

**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,)	ORDER MODIFYING AND
and Duke Energy Carolinas, LLC,)	APPROVING GREEN SOURCE
Requesting Approval of Green Source)	ADVANTAGE PROGRAM,
Advantage Program and Rider GSA to)	REQUIRING COMPLIANCE FILING,
Implement N.C.G.S. § 62-159.2)	AND ALLOWING COMMENTS

BY THE COMMISSION: On January 23, 2018, Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP), (together, Duke), jointly filed a petition for approval of the Green Source Advantage Program (GSA Program) and the corresponding Rider GSA (for DEC) and Rider GSA-1 (for DEP). In its petition, Duke argues that the proposed GSA Program is designed to implement the requirements of N.C.G.S. § 62-159.2, as enacted by Part III of S.L. 2017-192 (House Bill 589), and to cost-effectively facilitate Duke's direct procurement of new renewable energy resources on behalf of North Carolina's major military installations, the University of North Carolina system, and large nonresidential customers that are retail electric customers of DEC or DEP.

On January 26, 2018, the Commission issued an Order establishing this proceeding to review Duke's proposed GSA Program, rider tariffs, and associated program design features. That Order also set out a schedule for the filing of petitions to intervene, initial comments, and reply comments in this proceeding.

On or after January 30, 2018, the Commission issued orders allowing the following to intervene in this proceeding: the North Carolina Sustainable Energy Association (NCSEA), the North Carolina Clean Energy Business Alliance (NCCEBA), Wal-Mart Stores East, LP, and Sam's East, Inc. (together, Walmart), North Carolina Electric Membership Corporation (NCEMC), the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA), the University of North Carolina at Chapel Hill (UNC-CH), Apple, Inc., and Google, LLC, (together, Apple and Google), and the Southern Alliance for Clean Energy (SACE).

On February 19, 2018, the North Carolina Attorney General's Office (AGO) filed a notice of intervention pursuant to N.C.G.S. § 62-20.

The participation of the Public Staff is recognized pursuant to N.C.G.S. § 62-15(d).

On February 22 and 23, 2018, DoD/FEA, NCCEBA, NCSEA, Apple and Google, SACE, Walmart, and the Public Staff filed initial comments.

Also on February 23, 2018, the following corporations filed a joint consumer statement of position: New Belgium Brewing, SAS Institute, Inc., Sierra Nevada Brewing Co., Unilever, and VF Corporation.

On April 20, 2018, Duke, NCCEBA, NCEMC, NCSEA, SACE, UNC-CH, the AGO, and the Public Staff filed reply comments.

On May 4, 2018, NCCEBA, NCSEA, UNC-Chapel Hill, and DoD/FEA filed a joint motion for leave to file sur-reply comments. On May 15, 2018, Duke filed a response to that joint motion, stating that it is not opposed to allowing the motion, but requesting an opportunity to respond and otherwise disputing some statements included in that joint motion.

On July 16, 2018, the Commission issued an Order Scheduling Oral Argument, setting this matter for oral argument on September 4, 2018. In addition to scheduling this matter for oral argument, that Order states that "it is premature to allow comments addressing the proposed contracts filed in this proceeding at this time." However, that Order further expressed encouragement to the parties to continue to discussions in an effort to reach agreement on the disputed issues in this proceeding.

On September 4, 2018, this matter came on for oral argument as scheduled.

On September 5, 2018, Duke filed a consumer statement of position on behalf of Wells Fargo Bank, N.A. (Wells Fargo). In its statement of position, Wells Fargo expresses support for three proposals for calculating the GSA Bill Credit: the bill credit based on administratively-determined 5-year avoided cost, the bill credit calculated on an hourly, day-ahead projection similar to that proposed in the Walmart settlement, and the GSA customer negotiating a levelized \$/MWh price with the third-party renewable developer that becomes the GSA Product Charge and the GSA customer being permitted to allocate the total capacity (and the associated GSA Product Charge and Bill Credit) between various of the GSA customer's accounts.

On September 19, 2018, NCSEA and NCCEBA filed post hearing comments.

On September 26, 2018, Duke filed a motion to strike certain statements from the post-hearing comments of NCSEA and NCCEBA.

On October 8, 2018, Duke filed a response to the Commission's questions raised at oral argument.

On October 11, 2018, the Commission issued an Order on Post Oral Argument Filings. In that Order the Commission determined that NCSEA and NCCEBA's post-hearing comments contained statements that were appropriately responsive to the

Commission's questions and statements that were inappropriately argumentative. Therefore, that Order granted Duke's motion to strike, in part, and denied the motion, in part.

On October 24, 2018, NCCEBA, UNC-Chapel Hill, and SACE filed an agreement and partial settlement. In this filing, these parties detail their agreement to a bill credit that would be fixed for 10 years and thereafter be "refreshed" based on updated cost data, if the customer is participating under an agreement that extends beyond 10 years.

On October 25, 2018, the AGO filed a response to the NCCEBA, UNC-Chapel Hill, and SACE agreement and partial settlement, expressing support for Commission approval of that agreement.

RENEWABLE ENERGY PROCUREMENT FOR MAJOR MILITARY INSTALLATIONS, PUBLIC UNIVERSITIES, AND OTHER LARGE CUSTOMERS

On July 27, 2017, House Bill 589 (Session Law 2017-192) was enacted into law. Part III of House Bill 589, enacted as N.C.G.S. § 62-159.2 (GSA Statute), requires DEC and DEP to file with the Commission an application requesting approval of a new program to procure renewable energy resources on behalf of North Carolina's major military installations, the University of North Carolina system, and large nonresidential customers served by the offering utility. Subsection N.C.G.S. § 62-159(a) provides that the term "major military installation" is defined as provided in N.C.G.S. § 143-215.115(1),¹ that the University of North Carolina is the public, multi-campus university encompassing 16 constituent institutions as established by Article 1 of Chapter 116 of the General Statutes (UNC System), and that the other new and existing nonresidential customers to whom this program applies are those nonresidential customers with either a contract demand (i) equal to or greater than one megawatt (MW), or (ii) at multiple service locations that, in aggregate, is equal to or greater than five MW.

Pursuant to N.C.G.S. § 62-159.2(b), the program application 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. Further, that subsection provides that eligible customers shall be allowed to select the new renewable energy facility from which the electric public utility shall procure energy and capacity under the proposed program. In addition, that subsection provides that 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. Finally, that subsection

¹ Pursuant to N.C.G.S. § 143-215.115(1), the term "major military installation" means Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

provides that the eligible customers shall be allowed to negotiate with the renewable energy suppliers regarding price terms.

Pursuant to N.C.G.S. § 62-159.2(c), each contracted amount of capacity under the program shall be limited to no more than 125% of the maximum annual peak demand experienced at the eligible customer's premises. In addition, this subsection provides that DEC and DEP shall establish reasonable credit requirements for financial assurance for eligible customers that are consistent with the Uniform Commercial Code of North Carolina.² However, this subsection further provides that major military installations and the UNC System are exempt from the financial assurance requirements.

Pursuant to N.C.G.S. § 62-159.2(d), the program shall be offered by DEC and DEP for a period of five years, or until December 31, 2022, whichever is later, and shall not exceed a combined 600 MW of total capacity. That subsection provides that 100 MW of new renewable energy facility capacity shall be reserved for participation by major military installations, and that 250 MW of new renewable energy facility capacity shall be reserved for participation by the UNC System. That subsection further provides that major military installations and the UNC System must fully subscribe to these reserved capacity amounts prior to December 31, 2020, or three years after Commission-approval of the program, whichever is later. Any of these reserved capacities not subscribed to by the applicable deadline, shall be reallocated for use by any eligible program participant. Finally, any of the total GSA Program capacity not subscribed to by the end of the Program shall be reallocated to and included in a competitive procurement of renewable energy as provided in N.C.G.S. § 62-110.8(a).

Pursuant to N.C.G.S. § 62-159.2(e), in addition to the participating customer's "normal retail bill," the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer shall be paid by that customer. Further, that subsection provides that DEC or DEP shall pay the owner of the renewable energy facility which provided the electricity. In addition, that subsection provides that the participating customer shall receive a bill credit for the energy as determined by the Commission; provided that, the bill credit shall not exceed the utility's avoided cost. Finally, that subsection provides 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 program customer.

DUKE'S PETITION FOR APPROVAL OF THE GREEN SOURCE ADVANTAGE PROGRAM AND GSA RIDER TARIFFS

Duke's petition provides a detailed review of the proposed GSA Program and the program design. In its overview, Duke first sets the proposed GSA Program in the context of the existing renewable energy and energy efficiency portfolio standard (REPS)³ requirements and the recently approved program for the competitive procurement of

² Codified at Chapter 25 of the General Statutes.

³ Codified at N.C.G.S. § 62-133.8.

renewable energy (CPRE Program).⁴ Duke states that North Carolina has been a national leader in promoting the development of renewable energy generation since the enactment of the REPS in 2007, and that the CPRE Program, and its requirement to procure 2,660 MW of new renewable energy capacity over a 45-month period as "another major policy step forward." Duke describes N.C.G.S. § 62-159.2 as an additional mandate for the direct procurement of up to 600 MW of new renewable energy capacity for GSA Program-eligible customers over the next five years. After the conclusion of the GSA Program, Duke states that N.C.G.S. § 62-110.8(a) requires that the remaining GSA Program capacity be transitioned to the general renewable energy competitive procurement as an expansion of the CPRE Program. Thus, Duke states, House Bill 589 positions the state to continue to significantly expand Duke's procurement of cost effective renewable energy resources through both direct procurement, on behalf of participating GSA Program customers, and through the CPRE Program, on behalf of all customers.

Duke then argues that its proposed GSA Program meets the requirements of House Bill 589 to develop a customer-directed program for eligible customers to increase their commitment to renewable energy, while ensuring that non-participating customers are held neutral, neither advantaged nor disadvantaged, from the procurement requirements of N.C.G.S. § 62-159.2. Duke proposes to satisfy these mandates by offering two options under the GSA Program: (1) a "standard offer" GSA procurement option, where an eligible GSA Program customer would direct DEC or DEP to procure new renewable energy facilities dedicated to the GSA Program on behalf of the customer; and (2) a "self-supply option" that would allow customers to negotiate with renewable energy suppliers regarding price terms and select the new renewable energy facility from which DEC or DEP shall procure energy and capacity. Duke proposes that the standard offer option would be integrated with the CPRE Program request for proposal (RFP) process to ensure that the cost of the renewable power procured at the direction of the GSA Program customer is comparably cost-effective to that of new renewable energy resources procured under the CPRE Program for all customers. Duke states that, under both options, all retail customers receive the benefit of cost-effective energy and capacity, while each customer participating in the GSA Program will receive the renewable energy certificates (RECs) earned by the new renewable energy facilities participating in the GSA Program.

Duke next addresses in detail the following aspects of its proposed GSA Program design:

(1) GSA Program availability and customer eligibility: Duke states that it has designed the GSA Program's availability and customer eligibility requirements to meet the requirements of N.C.G.S. § 62-159.2, as further addressed in DEC and DEP's respective GSA Program tariffs attached to its petition. Duke proposes a three-year reserve period, during which 250 MW of the total 600 MW of GSA Program capacity will be reserved for the UNC System customers and 100 MW of the total 600 MW of GSA Program capacity will be reserved for major military installation customers. Duke

⁴ Codified at N.C.G.S. § 62-110.8. See also Commission Rule R8-71, and Order Modifying and Approving Joint CPRE Program, Docket No. E-2, Sub 1159, and E-7, Sub 1156 (issued Feb. 21, 2018).

further proposes that, at the end of the reserve period, any unsubscribed capacity will become available to any customer eligible to participate in the GSA Program, subject to Duke's proposed allocation of GSA Program capacity between DEC and DEP's service territories.

Duke proposes to allocate the 250 MW of unreserved GSA Program capacity between DEC and DEP's service territories based upon the load-ratio share of DEC and DEP's commercial and industrial customer classes. Therefore, proposed Rider GSA and Rider GSA-1 provide that 160 MW shall be allocated and available to DEC customers eligible for participation in the GSA Program and 90 MW shall be allocated and available to DEP customers eligible for participation in the GSA Program. Duke states that it will review and potentially update this proposed allocation after the expiration of the three-year reserve period.

Duke also proposes that customer eligibility for the GSA Program be limited to North Carolina retail customers receiving concurrent service from DEC or DEP who elect to contract for the RECs associated with renewable energy generated by a new renewable energy facilities dedicated to the GSA Program. Further, Duke proposes that large nonresidential customers seeking to participate in the GSA Program must have a contract demand that is equal to one MW or an aggregate demand at multiple service locations that is equal to or greater than five MW. In addition, Duke proposes that for a customer whose eligibility is based on aggregation of accounts to meet the five MW minimum, the aggregated accounts must be located within the same utility's service territory. Finally, Duke proposes that the customer participating in the GSA Program be required to be located in the same utility's service territory, in either North Carolina or South Carolina, as the new renewable energy facility or facilities dedicated to the GSA Program.

(2) The standard offer and self-supply options: Duke proposes two options for eligible customers to participate in the GSA Program: a standard offer option and a self-supply option. Under the proposed standard offer option, Duke states that DEC or DEP will procure renewable energy from a portfolio of new renewable energy facilities dedicated to the GSA Program, based upon customer interest expressed prior to each GSA Program RFP Solicitation. Duke states that this is intended to incorporate the GSA Program standard offer option into future CPRE RFPs as an "integrated component of the CPRE RFP process," and that any GSA Program standard offer capacity would be included in the CPRE RFP solicitation issued by the Independent Administrator of the CPRE Program and required to be consistent with the CPRE Program Guidelines. Evaluation of proposals would be managed by the Independent Administrator as provided in Commission Rule R8-71(f)(3) and future CPRE Program Plans would identify GSA Program capacity forecasted to be procured by DEC and DEP under the Standard Offer option. Under the proposed self-supply option, Duke states that customers eligible to participate in the GSA Program would be allowed to negotiate with renewable energy suppliers regarding price terms, select from contract terms of 2,5, and 20 years, and select the renewable energy facility from which DEC or DEP shall procure energy and capacity.

Included in this section of Duke's petition is a planned GSA Program enrollment and implementation timeline. This timeline anticipates Commission approval of the proposed GSA Program in summer 2018, and marketing of the program to eligible customers during the remainder of 2018. As proposed by Duke, the initial enrollment window for eligible customers to apply to reserve capacity under either the standard offer or the self-supply option will open January 1, 2019, and close prior to the initiation of the CPRE Tranche 2 RFP Solicitation, which is scheduled for February 2019.⁵ After the close of this first enrollment window, Duke will announce the aggregate GSA capacity that has been applied for and procure the capacity applied for as part of the Tranche 2 RFP Solicitation, in addition to the required CPRE Program capacity for Tranche 2. After the close of each CPRE RFP Solicitation bid evaluation, Duke will establish the applicable GSA bill credit and enter into power purchase agreements (PPAs) with the new renewable energy facilities dedicated to the GSA Program. Any remaining GSA Program capacity will then be made available to customers eligible to participate in the GSA Program through a subsequent enrollment window, which would be open until the issuance of the CPRE Tranche 3 RFP Solicitation. This iterative enrollment and capacity allocation process would repeat until the total GSA Program capacity is subscribed, and, at the end of the GSA Program, any amount of unsubscribed capacity would be transitioned to the CPRE Program, as required by N.C.G.S. § 62-110.8(a).

(3) The GSA customer application and enrollment process: As proposed by Duke, a customer eligible to participate in the GSA Program must first submit an application form through the GSA Program web platform on Duke's website. These applications would be accepted during an open enrollment period based upon Duke's proposed GSA Program implementation timeline. The customer application will identify an annual amount of capacity to be procured from one or more new renewable energy facility(ies) dedicated to the GSA Program, up to 125% of the customer's maximum annual peak demand at the customer's premises, and identify whether the eligible customer is seeking to participate in the standard offer procurement process or is seeking to negotiate independently with one or more new renewable energy facilities dedicated to the GSA Program under the self-supply option. Additionally, the customer must identify the term of the GSA Program service agreement from the 2-, 5-, and 20-year options available. The standard offer would only be available under a 20-year term, consistent with the CPRE Program procurement term. An eligible customer would be required to submit a \$2,000 application fee, which would be refunded only in the event that there is insufficient capacity available under the GSA Program.

An eligible customer seeking the self-supply option must have identified and negotiated price terms with the new renewable energy facility dedicated to the GSA Program and executed a standard form GSA term sheet prior to submitting the customer application for the GSA Program. The customer will be required to submit information about its selected new renewable energy facility by attaching the executed GSA term sheet to the application. In addition, the GSA term sheet will require the new renewable energy facilities dedicated to the GSA Program to attest that the facility will

⁵ On September 5, 2018, in Docket No. E-100, Sub 157, DEC and DEP filed updated CPRE Program plans as part of their 2018 integrated resource planning filings.

have corresponding supply that is exclusively dedicated to the GSA Program and that the renewable energy capacity is reserved on behalf of the customer-applicant. The facility supplying the renewable energy under the self-supply option will also be required to pay a GSA reservation fee calculated in a manner substantially similar to the bid bond established in the CPRE Program Guidelines.

Upon receipt of the completed application and the applicable fees, DEC or DEP will assign GSA capacity to the eligible customer on a first come, first served basis in the appropriate queue depending upon the reserved capacity sought (major military installations, UNC System, or unreserved). Duke states that this process will apply to both the standard offer option and the self-supply option and is designed to provide queueing parity among eligible customers of the same class. After accepting the completed application, DEC or DEP will deliver a standard GSA Service Agreement to the customer. Duke states that the GSA Service Agreement will describe the general terms and conditions, identify the material terms of the arrangement, and, for customers enrolling in the self-supply option, address the terms for pricing, tracking, and depositing RECs. Although the GSA Service Agreement for the self-supply option will address the handling of RECs, Duke further states that it will not take title to RECs under this option; rather, title to the RECs will transfer directly to the customer from the renewable energy facility owner. The GSA Service Agreement will also set forth the financial security required. Finally, Duke proposes that a GSA customer be required to execute the GSA Service Agreement within 30 calendar days of delivery, and additionally, under the self-supply option, that the renewable energy facility owner would be required to execute a GSA PPA within 30 calendar days of delivery. Failure to meet these deadlines would result in termination of the customer application.

(4) The GSA Product under the standard offer and self-supply options: In Duke's view, the GSA Program is "integrally tied to HB589's broader renewable energy procurement mandate" because any unsubscribed capacity under the GSA Program transitions into the CPRE Program pursuant to N.C.G.S. § 62-159.2(d). Thus, Duke proposes that the "GSA renewable energy product" procured under the GSA standard offer will be the same as the CPRE Program product, including requiring the new renewable energy facilities dedicated to the GSA Program to transfer contractual rights to the renewable energy, capacity, and environmental and renewable attributes as well as the rights to dispatch, operate, and control the renewable energy facility in the same manner as the utility's own generating resources. Thus, under Duke's proposed standard offer option, DEC or DEP will enter into a bundled PPA that is materially similar to the CPRE Program PPA, and the RECs associated with the PPA will be transferred from DEC or DEP to the NC-RETS account designated by the GSA customer. Under Duke's proposed self-supply option, DEC or DEP will enter into an unbundled GSA PPA with the owner of the new renewable energy facilities dedicated to the GSA Program for the energy and capacity, but not the RECs. Under the self-supply option, the RECs generated by the new renewable energy facilities dedicated to the GSA Program will be the subject of separate negotiations and agreements between GSA customers and the owner of the new renewable energy facilities dedicated to the GSA Program.

(5) The methodology for establishing the GSA bill credit: Duke states that its proposed methodology for determining the billing credit that a customer participating in the GSA Program will receive "was designed to meet the unique requirements of" N.C.G.S. § 62-159.2. Under Duke's proposed methodology, the customer participating in the GSA Program will remain a full requirements retail customer of DEC or DEP, and the new renewable energy facilities dedicated to the GSA Program will be a system asset providing energy and capacity to serve all of Duke's native load customers. Duke argues that the proposed GSA Program will facilitate eligible customers directing the procurement of renewable energy from the new renewable energy facilities dedicated to the GSA Program, but the participating customer will not be responsible for the cost and risk associated with directly procuring its own energy and capacity solely from the facility. As examples, Duke states that in the event of default by the owner of the new renewable energy facility dedicated to the GSA Program, DEC or DEP would continue to serve the customer's full electric requirements from other system resources, and, in the event of default by a customer participating in the GSA Program, DEC or DEP would have recourse to recover any outstanding costs of RECs (under the standard offer) and administrative costs, including the claim to any posted security, but DEC or DEP would otherwise continue to supply the customer's retail electric service and would continue to perform under the GSA PPA.

Duke proposes that the bill credit applicable to both the standard offer and the 20-year self-supply option will be equal to the capacity-weighted average price of all proposals selected in the most recently concluded CPRE RFP Solicitation, minus the forecasted cost of RECs that will be received by the participating customer.⁶ The forecasted cost of RECs will be determined by Duke prior to each GSA Program enrollment period based on a national, voluntary market index for procuring RECs. Duke argues that calculating the bill credit in this manner appropriately recognizes that the bundled renewable energy product procured through the CPRE Program represents the current market price of renewable energy capacity available to serve customers not participating in the GSA Program, who will be served by, and pay for, the energy and capacity generated by the new renewable energy facilities dedicated to the GSA Program. Duke further argues that because the CPRE Program is initially procuring bundled renewable energy to serve the electric requirements of all native load customers, reducing the bill credit by the cost of RECs appropriately allocates the cost of renewable energy attributes to the customer participating in the GSA Program. This arrangement, Duke concludes, meets the requirements of N.C.G.S. § 62-159.2 by ensuring that customers not participating in the GSA Program are held neutral from the impact of the procurement obligations arising under the GSA Program, and that the bill credit does not exceed DEC or DEP's forecasted avoided cost rate. Finally, for customers participating in the GSA Program that select the 2- or 5-year contract terms under the self-supply option, the bill credit will be the lesser of the negotiated GSA PPA contract price, or the forecasted avoided cost rate for the applicable contract term.

