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, Requesting Approval of Green Source Advantage Program and Rider GSA to Implement N.C.G.S. § 62-159.2	)))))	ORDER ON RECONSIDERATION

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 implementation of N.C.G.S. § 62-159.2. In addition, the Commission allowed Duke to include in that filing a narrative explanation of the revisions made in its compliance filing 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 as a renewable energy supplier (NCCEBA's Motion).[1]

[1] Contemporaneous with the issuance of this Order, the Commission will issue an Order approving Duke's compliance filing. To an extent, NCCEBA's Motion and the parties' comments overlap with issues addressed in the Order approving Duke's compliance filing. The Commission addresses the issues raised by NCCEBA, as relevant to its request for reconsideration and to the compliance filing, in this Order.

On May 6, 2019, the Commission issued an Order requesting comments regarding NCCEBA's motion.

On May 20, 2019, Duke, NCSEA, and SACE filed comments.[2]

On May 28, 2019, NCCEBA filed reply comments.

NCCEBA's Motion

In its Motion, NCCEBA requests that the Commission reconsider and amend its GSA Program Order with respect to the Commission's determination that Duke may participate in the GSA Program as a developer of renewable energy facilities. More specifically, NCCEBA argues that the Commission's conclusion that Duke should be allowed to receive cost-of-service based recovery after the term of a GSA Service Agreement between Duke and the GSA Customer was made based on a misapprehension of critical information regarding the context and consequences of that decision. NCCEBA further argues that the Commission failed to recognize that its decision to allow Duke to participate in the GSA Program as a developer of renewable energy facilities already involves market-based recovery during the term of the GSA Service Agreement and that extending such recovery beyond the term of the agreement is not "extraordinary." In addition, NCCEBA argues that the Commission failed to recognize that allowing Duke to recover its unamortized facility costs after the term of the GSA Service Agreement on a cost-of-service basis would provide Duke with a major, unfair advantage in competing with "independent renewable suppliers" also seeking to develop renewable energy facilities for prospective participation in the GSA Program. NCCEBA, therefore, makes two alternative requests: first, if Duke is allowed to participate in the GSA Program as a developer of renewable energy facilities, it be required to continue under a market-based cost recovery after the expiration of the GSA Service Agreement; or alternatively, that the Commission prohibit Duke from participating in the GSA Program.

As background to its argument, NCCEBA sets out its understanding of the cost recovery that investor-owned utilities "typically" receive and its definition of "market-based" recovery. In short, NCCEBA views the "standard practice" for monopoly utilities as an exchange: "monopoly utilities, … in exchange for agreeing to provide electric service in the public interest, are insulated from price competition and are guaranteed by the government the return of, and on, their investments." NCCEBA's Motion, p. 5-6. NCCEBA then describes its view as to the two ways that a monopoly utility may act as a market participant: through a competitive solicitation, such as the competitive procurement of renewable energy program, or through programs like the GSA Program or the community solar program that allow a "captive customer" to choose a renewable energy supplier who will sell renewable energy to the utility on behalf of the customer. In both of these settings, NCCEBA argues that the utility must compete on a "level playing field," which, in NCCEBA's view, means that the utility must be

[2] The Public Staff did not file comments specifically addressing NCCEBA's motion. However, the Public Staff addressed the substantive issue raised by NCCEBA's motion through its comments on Duke's compliance filing, which were filed in this docket on April 8, 2019.

compensated in the same way as other market participants by recovering its costs through its negotiated contract price.

While noting that neither N.C.G.S. §§ 62-159.2 nor 62-126.8 includes an express provision for market-based recovery, NCCEBA states that market-based cost recovery "is an essential requirement of utility participation in such a program as a competitive market participant." NCCEBA's Motion, p. 7. NCCEBA argues that there are two potentially appropriate paths for the Commission in this situation: either allow the utility to participate and recover its costs on a market basis, or not allow the utility to participate at all.

