

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1300
DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1300)	
)	
In the Matter of)	
Application by Duke Energy Progress, LLC,)	
for Adjustment of Rates and Charges)	
Applicable to Electric Utility Service in)	ORDER GRANTING IN PART
North Carolina and Performance-Based)	AND DENYING IN PART
Regulation)	REQUEST FOR LIMITED
)	WAIVERS OF SECTION III,
DOCKET NO. E-7, SUB 1276)	A.2.(B) AND (G) OF CODE OF
)	CONDUCT
In the Matter of)	
Application by Duke Energy Carolinas, LLC,)	
for Adjustment of Rates and Charges)	
Applicable to Electric Service in North)	
Carolina and Performance-Based Regulation)	

BY THE COMMISSION: On March 19, 2024, Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC and, together with DEP, Duke), filed in each of the above-captioned dockets the Reporting Requirements for the Affordability Stakeholder Group and Request for Limited Waivers of Section III, A.2.(B) and (G) of the Companies' Code of Conduct (ASG Reporting Requirements and Waiver Request).

In DEP's and DEC's respective rate case dockets, Docket Nos. E-2, Sub 1300 (DEP) and E-7, Sub 1276 (DEC), the Commission approved the Customer Assistance Program (CAP). See Order Accepting Stipulation, Granting Partial Rate Increase, and Requiring Public Notice, *Application by Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina and Performance-Based Regulation*, No. E-2, Sub 1300 (Aug. 18, 2023) (DEP Rate Case Order); see also Order Accepting Stipulations, Granting Partial Rate Increase, Requiring Public Notice, and Modifying Lincoln CT CPCN Conditions, *Application by Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation*, No. E-7, Sub 1276 (Dec. 15, 2023) (DEC Rate Case Order). The Agreement and Stipulation of Partial Settlement Regarding Low-Income/Affordability Performance Incentive Mechanism and Affordability Issues (Affordability Stipulation) was approved in both the DEP Rate Case Order and the DEC Rate Case Order.

In addition to approving the Affordability Stipulation, the DEP Rate Case Order directed DEP to convene a stakeholder engagement process to: (1) consider data and reporting issues that may be necessary for DEP's CAP Pilot; (2) consider metrics and inputs used to assess the CAP Pilot; and (3) update the Commission on the stakeholder process. According to the DEP Rate Case Order, the stakeholder group was to agree, no later than six months after issuance of the DEP Rate Case Order, upon the data and information that DEP will provide in an annual report to be filed each year that the CAP is effective. The Commission specified minimum requirements for the annual reports. The Commission also directed that DEP file a semi-annual report for certain information pertaining to weatherization, energy efficiency, CAP, and health and safety repairs. The DEC Rate Case Order did not direct DEC to engage in any reporting beyond that which the Affordability Stipulation requires.

On February 16, 2024, DEP and DEC filed a joint motion requesting an extension of time to provide the information to be provided in future reports on CAP. On February 22, 2024, the Commission issued an Order Granting Extension of Time to File Reporting Requirements for Annual Customer Assistance Program Report granting an extension until March 18, 2024, for DEP to file the report regarding the data and information to be included in the annual report on the CAP during the years that it is effective. The Commission noted that the Order was being filed in the DEC rate case docket (Docket No. E-7, Sub 1276) for informational purposes.

In the ASG Reporting Requirements and Waiver Request filed on March 19, 2024, Duke states that the members of the Affordability Stakeholder Group (ASG) have agreed that the information for the CAP will be reported by both DEP and DEC. Specifically, Duke requests that the Commission: (1) waive Section III, A.2.(b) and (g) of Duke's Code of Conduct governing its disclosure of Customer Information for the sole purpose of the ASG's work toward meeting the Commission's objectives outlined in the rate case orders, including filing such information in public reports; (2) provide that the limited waiver expires upon the filing of the final report of the ASG with the Commission; (3) include language providing that the limited waiver shall not be construed to impose any liability on DEC and DEP or their directors, officers, and employees related to the limited waiver and that DEC and DEP shall not be responsible for the security of the information or its use or misuse by a third party if they have used reasonable diligence to prevent improper disclosure or use; and (4) order Duke to file the annual report confidentially or, in the alternative, publicly, and grant a limited waiver of the Code of Conduct to do so. The limited waiver of Section III, A.2.(b) and (g) will allow Duke to include anonymous, aggregated non-public Customer Information in the annual and semi-annual reports for the CAP and to share that information with ASG members on a quarterly basis to enable the ASG to analyze the CAP.¹

