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 SUR-REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC

Pursuant to the North Carolina Utilities Commission's ("Commission" or "NCUC") February 19, 2024, *Order Allowing Sur-Reply Comments* in the above-captioned docket, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies" or "Duke Energy"), through counsel, respectfully submit these Sur-Reply Comments for the limited purpose of addressing new issues raised in the supplemental reply comments.

Duke Energy is committed to protecting their customers' nonpublic data from improper and inappropriate disclosures and providing customers with control of their own data in a cost-effective manner. In contrast, certain recommendations in this proceeding would result in inappropriate disclosure of confidential customer information coupled with (1) lack of Commission oversight, (2) costs that far exceed benefits, (3) ambiguous implementation rules, and (4) imposition of substantial additional administrative and regulatory burden on the Companies and the Commission. Many of these recommendations constitute a somewhat inexplicable and unjustified pendulum swing from the Commission's historic emphasis on protection of customer data to a position that seemingly prioritizes third party access to data at the expense of customers and with insufficient customer protections. As discussed in the Companies' Reply Comments,

while Green Button Connect My Data functionality would result in slight increase in the efficiency with which customers may elect to share their information with third parties (as compared with the currently available Download My Data functionality), the costs to do so outweigh the benefits and there are insufficient rules, processes and oversight to ensure the adequate protection of customers and their energy usage data and insufficient consideration given to the administrative burden and complexity of implementation.

Response to Attorney General's Office Supplemental Reply

The Attorney General's Office ("AGO") made a number of significant changes to their proposed Rule R8-51 in their supplemental reply comments on December 9, 2022, as discussed below. These changes shift the balance towards more disclosures at the expense of customer control and protection. The AGO has made little to no demonstration that the substantial expense of all such information disclosure is reasonable or even attempted to explain the purported benefits of imposing such extensive administrative burden on the utilities. The Companies address certain of the primary new AGO recommendations below.

Public Disclosure of Customer Information on the Internet

Subsection (j)(2)(i) of the AGO's proposed rule requires utilities to make aggregated data available on the internet. Subsection (j)(2)(i)(a) would require a utility to post usage data showing the total amount of energy used in one calendar year within the State of North Carolina,[1] the utility, any municipality, any zip code, any census block group, or any census block.[2] North Carolina appears to have 2,195 census tracts, 6,155

[1] There is not a utility that serves the entirety of North Carolina. It is unclear how the AGO expects a single utility to obtain this data.

[2] Subsection (j)(2)(i)(b) requires the data to be posted for every quarter for the same groups, then Subsection (j)(2)(i)(c) requires monthly posts for the State, utility, and municipalities.

block groups, and 288,987 census blocks,[3] as well as 552 municipalities and 834 zip codes. Once again, imposition of this level of administrative burden and costs is only appropriate where there has been a clear demonstration of substantial customer benefit, which has not occurred in this proceeding.

In addition to requiring the utility to perform a significant amount of work and data analysis on customer usage data, requiring broad disclosure of this so-called aggregate level data on the internet in small subsets and labelling it as aggregated information potentially puts customer data privacy at risk. The proposed rule further requires this so-called aggregate data to be posted as close to real-time as possible. The AGO has not articulated any alleged benefits of providing this information in as real-time as possible, allowing any entity to be able to take a snapshot of the data at certain times to learn the behavioral patterns of a community and perhaps even of individuals. Census blocks are the smallest geographic census unit. Blocks can be bounded by visible features—such as streets—or by invisible boundaries, such as city limits, they usually include, between 250 and 550 housing units but importantly have no minimum size and can be geographic areas with no population. As the AGO stated in its Supplemental Reply Comments, by getting similar datasets, a recipient of aggregated data can reidentify individual customers by looking at the changes between the data sets.[4] Given the potential for a census block to be very small, the energy usage data reported at this level and on a near real time basis may not be sufficiently anonymized. Advertisers, insurers and many other third parties would like to have access to these data to infer the private actions of individuals. In addition, there is the possibility that bad actors could use energy usage data available in real time for

[3] See https://www2.census.gov/geo/pdfs/reference/guidestloc/nc_gslcg.pdf.
[4] See AGO's Supplemental Reply Comments, p 4.

nefarious activities such as scams and break-ins. By requiring the data to be posted in real-time, the AGO's proposed rule has the potential to allow third parties to infer the private actions of individuals.

