

## 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,	)	<b>REPLY COMMENTS OF SACE</b>
LLC, Requesting Approval of Green	)	
Source Advantage Program and Rider	)	
GSA to Implement G.S. 62-159.2	)	

Pursuant to the North Carolina Utilities Commission's ("Commission") *Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA* and *Order Granting Second Extension of Time* in the above-referenced dockets, the Southern Alliance for Clean Energy ("SACE") respectfully submits the following reply comments in response to the initial comments filed by the U.S.

Department of Defense and Federal Executive Agencies ("DoD/FEA"); the University of North Carolina at Chapel Hill ("UNC-CH"); Apple and Google; Walmart; the North Carolina Sustainable Energy Association ("NCSEA"); the North Carolina Clean Energy Business Alliance ("NCCEBA"); and the Public Staff regarding the Green Source Advantage Program and Rider GSA tariffs ("GSA Program" or the "Program") filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies" or "Duke").

Overall, SACE agrees with the vast majority of the initial comments asserting that the GSA Program fails to properly implement N.C. Gen. Stat. ("G.S.") § 62-159.2 and requesting that the Commission require Duke to revise its GSA Program. SACE also supports the creation of a stakeholder process to develop a GSA Program that is

consistent with the requirements of G.S. § 62-159.2 and that meets the needs and expectations of eligible nonresidential customers in North Carolina. Because any GSA Program capacity that remains unreserved by December 31, 2022 will be re-allocated to the Competitive Procurement of Renewable Energy (“CPRE”) program,<sup>1</sup> SACE also recommends that necessary revisions to the GSA Program, including any stakeholder process, take place as quickly as reasonably possible to provide eligible customers an adequate opportunity for GSA Program participation.

**Reply to Initial Comments of U.S. Department  
of Defense and Federal Executive Agencies**

The DoD/FEA expressed initial concerns about Duke’s GSA Program, related to cost savings and energy resiliency.<sup>2</sup> The DoD/FEA stated that the value of renewable energy procurements to military installations are primarily linked to increased installation energy resiliency and the achievement of cost savings.<sup>3</sup> The DoD/FEA states that it is unlikely that it will subscribe to the GSA program if the program only provides options for purchasing renewable energy at higher costs than tariffed energy and does not increase installation energy resiliency.<sup>4</sup>

SACE appreciates the dual goals of cost savings and increased energy resiliency expressed by the DoD/FEA, and SACE supports the opportunity for GSA Program facilities to be sited at military installations in order to increase energy resiliency at those

---

<sup>1</sup> G.S. § 62-159.2(d)(“The program shall be offered by the electric public utilities subject to this section for a period of five years or until December 31, 2022, whichever is later....If any portion of the 600 megawatts (MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8.”).

<sup>2</sup> Initial Comments of the U.S. Department of Defense and Federal Executive Agencies, at p. 1 (Feb. 22, 2018)(hereinafter “DoD/FEA’s Initial Comments”).

<sup>3</sup> *Id.* at p. 2.

<sup>4</sup> *Id.*

locations. SACE also supports the development of a GSA Program that provides cost savings to participating customers, including the DoD/FEA.

### **Reply to Initial Comments of the University of North Carolina at Chapel Hill**

SACE generally supports and agrees with the initial comments filed by UNC-CH. SACE recognizes UNC-CH's unique perspective as a constituent institution of the University of North Carolina, a significant consumer of electric power, and a major driver of economic development in the State.<sup>5</sup> SACE agrees with UNC-CH that the GSA Program (1) is not consistent with the intent or language of H.B. 589;<sup>6</sup> (2) would not allow the procurement of renewable electricity at fair and competitive rates;<sup>7</sup> (3) would unfairly advantage non-participating customers by setting the GSA bill credit below Duke's avoided cost;<sup>8</sup> and (4) should provide greater flexibility in contract length, allow direct and full negotiating rights between developers and customers, and provide more options to meet diverse and changing customer needs.<sup>9</sup> SACE agrees with UNC-CH that "if the GSA bill credit were set at or near Duke Energy's avoided costs, as the GSA Statute authorizes, customers and suppliers could share in the benefits when renewable energy can be procured at below avoided cost."<sup>10</sup>

### **Reply to Initial Comments of Apple Inc. and Google**

SACE generally supports and agrees with the initial comments filed by Apple and Google, who provide the perspective of leaders in the integration of clean energy in their

---

<sup>5</sup> Initial Comments of the University of North Carolina at Chapel Hill, at p. 2 (Feb. 23, 2018)(hereinafter "UNC-CH's Initial Comments").

<sup>6</sup> *Id.* at p. 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at p. 4.