¹ Duke's Code of Conduct defines "Customer Information" as: "Non-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC, DEP, or Piedmont in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers. "Electric Services" means "Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service

Duke further states that it is committed to achieving the ASG's goals as set forth in the DEP and DEC Rate Case Orders, and that, as the ASG focuses on achieving the Commission's objectives, its participants need to view information specific to groups of customers which would necessitate Duke's disclosure of non-public Customer Information. Section III of Duke's Code of Conduct prohibits the disclosure of any Customer Information without a customer's consent except where required to do so by a court or agency, including the Commission.

Duke states that its Code of Conduct contains many provisions regulating its treatment of Customer Information. Section III, A.2.(b) provides that Duke shall not disclose Customer Information without the customer's consent, and then only to the extent the customer specifies. Section III, A.2.(g) requires Duke to take appropriate steps to store Customer Information in a manner that limits access to those persons permitted to receive it and requires all persons with access to such information to protect its confidentiality. Section III, A.2.(f)(iii) allows Duke to disclose Customer Information to a state agency or court if required by the agency or court to do so.

According to Duke, because the Commission has ordered certain data to be included in an annual report, Duke does not seek a waiver for the specific information ordered which is exempt from the Code of Conduct. However, Duke states that it will need a waiver to include additional and more specific information that the ASG has agreed to, including county-level data. Duke asserts that it is necessary and appropriate to follow the "Rule of Fifteens" and limit the sharing of aggregated non-public data at the zip code and county level to zip codes or counties that have no fewer than 15 residential customer accounts and no one customer makes up more than 15% of the load. For zip codes or counties with fewer than 15 residential customer accounts or with a customer who makes up more than 15% of the load, the report will aggregate the total and reflect them as "other." Duke states that it also contemplates this type of sharing of confidential Customer Information for the semi-annual reports. Duke requests a limited waiver of the provisions of the Code of Conduct that govern its disclosure of non-public customer data to third parties without customer authorization.

Duke also requests guidance from the Commission on whether to provide the annual reports confidentially or publicly. If the Commission requires Duke to file the annual report publicly, it requests a limited waiver of the Code of Conduct to do so.

Duke argues that the requested waiver is justified and that the waiver is necessary for the ASG's work, which is intended to improve the CAP. The ASG is being conducted pursuant to the DEP and DEC Rate Case Orders, with Commission oversight, and with clear objectives and parameters. Duke requests that the Commission allow the waiver for the purposes of complying with the rate case orders and with respect to the objectives of the ASG only. Duke states that the Customer Information would be aggregated with no

to other suppliers." The Code of Conduct does not apply to information pertaining to race, gender, age, income levels, type of dwelling, location of dwelling, or house value. Duke states that DEP and DEC do not collect or maintain these types of demographic data about their customers.

specific individual customer identifiers such as account numbers or specific addresses, so individual customer's privacy will be protected. Further, the request only involves residential customers, rather than all classes of customers, so the potentially sensitive competitive information of Duke's commercial and industrial customers will not be disclosed, even in the aggregate. Duke maintains that the anonymous aggregated Customer Information at the proposed level will not lead to any competitive advantage for DEC or DEP affiliates.

Duke asserts that its request for a limited waiver of the provisions of the Code of Conduct governing its disclosure of non-public Customer Information strikes a balance among protecting non-public Customer Information, expeditiously meeting the Commission's goals for the ASG, and complying with the Code of Conduct. Duke requests that, if the Commission allows the limited waiver, it include language like that included for similar waivers in the past, including for the Low-Income Affordability Collaborative (LIAC), providing that:

DEC and DEP shall use reasonable diligence in preventing improper disclosure of the Customer Information provided to the members of the ASG and any members of those organizations that will be reviewing the Customer Information and shall comply with Section III.A.2(k) of the Code of Conduct if they become aware of any improper disclosure or use of the Customer Information. DEC and DEP shall not be held responsible or liable for an improper disclosure or use of the Customer Information provided to ASG members and their organizations if they have used reasonable diligence to prevent any such improper disclosure or use.