As additional background, NCCEBA relates its understanding of the mechanism for Duke's cost recovery if it is allowed to participate in the GSA Program as a renewable energy supplier. NCCEBA describes the cost recovery approved by the Commission as "extraordinarily complex" and "counterintuitive," and alleges that Duke never explained its purpose in constructing this arrangement. NCCEBA argues that Duke's purpose in proposing this arrangement was to insulate Duke from any risk of default by the GSA Customer. Although NCCEBA further details its arguments on these points, it states that it is not seeking reconsideration of the Commission's decision on these issues. NCCEBA then details its understanding of the GSA Program Order, as related to cost recovery and the approved payments under the GSA Program when Duke is the developer of the participating project. Again, NCCEBA states that it is not seeking reconsideration of that decision, but observes that this arrangement "is difficult to reconcile with the plain and simple working of the GSA Statute." NCCEBA's Motion, p. 9.

NCCEBA then expands on its view that if Duke is permitted to participate in the GSA Program as a supplier, then market-based recovery after the expiration of the GSA Service Agreement is appropriate and necessary, while cost-of-service based recovery would be inappropriate. In summary, NCCEBA argues that recovery of costs during the term of the GSA Service Agreement, through the GSA Program payments and charges, is market-based and that there is nothing "extraordinary" about continuing that recovery in the post-term period.[3] NCCEBA argues that the Commission was not correct in its understanding that "market-based" recovery was a function of Duke's initial proposal to link the competitive procurement of renewable energy program (CPRE Program)[4] and the GSA programs, and instead argues that allowing market-based recovery in no way links the two programs. NCCEBA's fundamental concern, which is explained at length in its Motion, is that Duke will "game the process by offering unreasonably low pricing," giving Duke an "immense competitive advantage" through a "guaranteed recovery" of the remaining net book value of its GSA facilities. This, NCCEBA warns, would allow Duke to dominate the GSA Program.

[3] See NCCEBA's Motion, at p. 12-13, citing GSA Program Order at p. 44.

[4] See N.C.G.S. § 62-110.8.

NCCEBA next details its alternative argument that if the Commission does not authorize market-based recovery in the post-term period for Duke-developed facilities, then it should not permit Duke to participate in the GSA Program as a renewable energy supplier. First, NCCEBA alleges that the GSA Program Order did not address the significant lack of information regarding the administration of the GSA Program concerning Duke's participation as a renewable energy supplier. Second, NCCEBA argues that Duke would be at a significant competitive advantage relative to third-party GSA renewable energy suppliers because Duke's participation as a supplier under the GSA Program obviates the need for a PPA between Duke, the utility, and Duke, the renewable energy supplier. Third, NCCEBA argues that the GSA Program Order does not address the advantages that Duke will have regarding pricing information under the marginal, hourly bill credit option and with regard to the possibility that Duke will "unfairly leverage its existing relationships with its customers" to secure GSA Program participation with Duke as the supplier. In a separate, and final argument, NCCEBA requests that the Commission clarify that Duke affiliates are not permitted to participate as a supplier under the GSA Program as well.

The Parties' Comments

Through their respective comments, SACE and NCSEA generally support NCCEBA's positions and reiterate similar arguments as those raised by NCCEBA.

Through its comments, Duke responds to NCCEBA's Motion. Duke first argues that confirmation of Duke's right to recover market-based revenues for Duke-owned facilities at the conclusion of the GSA Term would be a reasonable outcome in the context of this proceeding. However, Duke states that there is a related policy issue that NCCEBA failed to address that, in Duke's view, NCCEBA's emphasis of the need for a "level playing field" does not acknowledge the right of qualifying facilities (QFs) to avail themselves of the "must purchase" requirements under the Public Utility Regulatory Policies Act of 1978 (PURPA). Duke argues that the availability of this "guarantee of future post-term cost recovery" actually creates an un-level playing field to the advantage of such QFs. Duke next argues that NCCEBA's alternative argument that Duke should be prohibited from participating in the GSA Program as a renewable energy supplier would have the effect of reducing the pool of potential suppliers available to meet the needs of potential GSA Customers. Duke next argues that NCCEBA has offered no compelling policy or legal justification for its recommendation that Duke affiliates be barred from participating in the GSA Program as renewable energy suppliers. Finally, Duke argues that NCCEBA has made a number of statements that are irrelevant to the relief requested in its Motion, are inaccurate, and should be ignored by the Commission. In conclusion, Duke requests that the Commission approve the GSA Program as presented in its compliance filing, affirm that Duke will be entitled to some form of post-term revenue recovery for Duke-developed facilities, affirm that Duke and its affiliates have an opportunity to participate as a renewable energy supplier, and deny NCCEBA's Motion in its entirety.

