

February 23, 2018

Ms. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

RE: Petition of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Requesting Approval of Green Source Advantage Program and Rider GSA to Implement G.S. 62-159.2 NCUC Docket E-2, Sub 1170 and E-7, Sub 1169

Dear Ms. Jarvis:

On behalf of the North Carolina Clean Energy Business Alliance ("NCCEBA") we hereby submit NCCEBA's **Initial Comments** in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to call me.

Thank you in advance for your assistance.

Very truly yours,

/s/Karen M. Kemerait

skb

Enclosure

cc: Parties of Record

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:
Petition of Duke Energy Progress, LLC,
and Duke Energy Carolinas, LLC,
Requesting Approval of Green Source
Advantage Program and Rider GSA to
Implement G.S. 62-159.2

**COMMENTS OF THE NORTH
CAROLINA CLEAN ENERGY
BUSINESS ALLIANCE**

Pursuant to the North Carolina Utilities Commission's ("Commission") Order issued on January 26, 2018 in the above-captioned proceeding, the North Carolina Clean Energy Business Alliance ("NCCEBA") submits the following Comments on the proposed Green Source Advantage ("GSA") Program filed by Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke" or the "Companies") on January 23, 2018, as well as NCCEBA's proposed and alternative GSA Program, which, unlike Duke's proposed GSA Program, complies with the requirements of applicable law.

I. PROCEDURAL HISTORY

On July 27, 2017, Governor Cooper signed into law House Bill 589 (Session Law 2017-192). *See* N.C. Gen. Stat. § 62-159.2. House Bill 589 (Part III), codified at N.C. Gen. Stat. § 62-159.2 (the "GSA Program Statute"), mandates that each electric utility serving more than 150,000 North Carolina retail jurisdictional customers, as of January 1, 2017, file with the Commission an application requesting approval of a new program to procure renewable resources on behalf of North Carolina's major military installations

(“Military Installations”), the University of North Carolina systems (“UNC System Customers”), and large nonresidential customers (collectively, “Eligible GSA Customers”) served by such utilities. The GSA Program Statute requires the procurement of up to 600 MW of new renewable energy capacity for Eligible GSA Customers over the next five years or until December 31, 2022, whichever is later.

On January 23, 2018, DEP and DEC jointly petitioned the Commission for approval of their proposed Green Source Advantage Program (“Proposed GSA Program” or “Program”) and their proposed Rider GSA.

On January 26, 2018, the Commission issued an Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA (“Commission Order”).

As NCCEBA was an active participant in the negotiations that led to House Bill 589 and is a representative of companies that intend to sell renewable energy for the benefit of Eligible GSA Customers, NCCEBA filed a Petition to Intervene on February 1, 2018. The Commission granted NCCEBA’s request to intervene on February 2, 2018.

Duke’s Proposed GSA Program and Rider GSA fail to comply with the GSA Program Statute in several material respects, and utterly fail to meet the needs and expectations of both renewable energy suppliers and Eligible GSA Customers. Duke’s proposed GSA Program wholly fails to meet the intent of the GSA Program Statute, and it places significant barriers to participation in the GSA Program. In light of the grave failings of Duke’s proposed GSA Program, NCCEBA not only submits comments that detail the problems with Duke’s Proposed GSA Program, but also is proposing an alternative GSA Program in Section V of the Comments that comply with the letter and

intent of the GSA Program Statute (the “Alternative GSA Program”).

Unlike Duke’s Proposed GSA Program, the Alternative GSA Program fully complies with the GSA Program Statute. In particular, the Alternative GSA Program (i) gives Eligible GSA Customers the opportunity to enter into integrated contracts for the purchase of energy, capacity, and renewable energy attributes, to select the renewable energy facility from which the renewable energy and capacity would be provided, and to negotiate the contract price with the renewable energy supplier, and (ii) meets the GSA Program Statute’s objective of ensuring that non-participating customers are neither advantaged nor disadvantaged by Duke’s procurement of additional renewable energy on behalf of participating GSA Program customers (“Program Customers” or “GSA Customers”).

II. BACKGROUND TO THE GSA PROVISION OF HOUSE BILL 589

Several years before the legislature enacted House Bill 589, on December 19, 2013, in Docket No. E-7, Sub 1043, the Commission approved a green source rider pilot program to enable certain nonresidential customers to procure renewable energy and capacity in the DEC territory. In addition to its limited geographic, temporal, and programmatic scope, the pilot program had numerous flaws and experienced only limited participation. Many large electricity users throughout both DEC and DEP territories sought a more expansive and permanent option for procuring cost-effective renewable energy. These large electric customers sought a new program that would promote the growth of renewable energy and economic development in the state, enable them to achieve their sustainability goals, and provide for predictability of electricity costs through long-term contracts for electricity. They desired access to the many

environmental and economic benefits of using renewable energy, including: long-term electricity cost certainty; generation of energy that produces no greenhouse gas emissions from fossil fuels and reduces some types of air pollution; diversification of our state's energy supply; and creation of economic development and jobs in manufacturing and installation. They requested that a green source program allow them to select the renewable facility from which the renewable energy and capacity would be provided, and that they be able to negotiate directly with the renewable energy supplier, rather than Duke. Companies such as Google, Facebook, Apple, and the University of North Carolina systems, among others, requested access to a program that would enable them to arrange for renewable energy facilities to be dedicated for their use in order to meet their sustainability goals.

