

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, Sub 161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Commission Rules Related to Electric) REPLY COMMENTS OF THE
Customer Billing Data) PUBLIC STAFF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers (the Public Staff), pursuant to the Commission’s May 26, 2020 *Order Requesting Reply Comments* (May 26 Order) in the above captioned docket, respectfully submits the following reply comments.

1. In response to the Commission’s February 4, 2019 *Order Requiring Information Requesting Comments, and Initiating Rulemaking*, and subsequent orders granting extensions of time, the Public Staff filed proposed revisions to Commission Rules R8-7, R8-8, and R8-51 (Public Staff draft rules) on access to electric customer usage data, electric utility customer billing information, and related topics on February 10, 2020. In addition, the Attorney General’s Office (AGO) filed its own draft rule R8-51 (AGO draft rule), and Mission:data Coalition filed a draft rule R8-51 that was similar to the AGO draft rule, with a few modifications. In addition, the Public Staff, AGO, Mission:data Coalition, the North Carolina Sustainable Energy Association (NCSEA), Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC), and Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEC) (together, “Duke”)

filed initial comments addressing portions of the Public Staff draft rules, as well as raising additional issues.

2. In their comments, DENC and Duke indicated their general support for the Public Staff's draft rules, subject to certain exceptions. In addition, NCSEA and EDF indicated their support for aspects of both the Public Staff's and the AGO draft rules. Consistent with the Commission's May 26 Order providing parties the opportunity to file reply comments, the Public Staff provides the following reply comments on the initial comments and draft rules for the Commission's consideration.

Public Staff Draft Rules R8-7 and R8-8:

3. In its initial comments, DENC indicated its support for the Public Staff's proposed rules R8-7 and R8-8, indicating that the revisions help provide customers with more clarity as to their energy usage and provide the utilities more guidance on how to collect and present customer data on the bills. DENC noted however, that the changes to the bill templates would require additional time, and requested that the Commission provide that the rules become effective no earlier than 90 days after the Commission's final order in this proceeding.¹ The Public Staff agrees with DENC that sufficient time should be provided for the utilities to update the bill templates as necessary following the Commission's determination on this matter.

¹ DENC Initial Comments at 4.

4. Duke indicated in its initial comments that it generally agreed with the Public Staff's proposed revisions to R8-7 and R8-8, but suggested several modifications. The Public Staff agrees with Duke that the references to "consumption" be struck and replaced with the word "usage" to maintain consistency.² In addition, Duke notes that to comply with aspects of Rule R8-7 and R8-8, the utilities must first complete implementation of their Customer Connect Program (Customer Connect), which is scheduled to be completed in April 2021 for DEC and April 2022 for DEP, and then accumulate at least 13 months of interval data per account before they can offer the annual rate review and rate analysis functionality proposed in the Public Staff draft rules.³ As such, Duke indicated waivers may be necessary to allow for implementation of these provisions following Commission approval of the rules. The Public Staff agrees that it is appropriate for these new functions to be implemented as part of Customer Connect, and, as indicated in our initial comments, recognized this challenge by providing in draft Rule R8-7(c) that the rate analysis would not be required until the metering and billing technology required for such analysis was in place. NCSEA in their comments noted that the vague nature of this statement and requested that the term believes the term should be better defined to be six months after a final Commission order. Rather than incorporating the undefined timeframe in the rule as currently proposed, however, the Public Staff agrees that a more appropriate measure would be for the utilities to request a time-limited waiver of these rules to the extent a utility is not able to comply with certain aspects of the Public Staff draft

² Duke Initial Comments at 1.

³ *Id.* at 2-3.

rules due to system constraints or reasonable delays in deployment of the metering and billing technology required. The Public Staff notes that DEC and DEP utilities have already deployed AMI meters in much of their service area and are collecting interval data. However, in discussions with the Public Staff, Duke indicated that the planned rate analysis functionality will require the data used for comparison to have been billed through the new system (SAP), and that historical data (total kWh consumption only, with no other billing determinant information) cannot be used. The Public Staff finds that the anticipated delay to collect data post-Customer Connect implementation is reasonable, but encourages the utilities to begin utilizing the collected data as early as possible to make these functionalities available to customers.

5. Duke further notes that Public Staff's draft Rule R8-8(d), which establishes that the utilities should "strive to maintain consistency between the data observed at the meter face and that maintained in the billing and customer data systems," may be inconsistent with DEC's current service regulations.⁴ Duke indicated that the Companies may not have the ability to show all billing components on the face of the meter, particularly for accounts billed by rating period, such as time-of-use (TOU) rates, and asked that that this provision be clarified. The Public Staff recognizes that current meter technology may not provide the capability to display meaningful data on the meter face in real-time for customers whose demand and energy components are calculated from interval data that is recorded and stored, but not available at the meter face, such as

⁴ Duke Initial Comments at 3.