⁶ Duke included a graphical representation of the timeline for GSA Program enrollment and implementation that also shows the timing of the CPRE RFP Solicitations as Figure 1 in its petition. The same figure is included as Attachment 2 to its petition for ease of reference.

(6) Rider GSA Rate Design: Duke proposes rate designs for the options available to customers participating in the GSA Program, and detailed the charges and credits that would take place between Duke, the customer participating GSA Program, and, if applicable, the new renewable energy facilities dedicated to the GSA Program, as selected by the GSA Program customer under the self-supply option. These proposed charges and credits are depicted in figures 2 and 3 in Duke's petition, and summarized in the following tables.

Table 1. Summary of Duke's Proposed Standard Offer Option Rate Design

Proposed Charges or Credits			
GSA Customer Pays Duke:	Retail charges under existing rate schedule	GSA Product Charge = quantity of energy delivered by the new renewable energy facility dedicated to the GSA Program (in kWh) during the prior billing month, multiplied by the weighted average price of the most recently concluded CPRE RFP Solicitation (in \$/kWh)	GSA Administrative Charges = \$375/month, plus \$50/month for each billed account. As discussed further below, Duke states that this charge is intended to recover costs for manual billing, labor, program management and support costs.
Duke pays GSA renewable energy facility:	Bundled renewable energy product PPA price = the facility owner's as-bid RFP price (in \$/MWh), divided by 1,000, and multiplied by the quantity of energy delivered by that facility (in kWh) during the prior billing month.		
Duke pays GSA Customer:	GSA Bill Credit = the weighted average price of the most recent CPRE RFP Solicitation (in \$/kWh), minus the GSA REC value (in \$/MWh) divided by 1,000, and multiplied by the quantity of energy delivered by the facility(ies) (in kWh) during the prior billing month.		

Note: the **GSA Product Charge** – the **GSA Bill Credit** = **value of RECs** procured. The net effect on the GSA Customer's bill is the sum of the **value of RECs procured**, **GSA Administrative Charges**, and the customer's **retail charges** under its existing rate schedule.

Table 2. Summary of Duke's Proposed Self-Supply Option Rate Design

Proposed Charges or Credits	
GSA Customer Pays Duke:	<p>Retail charges under its existing rate schedule</p> <p>GSA Product Charge = <u>For 20-year term:</u> weighted average price of the most recent CPRE RFP Solicitation (in \$/MWh), minus GSA REC value (in \$/MWh) divided by 1,000, and then multiplied by the quantity of energy delivered to DEC or DEP by the designated new renewable energy facility in the previous billing month. <u>For 2- and 5-year term:</u> lesser of forecasted avoided cost rate or negotiated unbundled PPA price. Note: This Product Charge is equal to the negotiated unbundled PPA price paid by Duke to the GSA renewable energy facility owner. This Product Charge is also equal to the GSA Bill Credit.</p> <p>GSA Administrative Charges = \$375/month, plus \$50/month for each billed account.</p>
Duke pays GSA renewable energy facility owner	The negotiated, unbundled self-supply PPA price under the GSA self-supply PPA (which is limited to the lesser of the unbundled self-supply PPA price or the avoided cost rate)
GSA Customer pays renewable energy facility owner	An agreed-to price for the RECs earned by the facility, which reflects the difference between the bundled, negotiated PPA price, and the negotiated, unbundled self-supply PPA price.
Duke pays GSA Customer	<p>GSA Bill Credit = <u>For 20-year term:</u> weighted average price of the most recent CPRE RFP Solicitation (in \$/MWh), divided by 1,000, multiplied by the quantity of energy delivered to DEC or DEP by the designated new renewable energy facility. <u>For 2- and 5-year term:</u> lesser of forecasted avoided cost rate or negotiated unbundled PPA price. Note: This GSA Bill Credit = GSA Product Charge.</p>

Note: the net effect on the GSA Customer's bill is the sum of the **GSA Administrative Charges** and the customer's **retail charges** under its existing rate schedule. The self-supply customer will separately pay the GSA renewable energy facility owner an **agreed-to price for the RECs** earned by the facility, which would reflect the difference

between the negotiated, bundled PPA price and the negotiated, unbundled self-supply PPA price.

Duke also proposes that under the self-supply option all self-supply customers that enroll during the same enrollment period will receive the same fixed GSA bill credit for the monthly energy produced, which would be equal to the CRPE Tranche weighed average price minus the GSA REC value. Similarly, Duke proposes that all standard offer customers that enroll during the same enrollment period will receive the same fixed GSA bill credit for monthly energy produced, which would be equal to the CPRE Tranche weighted average price minus the GSA REC value. Finally, Duke proposes that, under the 2- and 5-year terms available under the self-supply option, the GSA bill credit would be calculated according to the corresponding avoided cost rates, and limited to the unbundled self-supply PPA price.

(7) Billing and administrative charges: Duke proposes to continue billing customers that participate in the GSA Program under the applicable rate schedule for retail electric service. Duke's proposed GSA Riders would be a companion tariff to an applicable primary rate schedule, and, therefore, Duke states that the participating customer's billing statement will look much as it does today, but also reflect charges for the costs associated with the renewable energy delivered by the new renewable energy facility dedicated to the GSA Program (either the standard offer renewable energy product charge or the unbundled GSA product charge), net of the GSA Program bill credit (calculated as described above) and the GSA Program administrative charge. Duke proposes that the GSA administrative charge be equal to \$375/month, plus \$50/month for each billed account, and states that this charge is intended to recover costs for manual billing, labor, program management and support costs.

(8) Requirements for GSA Program new renewable energy facilities: Duke proposes a number of requirements for new renewable energy facilities dedicated to the GSA Program. First, Duke proposes that these facilities be required to be located within DEC or DEP's respective North Carolina and South Carolina assigned service territories, and be located in the same utility's service territory as the premises associated with the eligible customer's accounts for retail electric service. Second, for facilities that are participating in a standard offer process, Duke proposes applying the same requirements as apply under the CPRE Program. For facilities that are participating in a self-supply option, Duke proposes that additional eligibility requirements may be identified and included in the term sheet that is submitted by the customer participating in the GSA Program as part of the customer application, and that, at a minimum, these facilities be required to have completed the system impact study under the North Carolina Interconnection Procedures (NCIP) or the South Carolina Generator Interconnection Procedures (SCGIP) to provide an initial indication of viability. In addition, Duke proposes that a customer participating in the self-supply option be required to submit all facility documentation at the time the customer makes its application to participate in the program and that, for facilities located in North Carolina, the facility have obtained a certificate of public convenience and necessity (CPCN) prior to construction, but not prior to application.

(9) Reasonable credit requirements: For nonresidential customers eligible to participate in the GSA Program, Duke proposes required compliance with the credit requirements as set forth in Duke's proposed GSA Service Agreement.⁷ Pursuant to the GSA Service Agreement, customers that have a minimum acceptable credit rating from either Standard and Poor's Global Ratings, Inc. (S&P) or Moody's Investor Service will be assigned an unsecured credit limit based on the customer's rating. For eligible customers that do not have such a credit rating, Duke proposes allowing these customers to provide a guarantee from a parent entity that does have such a credit rating, or, alternatively, to submit financial statements for Duke's review and determination of an appropriate rating on a commercially reasonable basis. Duke proposes that customers that are unable to demonstrate at least a BB- rating on the S&P rating scale be ineligible for participation in the GSA Program.

Duke further proposes that the amount of performance security be sufficient to cover the early termination payment as determined under the schedule attached to the GSA Service Agreement for each year of the term of the agreement. If the customer does not have an unsecured credit limit, or if the performance security amount exceeds the customer's unsecured credit limit, then Duke proposes that the customer be required to provide further credit support in the form of a guarantee from some credit-worthy entity, a letter of credit acceptable to Duke, or a cash deposit. Duke states that these proposed credit support requirements are intended to protect Duke and its customers that are not participating in the GSA Program from the cost impacts in the event that a GSA Program customer fails to perform on the GSA Service Agreement, including the cost of RECs and the unrecovered administrative costs. Finally, Duke proposes an adjustment in the unsecured credit limit if the credit rating of the customer participating in the GSA Program changes, and proposes procedures for aggregating the security requirement to allow a customer to enter into multiple GSA Service Agreements, and for allowing an entity to act as guarantor for multiple GSA Service Agreements.

(10) Cost recovery and impacts to cost of service: Duke states that it has designed the GSA Program such that all administrative costs and REC costs will be recovered from or, in the case of the self-supply option, paid directly by the customer participating in the GSA Program. Further, Duke states that the costs of energy and capacity attributable to Duke-owned and third-party facilities under the GSA Program will be recovered from all native load customers, as these facilities will be "system supply resources" that deliver energy and capacity to Duke's electric systems to serve all North Carolina retail, South Carolina retail, and wholesale jurisdictional customers. Accordingly, Duke argues that the cost of energy and capacity generated by these facilities should also be recovered from all jurisdictions and customers, and that this cost is required to be at or below DEC or DEP's respective forecasted avoided costs.

Therefore, Duke states that it plans to annually petition the Commission for the recovery of the costs of energy and capacity attributable to Duke-owned and third-party facilities under the GSA Program, pursuant to newly enacted

⁷ The GSA Service Agreement was not included with the filing of Duke's petition and proposed GSA riders; however, as is addressed further below, was included with the filing of Duke's reply comments.

N.C.G.S. § 62-133.2(a1)(11).⁸ Duke further states that the "non-administrative/non-REC costs for energy and capacity to be recovered through the fuel factor [G.S. 62-133.2] will be equal to the GSA bill credit provided to the GSA customer multiplied by the megawatt-hours generated by the GSA Facility during the annual fuel factor test period." Finally, Duke states that because the GSA bill credit is equal to or below DEC and DEP's respective forecasted avoided costs, Duke customers not participating in the GSA Program will be held neutral, neither advantaged nor disadvantaged, from the impact of the GSA Program, as is required pursuant to N.C.G.S. § 62-159.2(e).

(11) Continued market based revenues after the GSA Program service agreement concludes: Duke proposes that if a DEC- or DEP-owned proposal is selected through the CPRE RFP Solicitation as a new renewable energy facility dedicated to the GSA Program, or if DEC or DEP enters into an arrangement to facilitate a customer's self-supply option under the GSA Program, then annualized recovery of Duke's expenses incurred would be a "market-based recovery similar to the market-based recovery mechanism contemplated for utility-owned CPRE assets" pursuant to N.C.G.S. § 62-110.8(g). Duke states that it has similar concerns as those that were addressed by the Commission in adopting Commission Rule R8-71(I)(4), and Duke will seek to ensure that its companies will have an equal opportunity to continue recovering revenues based upon an updated market based mechanism after the initial term of the GSA Service Agreement expires. In other words, Duke argues that both third-party-owned facilities recovering their costs through a PPA under the GSA Program and utility-owned facilities recovering their costs on a market basis through the fuel factor, if authorized by the Commission, should be given an equal opportunity to recover market-based revenues after the 20-year GSA Service Agreement expires at a rate that does not exceed the then-prevailing avoided cost rate established pursuant to N.C.G.S. § 62-156.

Duke concludes its petition by arguing that the proposed GSA Program, including the respective Rider GSA tariffs, were developed to achieve the mandates and objectives of N.C.G.S. § 62-159.2 and to facilitate cost-effective, direct renewable energy procurement on behalf of North Carolina's major military installations, the UNC System, and large nonresidential customers, while ensuring that non-participating customers are held neutral. Duke therefore requests that the Commission issue an order approving the proposed GSA Program and respective Rider GSA tariffs, authorizing Duke to integrate the GSA standard offer procurement as part of the CPRE Program RFP process, authorizing DEC and DEP to seek future recovery of costs attributable to DEC- or DEP-owned and third-party-owned facilities that are dedicated to the GSA Program on a market-basis pursuant to N.C.G.S. § 62-133.2(a)(11), and providing DEC and DEP an equal opportunity to continue recovering revenues based upon an updated market based mechanism after the initial term of the GSA Service Agreement expires, similar to the process provided for in Commission Rule R8-71(I)(4).

⁸ N.C.G.S. § 62-133.2(a1)(11) provides that, "cost of fuel and fuel-related costs" means, among other things, "all nonadministrative costs related to the renewable energy procurement pursuant to N.C.G.S. § 62-159.2 not recovered from program participants."

THE INTERVENOR-PARTIES' INITIAL COMMENTS

DoD/FEA's Initial Comments

In its initial comments DoD/FEA states that it is still reviewing the proposed GSA Program riders and analyzing the options potentially available under the proposed riders. DoD/FEA further states that its two major concerns with regard to energy procurement on military installations are cost and energy resiliency. As to cost DoD/FEA states that it is unclear what the cost of energy under the proposed rider would be in comparison to energy purchased through current tariffs, when taking into account the administrative costs, application fees, and potential costs related to capacity bonds under the proposed GSA Program. DoD/FEA also states that its military installations can provide land for use to site renewable energy facilities and that access to this land is usually given in exchange for increased energy resiliency and costs savings. In addition, DoD/FEA states that the Federal Acquisition Regulations and the Defense Federal Acquisition Regulations require some contract terms that may conflict with the standard contract developed for the CPRE Program. As to energy resiliency DoD/FEA expressed its goal of providing stronger infrastructure to its military installations, including providing on-site generation resources that can power critical operations during times of crisis, including when the broader electric system is inoperable. DoD/FEA further states that under the proposed standard offer and self-supply options, it appears that the energy generated at a new renewable energy facility dedicated to the GSA Program will serve Duke's customers and the projects may not be able to be constructed in a manner that would strengthen installation resiliency. In conclusion, DoD/FEA states that its participation in the GSA Program will depend upon achieving the dual goals of energy resiliency and costs savings, and reiterates its desire for GSA Program offerings that would accommodate siting new renewable energy projects at DoD/FEA's military installations in exchange for cost savings and increased resiliency.

NCCEBA's Initial Comments

In its initial comments, NCCEBA provides a history of this proceeding, a background on the enactment of House Bill 589, and argues that Duke's proposed GSA Program is in substantial violation of N.C.G.S. § 62-159.2. In addition, NCCEBA proposes an alternative GSA Program design that it argues fully complies with the requirements of N.C.G.S. § 62-159.2.

NCCEBA states that it was an active participant in the negotiations that led to the enactment of House Bill 589 as a representative of companies that intend to sell renewable energy for the benefit of customers participating in the GSA Program. NCCEBA argues that the proposed GSA Program fails to meet the needs and expectations of both renewable energy suppliers and customers eligible to participate in the GSA Program. As background to the enactment of House Bill 589, NCCEBA cites the Commission's approval of the green source rider pilot program in 2013 (Docket No. E-7, Sub 1043). NCCEBA states that the pilot program had numerous flaws and experienced only limited participation, which prompted large electric customers to seek a new program

that would promote the growth of renewable energy and economic development, enable the achievement of sustainability goals, and provide for predictability of electricity costs through long-term contracts for electricity, among other goals. NCCEBA further states that the General Assembly enacted N.C.G.S. § 62-159.2 in response to the interest in an improved program that would allow these customers to achieve these goals. Therefore, NCCEBA argues that it is critical that the GSA Program approved by the Commission effectuate the intent of the statute.

In arguing that Duke's proposed GSA Program is in substantial violation of N.C.G.S. § 62-159.2, NCCEBA first alleges that the proposed GSA Program is unlawfully integrated into the CPRE Program. Specifically, NCCEBA argues that Duke's proposed procurement of energy and capacity for the GSA Program through the CPRE RFP Solicitations ties the GSA Program to the CPRE Program in a manner that the General Assembly never intended. Second, NCCEBA argues that Duke's proposed program fails to allow customers eligible to participate in the GSA Program to negotiate with renewable energy suppliers regarding the price term, because under Duke's proposal the price term is established based on the results of RFPs issued under the CPRE Program. On this point, NCCEBA criticizes both the proposed standard offer, as allowing no opportunity for participating customers to realize energy savings, and spreading savings to Duke's shareholders and other customers, and the proposed self-supply option, as being tantamount to a REC deal with the added costs of an administrative fee paid to Duke and with no opportunity for energy savings or for consummating transactions outside of the CPRE Program timeline. As an alternative design, which NCCEBA argues is compliant with N.C.G.S. § 62-159.2, NCCEBA suggests setting the bill credit at or near avoided cost. Third, NCCEBA argues that Duke's proposed GSA Program fails to meet two requirements of N.C.G.S. § 62-159.2(b): (1) to provide the "standard contract terms and conditions for participating renewable energy suppliers from which" Duke will procure energy and capacity on behalf of customers participating in the GSA Program, and (2) to provide the "range of terms, between two years and 20 years, from which a participating customer may elect."⁹ Fourth, NCCEBA argues that Duke's proposed GSA Program wrongfully affords Duke the authority to control and dispatch new renewable energy facilities dedicated to the GSA Program in the same manner that is provided under the CPRE Program. Fifth, NCCEBA argues that Duke's proposed GSA Program is inconsistent with N.C.G.S. § 62-159.2, because it is "essentially a REC purchase program" and not a program for the procurement of unbundled RECs. Sixth, NCCEBA objects to two additional features of Duke's proposed GSA Program: that the proposed self-supply option would not open until January 1, 2019, and that Duke has proposed to allocate the 250 MW of capacity that is not reserved for major military installations or the UNC System between DEC and DEP's respective service territories (160 MW to DEC and 90 MW to DEP).

⁹ NCCEBA observes that Duke, in its petition, makes reference to the CPRE pro forma PPA and suggests that the CPRE pro forma PPA would be used for the GSA Program. However, NCCEBA argues that this does not satisfy Duke's obligation to file a proposed agreement in this proceeding, and that there are a number of respects in which the CPRE pro forma PPA is not suitable for the GSA Program.

Next, NCCEBA cites the provision of N.C.G.S. § 62-159.2(e) that requires "all other customers to be held neutral, neither advantaged nor disadvantaged, from the impact of the renewable energy procured on behalf of the program customer," and argues that the proposed GSA Program would unfairly advantage nonparticipating customers and disadvantage customers participating in the GSA Program. NCCEBA argues that requiring renewable energy to be procured at a price lower than Duke's avoided cost, as Duke has proposed, would result in savings being passed on to nonparticipating customers and to Duke's shareholders in violation of the intent and the plain language of the statute. In addition, NCCEBA argues that the proposed GSA Program creates "substantial disincentives" for eligible customers to participate in the GSA Program, because participating customers would, "in all cases pay more to participate in the program due to the costs that Duke would impose." Further, NCCEBA argues that the limited contract terms and conditions proposed by Duke would present practical limitations to participation by eligible customers.

NCCEBA proposes an alternative GSA Program that it believes fully complies with the law. NCCEBA's proposed GSA Program addresses various aspects of the program in detail. The critical point of disagreement between Duke's proposed GSA Program and NCCEBA's is the calculation of the bill credit that the customer participating in the GSA Program receives from Duke (other differences are not insignificant, and these differences will be discussed further below). Under NCCEBA's proposed GSA Program, the bill credit would be computed using the applicable avoided cost rates (in \$/kWh) multiplied by the quantity of energy delivered to DEC or DEP by the designated facility during the billing period. Under its proposed GSA Program, NCCEBA argues that there will be no "nonadministrative costs" related to the GSA Program that are recoverable under N.C.G.S. § 62-133.2(a)(11) because DEC and DEP will recover the full cost of payments under PPA with the owner of the renewable energy facility dedicated to the GSA Program. NCCEBA further argues that, because the bill credit is equal to DEC or DEP's forecasted avoided cost, non-participating customers will be held neutral from the impact of other customers' participation in the GSA Program.

NCSEA's Initial Comments

In its initial comments, NCSEA argues that Duke's proposed GSA Program fails to comply with the requirements N.C.G.S. § 62-159.2, and, therefore, requests that the Commission reject Duke's proposed GSA Program and direct Duke to engage stakeholders to craft a green tariff that complies with the language and intent of that statute.¹⁰ NCSEA's fundamental objection to Duke's proposed GSA Program is that instead of providing for DEC and DEP's procurement "of energy and capacity on behalf of the participating customer," as stated in N.C.G.S. § 62-159.2(b), Duke's proposed GSA Program provides participating customers with only RECs, and not energy and

¹⁰ Attached to NCSEA's initial comments was the consumer statement of position letter filed in this docket on February 23, 2018, and a separate letter from Davidson College, Duke University, and Wake Forest University that was not filed in this docket. NCSEA includes these two letters to support its general argument that Duke's proposed GSA Program falls short of meeting the needs or expectations of the customers that are eligible to participate in the program.

capacity. NCSEA also objects on the basis that Duke's proposed GSA Program does not provide "a range of terms, between two years and 20 years, from which the participating customer may elect," as stated in N.C.G.S. § 62-159.2(b), where Duke's proposed GSA Program provides for only a 20-year term under the standard offer and a two-, five-, or 20-year term under the self-supply option. NCSEA states that an eligible customer or renewable energy project developer may prefer to enter into a 10- or 15-year contract. NCSEA further argues that Duke's proposed GSA Program would benefit non-participating customers by capping the bill credit for certain participants at the lesser of the PPA price or avoided cost, resulting in a cross-subsidization by transferring benefits from participants to all other customers. Under NCSEA's view when a customer participating in the GSA Program negotiates a PPA price that is below DEC or DEP's avoided cost, then the difference between avoided cost and the PPA price represents a benefit to either Duke or to non-participating customers at the expense of program participants. This, NCSEA argues, violates the provision of N.C.G.S. § 62-159.2 requiring that non-participating customers be held neutral from the impact of the GSA Program. NCSEA next argues that Duke's petition and proposed GSA Program omitted the standard contract terms and conditions for participating customers and for renewable energy suppliers from which Duke procures energy and capacity that is required by N.C.G.S. § 62-159.2(b). While NCSEA acknowledges that Duke proposes that the GSA PPA will be the same in all material respects as the CPRE PPA, NCSEA argues that this is insufficient to comply with the requirement of N.C.G.S. § 62-159.2(b).

