STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1314
DOCKET NO. E-7, SUB 1289

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Requesting Approval of Green Source Advantage Choice Program and Rider GSAC	)	ORDER ACCEPTING STIPULATION AND APPROVING MODIFIED GREEN SOURCE ADVANTAGE CHOICE PROGRAM WITH CONDITIONS

BY THE COMMISSION: Section 5 of Session Law 2021-165 states in pertinent part

> The Utilities Commission shall . . . (iv) establish a rider for a voluntary program that will allow industrial, commercial, and residential customers who elect to purchase from the electric public utility renewable energy or renewable energy credits, including in any program in which the identified resources are owned by the utility in accordance with sub-subdivision b. of subdivision (2) of Section 1 of this act, to offset their energy consumption, which shall ensure that customers who voluntarily elect to purchase renewable energy or renewable energy credits through such programs bear the full direct and indirect cost of those purchases, and that customers that do not participate in such arrangements are held harmless, and neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs.

PROCEDURAL HISTORY

Duke's Initial GSA Choice Program Proposal

On January 27, 2023, Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP, and collectively with DEC, Duke), filed a petition in the above-captioned dockets requesting Commission approval of the Green Source Advantage Choice Program (GSA Choice Program) tariffs (Petition). Duke states that the GSA Choice Program is designed to meet large industrial and commercial customers' expectations for clean energy options, including Duke-owned and third-party-owned solar resources on Duke's systems. Petition at 3. The GSA Choice Program is comprised of both a renewable energy offering and an energy storage/other clean energy option. *Id.* at 4. A customer that elects the renewable energy offering has the option to enroll in the energy storage/other clean energy technology option. *Id.* at 4-5. The GSA Choice Program is designed to supplant the current Green Source Advantage Program (GSA Program) and the GSA Bridge Program, approved in Docket Nos. E-2, Sub 1170, and E-7, Sub 1169 and E-2, Sub 1306, and E-7, Sub 1277, respectively.

The GSA Choice Program is designed to allow large-load commercial and industrial customers to contract with Duke to provide locally-sourced Clean Energy Environmental Attributes (CEEAs), which are Renewable Energy Certificates (RECs) bundled with carbon emission attributes that are not included in the statutorily defined REC, to the customers. *Id.* at 5. The CEEAs will be either generated from Duke-owned generation facilities or purchased by Duke from third-party-owned renewable energy facilities. *Id.*

GSA Choice Renewable Energy Option

Duke's proposed renewable energy option under the GSA Choice Program would be available to nonresidential customers of DEC and DEP receiving concurrent service on other rate schedules, excluding outdoor lighting schedules, who elect to direct Duke to procure renewable energy on their behalf. *Id.* at Apps. B and C. Eligibility for the GSA Choice Program is limited to nonresidential customers with a minimum maximum annual peak demand of 1 MW or an aggregated maximum annual peak demand of 5 MW at multiple service locations in either DEC's or DEP's service territories. *Id.* These threshold limits are designed to match the GSA Choice Program to the needs of high energy users with sustainability needs. *Id.* at 7. Customers may subscribe up to 100% of their energy consumption, subject to capacity availability, and the program would be available to customers for term lengths of 5, 10, 15, and 20 years. *Id.*

The renewable energy option is limited to a maximum combined total program capacity of 4,000 MW of renewable energy facilities between DEC and DEP (Maximum GSA Choice Program Capacity). *Id*. Fifty-five percent of the Maximum GSA Choice Program Capacity (up to 2,200 MW) must be Duke-owned and the GSA Choice customer will enter into a PPA with Duke. *Id.* at 5. Forty-five percent of the Maximum GSA Choice Program Capacity (up to 1,800 MW) must be procured from third parties that have either entered into a two-party PPA with Duke, or a three-party GSA Facility PPA with Duke, a renewable supplier (the developer of the GSA Facility), and an eligible GSA Choice customer (the GSA Choice PPA). *Id.* Collectively, the CEEAs from the Duke-owned renewable energy facilities and the two-party PPAs with Duke are referred to as Available Renewable Energy Resources. Thus, there are two primary options for participation in the GSA Choice Program: (1) request Duke to provide CEEAs through the Available Renewable Energy Resources, or (2) propose to Duke a GSA Choice Facility developed by a third-party renewable energy supplier for a GSA Choice PPA.

For the Available Renewable Energy Resources, Duke will designate the amounts and types of renewable capacity that will be made available to GSA Choice customers at the time each competitive renewable energy procurement process is completed. GSA Choice customers can participate on a first-come, first-served basis until the Available

Renewable Energy Resources are fully subscribed. *Id.* at Apps.s B and C. The rate for the Available Renewable Energy Resources option includes an amount computed under the customer's primary rate schedule and riders, a Clean Energy Environmental Attribute charge, and the GSA Choice administrative fee. *Id.*

For the GSA Choice PPAs, customers can independently negotiate with a renewable energy developer and enter into a GSA Choice PPA, similar to the PPA in the legacy GSA Program. The GSA Choice PPA capacity will not be selected through the competitive renewable energy procurement processes and will not be part of the allotment of the Available Renewable Energy Resources. The GSA Choice Facility can include energy storage or some other clean energy technology. The third-party facility capacity for the GSA Choice PPAs will be limited to no more than 250 MW on an annual basis, and the annual amount available will be determined as part of the annual allocation process. *Id.* The rate for the GSA Choice PPA includes an amount computed under the customer's primary rate schedule and riders, the GSA Choice Product Charge, and the GSA Choice Bill Credit which is based upon an hourly marginal avoided cost or administratively established avoided cost. *Id.*

Duke anticipates that it may take 10 or more years to fully source the designated capacity available under the GSA Choice Program as it procures renewable resources over that time. *Id*. at 6.

