

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

In the Matter of:)
Petition for Approval of Green Source) NCSEA’S POST-HEARING
Advantage Program and Rider GSA to) COMMENTS
Implement N.C. Gen. Stat. § 62-159.2)

NCSEA’S POST-HEARING COMMENTS

The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned proceedings, files these post-hearing comments arising from and following the oral arguments in the above-captioned proceeding which took place on September 4, 2018 before the North Carolina Utilities Commission (“Commission”).

I. THE GEORGIA POWER GREEN TARIFF IS UNIQUE TO GEORGIA AND NOT COMPARABLE TO THE PROPOSED DUKE-WAL-MART STIPULATION.

Following NCSEA’s September 4, 2018 presentation of its oral argument in this proceeding, Commissioner Mitchell asked about differences between the green tariff recently offered by the utility Georgia Power and the proposed stipulation¹ agreed to by Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”) (collectively, “Duke”) and the potential Green Source Advantage customers Wal-Mart Stores East, LP and Sam’s East, Inc. (collectively, “Wal-Mart”). The following is an addendum to the response made on behalf of NCSEA in response to that question.

¹ *Agreement and Stipulation of Partial Settlement by and Between Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Wal-Mart Stores East, LP and Sam’s East, Inc., Docket Nos. E-2, Sub 1170 and E-7, Sub 1169 (August 16, 2018) (herein the “Stipulation”).*

a. The Georgia Power Green Tariff and Georgia Commission Order

The Georgia Power Company (“Georgia Power”) commercial and industrial green tariff (“Georgia Power Green Tariff”) was ordered by the Georgia Public Service Commission on August 9, 2017 in its *Order Approving Renewable Energy Development Initiative Commercial and Industrial Program* (herein the “*Georgia Power Green Tariff Order*”).² The *Georgia Power Green Tariff Order* states that the plan for a green tariff program was ordered in the *Final Order Adopting Stipulations* in Georgia Power’s 2016 integrated resource plan, and, specifically, Georgia Power “was ordered to consider the development of a renewable Commercial and Industrial (‘C&I’) Program of up to 200 megawatts[.]” See **Exhibit 1**. Georgia Power then proposed to procure up to 200 megawatts (“MW”) of renewable resources “from the ongoing REDI utility scale solicitation.”³ *Id.* Georgia Power proposed that renewable projects selected through this process “will be contracted for 30 year [sic] power purchase agreements” and that each of these contracts will be presented to the Georgia Public Service Commission “for certification and all renewable energy credits (‘RECs’) associated with such projects will be retired on behalf of the participating” commercial and industrial customers. *Id.*

The Georgia Public Service Commission further stated that the Georgia Power green tariff program will:

[...] allow C&I Customers to purchase a pro-rata share of the production of a portfolio of renewable projects that are selected through the REDI procurement process. [Georgia Power] will provide participating customers hourly credits at the actual hourly running cost of incremental based on the customer’s pro-rata share of the hourly amount of energy produced at the

² A copy of the *Georgia Power Green Tariff Order* is attached hereto and incorporated herein as **Exhibit 1**.

³ “REDI” is an acronym for Georgia Power’s utility scale Renewable Energy Development Initiative Program.

selected [facilities]. The monthly charge to participate in the [Georgia Power green tariff program], which will include the REDI PPA supply costs, a levelized additional sum, will be in addition to the customer's regular monthly electric service payments as well as the franchise fee and applicable taxes will apply to the entire bill.

Id.

The Georgia Public Service Commission also provided contract lengths for the Georgia Power green tariff program. Specifically, as proposed and accepted, the potential customers in that program could choose to enter into contracts in terms of length of “10, 15, 20, 25 and 30 years.” *Id.* Paired with the 30-year supply contract terms, this means that potential customers could, effectively, lock in 30-year pricing for, e.g., 10-year terms—a highly attractive provision for customers.

