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JUL 17 2020

July 17, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: *Docket No. E-100, Sub 161*
Commission Rules Related to Electric Customer Billing Data

Dear Ms. Campbell:

Enclosed for filing in the above-referenced proceeding, please find Virginia Electric and Power Company's, d/b/a Dominion Energy North Carolina, Reply Comments of Dominion Energy North Carolina.

Should you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

EBB:kjg

Enclosure

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Commission Rules Related to Electric)	REPLY COMMENTS OF DOMINION
Customer Billing Data)	ENERGY NORTH CAROLINA

NOW COMES Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“DENC” or the “Company”), pursuant to the North Carolina Utilities Commission’s (“Commission”) May 26, 2020 *Order Requesting Reply Comments* and June 24, 2020 *Order Granting Motion for Extension of Time* issued in the above-captioned docket, and hereby submits these Reply Comments for the Commission’s consideration supporting, in principal, modifications to Commission Rule R8-51 proposed by the Public Staff.

I. Introduction

On February 10, 2020, pursuant to the Commission’s February 4, 2019 *Order Requiring Information Requesting Comments, and Initiating Rulemaking* (the “Order”), the parties to this docket filed initial comments and/or proposed rules regarding reasonable and appropriate revisions to Commission Rules R8-7, R8-8, and R8-51 addressing electric utility customer billing information, as well as procedures for customers to access their usage and other customer data collected by the Company in its provision of electric service (“customer data”). The Public Staff and the North Carolina Attorney General’s Office (“AGO”) filed proposed rules, while the remaining parties submitted comments on appropriate revisions to the current customer billing and customer data rules and expressed

their support for the Public Staff's and/or AGO's rule revisions.¹ DENC along with Duke Energy Carolinas, LLP and Duke Energy Progress, LLP (together, "Duke") indicated support for the Public Staff's proposed rule with certain minor revisions and/or exceptions, Mission:data Coalition ("Mission:data") indicated support for the AGO's proposed rule with certain minor revisions, while the North Carolina Sustainable Energy Association ("NCSEA") and the Environmental Defense Fund ("EDF") supported aspects of both the Public Staff's and AGO's draft rules, without indicating a preference for one over the other.

As explained in DENC's initial comments, DENC supports the Public Staff's rule, with certain limited exceptions. The provisions contained therein significantly expand the Commission's current customer billing and data access rules, appropriately reflect national trends, as well as reflect robust discussions between the Public Staff, Duke, and DENC regarding the importance of meeting customers' privacy and confidentiality expectations and safeguarding customer data from unauthorized disclosure to third parties. While the AGO's rule also espouses many of these principles, the AGO's draft rule proposal goes well beyond what is required to adequately protect customer data, deviates from or duplicates the current regulatory framework, and, in some respects, exceeds the Commission's regulatory authority over third party businesses that are not public utilities. For these reasons and as set forth in more detail below, DENC respectfully recommends that the Commission adopt the Public Staff's proposed Rule R8-51 with certain limited

¹ The Public Staff filed proposed amendments to Rules R8-7 and R8-8 addressing customer billing, as well as Rule R8-51 addressing customer data access. The AGO's Comments and proposed rule revisions focus only on R8-51. Because the Public Staff was the only party to file proposed customer billing rules and DENC fully supports the Public Staff's proposed revision to Rule R8-7 and R8-8, DENC's reply comments do not further address the customer billing rules and focus only on the proposed revisions to Rule R8-51.

exceptions, as addressed in DENC's initial comments and further discussed in Section V below.

II. The Public Staff's Rule Achieves the Goals of the Rulemaking and Appropriately Protects Customer Data in Coordination with the Company's Commission-Approved Code of Conduct

The Commission's February 4, 2019 Order established the instant rulemaking proceeding in response to the Public Staff comments in Docket No. E-100, Sub 157, which highlighted the need for rules to provide customers and authorized third parties access to customer data, while at the same time ensuring that customers' personal and energy consumption data is protected from unauthorized disclosure in light of the changing landscape brought on by the deployment of smart meters.² In particular, the Public Staff highlighted the need to (1) establish a definition of "customer data;" (2) identify who should have access to that data; (3) describe how access should be granted; (4) set forth customer data protections, including liability for parties who breach the confidentiality of data; and (5) determine responsibility to pay for such access. In initiating the current docket for the purposes of such a rulemaking, the Commission acknowledged the important policy goals raised by the Public Staff and invited the utilities and intervenors to participate in the process of developing new rules.