Duke states that renewable energy procured through the GSA Choice Program will "count towards the program capacity and be considered as part of the baseline analysis in Integrated Resource and Carbon Planning processes." *Id.* at 6. Further, Duke explains that third-party facility capacity in the GSA Choice PPAs "will reduce the size of future procurements to ensure ultimate alignment with resources selected in the most recent Carbon Plan Order and subsequent biennial combined Carbon Plan and Integrated Resource Plans (CPIRP) approved by the Commission." *Id.*

To ensure that there is no double counting of CEEAs, Duke agrees to develop tracking and reporting tools for CEEAs and to work with interested stakeholders to establish an hourly accounting and reporting system to track CEEAs and to demonstrate: (1) the aggregate system level impact; (2) the hourly operations of clean energy on DEC and DEP's respective systems; (3) an individual assessment for customers participating in the Modified GSA Choice Program; and (4) the baseline level of clean energy for non-participants and customers seeking to build on that baseline level of clean energy. *Id.* at 12-13. In addition to ensuring that there is no double counting of environmental claims, Duke states that the tools will provide hourly detail of the carbon-free energy supplied to Duke's systems under the GSA Choice Program. *Id.* at 13.

GSA Choice Energy Storage/Other Clean Energy Option

The energy storage/other clean energy option under the GSA Choice Program will allow customers to virtually time-align their energy usage with renewable or clean energy output from a combination of Duke-owned renewable generation and energy storage or other clean energy resources. *Id.* at 5. The program capacity will be sourced from a portion of the renewable resources that Duke contracts to either own or purchase as part of the renewable procurement processes that Duke conducts each year. *Id.* at 11. This option is available to customers with a maximum annual peak demand of at least 15 MW or an aggregated maximum annual peak demand at multiple service locations in DEC or DEP of at least 30 MW. *Id.* Duke will retain operational control over the energy storage or other technology facilities and will have the right to use the resources for system needs. *Id.* at 12.

Commission Orders and Parties' Filings

On February 9, 2023, the Commission issued an Order setting the timeframe in which interested persons could petition the Commission to intervene and parties could file comments on Duke's GSA Choice Program proposal.

Through various orders, the Commission permitted the intervention of the following parties: the North Carolina Sustainable Energy Association (NCSEA); the Carolina Industrial Group for Fair Utility Rates II and the Carolina Industrial Group for Fair Utility Rates III (together, CIGFUR); the Carolina Utility Customers Association, Inc. (CUCA); the Southern Alliance for Clean Energy (SACE); the Clean Energy Buyers Association (CEBA); Google LLC (Google); the Carolinas Clean Energy Business Association (CCEBA); and the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA). The intervention of the Public Staff – North Carolina Utilities Commission (Public Staff) is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19(e). The North Carolina Attorney General's Office (AGO) is afforded intervention as of right on behalf of the using and consuming public pursuant to N.C.G.S. § 62-20.

On April 25, 2023, the following parties filed initial comments on Duke's GSA Choice Program proposal: CIGFUR, CEBA, Google, DoD/FEA, the Public Staff, CUCA, the AGO, and filing jointly, SACE, NCSEA, and CCEBA. On June 23, 2023, the following parties filed reply comments: CEBA, the Public Staff, CIGFUR, DoD/FEA, Google, CUCA, Duke, and filing jointly, SACE and NCSEA. CCEBA filed a letter in lieu of reply comments.

On June 23, 2023, the following parties filed reply comments: Duke, CEBA, the Public Staff, CIGFUR, DoD/FEA, Google, CUCA, and filing jointly, SACE and NCSEA. CCEBA filed a letter in lieu of reply comments.

The parties' initial and reply comments addressed multiple contested issues related to the renewable energy option of the GSA Choice Program, and the primary disagreement among the parties relates to the issue of "regulatory surplus." The issue of regulatory surplus is whether GSA Choice Program customers will be receiving renewable energy generated by sources that are in addition to renewable energy capacity selected by the Commission as part of its Carbon Plan oversight pursuant to N.C.G.S. § 62-110.9 (Carbon Plan Statute). The dispute over regulatory surplus includes disagreement among the parties as to whether S.L. 2021-165, § 5 requires that the renewable energy capacity made available through the GSA Choice Program be additional to the renewable energy capacity selected by the Commission as part of its Carbon Plan oversight and Biennial Carbon Plan and Integrated Resource Plans (CPIRP) orders. The overriding objection to the proposed GSA Choice Program is that it does not include regulatory surplus, a feature that is necessary for certification by programs like the Center for Resource Solutions' (CRS) Green-e Energy Program. Specifically, SACE, NCSEA, and CCEBA state in their Joint Initial Comments that customers want and expect regulatory surplus and that the Commission should direct Duke to refine the GSA Choice Program to achieve regulatory surplus to allow for certification by CRS.

