

February 23, 2018

Via NCUC ELECTRONIC FILING

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, North Carolina 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;**

Docket Nos. E-2, Sub 1170 and E-7, Sub 1169

Dear Ms. Jarvis:

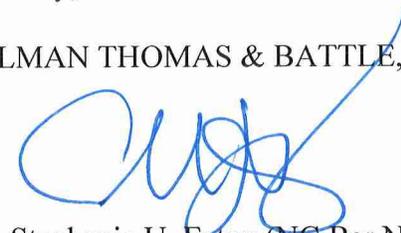
Please find attached for electronic filing with the North Carolina Utilities Commission ("Commission") a copy of the Comments of Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"), in the above-referenced matter. By copy of this letter, I am serving all parties of record via Electronic Mail and/or First-Class Mail.

Please contact us if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By



Stephanie U. Eaton (NC Bar No. 25111)
Carrie M. Harris (NC Bar No. 52711)

*Counsel to Wal-Mart Stores East, LP and Sam's East,
Inc.*

CMH/sds:10616157

Attachments

c: Certificate of Service

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: |) | COMMENTS OF |
| |) | WAL-MART STORES EAST, LP |
| Petition of Duke Energy Progress, LLC, |) | AND SAM'S EAST, INC. |
| and Duke Energy Carolinas, LLC, |) | |
| Requesting Approval of Green Source |) | |
| Advantage Program and Rider GSA to |) | |
| Implement G.S. 62-159.2 |) | |

Pursuant to the Order of the North Carolina Utilities Commission ("Commission") on January 26, 2018, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"), respectfully submit the following Comments regarding the Green Source Advantage Rider ("GSA") submitted by Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, the "Companies").

I. INTRODUCTION AND WALMART'S INTEREST IN THE DOCKET

Walmart has significant operations within the Companies' territories.¹ As reflected on Walmart's website, Walmart operates 218 retail units and four distribution centers and employs over 58,000 associates in North Carolina. Of those, Walmart has 80 stores, two distribution centers, and related facilities that take electric service from DEC and 66 stores, one distribution center, and related facilities that take electric service from DEP. In fiscal

¹ See Walmart's Petition to Intervene filed on February 20, 2018.

year ending 2017, Walmart purchased \$12.7 billion dollars' worth of goods and services from North Carolina-based suppliers, supporting almost 81,000 supplier jobs.²

Walmart has established aggressive and significant renewable energy goals, including: (1) an aspirational goal to be supplied 100 percent by renewable energy³ and (2) by 2025, to be supplied by 50 percent renewable energy. Additionally, Walmart has set a science-based target to reduce emissions in our operations by 18 percent by 2025 through the deployment of energy efficiency and the consumption of renewable energy.⁴ To date, Walmart takes electricity from one or more renewable resources in 19 states and Puerto Rico; North Carolina is not among those states.

Walmart seeks renewable energy resources that deliver industry leading value, including renewable attributes such as renewable energy credits ("REC"), within structures where the value proposition allows the customer to receive any potential benefits associated with the risk of being served by that resource instead of, or in addition to, the otherwise applicable resource portfolio. As a general rule, when selecting renewable resources, Walmart does not enter into premium structures or programs that only result in additional costs to our facilities. Additionally, Walmart does not enter into programs with terms in excess of 15 years.

Walmart utilizes three channels to secure renewable energy resources in order to meet our renewable energy goals:

- **Contracting for off-site resources:** These products are typically structured to serve Walmart's load and replace other energy, both physically and on

² <http://corporate.walmart.com/our-story/locations/united-states#/united-states/north-carolina>

³ <http://corporate.walmart.com/global-responsibility/environmental-sustainability>

⁴ <http://news.walmart.com/2016/11/04/walmart-offers-new-vision-for-the-companys-role-in-society>

the bill. To date, Walmart has primarily contracted for these resources through Texas Retail Energy, LLC ("TRE"), a competitive electric supplier wholly owned by Walmart, Inc. that serves as Walmart's electric supplier in most deregulated retail markets.

- **Contracting for on-site resources:** Walmart contracts for on-site, behind the meter resources through power purchase agreements and leases that allow performance guarantees. These resources replace grid energy and are priced with the expectation that the operating costs for the site are reduced.
- **Utility partnerships:** Walmart works with its utility partners to develop useable programs and economic structures targeted to function within the confines of the regulatory compact and with minimal impact to non-participating customers. The largest of these partnerships to date is Walmart's deal with Alabama Power to off-take a portion of a 72 MW solar farm in Alabama.⁵ Walmart is actively engaged with a number of utilities nationwide to develop and seek regulatory approval for similar programs.⁶ Despite Walmart's experience in developing partnerships with its utility partners, neither DEC nor DEP engaged Walmart in the development of the proposed GSA.

