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May 20, 2019

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 Progress, LLC and Duke Energy Carolinas, LLC's Reply to Motion for Reconsideration Docket Nos. E-2, Sub 1170 and E-7, Sub 1169

Dear Ms. Jarvis:

Attached for filing on behalf of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC is the Reply to Motion for Reconsideration.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,

Jack E. Jirak

Enclosure

cc: Parties of Record

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 Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2	)))))	DUKE ENERGY PROGRESS, LLC'S AND DUKE ENERGY CAROLINAS, LLC'S REPLY TO MOTION FOR RECONSIDERATION

I. PROCEDURAL BACKGROUND

On February 1, 2019, the North Carolina Utilities Commission ("Commission") issued its *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing and Allowing Comments* in the above captioned dockets ("Order"). As directed by the Order, Duke Energy Progress, LLC ("DEP"), and Duke Energy Carolinas, LLC ("DEC" and together with DEP, the "Companies" or "Duke") jointly submitted their Green Source Advantage ("GSA") Program Compliance Filing on March 18, 2019 ("Compliance Filing"). On April 8, 2019, Public Staff and a number of intervenors filed comments with respect to the Compliance Filing and on April 18, 2019, the Companies filed reply comments ("Reply Comments"). On May 1, 2019, the North Carolina Clean Energy Business Alliance ("NCCEBA") filed a Motion for Reconsideration ("Motion") with respect to the Order. The Companies hereby file this Reply to the Motion. All capitalized terms not otherwise defined in this Reply shall have the meaning assigned to them in the Compliance Filing.

II. ARGUMENT

A. Confirmation by the Commission of the right to post-term market-based cost recovery for any Duke-owned projects is a reasonable outcome in this proceeding.

The primary relief sought by NCCEBA in the Motion is that "the Commission [should] amend the GSA Order to allow Duke to continue market-based Post-Term Cost Recovery and not to allow the cost-of service based recovery."[1] As was stated in their Reply Comments, the Companies sought "confirmation that some form of post-term recovery of costs will be allowed, either under the default cost-of-service-based cost recovery construct referenced in the Order, or through provision of market-based revenues similar to non-utility GSA Facility Owners."[2] As Duke also made clear in its Reply Comments, the Companies view assurance of post-term recovery at a market-based rate to be an acceptable

[1] Motion at 2-3. As Duke notes later in this Reply, NCCEBA engages in misleading hyperbole in a number of areas of the Motion. For instance, NCCEBA asserts that Duke "acknowledged" that cost-of service based recovery post-term was "inconsistent, arbitrary, inappropriate and discriminatory" when it requested assurance of market-based recovery post-term in the initial GSA Application. Motion at 15. There is no basis in any of Duke's filing to support such a broad assertion. The Companies certainly acknowledge that their initial application sought confirmation of post-term market-based revenues but do not agree that such a request equates to agreeing that cost-of-service based recovery is "inconsistent, arbitrary, inappropriate, and discriminatory."

It is also not true that cost-of-service post-term recovery equates to an "enormous windfall." Motion at 15. Any post-term recovery would be subject to review by the Public Staff and future authorization by the Commission. Moreover, as the Companies described in their Reply Comments, it is entirely possible that future market-based revenues could be greater than cost-of-service revenues.

Finally, NCCEBA asserts without any evidence in the record that a return authorized (though not guaranteed, contrary to NCCEBA's statements) under cost-of-service based recovery would "likely exceed[] the returns being made by independent GSA Renewable Suppliers on their GSA projects." Motion at 16. NCCEBA has offered no evidence in this proceeding regarding the rates of return earned under their many North Carolina projects or the returns projected for their GSA projects, as third-party developers are not subject to the same regulatory oversight of their cost of service as the Companies and are therefore able to earn unlimited returns on their investments. *See Order Establishing Standard Rates and Contract Terms for Qualifying Facilities*, at 35 Docket No. E-100, Sub 148 (Oct. 11, 2017) (recognizing that "a QF has no limit on, and the Commission has no right to review, the amount of debt QFs may use for financing, the return on equity, or the overall rate of return").