In response, the North Carolina General Assembly enacted the Green Source Advantage section of House Bill 589—which mandates customer-directed programs designed to improve upon the green source rider pilot program and meet customers' sustainability goals. The legislature addressed the requests of the large electric customers that advocated for the green source program, and included provisions in the GSA Statute to ensure a cost-effective option for large electric users to procure renewable energy, allow customers to select the renewable facilities and negotiate directly with the renewable energy supplier, provide for long-term electricity cost certainty, and importantly, not create disincentives to participation in the Program. *See* N.C. Gen. Stat. § 62-159.2(b). It is critical that the GSA Program approved by the Commission effectuate the intent of the statute.

III. DUKE'S PROPOSED GSA PROGRAM IS IN SUBSTANTIAL VIOLATION OF HOUSE BILL 589

A. Duke unlawfully integrates the GSA Program into the CPRE Program

House Bill 589 makes it clear that the customer-directed GSA Program, provided under Part III of the legislation, and the competitive procurement of renewable energy program (“CPRE Program”)¹, provided under Part II, are separate programs that are wholly independent of each other. Indeed, despite the fact that the GSA Program was created in the section of House Bill 589 that immediately follows the section of the bill creating the CPRE Program, the General Assembly made absolutely no reference in the former to the latter. Clearly, if the General Assembly had intended for the GSA Program to be integrally connected to the CPRE Program, as Duke has proposed, it would have said so in the legislation. Duke, however, seeks to rewrite the legislation to serve the impermissible purpose of transferring the benefits of low-cost renewable energy procurement from the GSA Customer to the general ratepayers—a move that is likely to result in little, if any, participation in the GSA Program.²

The GSA Statute, entitled “Direct renewable energy procurement for major military installations, public universities, and large customers”, contains specific requirements for the GSA Program that are distinct from the requirements of the CPRE Program. The only overlap that could occur between the GSA Program and the CPRE Program would be at the expiration of the GSA Program and only if some amount of the 600 MW of renewable energy capacity had not been awarded to GSA Customers. In the event that some portion of the 600 MW of renewable energy capacity is not awarded

¹ In a separate statute from the GSA Program Statute, House Bill 589, mandated that the Companies competitively procure 2,660 megawatts (MW) of new renewable energy capacity through the CPRE Program over the next 45 months. *See* N.C. Gen. Stat. § 62-110.8.

² That outcome would benefit the Companies by increasing the size of the CPRE Program, in which they may be awarded 30% of the program capacity.

prior to the expiration of the Program, it will at that time be reallocated to the competitive procurement program. *See* N.C. Gen. Stat. § 62-156(e). Therefore, except at the expiration of the GSA Program, the 600 MW of renewable energy to be provided to GSA Customers under the GSA Program is in no way linked to the CPRE Program.

Despite the General Assembly's creation of a GSA Program wholly independent of the CPRE Program, Duke nonetheless seeks to rewrite the legislation to "tie" the GSA Program to the CPRE Program. *See Application*, ¶ 26 ("[T]he GSA Program is integrally tied to HB589's broader renewable energy procurement mandate on behalf of all customers through the CPRE Program . . ."). Duke seeks to have

The GSA "renewable energy product" to be procured under the GSA Standard Offer . . . be the same as the CPRE Program product, including requiring the Renewable Supplier to transfer the contractual rights to the "renewable energy, capacity and environmental and renewable attributes" generated by the GSA Facility as well as "rights to dispatch, operate and control the solicited renewable energy facilities in the same manner as the utility's own generating resources".

This attempt by Duke to create new law and link two independent programs was never intended by the legislature and also results in a number of provisions of the Proposed GSA Program (discussed below) that are contrary to the plain language of the GSA Statute.

B. The Proposed GSA Program fails to allow required negotiation of pricing terms

Duke's Proposed GSA Program fails to comply with the GSA Statute's unambiguous directive that "[e]ligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms." N.C. Gen. Stat. § 62- 159.2(b). Instead, the Proposed GSA Program prescribes price terms developed under the entirely separate CPRE Program, that was approved in the Commission's Order Modifying and

Approving Joint CPRE Program on February 21, 2018, in Docket Nos. E-2, Sub 1159, and E-7, Sub 1156. The Proposed GSA Program allows for effectively no negotiation in the Standard Offer option, and only allows eligible customers and suppliers in effect to negotiate renewable energy certificates (“REC”) prices under the proposed Self Supply option. As discussed previously, neither the language of the GSA Statute nor the structure of the new law provide for the GSA Program being a part of the CPRE Program or the CPRE Program’s pricing structure.

In order to understand the extent of the lack of compliance of the pricing terms of the Proposed GSA Program with House Bill 589, an explanation of how the Companies’ Proposed Program would operate is required.

The proposed GSA program provides two options for the GSA Customer: (1) a so-called “Standard Offer” option, and (2) a “Self-Supply” option.

i. Standard Offer Option

House Bill 589 specifically allows GSA Customers to select both the new renewable energy facility from which energy and capacity will be procured and the particular renewable energy supplier, as well as being allowed to negotiate with suppliers regarding price terms. N.C. Gen. Stat. § 62-159.2(b). However, under the Standard Offer option, the GSA Customer has no ability to select the renewable energy supplier, no ability to select the specific facility that will be dedicated for its use, and no ability to negotiate with suppliers regarding price terms, as required by House Bill 589. The GSA Statute unambiguously states that the GSA Program “shall allow eligible customers to select the renewable energy facility from which the electric public utility shall procure energy and capacity”, and that “[e]ligible customers shall be allowed to negotiate directly

with renewable energy suppliers regarding price terms”. N.C. Gen Stat. § 62-159.2(b).