NCSEA also argues that Duke has introduced elements into the proposed GSA Program that are unnecessarily complicated or restrictive and inconsistent with the provisions of N.C.G.S. § 62-159.2. NCSEA argues that Duke has inappropriately linked the GSA Program to the CPRE Program, and, as a result, the proposed GSA Program fails to comply with the requirements of N.C.G.S. § 62-159.2 by (1) allowing Duke the rights to dispatch a renewable energy facility under the GSA Program, (2) requiring evaluation of GSA Program procurement to be evaluated by the Independent Administrator of the CPRE Program, (3) failing to set out all standard terms and conditions for participating customers and renewable energy providers (as discussed above), (4) including restrictions on eligibility of new renewable energy facilities to participate in the GSA Program such as a reservation fee established in the same manner as the bid bond under the CPRE Program and requiring that the renewable energy facility participating in the GSA Program have completed the system impact study under the NCIP. NCSEA next argues that Duke has inappropriately linked the GSA Program to utility service territories by proposing an allocation of capacity under the GSA Program between the DEC and DEP service territories, by proposing to allow new renewable energy facilities located in the DEC and DEP balancing areas in South Carolina to participate in the GSA Program, and by proposing to require that the aggregated customer load be located in the same utility service territory. NCSEA further argues that Duke has inappropriately proposed other additional features in the GSA Program that are not supported by N.C.G.S. § 62-159.2 by allowing utility-owned facilities to participate in the GSA Program, and artificially restricting the times at which eligible participants may enroll in the GSA Program.

NCSEA then offered some criticisms of the structure provided for in N.C.G.S. § 62-159.2, describing the statute as "flawed." NCSEA concludes its initial comments by stating its interest in continued discussion, and by requesting that the Commission reject Duke's proposed GSA Program and instead direct Duke to engage stakeholders to craft a program that complies with the language and the intent of N.C.G.S. § 62-159.2.

SACE's Initial Comments

In its initial comments SACE provides an introduction that included discussion of the growing interest in "green tariffs" among utilities' large commercial and industrial customers across the country, including a list of principles that these customers view as the marker of a well-designed green tariff.¹¹ SACE then provides a summary of the background that led to the enactment of N.C.G.S. § 62-159.2 and of Duke's proposed GSA Program.

SACE next addresses the substance of Duke's proposed GSA Program, and argues that the proposed GSA Program fails to comply with the requirements of N.C.G.S. § 62-159.2 for several reasons. First, SACE argues that N.C.G.S. § 62-159.2 does not contemplate a REC-purchase program, stating that Duke's customers that wish to purchase RECs were able to do so without the enactment of N.C.G.S. § 62-159.2, and that, while a REC-purchase program provides a simple option for customers to obtain renewable energy attributes, it does not provide an opportunity to benefit economically from the fixed cost of power purchased directly from a renewable energy project. In support of its argument SACE cites to N.C.G.S. § 62-159.2(e) stating that this subsection describes multiple transactions involving payments and credits for energy and capacity, not a REC-purchase program. Second, SACE argues that the proposed GSA Program does not allow customers to negotiate with renewable energy suppliers regarding price terms as provided in N.C.G.S. § 62-159.2(b). In support of this argument SACE criticizes the proposed standard option as providing no opportunity to negotiate any price terms, where the price is established based on the weighted average price of the most recent CPRE RFP Solicitation and the REC value is based on a national voluntary market, and criticizes the self-supply option as providing an opportunity to negotiate only the REC price, where the bill credit is based on either the weighted average price of the most recent CPRE RFP Solicitation, DEC or DEP's forecasted avoided cost rate, or the negotiated self-supply price. Third, SACE argues that the proposed GSA Program does not ensure that all other customers are held neutral as required by N.C.G.S. § 62-159.2(e). In support of this argument, SACE states that the proposed GSA Program would advantage non-participating customers because the customers participating in the GSA Program will continue to pay their normal retail bill, in addition to the GSA Program charges, and the savings resulting from the energy and capacity purchased through the GSA Program, at or below the utility's avoided cost, will be passed to Duke's general customer base. SACE suggests that a bill credit at DEC or DEP's

¹¹ SACE included as attachments to its comments a publication titled Corporate Renewable Energy Buyers' Principles: Increasing Access to Renewable Energy and a letter from a number of corporations that have a presence in the state to the General Assembly that identifies the GSA Statute as a provision of House Bill 589 that is "in need of further improvement during implementation."

avoided cost rate is more appropriate than linking the GSA Program bill credit to the CPRE Program prices, and that this would allow customers participating in the GSA Program to realize electric bill savings if they are able to negotiate price terms below the avoided cost rates. Fourth, SACE argues that the proposed GSA Program does not provide an adequate range of terms from which customers may select as required by N.C.G.S. § 62-159.2(b). Rather than the proposed terms of 2, 5, and 20 years, SACE suggests that Duke should be required to offer a 15-year term, because eligible customers will benefit from a wider range of terms that provide price certainty and facilitate long-term business planning. Fifth, SACE argues that the proposed GSA Program should allow participants to hedge against future energy price increases or realize energy bill savings over a particular term. In support of this argument, SACE states that, although the proposed GSA Program contemplates fixed prices over the contract term, participating customers will see no benefit from the program as proposed, because the customer will continue to be required to pay its retail electric charges in addition to the GSA Program charges. Instead, SACE recommends that the Commission require Duke to allow customers participating in the GSA Program to negotiate a rate with the renewable energy supplier and capture the economic benefit of a price that is below DEC or DEP's avoided cost.

In conclusion SACE again argues that the proposed GSA Program fails to comply with the requirements of N.C.G.S. § 62-159.2 in that it fails to establish a green tariff that will provide meaningful access to renewable energy for customers eligible to participate in the program. Therefore, SACE requests that the Commission declare that Duke's proposed GSA Program does not comply with N.C.G.S. § 62-159.2 and instruct Duke to revise its program to comply with the statute and to reflect the arguments discussed in its comments.

Apple and Google's Initial Comments

In their initial comments Apple and Google provide a background on the enactment of House Bill 589 and state that, through their respective affiliates, they own and operate one or more data centers and related infrastructure in DEC's assigned service territory for retail electric service. They further state that the ability to invest in green energy is a "primary and essential" consideration in their business planning as they seek to save money, hedge against volatile fossil fuel prices, and lock in cost-effective, fixed energy rates. Apple and Google also express their support for fair, cost-competitive options for sourcing renewable energy, but argue that the proposed GSA Program fails to implement the requirements of N.C.G.S. § 62-159.2 and falls short of creating a viable program that is attractive to intensive users of energy in Duke's service territory, who are eligible to participate in the GSA Program.

Apple and Google then outline their principal concerns with Duke's proposed GSA Program. First, they argue that the proposed GSA Program does not provide the "range of terms" required by N.C.G.S. § 62-159.2(b), where the proposed GSA Program allows only a standard term of 20 years, and self-supply options of 2, 5, and 20 years. Apple and Google argue that this fails to satisfy both the plain language and the intent of

the statute, and suggests that the addition of 10- and 15-year terms would be appropriate. Second, Apple and Google argue that the economic terms of the proposed GSA Program are not transparent or predictable, where the "overall net economic impact on participating customers is not readily apparent." They further argue that the pricing and credit mechanisms as proposed are confusing and fail to provide the level of certainty for participants to decide whether to participate in the GSA Program. Third, Apple and Google argue that Duke's proposed GSA Program does not identify the standard contract terms and conditions applicable to the underlying commercial arrangements required by N.C.G.S. § 62-159.2(b). Based upon these concerns, Apple and Google conclude their comments by arguing that the Commission should reject Duke's proposed GSA Program and that "a truly impactful program" would ensure that customers have access to flexible contract terms, transparent pricing and standard terms and conditions, the ability for a participating customer to achieve 100% renewable targets, and additional flexibility in their procurement options.

UNC-Chapel Hill's Initial Comments

In its initial comments, UNC-Chapel Hill states that it does not believe that Duke's proposed GSA Program meets the requirements of N.C.G.S. § 62-159.2, and that, as a result, the 250 MW of renewable energy reserved for the UNC System will not be provided in a manner consistent with the intent and language of the statute unless the Program is modified. UNC-Chapel Hill then provided additional background on its interest in this proceeding, as a significant consumer of electric power and as a participant in the legislative process that lead to the enactment of House Bill 589. UNC-Chapel Hill further states that, under a program that is consistent with N.C.G.S. § 62-159.2, it could purchase as much as 112.5 MW of electricity from renewable energy facilities, saving up to \$1.7 million annually and reducing carbon dioxide emissions from the electric power it consumes by up to 10%. However, UNC-Chapel Hill further states that under Duke's proposed GSA Program, UNC-Chapel Hill would not realize any savings by purchasing renewable energy through the program, and would have to pay additional amounts for RECs, plus administrative fees, to achieve a similar reduction in carbon dioxide emissions.

UNC-Chapel Hill then states that its principal objection to Duke's proposed GSA Program is that it will not allow the procurement of energy from renewable energy facilities at fair and competitive rates. UNC-Chapel Hill also expressed its concern that the benefits of the program as proposed would be passed on to Duke's other customers, in violation of N.C.G.S. § 62-159.2, because the bill credit available to a participating customer is below Duke's avoided cost. In addition, UNC-Chapel Hill argues that Duke's proposed GSA Program does not meet the requirements of N.C.G.S. § 62-159.2 in that a compliant program would offer greater flexibility in contact length, provide for direct and full negotiating rights between renewable energy facility developers and the participating customers, and allow more options to meet diverse and changing customer needs. Further, UNC-Chapel Hill argues that Duke's proposed GSA Program would benefit from standardized contract terms addressing default, early termination, financial assurances, and other provisions approved by the Commission.

In conclusion UNC-Chapel Hill states that procuring electricity at fair and competitive rates assists UNC-Chapel Hill in overall cost management and frees up resources to focus on its core mission of education, research, and service. Further, UNC-Chapel Hill argues that any proposed program that unfairly inflates the cost of renewable energy, so that it is not competitive from a pricing standpoint, frustrates the legislative intent underlying N.C.G.S. § 62-159.2 and makes the program economically unattractive. Finally, UNC-Chapel Hill argues that the proposed GSA Program would not allow it to reduce its power costs, hedge against future increases in the cost of energy, or reduce carbon emissions.

Walmart's Initial Comments

In its initial comments, Walmart provides a statement of its interest in this proceeding, including, its having established "aggressive and significant renewable energy goals" such as an aspirational goal to be supplied by 100% renewable energy and to be supplied by 50% renewable energy by 2025. In addition, Walmart states that it has set "a science-based target" to reduce emissions in its operations by 18% by 2025 through implementation of energy efficiency measures and consumption of renewable energy. Further, Walmart states that it currently takes electricity from one or more renewable energy resources in 19 states and Puerto Rico, but North Carolina is not among those states.

Walmart next states that it seeks renewable energy resources that deliver "industry leading value," including RECs, within a structure that allows the customer to receive any potential benefits associated with the risk of being served by that resource rather than, or in addition to, the otherwise applicable resource portfolio. Walmart further states that it does not, as a general rule, enter into premium structures or programs that only result in additional costs to its facilities or enter into programs with a term in excess of 15 years. In addition, Walmart states that it utilizes three channels to secure renewable energy resources to meet its goals: (1) contracting for off-site resources; (2) contacting for on-site resources; and (3) utility partnerships.¹²

Walmart then argues that the Commission should reject Duke's proposed Program as incomplete based on the omission of a "GSA Service Agreement" and a "standard form term sheet" that were referenced in Duke's petition, but not included with its filing. This omission, Walmart argues, precludes parties from evaluating the proposed GSA Program because certain key terms are not defined in the proposed tariff or in the other documents filed with Duke's petition.

Turning to the substance of the proposed GSA Program, Walmart states that neither the proposed standard offer nor the self-supply option is attractive to Walmart.

¹² With regard to utility partnerships Walmart provided the example of its partnership with Alabama Power to off-take a portion of the output from a 72-MW solar-powered electric generating facility. Walmart also provided citations to proceedings before the respective public utility regulatory agencies in Missouri, Virginia, and Georgia, as examples of proceedings where it is "actively engaged with a number of utilities nationwide to develop and seek regulatory approval for similar programs."

With regard to the standard offer Walmart states that this option is essentially a cost-additive REC purchase program, and that the 20-year term of the contract is also problematic for Walmart. In short, Walmart states that it would not participate in the standard offer under the proposed GSA Program, and suggests that if it is appropriate for Duke to establish a REC purchase program it should be established outside of the limited capacity required to be made available under N.C.G.S. § 62-159.2. With regard to the self-supply option Walmart states that this option "boils down to nothing more than a cost-additive REC purchase program with significant administrative costs," including the "added burden of additional transaction costs associated with negotiating a REC price with the supplier." Again, Walmart states that this option is not an attractive option for Walmart. Nonetheless, Walmart argues that if the Commission approves the self-supply option, it should require the following modifications: (1) require more options in the length of a contract than the proposed 2-, 5-, and 20-year terms to comply with the requirement of N.C.G.S. § 62-159.2(b) that the program "provide a range of terms, between two and 20 years;" (2) establish a bill credit based on the avoided costs of DEC and DEP, rather than based upon the weighted average cost of the most recent CPRE RFP Solicitation; and (3) provide clarification regarding the applicability of the proposed GSA Program administrative charges.

THE PUBLIC STAFF'S INITIAL COMMENTS

In its initial comments the Public Staff provides a background on House Bill 589 and a summary of the requirements of N.C.G.S. § 62-159.2. The Public Staff then states that it has reviewed Duke's proposed GSA Program and, based upon this review, the Public Staff agrees that the proposed GSA Program was designed to implement the program in an efficient manner and generally includes the necessary components called for in N.C.G.S. § 62-159.2. However, the Public Staff further states that it takes exception to several aspects of Duke's proposed implementation of the GSA Program as further detailed in its comments.

The Public Staff first addresses the linkage between the proposed GSA Program and the CPRE Program by summarizing the proposed standard offer and self-supply options, and stating that the Public Staff generally supports the structure of the self-supply option as proposed, but disagrees with the standard offer option because it is linked to the CPRE Program in a manner that is "counter to the timeframes and purposes called for in each statute." While recognizing that N.C.G.S. § 62-110.8 (the CPRE Program) and N.C.G.S. § 62-159.2 (the GSA Program) were both enacted as part of House Bill 589, the Public Staff argues that the plain language of the statutes "clearly and unambiguously" delineates separate goals and purposes of each program with specific operating parameters and timeframes that reflect the independent nature of the two programs. The Public Staff cites N.C.G.S. § 62-159.2(d) in support of its view that the GSA Program should operate independently from the CPRE Program for its five-year eligibility period, and cites N.C.G.S. § 62-110.8(a) as reinforcing this conclusion. In short, under the Public Staff's interpretation, the only linkage between the CPRE Program and the GSA Program is that after the conclusion of the five-year availability period required under GSA Program, any unsubscribed capacity under the GSA Program would be

"reallocated" to competitive procurements that are additional to the 2,660 MW required under the CPRE Program. In addition the Public Staff argues that the goals for each program clearly support different desired outcomes under the two programs on the part of the General Assembly and notes several differences between the two statutory provisions. The Public Staff then notes the similarities between the program required by N.C.G.S. § 62-159.2 and the Green Source voluntary pilot program approved by the Commission in its Order issued on December 19, 2013, in Docket No. E-7, Sub 1043, and offered by DEC from December 2013 to December 2016. In conclusion the Public Staff reiterates its view that the self-supply option generally conforms more to the voluntary nature of N.C.G.S. § 62-159.2 and that the standard offer option does not align with the independent implementation of the GSA Program and the CPRE Program.

Next, the Public Staff addresses the issues of interconnection costs and application status under Duke's proposed GSA Program, in light of the linkage between the GSA Program and the CPRE Program. The Public Staff states that these issues, in addition to the implementation timeframes, operational limitations, and mandatory versus voluntary nature of the programs, also weigh against the integration of the two programs as proposed by Duke. The Public Staff first notes that under the CPRE Program, the Commission has approved a cost recovery methodology that departs from the traditional cost-causation approach (where all interconnection costs would be assigned to and recovered from the interconnection customer through Commission-approved interconnection fees) to allow the use of a grouping study process to evaluate grid upgrade costs, assignment of the costs to the proposal for evaluation purposes, and recovery of those costs through general rates. On this background the Public Staff states that Duke's use of the CPRE Program to identify and select projects for the standard offer under the GSA Program would further expand the departure from traditional cost-causation principles and make it more difficult to ensure that non-participating customers are neither advantaged nor disadvantaged as required by N.C.G.S. § 62-159.2. In addition, the Public Staff argues that it is critical to ensure that eligibility for the two programs is not biased in favor of one program over the other. As an example, the Public Staff states that the use of interconnection status as a part of the eligibility requirements should not be different under the two programs. However, the Public Staff further states that, under Duke's proposed standard offer, the fact that network upgrade costs identified under the CPRE grouping study may not be assigned to specific projects, along with the requirement that renewable energy suppliers have completed the system impact study to be selected under the self-supply option, has the potential to bias participation in favor of the standard option through the externalization of costs or faster implementation.

The Public Staff then addresses the basis for determining the bill credit to be received by the customer participating in the GSA Program, citing N.C.G.S. § 62-159.2(e) as providing the Commission the authority to determine the appropriate basis for the bill credit subject to two requirements: non-participating customers be held neutral and the bill credit not exceed the utility's avoided cost. The Public Staff states that it is considering various bill credit options and may provide additional recommendations in its reply comments. However, the Public Staff further states that at this time it does not agree with

Duke's proposed utilization of the CPRE Tranche weighted average price to form the basis of the bill credit under the self-supply option for the initial GSA Program offering period. While recognizing that the CRPE Tranche weighted average price reflects the market-based price for renewable energy resources, the Public Staff argues that the unknown nature of that price at this time makes participation in the GSA Program impractical and that waiting until that price is determined unduly delays implementation of the GSA Program and would result in further congestion of the CPRE Tranche 2 RFP Solicitation. Finally, the Public Staff notes that if the Commission determines that the negotiated unbundled PPA price should form the basis for determining the bill credit, the Public Staff believes that any REC price negotiated between the GSA Program customer and the renewable energy supplier should be a positive value to prevent potential gaming of the bill credit mechanism.

The Public Staff next turns to the requirement of N.C.G.S. § 62-159.2(b) that Duke provide standard contract terms and conditions for participating customers and for renewable energy suppliers, noting that Duke included copies of its proposed GSA rider tariffs, but did not include a standard PPA in its filing. The Public Staff acknowledges that Duke noted its expectation that the commercial terms of the GSA PPA would be the same as the pro forma PPA approved by the Commission for use in the CPRE Tranche 1 RFP Solicitation. However, the Public Staff further notes that, in approving the pro forma PPA for use in the CPRE Program, the Commission directed Duke to continue discussions regarding potential revisions to that PPA to address the issues raised by the parties to that proceeding. On this background the Public Staff states that it agrees that the use of the CPRE pro forma PPA as the basis for the GSA PPA, subject to the following modifications: (1) incorporation of any modifications made to the pro forma PPA; (2) elimination of the provisions dealing with the transfer of RECs and environmental attributes; and (3) modification of the curtailment and control instruction provisions. With regard to the provisions dealing with the transfer of RECs and environmental attributes, the Public Staff states that these provisions are not necessary under the self-supply option because the REC transaction is unbundled from the PPA and is handled in a separate transaction between the GSA customer and the GSA renewable energy supplier. With regard to the provisions related to curtailment and control instructions, the Public Staff cites N.C.G.S. § 62-110.8(b) as expressly providing that a CPRE Program renewable energy supplier allow dispatch, operation, and control of its renewable energy facility in the same manner as the utility's own generation resources, but similar language is not found in N.C.G.S. § 62-159.2. However, the Public Staff further states that, consistent with its positions expressed in the Commission's 2016 Biennial Avoided Cost Proceeding (Docket No. E-100, Sub 148), it continues to support reasonable control instructions and system emergency instructions similar to what would apply in the negotiated contract setting between the utility and a qualifying facility. The Public Staff, therefore, requests that the Commission require Duke to include information on the curtailment of any renewable energy resource under the GSA Program in the quarterly curtailment reports that are required pursuant to the Commission's October 11, 2017 Order issued in Docket No. E-100, Sub 148, as modified in the Commission's Order that approved the modified joint CPRE Program (issued in Docket Nos. E-2, Sub 1159, and E-7, Sub 1156).

Finally, the Public Staff addressed issues related to the length of term of the contracts under the proposed GSA Program, the proposed administrative fees and costs, and allocation among customers, queueing, and aggregation. The Public Staff believes that additional contract term lengths between the two and 20 year terms proposed for the standard option and between the two, five, and 20-year terms as proposed for the self-supply option are required under N.C.G.S. § 62-159.2(b). The Public Staff further states that it does not take exception to the administrative fees and charges as proposed, but it has requested additional information from Duke and may comment further in its reply comments. Finally, the Public Staff agrees with Duke's proposed allocation of undesignated capacity between DEC and DEP based on load ratio share, does not take exception with Duke's proposed queuing process for each of the specific allocation categories, and supports Duke's requirement that projects that seek to aggregate their accounts for participation in the GSA be located in the same utility service territory and that the renewable energy facility also be located in the same utility service territory.

THE INTERVENOR-PARTIES' REPLY COMMENTS

NCCEBA's Reply Comments

In its reply comments, NCCEBA provides a background of this proceeding and summarizes the comments of the other intervenor-parties, which generally express concern that the proposed GSA Program will not allow cost savings to participating customers, and, that very few, if any, large customers will participate in the program as proposed because they believe it is unworkable.

NCCEBA then argues that the "most fundamental problem" with the proposed GSA Program is that the proposed bill credit mechanism precludes participating customers from realizing any savings through participation in the program. While NCCEBA acknowledges that Duke's proposed GSA Program appropriately envisions that the participating customer paying its full retail bill, reimbursing Duke for amounts paid to a renewable energy supplier selected by the customer, and paying an administrative charge, NCCEBA argues that a bill credit equal to the PPA price, as Duke has proposed, means that the reimbursed amount and the PPA price cancel each other out and the participating customer has no potential for savings, even if the participating customer negotiated a PPA price below DEC or DEP's respective avoided cost rate. NCCEBA further argues, as it did in its initial comments, that any savings resulting from the GSA PPA price below avoided cost would be realized by Duke's other ratepayers or its shareholders and not by the customer participating in the GSA Program, who negotiated the PPA price below the utility's avoided cost rate. Therefore, NCCEBA urges the Commission to require Duke to implement the GSA Program in a manner that allows the participating customer to realize savings resulting from negotiating a GSA PPA price below the utility's avoided cost rate. This, NCCEBA concludes, is the only way to incentivize participation in the GSA Program within North Carolina's regulated monopoly framework.