[2] Reply Comments at 14.

alternative to cost-of-service based recovery in the context of the GSA Program.[3] Therefore, for the sake of clarity, the Companies affirm that assurance by the Commission of the right to market-based revenues for Duke-owned facilities at the conclusion of the GSA Term would be a reasonable outcome in the context of the GSA Program.

There is a related policy issue that NCCEBA fails to address that is also relevant to the Commission's consideration of this issue. NCCEBA repeatedly emphasizes the need for a "level playing field." However, NCCEBA does not acknowledge that the Qualifying Facilities ("QF") developed by its members for participation in the GSA Program actually have an advantage over Duke-owned facilities in that QFs possess the right to "put" their energy to Duke pursuant to the Public Utility Regulatory Policies Act's ("PURPA") "must purchase" requirements.[4] Duke-owned facilities have no similar legal construct to guarantee future post-term cost recovery, which actually creates an un-level playing field to the advantage of such QFs. This fact further demonstrates that Commission confirmation of the right to post-term market-based revenue for Duke-owned facilities is appropriate at this time.

B. If the Commission chooses to approve post-term cost-of-service recovery for Duke-owned projects, it does not follow that Duke should be prohibited from participation in the GSA Program.

NCCEBA argues that if the Commission determines that there are valid policy reasons to justify post-term cost-of-service based recovery for Duke-owned projects, then Duke should be prohibited from participation in the GSA Program. This false dichotomy

[3] *Id.*

[4] *See* 18 C.F.R. 292.303(a); 18 C.F.R. 292.304.

should be rejected by the Commission. Should the Commission conclude that cost-of-service post-term recovery is appropriate, the effect of NCCEBA's recommendation would be to reduce the pool of potential suppliers available to meet the needs of potential GSA Customers. While it is clear why this outcome would benefit NCCEBA members by increasing their likelihood of success, it is not clear how this would benefit GSA Customers, for whom the GSA Program was actually developed. In fact, it would appear from the Motion that NCCEBA would prefer a GSA Program that provides a greater likelihood of success for NCCEBA members to one that would provide the greatest breadth of opportunity and benefit for potential GSA Customers. Furthermore, there are many non-price considerations that may cause GSA Customers to prefer to contract with Duke as a GSA Facility Owner rather than another developer (*e.g.*, more long-term certainty through decreased likelihood of future sale of a GSA Facility to a third-party investor). NCCEBA's Motion ignores those considerations, focusing solely on the narrow interests of NCCEBA's members.

While more information regarding Tranche 1 remains to be reported by the Companies pursuant to the Commission-ordered reporting process, it is now public information that Duke-owned projects were among the most cost-competitive projects for customers, and it would be inappropriate to remove such potential supply options from the GSA Program simply because of this policy issue. From a policy perspective, the success of the GSA Program is, in part, dependent on the availability of as many GSA-eligible projects as possible, and eliminating Duke-owned projects would simply decrease the supply of potential projects for GSA Customers and decrease the benefit of the GSA Program for such customers.

C. NCCEBA has offered no compelling legal or policy justification for excluding Duke affiliates from participating in the GSA Program.

NCCEBA also asserts in its Motion that Duke affiliates should be completely barred from participating in the GSA Program but offers no compelling policy or legal justification for such recommendation. Once again, potential GSA Customers are best served when the pool of potential GSA Facility Owners is as large as possible, while NCCEBA's members' interest are best served when Duke affiliates are excluded from the pool of potential GSA Facility Owners.

NCCEBA offers very little in the way of policy arguments in support of this position, relying primarily on the fact that "[s]uch an exceptional arrangement was expressly authorized by the General Assembly in connection with CPRE but not GSA."[5] In its Order, the Commission rejected such overly simplistic arguments, finding that the GSA Statute provided the Commission discretion to establish a program to meet the customer-focused renewable energy procurement objectives established by the General Assembly, while holding non-participating customers harmless.[6] In reality, the statute is silent as to this issue, and the Commission is free to implement the policy that best serves these statutory aims. Moreover, the Public Utilities Act does not otherwise preclude contracts between the Companies and affiliates; instead, the General Assembly has granted the Commission express authority to review and approve such contacts in order to ensure

[5] Motion at 21.