Instead of allowing the GSA Customer to make its selection of facility and supplier, and even though the GSA Program and the CPRE Program are separate programs, Duke proposed that it would increase the size of its CPRE Program to include the GSA Customer’s desired renewable capacity. Duke states that it would contract with suppliers receiving awards under the CPRE Program for bundled energy, capacity and RECs at their respective bid prices and would transfer to the GSA Customer’s RETS account RECs acquired from renewable suppliers (although it is unclear whether the quantity of RECs delivered will be guaranteed to meet the customer’s request). The GSA Customer would pay Duke (a) its normal electric bill under its existing rate structure, (b) plus a GSA Product Charge based on the weighted-average price paid by Duke under the CPRE procurement, (c) administrative charges of \$375 per month per customer account (plus \$50 for additional accounts), (d) minus the Bill Credit, which equals (b) less a REC price derived from a national index. (However, please note that REC prices derived from a national index are not related to REC prices in North Carolina.)

Under this Standard Offer option, the GSA Customer would pay the same amount it would pay outside of the GSA Program, plus a market REC price and administrative charges. In other words, the GSA Customer has no potential to reduce its energy costs--and, to the contrary, will see the costs increase--and no potential to negotiate price terms or select its dedicated facility. While Duke implies that the GSA Customer would realize benefits from Duke’s procurement through CPRE, in fact all the savings relative to avoided costs would be spread broadly across Duke’s entire customer base (or, in the near term, Duke shareholders), thereby benefiting non-participants and harming the GSA

Customer, in direct contravention of the new law.

ii. Self-Supply Option

Under the Self-Supply Option, the GSA Customer would identify a specific renewable energy supplier and renewable facility with whom it would transact, and the Customer would purportedly negotiate with that supplier a bundled energy, capacity, and REC price. The renewable energy supplier would deliver the energy and capacity to Duke, and the RECs to the GSA Customer. However, the concept of an all-in negotiated purchase power agreement (“PPA”) price is illusory because, according to Duke’s proposed GSA Program, the payment to the supplier for energy would be based not on the PPA price, but on the weighted-average price paid by Duke under the CPRE procurement minus an index-based REC value (for illustration purposes will be referred to as “Value X”). That amount would be subtracted from the negotiated all-in price to determine the REC price paid to the renewable energy supplier by the GSA Customer. In sum, the GSA Customer would pay Duke (a) its normal electric bill under its existing rate structure, (b) plus a GSA Product Charge equal to Value X, (c) administrative charges of \$375 per month per customer account (plus \$50 for additional accounts), (d) minus the Bill Credit, which also equals Value X. The GSA Customer would additionally pay the REC price to the renewable energy supplier. The resulting transaction is tantamount to a REC deal with the added cost of an administrative fee paid to Duke, in which the GSA Customer has no ability to reduce its energy costs, whereas Duke and its other non-participating customers or shareholders will realize all the value resulting from renewable pricing below current avoided costs. *See* Table 1 below.

Furthermore, the structure of the Self-Supply option would prevent GSA

Customers and renewable energy suppliers from consummating transactions outside of the CPRE program timeline, which unnecessarily delays and complicates matters. While the Bill Credit is structured differently for the two- and five-year Self Supply options, it is similarly problematic and in violation of House Bill 589.

The foregoing elements of the proposed GSA Program are summarized in the following table and graphic:

Table 1	GSA “Standard Offer” Option	GSA “Self-Supply” Option
Duke charges to customer	<ul style="list-style-type: none"> •Existing retail bill •GSA Product Charge = Avg CPRE price x energy volume •GSA Admin Charge •GSA REC value (determined by Duke prior to each GSA Enrollment Period, based on nat’l, voluntary market index for procuring RECs) 	<ul style="list-style-type: none"> •Existing retail bill •GSA Product Charge = Avg CPRE price x energy volume less the GSA REC value (Duke claims this product charge is equivalent to the negotiated unbundled self-supply PPA price, but it is not) • GSA Admin Charge
Duke credits to customer (actual)	Avg CPRE price X energy volume	GSA Product Charge
Net customer bill (from Duke)	Existing retail bill + GSA admin charge + GSA REC value	Existing retail bill + GSA admin charge
RE supplier receives	<ul style="list-style-type: none"> •From Duke: As-bid RFP-priced energy (“Bundled RE Product PPA”) 	<ul style="list-style-type: none"> •From Duke: Avg CPRE price x energy volume less the GSA REC value (“Unbundled Self-Supply PPA Price”) •From customer: Negotiated REC price

STANDARD OFFER

Figure 2. Rider GSA Rate Design for Standard Offer Customers

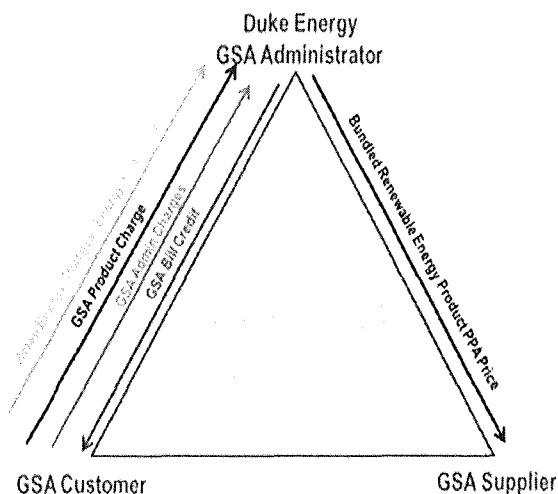
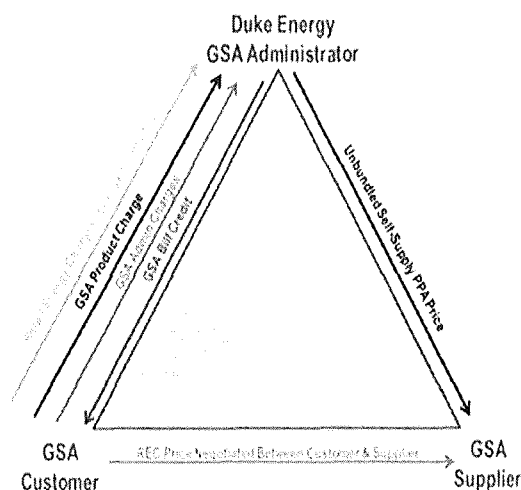
**SELF-SUPPLY**