⁵ <http://www.alabamane.wscenter.com/2018/01/02/chambers-county-solar-project-now-serving-alabama-power-customers/>

⁶ See, e.g., *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of 2017 Green Tariff*, Missouri Public Service Commission File No. ET-2018-0063; *Application of Virginia Electric and Power Company for Approval to Establish a Companion Tariff, Designated Schedule RG Pursuant to § 56-234 of the Code of Virginia*, Virginia State Corporation Commission Docket No. PUR-2017-00163; and *Georgia Power Company's 2016 Integrated Resource Plan and Application for Decertification of Plan Mitchell Units 3, 4A and 4B, Plant Kraft Unit 1 CT, and Intercession City CT – Commercial and Industrial Renewable Energy Development Initiative Program*, Georgia Public Service Commission, Docket No. 40161.

II. THE COMPANIES' PROPOSED GSA

Before turning to the merits of the GSA proposed by the Companies, the Commission should reject the Companies' filing as incomplete and order DEC and DEP to file a complete proposal, including all documents intended to be used in the implementation of the program. The proposed GSA tariffs reference a "GSA Service Agreement" and a "standard form term sheet"; however, neither the GSA Service Agreement nor the standard form term sheet were included in the Companies' filing. *See* DEC and DEP's Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2 ("Petition") at Attachment A, pp. 2, 3. The failure to include these critical documents precludes parties from evaluating the GSA because certain key terms, such as the GSA Product Charge, are not defined within the tariff nor other documents submitted by the Companies that will be used by customers during the effective period of the program.

Even if the Companies' produced all the critical documents, Walmart nonetheless believes that the GSA as proposed by the Companies fails to meet Walmart's expectations as a customer. The Companies propose two options for the GSA program: (1) a "Standard Offer" option, in which the Companies are responsible for resource procurement; and (2) a "Self-Supply" option, in which the customer can select the resource to be used. Neither option is attractive to Walmart as filed.

The Standard Offer is essentially just a cost-additive REC purchase program. This option relies on resources that appear to be acquired through the competitive procurement of renewable energy program ("CPRE"), but with the addition of significant administrative fees charged to participants. *See* Petition, ¶¶ 11, 45. The proposed term of the Standard

Offer – 20 years only – is also problematic. *See id.* ¶ 19. In total, Walmart would not participate in the Standard Offer program even were it approved by the Commission.

If the Commission determines that is appropriate for the Companies to offer customers a REC-purchase program sourced from CPRE resources, which is essentially what the Companies have proposed as the Standard Offer, then the Commission should reject the Standard Offer option and require that such a program be offered to all DEC and DEP customers outside of the capacity restrictions set forth in N.C. Gen. Stat. § 62-159.2(d) so that the program would not reduce the available capacity for GSA participation.

The Self-Supply option as filed by the Companies should also be rejected by the Commission. Similar to the Standard Offer option, the Self-Supply option boils down to nothing more than a cost-additive REC purchase program with significant administrative costs. Unlike the Standard Offer, however, the Self-Supply option has the added burden of additional transaction costs associated with negotiating a REC price with the supplier. The Self-Supply option as structured by the Companies is simply not an attractive option for Walmart.

If the Commission determines that it is appropriate to approve a GSA Self-Supply option, it should only do so with the following modifications:

- A. The contract terms proposed by the Company for the Self-Supply option are unreasonable and should be rejected or modified by the Commission.**

N.C. Gen. Stat. § 62-159.2(b), requires that a program under this section "shall provide a range of terms, between two years and 20 years." Without any explanation whatsoever, the Companies propose to offer contract terms of only two, five, and 20 years for the Self-Supply option. *See* Petition, ¶ 12. Such limited term options are unreasonable.

The shorter terms may produce higher costs to participating customers as development costs are spread over fewer MWh than would be the case with longer terms. In contrast, the 20-year term is simply too long for many customers – including Walmart – who may have corporate governance rules that limit contract terms, or who may not have the risk tolerance for a program of that duration. Given the unique circumstances of each potential participating customer, and the potential for flexible contract terms to benefit participating customers by creating a more competitive resource marketplace, if the Commission approves the GSA Self-Supply option it should require that the program allows for contracts of any length between two and 20 years.