NCCEBA then summarizes the comments of other intervenor-parties and the Public Staff which express objections to Duke's proposed GSA Program on the grounds that the standard offer option is unlawfully linked to the CPRE Program, that the proposed bill credit would penalize GSA Program participants,¹³ that the proposed standard contract fails to provide the terms and conditions required by N.C.G.S. § 62-159.2(b), and that Duke improperly included curtailment rights in the GSA PPA. NCCEBA then addressed the linkage between the proposed GSA Program and the CPRE Program in further detail, again arguing that this proposed feature of the GSA Program is contrary to the plain language of N.C.G.S. § 62-159.2, and expressing concerns about the delay of the Tranche 1 CPRE RFP Solicitation and about the potential for any further delays in implementing the two programs that might result from the Commission allowing the proposed linkage between the two programs. Finally, NCCEBA argues that renewable energy suppliers bidding into the Tranche 1 CPRE RFP Solicitation should be allowed to withdraw a bid without penalty if they intend to supply energy and capacity under the GSA Program, because the timing of the first RFP Solicitation vis-à-vis the implementation of the GSA Program may not allow for the reservation of capacity prior to the Tranche 1 CPRE RFP Solicitation opening. In other words NCCEBA is concerned that renewable energy suppliers will be forced to make "premature decisions" about whether to bid projects into the CPRE Tranche 1 RFP Solicitation or not submit a proposal in the hope of being selected as a supplier under the GSA Program.

In conclusion NCCEBA argues that the structure and implementation of the GSA Program are crucial to the success of the overall goals of the program for both customers and suppliers. Based on its view that Duke has made "significant deviations from the law and the underlying policy" of N.C.G.S. § 62-159.2, NCCEBA requests that the Commission order Duke to adopt NCCEBA's proposed alternative program outlined in its initial comments. Finally, in light of the complexity of these issues, NCCEBA requests that the Commission order oral arguments in this proceeding.

NCCEBA's Reply Comments

In its reply comments, NCCEBA states that its interest in this proceeding is to ensure that the implementation of the GSA Program comports with the agreements reached among the stakeholders and the legislative direction in N.C.G.S. § 62-159.2(e) to ensure that all non-participating customers be "held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer." NCCEBA focuses the remainder of its reply comments on the calculation of the bill credit under the program, first emphasizing that N.C.G.S. § 62-159.2 does not require that the bill credit be set at the utility's avoided cost, but provides the Commission discretion to set the bill credit at a lower level to ensure that non-participating

¹³ While NCCEBA agrees with the Public Staff that it would be appropriate to use the utility's avoided cost to establish the bill credit, and that it would be reasonable to "refresh" the bill credit for subsequent 5- or 10-year terms to accurately reflect the utility's current avoided costs, NCCEBA "strongly opposes" the Public Staff's alternative proposals to allow for an energy-only based bill credit, to utilize a competitive bidding process specific to the GSA Program, or to establish the bill credit based on actual incremental generation costs. These alternatives proposed by the Public Staff in its reply comments are discussed in further detail below.

customers are held neutral. NCEMC then argues that setting the bill credit at the avoided cost rate does not hold non-participating customers neutral, as illustrated by the following simplified example:

The GSA Program bill credit is equal to the utility's avoided cost (as determined under the Commission-approved methodology in Docket No. E-100, Sub 148)	=	\$60/MWh over a 20-year term
The GSA Program customer procures renewable energy at a negotiated levelized cost	=	\$50/MWh over a 20-year term
The difference, NCEMC argues, is socialized to the utility's non-participating customers	=	\$10/MWh

NCEMC further argues that the Public Staff's suggestion to update or refresh the avoided cost data does not achieve indifference for non-participating customers because it does not take into account "solar integration costs," as NCEMC argued in the 2016 Biennial Avoided Cost Proceeding.¹⁴

On this background, NCEMC recommends that the bill credit for a program customer be set at the exact amount that the electric utility pays the owner of the renewable energy facility, which amount shall not exceed the utility's avoided cost, and should "be calculated on a PPA-by-PPA basis to reflect the utility's then-current true avoided costs." NCEMC further states that it believes that Duke's proposed CPRE-derived market proxy for its "true avoided costs" is more accurate than the other proposals advocated for in this proceeding, and that this methodology will hold non-participating customers neutral as required by N.C.G.S. § 62-159.2(e) by minimizing the potential for socialized costs. Finally, NCEMC reiterates its opposition to setting the bill credit based upon the utility's avoided cost rates determined under the E-100, Sub 148 methodology and its further opposition to setting the bill credit at an updated or refreshed rate based upon the E-100, Sub 148 methodology, unless that update or refresh reflects solar integration costs. In conclusion, NCEMC recommends that if the Commission does not approve Duke's proposed bill credit methodology, the Commission should require Duke to publicly file an annual report detailing the difference between the amount DEC and DEP paid, in the aggregate, for renewable energy procurement under the GSA Program and the amount each operating company credited program customers via bill credits, in the aggregate, to add a measure of transparency and accountability to the program.

¹⁴ Included as an attachment to NCEMC's reply comments, is Duke's response to a data request of the Public Staff, wherein Duke states that solar integration costs are not included in its model.

NCSEA's Reply Comments

In its reply comments NCSEA states that it largely agrees with the comments and concerns set forth by the other intervenors in their respective initial comments. In support of its view that Duke's proposed GSA Program fails to provide a workable option for large energy consumers to procure clean energy through Duke NCSEA cites the initial comments of Walmart, NCCEBA, Apple and Google, and UNC-Chapel Hill. NCSEA then expresses its strong disagreement with the Public Staff's assertion that Duke's proposed GSA Program implements N.C.G.S. § 62-159.2 in an efficient manner and includes the components required by that statute.

NCSEA next argues that the proposed GSA Program provides no economic benefit to participating customers. In support of its argument, NCSEA cites comments of the other intervenor-parties to demonstrate that the proposed GSA Program does not provide participants an opportunity to procure clean energy in a cost-effective manner, nor an opportunity to lock-in rates and hedge against the volatility of fossil fuel prices, or even to determine in advance the overall economics of participation in the GSA Program. NCSEA further argues that Duke's proposed GSA Program does not provide an appropriate bill credit to participants. In support of this argument NCSEA agrees with the other intervenor-parties' arguments that the bill credit should reflect the costs that Duke avoids by purchasing power from the renewable energy resource under the GSA Program rather than from the system portfolio resources. In short NCSEA agrees with the other parties that the bill credit should be at, or very near to, the utility's avoided cost, and any difference between the bill credit and the utility's avoided cost would result in financial benefit to the utility or its shareholders. In addition NCSEA agrees with the Public Staff's view that the most up-to-date information and avoided cost calculations should be used when establishing the bill credit, but further argues that the bill credit should be fixed throughout the duration of the GSA Program contract rather than allowing the bill credit to adjust.

NCSEA also reiterated its arguments that the proposed GSA Program fails to meet the statutory requirements of N.C.G.S. § 62-159.2 in the following respects: by failing to allow negotiation of pricing, by failing to provide rate certainty, by failing to provide for the required range of contract term lengths or terms and conditions, and by unfairly advantaging non-participating customers. In addition NCSEA reiterates its arguments that Duke's proposed GSA Program is inconsistent with N.C.G.S. § 62-159.2 and frustrates the legislative intent underlying that statute by tying the GSA Program to the CPRE Program, by unreasonably delaying the implementation of the GSA Program, and by procuring RECs rather than energy and capacity. In conclusion, NCSEA states its support for NCCEBA's proposed alternative GSA Program, with some modifications, and, therefore, requests that the Commission reject Duke's proposed GSA Program and direct Duke to engage in discussions with the stakeholders to craft a green tariff that complies with the language and intent of N.C.G.S. § 62-159.2.

SACE's Reply Comments

In its reply comments SACE states that, overall, it agrees with the initial comments asserting that Duke's proposed GSA Program fails to properly implement N.C.G.S. § 62-159.2 and requesting that the Commission require Duke to revise its GSA Program. SACE further states that it supports the creation of a stakeholder process to develop a GSA Program that is consistent with N.C.G.S. § 62-159.2 and that meets the needs of the eligible customers. SACE then addresses more specifically issues raised by other intervenor-parties that support its broader view that the proposed GSA Program fails to comply with N.C.G.S. § 62-159.2. In particular, SACE expressed its agreement with NCCEBA that the alternative GSA Program proposed in NCCEBA's initial comments complies with N.C.G.S. § 62-159.2 and is more aligned with the type of renewable energy procurement program that would accommodate the clean energy procurement goals of eligible non-residential customers.

SACE next addresses the Public Staff's initial comments. SACE states its general agreement with the Public Staff's assertion that linking the proposed GSA Program to the CPRE Program is inappropriate. More specifically, SACE agrees with the Public Staff that eligibility for the CPRE and GSA Programs should not be biased in favor of one program over the other, that the bill credit should not be based upon the CPRE Tranche weighted average price under the self-supply option,¹⁵ and that Duke should be required to offer additional length of term options beyond the proposed two, five, and 20-year terms as proposed.

UNC-Chapel Hill's Reply Comments

In its reply comments UNC-Chapel Hill states that N.C.G.S. § 62-159.2 was incorporated into House Bill 589 at the request of the eligible customers, including UNC-Chapel Hill, and that the General Assembly intended these customers to benefit from the program. UNC-Chapel Hill further states that these eligible customers, through their comments filed in this proceeding, "have consistently, uniformly, and unequivocally stated" that Duke's proposed GSA Program does not create a program that would be subscribed to by these customers or achieve the intent of the legislation. UNC-Chapel Hill cites the initial comments of several of these parties for support of this view. Finally, UNC-Chapel Hill argues that customers eligible to participate in the GSA Program can be afforded the flexibility in the procurement of energy and capacity from renewable energy resources, at prices that they have negotiated, without disadvantaging Duke's non-participating customers, as required by N.C.G.S. § 62-159.2.

¹⁵ While SACE and the Public Staff agree that the bill credit should not be based upon the CPRE Tranche weighted average price under the self-supply option for the initial GSA offering period, the Public Staff indicated an openness to use of the tranche weighted average price as "a reflection of the market-based price for renewable energy resources" in future GSA offerings. SACE states that it does not agree with this view, and again argues that the use of the utility's avoided costs to form the basis of the bill credit complies with the requirement of N.C.G.S. § 62-159.2 that non-participating customers be held neutral.

THE AGO AND PUBLIC STAFF'S REPLY COMMENTS

The AGO's Reply Comments

In its reply comments the AGO states that there is broad consensus among the intervenor parties that Duke's proposed GSA Program violates the "spirit and letter" of House Bill 589 by inappropriately merging the CPRE Program and the GSA Program, by requiring GSA Program participants to subsidize other customers, by denying customers participating in the GSA Program the benefit of having negotiated price terms with a renewable energy supplier, by providing only a five-year term instead of a range of term lengths between two and 20-years, and by omitting the standard contract terms from the filing in this proceeding. The AGO then states that it concurs with these critiques and concludes that these features of Duke's proposed GSA Program are materially noncompliant with Part III of House Bill 589. The AGO then cites a number of intervenor-parties' comments to demonstrate that the eligible customers 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." In conclusion the AGO expresses agreement with the intervenor-parties' argument that the bill credit under the GSA Program should be "tied to Duke's avoided cost, with periodic resets to ensure that the credit reasonably matches Duke's actual avoided costs." This, the AGO argues, would comply with the mandate of N.C.G.S. § 62-159.2 that the program be cost-neutral for nonparticipating customers, while allowing the GSA Program participants to achieve energy savings by negotiating PPA prices below Duke's avoided cost.

The Public Staff's Reply Comments

In its reply comments the Public Staff notes that the intervenor-parties generally took issue with features of Duke's proposed GSA Program that link the GSA Program to the CPRE Program. These parties argue that the two programs were intended to serve different roles and purposes, with the only link being that any unsubscribed GSA Program capacity would be added to the required procurement under the CPRE Program. The Public Staff states that this argument and those comments are generally consistent with the Public Staff's position on this point. In particular the Public Staff notes its having taken exception to the proposed bill credit calculation based on the weighted average price of the CPRE Tranche 1 RFP under the self-supply option for the initial GSA offering period, as counter to the timeframes and purposes of the statutory sections authorizing each program. The Public Staff further states that N.C.G.S. § 62-159.2(e) authorizes the Commission to determine the appropriate basis for the bill credit to be received by the GSA Program customer, ensuring that all nonparticipating customers are held neutral, with the only limitation being that the bill credit may not exceed the utility's avoided cost. The Public Staff then summarizes and compares the comments of NCCEBA, SACE, UNC-Chapel Hill, and Walmart that addressed the method for determining the bill credit.

On this background the Public Staff frames the issue in this proceeding as centered on the legislative intent behind the enactment of N.C.G.S. § 62-159.2 in this way:

Was it [G.S. 62-159.2] designed to establish a voluntary program for customers to choose to participate in solely for the purposes of procuring new renewable energy resources in North Carolina, or was it also intended to provide participating customers with an opportunity to negotiate a renewable energy procurement at a cost below their bill credit, thereby establishing an additional financial incentive for participation? If it is the latter, then how do you reconcile the financial incentive provided to GSA participating customers while holding non-participating customers harmless?

The Public Staff then argues that N.C.G.S. § 62-159.2(b) clearly indicates that participating customers are allowed to "select the renewable energy facility from which the public utility shall procure energy and capacity" as well as to "negotiate with renewable energy suppliers regarding price terms." Public Staff's Reply Comments at 5, quoting N.C.G.S. § 62-159.2(b). These provisions, the Public Staff further argues, support the concept that the program established by N.C.G.S. § 62-159.2 "was intended to be more than simply a generic purchase of renewable energy attributes from facilities, instead establishing a process by which participating customers could identify projects and negotiate prices directly for the procurement of not only the renewable energy attributes, but also the energy and capacity component of the purchase." The Public Staff notes that several intervenor-parties stated their view that the proposed GSA Program is little more than a cost-additive REC buying program.

Turning to the intervenor-parties' proposal to set the bill credit at avoided cost, the Public Staff first provides a background on the Commission's final Order issued in the 2016 Biennial Avoided Cost Proceeding (Docket No. E-100, Sub 148). The Public Staff then draws a comparison between the concept that avoided cost rates, when properly established, make the purchasing utility indifferent to the source of electric output (purchases from qualifying facilities or from another source, including, the utility building and owning its own generation facility) and the provision of N.C.G.S. § 62-159.2(e) that customers not participating in the GSA Program be held neutral. Thus, the Public Staff argues that if the GSA bill credit is properly established, non-participating customers should be indifferent to the source of the purchased electric output, whether from a utility-owned generation facility, a PURPA¹⁶ qualifying facility (QF), or other purchased power. Continuing the comparison between the Commission's implementation of PURPA and the program established in N.C.G.S. § 62-159.2, the Public Staff notes that the implementation of Part I of House Bill 589 resulted in the Commission establishing the maximum term for a standard contract at 10 years, providing that the standard contract would be available to QFs with a generating capacity of 1 MW or less, and providing that, for QFs with a generating capacity greater than 1 MW, who are not eligible for the

¹⁶ The Public Utility Regulatory Policies Act of 1978.

standard contract, the maximum term of the contract shall be 5 years. The Public Staff states that this is relevant to its analysis of Duke's proposed GSA Program in that N.C.G.S. § 62-159.2 requires that a range of terms between two years and 20 years be available, it does not require the Commission to fix the bill credit for the same length of time as the contract term. The Public Staff states that it believes that a contract term under the GSA Program, along with a fixed bill credit of equivalent length, would result in non-participating customers facing overpayment and underpayment risk for the same reasons articulated in the Commission's final Order in the 2016 Avoided Cost Proceeding, thereby violating the neutrality concept required by N.C.G.S. § 62-159.2(e). Finally, the Public Staff notes that the Commission acknowledged other potential costs and benefits associated with the different supply characteristics of intermittent resources in that Order, and directed the utilities to consider and study these issues and to make proposals in the next avoided cost proceeding reflecting of those efforts.

Based upon its consideration of these concepts, the Public Staff believes that if the Commission chooses to use administratively determined avoided costs to establish a bill credit for GSA purposes, the credit should be fixed for a limited duration to reflect the risk that would otherwise be borne by non-participating customers. Therefore, the Public Staff recommends that the bill credit available under the GSA Program be fixed for a time period that is equal in length to the term of the PPA signed between the renewable energy supplier and the utility, up to 10 years. If the term of the PPA is longer than 10 years, then the Public Staff recommends that the bill credit be "refreshed" to reflect the then-current avoided cost rates for the balance of the term of the PPA (which is itself limited to 20 years). The Public Staff notes that this would provide a bill credit that is available for a time period that is equal to the maximum length of term available under the PURPA standard offer contract and that is five years longer than the maximum length of term available under a PURPA negotiated contract. The Public Staff further explained that the latter part of the duration of the GSA Program bill credit, the "refresh period," would allow for changes in market conditions, such as updates to natural gas price forecasts or costs and benefits based on the supply characteristics of intermittent resources, to be incorporated into the determination of the GSA Program bill credit. The Public Staff acknowledges that this introduces some risk to the GSA customer that the bill credit will decrease in the later part of the GSA Program PPA, the Public Staff also argues that the refresh could result in significant savings, if avoided costs rise in 10 years. This, the Public Staff concludes, provides the type of hedge against increases in electricity rates and in price volatility in fuel markets that several intervenor-parties addressed in their comments.

The Public Staff then suggests that the Commission consider the following options, if the Commission determines that avoided costs do not provide an appropriate basis for the GSA bill credit:

1. Bill credit based on energy-only: Citing N.C.G.S. § 62-159.2(e), which provides that the "the program customer shall receive a bill credit for the energy as determined by the Commission," the Public Staff states that, tracking this language and utilizing the energy-only component of avoided costs would remove the capacity portion of the avoided costs from the bill credit, allowing that reduction to serve as a proxy for

the potential costs associated with long-term forecast risk and the integration costs associated with distributed generation.

2. GSA-specific solicitation: The Public Staff also suggests that the Commission consider directing Duke to conduct a GSA-specific market solicitation separate from its CPRE solicitation, with the market clearing price providing the basis for the bill credit for both market participants and self-supply options, assuming sufficient levels of participation. The Public Staff states that, under this option, customers participating in the GSA Program would receive a financial benefit if the bundled price they negotiated was below the GSA-specific market clearing price.

3. Actual Incremental Generation Costs: In this option, the Public Staff suggests consideration of an approach similar to that taken by Georgia Power with its REDI C&I initiative, in which the bill credit provided to participants is based on Georgia Power's actual hourly running cost of incremental generation per kWh, calculated on a monthly basis. There is no fixed rate, but the fixed formula applies for the entire term of the contract (up to 30 years). The Public Staff notes that the initial offering under the Georgia REDI C&I initiative was fully subscribed.

Finally, the Public Staff addresses comments of Apple and Google that emphasized the need for transparency or predictability to encourage market participants to participate in the program, including the ability to determine in advance the overall economics of a particular proposal. The Public Staff notes that the joint consumer statement of position filed by New Belgium Brewing, SAS Institute, Inc., Sierra Nevada Brewing Co., Unilever, and VF Corporation expresses a similar concern. The Public Staff acknowledges these concerns, but states that to the extent the certainty provided to potential GSA Program participants comes by increasing the risk to non-participating customers, the Public Staff does not believe that would be consistent with the statutory requirement that non-participating customers remain neutral as to the impact of the GSA Program.

In conclusion the Public Staff suggests that the Commission may wish to evaluate the levels of participation or feedback received from the market after the initial GSA Program offering and requests that the Commission consider the issues and other considerations raised in its comments.

DUKE'S REPLY COMMENTS, REVISED GSA RIDER TARIFFS, PROPOSED GSA SERVICE AGREEMENTS, AND PROPOSED GSA TERM SHEET

In its reply comments Duke first states that it designed the GSA Program to meet the express requirements of N.C.G.S. § 62-159.2, while also reflecting the State's broader renewable energy procurement framework enacted through House Bill 589. Duke states that it is fully supportive of delivering a GSA Program that meets the needs and goals of eligible customers, and have proposed "certain incremental modifications" in the proposed GSA Program in its reply comments to address recommendations made by the Public Staff and the intervenor-parties. More specifically, Duke proposes to "partially

open" the GSA Program within 60 days of Commission approval (prior to January 1, 2019, as originally proposed) to offer 10 and 15-year GSA service agreement options in addition to the two, five, and 20-year options initially proposed, and to modify the standard offer option to address the Public Staff's concerns related to the participation requirements that are different under the self-supply option. In addition Duke includes as an attachment to its reply comments a pro forma GSA Service Agreement and certain other documents that it states are designed to more fully inform interested GSA Program customers regarding participation requirements.

Duke then states that while it is taking these steps to modify the proposed GSA Program, it is also apparent from the comments filed in this proceeding that "a fundamental misalignment of expectations exists in terms of the purpose of the GSA Program." While Duke describes its proposed GSA Program as a "customer-directed sustainability program to procure incremental renewable energy," it views the intervenor-parties as seeking a cost-savings program that would allow large, sophisticated electric customers to "fix zero-risk long-term 'hedgies' of their energy supply at rates above" Duke's anticipated cost of procurement through the CPRE Program and based upon a bill credit "to be subsidized by nonparticipating customers." Duke states that it disagrees with this altered approach to implementation of the program and that it continues to support its proposed GSA Program as consistent with N.C.G.S. § 62-159.2, in particular, the requirement that nonparticipating customers be held neutral. Therefore, Duke requests that the Commission approve the GSA Program and associated tariffs as modified in its reply comments.