<sup>10</sup> *Id.* at p. 5.

operations and who consider the ability to invest in green energy as a primary and essential consideration when assessing their current and future operations in North Carolina and elsewhere.<sup>11</sup> Apple and Google comment that the GSA Program “fails to implement the program put into place by the General Assembly and falls short of creating a viable program which will be attractive to intensive users of energy in Duke’s territory.”<sup>12</sup>

SACE agrees with Apple and Google that the GSA Program (1) does not provide a sufficient range of terms and must provide additional term options;<sup>13</sup> (2) does not provide transparent or predictable economic terms for participants;<sup>14</sup> and (3) does not identify the standard contract terms and conditions applicable to the underlying commercial arrangements.<sup>15</sup>

With respect to transparent and predictable economic terms, SACE agrees with Apple and Google that the “pricing and credit mechanisms set out in Duke’s proposed tariff are confusing and fail to provide the level of certainty that participants will need in deciding whether to seek to participate.”<sup>16</sup> SACE also agrees that the GSA Proposal fails to provide standard contract terms and conditions both for participating customers and renewable energy suppliers as required by G.S. § 62-159.2(b).

### **Reply to Initial Comments of Walmart**

SACE generally supports and agrees with the initial comments filed by Walmart. Walmart has established significant company-wide renewable energy goals, including to

---

<sup>11</sup> Initial Comments of Apple Inc. and Google, at p. 2 (Feb. 23, 2018)(hereinafter “Apple and Google’s Initial Comments”).

<sup>12</sup> *Id.* at p. 3.

<sup>13</sup> *Id.* at p. 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at p. 6.

<sup>16</sup> *Id.* at p. 5.

be supplied by 50 percent renewable energy by 2025.<sup>17</sup> Walmart states that the GSA Program fails to meet Walmart's expectations as a customer.<sup>18</sup>

SACE agrees with Walmart that the GSA Program is essentially only a cost-additive REC purchase program and that if the Commission determines that it is appropriate for Duke to offer customers a REC-purchase program sourced from CPRE resources, the Commission should require that such program be offered outside the capacity restrictions set forth in G.S. § 62-159.2(d) so that the program would not reduce the available capacity for GSA participation.<sup>19</sup>

SACE agrees with Walmart that the "range of terms" provided in the GSA Program is unreasonable.<sup>20</sup> Walmart recommends that in order to accommodate the needs of corporate purchasers for whom 20 year terms may be too long, the Commission should require contracts available for any length between two and 20 years.<sup>21</sup> SACE appreciates Walmart's desire for a broader range of terms to meet its needs as a corporate buyer, and SACE does not object to Walmart's recommendation. While SACE recognizes that not all renewable energy suppliers may be able to offer contracts ranging from two to twenty years, SACE agrees that GSA Customers should have the option to negotiate a contract with a GSA Supplier at a term acceptable to both parties.

Walmart also recommends that if the Commission approves the GSA Self-Supply option, the GSA Product Charge and the Unbundled Self-Supply PPA Price should be equal to the energy price negotiated between the customer and the supplier, and that the

---

<sup>17</sup> Initial Comments of Wal-Mart Stores East, LP and Sam's East, Inc., at p. 2 (Feb. 23, 2018)(hereinafter "Walmart's Initial Comments").

<sup>18</sup> *Id.* at p. 4.

<sup>19</sup> *Id.* at pp. 4-5.

<sup>20</sup> *Id.* at p. 5.

<sup>21</sup> *Id.*

GSA Bill Credit should be based on Duke's avoided cost.<sup>22</sup> SACE agrees that Walmart's recommended GSA Product Charge and GSA Bill Credit methodologies comply with G.S. §62-159.2 and are just and reasonable.

Finally, Walmart recommends an alternative definition of "GSA Administrative Charge" in order to provide greater clarity regarding the applicable "Customer Account."<sup>23</sup> SACE has no objection to this request.

**Reply to Initial Comments of the  
North Carolina Sustainable Energy Association**

SACE generally supports and agrees with the initial comments filed by NCSEA. NCSEA argues that the GSA Program inappropriately links the GSA tariff to the CPRE program.<sup>24</sup> SACE agrees with NCSEA that Duke's proposal to link the GSA Program with the CPRE process is not supported by the law and that Duke inappropriately imposes requirements found in G.S. § 62-110.8—the section of H.B. 589 establishing the CPRE program—on renewable energy facility developers that are not supported by the language of G.S. § 62-159.2.<sup>25</sup>

SACE also agrees with NCSEA that neither Duke's proposal to allocate the GSA Program unreserved general capacity to its DEC and DEP balancing areas in the same proportions as its CPRE capacity allocation, nor Duke's proposed requirement that aggregated customer load be located in the same service territory is supported by G.S. §

---

<sup>22</sup> Walmart's Initial Comments, at p. 8.

