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September 26, 2018

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Strike Comments
Docket Nos. E-7, Sub 1169 and E-2, Sub 1170

Dear Ms. Jarvis:

Please find enclosed Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Strike Comments for filing in connection with the above-referenced dockets. If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,

Jack E. Jirak

Enclosures

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

In the Matter of Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2	)	DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC'S MOTION TO STRIKE COMMENTS

NOW COME Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, "Duke Energy" or the "Companies"), pursuant to North Carolina Utilities Commission ("Commission") Rule R1-7, and move the Commission to strike the respective Post-Hearing Comments of the North Carolina Clean Energy Business Alliance ("NCCEBA") and the North Carolina Sustainable Energy Association ("NCSEA" and, together with NCCEBA, the "Solar Developer Advocates"). In support of this motion, the Companies show as follows:

The Commission's Order Scheduling Oral Argument did not authorize the filing of post-hearing comments nor did the Commission solicit such comments during the September 4, 2018 oral arguments.[1] Therefore, the Solar Developer Advocates should not be allowed to submit additional sur-reply comments for Commission consideration outside of the processes established by the Commission. The Solar Developer Advocates' filing

[1] The Commission's procedural rules do not support the filing of sur-reply comments on an Application, unless directed by the presiding commissioner. Commission Rule R1-21(e)(3); *see also* Transcript of September 4, 2018 Oral Argument at 167-68 (Chairman Finley ruling that "surrebuttal" was "not appropriate" at the close of the hearing).

of unauthorized post-hearing comments is particularly troubling considering their prior filing in the GSA Program dockets. Specifically, on May 4, 2018, in an earlier stage in this proceeding, NCCEBA and NCSEA moved the Commission ***for permission*** to file sur-reply comments. The Commission did not grant that motion in its July 16, 2018 order, electing instead to schedule oral arguments. Apparently, NCCEBA and NCSEA have altered their view of the appropriate procedural process since the Commission did not grant their May 4, 2018 request and, instead, have concluded that Commission approval of such unauthorized comments is not necessary. Such procedural irregularity should not be tolerated and the Solar Developer Advocates should not be permitted to circumvent the Commission's procedural authority. Moreover, in many cases, the issues raised in the Post-Hearing Comments were already addressed in the comments submitted by each party in the two rounds of comments that were expressly authorized by the Commission.

From a substantive perspective, the Companies object to all of the arguments made in the respective Post-Hearing Comments. The Reply Comments contain numerous

inaccuracies,[2] unsubstantiated generalizations,[3] flawed statutory interpretations,[4] and misleading[5] and irrelevant[6] information, demonstrate a poor understanding of fuel cost

[2] *See e.g.,* NCCEBA states that "GSA Customer load [will not be] served by CPRE purchases…in the future." NCSEA Comments at 6. This is false. The CPRE resources will be system assets serving the load of all customers, including GSA Customers. NCCEBA continues to ignore the fact that GSA facilities will be non-dispatchable and fuel-source limited solar generating facilities that cannot meet GSA Customers' 24/7/365 load requirements.

See e.g., NCSEA asserts that "[n]othing in. . .the day-ahead market dynamics reflects the costs that Duke avoids by not having to generate electricity from its own generation portfolio to serve the GSA customer." The Hourly Day Ahead System Lambda proposed to be used for the Bill Credit (which NCSEA improperly characterizes as the "day-ahead market dynamics") reflects the marginal cost of generating electricity on the Duke system therefore, contrary to NCSEA's evidence-less assertion, ***is precisely the cost that would be avoided by procuring the GSA resource***. Calculating the utility's avoided cost using the Hourly Day Ahead System Lambda is also fully consistent with FERC regulations, which contemplate determining "the purchasing utility's avoided costs calculated at the time of delivery." 18 C.F.R. 292.304(d)(1).

