

**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		
Petition of Duke Energy Progress, LLC,	)	
and Duke Energy Carolinas, LLC,	)	ORDER APPROVING
Requesting Approval of Green Source	)	COMPLIANCE FILING
Advantage Program and Rider GSA to	)	
Implement N.C.G.S. § 62-159.2	)	

BY THE COMMISSION: On February 1, 2019, in the above-captioned proceedings, the Commission issued an Order Modifying and Approving the Green Source Advantage (GSA) Program (GSA Program Order) established pursuant to N.C. Gen. Stat. § 62-159.2. Pursuant to that Order, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together, Duke) were required to make a compliance filing consisting of revised rider leaflets, GSA Service Agreements, GSA Program power purchase agreements (PPAs), and any other documents that Duke proposes to use in the administration of the GSA Program. In addition, the Commission allowed Duke to include in that filing a narrative explanation of the revisions made to the GSA Program to aid the Commission and the parties to this proceeding in determining whether the revised program complies with the requirements of the GSA Program Order and to identify any additional issues that arise in the required restructuring of the Program

On March 18, 2019, Duke made its required compliance filing.

On April 8, 2019, the North Carolina Clean Energy Business Alliance (NCCEBA), the Southern Alliance for Clean Energy (SACE), the North Carolina Sustainable Energy Association (NCSEA), and the Public Staff filed comments addressing Duke's compliance filing.

On April 18, 2019, Duke filed reply comments.

On May 1, 2019, NCCEBA filed a motion pursuant to N.C.G.S. § 62-80 requesting that the Commission reconsider one of the determinations made in the GSA Program Order related to Duke's participation in the GSA Program. Contemporaneous with the issuance of this Order, the Commission will issue an Order denying that motion. To the extent that issues raised by NCCEBA's motion are addressed through that separate Order, discussion of those issues will not be repeated in the present Order.

## Duke's Compliance Filing

Consistent with the requirements of the GSA Program Order, Duke's compliance filing consists of a narrative summary describing the modifications made the Program and a summary of other key Program details that were not required to be modified pursuant to the GSA Program Order, a GSA Service Agreement, a GSA Power Purchase Agreement (GSA PPA), Rider leaflets, a GSA Application, and a GSA Term Sheet. Duke's narrative summary details the following aspects of the modified Program: (1) the self-supply option required to be offered under the modified Program; (2) the bill credit paid to customers participating in the Program; (3) the documents used in the administration of the Program; (4) other miscellaneous Program details; (5) the application process, (6) financial assurance requirements; (7) cost recovery and post-term cost recovery. In addressing these aspects of the modified Program, Duke argues that its compliance filing is consistent with the requirements of the GSA Program Order and requests that the Commission approve its compliance filing as the modified GSA Program. In addition, as allowed by the GSA Program Order, Duke requested that the Commission address, clarify, or confirm certain aspects of the modified Program. These requests are addressed in the later sections of this Order.

## NCCEBA's Comments

In its comments, NCCEBA argues that Duke's revised program fails to comply with the Commission's conclusions reached in the GSA Program Order in a number of key provisions, and warns that, unless corrected, these provisions could limit participation in the GSA Program.<sup>1</sup> First, NCCEBA argues that Duke's Rider leaflets fail to include a process that will ensure fairness in the allocation and availability of capacity for participation in the GSA Program. More specifically, NCCEBA argues that Duke's proposed process for receiving reservations on a "first-come-first-served" basis based upon the date and time that the eligible customer's application is received could result in an electronic race to submit, which would advantage Duke as a developer of renewable energy facilities participating in the Program. Instead, NCCEBA suggests a specific deadline for application submittals and a lottery for awarding available capacity, if the Program is oversubscribed. Second, NCCEBA argues that Duke's revised security requirements are "fraught with problems and inequities" and should be rejected. Third, NCCEBA argues that Duke's elimination of the requirement for post-COD financial assurance under the hourly marginal avoided cost bill credit option would result in preferential treatment for that bill credit option and create an additional obstacle for eligible customers who do not have the ability to use that option. Fourth, NCCEBA argues that Duke failed to comply with the GSA Program Order in that Duke proposed to provide interconnection cost information under the applicable interconnection procedures, which NCCEBA views as inconsistent with the Commission's directive to provide that information "relatively early in the GSA application process." Finally, NCCEBA argues that

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<sup>1</sup> As noted above, NCCEBA has sought reconsideration of whether Duke should be allowed to recover through its general rates costs associated with a GSA renewable energy facility that Duke develops for participation in the GSA Program based upon cost-of-service. That question, and the related question of whether Duke should be allowed to develop facilities for participation in the GSA Program, is addressed through the separate Order issued in this docket.

