

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1187
DOCKET NO. E-2, SUB 1219
DOCKET NO. E-2, SUB 1193

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | |
| Applications by Duke Energy Carolinas, LLC, |) |
| and Duke Energy Progress, LLC, for |) |
| Adjustment of Rates and Charges Applicable |) |
| to Electric Utility Service in North Carolina |) |
| | ORDER GRANTING TIME |
| | LIMITED WAIVER OF CODE |
| | OF CONDUCT PROVISIONS |
| | WITH CONDITIONS |

BY THE COMMISSION: On August 24, 2018, in Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A, the Commission issued an Order Amending Regulatory Conditions. The Order, among other things, approved amendments to the Code of Conduct applicable to Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP, collectively Duke or companies), and Piedmont Natural Gas Company, Inc. (Piedmont). The Code of Conduct sets minimum guidelines and rules that apply to the relationships and transactions between and among DEC, DEP, Duke Energy Corporation, and other affiliates of DEC and DEP. In addition, the Code of Conduct prohibits the disclosure of certain non-public customer information about DEC's and DEP's retail customers.

The 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.

Code of Conduct, Sec. I, Definitions.

The Code of Conduct defines Electric Services as

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 to other suppliers.

Id.

The Code of Conduct contains several provisions regulating the Companies' handling and protection of Customer Information. See, Code of Conduct, Disclosure of Customer Information, Sec. III, A. 2.(a) – (k). Section III, A. 2(b) provides that the Companies shall not disclose Customer Information without the Customer's consent, and then only to the extent specified by the Customer. Section III, A. 2(g) requires DEC and DEP to take appropriate steps to store Customer Information in a manner that limits access to those persons permitted to receive it and requires DEC and DEP to ensure that persons with access to Customer Information will protect its confidentiality.

The Code of Conduct does not specifically address whether Customer Information includes data about a customer's gender, age, race, income level, type of dwelling (e.g., multi-family, single family, manufactured home), location of dwelling (e.g., city or suburb), and house value (collectively, demographic data).

Section II of the Code of Conduct states that

DEC, DEP, or Piedmont may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that circumstances in a particular case justify such a waiver.

On March 31, 2021, in Docket Nos. E-7, Subs 1213, 1214, and 1187, the Commission issued an Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice (DEC Rate Order). In summary, the DEC Rate Order approved an increase in the base rates of DEC. In addition, the Order required DEC and the Public Staff to organize a stakeholder collaborative group to study low-income affordability issues (Low-Income Affordability Collaborative or LIAC). On April 16, 2021, the Commission issued a similar Order in DEP's general rate case in Docket Nos. E-2, Subs 1219 and 1193 (collectively, Rate Case Orders). The Rate Case Orders outlined the parameters of the topics and issues to be studied by the LIAC, and directed Duke and the Public Staff to file a joint final report within 12 months of the date of the first LIAC workshop.

On January 14, 2022, DEC and DEP filed a joint petition in the above-captioned dockets pursuant to Commission Rule R1-5 and Section II of the Code of Conduct. The Companies requested a time-limited waiver of Section III, A.2.(b) and (g) of the Code of Conduct so that they may share anonymous, aggregated non-public Customer Information with the participants in the LIAC. Duke described the LIAC organizing activities in which it and the Public Staff have engaged in response to the Rate Case Orders. The activities include the selection of Guidehouse, Inc. (Guidehouse), as the third-party facilitator, holding the first LIAC meeting on July 29, 2021, and filing a Quarterly Progress Report (LIAC Report), on January 18, 2022. Duke stated that it discussed its request for a time-limited waiver with the Public Staff and the participants of the LIAC.

Duke stated that in the Rate Case Orders the Commission directed the LIAC, among other things, to:

- Provide an analysis or demographics of residential customers, including number of members per household, types of

households (single family or multi-family), the age and racial makeup of households, household income data, and other data that would describe the types of residential customers the Company now serves. To the extent the demographics vary significantly across the Companies' service areas, provide additional analysis of these demographic clusters;

- Estimate the number of customers who live in households with incomes at or less than 150% of the federal poverty guidelines, and whose incomes are at or less than 200% of the Federal Poverty Guidelines; and
- Provide an analysis of patterns and trends concerning energy usage, disconnections for nonpayment, payment delinquency histories, and account writeoffs due to uncollectibility.