See e.g., NCSEA alleges that Duke is seeking to "receive payment, recovered from ratepayers in the fuel rider, for its generation that is replaced by the power generated by the independent power producer pursuant to a GSA agreement with a GSA customer." NCSEA Comments at 8. This is blatantly incorrect and not what is reflected on Duke Energy's exhibit that is presented in NCSEA Exhibit 2. When a GSA resource displaces another system asset, that displaced system asset does not generate the MWh and no fuel cost is incurred. Therefore, Duke Energy does not recover any fuel costs associated with such displaced generation. But there is a cost associated with the MWh produced by the GSA resource, which is the price that Duke Energy pays through the PPA. Importantly, as shown on Exhibit 2, if the fixed Bill Credit is higher than the fixed GSA Customer Charge (*e.g.,* if the GSA Customer "pays" $37 but gets a $52 credit), then the GSA Customer makes no contribution to the cost of MWh generated by the GSA Facility and, in fact receives a credit of $15 for every MWh. In other words, there remains actual fuel costs to be paid, but the GSA Customer is paying $15 less in fuel as result of the inflated Bill Credit.

[3] *See e.g.,* NCCEBA alleges that the General Assembly "created a separate program—GSA—to allow [difference between actual contracted prices and long-term administratively established avoided costs] to be realized by a defined group of large energy users." NCCEBA Comments at 2. However, no citation to any statutory language is offered in support of this proposition. The General Assembly did, however, clearly task the Commission with "ensur[ing] that all other [non-participating] customers are held neutral . . ." *see* N.C. Gen. Stat. 62-159.2(e).

[4] *See e.g.,* NCCEBA correctly frames one of the questions posed by the Commission during the oral arguments—namely, "what significance [should be] ascribe[d] to the fact that the legislature did not require that the bill credit equal the utility's avoided cost (as it did in the section of H.B. 589 creating the community solar program)." NCCEBA Comments at 5. But after accurately stating the question, NCCEBA utterly failed to provide a coherent statutory interpretation, choosing instead to reiterate its view of what was intended by the term "avoided cost" but never actually explaining why a value that is specified as a cap should, instead be the bill credit itself—which is the precise question asked by the Commission as identified by NCCEBA.

[5] *See e.g.,* NCCEBA repeatedly emphasizes Public Staff's support for a Bill Credit set as the ten-year avoided cost without once acknowledging that the Public Staff had indicated that they would support avoided cost ***up to*** ten years but would also support an avoided cost set over a shorter duration. NCCEBA also never acknowledges that the Public Staff was also supportive of the Walmart Settlement.

See e.g., NCCEBA asserts that a ten-year avoided cost is "consistent with the General Assembly's and the Commission's avoided cost calculation horizon for PURPA standard offer program." NCCEBA Comments at 11, without mentioning that the General Assembly, through HB 589, expressly limited eligibility for the standard offer for 10 years to 1 MW or smaller facilities. *See* N.C. Gen. Stat. 62-156(b)(1). Due to the

recovery,[7] fail to provide concrete examples,[8] and, in some cases resort to making vague and completely unsubstantiated allegations.[9] In fact, it is worth noting that NCCEBA itself

minimum 1 MW customer contract demand eligibility requirements to participate in the GSA Program, the PURPA standard offer program eligibility is not applicable. *See* N.C. Gen. Stat. 62-159.2(a).

See e.g., NCCEBA cites to two FERC decisions but largely misstates the holdings in these cases, which do not support the proposition asserted. NCCEBA Comments at 7. Setting a utility's avoided cost through a competitive solicitation for renewable energy resource to meet a state-mandated renewable energy procurement requirement does not violate PURPA. In fact, FERC more recently indicated the exact opposite: "regardless of whether the State regulatory authority determines avoided cost administratively, through competitive solicitation (bidding), or some combination thereof, it must in its process reflect prices available from all sources able to sell to the utility whose avoided cost is being determined," *S. California Edison Co.*, 70 FERC ¶ 61,215, 61,677 (1995) (emphasis added). FERC explained that being "able to sell to the utility" can "mean[] that where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement" (*Order on Granting Clarification and Denying Rehearing*, 133 FERC ¶ 61,059, at P 27 (2010)).

[6] *See e.g.*, NCSEA spends approximately 5 pages providing an in-depth comparison of the Georgia Power Commercial and Industrial ("C&I") Program even though Duke Energy has never asserted that the Walmart settlement was intended to fully mirror the C&I Program.