As explained in its initial comments, DENC shares these goals and has undertaken significant efforts to enable customer access to their own usage data while also protecting customer confidentiality and privacy interests even in the absence of a Commission Rule expressly requiring it to do so. In particular, the Company's policies and procedures must comply with its Commission-approved Code of Conduct, which establishes minimum

² See *Order Requiring Information, Requesting Comments, and Initiating Rulemaking*, at 3 Docket No. E-100, Sub 161 (Feb. 3, 2019).

guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DENC and its affiliates, as well as regulates the disclosure of customer information.³ Under the Code of Conduct, the Company is not only prohibited from disclosing customer information to any affiliate or non-affiliate third party without the customer's consent (subject to limited exceptions⁴), but it also must limit its own employees' ability to access customer information by ensuring such information can only be accessed by authorized employees.⁵ Moreover, pursuant to the Code of Conduct, any improper disclosure of customer information is reported to the Commission along with a description of steps taken to mitigate the impact of the disclosure and prevent such disclosures from occurring in the future.⁶

Ensuring that the Company is able to reconcile and efficiently comply with the requirements of both the existing Code of Conduct, as well as the new customer data access rules is an important consideration for DENC. The Public Staff's proposed Rule R8-51 comports with the provisions of DENC's Commission-approved Code of Conduct and also fully addresses each of the five issues targeted by the instant rulemaking. In particular, the Public Staff's rule effectively addresses:

- 1) *Definition of customer data.* The Public Staff's proposed definition of "customer data" aligns with the definition of "customer information" set forth in DENC's Code of Conduct;⁷

³ See *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket No. E-22, Sub 551 (Nov. 19, 2018) Appendix A, Code of Conduct Governing The Relationships Among Dominion Energy North Carolina, Public Service Company of North Carolina, Inc., Their Affiliates, and Their Nonpublic Utility Operations ("Code of Conduct") Section II.A.2; see also DENC Initial Comments, at 8-9.

⁴ See Code of Conduct Section III.A.2.f.i (enabling disclosure of customer information to an affiliate or unaffiliated third party without consent "to the extent necessary for the Affiliate or non-affiliated third party to provide goods or services to DENC or PSNC and upon the written agreement of the other Affiliate or non-affiliated third party to protect the confidentiality of such Customer information").

⁵ See Code of Conduct Section II.A.2; see also DENC Initial Comments, at 8-9.

⁶ See Code of Conduct Section III.A.2.k.

⁷ Compare Code of Conduct § I (defining "Customer Information" as "[n]on-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural

- 2) *Access to customer data.* The Public Staff’s rule requires utilities to maintain the privacy of its customers’ information, while both (1) providing customers with “reasonable access to their own customer data[;]”⁸ and (2) “including a transparent process for customers to authorize third parties to access customer data[;]”⁹
- 3) *How access should be granted.* The Public Staff’s proposed rule directs that customer consent for third party disclosure should be obtained through a hard copy or electronically-signed consent form setting forth both the term of the consent and the type of data to be accessed,¹⁰ processes DENC already follows pursuant to the terms of its Code of Conduct¹¹;
- 4) *Customer data protections and liability for breaches.* The Public Staff’s rule directs utilities to “maintain the privacy of its public utility customers,” but declines to “impose any liability on a utility . . . relating to disclosures of customer information” that has been authorized by the customer.¹² This comports with DENC’s commitment, implemented by its Code of Conduct, to “take appropriate steps to store Customer Information in such a manner as to limit access to those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality[;]” and
- 5) *Cost of enabling access to customer data.* The Public Staff rule allows customers to access their own data within the prior 24 month period¹³ without an additional charge, but allows for collection of a fee outside that window. The Public Staff’s proposed rule further provides that third parties may be charged Commission-approved fees to access customer data.¹⁴

Each of these issues are addressed in significant detail in DENC’s initial comments.