Duke's proposed allocation of the 250 MW of "unreserved" capacity when it becomes available lacks sufficient oversight by the Commission. For these reasons, which are further detailed in its comments, NCCEBA requests that the Commission allow Duke to recover costs related to its self-owned facilities in the GSA Program on a "market basis" after the expiration of the initial GSA PPA term and that the Commission order Duke to amend its GSA Program consistent with NCCEBA's comments.

### SACE's Comments

In its comments, SACE argues that a few features of the GSA Program as outlined in Duke's compliance filing remain unclear or at odds with the GSA Program Order. First, SACE argues that Duke's GSA Service Agreement, which left blank a schedule for the GSA Product Charge and includes a notation that the contract is "subject to Duke legal and management approval," should be clarified. Second, SACE argues that Duke's Rider leaflets as related to the bill credit based on the hourly, day-ahead production data should be revised to reflect the availability of that bill credit under any length of term up to the 20-year maximum. Third, SACE argues that provisions in Duke's compliance filing related to the GSA Product Charge, the GSA Bill Credit, and the GSA PPA "contract price" should be amended or clarified. Fourth, like NCCEBA, SACE argues that provisions in Duke's compliance filing related to providing interconnection-related costs to eligible customers and renewable facility owners fail to provide this information "relatively early in the GSA Program application process," as directed by the Commission.

### NCSEA'S Comments

In its comments, NCSEA argues that Duke's compliance filing fails to comply with the GSA Program Order in that the Program as provided in Duke's compliance filing does not hold non-participating customers neutral. More specifically, NCSEA argues that the cost recovery provision included in Duke's compliance filing would allow for a "clear double recovery," that is, recovery of the GSA Bill Credit's paid to participating customers (recovered pursuant to N.C.G.S. § 62-133.2(a1)(11)) and recovery of costs that are "displaced" by procurement through the GSA Program, unless the Commission requires clarification of those provisions. Second, NCSEA argues that Duke's compliance filing outlines a program that would afford Duke "numerous and substantive" advantages as a participant developing renewable energy facilities that participate in the Program. In NCSEA's view, these advantages include issues related to interconnection (such as which party pays for interconnection costs, when grid upgrade costs will be provided to the participating customer, and whether a system impact study should be a requirement for GSA renewable energy facilities to be eligible to participate in the Program), PPA disparity and associated costs, the cost treatment for Duke-developed facilities after the end of Program participation, and the post-COD security for projects participating under the administratively-established avoided cost bill credit option. NCSEA also raises objections related to contract forms not included in the compliance filing, that future allocation of capacity should require Commission oversight, and that the GSA Application requires sophisticated information that some customers may not understand or know.

## The Public Staff's Comments

In its comments the Public Staff outlines ten key directives provided by the Commission through its GSA Program Order, and then reviews Duke's compliance filing in light of these directives. Generally, the Public Staff finds that Duke's compliance filing complies with each of the Commission's directives. However, the Public Staff raises an issue related to the GSA PPA "contract price," and responded to Duke's proposed requirement that GSA renewable energy facilities have completed a system impact study by suggesting an alternative milestone, the execution of a SIS Agreement. In addition, the Public Staff responded to Duke's comments related to cost recovery by generally agreeing with Duke's proposal that costs associated with a Duke-developed facility be eligible for inclusion in the relevant utility's rate base after the conclusion of the facility's participation in the Program. In conclusion, the Public Staff requests that the Commission consider the issues and other considerations raised in its comments.

## Duke's Reply Comments

In its reply comments, Duke states that it has made one minor modification to the Rider leaflets to address a question raised by SACE regarding the available contract terms under the hourly, marginal production data bill credit. Duke responded at length to the other comments filed by noting that the Public Staff generally supports approval of the compliance filing and arguing that no other modifications are needed as related to the interconnection procedures applicable to GSA renewable energy facilities. Duke then specifically addresses the issues raised by NCCEBA, NCSEA, and SACE related to interconnection of GSA Program facilities, cost recovery treatment of Duke-developed facilities, the structure of the Program and other miscellaneous issues.

## DISCUSSION AND CONCLUSIONS

The Commission has carefully reviewed Duke's compliance filing and all the comments filed in response thereto. Based upon that review and the entire record herein, the Commission determines that Duke's compliance filing should be approved for the reasons stated in the comments filed by Duke and the Public Staff. Consistent with those comments, the Commission finds that Duke's compliance filing, as revised in Duke's reply comments, generally complies with the requirements of the GSA Program Order. The parties have brought to the Commission's certain disputed issues that are ripe for resolution or clarification by the Commission. Therefore, the Commission will resolve these issues and direct Duke to open the GSA Program within sixty (60) days of the date of this Order.