Duke's June 23, 2023 reply comments propose limited modifications to the GSA Choice Program and its proposed tariffs in response to the Public Staff's and other intervenors' comments. Those proposed modifications include disclaimer language designed to ensure that participating customers will be informed that CEEAs purchased through the GSA Choice Program are not associated with generation surplus to Carbon Plan-selected generation (regulatory surplus) necessary to comply with the Carbon Plan Statute.

Contemporaneous with and after the filing of reply comments, some parties filed procedural proposals. With its reply comments filed on June 23, 2023, CIGFUR filed a Request for Procedural Relief, requesting a temporary stay of the proceeding to allow the parties to work toward resolving the regulatory surplus issue. On September 5, 2023, SACE and NCSEA filed a joint motion requesting that the Commission hold a technical conference on the issue of regulatory surplus. On August 1, 2023, Duke filed a Response to CIGFUR's Request for Procedural Relief, in which Duke stated that it did not object to CIGFUR's request for a temporary stay as to a decision on the regulatory surplus issue, reported its willingness to continue to engage with the parties in an attempt to reach consensus on the regulatory surplus issue, and requested that the Commission allow parties to file an update on the regulatory surplus discussions on November 15, 2023.

On February 20, 2024, the Commission issued an Order Requiring Update on Stakeholder Engagement and Efforts to Resolve Outstanding Issues which required Duke to provide an update regarding its then-recent stakeholder engagement and related efforts to resolve the outstanding issues among the parties.

On February 27, 2024, Duke filed its Update on Stakeholder Engagement and Customer Programs (Update) stating that, since September 2023, it had been actively engaged with stakeholders on issues related to regulatory surplus and had spent significant time and resources to develop an additional option for the GSA Choice Program called the Resource Acceleration Option (RAO). Duke's Update notes that, on November 8, 2023, SACE and NCSEA indicated that they could not support the RAO and that they had listed their concerns with the RAO. Duke's Update explains that, on November 17, 2023, Duke had responded to the concerns expressed by SACE and NCSEA. Duke's Update also indicates that, on December 20, 2023, SACE and NCSEA had requested a meeting with Duke on the RAO that was ultimately extended to all stakeholders and held on January 11, 2024. Further, Duke states that it was working toward a settlement with the Public Staff and CIGFUR on a modified GSA Choice Program design incorporating a RAO, and that it intended to circulate a draft of the proposed settlement to all intervening parties for their review and consideration by March 1, 2024. Finally, Duke states that it planned to file a stipulation and updated GSA Choice tariffs with the Commission in mid-March 2024 to resolve all outstanding issues in the GSA Choice dockets among the stipulating parties.

On March 1, 2024, SACE, NCSEA, and CCEBA jointly filed a response to Duke's Update (Joint Response) which states that "[t]he central problem with Duke's characterization of its efforts to resolve the outstanding issues in these proceedings—and regulatory surplus in particular—is that it conflates stakeholder engagement with settlement negotiations." Joint Response at 1. The Joint Response explains that SACE, CCEBA, and NCSEA were not invited to Duke's settlement discussions with the Public Staff and CIGFUR, and "were forced to conclude that stakeholder discussions had reached an impasse . . . ." *Id.* at 3. Noting that "Duke, the Public Staff, and CIGFUR evidently continued discussions and Duke later circulated the proposed [RAO] to counsel for all parties on October 23, 2023[,]" the Joint Response states that SACE and NCSEA "expressed appreciation for the effort that Duke put into developing the RAO, but maintained concerns and could not support it as proposed." *Id*. at 4. "Through discussions with counsel for large-customer groups, SACE and NCSEA came to understand that while the RAO option represented progress towards regulatory surplus, it would not work for any large customers for which the initially proposed [GSA Choice Program] . . . would not work, considering their corporate commitments." *Id.*

The Joint Response further states that on January 11, 2024, at stakeholders' request, Duke agreed to a follow-up discussion of its RAO proposal and agreed to expand the discussion to include all interested parties. "While some progress was made improving the RAO as proposed by Duke, no agreement was reached, particularly on regulatory surplus. Evidently Duke continued discussions with the Public Staff and CIGFUR." *Id.* at 5. The Joint Response contended: " . . . [S]electing merely two intervenors for settlement discussions does not constitute the rosy picture of a company 'actively engaged' with stakeholders and 'collaborative efforts,' such as Duke presented. Proper stakeholder engagement should allow all parties to engage and advocate for their positions." *Id*. The Joint Response concludes: "It is not surprising, then, that Duke's anticipated resolution of the outstanding regulatory surplus issue is not consensus . . . Although the RAO is an incremental improvement, it too is still far from sufficient." *Id.* at 5-6.