NCCEBA's Reply Comments

Through its reply comments, NCCEBA responds to the comments filed by Duke, SACE, and NCSEA. With regard to Duke's comments, NCCEBA notes that neither Duke nor any other party has opposed NCCEBA's request that the Commission permit any Duke-owned GSA Facility to receive market-based post-term cost recovery rather than cost-of-service based recovery. NCCEBA further argues that its preferred market-based cost recovery method is consistent with that method contemplated under Commission Rule R8-71, which applies to Duke-owned facilities that are participating in the CPRE Program. NCCEBA next responds to Duke's argument that prohibiting Duke and/or its affiliates from participating in the GSA Program as a renewable energy supplier would reduce the pool of potential suppliers for the Program. While NCCEBA agrees that a large pool of suppliers is desirable, NCCEBA reiterates its view that absent Commission directed changes, Duke would have an inherit advantage over third-party renewable energy suppliers if it participates in the pool. In response to the comments of SACE and NCSEA, NCCEBA notes the points of agreement among these parties. In conclusion, NCCEBA requests that the Commission reconsider and modify the GSA Program Order such that if Duke is permitted to participate in the Program as a renewable energy supplier, it be permitted to receive market-based cost recovery after the term of the GSA Service Agreement, or, if the Commission does not allow for this type of cost recovery, that Duke not be permitted to participate in the Program as a renewable energy supplier.

DISCUSSION AND CONCLUSIONS

Pursuant to N.C.G.S. § 62-80:

> The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

The Commission's decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission's discretion. State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. State ex rel. Utilities Comm'n v. North Carolina Gas Service, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998).

With respect to the issue of post-term recovery, the Commission reached its determination in the GSA Program Order without specifically addressing whether an

electric public utility can participate in the GSA Program as a renewable energy supplier.[5] Duke apparently assumed that it could, as it proposed that an eligible customer would have the option of requesting that DEC or DEP develop or competitively procure a GSA Facility,[6] and that its cost recovery after the term of participation be determined on a "market basis" rather than "cost-of-service."[7] No other party questioned whether Duke could participate as a renewable energy supplier, nor did the other parties specifically address the issue of continued market-based recovery.[8] To an extent, the parties' comments supporting and opposing NCCEBA's Motion tend to reflect their continued assumption that Duke is authorized to participate as a renewable energy supplier, as the focus of their arguments is the appropriate cost recovery method for Duke-owned facilities after the facility ceases participation in the GSA Program. However, NCCEBA has also requested that the Commission determine that Duke and its affiliates are not eligible to participate in the GSA Program as renewable energy suppliers.

The Commission has carefully reviewed and considered the arguments in support of and in opposition to NCCEBA's Motion. The Commission is not persuaded that reconsideration of the GSA Program Order is justified for the reasons that NCCEBA has argued, nor does the Commission find persuasive the arguments of the other parties. Instead, the Commission determines that the resolution of these issues lies in the appropriate construction of the provisions of N.C.G.S. § 62-159.2. As stated in the GSA Program Order:

> The Commission is an administrative agency created by statute, and has no regulatory authority except such as is conferred upon it by statute. State ex. rel. Utils. Comm'n. v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977). In enacting N.C.G.S. § 62-159.2, the General Assembly directed DEC and DEP to seek Commission approval of a program that complies with the provisions of that section. This requires the Commission to undertake an effort to discern the meaning of the provisions of N.C.G.S. § 62-159.2 through application of the rules of statutory interpretation. The cardinal principle of statutory interpretation is to ensure that the legislative intent is accomplished. Harris v. Nationwide Mut. Ins. Co., 332 N.C. 184, 191, 420 S.E.2d 124, 128 (1992). Statutory interpretation properly begins with an examination of the plain words of the statute, and if the statute is clear and unambiguous, the Commission must conclude that the Legislature intended the statute to be implemented according to the plain meaning of its terms. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 472, 480 S.E.2d 681, 683 (1997).