In sum, after reviewing the initial comments filed by all parties, DENC believes that the

gas consumption, load profile, billing history, or credit history, that is or has been obtained or compiled by DENC or PSNC in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers”) with Public Staff Proposed Rule R8-51(a)(2) (defining “customer data” as “non-public retail customer-specific data or information, excluding personal information, that has been obtained or compiled by an electric public utility in connection with the supplying of Commission-regulated electric power [and related services].”).

⁸ Public Staff Proposed Rule R8-51(b).

⁹ Public Staff Proposed Rule R8-51(c).

¹⁰ *Id.* R8-51(i).

¹¹ *See* Code of Conduct § III.A.2.b.

¹² Public Staff Proposed Rule. R8-51(o).

¹³ As discussed *infra* Section III, the Company’s current customer billing system only retains customer data for 18 months in a readily available format rather than 24 months proposed in the Public Staff’s draft rule. Accordingly, DENC plans to request a waiver from this 24-month requirement until the Company’s new Customer Information Platform is implemented in 2023.

¹⁴ *Id.* R8-51(e).

Public Staff's proposed Rule R8-51 appropriately and comprehensively addresses the customer data access issues that are the subject of this rulemaking proceeding. And, importantly, the Public Staff's proposed rule complements, while not contradicting, the already-existing regulatory framework and protections of customer data set forth in the Company's Commission-approved Code of Conduct such that customers' interests are robustly protected.¹⁵

III. The Public Staff's Rule is in Line with National Efforts to Protect Customer Data

The importance of customer access to and protection of usage and other customer data has been a topic of increasing national interest in recent years as new technology platforms, rate designs and advanced metering infrastructure ("AMI") investments have been made by utilities around the country. However, few states have enacted comprehensive rules to address these issues. In the few states to have considered and adopted robust rules or regulations on this topic, no singular framework has emerged; however, with some variation, the approved rules in these states appear to share a focus on four key areas: (1) establishing procedures enabling customers to readily access energy usage data generated from their account; (2) establishing a framework for customers to authorize a third party to access their customer data; (3) providing customers with adequate notice of the utility's privacy and security policies governing access to and disclosure of customer data to third parties; (4) setting guidelines for the provision of aggregated customer data. The Public Staff's Rule addresses each of these topics and additionally

¹⁵ Mission:data suggests, without providing any compelling reason, that DENC's Code of Conduct is "not well-suited" to address data access and privacy issues. Mission:data Initial Comments, at 7 n.3. However, as shown above, the Public Staff's rule would work to supplement the already-existing safeguards present in the Code of Conduct to appropriately address both issues.

establishes specific requirements for and limitations to customer consent forms authorizing third party access to customer data.

In promoting the AGO's proposed rule over the Public Staff's proposed rule, the AGO and Mission:data focus on the fact that the AGO's proposed rule follows the robust privacy framework enacted by the California Public Utilities Commission in 2012,¹⁶ as well as the customer data access framework for electric and natural gas customers adopted by the Colorado Public Utilities Commission in 2014.¹⁷ Specifically, the AGO and Mission:data highlight the California and Colorado rules approaches to distinguishing between primary and secondary purposes for data access and use.¹⁸ Under the AGO's proposed rule, a "primary purpose" for the collection, storage, use or disclosure of customer data is to "(i) provide or bill for electrical power; (ii) provide for system, grid, or operational needs; (iii) provide services as required by state or federal law or as specifically authorized by an order of the Commission; or (iv) plan, implement, or evaluate demand response, energy management, or energy efficiency programs[.]"¹⁹ A "secondary purpose" under the AGO's proposed rule is any purpose not enumerated as a "primary purpose." This language is taken verbatim from the California Rule.²⁰ Colorado's Rule, on the other hand, distinguishes not between a primary and secondary purpose for collecting data, but between standard versus non-standard data where "standard customer data" refers to usage and other data "actively maintained in its systems by a utility in its ordinary course of

¹⁶ *Decision Adopting Rules to Protect the Privacy and Security of the Electricity Usage Data of the Customers of Pacific Gas and Elec. Co., S. California Edison Co., and San Diego Gas & Elec. Co.*, Decision No. 11-07-056 (Jul. 28, 2011).

