

# SOUTHERN ENVIRONMENTAL LAW CENTER

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May 20, 2019

## *Via Electronic Filing*

Martha Lynn Jarvis  
Chief Clerk  
North Carolina Utilities Commission  
430 North Salisbury Street  
Dobbs Building  
Raleigh, NC 27603-5918

RE: 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  
*Docket Nos. E-2, Sub 1170 and E-7, Sub 1169*

Dear Ms. Jarvis:

Enclosed for filing in the above-referenced docket are the Comments of the  
Southern Alliance for Clean Energy on NCCEBA's Motion for Reconsideration. By copy  
of this letter, I am serving a copy of the comments on all parties of record.

Please let me know if you have any questions about this filing.

Sincerely,

/s/ Nick Jimenez

Enclosures

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 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 )

**COMMENTS OF SACE  
 ON NCCEBA'S MOTION FOR  
 RECONSIDERATION**

Pursuant to the North Carolina Utilities Commission's ("Commission") May 6, 2019 *Order Requesting Comments* and May 13 *Order Granting Motion for Extension of Time* in the above-referenced dockets, the Southern Alliance for Clean Energy ("SACE") respectfully submits the following comments on North Carolina Clean Energy Business Alliance's ("NCCEBA") May 1 motion for reconsideration and amendment of the Commission's February 1 *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments* ("February 1 Order").

SACE promotes responsible energy choices to ensure clean, safe and healthy communities throughout the Southeast. It supports expanding the proportion of electricity generation produced by renewable energy resources and seeks to ensure that the suite of programs that implement House Bill 589, including the Green Source Advantage ("GSA") program, are successful. SACE supports NCCEBA's motion for reconsideration because it believes that setting a level playing field will ultimately lead to a more successful program and comports with the intent of the legislature in enacting House Bill 589.

NCCEBA's motion points out that Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, "Duke Energy") will have an unfair advantage when competing against independent clean-energy developers for GSA customers' business under the GSA program as currently approved. Under the currently approved program, it appears that Duke Energy will be able to recover costs of any GSA facilities that it develops through its rates under general cost-of-service ratemaking—plus return on investment—after a project's initial term. In other words, Duke Energy will add the remaining capital value of the facility to its rate base and will be guaranteed income from those facilities for a portion of their useful life. Because a GSA contract term can be as short as two years, this means that Duke Energy could rate-base a GSA project for the overwhelming majority of its useful life. This guaranteed income greatly reduces the financial risk faced by Duke Energy when developing the GSA facility, compared to independent clean-energy developers that have no such guarantee.

This unfair advantage is problematic. First, it directly undermines a key purpose of the GSA program as set out in House Bill 589, which is to allow customers to negotiate with independent third parties for procurement of renewable energy to meet sustainability or climate goals. *See* N.C. Gen. Stat. § 62-159.2(b) ("Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms."). Second, Duke Energy's guaranteed income under the program as currently approved will likely enable it to crowd out third-party renewable developers by offering artificially low prices to prospective GSA customers for initial project terms. Notably, the program as currently approved also does not include any limits on how much of the program capacity could be met by Duke Energy as opposed to third-party developers. Third, not only does

Duke Energy's guaranteed income unfairly reduce its risk compared to independent clean-energy developers, but it also unfairly reallocates that risk to all of its customers, who will be paying the increased rates that result, effectively acting as insurers of Duke's GSA facilities. House Bill 589 requires that the "Commission shall ensure that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the [GSA] program customer." N.C. Gen. Stat. § 62-159.2(e). Providing Duke Energy a guaranteed stream of income on projects after an initial GSA term—as short as two years—appears to conflict with this directive because Duke would have the opportunity to shift costs and risk onto its broader customer base by offering lower prices to GSA participants for initial contract terms, knowing that it can recover additional costs later on through its rate base.

SACE also concurs with NCCEBA that this issue was not fully developed in the record for this docket. Duke Energy arguably buried its proposal to participate as a GSA facility developer in a footnote in its initial program filing.<sup>1</sup> If this proposal had been raised more prominently from the outset, intervenors likely would have submitted more extensive comments on this issue and pointed out that House Bill 589 does not anticipate that Duke Energy would develop GSA facilities,<sup>2</sup> and that Duke Energy has unfair advantages as a GSA facility developer.<sup>3</sup> If Duke Energy is permitted to participate as a GSA facility developer, the Commission should put guardrails in place to ensure a level

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<sup>1</sup> *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2*, at 7 n.4.

<sup>2</sup> See N.C. Gen. Stat. § 62-159.2(b) (requiring standard contract terms, while a contract would not be required between a utility and itself).

<sup>3</sup> See *NCSEA's Comments on Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Green Source Advantage Program Compliance Filing*, at 7-13.

playing field, as the Commission has done with other aspects of House Bill 589 such as the CPRE program.

As a clear example of a needed guardrail, the Commission should not guarantee that Duke Energy will be able to rate-base any GSA facilities, because this guaranteed future revenue unfairly reduces Duke Energy's financial risk compared to third-party developers. At the extreme, Duke Energy could contract with a GSA customer for as little as two years before adding the facility to its rate base and recovering most of the project costs from other customers, in contravention of House Bill 589. If the GSA Program is susceptible to gaming in this way, Duke Energy could offer contracts at below-market rates—or potentially even below cost—for short terms, making its profit from the latter, rate-based portion of the facility's life, while crowding out competition from substantially independent clean-energy developers.

Accordingly, SACE agrees with NCCEBA that so long as Duke is allowed to participate in the GSA Program as a GSA facility developer there must be guardrails on its participation to prevent it from abusing its incumbent utility advantages, and Duke Energy should not be guaranteed recovery at the outset of the program for the life of any GSA program facilities it develops.

## CONCLUSION

The issues discussed above will affect the overall success of the GSA Program.

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

Respectfully submitted this 20th day of May, 2019.

s/Nick Jimenez  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing 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 May, 2019.

/s/ Nick Jimenez