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[5] See GSA Program Order at p. 63.

[6] Petition of Duke Energy at Appendix 1, p. 1, Docket Nos. E-2, Sub 1170, and E-7, Sub 1169 (Jan. 23, 2018).

[7] Id. at 26-29.

[8] GSA Program Order at p. 63.

The issue is whether the term "renewable energy supplier" was intended to include an "electric public utility," as those terms are used in N.C.G.S. § 62-159.2. Pursuant to N.C.G.S. § 62-159.2(b):

> Each public utility's program application required by this section shall provide standard contract terms and conditions for participating customers and for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer. The application shall allow eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity. The standard terms and conditions available to renewable energy suppliers shall provide a range of terms, between two years and 20 years, from which the participating customer may elect. Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.

N.C.G.S. § 62-159.2(b) (emphasis added).

The term "electric public utility" appears throughout Chapter 62 and is understood to mean any person engaged in activity generally defined as the provision of retail electric service or in any of the other activities listed in the definition of "public utility."[9] The term "renewable energy supplier," however, is not defined in N.C.G.S § 62-159.2, and that term is not used in any other section of Chapter 62. The Commission determines that the use of the term "renewable energy supplier" in N.C.G.S § 62-159.2 is not clear and unambiguous in its meaning, because it is susceptible to more than one reasonable interpretation: first, that an electric public utility such as Duke is in included in the term "renewable energy supplier" because otherwise eligible customers would have fewer available suppliers from which to choose, arguably undermining the purpose and success of the GSA Program; or second, as SACE argues, that an electric public utility is not included in the term "renewable energy supplier," because an electric public utility cannot "procure energy and capacity" from itself nor enter into a contract with itself for such procurement.[10] To discern the meaning of the term "renewable energy supplier" the Commission will, therefore, look beyond the plain text of N.C.G.S. § 62-159.2.

The Commission looks first to the entirety of House Bill 589 for guidance as to the intended meaning of the term "renewable energy supplier," as it is used in N.C.G.S. § 62-159.2. A comparison of the text and structure of N.C.G.S. § 62-159.2 with the text and structure of N.C.G.S. § 62-110.8 is most instructive.[11] As both

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[9] See N.C.G.S. § 62-3(23); see also N.C.G.S. § 62-126.3(7).

[10] See Comments of SACE on NCCEBA's Motion for Reconsideration, at p. 3, N.C.U.C. Docket Nos. E-2, Sub 1170, and E-7, Sub 1169 (May 20, 2019); see also Black's Law Dictionary 1401 (10th ed. 2014) ("Procure" means "to obtain (something) esp. by special effort or means.").

[11] The other programs established pursuant to the enactments made by House Bill 589, where applicable, provide definitions of those entities that would stand in the shoes of a "renewable energy supplier" or rely on terms that are defined elsewhere. See Section 1 (using "small power producer," defined at N.C.G.S. § 62-3(27a)); Section 2 (using "the owner of the renewable energy facility"); Section 4 (using "qualifying cogeneration facilities" and "qualifying small power production facilities," as defined in 16 U.S.C.

N.C.G.S. § 62-110.8 and N.C.G.S. § 62-159.2 were part of the same enactment, the Commission begins with the presumption that the General Assembly's use of different terms of art in the two sections enacted by House Bill 589 reflects intended differences in the structure and operation of the two programs that were established pursuant to the requirements of those two sections. Reading House Bill 589 as a whole confirms that the goal of N.C.G.S § 62-110.8 is to increase the total amount of renewable energy-supplied capacity in Duke's resource portfolios, whereas the goal of N.C.G.S § 62-159.2 is to permit the eligible customers more choice in how Duke procures the energy and capacity needed to meet some or all of their individual demand.[12] For this reason, N.C.G.S § 62-110.8 focuses on renewable energy facilities, whereas the focus of N.C.G.S § 62-159.2 is on the transaction between an electric utility customer and a renewable energy supplier. Thus, N.C.G.S § 62-110.8 consistently uses the term "renewable energy facility" while N.C.G.S § 62-159.2 largely uses the term "renewable energy supplier."[13] In N.C.G.S. § 62-110.8, the characteristics of the facility are an important feature; in N.C.G.S. § 62-159.2 it is the identity of the supplier that matters.[14]