On March 28, 2024, Duke filed an Update to the Green Source Advantage Choice Program Report Issues (Second Update). The Second Update notes that Duke had circulated the draft settlement to all parties on February 29, 2024, and since then, some parties had requested additional stakeholder engagement related to the settlement and that several meetings had already occurred in March, 2024. The Second Update further expresses Duke's intent "to continue this engagement" and describes plans to convene with interested parties in the near term. Accordingly, the Second Update explains that Duke was holding off on filing the settlement stipulation with the Commission as originally indicated in the Update.

Duke's Modified GSA Choice Program Proposal

On April 12, 2024, Duke filed an Agreement and Stipulation of Settlement Resolving Contested Issues and Recommending Approval of Modified Programs (Stipulation) entered into by Duke, the Public Staff, and CIGFUR (Stipulating Parties). The Stipulation modifies Duke's initial GSA Choice Program by adding a proposed RAO to the existing two options for participating in the GSA Choice Program (Modified GSA Choice Program Proposal). Duke notes that it met with interested parties to further discuss both the RAO and a proposal from CCEBA. However,

> [a]fter considering CCEBA's proposals, the Stipulating Parties believe that the Stipulation included herein presents the best path for providing an attractive offering to interested customers while holding non-participants harmless, ensuring non-participants are "neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs," as required by Section 5 of [S.L. 2021-165].

Stipulation Cover Letter at 1-2. Further, Duke states that the "originally proposed options [for participating in the GSA Choice Program] have already received significant customer interest and support[.]" *Id*. at 2. Duke finally notes that the Stipulation resolves any outstanding issues between the Stipulating Parties with respect to the GSA Choice Program.

The Stipulating Parties state that, as amended by the terms of the Stipulation, the GSA Choice Program with the addition of the RAO is designed to allow industrial and commercial customers to purchase renewable energy or renewable energy credits to offset their energy consumption and to ensure that participating customers bear the full costs of their purchases so that the Program has no impact on non-participating customers. Stipulation, ¶ 11. Further, the Stipulating Parties explain that the Modified GSA Choice Program allows customers to purchase, and have retired on their behalf, CEEAs that are to be generated by solar facilities selected as part of ongoing competitive solar procurements conducted by Duke as directed by the Commission pursuant to the Carbon Plan Statute. *Id.* Customers can participate in the Modified GSA Choice Program in one of three ways: through the Available Renewable Energy Resources option, through the GSA Choice PPA option, or through the RAO PPA option. For the RAO option, the customer will select and negotiate with a renewable energy project that unsuccessfully bid into the most recent Carbon Plan competitive solar procurement and would then enter into a three-party agreement with Duke and the renewable energy project developer to acquire the CEEAs and accelerate that project's development. *Id.* The RAO option that enables renewable resources to be accelerated will potentially bring facilities on line years in advance of when they would have been brought on line otherwise. *Id.* at Ex. B.

More specifically, the Stipulating Parties explain that the RAO will provide up to an additional 300 MW of Program capacity every two years (in addition to the 250 MW of third-party GSA Choice PPAs). *Id*. Thus, the RAO will accelerate up to 1,000 MW of additional new solar capacity over the course of the Program. *Id.* ¶ 12. The proposed tariffs require that renewable energy projects participating in the RAO must have submitted a non-winning bid in the most-recent Carbon Plan competitive solar procurement. *Id.* The Stipulating Parties assert that this structure "would allow for participating RAO customers to make a definitive and demonstrable claim that but for their participation in the GSA Choice Program, the solar procured on their behalf would not have interconnected at that time." *Id*. The Stipulating Parties explain that

> RAO capacity contracted would be incremental to the "reasonable steps" approved by the Commission to execute the CPIRP and would not be deducted from ongoing procurements approved under a near-term action plan/execution plan in a given CPIRP. However, RAO capacity will be modeled and accounted for in the next CPIRP. This approach is necessary because integrated resource planning cannot ignore existing and contracted capacity; therefore, RAO facilities must be modeled in order to prudently plan for and operate the Companies' system, including to maintain or improve reliability of the grid.

Id. at Ex. B.

Commission Order Requesting Comments on the Modified GSA Choice Program Proposal

On April 17, 2024, the Commission issued an Order Requesting Comments on Agreement and Stipulation of Settlement Resolving Contested Issues and Recommending Approval of Modified Programs which requested comments from interested parties on the Modified GSA Choice Program Proposal. More particularly, the Commission allowed the non-Stipulating Parties to file concise comments by April 26, 2024 and the Stipulating Parties to file concise reply comments by May 3, 2024.

Comments of Non-Stipulating Parties on the Modified GSA Choice Program Proposal

On April 26, 2024, the Commission received three responses to the Modified GSA Choice Program Proposal: SACE and NCSEA filed a joint response, and CCEBA and CUCA each filed comments individually.

April 26, 2024 Comments of CCEBA

CCEBA states that the key issue that has held up implementation of the GSA Choice Program is that many customers need to procure clean energy that is additional to that which would otherwise be generated or procured by Duke. April 26, 2024 Comments of CCEBA at 3. CCEBA asserts that the proposed RAO "is likely to reduce customer participation in the Green Source Advantage program – particularly participation by those major customers who require access to additive clean energy resources as a condition of making investments in commercial and industrial facilities located in North Carolina." *Id.* at 2.