Importantly, with respect to municipalities, this data is to be provided on a public website whether the usage is residential or nonresidential. Given the relatively small size of census blocks, large nonresidential customers may run the risk of having their energy usage and usage patterns determined by competitors. It is likely that a savvy competitor could leverage census block level usage data to better understand production and production costs of a rival nonresidential customer business. While the AGO's proposed rule permits customers to opt-out, it is simply not reasonable to shift the burden of protecting information to customers. Furthermore, the AGO's proposed rule on this issue provides no exception for critical infrastructure, like military bases, once again shifting the burden to customers to protect their information.

Subsection (j)(2)(i)(d) would require a utility to make usage data available in any increment of time of the total amount of energy used by the utility within the State of North Carolina. This requirement gives a third party the ability to create more granularity around energy usage and does not seem to provide any significant benefit above providing the data in annual increments that would justify the cost, other than possibly providing potential additional insights into customers' behaviors and actions. The costs and risks associated with providing this information on a public platform far outweigh the benefits, which have not been clearly articulated in this proceeding.

Creation of Public University Repository Further Erodes Customer Control of Their Data and is beyond the Commission's Authority

The AGO's supplemental comments also includes a substantial new recommendation to effectively allow universities to have unfettered access to customer information and to partner with third parties in assessing such information. The AGO's proposal is ill-defined and open-ended and, frankly, represents a dramatic departure from the customer-protection focus that has historically guided the Commission's consideration of these matters. In addition, the proposal imposes new administrative burdens on the Commission and the Companies, and the AGO has offered little to no explanation of the benefits of these substantial new obligations and this substantial additional risk imposed on customers' privacy interests.

Subsection (j)(2)(iv) of the AGO's proposed rule would allow public universities to obtain two years of usage data together for individual customers. The information would include the street address for individual customers and the rate class. The proposed rule states no other personally identifying information will be included, but street addresses are sufficient to identify customers in all or nearly all cases.

The AGO's proposed rule appears to glibly assume the Commission has the authority to regulate and oversee the universities that access this information. Specifically, the proposed rule would require a public university to execute a nondisclosure agreement with the utility in a form approved by the Commission. It also requires public universities to notify the Commission of any breach with respect to the usage data and gives the Commission audit rights over the public university's use of the data. Putting aside the substantial additional administrative burden on the Commission that would be imposed by this process, it is also not clear that the Commission even possesses the statutory authority to perform the role envision by the AGO. The Commission's authority is not unbridled,

and with due respect to the Commission's authority, the Commission may only act when delegated and conferred with power from the General Assembly. *State ex rel. Utilities. Comm. v. N. C. Textile Mfrs. Assoc.*, 59 N. C. App. 240, 244, 296 S.E. 2d 487, 490 (1982), reversed on other grounds, 309 N. C. 238, 306 S.E.2d 113 (1983). Chapter 62 does not grant the Commission the authority to oversee operations at public universities, compel notifications from public universities or to conduct audits of public universities. Furthermore, even if consistent with the law, the additional functions imposed upon the Commission and the public universities will likely require additional staffing and increase workload to properly address the need for each group to protect customer data, and the AGO does not appear to have contemplated how these additional functions will be funded.

The Companies also find it concerning that the AGO's proposed rule allows public universities to use this data for commercial purposes. Subsection (j)(2)(iv)(b) states, "[t]he public university may use the usage data only for academic, research or policy purposes. It may not use the usage data for purely commercial purposes." This suggests that so long as the usage data is being used for academic, research or policy purposes it can be commercialized because it would not be used *purely* for commercial purposes. In any event, given that the Commission does not have authority to regulate or compel public universities to act, the Commission will likely not know how the information is being used.

The AGO's proposed rule allows the public universities to provide aggregated usage to third parties (potentially for a fee although that matter is unclear) provided that the aggregated data is otherwise available on a utility's website or it is stripped of any personally identifying information and anonymized using privacy-enhancing techniques, such as differential privacy, in a manner to prevent reidentification. Additionally, the

recipient must execute a nondisclosure agreement and agree to use the data only for "energy-related purposes" (a term which is notably not defined),[5] not to transfer the data to any other party, and not to attempt to reidentify any individual, family, household, residence or customer. Notably, the Commission does not have the necessary authority over the public university or these third parties to enforce the nondisclosure agreement or assure that any of these restrictions can be monitored for compliance.