<sup>23</sup> *Id.* at pp. 9-10.

<sup>24</sup> Initial Comments of the North Carolina Sustainable Energy Association, at p. 6 (Feb. 23, 2018)(hereinafter "NCSEA's Initial Comments").

<sup>25</sup> *Id.* at pp. 6-7.

62-159.2.<sup>26</sup> These requirements are not required by law and may unnecessarily limit GSA Program availability and/or discriminate against GSA customers.

NCSEA recommends that the Commission reject Duke's proposal and direct Duke to engage stakeholders to craft a green tariff that complies with the language and legislative intent of G.S. § 62-159.2.<sup>27</sup> SACE agrees with NCSEA's recommendation of a stakeholder process to develop a GSA Program that will comply with the requirements of G.S. § 62-159.2 and meet the needs of eligible large energy users, and SACE would support such a process if so ordered by the Commission.

**Reply to Initial Comments of the  
North Carolina Clean Energy Business Alliance**

SACE generally supports and agrees with the initial comments filed by NCCEBA, including NCCEBA's assertion that the GSA Program (1) is improperly linked to the CPRE program; (2) fails to allow required negotiation of pricing terms; (3) does not provide the opportunity for GSA participants to reduce its energy costs;<sup>28</sup> (4) fails to provide required contract terms and conditions; (5) is in effect a REC program, and (6) impermissibly advantages non-participating customers and provides no economic benefit to participating customers.<sup>29</sup> SACE also echoes NCCEBA's concern that if the barriers Duke has placed on GSA Program participation limit program participation, the re-allocation of unused GSA program capacity to the CPRE Program could be in Duke's

---

<sup>26</sup> *Id.* at p. 10.

<sup>27</sup> *Id.* at p. 2.

<sup>28</sup> Initial Comments of the North Carolina Clean Energy Business Alliance, at p. 8 (Feb. 23, 2018)(hereinafter "NCCEBA's Initial Comments"). SACE also agrees with NCCEBA's characterizations of the Standard Offer and Self Supply options on pp. 7-11.

<sup>29</sup> NCCEBA's Initial Comments, at p. 16.

interests if Duke would prefer to develop that capacity through the CPRE Program, but it would not fulfill the policy goals of G.S. § 62-159.2.<sup>30</sup>

Response to NCCEBA's "Alternative GSA Program"

NCCEBA included in its initial comments an Alternative GSA Program that "compl[ies] with the letter and intent of the GSA Program Statute."<sup>31</sup> SACE has reviewed the Alternative GSA Program and agrees that NCCEBA's proposal complies with the legal requirements set out in G.S. § 62-159.2 and is more aligned with the type of renewable energy procurement program that would accommodate the clean energy procurement goals of eligible non-residential customers.

*i. Program Availability and Customer Eligibility*

SACE agrees with NCCEBA's Alternative GSA Program that GSA capacity should not be allocated to DEC and DEP based upon the load-ratio share between DEC and DEP's commercial and industrial customers as proposed by Duke, but instead should be available across both balancing authorities on a first-come first-served basis.<sup>32</sup>

*ii. Customer Application and Enrollment Process*

SACE has no objection to NCCEBA's proposed application and enrollment process.<sup>33</sup> SACE supports the requirements that customers must have already identified and negotiated price terms with a Renewable Energy Supplier and executed a standard form GSA term sheet, and SACE agrees that the GSA Service Agreement should memorialize Duke's obligation to track and deposit the applicable RECs into the respective customer's NC RETS account and retire the RECs.<sup>34</sup> SACE also agrees that requiring the GSA customer and supplier to execute the GSA Service Agreement within 30 days would facilitate a more

---

<sup>30</sup> *Id.* at pp. 16-17.

<sup>31</sup> *Id.* at pp. 2-3.

<sup>32</sup> *Id.* at pp. 17-18.

<sup>33</sup> *Id.* at pp. 18-20.

<sup>34</sup> *Id.* at pp. 19-20.



efficient application process and help ensure that both parties are prepared to commit to the terms of the agreement.<sup>35</sup>

*iii. GSA Product*

SACE supports NCCEBA's proposed GSA Product consisting of energy, capacity, and RECs. SACE emphasizes that the REC price should be freely negotiated between the GSA customer and supplier rather than based on a national market index as proposed by Duke in its Standard Offer option.

*iv. GSA Bill Credit*

SACE supports NCCEBA's proposed GSA Bill Credit methodology and agrees that 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." G.S. § 62-159.2(e).