[6] Order at 42 ("Likewise, parties make many assertions that what Duke has proposed is inconsistent with the statute or even unlawful. Most of the assertions of "inconsistency" or "unlawfulness" lack support. For example, Duke has requested certain tie-ins in integrating the GSA Program into the CPRE Program addressed elsewhere in House Bill 589. The Commission finds nothing unlawful or fundamentally inconsistent in what Duke proposes. The requested tie-in is neither prohibited nor authorized. Rather, it is for the Commission, in its discretion, to approve or disapprove these recommendations.")(citation omitted).

they are in the public interest.[7] The Companies would, of course, be required to comply with and obtain the appropriate regulatory approval applicable to contract between the Companies and affiliates. In sum, NCCEBA has failed to provide any reasonable justification regarding why a *per se* prohibition on Duke affiliates offering to act as GSA Facility Owner is appropriate and its arguments should be rejected.

D. NCCEBA makes a number of statements that, though irrelevant to the specific relief requested in the Motion, are inaccurate and should be ignored by the Commission.

NCCEBA makes a number of inaccurate and hyperbolic statements in its Motion. While many such statements are irrelevant to the narrowly requested relief, the Companies nevertheless are providing limited responses to such statements to avoid any misapprehension by the Commission regarding these matters.

First, with respect to post-term cost recovery, NCCEBA posits that "Duke no doubt properly recognized that, for the reasons discussed below, cost-of-service based Post-Term Cost Recovery is completely inappropriate and unjust."[8] This is an inaccurate statement that is not supported by any evidence in the record, and the Companies do not agree with NCCEBA's allegation that the Commission's conclusion is "inappropriate and unjust."

Second, NCCEBA insinuates that the Companies' various filings were intentionally misleading in that "Duke clearly sought not to call attention to the issue of its participation as a GSA Renewable Supplier."[9] There is no evidence in the record to support this assertion concerning the Companies' supposed intention. Duke's plan to allow for its

[7] *See* N.C. Gen Stat. § 62-153(b).

[8] Motion at 2.

[9] *Id.* at 2.

own participation in the GSA Program was apparent from the very first filing,[10] and contrary to NCCEBA's approach, the Companies will not speculate as to why NCCEBA chose not to address the issue until more than 15 months after the initial filing.

Third, NCCEBA spends a substantial portion of its Motion rehashing the payment streams under the GSA Program (issues which could have been addressed their reply comments). In a number of respects, NCCEBA appears to still fail to grasp certain aspects of the GSA Program, though such lack of understanding does not prevent NCCEBA from negatively characterizing the arrangement as "tortured and counterintuitive" and concluding that the purpose of the arrangement is to "insulate Duke from any risk of default by the GSA Participating Customers." Yet, while the Companies expressly addressed this point for the Commission and interested parties in their Reply Comments,[11] NCCEBA never acknowledges or addresses the fact that when Duke bears the risk of default under a GSA arrangement, it is actually non-participating customers that bear that risk. Therefore, it is entirely consistent with the GSA Statute that Duke—and by extension, non-participating customers—are "insulated" from "any risk of default by the GSA Participating Customers." Every commercial transaction carries with it a certain set of risks, and NCCEBA appears to prefer that the risk for the GSA arrangement not be borne

[10] *See Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. State. § 62-159.2*, at 28 (filed Jan. 23, 2018).

[11] Reply Comments at 21. This benefit of the GSA Program design was also acknowledged by Public Staff in its comments. Public Staff Comments on DEC's and DEP's Compliance Filing, at 13 ("If the GSA Facility Owner believes the structure of the program presents financial risk, it has the right to negotiate financial assurance with the GSA Customer. Using this approach, risk of overpayment to the GSA Facility is shared by the GSA Facility Owner and the GSA Customer, and not non-participating customers, consistent with N.C. Gen. Stat. § 62-159.2.")

by the parties entering into the arrangement but instead be borne by non-participating customers.