CCEBA explains that the Stipulation preserves all elements of Duke's initial GSA Choice Program proposal, including an annual allotment of 250 MW of third-party GSA Choice PPAs. CCEBA objects to the Stipulation because "under the settlement, those 250 MW are deducted from Duke Energy's annual Carbon Plan procurement volumes." *Id.* at 3. CCEBA contends that "[t]his fact is critical in evaluating the parties' competing positions in this docket." *Id.* at 3. Further, CCEBA explains that under the RAO, Duke would offer an additional 300 MW of GSA Choice PPAs every two years subject to the following conditions: (1) in order to supply capacity to the RAO, renewable energy suppliers must have unsuccessfully bid into the most recent annual Duke competitive solar procurement, and (2) customers purchasing from the biennial 300 MW offering would only be eligible for a variable bill credit, not the fixed bill-credit option available under the 250 MW annual GSA Choice PPA allotment.

Referring to the additional biennial 300 MW offering provided under the RAO, CCEBA contends that "150 MW of 'regulatory surplus' per year is simply inadequate." *Id.* at 4. CCEBA further criticizes the biennial 300 MW offering, stating:

> Moreover, because the only eligible projects are ones that participated in and lost an RFP, interested customers would have a limited offering of available projects that may not match their need in terms of size or location and would have to wait for the completion of a lengthy RFP process to even know the universe of available projects. Customers would also lose the ability to select and work with the supplier of their choice and would be required to accept the uncertainty and risk of a variable bill credit.

Id.

CCEBA also objects to the Stipulation from a developer perspective because the RAO "increases the volume of utility-owned resources procured through the RFP while decreasing the volume of third-party PPAs." *Id.* According to CCEBA, Duke's initial GSA Choice Program proposal had allocated 825 MW, or 55%, of the annual 1,500 MW procurement to Duke-owned facilities and 675 MW, or 45%, to third-party PPAs (of which 250 MW would be GSA Choice PPAs and 425 MW would be annual Duke competitive solar procurement PPAs). *Id.* In contrast, CCEBA states that the Stipulation would increase the overall annual procurement of renewable resources from 1,500 MW to 1,650 MW, resulting in 907.5 MW, or 55%, being allocated to Duke-owned facilities and 742.5 MW, or 45%, being allocated to third-party PPAs. *Id.* However, CCEBA explains that since 400 MW of the third-party GSA Choice PPA allotment would be earmarked for GSA Choice Program PPAs[1], only 342.5 MW would remain for annual Duke competitive

[1] CCEBA reaches the 400 MW annual third-party PPA allotment by dividing the biennial 300 MW offering by two (150 MW) to reach an annual allotment plus the 250 MW annual allotment of non-regulatory surplus capacity. *See* April 26, 2024 Comments of CCEBA at n.1.

solar procurement PPAs, which is less than Duke's initial GSA Choice Program Proposal (of 425 MW). *Id*. CCEBA contends:

> That outcome is unfair to the development community and bad for ratepayers since PPA solar is generally cheaper than utility-owned assets. The RAO option decreases the PPA procurement by approximately 80 MW and increases [the Duke-owned] procurement by the same amount compared to Duke's original GSA proposal.

Id.

As an alternative to the Stipulation, CCEBA proposes that the RAO be eliminated and that the third-party GSA Choice PPA capacity of 250 MW per year be additional to, rather than subtractive from, renewable energy procurements. Under CCEBA's proposal, a total annual procurement of 1,500 MW under the Stipulation would increase to 1,750 MW to ensure that there is a greater volume of GSA Choice PPAs. *Id*. Of the 45% required for third-party PPAs (787.5 MW) pursuant to N.C.G.S. § 62-110.9(2)(b), CCEBA recommends that 537.5 MW be allocated to Duke's annual competitive solar procurements and 250 MW be allocated to the GSA Choice PPAs. CCEBA further recommends that the GSA Choice PPAs of 250 MW be regulatory surplus – in addition to the Carbon Plan procurement amount -- and offered as a fixed bill credit to customers. *Id*. CCEBA contends that its proposal "would allow for the type of regulatory surplus provided by the RAO, but with none of the drawbacks." *Id*. at 4. CCEBA states that while the RAO proposal offers a nominal total of 400 MW of third-party GSA Choice PPAs, the practical reality is that the RAO's offering (250 MW without regulatory surplus of which 150 MW is fixed-location projects offering only variable bill credits) will likely be underutilized. *Id*. at 5. CCEBA asserts that "its proposal will be more appealing to large load customers." *Id*.

Finally, CCEBA states that its proposal is for a four-year term aimed at achieving at least 1 GW of customer PPAs. *Id.* at 7.