Duke states that it proposes to use a similar approach to that used in the LIAC for sharing Customer Information with members of the ASG and any members of their organizations that will be reviewing the Customer Information. Specifically, before receiving the Customer Information, members of the ASG and, and any of their members who will be reviewing the information, will enter a memorandum of understanding (MOU) with Duke acknowledging that the Customer Information is confidential and committing the ASG member to using reasonable diligence to protect against the possibility of Customer Information being disclosed to any other person who has not signed the MOU. The information will be used only for purposes that the ASG identifies.

Duke states that the Public Staff supports the granting of Duke's request for the limited waiver of the Code of Conduct for the purpose of furthering the work of the ASG.

On April 11, 2024, the Southern Environmental Law Center (SELC) filed a letter on behalf of thirteen members of the ASG expressing support for the CAP data reporting requirements that Duke presented in its March 19, 2024 filing. The SELC letter outlined additional data reporting recommendations, which SELC asserts would ensure a more comprehensive evaluation of the CAP pilot and are supported by a significant number of

ASG members. SELC requested that the recommended additional data reporting requirements be included under any limited waiver of the Code of Conduct, if required.²

DISCUSSION AND CONCLUSIONS

Scope of the Requested Waiver

Duke requests that the Commission allow the limited waiver for purposes of complying with the two rate case orders and with respect to the objectives of the ASG only. Duke proposes to include anonymous, aggregated non-public Customer Information in the annual and semi-annual reports on the CAP and to share the anonymous, aggregated non-public Customer Information with the members of the ASG on a quarterly basis to enable the ASG to analyze the CAP.

On October 6, 2023, after the issuance of the DEP Rate Case Order, Duke invited members of the LIAC and the parties to the Affordability Stipulation (the Stipulating Parties) to join the ASG.³

The provisions in the Code of Conduct for which Duke seeks waiver are intended to protect Customer Information and authorize disclosure only when the customer consents or when disclosure is ordered by a court or regulatory body. Implicit in these Code of Conduct provisions is that Customer Information is private, confidential, and not to be disclosed freely without potential harm to the customer. Additionally, the Code of Conduct recognizes that Customer Information could have competitive value to Duke's affiliates as well as to unaffiliated third parties. In the DEP Rate Case Order, the Commission ordered Duke to report to the Commission certain Customer Information, which involves disclosure of that Customer Information to members of the ASG. Because the requested waiver of certain of the provisions of the Code of Conduct is necessary for DEP to comply with the Commission's directives in the DEP Rate Case Order, the Commission grants a waiver of Section III, A.2.(b) and (g) of the Code of Conduct as to DEP so that DEP may disclose aggregated residential Customer Information only to those ASG sub-teams that require it for purposes of complying with the DEP Rate Case Order and for no other purpose. The Commission requires that the information be disseminated in the most restrictive manner possible that still allows the ASG to conduct its work; specifically, the Commission orders that only the ASG sub-teams whose tasks require the confidential Customer Information have access to it. The Commission views this as a

² The organizations on whose behalf SELC filed the letter are Advance Carolina, Appalachian Voices, Charlotte Area Fund, Crisis Assistance Ministry, Natural Resources Defense Council, North Carolina Conference of the NAACP, North Carolina Housing Coalition, North Carolina Justice Center, Rowan Helping Ministries, Sierra Club, Southern Alliance for Clean Energy, Southern Environmental Law Center, and Vote Solar.

³ The Stipulating Parties, in both rate cases, include Duke, the Sierra Club, the North Carolina Justice Center, the North Carolina Housing Coalition, the Natural Resources Defense Council, the Southern Alliance for Clean Energy, Vote Solar, and the Public Staff.

reasonable step in support of the work of the ASG. This limited waiver granted expires on the date that the ASG files its final report with the Commission.

While the DEC Rate Case Order approved the Affordability Stipulation like the DEP Rate Case Order, unlike the DEP Rate Case Order, the DEC Rate Case Order did not direct DEC to engage in any reporting beyond that which the Affordability Stipulation requires. For this reason and due to the importance of protecting the confidentiality of Customer Information and minimizing the possibility of inadvertent or unauthorized disclosure, the Commission will not grant the waiver as to DEC.

The Commission is also not persuaded that it is reasonable to grant a waiver of the Code of Conduct for the additional reporting requirements identified by SELC in its letter as these additional requirements were not supported by the ASG as a whole.