More generally, NCCEBA's initial description on Page 8 of the payment arrangement (second full paragraph) is—contrary to NCCEBA's argument—precisely what Duke has proposed and exactly what is required under the statute.[12] NCCEBA later states that "the GSA Renewable Supplier is never entitled to receive more from Duke than the Bill Credit, which is intended to equal Duke's avoided cost."[13] This is an incorrect statement. The GSA Renewable Supplier will receive the Negotiated Rate (whatever that price is) so long as the GSA Customer fulfills its obligations under the GSA Service Agreement.[14]

NCCEBA later states that "[u]nder Duke's alternative arrangement, the only way to account for the potential increase or decrease in the customer's cost of service is through a side agreement between the GSA Participating Customer and the GSA Renewable Supplier, under which the customer pays the supplier any positive difference between the PPA price and the Bill Credit and the supplier pays the customer for any negative difference between the PPA price and the Bill Credit."[15] This statement is also not correct. Where the Negotiated Price exceeds the Bill Credit, the GSA Customer's bill will, all other things being equal, be larger than would have been the case absent participation in the GSA Program. And where the Negotiated Price is lower than the Bill Credit, the GSA

[12] Duke notes that NCCEBA's assertion that "the GSA Participating Customer receives a Bill Credit in recognition of the fact that (1) and (2) would otherwise constitute double payment by the customer" oversimplifies a complex issue that is entirely driven by the value of the Bill Credit and the Negotiated Rate.

[13] Motion at 9.

[14] Reply Comments at 19.

[15] Motion at 9-10.

Customer's total bill will, all other things being equal, be lower than would have been the case absent participation in the GSA Program, thereby allowing the GSA Customer to financially benefit from its participation in the GSA Program. No separate "side agreement" is necessary for the GSA Customer to receive any potential benefit from its Negotiated Price. In the case of any Duke-owned facilities, the Companies made clear in its Reply Comments that "[w]ith respect to Duke-owned facilities, the cost recovery will be identical [to that of a third-party owned GSA Facility] and non-participating customers will similarly be held neutral."

Finally, NCCEBA makes the following assertion in its Motion: "[w]e have already seen how the design of the CPRE program has allowed Duke to dominate that program. The Commission should not facilitate a similar result in the case of GSA."[16] As an initial matter, NCCEBA does not identify any specific aspect of the CPRE program that "allowed Duke to dominate that program." Such baseless assertions and hyperbole ignore the reality of the CPRE program structure, including the fact that the evaluation and selection of winning projects was conducted entirely by the Independent Administrator, which concluded that "the Tranche 1 solicitation was fairly conducted, with all [Market Participants] having access to the same information at the same time, and the IA is unaware of any bias towards or against any Market Participant."[17] Similarly, NCCEBA does not acknowledge the fact that the outcome of Tranche 1 CPRE RFP was directly impacted by the fact that "[a] significant number of proposals were withdrawn once identified as being

[16] *Id.* at 17.

[17] CPRE Independent Administrator's Report—Conclusion of Step 2 Evaluation and Selection of Proposals (April 9, 2019) at 2.

on the competitive tier, thereby reducing the number of projects available for consideration in Step 2."[18] While more information regarding the Tranche 1 RFP will be made available in subsequent reporting required by the Commission, it also worth noting the "result" of the CPRE Tranche 1 RFP was that the most cost-effective proposals made available in the RFP were selected for the benefit of customers at prices substantially below administratively-established avoided costs, irrespective of whether such projects were Duke-owned or third-party owned. Achieving a "similar result" in the context of the GSA Program would actually be in the best interest of GSA Customers. Once again, while NCCEBA focuses on the best interest of its members (i.e., how many projects they may be awarded in CPRE or GSA), the best interests of customers are served when the most cost-effective resources can be obtained.

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[18] *Id.*

III. CONCLUSION

WHEREFORE, the Companies respectfully request that the Commission:

(1) approve the Companies' GSA Program as presented in the March 18, 2019, Compliance Filing and modified by the its Reply Comments;

(2) affirm that the Companies will be entitled to some form of post-term revenue recovery;

(3) if the Commission concludes that cost-of-service post-term recovery is appropriate, affirm that Duke continues to have an opportunity to participate in the GSA Program;

(4) confirm that Duke affiliates are permitted to participate in the GSA Program so long as all necessary regulatory approvals are obtained; and

(5) deny the Motion in its entirety.

Respectfully submitted this 20th day of May, 2019.

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ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's Reply to Motion for Reconsideration, in Docket Nos. E-2, Sub 1170 and E-7, Sub 1169 has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 20th day of May, 2019.

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