April 26, 2024 Joint Response of SACE and NCSEA

SACE and NCSEA do not support the Modified GSA Choice Program Proposal and recommend that the Commission accept CCEBA's alternative proposal discussed above as an interim measure. April 26, 2024 Comments of SACE and NCSEA at 1. While CCEBA proposes its program for a four-year duration, SACE and NCSEA recommend that the Commission adopt CCEBA's proposal for two years. *Id*.[2] SACE and NCSEA further recommend that the Commission use the two-year interim period to work "towards a fully regulatory-surplus voluntary clean energy program that would procure clean energy eligible to generate independently certifiable RECs." *Id.*

SACE and NCSEA explain that they prefer CCEBA's proposal over the RAO settlement for three reasons. First, they state that CCEBA's proposal increases the

[2] In response, CCEBA indicates that it "would be willing to accept NCSEA's proposal should the Commission find it reasonable." April 26, 2024 Comments of CCEBA at 7.

amount of accelerated clean energy available for large customers to voluntarily purchase. *Id*. at 2. Second, SACE and NCSEA assert that CCEBA's proposal "allows participants to work with developers of their choosing to design projects that suit their needs." *Id.* Lastly, SACE and CCEBA claim that "CCEBA's proposal can offer these benefits without burdening nonparticipating customers[.]" However, SACE and NCSEA also note that

> [o]ne of the principal benefits of the RAO proposal would be the assurance that nonparticipating customers were not burdened as the only projects available would be those whose bids were not selected in a given annual solar procurement, meaning that their costs were higher thereby ensuring that nonparticipating customers received the lowest-cost solar bids.

Id.

In conclusion, SACE and NCSEA reiterate that the Commission should accept CCEBA's proposal as a time-limited "bridge" to a certifiable program "providing greater regulatory surplus." *Id.* at 3. Ultimately, they recommend that the Commission "ensure that Duke offers a voluntary customer program with full regulatory surplus, generating RECs eligible to be certified by the Center for Resource Solutions' (CRS) Green-e program." *Id*. Finally, SACE and NCSEA renew their prior recommendation that "a technical conference would be an excellent way to begin to resolve these issues and develop a successful program." *Id*.

April 26, 2024 Comments of CUCA

CUCA states that while it did not join the Stipulation, is not opposed to the Stipulation as there are "CIGFUR members who would like to participate in the program." April 26, 2024 Comments of CUCA at 1. However, CUCA notes that "no member of CUCA has expressed interest in the proposed RAO program." *Id.* at 2. "CUCA's members have little interest in the RAO, which would deliver electricity at a premium cost without providing the benefit of regulatory surplus based environmental attributes that would be useful in meeting corporate environmental, social, and governance goals." *Id.* CUCA further notes that its members "who are interested [in] purchasing renewable energy in the current environment . . . might participate in a program like the alternative proposed by CCEBA, primarily because it offers the opportunity (though no guarantee) of qualifying for certifiable regulatory surplus environmental attributes." *Id.*

In conclusion, CUCA states that it supports "continued stakeholder discussions and consideration by the Commission regarding customer programs designed to achieve surplus carbon emissions savings compared to what Duke would otherwise accomplish and that would be more attractive to customers." *Id.*

Reply Comments of the Stipulating Parties

On May 3, 2024, the Stipulating Parties filed reply comments to the April 26, 2024 comments of CCEBA, SACE and NCSEA, and CUCA. The Stipulating Parties contend that there is no consensus between CCEBA, SACE and NCSEA, and CUCA as to an alternative proposal to the Stipulation. May 3, 2024 Reply Comments, ¶ 6. The Stipulating Parties characterize CCEBA's alternative proposal as "an alternative program design more favorable to solar developer interests[.]" *Id*. at ¶ 8.

The Stipulating Parties also argue that the Commission should dismiss CCEBA's concerns about a lack of customer interest in the Modified GSA Choice Program noting that CCEBA's predecessor raised similar concerns about the original GSA Program; however, the original GSA Program and the current GSA Bridge Program are largely subscribed. *Id*. The Stipulating Parties suggest that CCEBA's arguments should be considered in the context of the success of the initial GSA program and the GSA Bridge program. *Id.*

The Stipulating Parties explain that "CCEBA's proposal results in an overall decrease in customer program capacity" since the RAO capacity adds an additional 150 MW of program capacity per year that is "additional to the 4,000 MW of total program capacity originally offered in the Companies' GSA Choice Application." *Id*. at ¶ 10. They note that CCEBA's proposal only provides for an additional 100 MW of capacity compared to Duke's initial proposed GSA Choice Program and "comes at the expense of 150 MW per year of total program capacity compared to the Stipulation." *Id*. The Stipulating Parties state that for customers that are interested in the initial GSA Choice Program options, CCEBA's proposal that would reduce the overall program capacity would be viewed as a drawback. *Id.*

With regard to CCEBA's comments about the variable bill credit in the RAO and the requirement that eligible projects cannot have been selected in the most recent annual solar procurement are not attractive to customers, the Stipulating Parties explain that

> these requirements were specifically designed . . . to hold non-participating customers harmless and to facilitate development of RAO projects that would not have been built in the same time frame (or potentially at all) but for the RAO customers accelerating their development — a feature that stakeholders specifically wanted to achieve with an acceleration or additionality option.