At the outset, the Commission observes that in some respects the parties' comments addressing Duke's compliance filing have raised objections that are procedural in nature, based on their view that Duke has belatedly introduced new issues or sought clarification of certain aspects of the GSA Program Order. The GSA Program Order expressly anticipated that restructuring the Program might give rise to additional issues, and the Commission directed Duke to address any such issues through a narrative

explanation of the revisions made to the Program.<sup>2</sup> Thus, the Commission determines that these objections do not support withholding approval of Duke's compliance filing. In addressing those disputed issues that are ripe for resolution or clarification, the Commission has carefully considered the parties' comments, and made reference to the conclusions reached in the GSA Program Order and the provisions of N.C.G.S. § 62-159.2.

### Interconnection issues

In its compliance filing, Duke states that it will implement the Commission's directive to follow the "traditional approach" of "assigning all interconnection costs" to the GSA Facility Owner, and that Duke agrees that this approach aligns with the statutory requirement that the GSA Customer pay the "total cost of any renewable energy and capacity." In short, Duke states that a GSA Facility Owner will be required to pursue interconnection of its facility under the applicable interconnection procedures, whether North Carolina, South Carolina, or FERC. In addition, Duke requests that the Commission consider whether a completed, full System Impact Study should be a requirement for potential GSA Facilities prior to submission of a GSA Customer Application, a requirement that Duke proposed to eliminate during consideration of the Program design, but now seeks to reinstitute. Duke's justification for continuing this requirement is to ensure that facilities seeking to participate in the GSA Program have sufficiently progressed in the interconnection process to achieve commercial operation in a timely manner.

NCCEBA, SACE, and NCSEA raised similar objections to Duke's compliance filing with regard to these issues. Their objections rest on three basic concerns: first, that Duke is not complying with the GSA Program Order's direction to provide customers and facility owners participating in the GSA Program with interconnection information "relatively early in the GSA Program application process;" second, that requiring a completed system impact study as a condition to participate in the GSA Program will create a barrier to participation not present in other contexts, ultimately having a chilling effect on participation in the GSA Program; and, third, that Duke's compliance filing is not sufficiently clear as to who is responsible for paying interconnection costs nor as to how Duke-owned facilities' interconnection costs will be treated. NCSEA requests that the Commission allow further comments on these issues.

The Public Staff commented that Duke's proposed treatment of interconnection processing of GSA Facilities is generally reasonable and has the potential to reduce the risk of GSA Program capacity being reserved by projects lacking significant information regarding their commercial viability. However, noting the small percentage of projects in the Duke queues that have completed a System Impact Study, the Public Staff suggested an alternative: that projects that have an executed System Impact Study Agreement be allowed to participate in the GSA Program. The Public Staff states that, at this point, the project would be designated as a Project A or B in the interconnection queue and be sufficiently certain in its development that it is no longer seeking to make material

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<sup>2</sup> GSA Program Order, p. 64.

modifications. Thus, the Public Staff agrees that eligible GSA Facilities should be sufficiently far along the interconnection process, but questions whether a completed SIS is necessary as a condition for participation in the Program.

In its compliance filing reply comments, Duke argues that its proposed approach to GSA Facility interconnection processing is reasonable, non-discriminatory, and consistent with the North Carolina Interconnection Procedures. As to the concerns of NCCEBA, SACE, and NCSEA, Duke states that these parties have characterized the GSA Program Order as creating a new obligation outside of the Interconnection Procedures, a characterization with which Duke disagrees. Duke requests that the Commission clarify this aspect of these issues. Duke further states that the cost of Interconnection Facilities and any applicable distribution and transmission network upgrades can only be meaningfully estimated through the completion of a System Impact Study, as required under the Interconnection Procedures. Duke supports its view by reference to the current NCIP serial review process, the potential for delay if Duke were required to deviate from the serial review process to study a GSA Facility, and that the results of studying the interconnection costs of a GSA Facility would be relatively invaluable where there were earlier-queued and/or interdependent projects. Duke also responds to the Public Staff's suggested alternative, that a GSA Facility be required to have executed a System Impact Study Agreement, stating that it appreciates the intent to increase the number of projects eligible for participation, but that this would also increase the likelihood that available GSA capacity would be assigned to projects that are not ultimately constructed. Duke suggests instead that the Commission allow its proposed requirement of a full System Impact Study to be implemented and then revisit the issue if it becomes apparent that the requirement is a barrier to full GSA Program subscription.

