BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 161

In the Matter of Commission Rules Related to Electric Customer Billing Data	)	JOINT SUPPLEMENTAL REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC

NOW COME Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, the "Companies") pursuant to the North Carolina Utilities Commission's ("Commission" or "NCUC") April 22, 2022 *Order Requiring Filing of Supplemental Comments* and subsequent extensions of time in the above-captioned docket, and submit their supplemental reply comments in response to the filed supplemental comments of the Public Staff, the Attorney General's Office ("AGO") and Mission:Data in this docket.

Duke Energy is committed to protecting their customers' nonpublic data from improper and inappropriate disclosures. As a regulated public utility, Duke Energy is subject to the NCUC's Rules, regulations, and orders with respect to how it may or may not share nonpublic customer information, including energy consumption information, with third parties. In this rulemaking docket, Duke Energy supports a NCUC rule governing access to their customers' nonpublic data that: (i) provides customers with control of their own data; (ii) provides the utilities subject to the rule with clear, unambiguous terms to promote ready compliance; and (iii) does not impose additional costs and burdens on customers that outweigh any benefits to customers. In general, with some exceptions, Duke Energy believes that Rule R8-51, as proposed by the Public Staff

of the North Carolina Utilities Commission ("Public Staff"), strikes the necessary balance between protecting customers' nonpublic energy usage data and implementing a workable and efficient process for appropriately sharing that data with third parties under certain limited circumstances.

Reply to Public Staff's Supplemental Comments

The Companies concur with the Public Staff's observations about the status of its Customer Billing and Data Management Systems and the installation of Advanced Metering Infrastructure.[1] With regard to Public Staff's proposed revisions to Commission Rule R8-7(a)-(c), the Companies agree with the Public Staff proposed language and are in the final stages of testing and implementing a rate comparison feature on their authenticated website, which will be available to customers having a minimum of 12 months of service at the premise. Additionally, the Public Staff noted that DEC and DEP no longer provide customers on a time-of-use rate ("TOU") schedule a comparison of bills between the TOU rate and the basic residential rate, and the Public Staff strongly encourages the Companies to make such a comparison available in its rate analysis tool, as envisioned in Draft Rule R8-7(c).[2] This capability is anticipated to be available in the first quarter of 2023 when the rate comparison feature is deployed.

The Public Staff revised its Draft Rule of R8-8(c) to require that utilities provide customers who have fewer than 12 months of consecutive utility service with a comparative analysis of their utility bills upon request. The Public Staff's original proposal only required the utilities to provide such an analysis to customers who had at least 12 months

[1] Public Staff's Supplemental Comments, p. 3-4.
[2] Public Staff's Supplemental Comments, p. 5.

of consecutive utility service.[3] The Companies disagree that they are capable of providing the same analysis, in terms of quality, with only one month of data on which to base its analysis when compared to data of 12 months of consecutive utility service. The fact is usage histories of less than 12 months will not provide as accurate a comparison as longer histories, particularly where seasonality is considered. Although the Companies could disclaim the quality of these short-term analysis, customers who act in reliance on substandard analysis to their own detriment will still place blame on the Companies, which will lead to a worse customer experience. At a minimum, the Commission should allow flexibility with the rule to allow the Companies to provide analysis with less than 12 months of usage data when the analysis, in the Companies' discretion, is of a sufficient quality. As for the Public Staff's removal of Draft Rule R8-8(d), the Companies appreciate and the support the removal of this section because it is not technically feasible.[4]

With respect to the Public Staff's comments on Draft Rule R8-51, the Companies find the Public Staff's elimination of the delay provision or any compliance period to be problematic. The Companies will require a compliance period to train customer service representatives and install necessary features. Currently, the Companies have a process in place to provide access to customer usage data to third parties.[5] In fact, the Companies implemented functionality similar to Green Button Download My Data in February 2020. However, the process, like Green Button Download My Data, requires customers to download their data and share it with the third party.[6] The current process does not