DEC Rate Order, at 176-77.

Duke stated that it has provided presentations to the LIAC that include relevant customer data that was publicly available and, thus, did not implicate the Code of Conduct, and additional information that the Companies have obtained from sources other than their customers. Duke stated that it does not collect or maintain demographic data about its customers, but that it has worked with third parties, such as Acxiom, to provide these types of demographic data for purposes of the LIAC's work. As an example, Duke attached to its petition Attachment No. 1, which includes demographic data that Duke has shared with members of the LIAC. Duke also included in its petition a list of specific demographic information that it had aggregated on a North Carolina basis and provided to the LIAC.

However, Duke stated that the LIAC participants have expressed a need to review certain information specific to groups of Duke's customers that would necessitate the Companies' disclosure of non-public Customer Information, and that the LIAC maintains that such information is necessary to the LIAC's accomplishment of the Commission directives. Based on the LIAC's expressed needs, Duke stated that to timely meet the Commission's goals outlined in the Rate Case Orders it is appropriate for Duke to provide anonymous non-public data aggregated at the zip code plus four level to LIAC participants, thus requiring a limited waiver of the provisions of the Code of Conduct that govern Duke's disclosure of non-public Customer Information to third parties without customer authorization. According to Duke, the Customer Information provided to the LIAC would be non-public energy usage and billing information, such as number of accounts, average bill amount, average monthly kWh usage, percentage of customers receiving all-electric service, and percentage of customers disconnected for nonpayment. Moreover, Duke stated that in some cases it would overlay its Customer Information with other data that is not Customer Information because it is available from sources other than Duke's customer records, such as age, race, federal poverty level, home value, percentage of customers living in single-family, multi-family and manufactured homes, and whether the account is in a city or suburb.

According to Duke, the Customer Information to be disclosed to the LIAC participants would be aggregated and would not include specific individual customer identifiers, such as account numbers or specific mailing or residence addresses, and therefore, the individual customer's privacy would be protected. Further, Duke stated that it would compile and deliver the aggregated Customer Information to the participants of the LIAC for the sole purpose of achieving the Commission's express objectives for the LIAC, and that the limited waiver would remain in effect until the LIAC submits its final report to the Commission.

In addition, Duke stated that its waiver request applies only to residential Customer Information, not Customer Information of other classes of customers. Duke maintained that potentially sensitive, competitive information of the Companies' commercial and industrial customers will not be disclosed, even in the aggregate, and that disclosure of the anonymous non-public Customer Information aggregated to the proposed level will not lead to any competitive advantage for DEC's or DEP's affiliates.

Moreover, Duke requested that the limited waiver include a directive that

Nothing in this Order Allowing Limited Waiver of the Code of Conduct shall be construed to impose any liability on DEC and DEP or any of DEC's or DEP's directors, officers and employees, relating to disclosures of Customer Information. Specifically, after DEC or DEP transfers customer data pursuant to this Limited Waiver, DEC and DEP shall not be responsible for the security of the information or its use or misuse by any third party. Nothing herein relieves DEC or DEP of its responsibility to comply with Section III.A.2(k) of the Code of Conduct.

Section III.A.2(k) of the Code of Conduct states that

Should any inappropriate disclosure of DEC, DEP, or Piedmont Customer Information occur at any time, DEC, DEP, or Piedmont shall promptly file a statement with the Commission describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences.

In further support of its petition, Duke cited the Commission's Order Approving Limited Waiver of Code of Conduct, issued in Docket No. E-7, Sub 997 on February 29, 2012 (Sub 997 Order). According to Duke, the Sub 997 Order approved the Companies' proposal to disclose anonymous, aggregated customer energy usage data to the City of Charlotte at the zip code plus four level, without any customer authorization. Duke stated that the City of Charlotte had requested the non-public Customer Information for use in completing the City's Quality of Life Study, and that in deciding to allow the limited Code of Conduct waiver the Commission relied on the following factors: the research that the City of Charlotte was conducting would ultimately benefit its citizens and DEC's customers; the disclosure of the non-public data in the aggregate was unlikely to lead to any affiliate of DEC gaining a competitive advantage; and the aggregated information at

that level did not raise any customer privacy concerns because no customer identification or individual customer-specific information would be included.