The AGO's proposed rule states that a public university may not provide aggregated data to a third party if (1) the aggregated data reveal specific customer information because of the size of the group, rate classification, or nature of the information or (2) the aggregated data otherwise contain identifiable information critical infrastructure or other sensitive data. Unfortunately, the AGO provides no guidance as to who determines what constitutes critical infrastructure, sensitive data, when specific customer information is revealed due to size, classification, or the nature of the information. In essence, the AGO's recommendation introduces substantial new costs on all customers and new risks of inappropriate disclosure and yet also utterly fails to provide necessary guidance and specificity that would be needed to mitigate all of these risks and does not address the substantial increase in resource demands on the Commission to oversee this new regime. Furthermore, because the Commission has no authority over public universities, the public universities will likely be responsible for making those determinations with different motives and purposes than would occur under Commission protection, leading to more disclosures of customer information and less control for the customer. While every public university may not choose to participate, each public university could adopt its own policy

[5] Presumably, parties would argue that any use of the energy usage information is, by definition, "energy-related."

without any experience or proper understanding of the regulatory requirements needed to provide necessary protections to customers. The rules in this respect introduce substantial administrative burden and costs with no meaningful benefits and are otherwise vague and imprecise (*e.g.*, the rules grant access to "academic researchers" without even attempting to define the term).

AGO's Proposed Revisions to Authorized Third Party Access Demonstrate a Critical Lack of Consumer Protections

In a similar vein to issues discussed above, the AGO's proposed rule for third party access imposes substantial new obligations and costs and onerous administrative burdens on the utility and the Commission with little to no justification of such burdens and, in many cases, inadequate definitions and guidelines. For instance, in Subsection (f)(1) of its proposed rule, the AGO added the following language, "[f]ollowing receipt of a valid customer authorization as described below, utilities shall electronically initiate data requested data to the third party within 90 seconds, unless the customer has requested data delivery by another method." There has been no demonstration in the record that such a requirement is reasonable or consistent with prudent utility practice. Furthermore, it is unclear how this 90 second deadline will interact with the eligibility determinations proposed by the AGO in Subsection (f)(9). Under the eligibility determinations, the Companies are tasked with the obligation of assessing every third party that is authorized by a customer to access information, and there is no clarity that the 90 second deadline is suspended in the case of a new third party that must be assessed for eligibility (which likely cannot be accomplished in 90 seconds). Not only is the imposition of such eligibility determination on the utility patently unreasonable, the eligibility criteria itself is vague and ambiguous (*e.g.*, one of the criteria is that the third party must have sufficient "technical

capability to interact securely with the utility's servers" but no definition is provided for such requirement). In essence, the Companies are required to serve as umpires over an issue completely outside of their core business function and for which only vague and ill-defined rules are provided. In addition to uncertainty regarding the feasibility of providing 100% of interval energy data from AMI meters in less than two minutes, it is unreasonable to impose the burden of requiring the initialization of the disclosure of any sensitive data in under two minutes.

Interval usage data can be analyzed using advanced algorithms to understand customer energy usage patterns, including specific appliance usage and customer presence in the residence. There are no limitations on the number of third parties that a customer can request their data to be shared with, nor is there protection or enforceable limitations on how the third parties will use or share the data received. The AGO's proposed rule appears to focus almost entirely on how fast and how often the utility must start divulging customer information to third parties whether authorized by the individual or in aggregate, with comparatively far less focus on the customer protections.

Going beyond that, the AGO's rule contains other related terms that are ambiguous, at best, and impose substantial obligations on the Companies and the Commission. For instance, the portion purporting to address liability states that the utility will have no liability where "the Commission orders the provision of standard customer data to a third party." Yet, it is clear under the rule that there will be many circumstances in which the utility provides information to a third-party without a specific Commission order to do so. The AGO's proposed rule goes further and contemplates an entirely new complaint process, creating the potential for substantial new administrative burden on the Companies

and Commission. The rule also imposes vague and undefined third-party monitoring burdens on the Companies. For instances, the rule effectively requires constant vigilance by the Companies of all third parties at all times and requires the Companies to notify the Commission if it has a "reasonable suspicion" of activities by a third party that are inconsistent with the rule. If a customer complains about a third party, then it becomes the utility's obligation to file a request to terminate the third-party access. In essence, any problem or suspicion regarding the behavior of any third party becomes the utility's problem to solve and then becomes another proceeding for the Commission to consider (particularly given that in the ordinary course, a Commission order is required to terminate a third-party's access). Once again, the material increase in administrative burden from this rule has simply not been justified.

Response to Public Staff's Supplemental Reply

In its Supplemental Reply Comments, the Public Staff raised a number of issues related to the implementation of Customer Connect. Each issue was resolved by the end of the first quarter of 2023.