¹⁷ *In the Matter of the Proposed Rules Relating to Data Access and Privacy for Elec. Utils.; 4 Code of Colorado Regs. 723-3 and Data Access and Privacy Rules for Gas Utils., 4 Code of Colorado Regs. 723-4*, Proceeding No. 14R-0394, Dec. No. R15-0406 (May 1, 2015).

¹⁸ See AGO Initial Comments at 17, Mission:data Initial Comments at 6-7.

¹⁹ AGO Proposed Rule R8-51(a)(6).

²⁰ Cal. Pub. Util. Comm'n R.08-12-009(1)(c)-(e).

business”²¹ and “non-standard data” refers to “billing determinants or other collected data.”²² Contrary to the AGO’s contention, however, the California and Colorado provisions appear targeted to address differing circumstances. The AGO’s rule appears focused to distinguish when consent is required for disclosure to a third party: a utility may disclose information without customer consent for a primary purpose, but must obtain consent for a secondary purpose disclosure. The Colorado rule is targeted to distinguish between providing information related to standard customer usage data as it is kept in the normal course of business and compiling various components of data together for disclosure.

Although it is true that the Public Staff’s proposed rule does not prescribe the type of categorical distinctions present in either the California or Colorado rules, it ultimately achieves the same purpose as both cited rules. With respect to California’s primary/secondary distinction, Public Staff Proposed Rule R8-51(c) provides that a utility may disclose customer data to third parties without customer consent “consistent with the utility’s most recently approved Commission Code of Conduct, to the extent necessary for the third party to provide goods or services to the utility and upon written agreement by that third party to protect the confidentiality of such customer data.” Thus, the Public Staff’s proposed rule allows for disclosure to achieve traditional utility functions just as the California rule does through its primary purpose language.²³ Likewise, the Public Staff’s proposed definition of “customer data” achieves the same purpose as Colorado’s distinction between standard and non-standard data by providing a detailed description of

²¹ 4 Code Col. Regs. 723-3 § 3000(ee).

²² *Id.* § 3026(c)(i).

²³ See Code of Conduct Section III.A.2.f.i.

the types of data encompassed by the term “customer data” in Public Staff Proposed Rule R8-51(a)(2), while also specifically excluding “personal information” from the term—which shall not be subject to disclosure by the utility—and providing a definition for “aggregated data”—a topic that is addressed with much less specificity in the Colorado rule. Moreover, aside from offering a short definition,²⁴ the Colorado rule does not include a description of what may or may not be done with “non-standard data” and the term is somewhat superfluous except to the extent it serves to underscore certain exclusions from the definitions of its opposite—a purpose the Public Staff’s Rule more efficiently and clearly achieves in the singular definition of “customer data.”

Aside from these semantic issues, neither the AGO nor Mission:data have pointed to any other provisions from the rules in other states that they contend is both appropriate in North Carolina and absent from the Public Staff’s proposed rule. Accordingly, DENC believes that the Public Staff’s proposed rule reasonably aligns with the regulatory frameworks developed in these other states and is most appropriate for adoption by the Commission.

IV. The AGO’s “Privacy Framework”-Focused Rule is Not Tailored to Complement and Often Duplicates and/or Deviates From Already-Existing Regulatory Requirements

The AGO extensively discusses how its proposed rule is grounded in and seeks to establish a “privacy framework” that extends “modern privacy regulation” at the national level to the Commission’s regulation (and the Company’s implementation) of data access for customers in North Carolina.²⁵ Although many aspects of the AGO’s proposed rule are consistent with DENC’s Code of Conduct as well as the Public Staff’s proposed rule, the

²⁴ 4 C.C.R. 723-3 § 3026(c)(i) (“non-standard customer data (billing determinants or other collected data”).

²⁵ See e.g. AGO Initial Comments, at 11.

AGO's proposal, as drafted, presents a few key departures from and/or additional requirements that raise concerns for DENC.