*v. Rider GSA Rate Design*

SACE supports NCCEBA's proposed GSA Product Charge, equal to the kWh delivered times the rate per kWh negotiated between the customer and the supplier, and the proposed GSA Bill Credit, equal to the kWh delivered times the applicable avoided cost rate.<sup>36</sup> SACE agrees that this approach is consistent with G.S. § 62-159.2(b)'s negotiation requirement, and it allows customers who are able to enter into a GSA PPA below Duke's applicable avoided cost rate to economically benefit from that negotiated rate. SACE has no objection to NCCEBA's proposed Bundled Renewable Energy Product PPA Price.

*vi. Billing and Administrative Charges*

SACE does not object to NCCEBA's proposed methodology for customer billing and the application of administrative charges. SACE does not object to reasonable monthly

---

<sup>35</sup> *Id.* at p. 20.

<sup>36</sup> *Id.* at p. 22.

administrative charges for participating customers but recommends that Duke be required to demonstrate that such charges are reasonable and will only recover the actual costs incurred for manual billing, labor, program management, and support costs.

*vii. Early Termination and Reasonable Credit Requirements*

NCCEBA proposes early termination and reasonable credit requirements for participating GSA Customers. SACE does not object to the proposed provisions. Because SACE anticipates that most negotiated GSA PPA prices will be equal to or below Duke's applicable avoided cost rate, in the event of an early termination or default, Duke will simply continue to purchase the output of the renewable facility at or below the avoided cost rate. SACE also agrees that in the event of a default of a negotiated GSA PPA price that is greater than Duke's avoided cost, Duke should only be required to purchase output at the applicable avoided cost rate and that the GSA Customer should be required to pay the difference between the avoided cost rate and the negotiated PPA price. While SACE anticipates that the financial assurances requirements in NCCEBA's proposal may deter participation for some potential GSA Customers, because SACE expects most GSA PPAs to be priced below Duke's avoided cost, and in order to ensure all other customers remain neutral pursuant to G.S. § 62-159.2(e), SACE does not object to NCCEBA's proposed financial assurances requirements. SACE also does not object to the liability provision regarding GSA Suppliers that default.

**Reply to Initial Comments of the Public Staff**

The Public Staff takes exception to several aspects of Duke's proposed implementation of the GSA Program. The Public Staff disagrees with Duke's Standard Offer option as currently proposed, since it links the implementation of the GSA Program pursuant to G.S. § 62-159.2 to the CPRE Program under G.S. § 62-110.8 in a way that is counter to the

timeframes and purposes called for in each statute.<sup>37</sup> SACE generally agrees with the Public Staff's assertion that the GSA Program has inappropriately linked the GSA Program with the CPRE program. The Public Staff notes that including the Standard Offer option in the CPRE process, including the CPRE interconnection grouping study, could potentially bias participation in the GSA Program towards the Standard Offer option rather than the Self-Supply option.<sup>38</sup> SACE agrees that the eligibility for the programs should not be biased in favor of one program over another, particularly if such bias discourages participation in a revised GSA Program that otherwise complies with the requirements of G.S. § 62-159.2.

The Public Staff also disagrees with Duke's use of the CPRE Tranche weighted average price to form the basis of the bill credit under the Self Supply option for the initial GSA offering period.<sup>39</sup> SACE agrees that the CPRE Tranche weighted average price may create further uncertainty for GSA Program participants.

SACE does not agree with the possibility raised by Public Staff that the CPRE Tranche weighted average price could form the basis of the GSA bill credit. Rather, SACE supports the Public Staff's alternative suggestion that Duke's current forecast of its avoided cost be used to establish the bill credit. As reflected in SACE's initial comments and the comments of other intervenors, using Duke's avoided cost to establish the customer bill credit is consistent with G.S. § 62-159.2 and would ensure that non-participating customers are held neutral. Finally, SACE agrees with the Public Staff that Duke should make other term options available to customers in addition to the two, five, and 20-year terms available under the GSA Program.<sup>40</sup>

---

<sup>37</sup> Initial Comments of the Public Staff, at p. 4 (Feb. 23, 2018)(hereinafter "Public Staff's Initial Comments").

<sup>38</sup> *Id.* at pp. 9-10.

<sup>39</sup> *Id.* at p. 11.

<sup>40</sup> *Id.* at p. 14.

## CONCLUSION

SACE respectfully submits these Reply Comments for the Commission's consideration.

Respectfully submitted this 20th day of April, 2018.

s/Peter D. Stein

Peter D. Stein

N.C. Bar No. 50305

SOUTHERN ENVIRONMENTAL LAW CENTER

601 W. Rosemary Street, Suite 220

Chapel Hill, NC 27516

Telephone: (919) 967-1450

Fax: (919) 929-9421

pstein@selcnc.org

*Attorney for SACE*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Comments of the Southern Alliance for Clean Energy, as filed today in Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 20th day of April, 2018.

s/ Peter D. Stein