Similarly, the Georgia Power green tariff program mandates generous termination rights for customers: “C&I customers may terminate their C&I REDI agreements *at any time without a termination payment upon 180 days’ written notice to Georgia Power.*” *Id.* (emphasis added). This flexibility is another highly attractive feature for potential customers. Upon termination or the expiration of the contract between the customer and Georgia Power, the remaining capacity set out in the underlying PPA “will immediately become available to serve all of Georgia Power’s retail customers, including the associated RECs.” *Id.*

The *Georgia Power Green Tariff Order* further states that the Georgia Commission Staff, Georgia Power, and customers interested in the Georgia Power green tariff met several times during Georgia Power’s development of the program. Following these meetings, the Georgia Commission Staff recommended the proposed program with one modification incorporating a timeline for incorporating the utility scale projects into the

commercial and industrial green tariff program. It should also be noted that the application submitted by Georgia Power in that proceeding included a proposed customer contract. *Id.*

- b. The Georgia Power Green Tariff is different than the proposed stipulation between Duke and Wal-Mart and what is allowed under N.C. Gen. Stat. § 62-159.2

The Georgia Power Green Tariff is markedly different than the Stipulation and would not comply with the requirements set forth in N.C. Gen. Stat. § 62-159.2. Perhaps most notably, the Georgia Power Green Tariff provides its customers with variable contract term lengths between 10 and 30 years. This variance allows for the potential green tariff customers to negotiate energy prices over a range of terms and for (if sought) lengthy terms. As stated during the oral arguments on September 4, 2018, Duke has not offered customer contracts of such varying and lengthy terms. In fact, Duke argued against the use of long term contracts where those lengthy contracts arise out of the negotiation of price terms between the customer and the renewable energy supplier and include a bill credit capped by the administratively-determined avoided cost rate as required by N.C. Gen. Stat. § 62-159.2.

Furthermore, the underlying power purchase agreement (“PPA”) in the Georgia Power Green Tariff has a duration of 30 years and is *not required* to be the same length as the associated customer contract. In contrast, the Stipulation states specifically that the “term of the PPA agreement shall be equal to the length to the term of GSA service agreement.” *See, Stipulation*, p. 3. The 30-year PPAs are consistent with the utility renewable energy procurement contracts in the Georgia Power REDI program and, therefore, there is no reason for a shorter length contract. In contrast, the Stipulation’s PPA limitation will hinder a renewable energy supplier’s ability to enter the program.

Under N.C. Gen. Stat. § 62-159.2, the customer may negotiate price terms with the renewable energy supplier. However, under the *Georgia Power Green Tariff Order*, the customer does not negotiate price terms but rather purchases a pro-rated amount of energy from a pool of utility-procured renewable energy in the underlying utility scale solar program (REDI). The Georgia Power Green Tariff customers are then awarded hourly-credits based upon “the actual hourly running cost of incremental generation” based on the customer’s pro-rata share of energy at the selected renewable facility from the utility scale solar portfolio.⁴ *See, Exhibit 1.* Neither N.C. Gen. Stat. § 62-159.2 nor the Stipulation provide for such a program or mechanism. Rather, N.C. Gen. Stat. § 62-159.2 caps the bill credit at an avoided cost rate (“[t]he program customer shall receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed utility’s avoided cost.”) and provides the customer with the specific ability to negotiate price terms (“[e]ligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.”). N.C. Gen. Stat. § 62-159.2.

There is a *fundamental* difference between the North Carolina and the Georgia green tariff programs as constructed by statute and commission order: in Georgia, the customers have the ability to enter into a variable range of long term contracts (with the above-described termination rights) to procure pro-rata energy that is already being produced for consumption in a utility scale solar program and will still be procured by the

⁴ Georgia Power also offers at least four different real-time pricing tariffs under its “Marginally Priced Rates” selection for customers with demand greater than 250kW. *See, <https://www.georgiapower.com/business/billing-and-rates/business-rates.html>.* According to Georgia Power’s “Marginally Priced Rates” webpage: “[w]ith Marginally Priced rates, Georgia Power provides a financial incentive to change your electricity usage habits to take advantage of lower-priced hours and avoid heavy usage during higher-priced hours.” NCSEA believes that the popularity of the Georgia Power Green Tariff Program is directly linked to the tariff overlap with the real-time pricing tariffs offered by Georgia Power to large consumers of electricity which are not as widely offered in the Duke territories.