A. Certain Provisions of the AGO's Rule Duplicate and/or Deviate From DENC's Code of Conduct and the Already-Existing Regulatory Framework

The AGO's proposed rule contains several provisions that either duplicate already-existing provisions in DENC's Code of Conduct or would impose an unnecessary additional burden on DENC, the Public Staff, and/or the Commission to implement that do not meaningfully further the dual goals of providing customers with appropriate access to their own data and protecting all such data from any unauthorized disclosure. In particular:

- 1) AGO Proposed Rule R8-51(c) would require utilities to include in its privacy notice an "explicit description of . . . each category of covered information that is disclosed to third parties, and, for each such category: (1) The purposes for which it is disclosed; and (b) The categories of third parties to which it is disclosed" as well as the "specific identities" of third parties to whom customer data is disclosed and the purpose for such disclosure. As a threshold matter, it is not practical for any utility to include the "specific identity" of third parties authorized to receive customer data in a generic notice to customers. With the possible exception of aggregate data, customer data is, and will only be, provided to a third party after obtaining customer consent or where authorized under the Code of Conduct to a non-affiliated third party providing goods and services to the utility. As such, it is impossible to pre-emptively include this information—before any consent is obtained—into a general notice. For the same reason, it would not be feasible to describe the categories of information disclosed before any such disclosure is authorized. Even applying these provisions to disclosure of aggregate data—and it is not at all clear from the language that AGO Rule R8-51(c) is intended to apply only to aggregate data—a utility may receive requests for such data from new entities at any time, creating an unworkable situation where the notice must be updated at frequent, but irregular intervals;

- 2) AGO Proposed Rule R8-51(f)(6) would require DENC to contact customers annually “to provide an opportunity for revocation” of any third party disclosure consent. Because DENC does not currently use an automated consent process, undertaking this action annually would require significant resources and impose cost burdens that are unnecessary given the customer’s right to revoke a consent at any time²⁶;
- 3) AGO Proposed Rule R8-51(f)(9) would render an authorized third party ineligible to receive customer data in the event that any customer or utility had ever reported it to the Commission upon a reasonable suspicion that it misused customer data or if it had not adopted or complied with the DataGuard Seal. This provision is a vague requirement and seemingly asks the Company (or the Commission or the Public Staff) to create a burdensome vetting and monitoring process before releasing data to an authorized third party;
- 4) AGO Proposed Rule R8-51(h)(4) would allow the utility to discontinue granting access to an authorized third party if the Commission finds that the third party has misused data. This process would be unduly burdensome on both the utility and the Commission as the utility should not have to seek Commission approval for termination in the event of a known misuse and the Commission should not be required to rule on every instance of alleged misuse. If the utility’s actions were not warranted, either the third party or the customer could file a complaint pursuant to established Commission procedures;
- 5) AGO Proposed Rule R8-51(q) and (t) would create an obligation for utilities to conduct an “annual independent audit of its data privacy and security practices in conjunction with general rate case proceedings” and to maintain and make available a variety of information for Commission review. These provisions are both unnecessary and unduly burdensome as such audits are expensive and time-consuming and the Commission and Public Staff already have broad authority to audit utilities for any reason.
- 6) Finally, AGO Proposed Rule R8-51(h)(1)-(3) proposes to create new complaint procedures that are duplicative of the Commission’s already-existing regulatory framework. These complaint provisions are unnecessary as Commission Rules R8-6 and R1-9 already set forth robust procedures by which customers can submit either a formal or informal complaint against a utility.²⁷ Further, adopting a data access-specific

²⁶ In contrast, Subsection (f) of the Public Staff’s proposed rule more reasonably requires the Company to post detailed information on its website about its customer data access policies as well as provide such information in writing, upon request of any party. This notice will also include a customer service phone number and web email address where customers can obtain additional information, if desired.

²⁷ Rule R8-6, for example, provides that utilities must promptly investigate “all service complaints made to it by its consumers, either directly or through the Commission or the Public Staff.” In addition, utilities must keep records of any complaint for one calendar year, but are not required to submit them to the Commission

complaint process would be unprecedented under the Commission's Rules, which reflect the Commission's general authority to regulate all aspects of electric public utilities' operations, including to compel efficient service by public utilities.

In addition to the foregoing, the AGO's proposed rule would also impose a significant number of new reporting requirements, in excess of the customer data-related reporting required by the Code of Conduct today.