Further, N.C.G.S § 62-110.8 expressly addresses the matter of recovery of costs by an electric public utility that develops a renewable energy facility for participation in the CPRE Program, authorizing the Commission to allow either market-based cost recovery or recovery under the traditional cost-of-service method.[15] Section 62-159.2 is silent as to the matter of cost recovery by an electric public utility. Similarly, the General Assembly addressed issues related to regulatory conditions and code of conduct restrictions in N.C.G.S § 62-110.8,[16] but was silent as to these issues in N.C.G.S § 62-159.2. The Commission finds it implausible that the General Assembly, having clearly identified and addressed both issues in Section 2 of House Bill 589 (enacting N.C.G.S. § 62-110.8), would have said nothing on these subjects in Section 3 of the same enactment (enacting

§ 796); and Section 6 (enacting new defined terms "electric generator lessor" and "solar energy facility").

[12] GSA Program Order at p. 41.

[13] But see N.C.G.S. § 62-159.2(e) (providing that "the electric public utility shall pay the owner of the renewable energy facility which provided the electricity") (emphasis added). In context, the use of the term "the owner of the renewable energy facility" seems to be synonymous with "renewable energy supplier," and its use is an anomaly within N.C.G.S § 62-159.2. As the Commission has previously observed, the provisions of N.C.G.S § 62-159.2 are difficult to reconcile. See GSA Program Order at p. 43.

[14] The identity of the supplier takes on greater meaning within the broader context of considering whether State law prohibits "third-party sales" of electricity. On April 15, 2016, in Docket No. SP-100, Sub 31, the Commission issued an Order determining that such sales are prohibited. On September 19, 2017, the North Carolina Court of Appeals issued an Opinion finding no error in the Commission's determination, and that decision was affirmed, per curium, by the North Carolina Supreme Court. State ex. rel. Utilis. Comm., et. al. v. North Carolina Waste Awareness and Reduction Network, No. 350A17 (N.C. Sup. Ct., May 31, 2018). House Bill 589 was ratified on June 30, 2017, and signed into law on July, 27, 2017.

[15] N.C.G.S. § 62-110.8(g).

[16] See, e.g., N.C.G.S. § 62-110.8(h)(2).

N.C.G.S. § 62-159.2), but, nonetheless, intended for electric public utilities to participate in both programs in the same way. The more natural inference to draw is that the General Assembly did not intend that electric public utilities would participate as renewable energy suppliers in the GSA Program and, therefore, saw no need to address the subject of cost recovery in the case of renewable energy facilities owned and operated by an electric public utility within the text of N.C.G.S. § 62-159.2.

In addition, N.C.G.S § 62-110.8 provides Duke three options to meet the renewable energy procurement goals established by the statute: (a) by purchasing renewable energy facilities from third parties and then owning and operating them as public utility property; (b) by constructing, owning and operating the facilities itself; or (c) by purchasing renewable energy capacity and energy from renewable energy facilities owned and operated by third parties. The General Assembly thereby expressly delineated an electric public utility's options for participation in the CPRE Program. There is nothing comparable in the text of N.C.G.S § 62-159.2. It defies logic and violates principles of statutory construction to assume that the difference is unintentional or accidental.[17] Instead, the more appropriate inference, and the one that the Commission draws, is that the General Assembly did not address the options available for an electric public utility's participation in the GSA Program because it did not intend to include an "electric public utility" as a "renewable energy supplier" as that term is used in N.C.G.S. § 62-159.2.