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[3] Public Staff's Supplemental Comments, p. 5.
[4] Public Staff's Supplemental Comments, p. 6.
[5] This process is available to residential and nonresidential customers. Additionally, nonresidential customers have a means of granting access to other people via the Companies' authenticated website where they can download the usage for themselves.
[6] The Companies recognize that under the Public Staff's Proposed Rule R8-51(a)(5) the term "Third party" is tailored to exclude an agent of the customer designated by the customer with the utility to act on the

necessarily to conform to the Public Staff's Draft Rule R-8-51(h), which requires the utility to disclose customer data to a third party. If the Commission mandates this process, the Companies will need time to build out and implement a secure process to transfer customer data directly to third parties. If the rule is made effective prior to 12 months from the date of the Commission Order adopting this rule, the Companies will likely need to seek a temporary waiver to build out and implement necessary processes.

If the Commission moves forward with the Public Staff's draft rules, the Companies should be able to comply within a shorter period than some of the other parties' draft rules because the Public Staff's draft rules are simpler with clear, unambiguous terms that foster and promote ready compliance. Nonetheless, the Companies do not equate ready compliance with immediate compliance and request a minimum compliance period of at least 12 months.[7]

Lastly, with regard to Draft Rule R8-51, the Companies agree with the Public Staff that the utilities have made strides toward providing customers with the means of conveying access to their usage data to third parties, and the Companies are able to generally comply with the Public Staff's Draft Rule R8-51. However, the Companies oppose rules that mandate a "Green Button Connect My Data" functionality.[8]

Reply to AGO's Supplemental Comments

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customer's behalf. However, for the purposes of these supplemental reply comments, the Companies use the term "third party" to refer to someone other than the customer. Under Rule R12-11(i)(1), customers are permitted to designate a third party to receive certain notices. It may cause unnecessary confusion under the Commission rules to have third-party designees under Commission Rule 12-11 and to exclude designees from being third parties under Commission Rule 8-51.

[7] The process would need to be prior developed and rolled out within a scheduled optimization update with Customer Connect.

[8] See DEC and DEP's Joint Reply Comments, p. 17-20 (July 17, 2020) and Supplemental Comments, p. 7 (July 22, 2022)

The AGO's Supplemental Comments focus on two main issues that require a response. First, the AGO reiterates their preference to mandate that electric utilities maintain data and make it automatically available to customer-authorized third parties in an electronic machine-readable format that conforms to nationally recognized standards and best practices, such as the Green Button Connect My Data standard. Second, the AGO proposes modifying its proposed rule regarding aggregated data to eliminate the "15-15" rule as a safe harbor because recent studies have shown the vulnerabilities with the "15-15" rule.[9]

The AGO's two main positions appear to be somewhat inconsistent. On the one hand, the AGO recognizes there is a crucial need to protect consumer privacy to prevent advertisers, insurers and many other third parties to infer the private actions of individuals. However, on the other hand, the AGO supports allowing third parties to enter customers' account numbers using an application programming interface ("API") and receive customer information, while limiting utilities' options to protect information, including limiting the timeframe to process the third-party's request and limiting the validation of the customer's identity to processes that are no more onerous than creating an online account on a utility's website.[10] DEC and DEP are committed to protecting their customers' nonpublic data from improper and inappropriate disclosures, while at the same time, agree with the Public Staff that rules should provide a more reasonable pathway for third parties to access aggregated data.

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[9] The "15-15 Rule" as stated in the Public Staff's Drafted R8-51(l) allows a utility to disclose readily available aggregated customer data that consists of at least fifteen customers, where the data of a single customer does not comprise 15 percent or more of the aggregated data within the same customer class.

[10] See AGO's Supplemental Comments Attachment 1 – Revised AGO Proposed Rule R8-51(f)(3) and (f)(3)(iii).

The Companies recognize the AGO's concerns with the 15-15 rule, and its desire to sufficiently protect aggregated data from being disaggregated to identify protected, non-public customer information. However, the AGO's revised rule will not more effectively anonymize aggregated data than the 15-15 rule. Instead, the AGO's proposed rule would merely change an objective standard to a subjective standard.