utility for the term of a 30-year PPA if the customer terminates or term expires; in North Carolina, the statutory green tariff program falls outside the utility scale solar statutory program (the Competitive Procurement of Renewable Energy or “CPRE” program) as N.C. Gen. Stat. § 62-159.2 stipulates for independent negotiation rights between the customer and the energy supplier and caps the bill credit (rather than provides for a specific bill credit mechanism) at the avoided cost rate.

The Stipulation incorporates some of the Georgia Power program concepts while attempting, but failing, to adhere to the requirements of N.C. Gen. Stat. § 62-159.2. The problem is, of course, that the Stipulation limits negotiation power of the intended customers by limiting contract term lengths and potential customer price terms and fails to incorporate a bill credit cap set at the administratively determined avoided cost rate. Also, the considerable customer termination rights delineated in the *Georgia Power Green Tariff Order* are not incorporated in the Stipulation.

Finally, the Georgia Power Green Tariff is intended for *commercial and industrial customers*. In North Carolina, the General Assembly explicitly delineated the University of North Carolina and large military institutions as the intended recipients of the green tariff program with well-qualified large commercial and university customers falling thereafter as potential customers.

II. DUKE'S PROPOSED CPRE WEIGHTED-AVERAGE AVOIDED COST METHODOLOGY DOES NOT REFLECT THE UTILITIES' TRUE AVOIDED COST.

Following NCSEA's presentation of its oral argument in this proceeding, Commissioner Brown-Bland asked whether, if Duke is purchasing energy and capacity through the CPRE at a price less than the administratively-determined avoided cost rate, this market price should be the "avoided cost" as the term is used in N.C. Gen. Stat. § 62-159.2. NCSEA believes that the term "avoided cost" in N.C. Gen. Stat. § 62-159.2 can only be interpreted to be the administratively-determined avoided cost rate and should not be interpreted to be a market price set by either the CPRE or by day-ahead market dynamics.

Nothing in either a market price set by the CPRE or by 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. Unlike the administratively-determined avoided cost rates set pursuant to N.C. Gen. Stat. § 62-156(b), the market prices set by the CPRE and by day-ahead market dynamics are not the subject to expert testimony, Commission review, and a finding by the Commission that they are in the public interest. Commissioner Brown-Bland's question does lead to a logical follow-up question, namely, if the Commission determines that one of the two market pricing mechanisms is the "avoided cost" for purposes of N.C. Gen. Stat. § 62-159.2, would Duke be able to leverage its size and purchasing power to manipulate these mechanisms such that their values do not reflect Duke's actual cost of generation? NCSEA's position is that, to prevent manipulation of the "avoided cost" cap for the bill credit, "avoided cost" as used in N.C. Gen. Stat. § 62-159.2 should be interpreted by the Commission to mean the

administratively-determined avoided cost calculated pursuant to N.C. Gen. Stat. § 62-156(b).

III. DUKE IS NOT PERMITTED TO RECOVER LOST REVENUE VIA THE FUEL RIDER.

During their rebuttal argument, Duke distributed a document entitled “20 Year Avoided Cost Illustration”.⁵ Exhibit 2 purports to demonstrate the financial effects of a bill credit *equal* to the administratively determined avoided cost amount for a period of 20 years. On page 2 of the 20 Year Avoided Cost Illustration, Duke includes the following bullet-point statements:

- GSA Customer pays \$37 but receives Bill Credit of \$52
 - Net impact is \$15 reduction on GSA Customer Bill
- This means less revenue from GSA Customer which = a cost to non-participating customers to be recovered through fuel clause.***

See, **Exhibit 2.**

As noted in our oral arguments, NCSEA opposes allowing Duke to recover the amounts credited to the GSA customers via the fuel rider because the GSA service charge paid by the GSA customer is designed to hold ratepayers harmless. However, NCSEA finds 20 Year Avoided Cost Illustration troubling because it appears to show Duke’s intention to recover lost revenues through the fuel rider. Exhibit 2 appears to indicate that Duke believes that it should 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. Therefore, according to Duke, the GSA customer is paying for their renewable energy generation (as required by N.C. Gen.