Duke then argues that the Commission must decide whether the GSA Program is a "sustainability program or a subsidy program." Duke views the comments submitted by the intervenor-parties as an argument that the proposed GSA Program "should be fundamentally restructured to facilitate hedging and arbitrage activities that deliver artificially-derived savings to" customers participating in the GSA Program and "above-market profits to" suppliers of renewable energy under the program. Duke further argues that because these benefits will necessarily be funded by nonparticipating customers, the threshold question, as described by Duke, for the Commission to resolve is one of legislative intent between two alternative views of the program:

- (1) to provide eligible GSA Customers with an opportunity to increase their commitments to renewable energy procurement without adversely impacting nonparticipating customers (as [Duke] proposes), or
- (2) to require nonparticipating customers to subsidize Eligible GSA Customers' hedging strategies based on an administratively-calculated, long-term fixed forecast of avoided cost up to 20 years in the future (as the [intervenor-parties] argue).

Expanding on its argument that the former view is the appropriate interpretation of the legislative intent underlying N.C.G.S. § 62-159.2, Duke argues that its approach to implementing the GSA Program is grounded in N.C.G.S. § 62-2(3a), providing that Duke plan for their customers' energy needs and operate their system to deliver reliable and affordable energy utilizing the "least cost mix of generation and demand-reduction measures." Duke then acknowledges that the General Assembly departed from this mandate in the enactment of the REPS in 2007, which contemplates charging Duke's North Carolina customers with the "incremental costs" of compliance above the utility's avoided cost, and costs below avoided costs treated as system supply costs used to serve all customers. Further, Duke argues that the establishment of the CPRE Program and the GSA Program with the passage of House Bill 589, and the subsequent implementation of these programs, represent an "integrated" approach to expansion of Duke's procurement of cost effective renewable energy resources. In addition Duke states that, like the REPS, the CPRE Program and the GSA Program contain "critical cost containment protections" in that N.C.G.S. § 62-110.8(b)(2) limits the CPRE Program procurement price at the utility's avoided cost and that N.C.G.S. § 62-159.2(e) requires that Duke's customers that are not participating in the GSA Program be held neutral from the impact of those who do participate. Duke then repeats many of the arguments made in its initial comments to support its view that the proposed GSA Program is compliant with the requirements of N.C.G.S. § 62-159.2, including holding nonparticipating customers neutral and allowing participating customers to negotiate pricing.

Duke next addresses the method for determining the bill credit paid to a customer participating in the GSA Program. Duke argues that the intervenor-parties' view that the bill credit should be established at or just below the utility's avoided costs and fixed throughout the term of the PPA seeks to transform the statute's cap on the bill credit amount into the bill credit itself, and ignores the competitively-established market data and price of renewable energy that is contemporaneously being procured by Duke through the CPRE Program. Duke further argues that establishing the bill credit in this manner creates an artificial price to beat and will allow for gaming of the program to provide participants guaranteed cost-savings. Duke uses the following example to illustrate its point:

20 Year Avoided Cost	\$57/MWh
GSA Bill Credit	\$57/MWh
Negotiated PPA Price	\$45/MWh
GSA Product Charge	\$45/MWh
GSA Weighted Avg. Price	\$42/MWh

From this example, Duke concludes that, because the GSA bill credit is recovered from all nonparticipating customers through the adjustment in rates authorized by N.C.G.S. § 62-133.2, the utility's nonparticipating customers pay the \$12 difference between the bill credit and the negotiated PPA price. Further, Duke concludes that the renewable energy supplier would benefit from selling at \$45/MWh rather than at a price established through the CPRE RFP Solicitation (represented in this example by the GSA weighted avg. price of \$42/MWh). Extending this example over 20 years and assuming that it

applies across the full 600 MW available under the GSA Program, Duke further concludes that the "over-payment by nonparticipating customers compared to the CPRE Program-procured solar could approach \$350 million over the 20-year term."

Duke then argues that the statutory framework established by the enactment of House Bill 589 does not support the use of a 20-year forecast of avoided cost rates to set the bill credit, in light of the changes made to N.C.G.S. § 62-156 (reducing the maximum term of the standard contract to 10-years for QFs with a generating capacity of 1 MW or less and reducing the maximum term of negotiated contracts to 5 years), and the enactment of the CPRE Program, which relies on competitive bidding rather than the traditional, administratively established avoided cost rates. In addition, Duke argues that the Commission's recent avoided cost orders likewise reject the use of a 20-year term in PURPA contracts. Finally, Duke again argues that establishing the GSA Program bill credit in a manner that is not based on the results of the CPRE RFP Solicitations would disadvantage nonparticipating customers in violation of N.C.G.S. § 62-159.2(e).

Duke next responds to NCCEBA's comments related to cost recovery for energy delivered under the GSA Program. Duke argues that NCCEBA's proposed alternative GSA Program would "effectively guarantee" that DEC and DEP would not recover the costs of implementing the GSA Program. Duke states that under NCCEBA's alternative program design, the bill credit paid to the GSA Program participant would equal the utility's avoided cost over the contracting period of the GSA PPA, while the bundled GSA PPA price would equal the price negotiated between the GSA Program participant and the renewable energy supplier. Duke then responds to NCCEBA's argument that its proposed alternative obviates the need to recover costs through the fuel factor because the GSA Program participant pays the full cost of the PPA. Duke argues that NCCEBA's view fails to recognize that the Bill Credit paid to the GSA Customer must be, and is authorized to be, recovered under amended N.C.G.S. § 62-133.2. Under Duke's proposed GSA Program, the "non-administrative/non-REC costs for energy and capacity to be recovered through N.C.G.S. § 62-133.2(a1)(11) will be equal to the GSA bill credit provided to the GSA Customer multiplied by the megawatt-hours generated by the GSA Facility during the annual fuel factor test period." Otherwise, Duke argues, the bill credit will go unrecovered.

Duke further argues that NCCEBA fails to recognize that the renewable energy facilities dedicated to the GSA Program will be system supply resources, delivering energy and capacity to serve Duke's North Carolina and South Carolina retail customers and wholesale customers. Under this arrangement, Duke intends to allocate the cost of the energy and capacity procured through the GSA Program, minus the standard offer REC value assigned to and recovered from the GSA Program customer, for recovery from all jurisdictions and customers. Duke further states that this approach is consistent with the manner in which Duke recovers all other purchased power expense today, including purchases made to comply with the REPS and purchases that were made under the Green Source Rider pilot in effect from 2013-2016. Duke then emphasizes that the provision included at N.C.G.S. § 62-133.2(a1)(11), authorizing Duke to recover "all nonadministrative costs related to the renewable energy procurement" under the

GSA Program that is not recovered from the GSA Program participants, is unique to North Carolina. In contrast Duke states that in South Carolina, Duke is authorized to recover only the equivalent to its purchased power costs from retail and wholesale jurisdictions. In conclusion, Duke states that it designed the bill credit under the proposed GSA Program to be equal to the unbundled GSA PPA price (under the self-supply option) or to the bundled renewable energy product price minus the REC value (under the standard option), to ensure "full cost recovery" and to ensure that customers not participating in the GSA Program are held neutral.

Duke next addresses the comments of the intervenor-parties and of the Public Staff related to its standard offer option under the proposed GSA Program. Duke's comments largely repeat and emphasize arguments made in its petition, describing the standard offer option as a "turnkey participation option." Duke argues that this option should be preserved as it accommodates eligible customers' varied preferences and resources. Duke further argues that nothing in N.C.G.S. § 62-159 prohibits linking the GSA Program to the CPRE Program. In response to concerns expressed by the Public Staff, Duke states that it has agreed to modify the standard option in two ways: first, to require that renewable suppliers under the standard option be required to separately bid the full cost of delivering their potential project (including grid upgrade costs) in addition to offering a proposal under the CPRE Program (where grid upgrade costs are not included in the initial proposal), and, second, by eliminating the requirement that self-supply option renewable energy facilities have completed a system impact study before an eligible customer can submit an application to participate in the GSA Program.

Duke then addresses arguments and concerns raised in the comments of the intervenor-parties and of the Public Staff related to the timing in the opening of the enrollment period for the proposed GSA Program. Duke first states that NCCEBA's concerns stem from a misreading of the proposed program design in that the restrictions NCCEBA perceived do not exist because once the self-supply option opens, it remains continuously open for the duration of the five-year GSA Program. Duke also states, in response to the Public Staff's comments, that it proposed January 1, 2019, as the opening of the enrollment window because it is after the completion of the Tranche 1 CRPE RFP Solicitation and to allow Duke to undertake "proper administrative and technical support for the Program." However, Duke further states that, if the Commission determines that January 1, 2019 is an undue delay in the opening of the GSA Program enrollment period, then Duke would support opening the enrollment period 60 days after the Commission approves the program, with a 5-year avoided cost rate serving as the bill credit for all customers participating in the GSA Program.

Finally, Duke explains its offer to include additional contract terms of 10 and 15 years under the self-supply option, and addresses various issues raised in the comments of the other parties. As modified, Duke proposes that the self-supply option offer customers two-, five-, ten-, fifteen-, and twenty-year contract terms, with the bill credit under the five-, ten-, and fifteen-year terms be set at the lesser of the negotiated PPA price or the five-year administratively-determined avoided cost rate, fixed for the duration of the service agreement. For the two-year term, the bill credit would be the

lesser of the negotiated PPA price or the Commission-approved two-year forecasted avoided cost rate, and, for the twenty-year term, the bill credit would be the GSA tranche weighted average price, minus the GSA REC value. Duke then addresses the other parties' comments related to bill credits and charges, and other features of the program design. These arguments are summarized above, and Duke's responses recited and emphasized arguments made in its petition, therefore, these comments will not be summarized again here. Lastly, the Commission notes that Duke included with its reply comments revised rider tariffs, service agreements, and a term sheet for the self-supply option.

AGREEMENTS AND STIPULATIONS AMONG THE PARTIES

On August 16, 2018, Duke filed its agreement and stipulation of partial settlement reached with Walmart. Duke states that its settlement memorializes its agreement with Walmart providing for an alternative self-supply bill credit mechanism based on the Duke utilities' marginal energy costs. Duke proposes that this bill credit mechanism "would be available to participating customers in addition to the Bill Credit options proposed in the Company's initial filing and reply comments." Duke further states that the concept behind this bill credit mechanism was mentioned by the Public Staff as a potential compromise solution and is substantially similar to the credit provided under Georgia Power's REDI C&I initiative.

On October 24, 2018, NCCEBA, UNC-Chapel Hill, and SACE filed an agreement and stipulation of partial settlement reached among these parties. These parties agreed among themselves to an "alternative bill credit" that would be fixed for a period up to ten years, and then "refreshed" based upon updated data for any GSA agreement that lasts longer than ten years. These parties agree that this alternative bill credit "strikes an appropriate balance between providing reasonable certainty to the participating customer regarding their electricity costs and ensuring that the projection of costs is accurate." These parties also identified the following other parties who did not join the agreement and stipulation, but who also do not object to the use of the alternative bill credit proposed therein: the Public Staff, NCSEA, and DoD/FEA.

ORAL ARGUMENT

On September 4, 2018, pursuant to the Commission's Order issued in these proceedings on July 16, 2018, this matter came on for oral argument. The parties reiterated and detailed their positions on the issues in controversy, consistent with the foregoing summary of the parties' comments. In addition counsel for Duke stated that it held discussions with the relevant stakeholders and agreed to the use of the Commission-approved five-year avoided cost rate, consistent with the five-year rate made available to QFs not eligible for the standard rate pursuant to N.C.G.S. § 62-156(c), with a "re-fresh," or recalculation of the rate based on updated data occurring at the end of every five-year period. Further, there was general agreement among the parties that the Commission is not required to, nor prohibited from, using a bill credit methodology based on the results of the CPRE RFP Solicitations, as proposed by Duke, or from using a bill credit methodology based on the Commission-approved avoided cost rates established

pursuant to N.C.G.S. § 62-156(b) (the standard contract under PURPA). The Commission found the session of oral argument helpful to resolving the disputed issues in these proceedings and appreciates the efforts that the parties undertook to participate in the oral argument.

DISCUSSION AND CONCLUSIONS

The Commission has carefully reviewed Duke's petition, Duke's proposed rider tariffs and related documents, the parties' comments, the transcript of the oral argument held on September 4, 2018, and the entire record in these proceedings. Based upon this review, the Commission recognizes that the parties have substantial disagreement over how nearly every aspect of how this program should be implemented. Their disagreement extends to issues that are fundamental to the structure of the program, and is of a tenor that makes any further discussions among the parties unlikely to be fruitful. Therefore, the Commission will deny the pending requests to require a stakeholder process for discussion of a redesigned program. Further, because the Commission determines that there is sufficient information and arguments before it to define the issues in these proceedings, and because the Commission will require Duke to make significant revisions to its GSA Program filings, the Commission will deny NCCEBA's request to allow sur-reply comments or additional oral arguments in this matter. In short, it is left to the Commission to resolve the disputed issues and determine the appropriate means of implementing the GSA Program in a manner consistent with the requirements of N.C.G.S. § 62-159.2.

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). The fundamental issue before the Commission is what program structure and features best effectuate the legislative intent underlying the enactment of N.C.G.S. § 62-159.2.

In addressing this question, the Commission finds it helpful to make reference to the evolution of the State's energy policy, as cited by Duke in its reply comments. The policy of this State is for electric public utilities to produce and deliver energy using the "least cost mix of generation and demand-reduction measures." N.C.G.S. § 62-2(3a). Historically, utilities' obligations to purchase renewable resource-supplied energy was an exception to this general policy. For example, in 2007, the General Assembly enacted the REPS, requiring Duke, among others, to meet an escalating percentage of their North

Carolina retail electric sales from renewable energy sources or to reduce energy demand through the implementation of demand-side management or energy efficiency programs. See N.C.G.S. § 62-133.8. At the time, electricity generated from renewable resources was more expensive than the costs a utility would otherwise incur under the least-cost mandate, and, therefore, the REPS authorized the recovery of “incremental costs” to comply with the REPS; that is, costs that are in excess of the utility’s avoided costs. N.C.G.S. § 62-133.8(h)(1)(a). As with the GSA Statute, the REPS did not define “avoided costs,” leaving the resolution of that question to the Commission. See Order Adopting Final Rules, pp. 37-42, Docket No. E-100, Sub 113 (2008).

In November 2017, in Docket No. E-100, Sub 148, Duke filed cost data and proposed changes to the rates, terms, and conditions for the purchase of electricity from QFs. These filings demonstrated that 60% of all QF projects in the nation were located in North Carolina, and alleged a significant risk of overpayment for electric power supplied by renewable energy facilities based on the position that there is an inherent risk of inaccuracy in avoided cost rates based on forecasted cost data over long-term periods.¹⁷ The Commission presumes that the General Assembly was aware of these filings and of the Commission’s order in Docket No. E-100, Sub 140 during its deliberations on House Bill 589. The Commission recognizes that House Bill 589 was enacted as a response to this perceived imbalance in the market for QF-supplied power and to changing customer attitudes toward renewable energy, intended to (1) introduce measures of market forces to set the rates, terms, and conditions for Duke’s purchases of energy and capacity supplied by renewable energy facilities and to reduce reliance on Commission-established rates; (2) establish programs that require Duke to continue procuring energy and capacity supplied by renewable energy facilities beyond what they would be required to do pursuant to the REPS requirements; and (3) allow Duke’s customers to have more choice about how Duke procures the energy it needs to serve these customers. In addition, and indicative of the intended meaning of “avoided cost” for purposes of the GSA Statute, it is now understood that it is possible for Duke to procure such energy below the price established by the “Commission-approved avoided cost methodology.” See N.C.G.S. § 62-110.8(b)(2).

The Commission concludes that the GSA Statute was enacted to further these goals, with an emphasis on Duke’s additional obligations to purchase renewable energy and capacity, and on the eligible customers’ ability to choose how Duke procures that energy and capacity. Thus, the Commission generally agrees with Duke’s argument that House Bill 589 was intended to evolve the State’s energy policy. In addition, the Commission finds it appropriate to incorporate features of market forces into the GSA Program, where practicable, and of the Commission’s PURPA implementation, where necessary, to further the broad intent underlying the enactment of House Bill 589. Further, the Commission concludes that the appropriate structure of the GSA Program should attract participation from the eligible customers, because, as many of the parties have

¹⁷ See Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC’s Joint Initial Statement and Exhibit, at 27, Docket No. E-100, Sub 148 (Nov. 15, 2016).

argued, the General Assembly did not intend to establish a program that would be unsuccessful in attracting participation from eligible customers.

At the outset, the Commission acknowledges that many parties support their contentions by arguing what they maintain the General Assembly intended by authorizing the GSA Program. The Commission finds many of these arguments unpersuasive. While the Commission understands that the GSA Program and House Bill 589 resulted from a collaborative process, it is apparent to the Commission that the stakeholders have come away from the process with widely disparate views of what the General Assembly intended. Consequently, unless the General Assembly's intentions found their way into the wording of the statute, the Commission cannot rely on stakeholders' representations of what these intentions are. Likewise, parties make many assertions that what Duke has proposed is inconsistent with the statute or even unlawful.¹⁸ Most of the assertions of "inconsistency" or "unlawfulness" lack support. For example, Duke has requested certain tie-ins in integrating the GSA Program into the CPRE Program addressed elsewhere in House Bill 589. The Commission finds nothing unlawful or fundamentally inconsistent in what Duke proposes. The requested tie-in is neither prohibited nor authorized. Rather, it is for the Commission, in its discretion, to approve or disapprove these recommendations.

Fundamentally, many parties argue that the terms of the GSA Statute require the ability of the subscribing customers to have the ability to "hedge" or to enhance profitability by participating. The Commission finds no explicit language in the statute containing such a requirement. The Commission's willingness to authorize implementation of the statute to facilitate this result must be based on the General Assembly's "implied" intent that customers subscribe and the fact that the previously available green source mechanism failed to attract sufficient customers.¹⁹ At the same time, the Commission must be mindful of the express provisions of the GSA Statute that "avoided costs" are the ceiling for the subscribing customers' bill credit, and not the floor, and that Duke's non-participating customers are to be neither advantaged nor disadvantaged by participation of eligible customers. When, hypothetically, the renewable generator sells renewable power to Duke under the must buy provisions of the GSA Program at \$X when Duke has no intent to build new generation or enter into contracts to purchase additional wholesale power and when the credit Duke provides the subscribing customer is \$X + 10, Duke and NCEM make a forceful and persuasive argument that non-subscribing customers will have to bear responsibility for the "\$ 10."²⁰

¹⁸ See, e.g., NCCEBA April 20, 2018 Reply Comments, p. 7, footnote 3, "As noted by NCCEBA, the Public Staff, and others, Duke's proposed Standard Offer GSA Option blatantly violates the GSA Program Statute . . ."

¹⁹ See Final Report on Implementation of Pilot Program, p. 2, Docket No. E-7, Sub 1043 (filed Mar. 20, 2017) (stating that DEC entered into agreements with three customers, for a total of 192,868 MWh and that an additional project will come online in July 2017 with approximately 10,500 MWh, and that this represents 20% of the annual aggregate cap (1,000,000 MWh) for customer participation.

²⁰ The provisions of HB 589 authorizing the GSA cannot be divorced from other provisions of the legislation limiting the "must take" provisions under PURPA. The standard offer entitlement is circumscribed, and the term of negotiated PPAs is limited to five years. Were the Commission to authorize

The Commission finds the provisions of the GSA Statute difficult to reconcile, the arguments of the parties in many respects less than helpful, and, consequently, seeks to exercise its discretion to implement its Order in compliance with the statute to the best of its ability. Thus, after careful consideration of the entire record in this proceeding, the Commission concludes that the General Assembly has delegated to the Commission the discretion to structure the GSA Program in a manner consistent with the intent supporting House Bill 589 and the specific mandates of the GSA Statute by striking an appropriate balance between the risks and benefits to participating customers, renewable energy facility owners, and the utility enterprises. The Commission exercises this discretion subject to two specific directives that have broad implications for implementing a GSA Program that complies with the GSA Statute. First, all nonparticipating customers are to 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). Second, the bill credit received by participating customers “shall not exceed [the] utility’s avoided cost.” *Id.* As reflected in the following, other specific directives included in the GSA Statute guide the Commission’s resolution of discrete issues in controversy. In doing so, absent specific direction included in the plain language of the statute, the Commission’s approval of the modifications to the GSA Program rely upon the sound discretion of the Commission, informed by its expert judgement and its experience in the regulation of electric public utilities.

With this background, the Commission now addresses two disputed issues related to the broad legislative intent of the GSA Statute: (1) the extent to which the GSA Program and the CPRE Program are integrated, if at all; and (2) the establishment of an appropriate proxy for the value of the energy and capacity procured through the GSA Program. At the oral argument, no party argued that any other party’s proposals for implementation of the statute is unlawful.

Duke argues that the GSA Program and the CPRE Program are part of an “integrated renewable energy procurement plan,” citing the provision of N.C.G.S. § 62-159.2(d), whereby unsubscribed capacity available under the GSA Program will be reallocated to the CPRE Program if any portion of the 600 MW available under the GSA Program is unsubscribed. The other parties disagree with Duke’s view, arguing that the GSA Program stands on its own, separate and apart from the CPRE Program, notwithstanding this reallocation provision. These parties argue that the GSA Program should not incorporate the features of the CPRE Program, and instead advocate for the incorporation of features akin to the Commission’s implementation of PURPA, such as long-term rates that are based on the Commission-established avoided cost rates.