Through the GSA Program Order, the Commission recognized and anticipated the complexity of these interconnection related issues by largely not addressing them in that Order, and by providing guidance to Duke and the other parties. This guidance included direction to assign all interconnection costs to the GSA Program customer and/or the GSA renewable energy facility.<sup>3</sup> It also included the practical recognition that a customer seeking to participate in the GSA Program requires a certain amount of information about the costs, and, thus, has a need that Duke provide information about interconnection costs "relatively early" in the application process. As directed by the Commission, Duke addressed both points of guidance by stating that "each project will be studied in accordance with the interconnection procedures" and that "interconnection-related information will be provided to the GSA Facility Owner in accordance with the applicable

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<sup>3</sup> The Commission's identification of the "GSA Program customer and/or the GSA renewable energy facility" as the party to whom these costs should be assigned seems to have caused some confusion among the parties here. Identification of both those parties was intended only to recognize the economic reality, as the Commission presumes it to be, that the GSA Program customer would ultimately be paying the costs, although the owner of the GSA renewable energy facility would actually receive the request for payment. While the parties' precision in this regard is not misplaced, it was a more technical reading of the GSA Program Order than was intended. Moreover, in the same paragraph of the GSA Program Order, the Commission directed Duke to address these issues with more specificity through its compliance filing, which Duke has done by identifying the GSA Facility Owner as the Interconnection Customer.

interconnection procedures.”<sup>4</sup> After careful consideration, the Commission agrees with Duke that its proposal to adhere to the applicable interconnection procedures within the GSA Program is reasonable and complies with the GSA Program Order. In short, the Commission had no intent to create an evaluation of interconnection-related costs specific to the renewable energy facilities that are seeking to participate in the GSA Program, and the Commission finds that it is reasonable and appropriate to make use of the existing interconnection procedures to evaluate and provide information on interconnection-related costs to the GSA Facility Owner. Further, while the Commission finds helpful the Public Staff’s suggested alternative, the Commission also agrees with Duke that it would be appropriate to proceed with Duke’s proposed requirement of a full System Impact Study report and to revisit this issue to evaluate the extent to which this requirement is a barrier to full subscription of the capacity available under the GSA Program. Therefore, the Commission concludes that Duke’s compliance filing is consistent with the GSA Program Order, and, therefore, should be approved.

#### Revision related to length of term under hourly bill credit

In its compliance filing reply comments, Duke states that SACE raised a concern regarding language in the Rider GSA regarding the contract term available to GSA Customers electing the Hourly Avoided Cost Bill Credit. Duke further states that it does not disagree with the intent of SACE’s comment and noted that its narrative description of the compliance filing and its GSA Service Agreement submitted therewith reference the ability of a customer to select any number of years up to the 20-year limit provided in N.C.G.S. § 62-159.2. To address SACE’s concern and to eliminate ambiguity, Duke submitted a revised Rider GSA to clarify that a GSA Customer electing the Hourly Avoided Cost Bill Credit option may enter a GSA Service Agreement for any number of years up to 20 years. The Commission agrees with Duke and SACE and determines that this revision to Rider GSA should be approved.

#### Allocation and availability of capacity

In its revised Rider leaflets, Duke proposed that any reserved capacity (that is, capacity that is available only to the University of North Carolina system and major military installations) not subscribed to within the three-year reserve capacity period by those customers eligible to do so, will “then be made available for subscription by any Eligible GSA Customer.” NCCEBA and NCSEA both argue that additional oversight by the Commission is needed with regard to this future allocation of capacity. In its compliance filing reply comments, Duke argues that the GSA Program Order was “clear and unambiguous” in that it provides as follows: “the Commission may consider making adjustments to this allocation in future years of the GSA Program, particularly in those years when any un-awarded ‘reserved’ capacity becomes available to other customers.”<sup>5</sup> Duke states that it believes that the GSA Program Order is sufficiently clear that the Commission will exercise its oversight of the allocation of future reserved capacity in the manner that it deems appropriate, and that, contrary to the comments of NCSEA and

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<sup>4</sup> Duke’s compliance filing at p. 11.

<sup>5</sup> GSA Program Order at p. 51.

NCCEBA, no further clarification is needed from the Commission. The Commission agrees with Duke and, therefore, concludes that the objections raised by NCSEA and NCCEBA as to this issue do not support withholding approval of Duke's compliance filing, and that the above-referenced provisions of Rider GSA and Rider GSA-1 should be approved.

#### Revised security requirements

In the GSA Program Order, the Commission withheld approval of the financial security provisions of the GSA Service Agreement based upon Duke's shortcoming in demonstrating that Article 11 of the GSA Service Agreement complies with the requirements of N.C.G.S. § 62-159.2(c). The Commission directed Duke to either revise its proposed credit requirements or otherwise demonstrate to the Commission that those requirements are "consistent with the Uniform Commercial Code of North Carolina." N.C.G.S. § 62-159.2(c).