[7] *See e.g.*, NCSEA asserts that "N.C. Gen. Stat. § 62-159.2 does not authorize Duke to recover lost revenues" but fails to even mention N.C. Gen. Stat. § 62-133.2(a1)(11), which was added by HB 589 and authorizes the Companies to recover through their respective fuel riders "[a]ll nonadministrative costs related to the renewable energy procurement pursuant to [the GSA Program] not recovered from the program participants." The Companies' prudently incurred fuel costs are recovered on a dollar for dollar basis with no return, and where a GSA Customer receives a Bill Credit that is greater than the GSA Customer Charge, they contribute less to the total fuel cost and non-participating customers are forced to bear additional costs that would otherwise have been paid by the GSA Customer. As shown on Duke Energy's hearing exhibit provided as NCSEA Exhibit 2, under the NCCEBA and NCCEBA proposal, the GSA Customer is not actually paying any amount towards the cost of the GSA resource. That is, where a GSA Customer "pays" a fixed GSA Charge but receives a fixed GSA Bill Credit that is higher than the GSA Customer Charge, then it is really a fiction to suggest that the GSA Customer is "paying" any amount towards the cost of the GSA resource (*e.g.*, if the GSA Customer "pays" $37 but gets a $52 credit, the net effect is that the GSA Customer "pays" nothing but instead sees a reduction in their total liability for fuel cost). Because fuel costs are recovered on a dollar for dollar basis, non-participating customer must make up for the fuel costs not paid by the GSA Customer due to the difference between the GSA Customer Charge and the Bill Credit, which would be recovered through the fuel clause pursuant to N.C. Gen. Stat. § 62-133.2(a1)(11).

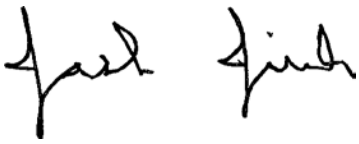
[8] *See e.g.*, Unlike the multiple detailed hypothetical cost scenario charts presented by Duke at oral argument, neither NCCEBA nor NCSEA have provided a full cost accounting example setting forth a detailed picture of what costs are incurred under their proposed GSA program structure. In NCSEA's limited narrative on page 9 of its comments, NCSEA asserts that, under Duke Energy's hypothetical, non-participating customers "will save $15 by paying $37 (rather than $52)." But NCSEA does not account for the fact that non-participating customers also pay for the $15 net credit received by the GSA Customer (see FN 7—GSA Customer "pays" $37 but gets a $52 credit, reducing their contribution to fuel costs by $15).

[9] *See e.g.*, NCSEA alleges, ***without any evidence***, that Duke would be able to "manipulate" the CPRE market prices or its actual marginal cost. NCSEA Comments at 7.

was already required to amend its Post-Hearing Comments due to the fact that it incorrectly represented that Public Staff supported NCCEBA's bill credit proposal.[10] If the Commission chooses not to grant this motion to strike, Duke Energy requests that the Commission authorize the Company to respond to the respective Post-Hearing Comments.

WHEREFORE, for the reasons set forth above, the Companies respectfully move the Commission to strike Post-Hearing Comments of NCCEBA and NCSEA, respectively. Alternatively, the Company requests an opportunity to provide a response.

This the 26th day of September, 2018.



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Counsel for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC

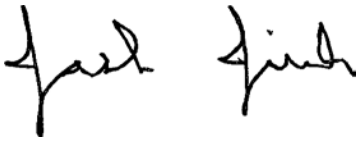
See e.g., NCCEBA once again raises baseless allegations insinuating that Duke Energy's GSA Program structure might somehow allow "Duke Energy's shareholders to capture the benefits of the [GSA Program] cost savings…." Yet no evidence or accounting examples are provided to show how this would occur.

[10] *See* September 21, 2018 letter on behalf of NCCEBA filed in Docket Nos. E-7, Sub 1169 and E-2, Sub 1170

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Strike Comments, in Docket Nos. E-7, Sub 1169 and E-2, Sub 1170, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid, properly addressed to parties of record.

This the 26th day of September, 2018.



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