Figure 3. Rider GSA Rate Design for Self-Supply Customers



Finally, Duke asserts that GSA Customers may directly negotiate with DEC or DEP to develop a GSA Facility under the Self-Supply Option. The statute simply does not allow Duke and its affiliates to be eligible renewable energy suppliers.

iii. Example: House Bill 589-Compliant Green Tariff versus Proposed GSA Rate Structure

Instead of setting the bill credit at or near the avoided cost and allowing the GSA Customer and renewable supplier to share the benefits between the avoided cost and the negotiated price (as allowed in N.C. Gen. Stat. §62-159.2 (e)), Duke has proposed that it be allowed to capture all of those benefits by setting the Bill Credit at the average price of winning bids through the CPRE program. In contrast to Duke's proposal that prevents any benefit from flowing to the GSA Customer, if the Bill Credit were set at or near Duke's avoided costs, as authorized by House Bill 589, the GSA Customers and renewable energy suppliers could share in the benefits of renewable pricing below avoided cost.

Table 2 below illustrates the difference between Duke's proposed GSA Program options and a House Bill 589 compliant program.

Table 2	HB589 Compliant Program	GSA "Self-Supply" Option	GSA "Standard Offer" Option
Duke Energy net bill to Customer	Existing Retail Rate less Negative Price Premium* (cost savings)	Existing Retail Rate + GSA Admin Charge (cost premium)	Existing Retail Rate + GSA REC Value + GSA Admin Charge (cost premium)
RE Supplier net bill to Customer	N/A	Negotiated REC Value	N/A
Duke Energy payment to RE Supplier	Negotiated PPA Price	Avg CPRE price x energy volume less the GSA REC value	As-bid RFP-priced energy ("Bundled RE Product PPA")
	<i>*Negative Price Premium = Avoided Cost less Negotiated PPA Price</i>		

In short, Duke has designed the GSA Program to ensure that the GSA Customer receives no financial benefit from participating in the Program, and allocates any financial benefits instead to either Duke shareholders or non-participating customers, which is in direct contravention of the requirements of the GSA Program Statute. NCCEBA respectfully requests that the Commission order Duke to amend its Proposed GSA Program to comply with House Bill 589 and separate the CPRE Program from the GSA Program consistent with the directive of House Bill 589.

C. Duke's Proposed GSA Tariff fails to provide required contract terms and conditions

Duke's Proposed GSA Program contains two notable failures in regard to House Bill 589's requirements of contract terms and conditions and the length of contracts.

First, N.C. Gen. Stat. § 62-159.2 (b) provides that “[e]ach public utility’s program application required by this section shall provide standard contract terms and conditions for participating renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer.”³ No such contract terms and conditions were filed with Duke’s Program application. Second, N.C. Gen. Stat. § 62-159.2 (b) provides that “[t]he standard terms and conditions available to renewable energy suppliers shall provide a range of terms, between two years and 20 years, from which the participating customer may elect.” Duke has failed to allow the required range of terms, as the only options available under the Self Supply option are two, five and 20 years. The proposed GSA Program does not give the GSA Customer the option of contract lengths between five and 20 years. It is highly likely that many Eligible GSA Customers are interested in contracts of durations between six and 19 years. These failures to comply with the new law create additional disincentives for eligible GSA Customers and suppliers to participate in the Program.

D. The Proposed Program wrongfully allows for economic dispatch by Duke

Duke unlawfully proposes that all renewable energy suppliers will be subject to control and economic dispatch by Duke. *See* IV. GSA Product Under the Standard Offer and Self Supply Options ¶ 26. As justification for this proposition, Duke relies upon N.C. Gen. Stat. § 62-110.8 that expressly allows Duke to include dispatch rights in a PPA with a renewable energy developer under the CPRE Program. Again, it is important to point out that the GSA Program is separate from the CPRE Program, and the GSA Statute

³ Duke makes passing reference to the form power purchase agreement it proposed in connection with the CPRE Program and suggests that it would use that agreement for purposes of the GSA Program. *See Application*, ¶ 27. However, that reference does not satisfy Duke’s statutory obligation to file a proposed agreement in this proceeding, and there are a number respects in which a CPRE PPA is not suitable for GSA Program purposes.

provides no similar authority for dispatch rights. Moreover, dispatch control over GSA renewable energy suppliers would allow Duke to curtail the suppliers, which could result in GSA Customers not being able to achieve their renewable energy goals.

E. Duke's GSA Program is in effect a REC program

N.C. Gen. Stat. § 62- 159.2(b) makes it clear that the GSA Program is a program for the procurement of energy and capacity, and not a program for the procurement of unbundled RECs. Indeed, if the large customer community's needs were met through the purchase of RECs, which was possible under pre-existing law, there would have been no need for the passage of Part III of House Bill 589. Yet Duke acknowledges in its Application, that its Proposed GSA Program is essentially a REC purchase program: "The Proposed GSA Program is designed "to facilitate [the GSA] customers obtaining renewable energy attributes and renewable energy certificates (RECs) associated with this new renewable energy generation to meet their sustainability goals." This Duke-created concept is inconsistent with both the plain language of the GSA Statute and the expectations of large electric customers that desire to procure bundled renewable energy (*i.e.*, energy, capacity, and environmental attributes/RECs), not unbundled RECs under a separate contract with the Renewable Supplier. Since the GSA Statute contains no provision for the unbundled purchase of RECs, Duke should not be permitted to unilaterally modify such a requirement in the GSA Program.