Hold Harmless Provision

Duke requested that the Commission, in any order granting its requested waiver, include a provision that affords blanket protection to Duke in the event that Customer Information is improperly used or disclosed by a member of the ASG (or any member or representative of those organizations who will be reviewing the Customer Information). Duke made a similar request in the context of the waiver sought for the LIAC. As with the waiver granted in the LIAC, while DEP is giving up exclusive control over the Customer Information to the ASG, DEP is not relinquishing total control. Rather, DEP will maintain a substantial level of oversight with respect to the actions of the ASG, including the ASG access to and use of the Customer Information. As reported to the Commission by Duke, each sub-team will be led by one representative from Duke and one representative from another ASG member. Therefore, as with the LIAC, the Commission is not persuaded that the blanket hold harmless provision requested by Duke is necessary or appropriate. The Commission concludes that it is reasonable and appropriate to require DEP to use every effort in preventing improper disclosure of the Customer Information provided to the appropriate ASG sub-teams and any members of those organizations who will be reviewing the Customer Information and to comply with Section III.A.2(k) of the Code of Conduct if DEP becomes aware of any improper disclosure or use of the Customer Information. DEP shall not be held responsible or liable for an improper disclosure or use of the Customer Information provided to ASG members in accordance with this Order if DEP has used every effort to prevent any such improper disclosure or use.

Memorandum of Understanding

As with the waiver granted for the LIAC, the Commission directs DEP to enter into an MOU with the relevant ASG members acknowledging that the Customer Information provided by DEP is confidential, committing to use every effort to protect against the possibility of unauthorized disclosure of the Customer Information, and committing that the original and all copies of the Customer Information will be returned to DEP on or before the date that the final ASG report on the CAP is filed with the Commission.

Filing of Annual and Semi-Annual Reports on the CAP

The Commission is persuaded of the necessity of DEP's filing the required annual and semi-annual reports on the CAP on a confidential basis.

IT IS, THEREFORE, ORDERED as follows:

1. That DEP's request for a limited waiver of the Code of Conduct, as detailed and restricted herein, so that it may disclose certain confidential Customer Information to ASG sub-teams, is hereby granted;
2. That DEC's request for a limited waiver of the Code of Conduct, as detailed herein, so that it may disclose certain confidential Customer Information to the ASG, is hereby denied;
3. That all Customer Information made available by DEP to the ASG shall be used solely for the purpose of for purposes of complying with the DEP Rate Case Order and for no other purpose;
4. That within 30 days of the date of this Order DEP shall enter into and file with the Commission a Memorandum of Understanding with ASG members. The MOU shall include an acknowledgement by the ASG member that the Customer Information provided by DEP is confidential, a commitment by the ASG that it will use every effort to protect against the possibility of the Customer Information's being disclosed to any person other than members of the ASG, and a commitment by the ASG that it will return the original and all copies of the Customer Information to DEP on or before the date on which the ASG files its final annual report on the CAP with the Commission;
5. That DEP shall report promptly to the Commission any misuse or unauthorized disclosure of the Customer Information provided pursuant to the limited waiver;
6. That DEP shall use every effort in preventing improper disclosure of the Customer Information provided to the ASG and shall comply with Section III.A.2.(k) of the Code of Conduct if they become aware of any improper disclosure or use of the Customer Information. DEP shall not be held responsible or liable for an improper disclosure or use of the Customer Information provided to the ASG if they have used every effort to prevent any such improper disclosure or use;
7. That the limited waiver granted herein shall expire on the date that the ASG files its final annual report on the CAP with the Commission; and

8. That the annual reports and semi-annual reports on the CAP shall be filed with the Commission on a confidential basis.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of May, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Tamika D. Conyers". The ink is dark and the signature is fluid.

Tamika D. Conyers, Deputy Clerk

Commissioners Jeffrey A. Hughes and Floyd B. McKissick, Jr., dissent in part.