Id. ¶ 11. The Stipulting Parties also note that approximately half of current GSA Program customers elect the variable bill credit option. *Id.*

In response to comments about CRS' ability to certify GSA Choice Program RECs through its Green-e program, the Stipulting Parties state that CRS has stated that due to the structure of the Carbon Plan Statute, "CRS would not be able to certify Duke's Customer Programs." *Id*. ¶ 12 (internal citation omitted). The Stipulting Parties further note that "CRS identified one clear pathway to certification: for the emission reductions associated with GSA Choice projects to be added back to Duke's North Carolina carbon emissions when evaluating compliance with [the Carbon Plan Statute's] goals." *Id.* Further, the Stipulting Parties state that CRS indicated that the concept of resource acceleration was not yet contemplated in the Green-e standards, and that it could not certify claims of accelerating statutory requirements for decarbonization." *Id.* ¶ 13.

The Stipulating Parties further contend that

> [w]hile CRS is likely unable to certify RECs from either the RAO or CCEBA's proposal, the RAO provides participating customers with a clear and demonstrable claim to resource acceleration. Because the RAO requires contracting with a project not selected in the most recent annual procurement, participating customers can confidently state that but for their participation, the renewable project would have been delayed.

Id. ¶ 14.

In conclusion, the Stipulating Parties state that Duke has worked diligently with stakeholders for nearly two years to develop a program that will be attractive to eligible customers and compliant with applicable law. *Id.* at 9. The Stipulating Parties further note that while the Stipulation does not resolve all contested issues, it does make "significant progress either resolving or narrowing the disputes." *Id*. Finally, the Stipulating Parties state that Duke "will continue to engage with stakeholders on future program designs to meet customer needs." *Id.*

DISCUSSION AND CONCLUSIONS

The Commission notes that participation in this proceeding has been robust and recognizes that the parties put significant effort in considering the merits of the initial GSA Choice Program and the Modified GSA Choice Program. In summarizing the filings of parties above, the Commission did not attempt to exhaustively detail every argument proffered by each party but instead focused on recalling the points it found most salient and persuasive regarding the ultimate issue pending – whether to approve Duke's Modified GSA Choice Program Proposal in the Stipulation. However, the lack of direct reference to any particular comment or point should not be taken as an indication that the Commission has failed to consider that position. In arriving at its final conclusion, the Commission has given careful and due consideration to the entire record herein.

With regard to the parties' disagreement as to whether S.L. 2021-165, § 5 requires capacity offered under the customer programs to be regulatory surplus, the Commission finds that the plain language of the statute, which is cited in full on page 1 of this Order, does not require that a customer program offer capacity in addition to CPIRP-planned capacity. "[I]t is not reasonable to assume that the legislature would leave an important matter regarding the administration of the Act open to interference or speculation; consequently, the judiciary should avoid grafting upon a law something that has been omitted, which [it] believes ought to have been embraced." *Deese v. Se. Lawn & Tree Expert Co.*, 306 N.C. 275, 278, 293 S.E.2d 140, 143 (1982) (quotations and citations omitted). The concepts of additionality or regulatory surplus are not referenced in S.L. 2021-165, § 5. Accordingly, it would be unreasonable for the Commission to interpret

S.L. 2021-165, § 5 to require capacity made available through the customer programs to be regulatory surplus. The Commission also finds that the Amended GSA Choice Program complies with the statutory requirements of S.L. 2021-165, § 5. The GSA Choice Program capacity, together with the additional RAO capacity, allows GSA Choice customers to purchase renewable energy or renewable energy credits to offset their energy consumption, ensures that GSA Choice customers bear the full cost of their purchases, and ensures that non-participating customers are held harmless from the impacts of the Program and are neither advantaged nor disadvantaged from the impacts of the renewable energy procured on behalf of the GSA Choice customer. Therefore, the Commission concludes that the Amended GSA Choice Program meets the requirements of S.L. 2021-165, § 5.

The Commission notes the concern of SACE, NCSEA, and CCEBA that customers want regulatory surplus in the Modified GSA Choice Program and further notes their request that the GSA Choice Program be amended to achieve regulatory surplus so that the RECs could be certified by CRS. The Commission acknowledges the preference of some customers for regulatory surplus, but finds that CRS would not certify the CEEAs even if they achieved regulatory surplus. CRS provided information that due to the structure of the Carbon Plan Statute, CRS will not be able to certify the CEEAs from the Modified GSA Choice Program and that resource acceleration under the RAO is not yet contemplated by the Green-e standards. The Commission finds it appropriate to direct Duke to advise the Commission in the event that CRS's Green-e standards evolve to allow for certification of CEEAs attributable to RAO capacity.

Based on the entire record, the Commission concludes that the Modified GSA Choice Program Proposal in the Stipulation is reasonable and will provide a variety of attractive clean energy offerings to industrial and commercial customers. In reaching this conclusion, the Commission notes that the Modified GSA Choice Program will provide a robust amount of renewable energy capacity (up to 5,000 MW with the addition of the RAO capacity) to GSA Choice customers over the length of the Program, and will provide several options for customers to purchase CEEAs and have them retired on their behalf: through the Available Renewable Energy Resources option, through the GSA Choice PPA option, and through the RAO PPA option. The RAO option that was added to the GSA Choice Program in the Stipulation will enable renewable resources to be accelerated and potentially brought on line years in advance of when they would have been brought on line otherwise. Thus, the RAO will accelerate up to 1,000 MW of additional new solar capacity, in addition to the procurement of up to 4,000 MW of capacity proposed in the initial GSA Choice Program. The Commission therefore finds that the Modified GSA Choice Program Proposal in the Stipulation is an improvement to the initial GSA Choice Program Proposal because the RAO option adds additional accelerated capacity to the Program.