The Public Staff also states in its Supplemental Reply Comments that it continues to support the requirement for Green Button Connect functionalities. As explained in earlier comments and reiterated above, Duke Energy already provides substantial access to customers and the limited additional benefits of Green Button Connect functionality do not outweigh the costs, particularly in light of the clear, real-world evidence that there has been little-to-no-demand for the functionality. The Public Staff's response is that demand for the utilities' Download My Data offerings is currently limited, but notes that demand may increase if the offerings are improved and consistent with best practices. Duke Energy's

Download My Data (DMD) program has been available for four years, the initial implementation was for residential customers, and the Companies have observed low volume of downloads since that implementation. With the implementation of Customer Connect, DMD was made available to non-residential customers. Non-Residential customers also have the ability to delegate access to their online account to third-parties. With this access, third parties gained the ability to access DMD via the Companies' business portals. Even with the capability to delegate access to third parties, the Companies continues to see low adoption of DMD. Despite low adoption, Duke Energy has accepted and welcomed feedback from third party energy consultants to improve its platform, along with the plethora of other options for accessing customer usage data in its digital portals. For example, in 2023 interval read quality indicators were added to DMD so users can determine estimated vs actual reads. Duke Energy also addressed issues reported by third parties regarding timestamps and zero read values in the data. Even though Duke Energy did not certify its initial implementation of DMD with Green Button, it does intend to update its Download My Data XML download to current NAESB REQ.21 standards and gain certification from Green Button.

Response to Mission:Data's Supplemental Reply

In its Supplemental Reply Comments, Mission:Data primarily focuses on federal grant programs and urges the Commission to expeditiously adopt the AGO's proposed Rule R8-51 to take full advantage of incoming federal funds. Duke Energy has reported on this topic in other dockets. In Docket No. M-100, Sub 164, the Companies have provided multiple reports on the availability of funds from the IIJA. Duke Energy also provided information to the Commission on the IIJA through testimony submitted in the

DEC multi-year rate plan ("MYRP") in Docket No. E-7, Sub 1276. The Companies are not aware of any IIJA grants that exclusively require the use Green Button Connect My Data.

Mission:Data states that Duke Energy's Green Button Download My Data file format does not adhere to the Green Button standard. This is somewhat inaccurate. Duke Energy does not offer Green Button Download My Data. It offers Duke Energy Download My Data, which has functionality similar to Green Button Download My Data, but it is not the same. When Duke Energy Download My Data was implemented in February 2020, it adhered to the Green Button standard. Subsequent to that and over the course of this docket, the Green Button standard has changed. As discussed above, the Companies are committed to updating their program to the current Green Button standard for Download My Data. However, there is a risk of sunk costs to make those updates if the Commission adopts a proposed version of R8-51, which mandates Connect My Data functionality. The Commission should avoid delegating its authority by adopting a rule that requires the Companies to conform to standards that are set by a separate entity.

Conclusion

The AGO's new proposed rules introduce substantial new administrative burdens and costs on the utility and the Commission, and there has been little to no evidence to demonstrate that the benefits (to the extent any exist) of all such burdens exceed the substantial costs. The rules are rife with ambiguity and vagueness and impose on the utility and the Commission obligations and duties that go far beyond the core functions of each.

The AGO recognizes, and the Companies agree, that regulations addressing data access and privacy need balance and have competing considerations. However, the AGO's latest revisions are weighed heavily towards the benefit of third parties, inuring more to the benefit of technology companies associated with Mission:Data rather than customers. The Companies generally support the Public Staff's proposed Rule R8-51 because, with few exceptions, it is easier to administer and strikes an appropriate balance between data access and privacy. Where there are exceptions, particularly with regard to Green Button Connect functionality, the Companies have serious concerns that the proposed rule does not adequately protect customers from third parties that could be bad actors and, furthermore, strenuously object to all portions of the rule that would place the obligation on the utility to monitor any aspect of third-party conduct or actions that are completely outside of the control of the Companies.

Finally, given the now voluminous record of comments and multiple competing proposed rule modifications, the Companies respectfully request that, to the extent that Commission elects to implement Green Button Connect or any of new recommendations introduced by the AGO, a consolidated proposed rule reflecting any such changes be provided for comment prior to adoption so that all parties will have an opportunity to fully understand and comment on any such changes. In addition, if Green Button Connect or any material new reporting obligations are ultimately determined to be necessary by the Commission, the Companies believe that deferral of the related costs would be appropriate given the circumstances.

Respectfully submitted this 19th day of April 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's JOINT SUR-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 19 day of April, 2024.

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