The Commission concludes that neither interpretation of the provisions of the GSA Statute is prohibited in light of the express language of the GSA Statute, which neither requires, nor forbids, the use of features of the CPRE Program or of PURPA implementation, in the administration of the GSA Program. However, the Commission, in

long-term must take PPAs into the GSA Program at fixed rates, these actions would be inconsistent with HB 589 viewed in totality.

its discretion, does not agree that Duke's proposed integration of the CPRE Program should be authorized. Consistent with the comments of the Public Staff, the Commission concludes that as the General Assembly did not require the two programs to be implemented complementarily, and as implementation in this fashion poses difficulties in administration, the Commission declines to approve it. The Commission's determination is supported by several considerations. First, the provision of N.C.G.S. § 62-159.2(d) that would reallocate the capacity available under the GSA Program to the CPRE Program did not expressly create the linkage Duke sees, but provides some measure of certainty that Duke would achieve the legislative goal of procuring an additional 3,300 MW of renewable energy-supplied energy and capacity through the following programs established by the enactment of House Bill 589: CPRE Program (2,660 MW), GSA Program (600 MW), and Community Solar (40 MW). Second, the GSA Program and the CPRE Program both are established by statutes that provide for robust administrative structures and include features unique to each program. Third, as the Public Staff argues, the CPRE Program and the GSA Program have different timeframes and purposes, a consideration that takes on additional import in light of the delays experienced in implementing the CPRE Program and the present uncertainty about the results of the Tranche 1 CPRE RFP Solicitation. In short, the Commission determines that building the GSA Program into the CPRE Program framework in the way Duke proposes, while not expressly prohibited under the GSA Statute, is (1) difficult to administer for practical and administrative reasons related to the timing of the CPRE RFP Solicitations; (2) unnecessary given the structure of the GSA Program set out in the GSA Statute; and (3) unjustified by the provisions that reallocate unused GSA Program capacity to the CPRE Program at the end of the 5-year GSA Program. Therefore, the Commission will direct Duke to revise its proposed GSA Program to remove the program features that relied on the integrated implementation of the GSA Program and the CPRE Program.

The most complex and contested issue in this proceeding is how to establish a bill credit that serves as a proxy for the value of the energy and capacity procured through the GSA Program. The Commission's determination of the appropriate bill credit to be received by participating customers is at the heart of implementing the General Assembly's directive that all customers not participating in the GSA Program 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). The bill credit is also the mechanism through which a participating customer is compensated for the energy and capacity procured on its behalf. Thus, properly established, the bill credit should provide an economic incentive for eligible customers to participate in the GSA Program. While not burdening non-participating customers with costs that they otherwise would not incur, Duke's proposed bill credit for the longer-term agreements is based on the results of the CPRE RFP Solicitations. The other parties have generally argued for the use of Commission-established avoided cost rates, fixed over a long-term period, as the basis for the bill credit. In addition, the Public Staff presents three alternative recommendations for establishing the bill credit: (1) a bill credit based on energy only; (2) establishment of the bill credit based on a competitive solicitation specific to the GSA Program; and (3) the use of actual incremental generation costs, similar to the approach taken by Georgia Power with its REDI C&I Initiative. Further, the Walmart Settlement proposes an additional alternative, using a bill credit based on hourly incremental

generation costs, as determined on a day-ahead basis. This, as Duke explained at the oral argument, differs from the Georgia Power's REDI C&I Initiative in that the Georgia Power initiative is based on actual cost data on a day-behind basis. After the oral argument and in response to Commission questions, Duke filed an explanation that the day-ahead basis aligns with Duke's real-time pricing tariffs and is administratively less burdensome because the data used are already generated for the purposes of those tariffs. All of the parties generally agree that each bill credit methodology proposed in this proceeding is permissible under the GSA Statute.

The Commission agrees with the Public Staff that N.C.G.S. § 62-159.2(e) authorizes the Commission to determine the appropriate basis for the bill credit to be received by the GSA Customer, while also ensuring that all other (non-participating) customers are held neutral, neither advantaged nor disadvantaged from the impact of the GSA Program, the only specific limitation being that the bill credit may not exceed the utility's avoided costs. As noted above, the avoided costs are a ceiling, not a floor. The Commission weighed several factors in determining the appropriate bill credit, including: (1) how the bill credit reduces reliance on the long-term fixed rates based on forecasted costs, as is consistent with the broad intent of House Bill 589; (2) that the bill credit does not exceed the utility's avoided cost, and is an accurate proxy for the value of the energy procured through the GSA Program, thereby holding non-participating customers harmless; and (3) whether the bill credit has the potential to attract participation from eligible customers. The latter factor weighed heavy in the Commission's consideration of these issues, particularly in light of some parties' predictions that unless the bill credit is calculated in a certain manner, the GSA Program, as proposed by Duke, would be largely un-subscribed or under-subscribed. The Walmart Settlement and the Wells Fargo consumer statement of position demonstrate that Duke's proposed bill credit methodologies would be accepted by some eligible customers. The remaining questions are whether Duke's proposed bill credit methodology would exceed the relevant utility's avoided cost and hold nonparticipating customers neutral, as required by N.C.G.S. § 62-159.2(e).

In these proceedings and in others, much time and effort have been devoted to discussing the Commission's administratively-established avoided cost rates. The two alternative views are that these rates are inherently inaccurate over the long-term, and that administratively established avoided cost rates are, as a matter of law under PURPA, assumed to be the point where the utility is indifferent to purchasing power from a QF or another source, or generating power itself.²¹ The Commission recognizes that both arguments have support; however, the Commission need not resolve this debate to establish a GSA Program that will comply with both the express requirement of the GSA Statute to hold nonparticipating customers neutral and the implied requirement to attract participation from eligible customers. It is sufficient that the Commission strike an

²¹ See, generally, Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, pp. 16-18, Docket No. E-100, Sub 148 (2017). However, the Commission, as addressed above, recognizes that House Bill 589, including the GSA Statute, display an intent on the part of the General Assembly to introduce an element of competitive pricing into the procurement of renewable energy and to reduce reliance on PURPA, which contains a "must purchase" requirement for investor-owned utilities in purchasing a QF's electric output.

appropriate balance between the risk of inaccurate price forecasting that is inherent in the administratively-established avoided cost rates that are fixed for the long-term, and the risk inherent in a rate based upon cost data that cannot be fully known today.

The Commission first determines that the General Assembly did not define the words “avoided cost” in the GSA Statute, but in this Order the Commission will use the term as it is understood and implemented through N.C.G.S. § 62-156(c). Thus, for the bill credit options based on the Commission’s implementation of PURPA, the Commission expects the utility to “design [the bill credit] rates consistent with the most recent Commission-approved avoided cost methodology” and to use “up-to-date data in determining the inputs for negotiated avoided cost rates,” updated at the time of the submission of the GSA Service Agreement.²²

The Commission, in its discretion, determines that two bill credit methodologies proposed in this proceeding strike the appropriate balance called for in the GSA Statute: 1) Duke’s proposal to use an avoided cost rate methodology that would apply to contracts made pursuant to N.C.G.S. § 62-156(c) and make such rate available for two- and five-year term GSA Service Agreements, with a refresh of that rate every five years thereafter under longer-term GSA Service Agreements; and 2) the use of hourly, marginal cost data to determine the bill credit, under a formula that is fixed for the term of the GSA Service Agreement, as proposed under the Walmart Settlement.

The following considerations support the Commission’s conclusion that the use of a 2-year avoided cost rate methodology that would be available under contracts made pursuant to N.C.G.S. § 62-156(c) is appropriate for use in determining the GSA bill credit. First, this bill credit determination mitigates almost entirely the risk of inaccurate price forecasts, because the data that produces this rate are relatively current, in the sense that there is minimal lag time between the utility submits the cost data and proposed rate methodology to the Commission for review and approval, and updating of that cost data at the time of the establishment of the rate through the execution of the GSA Service Agreement and PPA. Second, the 2-year rate roughly coincides with the timing of the Commission’s biennial avoided cost proceedings, meaning the rate methodology would reflect the Commission’s evolving implementation of PURPA. Third, the 2-year rate is shorter in duration than the period the General Assembly concluded is appropriate for a negotiated contract under PURPA. See N.C.G.S. § 62-156(c) (allowing for a negotiated PURPA contract up to 5 years). While not dispositive, the Commission finds persuasive the parties’ arguments that this congruence is appropriate based on the recent amendments to N.C.G.S. § 62-156(c), which are generally understood to be an attempt to mitigate the risk of inaccuracy of long-term avoided cost rates. Therefore, the Commission will approve the use of the 2-year avoided cost rate, as agreed to by Duke and as supported by the Public Staff, as a basis for calculating the GSA Bill Credit. In the compliance filing required by this Order, the Commission will require Duke to address with specificity the timing of the establishment of the rate in light of the need to use updated cost data as inputs to the Commission-approved rate methodology.

²² See N.C.G.S. § 62-156(c) and Order of Clarification, Docket No. E-100, Sub 140 (2015).

Similar considerations support the determination that use of a 5-year avoided cost rate methodology that would be available under contracts made pursuant to N.C.G.S. § 62-156(c) is appropriate for use in determining the GSA bill credit. While a 5-year term slightly increases the risk of “staleness” in cost data (because there is a longer lag time between the update to the cost data that are inputs to the rate methodology at the time of the execution of the PPA or GSA Service Agreement and the conclusion of the term of the fixed rate), the Commission concludes that the congruency with the 5-year term provided for in recently amended N.C.G.S. § 62-156(c) supports use of a 5-year term. In addition, the approval of this five-year term is supported by the comments submitted by Duke and the Public Staff. Further, the Commission will approve the use of Duke’s proposed five-year reset under the ten-, 15-, and 20-year terms to be made available under the GSA Program. This five-year reset will mitigate the impact of the staleness of long-term fixed rates, consistent with the intent supporting House Bill 589.

The Commission also determines that the GSA Program should include an alternative option for calculating the bill credit based on the utility’s marginal hourly cost data, as proposed in the Walmart Settlement. The Commission recognizes the arguments made by a number of the parties in favor of a long-term, fixed bill credit amount based on the Commission-established avoided cost rates, as providing a measure of certainty for participating customers and renewable energy facility owners. However, the Commission determines that such a bill credit would be inconsistent with the broad legislative intent supporting the enactment of House Bill 589, including the reduced emphasis on long-term fixed rates. Moreover, to the extent that these arguments rest on PURPA’s mandate to provide QFs a reasonable opportunity to obtain financing, these arguments are misplaced because there is no similar mandate under the GSA Statute. Furthermore, the GSA Statute is part of House Bill 589, which expressly reduces both the availability and the maximum term of the standard offer contract under PURPA and limits the term of negotiated PPAs under PURPA to five years. Walmart’s commitment to avail itself of such a program through its settlement with Duke is sufficient to rebut the arguments that structuring the bill credit based on hourly cost data would result in a significantly lower level of participation in the GSA Program than the 600 MW authorized through the GSA Statute. Finally, the Commission is persuaded by the additional information provided in Duke’s response to Commission questions that this bill credit option should be forward-looking, rather than retrospective. Therefore, the Commission will approve the Walmart Settlement and require Duke to make this bill credit option generally available to eligible customers.

The Commission bases its approval of the Walmart Settlement on the following understanding of the explanation included with the filing accompanying the Walmart Settlement: (1) that the GSA Service Agreement is a three-party agreement between (a) DEC or DEP, (b) the GSA Customer, and (c) the GSA renewable energy facility; (2) that the GSA customer will negotiate a levelized \$/MWh price with the GSA renewable energy facility to set the GSA Product Charge; (3) that the PPA between DEC or DEP and the GSA renewable energy facility will include a price term that reflects the applicable marginal hourly rate formula set out in the Walmart Settlement; (4) that Duke will assign to the GSA renewable energy facility its right to receive the GSA Product Charge payment from the GSA customer; (5) that the GSA renewable energy facility will assign to the

GSA Customer its right to receive payment under the PPA, which payment is determined by the applicable hourly marginal rate formula and shall be equal to the GSA Bill Credit. In this manner, the GSA Bill Credit payment is passed-through Duke from the GSA renewable energy facility to the GSA Customer, and the GSA Product Charge is passed-through Duke from the GSA Customer to the GSA renewable energy facility. As discussed throughout this Order, this arrangement complies with the requirements of N.C.G.S. § 62-159.2, and will be required under both bill credit options. Although the Walmart Settlement then contemplates “additional amounts” that may be payable by Duke to the GSA renewable energy facility, during period when the PPA price (the price based on the applicable marginal hourly rate formula) is less than the GSA Product Charge (the price negotiated by the GSA Customer with the GSA renewable energy facility), it is not clear to the Commission that this additional payment is permissible under the GSA Statute. To the extent that this provision creates ambiguity as it is inconsistent with the explanation Duke provided, the Commission resolves this ambiguity on the basis of the foregoing understanding of Duke’s explanation, because the Commission assumes that the parties would not have proposed an additional, but undefined, payment that would call into question whether the Walmart Settlement complies with the GSA Statute.

Finally, and as further discussed below, the Commission notes that a number of the parties have argued in favor of the availability of a bill credit option that is fixed up to ten years, and which is based upon Commission-approved avoided cost rates. As with other proposed bill credit methodologies that the Commission has declined to approve, the Commission chooses not to authorize this option. While this option is not strictly prohibited by the GSA Statute, the Commission finds it to place the non-participating customers at too great a risk of overpayment in contradiction of the express requirement that they be held “neutral, neither advantaged, nor disadvantaged.” Upon examination of the evolution of state energy policy, including the advent of the GSA Program and the other changes enacted through House Bill 589, the Commission is unwilling to require the availability of a bill credit that is fixed for a term that is longer than the five years authorized in the implementation of PURPA for QFs not eligible for the standard contract. The rationale for making available a ten-year fixed rate for the GSA credit, as the Commission understands it, is to support the opportunity to obtain financing of the renewable energy facility project, which supports PURPA’s mandate to encourage QFs.²³ While the bill credit is the item at issue, the term of the credit is inextricably tied to the term of the PPA entered into by the renewable generator with respect to which the credit is offered. Historically, in its implementation of PURPA, the Commission has implemented the requirement of a term length enabling favorable financing terms by requiring the relevant utilities to offer standard contracts that include long-term levelized rates that are fixed for five, ten, or 15 years.²⁴ This Commission determination, among others, has been criticized by some as imposing unreasonable costs on ratepayers. In House Bill 589, the General Assembly reduced the maximum length of the standard offer contract available

²³ See Windham Solar LLC & Allco Fin. Ltd., 157 FERC ¶ 61,134 (Nov. 22, 2016).

²⁴ See Order Setting Avoided Cost Input Parameters, pp. 19-22, Docket No. E-100, Sub 140 (2014).

pursuant to the State's implementation of PURPA to ten years (eliminating the availability of the 15-year term), limited the availability of the standard offer contract to projects with a generating capacity of 1 MW or less (reducing the Commission-established threshold from 5 MWs) and limited the maximum length of the negotiated contracts available to those projects that do not qualifying for standard offer to five years.²⁵ While one objective of limiting the term of negotiated PURPA eligible PPAs to five years arguably was to drive QF developers into the CPRE Program, that fact in no way undercuts the conclusion that the General Assembly viewed with disfavor long-term fixed rates based on administratively-determined avoided costs. The CPRE Program is itself an alternative that reduces the risk to ratepayers that is inherent in long-term fixed rates that are based on forecasted price data. The theory behind the CPRE Program is that competition will drive down the price paid to QFs below the administratively determined avoided costs. Moreover, participation in CPRE Program is limited in MWs eligible and duration of the program, and includes the right to dispatch and control the electric output from facilities participating in the CPRE Program. In contract, the five-year limit for negotiated QF PPAs is unlimited in capacity available, exists into perpetuity (absent a change in federal law), and requires the utility to take and purchase the electric output from the QF without regard to the traditional least-cost, economic dispatch model.

As explained above, the Commission understands the use of the term "avoided cost" in the GSA Statute as it is understood and implemented through N.C.G.S. § 62-156(c), the PURPA negotiated contract. It would be inconsistent with the recent amendments to N.C. Gen. Stat. § 62-156(c) to require the availability of a bill credit under the GSA Program (a non-PURPA context) that is longer than five years, when the Commission understands that House Bill 589 is a departure from the traditional implementation of PURPA, which includes the express requirement to provide a reasonable opportunity to obtain financing of QF projects. Therefore, the Commission chooses not to approve the availability of a bill credit under the GSA Program that is fixed for longer than five years.

PURPA, enacted in 1978, requires the incumbent electric utility to buy power generated by a QF at a price based on the costs incurred to build and operate a unit the utility would build and operate but for its purchase from the QF. Such purchases are required whether or not the utility actually would build that unit or not. PURPA is a must purchase statute. According to FERC, the PPA with the QF under PURPA should be of sufficient length to enable the QF to obtain reasonable financing. Historically, one difficulty with PURPA has been that the long-term fixed rates established at the time the QF obtains a legally enforceable obligation seldom equals the actual price a utility would pay for procurement of electric power 10 years later. Often this results in the utility paying too much to the detriment of its ratepayers. In North Carolina, the proxy plant upon which administratively determined avoided costs are based has been a natural gas burning combustion turbine. Subsequent to the availability of shale gas, the price of natural gas has dropped precipitately. This result, from what was then an unanticipated and unknowable development in the marketplace, typifies the type of risk inherent in

²⁵ See N.C. Gen. Stat. § 62-156(b)(1) and (c).

establishing long-term, fixed rates based on estimated avoided costs, and likely resulted in utilities purchasing power at rates substantially in excess of their actual avoided costs.²⁶

Moreover, unlike the combustion turbine, solar QFs have no fuel costs, so the PURPA theoretical proxy fails to measure the solar QF's actual costs. Also, unlike the combustion turbine, historically solar generation output is dependent on sunshine, making it intermittent, largely non-dispatchable, and unlikely to generate on system peak.

Consequently, historically long-term fixed administratively-determined PURPA avoided costs rates have posed substantial risks to ratepayers. The longer the required PPA term under PURPA or the GSA Program, the greater the likelihood that the payments will be out of line with the subsequently experienced avoided costs and the greater the risk to ratepayers. The fundamental requirement of the GSA Statute is that the credit be structured to "ensure that all other customers are held neutral, neither advantaged, nor disadvantaged." In the Commission's view, long-term fixed-rate credits based on avoided costs cannot be adequately reconciled with this fundamental requirement.

In summary, the Commission concludes that these bill credit options are consistent with the requirement in N.C.G.S. § 62-159.2(e) that nonparticipating customers be held neutral, because each methodology relies on updated or nearly real-time cost data and offer either a rate that is fixed for two or five years, or a rate formula that is fixed for up to twenty years, and that these bill credit options are structured to ensure that the bill credit will not "exceed the utility's avoided cost," as is required under the GSA Statute.

Availability

The availability section of Duke's proposed riders reflect that the GSA Program is available to major military installations, the University of North Carolina, and nonresidential customers with either a contract demand (i) equal to or greater than one MW, or (ii) multiple service locations that, in the aggregate, is equal to or greater than 5 MW, as required by N.C.G.S. § 62-159.2(a). The availability section also reflects the requirements of N.C.G.S. § 62-159.2(d), namely, that the program shall be offered for a period of five years, or until December 31, 2022, whichever is later, shall be limited to 600 MW of total capacity, and shall provide reserved capacity of 100 MW for major military installations, and 250 MW for The University of North Carolina. Further, as is also consistent with N.C.G.S. § 62-159.2(d), the availability section provides that any unsubscribed amount of that reserved capacity shall, at the end of the first three years of the program, be added to the 250 MW of remaining available capacity and made available to the other eligible customers. The Commission determines that the provisions of N.C.G.S. § 62-159.2 related to customer eligibility and the availability of the GSA Program are unambiguous, and that Duke's proposed rider provisions related to the same are consistent with the plain language of the statute. Therefore, subject to the following discussion, the Commission determines that these provisions should be approved.

²⁶ It is altogether possible that in the future natural gas prices will rise. Should that occur, avoided costs rates would likely increase as well. Authorizing periodic adjustments to the GSA credit should be beneficial to participating GSA customers.

The other parties to these proceedings have objected to the following provision in the availability section of Duke's proposed riders: Duke's proposal to allocate the 250 MW of capacity that is "unreserved" under the GSA Program between DEC and DEP based upon the load-ratio share between DEC and DEP's commercial and industrial customer classes. Duke's proposed riders identify 160 MW to be made available to DEC customers and 90 MW to be available to DEP customers. Duke supports its proposal through its reply comments, stating that the proposed allocation is not prohibited by the GSA Statute, is reasonable based on the load ratio share of the two utilities, and is designed to provide an equitable allocation to allow fair participation opportunities for customers served by both utilities. NCCEBA, NCSEA, SACE, and Apple and Google have questioned whether there is a statutory basis for this proposed allocation and suggest that the unreserved capacity be available across both utilities on a first-come, first-served basis. In its initial comments, the Public Staff stated that it does not take exception to Duke's proposed allocation of the unreserved capacity across the two utilities.

The Commission agrees with Duke that the proposed allocation of unreserved capacity is not expressly authorized, nor prohibited, by the GSA Statute, leaving the resolution of this question to the discretion of the Commission. The Commission determines that Duke has articulated a reasonable basis for the proposed allocation method and that the Public Staff having found no reason to object to this proposed allocation lends support to deferring to Duke's business judgment on this issue. The other parties' objections, based on a lack of express authorization under the GSA Statute are not persuasive. The Commission, therefore, will approve the proposed allocation of unreserved capacity between DEC and DEP. However, the Commission further concludes that this issue, among others in these proceedings, deserves monitoring with regard to the impact on participation by both utilities' customers, and, therefore, 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 eligible customers.

Directed Procurement of GSA Facilities

The section of Duke's proposed riders titled, "Direct Procurement of GSA Facilities," outlines the basic structure of Duke's proposed GSA Program as allowing eligible customers to direct DEC or DEP to procure renewable energy and to obtain the RECs "generated by a GSA Facility or portfolio of GSA Facilities." Duke first proposes to require that a participating renewable energy facility be located in either North Carolina or South Carolina within the service territory of the respective utility that serves the participating customer's premises. Duke next proposes its "standard offer" (facilities selected through a competitive solicitation) and "self-supply" (facilities that are either Duke-developed, or subject of a negotiated agreement by the participating customer) options, and details the requirements of both options, including that the owner of the respective renewable energy facility enter into a PPA with the utility. This section of the proposed riders relies heavily on Duke's view that the GSA Program is "integrated" with the CPRE Program.

The other parties generally object to this portion of the proposed riders, contending that it is contrary to the requirements of N.C.G.S. § 62-159.2(b). They argue that this section is inconsistent with the requirements of N.C.G.S. § 62-159.2 in two ways: (1) that the proposed program does not “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,” and, (2) that the proposed program does not “allow eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity.” N.C.G.S. § 62-159.2(b). In addition, NCSEA specifically objects to the requirement that GSA renewable energy facilities be located in DEC or DEP’s respective service territories in North Carolina or South Carolina, and in the same service territory as the participating customer’s premises, or multiple premises if the customer is aggregating its load to meet the eligibility threshold.