⁵ A copy of the 20 Year Avoided Cost Illustration document is attached hereto and incorporated herein as **Exhibit 2.**

Stat. § 62-159.2) *and* Duke is recovering lost revenues (due to decreased demand for its own generation) from non-participating customers. This is inconsistent with North Carolina utilities law.

The use of the fuel rider to recover lost revenues from ratepayers is improper. N.C. Gen. Stat. § 62-159.2 does not authorize Duke to recover lost revenues and, more importantly, the statute specifically says non-participating customers should be held neutral. *See* N.C. Gen. Stat. § 62-159.2(e). Duke's proposed application of the statute does not hold non-participating customers harmless, but instead, *charges* them for the revenues that Duke believes it would have otherwise earned but for the green tariff. This is simply unfounded and falls outside of the intent of the statute. Duke is not guaranteed revenue by N.C. Gen. Stat. § 62-159.2 or any other statute. The way that Duke has applied the terms in Exhibit 2 clearly shows that, despite the lack of statutory authority, it intends to replace lost revenues through this program via the fuel rider. Accordingly, NCSEA requests the Commission make clear in its order that Duke is not to recover lost revenues through the fuel rider.

NCSEA respectfully requests that the Commission find that the proposals put forward by Duke thus far fail to comply with the requirements of N.C. Gen. Stat. § 62-159.2 and require Duke to collaborate with the intervenors and other potential program participants in crafting a green tariff that complies with the statute and truly holds non-participating customers neutral.

Respectfully submitted, this the 19th day of September, 2018.

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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 with the party's consent.

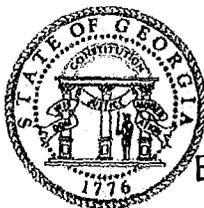
This the 19th day of September, 2018.

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Exhibit 1

COMMISSIONERS:

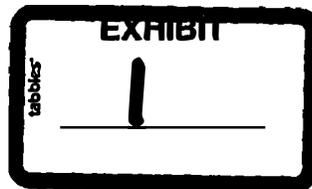
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DOCKET # DOCKET NO. 40161

DOCUMENT # 169267

IN RE: GEORGIA POWER COMPANY'S 2016 INTEGRATED RESOURCE PLAN

ORDER APPROVING RENEWABLE ENERGY DEVELOPMENT INITIATIVE COMMERCIAL AND INDUSTRIAL PROGRAM

On August 2, 2016, the Georgia Public Service Commission ("Commission") issued its Final Order Adopting Stipulations in Georgia Power Company's ("Georgia Power" or "Company") 2016 Integrated Resource Plan ("IRP") in Docket No. 40161. In this stipulation, the Company was ordered to consider the development of a renewable Commercial and Industrial ("C&I") Program of up to 200 megawatts ("MW"). The C&I program was to be developed to deliver value to all of Georgia Power's customers and was to be benchmarked to the last accepted proposal from the Company's utility scale Renewable Energy Development Initiative ("REDI") program.

On July 20, 2017, Georgia Power filed for approval its proposed C&I REDI program, which contained a proposed C&I REDI customer agreement and a C&I REDI tariff. For this program, Georgia Power proposed to procure up to 200 MW of renewable resources from the ongoing REDI utility scale solicitation. Projects selected through this process will be contracted for 30 year power purchase agreements ("PPA"). These contracts will be presented to the Commission for certification and all renewable energy credits ("RECs") associated with such projects will be retired on behalf of the participating C&I customers.