customers taking service under TOU rates or under DEC's Dynamic Pricing Pilots approved by the Commission on July 2, 2019, in Docket No. E-7, Sub 1146. However, most of Duke's customers are billed on "simple," energy-only rates which calculate kWh consumption from meter readings; therefore, these customers should be able to utilize meter readings displayed on the face of the meter to independently obtain and calculate their energy usage as a comparison to that which is displayed on the web portal. In addition, there have been some instances, as documented in the December 20, 2017, Supplemental Report of Real-Time Electric Usage Information for AMR and Smart Meters filed by DEC in Docket No. E-7, Sub 1115, where certain meter functions have presented inconsistent information to customers regarding the current on-peak periods and applicable rates. As documented in DEC's Response to Time of Use and Prior Notification Issues, filed on July 27, 2018, in Docket No. E-7, Sub 1115, DEC has since resolved those issues. Nonetheless, the Public Staff believes it is appropriate for the Commission's rules to support customer information provided both at the meter face and using the billing and data systems in a transparent and consistent fashion. The Public Staff's draft Rule R8-8(d) does not require all of the billing components to be shown on the face of the meter, but establishes a goal that a customer can reasonably understand any discrepancies between information shown on the meter face and the electronic platform. To the extent additional information may be required for customers taking service under certain rate schedules or riders where billing components cannot be meaningfully displayed on the meter face,

then this information should be provided to the customer in the tariffs themselves and in the electronic platform, as appropriate.

Public Staff Draft Rule R8-51

6. As noted in our initial comments, the Public Staff draft revisions to Commission Rule R8-51 seek to establish a basic framework for the provision of access to customer usage data by customers and customer-authorized third parties, and access to aggregated customer usage data to all. NCSEA and EDF in their initial comments both indicated that they supported the Public Staff's draft Rule R8-51, as well as the Mission:data draft.⁵ In addition, the Public Staff worked with the utilities to ensure that the draft rule is consistent with their respective Codes of Conduct. Both Duke and DENC indicated in their comments that the draft rule is consistent with the definitions and procedures that the utilities already have in place through their respective Codes.⁶ Duke and DENC did, however, express issues or concerns with certain portions of draft Rule R8-51, as discussed below.

7. Duke first took issue with the provisions included in the Public Staff draft Rule R8-51 that would go into effect in January 1, 2022, based on concerns over potential impacts to their deployment schedule for Customer Connect. The Public Staff discussed these concerns with Duke and understands that Duke is conducting performance testing of the final Customer Connect platform and has entered into a "freeze period" that limits further changes or added functionality to the system at this time. Duke indicated that prior to implementing the measures to

⁵ NCSEA Initial Comments at 2; EDF Initial Comments at 1.

⁶ Duke Initial Comments at 3; DENC Initial Comments at 7-13.

meet the requirements proposed by the Public Staff draft rule to become effective January 1, 2022, Duke would need to evaluate additional topics, including customer privacy, tracking and understanding customer consent, as well as the costs associated with providing the services. The Public Staff notes that the intention of the delayed effective date is to provide advance notice to the utility and other parties of these requirements such that the necessary planning and steps to implement the new requirements to be in line with “nationally recognized standards and best practices” can be incorporated into current plans for development and deployment of Customer Connect and other necessary platforms in a timely and cost-effective manner. To the extent a waiver from these requirements are necessary, or if an alternative effective date can be identified to allow these requirements to become effective in a more efficient manner, the Public Staff would be supportive of those measures.

8. Duke and DENC also noted concerns with Public Staff draft Rule R8-51(d), as it would read effective January 1, 2022, that provides:

Customer data shall be maintained and made available to customers and customer-authorized third parties in electronic machine-readable format that conforms to the latest version of the North American Energy Standard Board’s (NAESB) Req. 21, the Energy Services Provider Interface (ESPI), or a Commission approved electronic machine-readable format that conforms to nationally-recognized standards and best practices.

9. Duke stated that it is currently implementing its own proprietary customer data access tool that is similar to Green Button: Download My Data (GBD) functionality, and also noted that customers with AMI meters can already

view and download their electric data usage online in a standardized format.⁷ Duke further stated that it had previously reviewed the Green Button: Connect My Data (GBC) functionality proposed by the Public Staff's draft rules, and did not believe that customer demand outweighed the projected costs to implement the program.⁸

10. DENC raised concerns with the prospective adoption of a requirement two years in advance, and also noted the prior Duke-led stakeholder process related to customer data access in Docket No. E-100, Sub 147, in which DENC took the position that deployment of GBC was premature until AMI had been fully deployed in the Company's service territory. DENC also noted that additional investments to establish standards and security requirements outside of these rules to protect from third-party intrusion.⁹ DENC further stated that it believes it is premature to mandate these requirements "without a more robust discussion of the customer interest, cost, benefits, and risks of doing so closer in time to when the benefits can be fully leveraged from the Company's future investments in the CIP and smart meters."¹⁰

11. The Public Staff recognizes the concerns raised by the utilities and the need for additional time to evaluate and best implement functionality to comply with the rule, as indicated in the delayed effective date of this draft rule.¹¹ It is also important to note that the Public Staff's draft Rule R8-51(d) is designed to ensure

⁷ Duke Initial Comments at 5.

⁸ *Id.*

⁹ DENC Initial Comments at 15-16.

¹⁰ *Id.* at 16.