Under the AGO's proposed revision of the definition, "aggregated data" means usage data from which no individual, family, household, residence or customer could be identified or reidentified without extraordinary effort if such usage data were made public. Additionally, it requires the utility to (1) remove all information that could identify any particular individual, family, house, residence, or customer, 2) combine and/or process the usage data with the usage data of a sufficiently large group of customers, and 3) in appropriate cases, utilize other anonymization techniques, which may include reducing the granularity of the data transferred or differential privacy.

This proposed revision is quite ambiguous. It is unclear what constitutes extraordinary effort or how large is a sufficiently large group of customers. The AGO presents a study stating the individuals can be reidentified from the 15-15 rule "by simple algebra," but it is unclear what level of mathematics requires extraordinary effort. If third parties would be "delighted" to have access to this information to infer the private actions of individuals, as the AGO notes, nothing would prevent them from using extraordinary effort.

The AGO also revised its proposed rule to limit access of aggregated data to specific circumstances, specifically for EnergyStar benchmarking, government entities and

academic researchers.[11] According to the AGO, the proposed revision may allow utilities to file rate schedules for other appropriate situations for Commission approval to transfer aggregated data without obtaining consent.[12] Such an approach is similar to process established by the Companies' Code of Conduct in which the Companies must seek a waiver to provide aggregated data in various situations. As the Public Staff stated in its supplemental comments, the process established in the Code of Conduct is heavily constrained. It is unlikely that the AGO's proposal will alleviate that constrain and provide a reasonable pathway for third parties to access aggregated data.

The AGO appears to criticize the Companies for not complying with the Green Button Connect My Data standard voluntarily, and would mandate that electric utilities maintain data and make it automatically available to customer-authorized third parties in an electronic machine-readable format such as the Green Button Connect My Data standard.[13] The Companies fully support allowing customers to access their energy usage data, and in fact implemented functionality similar to Green Button Download My Data functionality in February 2020 to further facilitate the customer access previously provided. However, it would not be prudent or reasonable for the Companies to spend millions of dollars on a project that would not be cost-effective. The AGO claims that the Companies' estimated costs to implement Green Button Connect My Data or a comparable standard is not a reason for the Commission to decline to require its adoption because the costs are "small" relative to the costs of implementing Customer Connect or the installation

[11] The AGO also recognizes that there are likely other appropriate situations to transfer aggregated data without customer consent.

[12] The Companies assume the AGO is referring to section R8-51(j)(4) of its revised rule, but it does not seem to provide a process to approve additional scenarios besides EnergyStar benchmarking, government entities, and academic researchers.

[13] AGO's Supplemental Comments, P. 3.

of AMI. However, just because the AGO asserts that a cost of $3.2 million is "small" when compared to much larger projects does not make it worthwhile. As the Companies noted in their reply comments and supplemental comments, for the time period noted, only about 1/10 of one percent of residential customers accessing their online account selected to utilize the Download my Data feature. Approximately two and a half years later, customer usage of this feature has hardly expanded. For the year 2022 to date, following 9 million customer account accesses, the Download My Data feature was only selected 18,000 times, which is 2/10 of one percent. To make the significant financial investment required to expand that program at this time and allow third parties ready on-going access to customer usage data is not a prudent use of resources, especially when customers already have access to Green Button Download My Data functionality.

The AGO's proposed rule also requires utilities to verify the third parties that a customer has already consented to share their data with and requires utilities to determine these third parties eligibility.[14] The Commission does not have jurisdiction over these third parties. However, utilities should not be the regulators of these third parties. It's not a utility function to regulate third parties. The AGO's proposed rule would require utilities to deem third parties eligible to receive information that customers have already consented to give to these parties. A utility would be required to file a request with the Commission if a utility believes it is necessary to terminate an authorized third party's access to customer data.[15] From there, if the Commission confirms that a third party is or has become ineligible to receive information as an authorized third party, the Commission shall allow the utility to refrain from providing or to discontinue providing standard customer data to

[14] See AGO's Supplemental Comments Attachment 1 – Revised AGO Proposed Rule R8-51(f)(9).
[15] See AGO's Supplemental Comments Attachment 1 – Revised AGO Proposed Rule R8-51(h)(2).

that party. This allows a bad actor to continue receiving a customer's information, assuming the customer has not already revoked their consent, until the Commission makes this confirmation.