The Commission finds the comments of Duke and the Public Staff that there is customer interest in the Modified GSA Choice Program Proposal to be persuasive because the original GSA Program and the GSA Bridge Program are largely subscribed. The Commission finds Duke's and the Public Staff's comments that there is a market for the Modified GSA Choice Program to be supported by CIGFUR's participation in the

Stipulation. The Commission is likewise not persuaded by CCEBA that the RAO option with a variable bill credit will be underutilized because the variable bill credit will not be attractive to customers. The Commission notes that about one-half of the GSA Program customers opted for the variable bill credit option.

The Commission finds that the non-Stipulating Parties that commented on the Stipulation did not provide a better structured alternative to the Modified GSA Choice Program proposal. The Commission notes that there was no consensus among CCEBA, SACE and NCSEA, and CUCA as to an alternative proposal to the Stipulation. In regard to CCEBA's alternative proposal, the Commission notes that it results in an overall decrease in GSA Choice Program capacity. The Commission is persuaded by the Stipulating Parties that for customers that were interested in the initial GSA Choice Program options, CCEBA's proposal that would reduce overall program capacity would be viewed as a drawback.

Accordingly, the Commission approves the Modified GSA Choice Program Proposal in the Stipulation subject to the following three conditions. First, the Commission directs Duke to continue its ongoing development, including working with interested stakeholders, of an hourly accounting and reporting system to track CEEAs and to demonstrate: (1) the aggregate system level impact; (2) the hourly operations of clean energy on DEC and DEP's respective systems; (3) an individual assessment for customers participating in the Modified GSA Choice Program; and (4) the baseline level of clean energy for non-participants and customers seeking to build on that baseline level of clean energy. Second, the Commission directs Duke to file an annual progress report with the Commission detailing its progress on the tracking tool by January 1 of each year until the tracking system is operational. Third, the Commission directs Duke to advise the Commission in the event that CRS's Green-e standards evolve to allow for certification of CEEAs attributable to RAO capacity.

IT IS, THEREFORE, ORDERED as follows:

1. That the Modified GSA Choice Program Proposal as contained in the Stipulation is approved subject to the following directives;

2. That Duke shall Duke to continue its ongoing development, including working with interested stakeholders, of an hourly accounting and reporting system to track CEEAs and to demonstrate: (1) the aggregate system level impact; (2) the hourly operations of clean energy on DEC and DEP's respective systems; (3) an individual assessment for customers participating in the GSA Choice Program; and (4) the baseline level of clean energy for non-participants and customers seeking to build on that baseline level of clean energy. Duke shall file an annual progress report with the Commission detailing its progress on the tracking tool by January 1 of each year until the tracking system is operational;

3. That Duke shall advise the Commission in the event that the CRS' Green-e standards evolve to allow for certification of CEEAs attributable to RAO capacity; and

4. That DEC and DEP shall file appropriate compliance tariffs with the Commission in order to implement the GSA Choice Program as soon as practicable.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of July, 2024.

NORTH CAROLINA UTILITIES COMMISSION

Taylor C. Berry

Taylor C. Berry, Deputy Clerk

Commissioner Jeffrey A. Hughes concurs.

DOCKET NO. E-2, SUB 1314
DOCKET NO. E-7, SUB 1289

Commissioner Jeffrey A. Hughes, concurring:

I join the majority in approving the Modified GSA Choice Program, but I am disappointed with the result and the inability of the parties to develop programs that were more attractive than the resulting programs. While the docket included evidence that some parties "support" general GSA type programs, I found the commentary pointing out the program offerings' shortcomings more compelling. For example, the Southeast Sustainability Directors Network (SSDN), an organization that represents the individuals with key responsibility to achieve local government goals, while in support of the potential impact of GSA programs, they shine a light on the key issue of additionality of whether a specific program would help them meet their goals in their comments: "It is also critical to ensure that participation results in procurement of *additional* zero-carbon resources above and beyond the amount set by the Carbon Plan that would have been implemented otherwise (i.e., result in additionality)." SSDN Local Government Comments on Customer Programs at 2 (June 23, 2023) (emphasis original).

Similarly, CUCA stated that they would not oppose the Modified GSA Choice Program, but they did not join the Stipulation and stated that their members "have little interest in the RAO, which would deliver electricity at a premium cost without providing the benefit of regulatory surplus-based environmental attributes that would be useful in meeting corporate environmental, social, and governance goals." April 26, 2024 CUCA's Comments on Stipulation at 2.

Once the program offerings are launched, it will quickly become clear whether the program is as attractive as Duke asserts. If concerns continue and interest is modest from the outset, it is my hope that Duke will work quickly on new programs that will have a greater impact.

/s/ Jeffrey A. Hughes
Commissioner Jeffrey A. Hughes