The Commission agrees that N.C.G.S. § 62-159.2 expressly requires standard contract terms and conditions for both participating customers and the participating renewable energy facilities, meaning fill-in-the-blank forms used to express the terms of the agreement between Duke, its customer, and the renewable energy facility owner. Duke initially did not file the standard forms, and the other parties complained about the lack of opportunity for review and comment. Duke has since filed a proposed GSA PPA, GSA Service Agreement, GSA Term Sheet, and other related documents with the Commission, but the other parties have not had a meaningful opportunity to present arguments related to these documents. The Commission generally agrees with the positions of the other parties, and, thus, will also direct Duke to include revised versions of these documents in the compliance filing required by this Order. This directive recognizes that, because this Order requires Duke to make substantial changes to its proposed program, a detailed review of these documents at this time would be an unproductive effort.

The parties also disagree on whether Duke’s proposed riders are consistent with the directive that the GSA Program “application shall allow eligible customers to select the new renewable energy facility from which the utility procures energy and capacity on behalf of the participating customer.” See N.C.G.S. § 62-159.2(b). The Commission disagrees that Duke’s proposed standard offer option is not authorized by the GSA Statute because eligible customers subscribing to that option cannot choose their renewable energy supplier. The Commission determines that this reading of the statute, advanced in support of the objections to the standard offer option, is too narrow and restrictive and may tend to limit participation by eligible customers without the sophistication and wherewithal to select their own renewable energy supplier. This result, or course, makes more of the 600 MW of the GSA Program set aside available for customers without these limitations. The requirements of the statute are broad enough to permit eligible customers to authorize Duke to select a renewable energy supplier for them. Any eligible customer wishing to self-select its supplier is free to do so and not elect the standard offer option. However, as no party to this docket representing those potentially interested in participating in the GSA Program, including the Public Staff and

the AGO, expresses any support for this standard option, the Commission for the moment at least, will refrain from approving it.²⁷

Under the remaining “self-supply option,” as proposed by Duke, the customer can choose to have Duke procure energy and capacity from a facility that Duke develops, or from a facility that the customer has negotiated with regarding the price of the energy and capacity. This ameliorates the alleged short-coming of the standard offer, and complies with the requirements of N.C.G.S. § 62-159.2(b) in that the customer is empowered to “select the new renewable energy facility from which the utility procures energy and capacity on behalf of the participating customer.” However, other parties have criticized this option as well, on the basis that the participating customer is provided an “unbundled REC” and nothing more (some of this criticism is targeted at the proposed rate design, which is addressed below). The Commission, in its discretion, agrees with this criticism because the fundamental economics of the transaction under Duke’s proposed self-supply option is a negotiation for the sale of RECs, through a separate contractual arrangement between the participating customer and the GSA renewable energy facility. In this sense, the eligible customer is denied the opportunity to “negotiate with renewable energy suppliers regarding price terms” for the procurement of energy and capacity supplied by the renewable energy facility selected by the eligible customer. While the language in N.C.G.S. § 62-159.2(b) does not expressly provide for negotiation regarding the price for renewable energy and capacity, the Commission concludes that its determination is in accord with the GSA Statute. Therefore, while the basic concept of the self-supply option is one the Commission will require Duke to retain, the Commission will require Duke to revise the structure of the self-supply option, consistent with the conclusions reached in this Order. In rejecting this option the Commission will remain open to receiving from Duke a proposed REC-purchase program similar to that proposed as the standard offer, separate and apart from the GSA Program.²⁸ The revised structure of the self-supply option should empower the eligible customer to negotiate a price with the renewable energy facility the customer has selected, which sets the GSA Product Charge as part of the three-party agreement for participation in the GSA Program, consistent with the basic structure proposed in the Walmart Settlement.

Finally, the Commission recognizes that NCSEA has identified a proposed limitation on the participating customer’s ability to select the new renewable facility in that Duke has proposed a requirement that the facility be located in North Carolina or South Carolina, within the same utility service territory as the customer’s premises. The Commission determines that Duke has articulated a reasonable basis for these

²⁷ While some commenters predict that insufficient interest in the GSA Program as proposed by Duke will materialize to make the program successful, these same commenters advocate positions limiting the potential participation by some customers without the wherewithal to utilize the self-select option.

²⁸ On November 20, 2018, in Docket Nos. E-2, Sub 1190; E-7, Sub 1185; and E-100, Sub 90; DEP and DEC filed a request for approval of proposed Renewable Advantage Riders and modifications to the existing NC GreenPower Program. In its filings, Duke describes the proposed Renewable Advantage Rider as a “new voluntary program allowing residential and non-residential (small business) customers to purchase RECs to offset all or a portion of their electrical consumption.” That matter is pending before the Commission.

requirements related to the siting of new renewable energy facilities, namely, that the facility will serve all DEC or DEP customers in both North Carolina and South Carolina, as “system assets.” As with other issues in these proceedings, the lack of express statutory authorization for Duke’s proposed requirement is not persuasive, because the resolution of this issue lies in the discretion delegated to the Commission through the GSA Statute.

Application Process and GSA Service Agreement

The section of Duke’s proposed riders titled “Application Process and GSA Service Agreement,” outlines Duke’s proposed procedures for eligible customers to apply to participate in the GSA Program, and for memorializing the terms of an eligible customer’s participation in the GSA Program. First, Duke proposes that an eligible customer be required to submit an application during the GSA Program enrollment window and request an annual amount of renewable capacity to be developed or procured on the customer’s behalf, subject to the limitation established in N.C.G.S. § 62-159.2(c) (providing that the contracted amount of capacity shall be limited to no more than 125% of the maximum annual peak demand of the eligible customer premises). Duke proposes that the application require the eligible customer to indicate whether the customer is requesting that Duke develop a facility for the customer’s participation in the Program, or whether the eligible customer is electing to participate under the standard offer option or self-supply option, and to identify the customer’s requested length of contract term for participation in the Program (as originally proposed, Duke would require designation of a two-, five-, or twenty-year contract term; however, in its reply comments, Duke agreed to include ten- and fifteen-year options).

Duke’s proposed program would also require that the application be accompanied by the payment of a \$2,000 application fee, which fee would be nonrefundable, except where the application is rejected because the GSA Program already reached its full available capacity. Duke’s proposes that applications be accepted on a first-come-first-served basis based on the date and time of the receipt of the application and application fee. Duke’s proposed application process would also require eligible customers electing to participate through the self-supply option to provide a “term sheet” executed by the eligible customer and the renewable energy supplier, which shall identify the renewable energy supplier and provide other information about the facility, and to make payment of a capacity reservation bond in the appropriate amount as determined according to the methodology under the CPRE Program. Finally,²⁹ this section of the proposed riders would require the eligible customer to execute a GSA Service Agreement and return it to Duke within 30 days of delivery to the eligible customer.

This section of the proposed riders, with the exception of the issue of calculating the GSA bill credit, is largely administrative and non-controversial. However, NCSEA and

²⁹ This section also provides for Duke, after review of the customer’s application and completion of an RFP to inform the customer of the applicable GSA Bill Credit based upon the results of the CPRE RFP Solicitation. The Commission addresses Duke’s proposed rate design below and, therefore, omits discussion of this issue here.

NCCEBA objected to Duke’s proposed “enrollment window” concept as not supported by the GSA Statute and as unnecessarily restricting the ability of eligible customers to participate. In addition, NCSEA and other parties criticized the restricted offerings of contract terms. The Commission understands that Duke’s basis for proposing an enrollment window is to coordinate the timing of the close of a CPRE RFP Solicitation, with the need to identify the applicable GSA Bill Credit that is based on the results of the CPRE RFP Solicitations.³⁰ As discussed above, the Commission has chosen not to approve Duke’s proposed integration of the CPRE Program with the GSA Program. The Commission determines that the proposed enrollment window is unnecessary in light of that decision and the related determination of the appropriate bill credit options that Duke must offer. The Commission, therefore, will require Duke to revise this section of the proposed riders consistent with these conclusions.

In response to comments submitted by other parties, Duke, in its reply comments, agreed to offer two-, five-, ten-, fifteen-, and twenty-year term options for participation in the GSA Program under the bill credit option that is based on the Commission-approved avoided cost rate methodology. The Commission determines that Duke’s proposed additional contract term lengths appropriately responds to the concerns expressed by the other parties. Therefore, the Commission will approve Duke’s proposed contract term options of two-, five-, ten-, fifteen-, and twenty-years for use in that bill credit option. Under the bill credit option based on hourly, day-ahead production data, as proposed in the Walmart Settlement, the customer could elect to participate for a term of any number of years up to the 20-year limit provided in the GSA Statute. The Commission determines that this is also appropriate and should be made generally available as an alternative bill credit option. The two options with the varying term lengths provides sufficient flexibility for the eligible customers’ participation in the GSA Program.

GSA PPA Rates and Terms

The section of Duke’s proposed riders titled “GSA PPA Rates and Terms” details Duke’s proposal that the GSA PPA (i.e., the contract for the sale of the output from the GSA renewable energy facility to Duke) delivered to the GSA renewable energy facility will be “in substantially the same form as the PPA approved for the CPRE Program procurement.” Significantly, this affords Duke the authority to dispatch, operate, and control the GSA renewable energy facility in the same manner as the utility’s own generating resources, consistent with the authority afforded to Duke under the CPRE Program. See N.C.G.S. § 62-110.8(b). The other parties object to the inclusion of these provisions, based upon a lack of statutory support.

The Commission is not persuaded that importing this feature of the CPRE Program is appropriate for the GSA Program, and, therefore, in its discretion, determines not to approve it. The CPRE Program is unique in providing this authority to the utility, and the

³⁰ The Commission notes that Duke clarified in its reply comments that the opportunity for eligible customers to “enroll” in the program is available throughout the existence of the GSA Program, but the “applicable” bill credit amount would change based on the results of the most recently concluded CPRE RFP Solicitation. Thus, Duke responds to NCSEA by stating that the participation restrictions NCSEA perceives do not exist.

Commission is unwilling to extend such authority to the GSA Program. Instead, for the reasons articulated by the Public Staff, the Commission determines that the rights of the utility to dispatch and control the output of a GSA renewable energy facility should be more similar to those rights provided for in dealings with QFs that are not eligible for the utility's standard contract. Therefore, the Commission will require Duke to revise the GSA riders and PPA terms and conditions to reflect this conclusion. These terms and conditions shall include the right to order a GSA renewable energy facility to dispatch-down or fully curtail its output when the utility is faced with a system emergency. See, e.g., Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, pp. 7-8 and 78-83, Docket No. E-100, Sub 148 (2017). Consistent with the Public Staff's comments, the Commission will also require Duke to include instances of dispatch-down instructions or curtailment as applied to GSA renewable energy facilities in the similar reports required for other renewable energy facilities.

This section of Duke's proposed riders also addresses the "contract price" paid by Duke to the GSA renewable energy facility. Consistent with the Commission's decision to not approve the CPRE Program linkage proposed by Duke, the Commission similarly determines not to approve Duke's proposed contract price that would be based on the capacity-weighted average of all proposals selected through a CPRE RFP Solicitation or, for shorter-term agreements, on the lesser of the utility's avoided cost rate or the price negotiated between the eligible customer and the renewable energy facility owner. The Commission determines that the eligible customer shall be allowed to negotiate with the renewable energy suppliers regarding the price terms. Again, the Commission has chosen not to link the implementation of the GSA and CPRE Programs. When reading subsection (b) of the GSA Statute together with subsection (e) (providing that the total cost of the renewable energy and capacity procured on behalf of the eligible customer shall be paid by that customer, in addition to the customer's "normal retail bill," and that the electric public shall pay the owner of the renewable energy facility), 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.

Renewable Energy Credits

The section of Duke's proposed tariffs titled "Renewable Energy Credits" sets out Duke's proposed treatment of RECs under the GSA Program. For self-supply customers, Duke proposes that the value of the RECs shall be negotiated and agreed to through a REC purchase agreement between the eligible customer and the renewable supplier. Under this arrangement, Duke would not be responsible for procuring, delivering, or

transferring RECs to the eligible customer. Above, the Commission required Duke to make changes to its self-supply option that are unrelated to the treatment of RECs. The Commission now determines, consistent with the Walmart Settlement, that the GSA renewable energy supplier shall transfer all RECs earned by the facility to the GSA Customer. Thus, the GSA Program shall provide for a “bundled PPA” in which the cost of the REC will be included in the energy and capacity price negotiated by the GSA customer with the renewable energy supplier, and provide for the transfer of RECs to Duke and then to the GSA customer. To implement this aspect of the GSA Program, renewable energy facilities participating in the GSA Program must be registered as new renewable energy facilities pursuant to Commission Rule R8-66, and must participate in NC-RETS or another REC tracking system to facilitate the issuance of RECs. The Commission will, therefore, require Duke to incorporate registration of renewable energy facilities as a requirement for renewable energy facilities participating in the GSA Program, and otherwise revise this section of its proposed riders to reflect the foregoing conclusions.

Monthly Rate

The section of Duke’s proposed tariffs titled “Monthly Rate” sets out the key economic terms of the proposed GSA Program: the charges that a participating customer must pay and the bill credit that the participating customer is entitled to receive. Under Duke’s proposed monthly rate, the GSA Customer’s monthly rate or charges would be the “amount computed under the GSA Customer’s primary rate schedule and any other applicable riders,” plus the sum of the GSA Product Charge, GSA Bill Credit, and the GSA Administrative Charge. Duke supports its proposed monthly rate with a detailed explanation of the calculation of these charges and credits, and with legal and policy arguments. The other parties generally object to the use of the results of a CPRE RFP Solicitation to establish the GSA Bill Credit, and have offered alternative rate designs. The Commission determines that the basic structure of Duke’s proposed monthly rate is appropriate because it reflects the requirement of N.C.G.S. § 62-159.2(e) that “in addition to the participating customer’s normal retail bill, the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer shall be paid by that customer.” The Commission will now address each of the individual proposed charges and credits.

First, the Commission concludes that Duke has proposed an appropriate definition of the GSA Product Charge under the Walmart Settlement.³¹ The GSA Product Charge shall be an amount expressed in dollars that is equal to the energy produced by the GSA Facility in the prior billing month (expressed in kWh or MWh) multiplied by the fixed rate for the power purchased from the renewable energy supplier (expressed in \$/kWh or \$/MWh), as specified in the GSA Service Agreement. The “fixed rate for the power purchased from the renewable energy supplier” shall be the rate that the participating customer negotiated and agreed to with the renewable energy supplier that the

³¹ As addressed above in the discussion of the PPA Rates and Terms, the Commission will require Duke to alter the inputs that determine the GSA Product Charge to ensure that the participating customer is able to negotiate the price term with the renewable energy supplier that it has selected, as required by N.C.G.S. § 62-159.2(b).

participating customer selected. Reflecting the plain language of N.C.G.S. § 62-159.2(b), the participating customer shall be permitted to negotiate the price term with the renewable energy supplier it has selected. As also addressed above, the GSA Product Charge shall be collected from the participating customer by Duke, and then remitted to the renewable energy supplier, in a manner consistent with the assignment proposed in the Walmart Settlement. This implements the requirement of N.C.G.S. § 62-159.2(e) that the electric public utility “pay the owner of the renewable energy facility which provided the energy.” In summary, the GSA Product Charge shall be a monthly charge to the participating customer that is equal to the price the customer would have paid directly to the renewable energy supplier under a negotiated contract for the sale of the electric output of the facility, with the only difference being that Duke shall collect the GSA Product Charge and remit the same amount to the renewable energy supplier.

Second, the Commission notes its determination of the appropriate bill credit options above. The Commission recognizes the arguments made by a number of parties in favor of a long-term, fixed bill credit amount based on the Commission-established avoided cost rates, particularly as it relates to providing a measure of certainty for participating customers and renewable energy facility owners. However, the Commission determines that such a bill credit would be inconsistent with the intent supporting the enactment of House Bill 589, including the reduced emphasis on long-term fixed rates. Moreover, to the extent that these arguments rest on PURPA’s mandate to provide QFs with a reasonable opportunity to obtain financing, these arguments are misplaced because there is no similar mandate under the GSA Statute. Thus, the Commission determines not to agree with arguments presented in favor of a ten-year fixed bill credit, as exemplified in the stipulation between NCCEBA, UNC-Chapel Hill, and SACE, and in favor of a 20-year fixed bill credit, as advocated by NCSEA. The Commission also recognizes that the establishment of the bill credit is critical to attracting participation among the eligible customers, and, therefore, is at the heart of establishing a successful GSA Program. However, the Commission is not persuaded that a bill credit fixed for longer than five years is necessary to attract participation in the program, or that the bill credit methodology proposed under the Walmart Settlement (under which the methodology is fixed, but the credit itself will vary as marginal costs change) will go wholly unsubscribed or even significantly under-subscribed. Moreover, unlike under the implementation of PURPA, where long-term, fixed rates support the ability of QF projects to obtain financing,³² there is no similar mandate in the GSA Statute. In addition, the General Assembly has directed the Commission to limit the term of PURPA negotiated contracts to five years. See N.C.G.S. § 62-156(c). As discussed above, the Commission determines that it would be anomalous to approve a negotiated GSA option for greater than five years when the GSA Program is part of the same legislation limiting PURPA negotiated PPAs to five years. Based upon these considerations, the Commission will not require Duke to offer a GSA Program bill credit that is fixed for longer than five years at this time. The Commission will, however, monitor participation in this program and remain open to revisiting this issue in the future.

³² See Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, pp. 34-39, Docket No. E-100, Sub 148 (2017).

Third, the Commission determines that Duke's proposed GSA Administrative Charge is appropriate and should be approved. Under Duke's proposed program, the GSA Administrative Charge is defined as the applicable monthly administrative charge of \$375 per customer account, plus an additional \$50 charge per additional account billed. No party raised an objection to the proposed GSA Administrative Charge, and Duke represents in its comments that the proposed charge was based on Duke's costs for administering the program. The Commission concludes that these proposed charges are reasonable and should be approved.

General Provisions

The section of Duke's proposed riders titled "General Provisions" includes miscellaneous provisions regarding the terms of participation in the program. This section provides that the participating customer provide security as required in the GSA Service Agreement and that the Duke utilities will not be liable to the participating customer in the event that the renewable energy facility does not produce energy as required or expected. This section also addresses procedures for termination or default on the GSA Service Agreement.

The Commission has reviewed Duke's proposed GSA Service Agreement, and will withhold approval of that agreement, with regard to the financial security provisions of Article 11 of the GSA Service Agreement. Pursuant to N.C.G.S. § 62-159.2(c), Duke is directed to "establish reasonable credit requirements for financial assurance that are consistent with the Uniform Commercial Code of North Carolina." Duke has not demonstrated how Article 11 of the GSA Service Agreement is consistent with the Uniform Commercial Code of North Carolina, nor does the GSA Service Agreement or Duke's comments reference Chapter 25 of the North Carolina General Statutes. While none of the other parties objected to the security provisions, the Commission is not prepared to approve these provisions where the record fails to demonstrate that these provisions meet the express requirement of the GSA Statute. Therefore, the Commission will direct 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."

Remaining Issues

1. Cost Recovery

The complexity of the issues involved in establishing the GSA Program rate design, including the bill credit, and the vigorous opposition to Duke's initial proposed GSA Program, encompass disagreements about what costs Duke is entitled to recover pursuant to amended N.C.G.S. § 62-133.2(a1)(11). Duke proposes that it be allowed to recover the cost of energy and capacity generated or delivered by all GSA Program facilities, which shall be equal to the GSA bill credit multiplied by MWhs generated by GSA facilities. Duke supports this proposal by arguing that because the bill credit for energy delivered under the GSA Program is equal to or below the utility's avoided cost, non-participating customers will be held neutral. NCCEBA, and other parties, objected to

this proposal based on their view that the proposed program is cost-contained, meaning all costs are recovered from the participating customers, and, thus, there are no non-administrative costs to be recovered through N.C.G.S. § 62-133.2(a1)(11).

In resolving this issue, the Commission finds helpful the arguments of counsel for Duke and counsel for the Public Staff at the oral argument. These arguments clarified Duke's proposal that GSA renewable energy facilities will be "system assets," meaning that the energy delivered to Duke will be dispersed throughout the electric system and will serve all retail customers. In other words, the electrons generated by the GSA renewable energy facilities and procured under the GSA Program may not, and need not, be delivered to the participating customer for consumption at that customer's premises. For purposes of implementing a GSA Program that complies with the requirements of the GSA Statute, it is sufficient that the amount of energy generated by the GSA renewable energy facility is metered, and that the bill credit is appropriately established to ensure that all non-participating customers are held neutral and that the bill credit does not exceed the utility's avoided costs. Viewed in this light, and as stated by counsel for the Public Staff, the bill credit as determined by the Commission is "basically the price that [Duke] would be paying for that additional power being added as a system resource." Tr. Vol. 1, p. 159. In this manner, the nonparticipating customers will bear the costs of the electric power delivered to the Duke utilities, but the cost that they will bear is approximately the same as they would have paid in the absence of the electric power procured under the GSA Program. This, the Commission determines, ensures that all nonparticipating customers "are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable energy procured on behalf of the program customer." N.C.G.S. § 62-159.2(e).