F. Additional Problems with the GSA Program

In addition to the many aspects of the Proposed GSA Program that violate the new law, Duke has introduced other problematic provisions into the GSA Program. Those problematic provisions include the following.

1. The GSA program would not open the Self-Supply option to participants until January 1, 2019, and the earliest contracts would not be executed until April 2019. *See* II. GSA Standard Offer Procurement and Self-Supply Option ¶ 14. This is 18 to 21 months after House Bill 589 became law, and there is simply no reasonable justification for the delay. Many large electric customers are waiting for the opportunity to participate in the Program so that they may achieve their sustainability goals. NCCEBA requests that the Commission order that GSA Program allow for contracts to be executed as soon as the GSA Program is approved by the Commission.

2. Duke proposes to allocate the 250 MW of Unreserved Capacity available to large nonresidential customers, with 160 MW of this Unreserved Capacity allocated to DEC customers and 90 MW allocated to DEP. *See* I. GSA Program Availability and Customer Eligibility ¶ 8. Nothing in the new law allows Duke to dictate how to allocate the Unreserved Capacity between its service territories. In fact, N.C. Gen. Stat. § 62-159.2 (d) allows unused capacity from major military installations or The University of North Carolina to be “reallocated for use by any eligible program participant,” which would broaden rather than narrow participation.

IV. DUKE’S PROPOSED GSA PROGRAM DISADVANTAGES GSA CUSTOMERS

Fundamentally, Duke’s proposed GSA Program fails to comply with the law’s explicit requirement that “all other customers *are held neutral, neither advantaged nor disadvantaged*, from the impact of the renewable electricity procured on behalf of the program customer.” N.C. Gen. Stat. § 62-159.2 (e) (emphasis added). Rather than complying with the law by ensuring that non-participating customers are neither advantaged nor disadvantaged by the GSA Program, Duke’s Proposed Program would

both unfairly advantage non-participating customers and unfairly disadvantage GSA Customers. Specifically, the Proposed Program would provide unfair advantages to non-participating customers and disincentives to GSA Customers by first requiring that the renewable energy is procured at a price lower than Duke's avoided cost, and then passing all of the cost savings to non-participating customers (and Duke shareholders), while providing no savings to GSA Customers. Duke's Program would thus result in preferential financial benefit to non-participating customers and no financial benefit whatsoever to participating customers. Such result is in absolute contradiction to the intent of House Bill 589 and the plain language of the statute.

Not only does Duke's Proposed GSA Program violate the new law--by advantaging non-participating customers, rather than holding them neutral--but it creates substantial disincentives for eligible GSA Customers to participate in the program. For example, Eligible GSA Customers that seek to meet their sustainability goals by participating in the Program will in all cases pay more to participate in the Program due to the costs that Duke would impose. Since Duke's Proposed GSA Program limits contract terms and conditions, some Eligible GSA Customers will be subjected to practical limitations in their ability to participate. Finally, many Eligible GSA Customers would like to purchase renewable energy and capacity through the green source program as soon as possible; but Duke will not allow participation in the Program until January 1, 2019.

The gravity of the barriers that Duke has placed to participation in the GSA Program is of great concern to NCCEBA and many large electric users. Duke's imposition of those disincentives could make it difficult or impossible for participation in

the Program. In the event that large electric users are not able to participate and purchase the 600 MW of renewable energy capacity available through the Program, the unused portion of the 600 MW of capacity will be reallocated to the CPRE Program, which could be in Duke's financial interest.

V. ALTERNATIVE GSA PROGRAM DESIGN

In addition to the above comments, NCCEBA submits the following Alternative GSA Program which NCCEBA believes fully complies with the GSA Program Statute and effects the legislature's intent in enacting Part III of House Bill 589.

I. GSA Program Availability and Customer Eligibility

1. The GSA Program Statute establishes GSA Program availability, providing 250 MW of the Maximum GSA Program Capacity will initially be reserved exclusively for UNC System Customers and 100 MW will be reserved exclusively for Military Customers for a three-year period after Program approval ("Reserve Period"). *See* N.C. Gen. Stat. § 62-159.2(c). The remaining 250 MW of the Maximum Program Capacity ("Unreserved Capacity") will be available to eligible large nonresidential customers. *See* N.C. Gen. Stat. § 62-159.2(a). If Program capacity reserved for Military Customers and UNC System Customers remains unsubscribed after the Reserve Period concludes, such capacity will become available to any Eligible GSA Customer subject to the Companies' determination of the appropriate allocation between DEC and DEP, as discussed below. *See* N.C. Gen. Stat. § 62-159.2(d).

2. The initial 250 MW of Unreserved Capacity available to the Companies' large nonresidential customers should not be allocated between DEC and DEP based upon the load-ratio share between DEC's and DEP's commercial and industrial customer

classes, as proposed by the Companies. Rather, it should be available across the service territories of DEC and DEP on a first-come, first served basis, just as contemplated for the Military Customers and the UNC System Customers, as discussed in more detail below.

3. Large nonresidential customers seeking to participate in the GSA Program must have a contract demand (i) equal to or greater than one megawatt (“MW”) or (ii) at multiple services locations that, in aggregate, is equal to or greater than five MW. See N.C. Gen. Stat. § 62-159.2(a).