B. The value proposition of the Self-Supply option has no relationship to the underlying economic opportunity, and the proposed GSA Product Charge, Unbundled Self-Supply Power Purchase Agreement ("PPA") Price, and GSA Bill Credit structures should be rejected or modified by the Commission.

N.C. Gen. Stat. § 62-159.2(b) provides that "eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms." By being able to negotiate price terms directly with the supplier, customers expect to negotiate favorable terms for the energy procured. In Walmart's experience, "price terms" include the price of the renewable energy and capacity and the price of the RECs. Logically, a customer who goes to the trouble to negotiate such price terms rationally expects that they would pay rates commensurate with those negotiated prices.

The Self-Supply option, as filed, does not memorialize this value proposition. Indeed, the negotiation of "price terms" in the Self-Supply option creates a wholly illusory "benefit" for the customer. Rather than paying the price for renewable energy negotiated with the supplier, the Companies' proposed GSA requires that the Self-Supply customer pay a "GSA Product Charge" that is calculated as the total of the applicable competitive

procurement of CPRE Tranche Weighted Average Price (\$/MWh) minus the GSA REC Value (\$/MWh). Petition, ¶ 38.

For the 20-year Self-Supply term, the Companies propose that the "Unbundled Self-Supply PPA Price," or the PPA rate paid by DEC or DEP to the supplier, is equal to the proposed GSA Product Charge. *Id.* ¶ 41. For the proposed two- and five-year terms, the Companies propose to pay the supplier the lesser of the rate equal to the GSA Product Charge or the PPA rate negotiated between the customer and supplier. *See id.* at Attachment A, p. 3. Thus, the ability of the customer to negotiate a price is essentially meaningless under the Self-Supply option proposed by the Companies. To preserve the value proposition set forth in N.C. Gen. Stat. § 62-159.2(b), Walmart recommends that, regardless of contract term, if the Commission approves the GSA Self-Supply option, then it should require that the GSA Product Charge and the Unbundled Self-Supply PPA Price be equal to the energy price negotiated between the customer and the supplier.

The proposed GSA Bill Credit suffers from the same disconnect from the underlying economic opportunity as the proposed GSA Product Charge and Unbundled Self-Supply PPA Price. Like the GSA Product Charge and the Unbundled Self-Supply PPA Price, the Companies propose that the GSA Bill Credit be based on the total of the applicable competitive procurement of CPRE Tranche Weighted Average Price (\$/MWh) minus the GSA REC Value (\$/MWh). *See Id.* at, ¶ 42. Again, this calculation does not square with customer expectations or logic.

Optimally, any bill credit should reflect the energy and capacity costs to the DEC or DEP systems that are avoided by the customer purchasing power from the renewable generation resource instead of from the system portfolio of resources ("buying renewable

vs. system"). The Companies' proposal, however, ties the bill credit to the avoided cost of a portfolio of incremental renewable resources ("buying renewable vs. renewable"), not the total system portfolio of resources. Implementing the GSA Bill Credit in this manner decreases the value of participating in the Self-Supply option to the customer.

To the extent the Commission approves a GSA Self-Supply option, the Commission should recognize that customers enter into these programs with the intention of buying renewable vs. system as opposed to buying renewable vs. renewable. Moreover, if the Commission approves the GSA Self-Supply option, then it should set the GSA Bill Credit based on the avoided costs for DEC and DEP of the customer buying renewable vs. system.

Walmart's recommendation concerning the GSA Bill Credit recognizes that the Commission has recently ordered changes to the calculation and applicability of avoided costs, including the option for qualifying facilities that do not qualify for long-term levelized rates to enter into an active utility solicitation for new resources, in addition to being able to sell at the utility's Commission-established variable energy rate. *See In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*; Docket No. E-100, Sub 148 (Order entered Oct. 11, 2017), p. 108. Walmart also recognizes that N.C. Gen. Stat. § 62-159.2(e) requires that all other customers be held neutral.

Two factors ensure that setting the GSA Bill Credit at avoided cost will result in just and reasonable rates that comply with N.C. Gen. Stat. § 62-159.2(e). First, the Commission has authority to determine both the calculation methodology and the level of avoided costs, which provides assurance that avoided cost rates are just and reasonable.