¹¹ The Public Staff notes that NCSEA recommended that the effective date of the rule should be accelerated, and instead come into effect six months after a final Commission order in this rulemaking. NCSEA Initial Comments at 2.

that the utilities' management of customer data conforms to national standards and best practices, which is not limited to conformity with the Green Button functionality. The utilities have the option to seek Commission approval for its own customer data access functionality, but it must conform with nationally recognized standards and best practices. To the extent that Duke's current data access tool being implemented can be demonstrated to be consistent with national standards and provide the same level of functionality to customers, this tool may be used to demonstrate compliance with Rule R8-51. As the utilities continue forward with their plans or actions to deploy AMI infrastructure and to update their customer billing and data management platforms, the draft rule can help provide guidance to ensure that the tools developed are consistent with national standards and practices. As noted by EDF in its initial comments, ensuring data access standards are equivalent to the most recent version of the applicable industry national standard will help to avoid the development of a "balkanized system where each utility has its own individual system for electronic data exchange" that would reduce customer choice for energy efficiency and demand response tools, as well as potentially limit the savings customer may realize.¹²

12. DENC further noted that the Public Staff's revised Rule R8-51(d) would require utilities to retain and make customer usage data available to download for at least 24 months. DENC indicates that it is generally supportive of the 24-month position called for in the Public Staff' draft rule, but its current standard practice for making customer data available for download by the

¹² EDF Initial Comments at 3.

Company's customers is currently limited to 18 months.¹³ DENC indicated that is currently seeking regulatory approval in Virginia to deploy a new customer information platform (CIP) that would be necessary to make compliance with the 24-month requirement more practicable to implement. Therefore, DENC would likely need to seek a waiver from the customer data retention requirement until it has completed its CIP initiative.¹⁴ The Public Staff agrees that a time-limited waiver of this requirement for DENC, along with providing notice of its current technological and data capabilities to provide customer data to customers and third parties, consistent with the Public Staff's draft Rule R8-51(f).

AGO and Mission Data Draft Rule R8-51

13. As previously noted, the AGO and Mission:data both filed comprehensive draft rules that were similar in content and format, which the AGO notes are organized according to the nationally and internationally recognized Fair Information Practices (FIPs).¹⁵ The AGO further stated that it "incorporated the substantive provisions of draft rules prepared by other parties regarding access and aggregation of data, then placed those provisions within the privacy framework necessary to protect North Carolina consumers."¹⁶ The Public Staff supports the position of the AGO that providing data access cannot be fully considered without also considering privacy and security.

¹³ DENC Initial Comments at 9-10.

¹⁴ *Id.*

¹⁵ AGO Initial Comments at 5.

¹⁶ *Id.* at 1.

14. Both subsequent to and following the filing of draft rules on February 10, 2020, the Public Staff had multiple discussions with the AGO regarding the scope of the proposed revisions to Rule R8-51. The Public Staff acknowledges the linkage between privacy and access, as discussed in the AGO Initial Comments, and agrees that the privacy and security of the data is a paramount consideration. However, the Public Staff believes that its draft Rule R8-51 that calls for the maintenance and provision of data consistent with national standards, along with the existing privacy and security protections provided to customers through the utilities' Codes of Conduct and existing privacy policies, provides a sufficient framework at this time for customer data access.

15. While the Public Staff did not prepare a section by section response to the AGO draft rule, the Public Staff does notes that the prescriptive nature of the AGO draft rule may overlap or be redundant in some cases with existing Commission authority. For example, Section (h) of the AGO draft rule establishes a complaint process in the context of customer data access that would be separate from the Commission's existing broad authority to hear complaints against utilities under Rule R1-9. In addition, Section (q) of the AGO draft rule states that the utilities must make available to the Commission related to accountability and auditing may already be contained within the Commission's existing authority under N.C. Gen. Stat. § 62-34 (to investigate companies under its control; visitation and inspection) and N.C. Gen. Stat. § 62-51 (To inspect books and records of corporations affiliated with public utilities). Section (h)(3) and (i) of the draft rule would also put potentially put the Commission in the position of investigating and

taking enforcement actions against third parties for violation of Commission rules that is beyond the existing authority of the Commission in N.C. Gen. Stat. § 62-310 *et seq.* Similarly, some the provisions contained in the AGO draft rule overlap or conflict with matters addressed within the utilities' Codes of Conduct that would require further consideration and possible revision to align with the rule.

16. The Public Staff believes it is appropriate to continue to discuss additional changes proposed within the AGO draft rule to bring more alignment on the issues raised. However, at this time, but Public Staff recommends that the Commission adopt the Public Staff's draft rule, with the revisions identified in these comments. The Public Staff further recommends that the Commission request the AGO, Duke, DENC, the Public Staff, and other parties to continue to discuss refinements to Rule R8-51 going forward that may incorporate additional elements of the AGO draft rule in order to provide a straightforward process for ensuring customers can access their data in a safe and efficient manner.

Respectfully submitted this the 17th day of July, 2020.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing reply comments on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 17th day of July, 2020.

Electronically submitted
/s/ Tim R. Dodge