II. GSA Customer Application and Enrollment Process

4. To enroll in the GSA Program, an Eligible GSA Customer must first submit an application form (“Customer Application”) through a Program web platform on the Duke Energy website. The Customer Application will identify an annual amount of capacity to be procured from a GSA Facility that shall not exceed one hundred twenty-five percent (125%) of the maximum annual peak demand of the eligible customer premises. *See* N.C. Gen. Stat. § 62-159.2(c).

5. In its Customer Application, the Eligible GSA Customer must identify its intent to participate in the GSA Program for a period of between two and 20 years and, accordingly, express its intent to enter into a GSA Service Agreement with DEC or DEP (as applicable) for the corresponding period of time. All GSA Customers must submit an appropriate application fee, which is intended to cover the Companies’ costs to review and process the application and, if approved, execute required contracts. Customers not awarded GSA capacity will be placed on a prioritized waiting list based on the date of submittal of a completed Customer Application. The application fee will be refunded to

the Customer only in the event that the Customer's application is rejected based on insufficient GSA Program capacity.

6. Prior to submitting a Customer Application, a GSA Customer must already have identified and negotiated price terms with a Renewable Supplier and executed a standard form GSA term sheet ("GSA Term Sheet") that indicates the name of the customer, the name of the supplier, the details of the facility(ies), negotiated price terms, and contract length (between two and 20 years). The Customer Application will require the prospective GSA Customer to submit information about its selected Renewable Supplier by attaching the executed GSA Term Sheet to the Self-Supply Customer's Customer Application. The GSA Term Sheet will also require the Renewable Supplier to attest that the GSA Facility will have corresponding supply that is exclusively dedicated as a GSA Program Facility and the renewable energy capacity is reserved on behalf of the identified Program applicant(s) requesting to enroll in the GSA Program.

7. Upon receipt of a completed Customer Application and applicable fees, DEC or DEP will assign GSA capacity to the Eligible GSA Customer on a "first-come, first-served" basis in either the reserved Military Customer queue, reserved UNC System Customer queue, or Unreserved Capacity queue. The Customer Application will be date- and time-stamped to designate each Eligible GSA Customer's position in the applicable GSA Program queue. This process is designed to provide queuing parity among Eligible GSA Customers of the same class (*e.g.*, UNC System Customers). A Customer Application shall not be accepted until the applicant has paid the required Customer Application fee.

8. After accepting a GSA Customer Application, DEC or DEP will deliver a standard GSA Service Agreement to the GSA Customer. The GSA Service Agreement will identify the material terms of the GSA Customer arrangement, including (i) the GSA Facility(ies) from which the Companies will be procuring renewable energy on behalf of the GSA Customer; (ii) the GSA Bill Credit that the participating GSA Customer will receive on its bill; (iii) the GSA Product Charge that the GSA Customer will pay to DEC or DEP, who will be responsible for then paying the third-party Renewable Supplier under the GSA PPA; and (iv) administrative charges required to participate in the GSA Program. The GSA Service Agreement will also memorialize DEC or DEP's obligation to track and deposit the RECs generated by the designated GSA Facility ("designated GSA Facility(ies)") in the GSA Customer's North Carolina Renewable Energy Tracking System ("NC RETS") account and retire those RECs on behalf of the GSA Customer.

9. The GSA Service Agreement will also set forth the financial security to be required from the GSA Customer to protect the Companies and customers from potential default by the GSA Customer during the term of the GSA Service Agreement. These financial security requirements are further addressed in Section IX below.

10. Failure by the GSA Customer to execute the GSA Service Agreement within 30 calendar days of delivery by DEC or DEP or failure by the Renewable Supplier to execute the GSA PPA within 30 calendar days of delivery by DEC or DEP will result in the termination of the Customer Application, which would then require the Eligible GSA Customer to start the Program enrollment process anew in order to participate in the Program. This condition ensures that other later-queued Program applicants will have reasonable access to unsubscribed Program capacity.

III. GSA Product

11. DEC or DEP will enter into a bundled GSA PPA with the Renewable Supplier for energy, capacity and RECs produced by the designated GSA Facility(ies) (“Bundled Renewable Energy Product”),