Moreover, under N.C.G.S § 62-159.2 an electric public utility is to provide "standard contract terms and conditions … for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer." N.C.G.S. § 62-159.2(b). If the General Assembly had contemplated that the public utility might itself be a renewable energy supplier to a participating customer, it would have likely acknowledged such a case and addressed the meaningfulness, or lack thereof, of the stipulated requirement that there be some contract between the public-utility-as-procurer-of-renewable-energy and the public-utility-as-renewable-energy-supplier.[18] Again, the care taken in N.C.G.S § 62-110.8 to identify the different ways in which an electric public utility may participate, and the consequences of a utility contracting with itself for the competitive procurement of renewable energy and capacity, stands in contrast to the absence of any similar provision in N.C.G.S § 62-159.2.

[17] "'Perhaps no interpretive fault is more common than the failure to follow the whole-text cannon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.'" N.C. Dep't of Transp. v. Mission Battleground Park, DST, No. 361PA16, at p. 9 (N.C. Sup. Ct., Mar. 2, 2018) (quoting Scalia & Garner, Reading Law: The Interpretation of Legal Texts, p. 167 (2012)).

[18] The same observation could be made with respect to the provisions in N.C.G.S § 62-159.2 that "[t]he electric public utility shall pay the owner of the renewable energy facility which provided the electricity," a provision that has no meaning if the public utility itself is the renewable energy supplier. See N.C.G.S. § 62-159.2(e). See also n. 9, infra, and associated text; see also n. 13, infra.

In light of the foregoing and having carefully reviewed the entirety of House Bill 589, the Commission concludes the term "renewable energy supplier" does not include an "electric public utility" as those terms are used in N.C.G.S. § 62-159.2. This conclusion renders moot the question of what method of post-term cost recovery is appropriate with regard to an electric public utility's development of a renewable energy facility for participation in the GSA Program. However, this conclusion leaves unresolved whether a utility's unregulated affiliate is permitted to participate as a renewable energy supplier.

For the following reasons, the Commission concludes that N.C.G.S. § 62-159.2 does permit an electric public utility's unregulated affiliate company to participate in the GSA Program as a renewable energy supplier. First, the Commission generally agrees with Duke that the availability of more renewable energy suppliers under the GSA Program tends to support the success of the program. Thus, in the absence of a provision in N.C.G.S § 62-159.2 prohibiting participation by a utility's unregulated affiliate, the Commission will construe the term "renewable energy supplier" consistent with the goal of permitting eligible customers more choice in how Duke procures the energy and capacity needed to meet some or all of their individual demand.[19] Second, the Commission determines that the absence of a provision in N.C.G.S § 62-159.2 addressing affiliate company participation should not give rise to an inference against an affiliate's participation because, as Duke noted in its comments, these agreements are subject to Commission review pursuant to N.C.G.S. § 62-153.[20] Third, the Commission finds the arguments about Duke's unfair advantages as a renewable energy supplier to be largely inapplicable to an unregulated affiliate of an electric public utility because the affiliate will be offered the same "standard terms and conditions" that all other renewable energy suppliers will be offered.

In conclusion, the Commission has carefully considered NCCEBA's Motion and the parties' comments in response thereto, and concludes that the term "renewable energy supplier," as it is used in N.C.G.S. § 62-159.2, does not include an "electric public utility." However, the Commission further concludes that the term "renewable energy supplier" does include an electric public utility's unregulated affiliate, which would be allowed to participate on the same standard terms and conditions as any other renewable

[19] See n. 11, infra, and associated text.

[20] The Commission does not determine in this Order the procedural aspects of how that review will be undertaken. It is sufficient here to make clear that the Commission expects Duke to seek Commission approval of such agreements in an appropriate proceeding and the Public Staff to investigate these agreements and make appropriate recommendations to the Commission. In particular, and in addition to complying with the requirements of N.C.G.S. § 62-153, Duke and the Public Staff are expected to address the requirement that Duke's non-participating customers be "held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer." N.C.G.S. § 62-159.2(e).

energy supplier. Accordingly, the Commission's GSA Program Order and Duke's GSA Program Plan and associated documents shall be modified to reflect this conclusion.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of August, 2019.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Deputy Clerk