STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
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	)) REPLY COMMENTS) OF THE) ATTORNEY GENERAL'S) OFFICE)	

The North Carolina Attorney General's Office (the "AGO"), pursuant to the Commission's January 26, 2018 Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA in the above-captioned dockets, respectfully submits these reply comments about the Green Source Advantage Program ("GSA Program") and Rider GSA tariff proposals filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, "Duke") in their Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2 on January 23, 2018 ("GSA Petition") and the initial comments of various intervenors filed on or about February 23, 2018.

In 2017 the General Assembly passed House Bill 589 (Session Law 2017-192), which was the result of negotiations and lobbying by numerous stakeholders in the area of renewable energy. Duke's Petition is filed in accordance with Part III of House Bill 589, codified in N.C. Gen. Stat. § 62-159.2, titled "Renewable Energy Procurement for Major Military Installations, Public Universities, and Other Large Customers."

Among the intervenors who filed comments, there is broad consensus that the GSA program proposed by Duke violates the spirit and the letter of H.B. 589 in the following ways:

1. Duke's proposal inappropriately merges the Renewable Energy Procurement for Large Customers enacted under Part III of H.B. 589 with the Competitive Procurement of Renewable Energy created under Part II of H.B. 589 ("CPRE"), even though the General Assembly provided different provisions, purposes, and timelines for the two programs. Duke's GSA proposal pulls in elements of the CPRE statutory scheme that the General Assembly did not authorize under Part III of H.B. 589. Under Duke's proposed GSA program, Duke would procure renewable energy under the CPRE program for GSA customers who choose the "standard option" instead of the "self-supply" option. GSA Petition ¶ 5. For standard option customers, significant elements of the CPRE program would apply, such as "rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources." GSA Petition ¶ 26.

2. Under Part III of H.B. 589, the participating customer is to pay its normal retail energy bill, as well as the costs to Duke of the renewable energy and capacity, less a bill credit that cannot exceed Duke's avoided cost. N.C. Gen. Stat. § 62-159.2(e). Potential customers that participated in the stakeholder process for HB 589 expected participation in the program to provide cost savings. Pursuant to the statute, all other customers are to be "held neutral,

neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer." *Id*.

Contrary to this clear legislative directive, customers in Duke's proposed GSA program would actually pay more for power than non-GSA customers. More specifically, for GSA customers selecting two or five year terms, Duke's program sets the bill credit for obtaining renewable energy to be equal to the cost of providing renewable energy, and then charges administrative fees on top of that. *See* Petition Attachment C. For GSA customers who select a twenty year term, the price for renewable energy and the offsetting bill credit are set to the weighted average price Duke pays under the CPRE Program, and the customer must also pay a Renewable Energy Credit price derived from a national index. *Id*. These charges are in addition to the statutory requirement of paying their normal retail bill.

As a result, participants in Duke's proposed GSA program would pay more for using renewable energy even if (as is likely) that energy were in fact cheaper than the fossil-fuel burning energy it replaced.[1] Consequently, Duke's proposed GSA program would require participants to subsidize other customers, in violation of the statute.

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[1] The initial comments of the North Carolina Clean Energy Business Alliance pp 7-10 do an excellent job of explaining the billing charges and credits Duke proposes.

3. H.B. 589 provides that "[e]ligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms." N.C. Stat. § 62-159.2(b). Even though Duke's program provides for negotiations in a literal sense for self-supply GSA customers, the negotiations are functionally meaningless because a GSA customer's bill credit for the renewables is equal to the price it pays (with a ceiling of Duke's avoided costs), which means the bill credit cannot be greater than zero. In essence, a GSA customer can bargain if it wishes to do so, but it is denied the benefit of its bargain.

4. Duke's program does not provide a "range of terms, between two years and 20 years, from which the participating customer may elect." N.C. Gen. Stat. § 62-159.2(b). Instead Duke provides only one contract term between two and twenty years, namely a five year term. GSA Petition ¶ 19.

5. Duke's filing did not include the standard contract terms required by N.C. Gen. Stat. § 62-159.2(b).

The AGO concurs with these critiques, and concludes that these features of Duke's GSA Program are materially noncompliant with Part III of H.B. 589. As a result of the failure of Duke's proposed program to meet the basic tenets of the statutory scheme, the very entities that the General Assembly envisioned would participate in the program have stated that their participation would conflict with their obligation to minimize costs in their operations. Specifically:

- The University of North Carolina at Chapel Hill notes that it has a duty under the North Carolina Constitution to provide higher education "free

of expense" "as far as is practicable." UNC Initial Comments p 2. The University had expected to save nearly $1.7 million per year under Part III of H.B. 589 as enacted; however, given that it will have to pay extra money to participate in Duke's GSA Program, the program is "economically unattractive to UNC-Chapel Hill." UNC Initial Comments p 5.

- Similarly, the Department of Defense stated that it was unlikely that DoD policy would allow a large procurement of renewable energy that did not achieve cost savings. DoD Initial Comments pp 2-3.
- Wal-Mart obtains renewable energy in nineteen states and Puerto Rico, but it will not do so in North Carolina if it results in additional costs. Wal-Mart Initial Comments at 2. As a result of the pricing structure, it does not find Duke's GSA Program attractive. Wal-Mart Initial Comments p 5.

The intervenors who would like to participate as renewable energy customers under the GSA program contend that the bill credit should be equivalent to Duke's avoided cost.

The AGO recognizes that long-term contracts locking in an avoided cost component create a risk that nonparticipating customers will be disadvantaged, but the AGO agrees that the bill credit should be tied to Duke's avoided cost, with periodic resets to ensure that the credit reasonably matches Duke's actual avoided costs. This would comply with the statutory mandate to make the

program cost-neutral for nonparticipating customers, while allowing GSA Program participants to achieve energy savings by negotiating prices for renewable energy below Duke's avoided cost.

The Commission should require Duke to amend its GSA Program to conform to the requirements of H.B. 589.

Respectfully submitted, this the 20th day of April, 2018.

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-s-
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CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing ATTORNEY GENERAL'S REPLY COMMENTS upon the parties of record in this proceeding and their attorneys by electronic mail.

This the 20th day of April, 2018.

-s-
Jennifer T. Harrod
Special Deputy Attorney General