IV. GSA Bill Credit

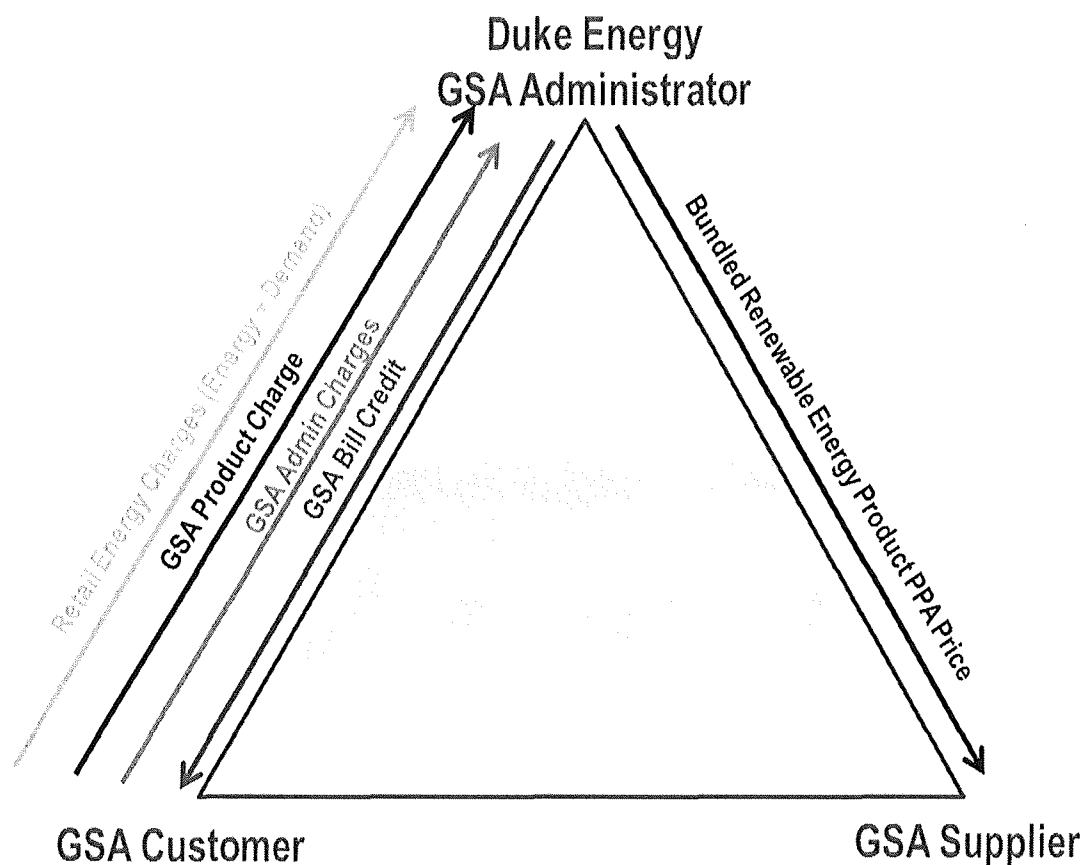
12. Consistent with the GSA Program Statute, the GSA Bill Credit will be equal to the applicable utility’s avoided cost rate over a period equal to the contracting period of the GSA PPA and calculated at the time of the GSA Customer’s application (based on the Commission’s most recently approved avoided cost methodology) multiplied times the kilowatt hours delivered by the Designated GSA Facility to the utility.

13. This approach “ensure[s] that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer.” N.C. Gen. Stat. § 62-159.2(e).

V. Rider GSA Rate Design

14. As prescribed by N.C. Gen. Stat. § 62-159.2(e), in addition to the GSA Customer’s normal retail bill for energy and demand charges, the total cost of any renewable energy procured by the Companies pursuant to the GSA Service Agreement will be paid for by the GSA Customer. Figure 1 presents the various charges and credits between the Companies, the GSA Customer, and the Renewable Supplier.

Figure 1: GSA Rider Rate Design



15. The “GSA Product Charge” is computed as the product of the quantity of energy delivered to DEC or DEP by the designated GSA Facility(ies) (in kilowatt-hours (“kWh”)) during the prior billing month multiplied by the applicable PPA Price (in dollars-per-kWh).

16. The GSA Bill Credit is then computed using the applicable avoided cost rates (in dollars-per-kWh, calculated as described in Section IV above) multiplied by the

quantity of energy delivered to DEC or DEP by the designated GSA Facility(ies) (in kWh) during the prior billing month.

17. The Bundled Renewable Energy Product PPA Price is the amount paid by the Company to a Renewable Supplier, and is equal to the Renewable's Supplier's PPA price (in dollars-per-MWh) divided by 1,000, and multiplied by the quantity of energy delivered to DEC or DEP by the designated GSA Facility(ies) (in kWh) during the prior billing month.

VI. Billing and Administrative Charges

18. The Companies will continue to bill participating GSA Customers in accordance with the applicable rate schedule for their account(s). In other words, a participating GSA Customer will still pay the energy and demand charges associated with the full requirements of its energy load under its applicable primary rate schedule. Because Rider GSA is a companion tariff to an applicable primary rate schedule, a participating GSA Customer's monthly billing statement will look much as it does today, retaining its existing rate tariff associated with billing for energy consumption at their premises, but it will also reflect the cost associated with contracted- for renewable energy delivered by a GSA Facility during the previous billing period (the Renewable Energy Product Charge), net of the Rider GSA Bill Credit, and Rider GSA Administrative Charge.

19. The Rider GSA monthly Administrative Charge for GSA Customers shall be \$375 per month, plus \$50 per billed account monthly. This monthly GSA Administrative Charge is intended to recover costs for manual billing, labor, program management, and support costs.

VII. GSA Facilities

20. GSA Facilities must be located within DEC's or DEP's respective North Carolina or South Carolina jurisdictional assigned service. A customer may select a GSA Facility located anywhere within DEC's or DEP's service territory.

21. A GSA Customer will also be required to submit all GSA Facility documentation required in the GSA Facility Term Sheet at the time a Customer Application is submitted. All GSA Facilities located in North Carolina must also obtain a certificate of public convenience and necessity ("CPCN") from the Commission prior to initiating construction of the GSA Facility, but not prior to submitting a Customer Application.

VIII. Early Termination and Reasonable Credit Requirements

22. In the event of early termination of the GSA Agreement by, or due to a default by, the GSA Customer the following shall apply:

1. If the purchase price under the GSA PPA is less than or equal to the Company's applicable avoided costs, the GSA PPA shall remain in full force and effect for the remainder of its term, notwithstanding the termination of the participating customer's participation in the program.
2. If the purchase price under the GSA PPA is more than the Company's applicable avoided costs, the GSA PPA shall remain in full force and effect for the remainder of its term, notwithstanding the termination of the GSA customer's participation in the GSA Program, except that the purchase price shall be reduced to the Company's applicable avoided costs and the GSA Customer shall be immediately liable to the Renewable Supplier for liquidated damages, payable within thirty (30) days and calculated as the difference between the projected revenues the supplier would have received over the remainder of the PPA term at the original purchase price and the projected revenues it is expected to receive during the same period at the new purchase price. As its sole liability for termination of its participation in the program, the GSA Customer shall pay the Renewable Supplier the amount of any such liquidated damages payable as provided herein and shall, as a condition of its participation in the program, provide the renewable electricity supplier with financial assurance sufficient to secure its obligation to make such payment; provided that such financial assurance shall be reduced on an annual basis to reflect the reduced amount of the potential liquidated damages payable under the GSA PPA. At the request of the GSA Customer, the Company shall enter into a new contract

with another Eligible GSA Customer to accommodate a transfer of the participating GSA customer's rights and obligations with respect to the GSA PPA to that Eligible GSA Customer.⁴