Georgia Power's proposed C&I REDI program will allow C&I customers to purchase a pro-rata share of the production of a portfolio of renewable projects that are selected through the REDI procurement process. The Company will provide participating customers hourly credits at the actual hourly running cost of incremental generation based on the customer's pro-rata share of the hourly amount of energy produced at the selected C&I REDI facilities. The monthly charge to participate in the C&I REDI program, which will include the REDI PPA supply costs, a levelized

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additional sum, and administrative costs, will be in addition to the customer's regular monthly electric service payments as well as the franchise fee and applicable taxes will apply to the entire bill.

Existing Georgia Power C&I customers with a minimum annual peak demand of 3 MW at one or an aggregate of customer accounts may participate under the proposed C&I REDI program. Participants will be able to subscribe up to 100% of their preceding year's total annual energy consumption for each of the customer's eligible premises aggregated to meet the applicability criteria. As proposed, Georgia Power C&I customers that want to participate in the program will be given the opportunity to submit a Notice of Intent ("NOI") identifying their proposed subscription level in MW, contract term length, and any other requirements related to their interest in the program. A NOI participation fee of \$5,000 is proposed to offset some of the costs of the program. If the level of customer interest in MW exceeds the amount of capacity available in the C&I REDI program, Georgia Power will allocate participation among interested participants pro-rata until the available program capacity is fully allocated. Georgia Power C&I customers that submit an NOI will be given a price to participate in the C&I REDI program under a confidentiality agreement.

Participating C&I customers will be given the option to enter into C&I REDI contracts for terms of 10, 15, 20, 25, and 30 years. C&I customers may terminate their C&I REDI agreements at any time without a termination payment upon 180 days' written notice to Georgia Power. However, such customers will not be able to re-subscribe to the current C&I REDI program offering. If a customer terminates its C&I REDI agreement early or the agreement reaches its term expiration, that portion of C&I REDI capacity will immediately become available to serve all of Georgia Power's retail customers, including the associated RECs.

As proposed by the Company, the C&I REDI Schedule "CIR-1" will go into effect on January 1, 2019. If the selected C&I REDI resources are not online by that time, Georgia Power proposes to phase in program benefits to participating C&I customers as each facility achieves commercial operation.

Staff Recommendation

Commission Staff ("Staff") met with Georgia Power and interested C&I customers several times during the development of the C&I REDI program. Staff reviewed Georgia Power's filing of its proposed C&I REDI program, customer agreement, and corresponding tariff and recommends approval with one modification. Staff recommended that the Company and Staff work together to develop the timeline and the process to be used for the selection of projects to be used to source the C&I program.

The Commission approved Staff's recommendation at the August 1, 2017 Administrative Session.

WHEREFORE IT IS ORDERED that Georgia Power Company's request for approval of its proposed Commercial and Industrial Renewable Energy Development Initiative program, which contained a proposed customer agreement and tariff is hereby approved.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem proper.

ORDERED FURTHER, any motion for reconsideration, rehearing, or oral argument shall not stay the effectiveness of this order unless expressly ordered by Commission.

The above by action of the Commission in Administrative Session on the 1st day of August, 2017.


Reece McAlister
Executive Secretary

8-9-17
Date


Stan Wise
Chairman

8-9-17
Date

Exhibit 2

20 Year Avoided Cost Illustration

- Under intervenor proposals:
 - “Cost savings” to GSA Customers = a “cost” to non-participating customers

20 Year Avoided Cost Illustration

- Illustrative Scenario:
 - 20 Year GSA Service Agreement
 - 20 Year PPA with negotiated price = \$37
 - Bill Credit: 20 Year Avoided Cost = \$52
- GSA Customer pays \$37 but receives Bill Credit of \$52
 - Net impact is \$15 reduction on GSA Customer Bill
 - *This means less revenue from GSA Customer which = a cost to non-participating customers to be recovered through fuel clause.*
- Duke pays \$37 to GSA Renewable Supplier under the terms of the PPA.
 - **Net cost to non-participating customers for that MWh of energy is \$52**
 - \$37 (PPA payment from Duke) + \$15 (net credit to GSA Customer).
- “Cost savings” of \$15/MWh to GSA Customer is a cost to non-participating customers recovered through the fuel clause