In its compliance filing, Duke explains that it has determined that no financial assurance shall be required of the GSA Customer and that it has revised the GSA Service Agreement accordingly. Duke further explains that if the GSA Customer defaults on its obligations, the GSA Service Agreement will be terminated, but the applicable PPA will remain in place and Duke will continue to pay the GSA Facility Owner under the terms of the PPA (at a price based on either the administratively-determined avoided cost rate or at the hourly marginal avoided cost rate). Thus, in Duke's view, in light of the Commission's determination that these payment structures hold neutral the non-participating customers, as is required by the GSA Statute, there is significantly reduced risk of harm resulting from a GSA Customer defaulting. Duke notes that this proposed arrangement is consistent with the established practice in the setting of negotiated contracts with qualifying facilities (QFs). Duke argues that acceptance of similar provisions in that context demonstrates that its proposal to forego financial assurance is reasonable and consistent with two standards under the Uniform Commercial Code of North Carolina: "adequate assurance of due performance" and the "adequacy of any assurance offered shall be determined according to commercial standards." Finally, Duke states that the GSA Facility Owner is free to separately require financial assurance of the GSA Customer if the GSA Facility Owner deems it necessary to do so.

NCCEBA objects to this revision of the GSA Service Agreement stating that it is "fraught with problems and inequities." NCCEBA states that the contingent reduction in PPA pricing would be highly problematic for the financing of renewable energy facilities that are seeking to participate in the GSA Program and require the GSA Facility Owner to pursue the GSA Customer for any damages it may suffer as a result.

The Public Staff states that it generally agrees with this aspect of the Program structure. The Public Staff further states that if the GSA Facility Owner believes that this structure presents financial risk, it has the right to negotiate financial assurance with the GSA Customer, sharing the risk of overpayment between the GSA Facility Owner and the GSA Customer and not among Duke's customers not participating in the Program. The

Public Staff concludes that this appears to comply with the GSA Program Order's directive on this issue. The Public Staff does note that there could be significant differences between the GSA Bill Credit (the amount that the GSA Facility Owner would continue to be paid after default) and the price negotiated between the GSA Facility Owner and the GSA Customer. To mitigate this risk to the GSA Facility Owner, the Public Staff argues that the GSA Facility Owner should be permitted to seek out and negotiate with another potential GSA Customer to sign on to the original GSA Service Agreement for the remainder of the term and that any new agreement should not constitute a new allocation of capacity under the GSA Program.

In its compliance filing reply comments, Duke addressed this issue generally by stating that Duke's requirements with respect to performance assurance are based on the risk profile of a particular transaction and by restating its previous explanation that the GSA Facility Owner may require additional security of the GSA Customer outside of the GSA Service Agreement.

The Commission agrees with Duke and the Public Staff that the proposed revision of the GSA Service Agreement at issue here complies with the GSA Program Order. Specifically, the Commission determines that Duke's reference to the provisions of the Uniform Commercial Code are helpful to resolving this issue and sufficient to ameliorate the shortcoming noted in the GSA Program Order. The well-established standard of "commercial reasonableness" and the application of "reasonable commercial standards" are sufficient guidance for all of the participants in the GSA Program. Further, Duke's reference to the context of negotiated PPAs with QFs provides a concrete application of these standards in an analogous context. In addition, the Commission also agrees with the Public Staff's suggestions that, after default by a GSA Customer, the GSA Facility Owner should be allowed to seek out and negotiate with another customer eligible to participate in the GSA Program. The Commission, therefore, determines that this portion of the revised GSA Service Agreement should be approved and that Duke will be required to accommodate the re-negotiation process described by the Public Staff. Any re-negotiation shall take place within a reasonable time after default by the GSA Customer, and shall not constitute a new allocation of capacity under the GSA Program.

#### Post-COD financial assurance

In its compliance filing, Duke states that with respect to renewable PPAs in general, Duke has historically required performance assurance to cover risk both prior to commercial operation (pre-COD) and after commercial operation (post-COD). Duke further explains that the GSA PPA includes pre-COD financial assurance requirements that are similar in size to the pre-COD requirements in the negotiated QF PPAs and that post-COD financial assurance will only be required for the GSA PPAs that utilize the GSA Bill Credit that is based on the administratively-established avoided cost rate. Duke further explains that the GSA Bill Credit based on the hourly, marginal avoided cost rate does not include the risk of short-term overpayment and long-term underpayment that is present in the context of an administratively-established avoided cost rate.

NCCEBA and NCSEA objected to this proposed revision to the GSA Program on the basis that it is unfair to distinguish between the two GSA Bill Credit options and that the disparate treatment would result in favor of some customers and present obstacles to participation for other customers.

In its compliance filing reply comments, Duke responded to these objections by stating that NCSEA did not attempt to address the explanation included in Duke's compliance filing and that NCCEBA chose to ignore Duke's explanation included in its compliance filing. Duke further states that it is "overly simplistic to insist that the performance assurance requirements be made the same simply out of principal," and reiterates its view that the differences between the two GSA Bill Credit options are "real and un rebutted." This, Duke argues, justifies the differing treatment of the post-COD performance assurance options included in its revised GSA PPA.