The Commission, therefore, anticipates that Duke will seek recovery of the non-administrative costs related to the GSA Program not recovered from program participants, as authorized by N.C.G.S. § 62-133.2(a1)(11). While the Commission agrees with counsel for Duke that there is a "real cost" to be recovered, the Commission finds that the parties have not addressed with sufficient precision how to account for these costs in the fuel cost recovery proceeding. The Commission expects that Duke's application for cost recovery will demonstrate the following:

1. That customers participating in the GSA Program continue to pay their "normal retail bill," requiring that the participating customer continue under an appropriate rate schedule generally available to nonresidential customers;
2. That Duke has collected a GSA Administrative Charge equal to \$375 per customer account per month, plus an additional \$50 per month per additional account, from each customer participating in the GSA Program. The revenue from collecting this administrative charge recovers the program administrative costs, including expenses for manual billing;

3. That Duke has collected a GSA Product Charge from each customer participating in the GSA Program, and that the GSA Product Charge is equal to the price negotiated between the participating customer and the owner of the GSA renewable energy facility (expressed in \$/MWh, fixed for the term of the PPA) multiplied by the amount of energy delivered to Duke by the GSA renewable energy facility (expressed in MWh). The revenue collected by Duke as the GSA Product Charge shall ultimately be paid to the relevant GSA renewable energy facility.
4. That Duke has paid a GSA Bill Credit each month, to each participating customer. For customers that elect to participate through a GSA Service Agreement with a two- or five-year term, the bill credit shall be based on the most recently approved avoided cost rate methodology applicable in the PURPA negotiated contract setting, fixed for the full two- or five-year term of the agreement, and multiplied by the amount of energy delivered to Duke by the relevant renewable energy facility. For customers that elect to participate through a GSA Service Agreement that has a term longer than five years, the bill credit will be based on the most recently approved avoided cost rate methodology applicable in the PURPA negotiated contract setting, refreshed after five years to reflect the then-most recently approved avoided cost rate methodology applicable in the PURPA negotiated contract setting. Alternatively, the bill credit will be based on the marginal hourly production cost data, consistent with the methodology proposed in the Walmart Settlement for any length of term. In either case, the applicable rate will be multiplied by the amount of energy delivered to Duke by the relevant renewable energy facility to arrive at a bill credit expressed in dollars. Duke shall present the total of all bill credit payments in the relevant test period as the amount sought to be recovered through N.C.G.S. § 62-133.2(a1)(11).

In addition, and in recognition that these proceedings are focused on establishing a GSA Program that complies with the GSA Statute, the Commission will be open to further recommendations from the Public Staff regarding its needs for auditing the GSA Program costs that Duke seeks to recover through N.C.G.S. § 62-133.2(a1)(11), and for presenting appropriate recommendations to the Commission in the relevant proceeding for recovery of fuel and fuel-related costs.

2. Interconnection Application Status and Payment of Costs

Duke initially proposed to use the CPRE Program to identify and select projects for the Standard Offer under the GSA Program and to require renewable energy facilities participating in the GSA Program to have completed the system impact study under the North Carolina Interconnection Procedures (NCIP). After receipt of the other parties' comments, and in particular those of the Public Staff, Duke revised its proposal in two ways. First, Duke proposes to require that renewable energy facilities participating in the GSA Program "separately bid the full cost of delivering their potential project (including potential grid upgrades)" as a measure of mitigating the concern of bias toward a standard

offer option that does not capture “grid upgrade costs.” Second, Duke proposed to revise the GSA Program by eliminating the requirement that the participating renewable energy facilities must have completed the system impact study before submission of an application by an eligible customer.

For the following reasons, the Commission is not prepared to address these issues at this stage in these proceedings. First, the Commission’s determination that the integration of the CPRE Program and the GSA Program is inappropriate will require Duke to substantially alter its proposed approach to evaluating and collecting grid upgrade costs within the GSA Program. Second, after the parties filed their comments in these proceedings, the Commission approved interim modifications to the NCIP to accommodate the CPRE Program Tranche 1 RFP Solicitation, and expressed an intent to consider changes to the treatment of grid upgrade costs under the CPRE Program. Third, the Commission is in the process of considering broader modifications to the NCIP, and has scheduled a hearing for January 28, 2018, for that purpose. See Docket No. E-100, Sub 101.

However, the Commission will provide the following guidance to Duke and the other parties for approaching these issues in these proceedings and in Docket No. E-100, Sub 101. For the purposes of interconnecting GSA Program renewable energy facilities, the Commission shares the Public Staff’s preference for the “traditional approach” of assigning all interconnection costs to the GSA Program customer and/or the GSA renewable energy facility. Unlike the CPRE Program, where there is guidance to market participants about where to locate their proposed renewable energy facilities to minimize grid upgrade costs, the GSA Program does not provide the same feature. Further, where the “total cost of any renewable energy and capacity procured” on behalf of the GSA Program customer, including the relevant interconnection costs or grid upgrade costs, “shall be paid by that customer” considerations of who pays these costs are resolved by the plain language of the GSA Statute. Finally, under the GSA Program there is no statutory limit on the price that the eligible customer can agree to in its negotiations with the owner of a renewable energy facility participating in the GSA Program. Thus, the Commission is not tasked with monitoring or enforcing considerations of cost-effectiveness under the GSA Program in the same way as under the CPRE Program, because the limit placed on the bill credit, not to exceed the utility’s avoided cost, provides a cost-effectiveness measure under the GSA Program. Further, the Commission recognizes that Duke must provide the eligible customer with information regarding the interconnection costs and/or grid upgrade costs fairly attributed to accommodating the renewable energy facility selected by the GSA customer relatively early in the GSA Program application process. Although Duke states that it has revised the GSA Program design to address the Public Staff’s comments by eliminating the requirement to complete the system impact study, it is not clear to the Commission when the GSA Program customer and its selected renewable energy facility will be informed about these costs. Therefore, the Commission will require Duke to address these issues with more specificity through its compliance filing required by this Order.

3. Continued Market Based Revenues

Duke proposes that it be authorized to recover costs for any Duke-owned renewable energy facility developed for and participating in the GSA Program on a “market-based recovery,” after the initial term of the GSA Service Agreement expires. This proposal is similar to the recovery method expressly authorized under the CPRE Program by N.C.G.S. § 62-110.8(g). In support of its proposal, Duke argues that both third-party owned facilities and utility-owned facilities “should be given an equal opportunity to recover market based revenues after” the initial agreement concludes, at a rate that does not exceed the Companies’ then-prevailing avoided cost rate established pursuant to N.C.G.S. § 62-156. The other parties have not specifically addressed this issue.

The Commission understands that Duke’s proposed market-based recovery follows naturally from Duke’s misplaced view that the CPRE Program and the GSA Program are integrally linked. For reasons discussed above, the Commission does not agree with the view that the two programs should be linked in the way Duke proposed. The Commission also disagrees that Duke’s proposal for market-based recovery beyond the term of the GSA agreement should be approved. The recovery allowed under N.C.G.S. § 62-110.8(g) is extraordinary in the context of the economic regulation of public service companies, which are generally entitled to recover the costs of service, plus a reasonable return on capital invested to serve the utility’s customers. The Commission finds no compelling justification for departing from the general rule in this case.

4. Concerns of the University of North Carolina and Major Military Installations

The University of North Carolina and the State’s Major Military Installations are granted special status under the GSA Statute by provisions that require reservation of 100 MW for Major Military Installations and 250 MW for the University of North Carolina. UNC-Chapel Hill and DoD/FEA have argued that they are in a unique position as taxpayer-funded entities with purposes that are different than the for-profit nonresidential customers that are also eligible to participate in the GSA Program. UNC-Chapel Hill and DoD/FEA present these arguments to support their view that the appropriate bill credit would be based on the rates established by the Commission in biennial avoided cost proceedings, with the bill credit being fixed for up to ten years, with a reset based on the Commission’s more recently approved avoided cost rates under longer term GSA service agreements.

While the General Assembly expressly addressed these entities’ eligibility, by reserving a discrete portion of the GSA 600 MW set aside, the GSA Statute does not distinguish the economic terms on which these entities would be allowed to participate in the GSA Program. Thus, participation of the University of North Carolina or the Major Military Installations in the GSA Program is subject to the General Assembly’s instruction that all nonparticipating customers be “held neutral from the impact of the renewable electricity procured on behalf of the program customer.” As discussed throughout this Order, the bill credit methodologies proposed by UNC-Chapel Hill and DoD/FEA would not reflect the utility’s avoided costs as precisely as the methodologies approved in this

Order, raising the potential for cost-shifting between customers or overpayment by Duke when purchasing power on behalf of all customers. Therefore, the Commission will not approve a separate set of economic terms for these eligible customers at this time, but will direct Duke to continue discussions with these eligible customers and report to the Commission on whether an alternative rate design can be agreed upon. Such an alternative should be generally consistent with the conclusions reached in this Order and should attract a commitment to participate in the GSA Program by these eligible customers.

IT IS, THEREFORE, ORDERED as follows:

1. That the Walmart Settlement filed in these proceedings on August 16, 2018, shall be, and is hereby, approved;

2. That the Agreement and Stipulation of Partial Settlement filed in these proceedings on October 24, 2018, shall be, and is hereby, rejected;

3. That within 45 days of the date of this Order, DEC and DEP shall make a compliance filing in these dockets, requesting Commission approval of a revised GSA Program that complies with the conclusions reached in this Order. That filing shall consist of revised rider leaflets, GSA Service Agreements, GSA Program PPAs, and any other documents that Duke proposes to use in the administration of the GSA Program. That filing may also include a narrative explanation of the revisions to aid the Commission and the parties in determining whether the revised program complies with the requirements of this Order and may identify any additional issues that arise in the required restructuring of the Program;

4. That within 60 days of the date of this Order, all parties may, and the Public Staff shall, provide comments for the sole purpose of aiding the Commission in determining whether the revised GSA Program complies with the requirements of this Order, responding to any additional issues identified by Duke, and addressing whether the GSA Service Agreements, GSA Program PPAs, and any other documents on which the parties have not had opportunity to comment, comply with this Order; and

5. That within 70 days of the date of this Order, Duke may file reply comments in response to those comments; and

6. The Commission will proceed appropriately upon receipt of the compliance filing and the parties' comments.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of February, 2019.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "M. Lynn Jarvis". The signature is written in a cursive style with a large initial "M" and a prominent "J".

M. Lynn Jarvis, Chief Clerk

Commissioner Daniel G. Clodfelter concurs.

Commissioner Charlotte A. Mitchell concurs in part.

Commissioner ToNola D. Brown-Bland concurs in part, and dissents in part.

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

Commissioner Daniel G. Clodfelter, concurring:

Although I concur in the Commission majority's opinion, I also believe that the proposal advanced by Commissioners Mitchell and Brown-Bland to permit an additional bill credit option based on the Commission's determination of the utility's energy-only avoided cost, fixed for a term of ten years, is not an unreasonable one. Like the majority, however, I am of the view that the legislative mandate in G.S. 62-159.2(e) requiring the Commission to administer the program in a manner that neither advantages nor disadvantages non-participating customers counsels the selection of a shorter, rather than a longer period, in establishing the fixed bill credit allowed to program participants. It may prove that Commissioners Mitchell and Brown-Bland turn out to be correct that the use of the five-year full avoided cost to establish the amount of the bill credit will be insufficient to attract the participation of some who are interested in the program, but the Commission always retains the ability to monitor the responses of interested parties and take appropriate action, if needed, in the future.

/s/ Daniel G. Clodfelter

Commissioner Daniel G. Clodfelter

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

Commissioner Charlotte A. Mitchell, concurring in part:

I write separately to indicate that, in addition to the bill credit options approved by the majority, I would approve a bill credit option based on the utility's avoided energy costs, calculated using the Commission's most-recently approved avoided cost methodology, fixed for a term of ten years.

While I agree with the majority's sentiment that establishing the bill credit was the contested issue and is the most complex issue in this proceeding, the comments and statements received from eligible customers indicate that the bill credit is critical, perhaps the most critical, to their participation in the program. However, the statutory directive that non-participating customers be neither advantaged nor disadvantaged from the impact of the electricity procured on behalf of participating customers is clear and unambiguous and must be read to limit the credit offered to participating customers. Striking the appropriate balance between providing eligible customers with an option that will afford participation in the program and holding non-participating customers harmless will dictate the success of the program contemplated by the plain language of the statute.

At the outset, it is worth noting that the large energy customers eligible to participate in the program constitute a diverse group with varied energy preferences, load profiles, corporate or institutional goals and risk tolerances. I am persuaded that an arrangement that may enable participation in the program for one eligible customer may not work for another eligible customer. Thus, in approving this program, the Commission must endeavor to accommodate this diversity to the extent possible within the clear directives set forth in the statute.

Presumably, the bill credit as set forth in the Walmart Settlement and approved by the Commission, will afford participation in the program by the customers that participated in the settlement effort. In addition, the majority approves a bill credit option calculated using the utility's full avoided cost for a maximum term of five years, with a refresh of the credit every five years thereafter through the end of the term of the contract with the renewable energy supplier. Whether a five year credit will afford participation by eligible customers remains to be seen. The Commission did not hear from any eligible customer that a five year bill credit calculated using the Commission-approved avoided cost methodology would be sufficient to enable participation in the program. The Commission did hear from certain eligible customers, including the public institutions specifically identified in the statute, that these parties need certainty over a reasonable period of time regarding the costs they will incur as a result of participating in the program and that a five year time horizon does not provide that certainty. See, e.g., Tr. P. 73, ll 4-8 (arguing that a bill credit term of 10 years would attract participation by the University of North Carolina).

Additionally, a statement filed by New Belgium Brewing, SAS Institute Inc., Sierra Nevada Brewing Co., Unilever and VF Corporation emphasizes the need for “long-term price stability”. Perspective of Potential Green Source Advantage Business Participants, February 23, 2018, p. 2. A statement provided by Davidson College, Duke University and Wake Forest University includes this same emphasis. NCSEA’s Initial Comments, Attachment B, February 23, 2018.

Perhaps most significantly, the Public Staff recognized that, while a bill credit term up to the maximum PPA term allowed by the statute would involve inappropriate risk to non-participating customers, a bill credit term of 10 years would be appropriate. The Public Staff noted that:

While G.S. 62-159.2(b) provides that the standard terms and conditions available to renewable energy suppliers under the GSA Program “shall provide a range of terms between two years and 20 years from which the participating customer may elect,” it does not require the Commission to fix the bill credit for the same term as the contract between the renewable energy supplier and the utility. To the extent that renewable energy suppliers and GSA participants agree to maximum length PPAs with terms longer than 10 years, the Public Staff believes that utilizing a fixed bill credit of an equivalent length would result in non-participating customers facing overpayment and underpayment risk for the same reasons considered in the 2016 Avoided Cost Order, thereby violating the neutrality concept required by G.S. 62-159.2(e).

Reply Comments of the Public Staff, pp 7-8. Thus, the Public Staff recommended that the bill credit should be equal in length to the term of the contract between the renewable energy supplier and the utility but, in no case, longer than 10 years. Reply Comments of the Public Staff, p. 9. The Public Staff noted that while this recommendation reflects a longer term than would otherwise be available for a negotiated contract for a qualifying facility (QF) greater than 1 MW, it is equivalent in length to the maximum term for QFs eligible for the standard offer.

Therefore, I conclude that a bill credit term of 10 years is more likely to enable participation in the program by certain customers—including those public institutions identified in the statute and for which 350 MW of the total 600 MW is specifically set aside in the statute—than a shorter term.

As to the issue of how the bill credit should be calculated, I agree with the Public Staff’s recognition that calculating the credit using the Commission-approved avoided cost methodology is consistent with the neutrality requirement of the statute. Specifically, the Public Staff noted that the properly established avoided cost rates would make the purchasing utility “indifferent” to the source of electric output, which is comparable to the “neutrality” requirement in the statute with regard to the impact of the program on non-participating customers. Reply Comments of the Public Staff, pp 6-7. On this issue, the Public Staff observed that a bill credit calculated using the Commission-approved avoided

cost methodology would be appropriate if the term of the bill credit is limited to 10 years. Reply Comments of the Public Staff, p. 9.

As an alternative to calculating the bill credit using the utility's full avoided cost, the Public Staff offered the following bill credit option to better ensure that nonparticipating customers are neither advantaged nor disadvantaged by the GSA Program:

Bill Credit Based on Energy Only: G.S. 62-159.2(e) provides that the "[t]he program customer shall receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed [the] utility's avoided cost." (emphasis added). Tracking this statutory language, utilizing the energy-only component of avoided costs would remove the capacity portion of avoided costs from the bill credit, allowing that reduction to serve as a proxy for the potential costs associated with long-term forecast risk and the integration costs associated with distributed generation.

Reply Comments of the Public Staff, pp 10-11.

As recognized by one of the parties to the proceeding, "[t]he longer the horizon used, the greater the risk that the projection of the costs that the utility would otherwise incur will be inaccurate." NCCEBA's Amended Post-Hearing Comments, September 21, 2018, p. 9. Because I conclude that a 10-year term is likely necessary to enable participation in the program by certain eligible customers, I would have approved the alternative recommendation of the Public Staff to calculate the bill credit based on the utility's avoided energy cost to mitigate the risks inherent to forecasting costs.

Consistent with the recommendation of the Public Staff, following the initial term of the bill credit, I would allow a second 10-year term, recalculated using then current avoided cost data.

For these reasons, I would go farther than the majority and would have approved the option of an avoided energy-only bill credit, fixed for a term of up to 10 years, which I find strikes the appropriate balance called for under the statute, particularly as it relates to providing a necessary measure of certainty for certain eligible customers that are identified in the statute and that have expressed to the Commission a desire to participate in the program.

/s/ Charlotte A. Mitchell

Commissioner Charlotte A. Mitchell

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

Commissioner ToNola D. Brown-Bland, concurring in part and dissenting in part:

The Commission approved DEC's Rider GS (Green Source Rider) pilot program in December, 2013. The program was proposed to enable certain nonresidential customers to elect to displace all or a portion of the energy supplied for the customer's new load with procurement of power (energy and capacity) from renewable energy sources. The pilot program provided for bill credits to participating customers based on the DEC's avoided cost model. However, the program limited such credits to an amount equal to the cost of the renewable energy and RECs procured or produced by DEC. Based on DEC's final (March 2017) report on implementation of the pilot program, customer participation in the pilot only amounted to approximately twenty percent of the annual (MWh) aggregate cap available in the program. The Company noted in the report that "[p]ricing is the most significant reason why existing customers did not contract for more capacity, and the program did not attract more than four customers." It is against this backdrop of failure to attract participants that the General Assembly enacted the Green Source Advantage Program as an improvement over the Green Source Rider Pilot Program. I believe the failure of the pilot program is therefore instructive to this Commission's efforts to implement a successful GSA Program.

I concur with the majority in concluding "that the appropriate structure of the GSA Program should attract participation from the eligible customers, because, as many of the parties have argued, the General Assembly did not intend to establish a program that would be unsuccessful in attracting participation from eligible customers." Moreover, in legislating an opportunity for eligible non-residential customers to have their public utility provider procure renewable energy on their behalves, the General Assembly made express reference only to two customer categories: major military installations and The University of North Carolina, defined to include its constituent institutions. Thus, it is reasonable to conclude from the express language of N.C.G.S § 62-159.2 that the legislature had a specific and precisely focused interest in these two customer categories participating in the GSA Program. Therefore, in my opinion, compliant implementation of the Program requires this Commission to approve a program with a bill credit that is likely to encourage and enable participation by both UNC and DoD/FEA. While I agree with the majority and join in its opinion and in its decision regarding the bill credit options it approves, I write to dissent from the majority's decision not to approve a ten-year bill credit option that would provide a better incentive for UNC and DoD/FEA to participate in the GSA Program as desired by the General Assembly.

The clear interests of UNC and DoD/FEA (and others) have been properly stated in the majority Order.

On October 24, 2018, NCCEBA, UNC-Chapel Hill, and SACE filed an agreement and stipulation of partial settlement reached among these parties. These parties agreed among themselves to an alternative bill credit that would be fixed for a period up to ten years, and then refreshed based upon updated data for any GSA agreement that lasts longer than ten years. These parties agree that this alternative bill credit strikes an appropriate balance between providing reasonable certainty to the participating customer regarding their electricity costs and ensuring that the projection of costs is accurate. These parties also identified the following other parties who did not join the agreement and stipulation, but who also do not object to the use of the alternative bill credit proposed therein: the Public Staff, NCSEA, and DoD/FEA.

I cannot ignore the interests expressed by these customers who are provided special status in the GSA enabling statute. The majority appropriately notes that “[t]he Commission also recognizes that the establishment of the bill credit is critical to attracting participation among the eligible customers, and, therefore, is at the heart of establishing a successful GSA Program.” I believe, based on the input of the customers noted above, for the GSA Program to be successful, a ten-year fixed bill credit option is needed to help ensure the General Assembly’s goal in attracting these customers to the Program.

I disagree with the majority’s position that “it would be anomalous to approve a negotiated GSA option for greater than five years when the GSA Program is part of the same legislation limiting PURPA negotiated PPAs to five years.” The CPRE is also part of this same legislation and it includes fixed 20-year levelized cost payments. The enabling statute for the GSA Program provides that “[i]f any portion of total capacity set aside to major military installations or The University of North Carolina is not used, it shall be reallocated for use by any eligible program participant. If any portion of the 600 megawatts (MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8(a),” where (if reallocated) it would then be subject to a 20-year levelized fixed cost rate. It is also worth noting that the language the majority references as having changed or amended the PURPA landscape, found in N.C.G.S. § 62-156(c), expressly limits negotiated purchase power agreements to five years, but the GSA Program legislation, §62-159.2, contains no such limitation. In my opinion, this absence of a five-year reference represents a conscious choice of the General Assembly to provide the Commission with the flexibility, based on its judgment and the information made available to it, to approve a Program that could successfully attract participants including UNC and DoD/FEA. UNC and DOD/FEA have appeared before this Commission and informed us that, for reasons I found credible, they do not find or agree that a five year bill credit option will reasonably lead to their participation in the GSA Program.

Based on the General Assembly’s goal to include UNC and DoD/FEA in the GSA Program, and the balance of risk-sharing provided by the Public Staff’s ten-year bill credit alternative, I would vote to approve the ten-year bill credit. Inasmuch as the approved program fails to address the concerns of those intended to benefit, the program is not compliant with the statute and I dissent from the majority’s decision not

to allow a longer bill credit option. Aside from not allowing a longer bill credit option as discussed hereinabove, I concur in the majority opinion. Further, I join in the Concurring Opinion of Commissioner Mitchell and would find that concerns regarding inaccuracies of cost projections over a period longer than five years would be sufficiently addressed and mitigated by calculation of the bill credit based solely on the utility's avoided energy costs.

/s/ ToNola D. Brown-Bland

Commissioner ToNola D. Brown-Bland