- 1) AGO Proposed Rule R8-51(u) would create new reporting requirements absent from the Code of Conduct or the Public Staff's proposed Rule to disclose (1) the number of authorized third parties accessing standard customer data; and (2) the "number of non-compliances with this rule or with contractual provisions required by this rule experienced by the utility, and the number of customers affected by each non-compliance and a detailed description of each non-compliance."
- 2) AGO Proposed Rule R8-51(p) would require utilities to both notify the Commission in the event of a security breach and to file an annual report with the Commission notifying it of all security breaches within the previous calendar year. The Code of Conduct, on the other hand, simply requires notification in the event of a breach, and, through such reporting, ensures that the Commission is adequately informed of any such data breach issue. Adding an annual reporting requirement exceeds what is required under the Code of Conduct and creates an unnecessary additional reporting burden for the utility that serves no practical purpose;
- 3) AGO Proposed Rule R8-51(k) would require the utility to annually report to the Commission the number of requests for disclosure of customer data pursuant to legal processes and the number of customers whose records were disclosed. Again, this creates an unnecessary reporting burden for the utility and Commission to receive and review such information that has no apparent benefit to the customer; and
- 4) AGO Proposed Rule R8-51(h)(3) would require utilities to report a third party to the Public Staff and Commission in the event the utility has a "reasonable suspicion" of data misuse. Implicitly, this provision would also require the Commission to make some finding regarding the alleged misuse. As explained in more detail *infra* Section IV.B, the Commission lacks jurisdiction over third parties, rendering the provision ineffectual to achieve its stated intent.

either contemporaneously or in an annual report as the AGO would require for data access grievances. Likewise, Rule R1-9 sets forth a detailed procedure for pursuing a complaint before the Commission.

As shown above, the AGO’s proposed rule would create significant additional reporting requirements on both incident-based and annual intervals. These requirements would work significant additional burden on the utility, as well as the Commission, and, in some instances, the Public Staff (beyond the reporting required by the Code of Conduct). Complying with these significant new reporting requirements would require new business processes and IT investments by the Company. DENC also believes these additional reporting requirements are unnecessary to protect customer interests.

In contrast, the Public Staff’s proposed rule does not duplicate or seek to significantly expand current reporting requirements by imposing the additional requirements proposed by the AGO. Consistent with the Public Staff’s proposed Rule, DENC will continue to be obligated to undertake the reporting requirements relating to disclosure of Customer Information under its Code of Conduct.

For all of these reasons, DENC strongly believes that the Public Staff’s Rule more appropriately addresses the goals of the rulemaking proceeding while complementing the existing protections in DENC’s Code of Conduct than the AGO’s Rule.

B. Provisions of the AGO’s Rule Attempt to Establish Regulatory Oversight of Third Parties Beyond the Commission’s Jurisdiction

The Commission has recognized that “Chapter 62 vests the Commission with all powers necessary to require and compel any *public utility* to provide and furnish the citizens of this State reasonable service.”²⁸ Implicit to its exercise of such power is the “exclusive jurisdiction to resolve a public utility’s service obligations[;]”²⁹ conversely,

²⁸ *In the Matter of the City of Greensboro, a North Carolina Municipal Corporation v. Duke Energy Carolinas, LLC*, Order on Jurisdiction and Dismissal of Complaint, Dkt. No. E-7, Sub 1038, at 7 (Mar. 5, 2014) (emphasis added).

²⁹ *Id.* at 17.

however, the Commission lacks jurisdiction over the activities of non-utility third parties, even where their activities may impact utility customers.³⁰

Notwithstanding these jurisdictional limitations, the AGO's proposed rule seemingly attempts to grant the Commission authority to regulate the actions of third parties. For example, AGO Proposed Rule R8-51(f)(9) would require utilities to ensure that authorized third parties have adopted and complied with "the most updated version of the 2015 Department of Energy's Voluntary Code of Conduct Final Concepts and Principles for Data Privacy and the Smart Grid (the "DataGuard Seal") or a similar nationally accepted eligibility standard approved by the Commission as a necessary, comparable, reasonable and appropriate alternative." The Rule does not articulate how a utility or the Commission could or should undertake to determine compliance with a complex set of data security requirements to which the utility, itself, is not bound. Nor does it address how such a requirement could be enforced where the Commission lacks regulatory authority over third parties—who may hail from a broad range of industries and could be located in Silicon Valley or Shanghai, China—that would be subject to these requirement. Because the Commission lacks jurisdiction over third parties necessary to make determinations as to what data privacy standards are "necessary, . . . reasonable, and appropriate" for access to customer data, the AGO's proposed rule would be inherently unenforceable and could be subject to judicial overturn.³¹