The Commission agrees with Duke on these issues. The Commission accepts Duke's representations that the differing treatment of post-COD financial assurance are based upon real differences in the magnitude of risk involved in the two available bill credit options. While the Commission acknowledges NCSEA and NCCEBA's objections and allegations of unfair treatment, the Commission finds these general objections are insufficient to rebut Duke's detailed arguments grounded in Duke's experience with negotiated PPAs with QFs. Therefore, the Commission determines that Duke's revised post-COD financial assurance provisions should be approved.

#### Miscellaneous Issues Related to GSA Documents

As a part of its compliance filing, and in response to the direction provided in the GSA Program Order, Duke included the following documents that it will use in the administration of the Program: GSA Service Agreement, GSA PPA, Rider GSA and Rider GSA-1, GSA Application, and GSA Term Sheet.

In their respective comments, SACE and NCSEA objected based upon their view that Duke's compliance filing failed to comply with the above-referenced direction provided through the GSA Program Order. Specifically, SACE and NCSEA objected that the GSA Service Agreement leaves blank the schedule of the GSA Product Charge and that the GSA Service Agreement includes a notation that the document is "subject to Duke legal and management approval." More broadly, NCSEA alleges that Duke failed to comply with the Commission's directive.

Duke responded to both objections through its compliance filing reply comments. As to the first objection, Duke states that these criticisms are "nonsensical" because the GSA Product Charge is equal to the Negotiated Rate, which will be determined based on negotiations between the GSA Customer and the GSA Facility Owner, and, thus, is not known at this time. As to the second objection, Duke states that the notation is "boilerplate language" included as standard for an un-executed document and will not alter or override the terms of the Commission's directives in this proceeding. As to NCSEA's broad allegation that Duke failed to comply with the direction to include the GSA Documents, Duke states that it did include the required documents. The Commission understands

Duke's statement as a representation that no other documents of significance will be used in the administration of the Program.

The Commission agrees with Duke on these issues and finds SACE and NCSEA's objections to be without merit. Further, the Commission finds that this disagreement exemplifies a situation where discussion among the parties should obviate the need for a ruling from the Commission. The Commission expects the parties before it, and in particular the attorneys who represent them, to cooperate with each other in resolving menial misunderstandings. On this type of issue, the lack of discussion outside of the formal record draws the Commission into tedious disagreements and taxes the Commission's capacity to efficiently administer its judicial responsibilities. Therefore, the Commission determines that, with regard to these issues, Duke's GSA Documents should be approved as responsive to the direction provided in the GSA Program Order.

#### Clarification of "contract price"

In the GSA Program Order, the Commission resolved issues related to the structure of the payments and charges involved in the GSA Program, including, as relevant here, the following:

The Commission determines that the contract price is to be established based on the negotiations between the eligible customer and the renewable energy facility owner, and that the eligible customer will be required to pay Duke that contract price, which shall then be passed on to the owner of the GSA renewable energy facility. Therefore, the Commission, in its discretion, determines that the GSA PPA contract price shall be the rate negotiated between the eligible customer and the owner of the GSA renewable energy facility (in \$/MWh) multiplied by the energy actually produced by the facility (in MWh), to derive an amount expressed in dollars. This pricing mechanism shall apply for all contract term lengths, and shall establish the GSA Product Charge, consistent with that construct proposed under the Walmart Settlement. The Commission will, therefore, require Duke to revise this portion of its rider to reflect the foregoing conclusions.

In its compliance filing, Duke included the following narrative explanation of its response to the above-excerpted direction: the contract price specified in the PPA is the relevant Bill Credit methodology selected by the applicable GSA Customer. The GSA Facility Owner receives the Negotiated Price for so long as the GSA Customer continues to perform its obligations under the GSA Service Agreement." Duke's revised GSA Service Agreement, Rider leaflets, and GSA PPA include corresponding provisions.

In its comments, SACE argues that Duke appears to require that the GSA Customer and the GSA Facility Owner set a contract price that equals the GSA Bill

Credit. SACE alleges that this is a problem in two ways: first, that such an arrangement would not allow the GSA Customer to actually negotiate a PPA price with a GSA Renewable Facility Owner in violation of the GSA Program Order; and second, that such an arrangement would prevent the GSA Customer from achieving costs savings that result from negotiating a PPA price that is lower than Duke's avoided cost. SACE argues that the Commission should require Duke to comply with the GSA Program Order in that GSA Customers must be able to negotiate with renewable suppliers regarding the price for renewable energy and capacity and require Duke to amend or clarify its proposed GSA Program accordingly.