Finally, Duke stated that it was authorized to state that the Public Staff supports the granting of Duke's request for the time-limited waiver of the Code of Conduct for the purpose of furthering the work of the LIAC.

DISCUSSION

Scope of the Requested Waiver

In the LIAC Report, Duke listed 26 stakeholders, other than Duke and the Public Staff, who have participated in at least one LIAC meeting. In addition, Duke identified four subteams that have been established within the LIAC: Customer Challenges (19 members), Affordability Metrics (19), Rates and Programs (20), and Collaborative Coordinations (14). Duke stated that the activities of each subteam are being led by two co-leaders and have been driven by a set of accountabilities described in Appendix B to the LIAC Report. Duke further stated that the subteams have begun working through specific tasks with the goal of generating findings or framing recommendations that will eventually be presented to the full LIAC for further discussion or endorsement.

Appendix B to the LIAC Report states that the focus of the Customer Challenges subteam is to "Position the LIAC to prepare an assessment of current affordability challenges facing residential customers." (LIAC Report, Appendix B, at B-2). The actions identified to be taken by this subteam are to consider the demographic data and other information, use the demographic data and other information to identify customer challenges faced by North Carolina residential customers, and develop affordability assessment recommendations. Id. Finally, the tasks identified for the Customer Challenges subteam are to compile data inputs needed to conduct an assessment, align on interpretation of the data, develop insights to share with the LIAC, and propose an assessment methodology. Id.

Duke's petition requests a waiver of the Customer Information restrictions that would allow Duke to share the anonymous, aggregated by zip code Customer Information with all participants in the LIAC. However, the Commission is reluctant to grant such a broad waiver for the disclosure of Customer Information. Rather, the Commission finds it prudent to limit as much as possible the number of people who are granted access to the Companies' Customer Information so long as such limitation does not impair the usefulness of the information as a tool for the work of the LIAC.

Having reviewed the focuses, actions, and tasks of all four subteams, as these are described in Appendix B to the LIAC Report, the Commission concludes that access to the Customer Information should be limited to the Public Staff, Guidelines, Inc., and the members of the Customer Challenges subteam. It appears that the primary goal of the Customer Challenges subteam is to develop an affordability assessment mechanism that will enable the LIAC to identify the main factors affecting affordability of utility services, and to share its conclusions with the LIAC. The Commission concludes that the Customer

Challenges subteam should be able to conduct its evaluation using the Customer Information, and then share its results and conclusions with all stakeholders without having to disclose the actual Customer Information inputs. Finally, in the event that this limited access to the Customer Information results in an inability of the LIAC to fully utilize the data, the Commission will entertain a request by Duke to expand the scope of stakeholder access to the Customer Information.

Hold Harmless Provision

Duke requested that the Commission include in its Order a statement that would essentially provide blanket protection for Duke in the event that Customer Information is improperly used or disclosed by another person but would not relieve DEC or DEP of its responsibility to report the improper disclosure of the information, as required under Section III.A.2(k) of the Code of Conduct. The Commission acknowledges the fact that Duke will be giving up its exclusive control of the Customer Information. Further, the Commission agrees that under the circumstances the risk of improper disclosure of the information resulting from Duke's relinquishment of exclusive control is appropriately balanced by the benefits to be gained from the Customer Challenges subteam's use of the information. The Commission also agrees that Duke's relinquishment of exclusive control over the Customer Information justifies a relaxation of Duke's ultimate responsibility for an improper disclosure of the information by the Customer Challenges subteam or one of the subteam's members.

However, the Commission is not persuaded that the blanket hold harmless provision requested by Duke is necessary or appropriate to protect Duke and to fully implement the purposes of the limited waiver requested by Duke. Indeed, there was no hold harmless provision included in the Sub 997 Order, and there is no such hold harmless provision in the Code of Conduct. In addition, Duke will not be relinquishing total control over the Customer Information. Duke is the co-leader of the LIAC, along with the Public Staff. Further, a Duke Energy employee is one of the two co-leaders of the Customer Challenges subteam. (LIAC Report, at 5.) Thus, Duke will maintain a substantial level of control and oversight with respect to the actions of the LIAC, including the LIAC's access to and use of the Customer Information. As a result, the Commission will require Duke to continue to take reasonable steps to prevent improper disclosure of the Customer Information, within the context of the use of the information by the Customer Challenges subteam. The Commission concludes that the following statement of Duke's responsibility for protecting against the improper disclosure of Customer Information is reasonable and appropriate:

DEC and DEP shall use reasonable diligence in preventing improper disclosure of the Customer Information provided to the Customer Challenges subteam 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 the Customer Challenges subteam if they have used reasonable diligence to prevent any such improper disclosure or use.