³⁰ See *id.* (concluding that the Commission "[did] not have jurisdiction over complaints filed by Duke against property owners pursuant to Section 30-12-1.11.2(f) of Greensboro's Utility Vegetation Management Ordinance" and further explaining that the "Commission cannot assert personal jurisdiction over such property owners against their wishes who are not subject to the regulatory authority of the Commission").

³¹ See AGO Proposed Rule R8-51(f)(9).

Likewise, AGO Proposed Rule R8-51(h)(3), discussed in Section IV.A above, would require a utility to “expeditiously inform” the Commission and Public staff in the event it has “reasonable suspicion” that an authorized third party has misused customer data and R8-51(h)(4) suggests that the Commission should then “confirm” whether “a third party is or has become ineligible to receive” customer data and to “allow the utility to refrain from providing or to discontinue providing standard customer data to that party.” Putting aside the practical difficulty of policing a third party’s ongoing, authorized use of customer data, the limits of the Commission’s regulatory authority and jurisdiction to regulate public utilities would effectively impede the Commission and Public Staff from investigating the misconduct through traditional measures such as accessing the books and records of a regulated entity or the issuance of a third party subpoena. Without such tools, it would be difficult, if not impossible to ensure compliance with the AGO’s proposed rule. Likewise, the Commission is unlikely to be able to address any clearly-identified misconduct as it lacks authority to impose any adverse consequence on a third party for non-compliance. In the absence of Commission authority to act on such information, the provision would impose yet another reporting burden on the utility without providing any potential benefit to the customer.

For all of these reasons, DENC believes that the Public Staff’s proposed rule, as drafted, provides a better framework for addressing access to and protection of customer data that, in conjunction with existing Commission rules regarding complaint procedures, is more efficient and better fits within the existing regulatory framework of the Commission.

V. It is Premature for the Commission to Adopt the Public Staff's Revisions to R8-51(d), (g), and (h), Requested to Take Effect January 1, 2022, and the Commission Should Decline to Do So

As discussed in DENC's initial comments and in section I *supra*, DENC has several concerns with prospective revisions to R8-51(d), (g), and (h) that the Public Staff proposes should be approved now to become effective January 1, 2022.³² First, the 2022 version of R8-51(d) would require the utility to maintain 24 months of customer data in an "electronic machine-readable format that conforms to nationally-recognized standards and best practices commensurate with the meter or network technology used to serve the customer." Subsections (g) and (h) would also mandate an electronic consent process for customers to authorize third party access to their customer data. As explained in the Company's initial comments, it would be inefficient and impractical for DENC to implement these requirements prior to deployment of the Company's planned Customer Information Platform, which is under development today but is not planned to go live until April 2023. To address these practical concerns, the Public Staff has informally agreed to support a future request for waiver by DENC from this 24-month requirement and instead only require the Company to provide 18 months of customer data until the Company's new Customer Information Platform becomes commercially operational in 2023. With the benefit of such a waiver applicable to subsection (d), (g), and (h), the Company does not oppose these aspects of proposed Section R8-51.

Conversely, DENC continues to oppose the Public Staff's prospective proposal to require that, by 2022, customer data be maintained and made available to customers and

³² NCSEA goes even further, advocating that such provisions should be implemented within six months of rule implementation. *NCSEA's Comments and Request for Reply Comments* at 2. For the reasons discussed in this Section, DENC is opposed to NCSEA's proposal.

authorized third parties in “in electronic machine-readable format that conforms to the latest version of the North American Energy Standard Board’s (“NAESB”) Req. 21, the Energy Services Provider Interface (“ESPI”), or a Commission approved electronic machine-readable format[.]”³³ As explained in DENC’s initial comments, DENC has made available to its Customers the Green Button Download My Data functionality, which has received only limited customer interest since being deployed in 2013. DENC does not currently grant authorized third-parties access to customer data in an electronic machine-readable format, nor has the Company made the significant IT investments that would be required to do so in a manner that ensures system security and minimizes data intrusion risks. Instead, DENC directly provides authorized third parties customer data, via secured e-mail or another similar format, pursuant to an executed standardized consent form. This procedure has been appropriately meeting customer demands; and, to date, DENC has not observed any demand from its customer for the Company to invest in implementation of a platform such as Green Button Connect.