The AGO's proposed rule does not create an efficient or workable process, but it does highlight the risks of requiring utilities to automatically provide customer information for third parties. Creating a regime where utilities are pseudo-regulators of third parties who seek customer information is not a superior approach to simply letting customers control their own information, which is the approach Duke Energy has already implemented with its Download My Data offering.

The AGO also argues that the Companies should implement Green Button Connect My Data because their approach is not interoperable with a system used in other parts of the country. The AGO alleges this approach discourages developers who would need to design tools to work with the Companies' "discrete regime," which the AGO states, in a conclusory fashion, will limit the energy conservation opportunities available to North Carolina and steer customers to the Companies' programs. It appears the AGO is referring to the policy established by the General Assembly to promote the inherent advantage of regulated public utilities and that a regulated monopoly best serves the public, as opposed to competing suppliers of utility services. However, it seems highly unlikely that developers would bypass the ninth largest state in the nation by population, which is rapidly growing, if the Commission does not opt to implement Green Button Connect My Data. Essentially, the AGO is suggesting that the Commission should shift the costs to design tools from independent developers to retail customers, which is a curious position for a consumer advocate. Customers should not bear the costs to build third-party businesses.

Reply to Mission:Data's Supplemental Comments

In its supplemental comments, Mission:Data remarks on a number of best practices that have emerged in various jurisdictions regarding third-party data access. Mission:Data focuses on developments in California, Washington, D.C., New Hampshire, New York, Ohio, Maine and Texas, all of which are deregulated electric utility jurisdictions. In those jurisdictions, it may be sensible to require an interoperable functionality like Green Button. In those jurisdictions, customers can provide their data automatically to a third party, which may be a third-party electric supplier, that can provide options for the customer to switch to a different electric supplier that may be more suitable for their needs. North Carolina promotes the inherent advantage of regulated public utility, and the established policy is that a regulated monopoly best serves the public, as opposed to competing suppliers.

Additionally, Mission:Data advocates for the implementation of a centralized application programing interface ("API"), which has been incorporated in Texas and is underway in New Hampshire and New York. Without it, Mission:Data states it would be impossible for energy management software to be universally available to customers in North Carolina and would lead to faulty comparisons across service territory lines, inefficiencies for service providers, and reduced choices available for customers.[16] Contrary to the AGO and Mission:Data's concerns that energy management software providers cannot access the Companies' functions, which has already been implemented, is unfounded. North Carolina has a large and growing market. The fact is customers have demonstrated a limited demand for this information, and it is unnecessary to invest in the

[16] Mission:Data Supplemental Comments, See Section 3. Centralization via a Single Application Programming Interface ("API") p. 10-11

delivery of this product when there has been no material demand from customers. Once again, customers should not bear the costs to build these third-party businesses.

Conclusion

DEC and DEP maintain their position as set forth in multiple comments in this docket. The Companies' stated preference is to implement the Public Staff's draft rules. To the extent additional refinements are needed to Rule R8-51 going forward, the parties can continue to discuss incorporating additional elements. To the extent additional revisions and items have been added to the proposed rules in this latest round of supplemental reply comments, the Companies may request an opportunity to respond.

Respectfully submitted this 9th day of December 2022.

By: _____

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ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC
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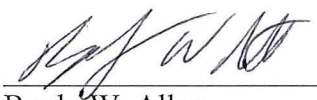
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of JOINT SUPPLEMENTAL REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC has been served by electronic mail (e-mail), hand delivery, or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to parties of record.

This, the 9th day of December, 2022.



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