In its comments, the Public Staff addressed this issue by first outlining the three-way agreement between the GSA Customer, GSA Facility Owner, and Duke, which it describes as resulting in a "complex billing arrangement" intended to protect non-participating customers harmless from a potential default by a GSA Customer. The Public Staff notes Duke's comments addressing this issue, and agrees that the GSA PPA price between Duke and the GSA Facility Owner is not the negotiated price, but is the applicable GSA Bill Credit. The Public Staff then states that this appears to be a "semantics issue," details its understanding of the assignment mechanism Duke describes in its compliance filing, and, ultimately, concludes that Duke's compliance filing "captures the intent of the Commission" expressed through the GSA Program Order. The Public Staff included graphic depiction of the flows of payments and charges under the three-party agreement structure approved by the Commission.

In its compliance filing reply comments, Duke responds to SACE's arguments by stating that "SACE's statements are incorrect and its general criticisms of the Compliance Filing appear to be based on a fundamental misunderstanding of the GSA Program." Duke then reiterates and details its explanation provided in its compliance filing, and notes that the Public Staff also extensively discussed this issue and concluded that the revised structure empowers the GSA Customer to negotiate a price with the renewable energy supplier of its choice. Duke further states that it believes that it is clear that the GSA Customer and the GSA Facility Owner can independently negotiate the GSA Product Charge and that the GSA Customer can potentially achieve cost savings from participation in the GSA Program. In addition, Duke notes that the Public Staff addressed the potential ambiguity resulting from the Commission's use of the term "contract price" and states that its compliance filing precisely reflects the Commission's direction that the price negotiated between the GSA Customer and the GSA Facility Owner shall establish the GSA Product Charge. In addition, Duke notes that the Public Staff commented that this arrangement ensures that customers are not exposed to financial risk in the event of default by a GSA Customer, and that, so long as the GSA Customer performs as agreed under the GSA Service Agreement, the GSA Facility Owner will receive the negotiated rate via assignment under the GSA Service Agreement. Finally, Duke commits to provide a visual depiction of the three-party GSA Program structure and billing arrangement to assist potential Program participants in understanding the Program.

The Commission acknowledges that the use of the term "contract price" in the above-excerpted portion of the GSA Program Order has the potential to create ambiguity

when read in isolation. However, in the context of the discussion of the other discussion of “GSA PPA Rates and Terms,” and in light of the Commission’s conclusions articulated throughout the GSA Program Order, the Commission concludes that there is only one reasonable interpretation of the use of the term “contract price.” That one reasonable interpretation is articulated by the Public Staff in its comments and depicted in the attachments to the Public Staff’s comments. Moreover, the Commission determines that Duke’s compliance filing is consistent with the Public Staff’s description and complies with the GSA Program Order with respect to these issues. Therefore, the Commission concludes that SACE’s objections on these issues do not support withholding approval of Duke’s compliance filing and that Duke’s compliance filing should be approved.

### Application Requirements and Selection Process

In its compliance filing, Duke details its revised application requirements and selection process, including the timelines for required submittals and responses, the information required to be included in the application, and the assignment of available capacity on a first-come-first-served basis within both the reserved and unreserved capacity categories. In addition, Duke states that it has established a website for the purpose of providing information to eligible customers and processing applications.

In its comments, NCCEBA requests that the Commission instruct Duke to include a more detailed protocol for submission of GSA applications and for subscription of GSA capacity. More specifically, NCCEBA argues that the proposed first-come-first-served basis for processing applications could result in a submittal race and advantage Duke as a participant in the Program, “given its knowledge of server locations and access to faster internet connection speeds.” NCCEBA suggests that the Program would work more efficiently if Duke provided a deadline for submission of reservations and utilize a lottery system to award capacity, if the reservations exceed available capacity.

In its comments, NCSEA expresses its view that the application requirement that GSA Customers include their annual peak demand and the amount of capacity sought to be procured through the Program necessitates a level of sophistication that eligible customers may not possess. NCSEA, therefore, encourages Duke to provide knowledge and resources to those customers who may not know this information, when requested to do so. In addition, noting that the application fee is \$2,000, NCSEA further argues that Duke should grant leeway to customers who submit an application and later discover a clerical error or misunderstanding to correct such errors or misunderstandings without Duke rejecting the application and keeping the fee.

In its compliance filing reply comments, Duke notes that the Commission expressly approved the acceptance of applications on a first-come-first-served basis in the GSA Program Order. Duke argues that NCCEBA should have raised these arguments earlier in the proceeding and that it is inappropriate to consider such new proposals at this juncture of the proceeding. Further, Duke states that it believes that the first-come-first-served basis continues to be reasonable and that the lottery process would unnecessarily add costs and complexity to the Program. In response to NCSEA’s concerns that eligible customers may not have the level of sophistication needed to

submit a completed application, Duke commits to have personnel available to provide additional information, including the account executives already assigned to these customers, and to identify on the GSA website a contact for additional questions. Finally, with regard to the potential for correction of clerical errors or other misunderstandings, Duke states that it will notify a customer of such deficiencies in writing and allow the customer a reasonable opportunity to cure such deficiencies and to proceed with processing the application without requiring the forfeiting of the application fee.