DOCKET NO. E-2, SUB 1300
DOCKET NO. E-7, SUB 1276

Commissioner Jeffrey A. Hughes, dissenting in part:

I do not agree with the majority's opinion and believe the Commission should have granted the Customer Code of Conduct waiver for both DEC and DEP as requested by Duke. The request was supported by a wide variety of organizations and parties including advocates focused on affordability issues as well as the Public Staff. The order denying this request cited concerns for protecting customers as well as the fact that the DEP and DEC rate case orders had different mandatory minimum customer assistance pilot program reporting requirements. As far as customer protection goes, I think this was adequately addressed in Duke's waiver request which outlined several multiple data management procedures and best practices that have been widely used for years across the country to successfully maintain customer anonymity. I also see no reason to deny a Commission created affordability stakeholder group with access to key information in the DEC service area that they themselves stated will help them understand affordability issues simply because the DEC and DEP have different mandatory reporting requirements. On the contrary, the DEP and DEC region have different electricity rates, energy burdens, and regional demographics such that allowing the group to have access to the same granularity of data in the two service areas is important to understanding the range of challenges faced in different regions of the state. In summary, I strongly believe that the negligible risk associated with granting the waiver is far outweighed by the insight it may provide to help address one of the most important electricity service challenges in the state.

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

DOCKET NO. E-2, SUB 1300
DOCKET NO. E-7, SUB 1276

Commissioner Floyd B. McKissick, Jr., dissenting in part:

I vehemently disagree with the majority's decision not to grant the reasonably requested limited waivers to Duke Energy Carolinas, LLC (DEC; and together with Duke Energy Progress, LLC (DEP), Duke), to allow them to release anonymous, aggregated non-public customer information in annual and semi-annual reports relating to the Customer Assistance Program (CAP) and to share anonymous, aggregated non-public customer information with members of the Affordability Stakeholder Group (ASG) to enable the ASG to analyze data relating to the CAP.

I would like to point out that the aggregated data disclosed would only relate to residential customers and it would not contain any specific individual customer identifiers, such as customer names, account numbers, mailing addresses or residential addresses; therefore, a customer's privacy would be protected.

Before any information sharing occurs members of the ASG and any members of their organizations that would be reviewing the data, would be required to sign a Memorandum of Understanding (MOU) with DEP and DEC.

In Duke's application to the Commission in which the waivers were requested it explicitly stated that the MOU would contain an acknowledgment that the customer information provided was confidential and it would have required members of the ASG to commit that each would use reasonable diligence to protect against the possibility of customer information, being disclosed to any person, who had not signed the MOU and that the information shared would only be used for the purposes identified in the MOU and for no other purposes.

As an attorney who has been involved in complex cases for close to four decades, I have seen many cases where confidentiality agreements, protective orders, or other legal agreements were used to protect the confidentiality of documents and/or information, such as trade secrets, source codes, financial data, or other sensitive information and those agreements were successful in protecting the confidentiality of the documents or information being shared or disclosed. There is no reason why the MOU proposed by Duke Energy could not have worked successfully and effectively in protecting the confidentiality of the customer information involved in this proceeding. I would also like to point out that the ASG and the Public Staff supported Duke's request for the proposed waivers. More importantly, now that the CAP pilot has been allowed by the Commission in the DEP and the DEC rate cases I would like data collected and analyzed to assist Duke, the ASG and the Commission in determining the effectiveness of the program, as well as modifications that might be proposed to improve the CAP. Among the ideas that will be assessed by the ASG is whether a tiered CAP should be a part of a subsequent program offered to eligible customers.

If the ASG could obtain zip code level data for customers of DEP and DEC it would provide a full data set for analysis of the Customer Assistance Program in its totality. Under the majority's decision, Duke and ASG would have an incomplete data set, since the waiver granted by the majority only relates to DEP customers, rather than to both DEP and DEC customers.

While it may be possible to extrapolate trends based upon data collected from DEP customers it's important to remember that we are looking at two different companies with different rates for service and that each has a unique customer base as well as different geographical service territories.

Why force the companies and the ASG to speculate and extrapolate when a full data set could be obtained from the outset. Duke's proposal struck a reasonable balance between sharing pertinent data while protecting the privacy of customers, by providing aggregated, non-specific data. The Code of Conduct waivers requested by Duke in this proceeding are similar to the waivers granted by the Commission to allow the City of Charlotte to obtain non-public zip code level customer information to complete its Quality-of-Life Study. This Commission also granted a waiver request to allow Duke to disclose aggregated residential customer information to certain members of the Low-Income Affordability Collaborative (LIAC) which used the data provided as a basis for recommending the establishment of a Customer Assistance Program. Now that a pilot Customer Assistance Program has been established, we should be approving the requested waivers to provide access to the very data and information that can help Duke's most vulnerable customers.

/s/ Floyd B. McKissick, Jr.
Commissioner Floyd B. McKissick, Jr.