Moreover, DENC understands that peer utilities in other states have incurred several millions of dollars to implement Green Button Connect or similar programs and anticipates an incremental, yearly cost to maintain such a system. In addition to ensuring compliance with the Commission’s rule, DENC would also need to invest in and establish standards and enhanced security requirements outside of these rules to ensure the Company’s system remains protected from intrusions by third parties (whether authorized or not) attempting to access customer data through DENC’s IT systems. And, importantly,

³³ As explained in DENC’s Initial Comments, the Public Staff’s Rule contemplates implementation of the Green Button Connect platform, which would entail a significant up front implementation cost and an ongoing annual maintenance cost. At this time, however, DENC has not developed an assessment of the incremental costs to implement such a platform.

if the requirement were to take effect *before* DENC completes implementation of its updated Customer Information Platform, some of these costs would be incurred twice—as there would be cost involved both to upgrade its current system and cost to add the capability to the new Customer Information Platform that will be implemented under the plan discussed in DENC’s initial comments. Due to the lack of customer demand and in light of the potentially significant costs and data security and IT complexities of developing such a platform, DENC continues to believe it premature to require the Company to develop a platform for machine to machine information exchange functionality, such as Green Button Connect, at this time.

If the Commission determines that the public interest supports adopting these prospective provisions of the Public Staff’s rule, however, then DENC requests guidance from the Commission as to whether such costs should be allocated to DENC’s customers or to the third parties requesting access to such data. Section (e) of the Public Staff’s proposed rule provides that third parties may be charged a fee for accessing customer data, and implementing a standard such as the Green Button Connect platform that the Public Staff’s prospective rule contemplates is intended to enable “connection” to DENC’s system primarily to facilitate third party access. Thus, since it is third parties versus DENC’s customers who stand to benefit from the anticipated multi-million dollar incremental investment to enable Green Button Connect or a similarly featured platform, the issue of cost-causation and proper cost assignment becomes much more significant should the Commission choose to adopt the prospective provisions of the Public Staff’s proposal that would mandate future deployment of Green Button Connect or a comparable standard.

For all of these reasons, DENC believes that an affirmative requirement to provide customer data to customers and third parties in a machine readable format is premature to meet most customer's needs and, importantly, would represent an incremental cost to the planned Customer Information Platform being developed now for deployment in 2023. In the event the Commission chooses to adopt the rule, however, DENC respectfully requests that the Commission grant the Company additional time for compliance to ensure selection and/or development of a platform that best serves the needs of DENC's customers while ensuring the electronic security and privacy of their information on any such system, as well as provide guidance on the appropriate procedures to recover the incremental costs to enable this enhanced functionality.

VI. Conclusion

WHEREFORE, DENC respectfully requests that the Commission accept these Reply Comments, which generally support the Public Staff's Proposed Rule R8-51, as well as Rules R8-7 and R8-8. The Company also specifically requests that the Commission reject the AGO's and Mission:data's alternative Proposed Rule R8-51 as well as the Public Staff's proposal to also adopt amended rule provision to prospectively become effective January 1, 2022. In the event the Commission elects to grant the Public Staff's proposed revisions in 2022, however, DENC asks the Commission to allow DENC a waiver until it achieves full commercial operation of its planned Customer Information Platform, as these future investments will better enable the Company to provide customer data in a format that complies with NAESB Req. 21. DENC additionally asks for Commission guidance on cost recovery for the incremental costs of undertaking those efforts.

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments of Dominion Energy North Carolina as filed in Docket No. E-100, Sub 161 were served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 17th day of July, 2020.

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