Second, because the program requires participating customers to remain full-service customers of the Companies, participating customers will continue to pay for their use of the generation capacity and the distribution and transmission systems through base rates. As the economics of the GSA program are centered around variable energy costs, the likelihood of the shifting of fixed cost recovery between participants and non-participants is minimal.

C. The applicability of the proposed GSA Administrative Charge is unclear.

The Companies propose the following language for the application of the GSA Administrative Charge:

GSA Administrative Charge – the applicable monthly administrative charge shall be \$375 per Customer Account, plus an additional \$50 charge per additional account billed.

See Petition at Attachment A, p. 3. The Companies do not define "Customer Account" in the proposed tariff. Thus, it is unclear if the "Customer Account" set forth in the Companies' proposed definition of "GSA Administrative Charge" refers to the primary account at a single customer premise that has multiple accounts participating in the program,⁷ or if "Customer Account" is intended to be the first account of all of an aggregated customer's accounts participating in the program, with all other participating accounts treated as "additional account billed."⁸

While the tariff does not define "Customer Account," it does reference "service locations" in the context of the "Availability" provisions of the proposed tariff. To rectify

⁷ For example, Walmart has some facilities that have more than one meter and account at the facility, and the "primary account" would be the largest account at the facility.

⁸ For example, Walmart could have 50 accounts aggregated to participate in the program. One account would be defined as "Customer Account" and the remaining 49 would be defined as "additional account billed."

the lack of clarity in the "GSA Administrative Charge" definition proposed by the Companies and to ensure consistency throughout the tariff language, Walmart recommends that "GSA Administrative Charge" be defined as follows:

GSA Administrative Charge – the applicable monthly administrative charge shall be \$50 per service location but shall total to no less than \$375 for all service locations.

III. SUMMARY OF RECOMMENDATIONS

In conclusion, Walmart submits the following recommendations to the Commission:

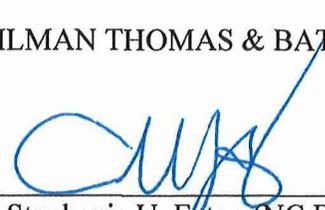
- The Commission should reject the Companies' filing as incomplete and order DEC and DEP to file a complete proposal, including all documents intended to be used in the implementation of the program.
- If the Commission determines that is appropriate for the Companies to offer customers a REC-purchase program sourced from CPRE resources, which is essentially what the Companies have proposed as the Standard Offer, then the Commission should reject the Standard Offer option and require that such a program be offered to all DEC and DEP customers outside of the capacity restrictions set forth in N.C. Gen. Stat. § 62-159.2(d) so that the program would not reduce the available capacity for GSA participation.
- The Commission should reject the proposed GSA Self-Supply option as filed. If the Commission determines that it is appropriate to approve a GSA Self-Supply option, then it should only do so with the following modifications:

- The Commission should require that the program allows for contracts of any length between two and 20 years;
- The Commission should require that the GSA Product Charge and the Unbundled Self-Supply PPA Price be equal to the energy price negotiated between the customer and the supplier;
- The Commission should recognize that customers enter into these programs with the intention of buying renewable vs. system as opposed to buying renewable vs. renewable, and if the Commission approves the GSA Self-Supply option, it should set the GSA Bill Credit based on the respective avoided costs for DEC and DEP; and
- The Commission should clarify the GSA Administration Charge to mean: *"the applicable monthly administrative charge shall be \$50 per service location but shall total to no less than \$375 for all service locations."*

Respectfully submitted,

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Dated: February 23, 2018

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1170

DOCKET NO. E-7, SUB 1169

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)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Comments of Wal-Mart Stores East, LP and Sam's East, Inc., upon the following parties to this proceeding via Electronic Mail and First-Class Mail:

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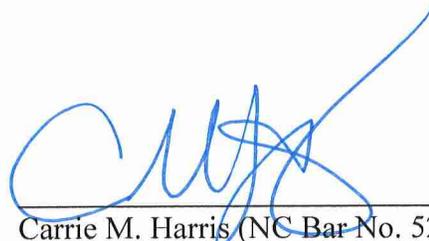
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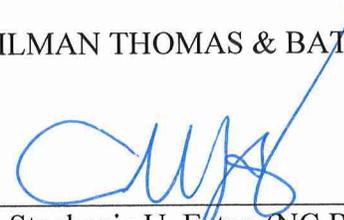
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Dated: February 23, 2018

Respectfully submitted,

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Dated: February 23, 2018