23. Major military facilities and the University of North Carolina are exempt from credit requirements under the Program statute. Other Eligible GSA Customers desiring to participate in the GSA Program must comply with the credit requirements set forth in the GSA Service Agreement. As specified in the GSA Service Agreement, customers that have a minimum acceptable credit rating from either Standard & Poor's Global Ratings Inc. ("S&P") or Moody's Investor Service will be assigned an unsecured credit limit based on such GSA Customer's particular credit rating. GSA Customers that do not have such a credit rating may provide a parent guarantee from an entity with such a credit rating or, alternatively, may submit financial statements for review by the Company, which will then assign an appropriate rating on a commercially reasonable basis for purposes of the GSA Service Agreement. Unaudited or incomplete financial information will negatively impact the assigned rating. GSA Customers that are unable to demonstrate creditworthiness equivalent to at least a BB- rating (per S&P rating scale) will not be eligible for participation in the Program.

24. The amount of the performance security shall be sufficient to cover the early termination payment as determined under the GSA Service Agreement and specified in a termination schedule attached to the GSA Service Agreement for each year of the term of

⁴ The GSA PPA should include a time-differentiated rate schedule derived from the Company's avoided costs as of the date that the GSA Customer submitted its application, which shall form the basis of a modified PPA between the Company and the Renewable Supplier in the event of early termination of the GSA PPA.

the GSA Service Agreement (the “Security Amount”) in the event that the PPA rate is greater than the applicable avoided cost. If a GSA Customer does not have an unsecured credit limit, or if the Security Amount exceeds a GSA Customer’s unsecured credit limit, then the GSA Customer will be required to provide credit support in the form of a guarantee from a credit-worthy entity, an acceptable letter of credit acceptable to the Companies, or a cash deposit in amount equal to the difference between the Security Amount and the unsecured credit limit (if any). Such credit support is intended to protect the Renewable Energy Supplier in the event of a GSA Customer’s failure to perform its obligations under the GSA Service Agreement.

25. In the event there is a change in a GSA Customer’s credit rating during the term of the GSA Service Agreement, the unsecured credit limit (if any) will be adjusted accordingly. If a GSA Customer enters into multiple GSA Service Agreements under the Program, then the total Security Amount will be aggregated across all GSA Service Agreements. If an entity wishes to act as a guarantor for multiple GSA Service Agreements under the Program, then the unsecured credit limit available to such guarantor will be allocated to such agreements in the amounts requested by the guarantor. GSA Customers having an investment grade credit rating or a guarantee from an investment grade rated entity will not be required to provide additional credit support.

26. In the event of the Renewable Supplier’s default under the GSA PPA, the PPAs shall provide that the supplier shall be liable to the GSA Customer for any actual direct damages it incurs as a result of contracting with the Company and another renewable energy supplier to replace the energy, capacity and environmental attributes not provided by the defaulting supplier. The GSA PPA shall provide for the posting of

performance security by the Renewable Supplier to secure its potential liability for damages as described herein. Such performance security (i) shall be in the form of a letter of credit, a surety bond, or an escrow account; (ii) shall not to exceed fifty thousand dollars (\$50,000) per MWac; (iii) shall, at the option of the Renewable Supplier, each year be reduced to an amount equal to the number of years remaining in the GSA PPA divided by the term (in years) of the GSA PPA multiplied by the original amount of the performance security; and (iv) shall not be required to be posted until the Renewable Supplier and the Company have executed an interconnection agreement.

IX. Cost Recovery and Impacts to Cost of Service

27. Under the GSA Program, the Companies will recover from the GSA Customer the full cost of the Renewable Supplier PPA such that there will be no “nonadministrative costs related to the renewable energy procurement pursuant to [the GSA Program statute] not recovered from program participants” and thus no need for any recovery by the Companies pursuant to new Section (a1)(11) of the fuel factor. N.C. Gen. Stat. § 62- 133.2(a)(11). Because the GSA Bill Credit for energy delivered by GSA Facilities under a GSA PPA is equal to or below the Companies’ forecasted avoided cost, non-participating customers will be held neutral, neither advantaged nor disadvantaged, from the impact of the renewable energy procured on behalf of participating Rider GSA Customers. *See* N.C. Gen. Stat. § 62-159.2(e).

CONCLUSION

NCCEBA and its members were actively involved in the negotiations that led to House Bill 589, including the GSA Program Statute, and have played an active role in the implementation of the new law. The structure and implementation of the GSA Program

are crucial to the success of the overall goals of the GSA Program Statute for both customers and suppliers. Given Duke's significant deviations from the law and the underlying policy of the GSA Program Statute, NCCEBA respectfully requests that the Commission order Duke to amend its GSA Program and Rider to fully comply with the law and create a program that provides incentives for customers and suppliers to participate.

Respectfully submitted, this the 23rd day of February, 2018.

/s/ Karen M. Kemerait
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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission to all parties of record.

Respectfully submitted, this the 23rd day of February, 2018.

SMITH MOORE LEATHERWOOD LLP

BY: _____
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