The Commission agrees with Duke with regard to the issues raised by NCCEBA. Although the GSA Program Order contemplated the possibility that some new issues might arise in the restructuring of the Program, as Duke notes, the first-come-first-served processing of applications has been a component of the Program since it was proposed. Moreover, Duke appropriately notes that the Commission expressly approved the first-come-first-served processing of applications.<sup>6</sup> At this stage in the proceedings, the only question ripe for determination is whether Duke's compliance filing complies with the GSA Program Order. With regard to these issues, the Commission concludes that it does. Therefore, the Commission determines that NCCEBA's objections to the first-come-first-served processing of applications do not support withholding approval of Duke's compliance filing, and that NCCEBA's suggested alternative processing of applications should be rejected. Finally, the Commission determines that Duke's response regarding clerical errors and the information required to be submitted in the GSA Application is sufficient to address NCSEA's concerns. Therefore, the Commission concludes that Duke's comments on those issues support approval of the compliance filing.

#### Recovery of costs through N.C.G.S. § 62-133.2(a1)(11)

In the GSA Program Order, the Commission resolved issues related to the GSA Program rate design, including, disagreements about what costs Duke is entitled to recover pursuant to amended N.C.G.S. § 62-133.2(a1)(11). The Commission expressed in detail its expectations that Duke will seek recovery of the "non-administrative costs related to the GSA Program not recovered from program participants" and set out the expected contents of its application for cost recovery in four categories. The Commission expressed its desire for more precision with regard to these issues and its openness to receiving further recommendations from the Public Staff regarding its needs to audit these costs.

In its compliance filing, Duke confirmed that the Commission's expectations detailed in the GSA Program Order regarding cost recovery are accurate. Duke also states that the GSA Program is not cost-contained in the sense that not all costs are recovered from participating customers. Duke further states that each MWh generated by the GSA Facility will displace a MWh that would have been generated by another system asset and that Duke is not recovering any fuel costs associated with that "displaced MWh."

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<sup>6</sup> GSA Program Order at p. 54-55.

In its comments, NCSEA alleges that Duke's proposed cost recovery is not stated in the GSA Program Order, and raises a number of questions. NCSEA's comments on this point center on its view that Duke could potentially receive the GSA Product Charge and also recover the same amounts through the fuel rider. While acknowledging that the mechanism involved in the GSA Program is complex and that "it is possible" that Duke will have no such double cost for energy or double recovery, NCSEA seeks clarification from the Commission on this issue.<sup>7</sup>

In its compliance filing reply comments, Duke responds to NCSEA by stating that NCSEA has previously raised these arguments regarding "double recovery," and that NCSEA's allegations fail to provide any detailed accounting examples. Duke further states that "there will be no fuel cost recovery associated with the 'displaced' MWh and the cost borne by non-participating customers for each MWh generated by a GSA Facility will be the applicable Bill Credit." With respect to Duke-owned facilities, Duke states that cost recovery will be identical and non-participating customers will similarly be held neutral, that its proposal is that "the capital cost of the Duke-owned GSA Facility will be excluded from rate base for purposes of establishing base rates," and that the only revenue Duke will receive for such facilities is that which is permitted under N.C.G.S. § 62-159.2, i.e., the Bill Credit at the avoided cost rate. In conclusion, Duke argues that no further clarification of these issues is needed.

The Commission agrees with Duke as to these issues. As noted above, the Commission outlined its expectations for Duke's application for cost recovery as relevant to GSA Program costs, and afforded the opportunity for the Public Staff to present recommendations regarding its needs for auditing these costs. Although the Public Staff may later avail itself of this opportunity in a fuel cost recovery proceeding, it has not included any such recommendations in its reply comments filed in this proceeding. The Commission finds that no other clarification of these issues is necessary or justified. Therefore, the Commission determines that Duke's compliance filing should not be rejected based on these issues.

## CONCLUSION

Based upon the foregoing and the entire record herein, including Duke's compliance filing and the comments of Duke and the Public Staff, the Commission determines that Duke's compliance is consistent with the GSA Program Order and, therefore, should be approved. The Commission will continue to monitor developments in the GSA Program and consider adjustments to the Program where it appears that

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<sup>7</sup> To some extent, NCSEA's comments on this point overlap with the issues raised by NCCEBA's motion for reconsideration. As stated above, these issues are addressed through a separate Order of the Commission.

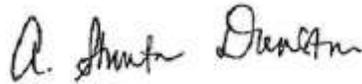
barriers to achieving the goals of the Program are present. Duke shall open the GSA Program to eligible customers within 60 days of the date of this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 5<sup>th</sup> day of June, 2019.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "A. Shonta Dunston".

A. Shonta Dunston, Deputy Clerk