Memorandum of Understanding

In the Sub 997 Order, the Commission discussed the fact that DEC had entered into a Memorandum of Understanding (MOU) with the City of Charlotte and the University of North Carolina at Charlotte (UNCC), the City's research partner, that provided, among other things, that the City would be responsible for protecting the Customer Information received from DEC, would ensure the security of all data provided to UNCC in its role as the City's data compilation contractor, and would not disclose or publish the actual Customer Information, except on an aggregated basis as part of the City's study. Further, the Commission noted that both the City and UNCC had agreed that the Customer Information would be used solely to fulfill their respective obligations in furtherance of the study and that neither of them would use the Customer Information for any other purpose. In addition, the Commission noted that DEC had filed the MOU with the Commission.

The Commission concludes that there is good cause to require that DEC and DEP enter into an MOU with Guidehouse, Inc., specifying that Guidehouse will be the initial recipient and gatekeeper of the Duke Customer Information. In addition, the MOU shall include an acknowledgement by Guidehouse that the Customer Information provided by Duke is confidential, a commitment by Guidehouse that it will use reasonable diligence to protect against the possibility of the Customer Information being disclosed to any person other than the LIAC Customer Challenges subteam, and a commitment by Guidehouse that it will return the original and all copies of the Customer Information to Duke on or before the earlier of July 29, 2022, or the date that Duke and the Public Staff file the final LIAC report.

CONCLUSION

Based on the foregoing and the record, the Commission concludes that there is good cause to grant DEC's and DEP's requested waiver of Section III, A.2.(b) and (g) of the Code of Conduct, subject to the conditions detailed herein, so that Duke can disclose aggregated residential Customer Information to certain LIAC participants for use in the LIAC's discussions and recommendations to the Commission. The limited waiver granted herein shall expire on the earlier of July 29, 2022, or the date that Duke and the Public Staff file the final LIAC report. The Commission views this as a reasonable step in support of the work of the LIAC. At the same time, the Commission emphasizes to Duke, Guidehouse, and the LIAC participants the importance of protecting the confidentiality of Customer Information, and that it expects all persons who obtain access to Customer Information to take seriously their duty to carefully comply with the conditions stated in this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That DEC's and DEP's request for a limited waiver of the Code of Conduct, as detailed and restricted herein, so that they can disclose certain Customer Information to the LIAC Customer Challenges subteam, is hereby granted;

2. That all Customer Information made available by DEC and DEP to the Customer Challenges subteam shall be used solely for the purpose of the LIAC's discussions and recommendations to the Commission;

3. That within 30 days after the date of this Order Duke shall enter into and file with the Commission a Memorandum of Understanding with Guidehouse, Inc., specifying that Guidehouse will be the initial recipient and gatekeeper of the Duke Customer Information. In addition, the MOU shall include an acknowledgement by Guidehouse that the Customer Information provided by Duke is confidential, a commitment by Guidehouse that it will use reasonable diligence to protect against the possibility of the Customer Information being disclosed to any person other than the members of the LIAC Customer Challenges subteam, and a commitment by Guidehouse that it will return the original and all copies of the Customer Information to Duke on or before the earlier of July 29, 2022, or the date that Duke and the Public Staff file the final LIAC report;

4. That DEC and DEP shall report promptly to the Commission any misuse or unauthorized disclosure of the Customer Information provided pursuant to this limited waiver;

5. That DEC and DEP shall use reasonable diligence in preventing improper disclosure of the Customer Information provided to the Customer Challenges subteam 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 the Customer Challenges subteam if they have used reasonable diligence to prevent any such improper disclosure or use; and

6. That the limited waiver granted herein shall expire on the earlier of July 29, 2022, or the date that Duke and the Public Staff file the final LIAC report.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of March, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Erica N. Green". The signature is written in a cursive, flowing style.

Erica N. Green, Deputy Clerk