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July 17, 2020

**VIA ELECTRONIC FILING**

Ms. Kimberley A. Campbell  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**RE: Joint Reply Comments of Duke Energy Carolinas, LLC and Duke  
Energy Progress, LLC  
Docket No. E-100, Sub 161**

Dear Ms. Campbell:

Pursuant to the Commission's *Order Requiring Information, Requesting Comments, and Initiating Rulemaking* issued February 4, 2019, the Commission's May 26, 2020 *Order Requesting Reply Comments*, and the subsequent extensions of time granted by the Commission in the above-referenced docket, enclosed for filing are the Joint Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kendrick C. Fentress".

Kendrick C. Fentress

Enclosure

cc: Parties of Record

OFFICIAL COPY

JUL 17 2020

**CERTIFICATE OF SERVICE**

I certify that a copy of the Joint Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, in Docket No. E-100, Sub 161, has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1<sup>st</sup> Class Postage Prepaid, properly addressed to parties of record.

This the 17<sup>th</sup> day of July, 2020.



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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 161

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

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “the Companies”), pursuant to the North Carolina Utilities Commission’s (“Commission” or “NCUC”) February 4, 2019 *Order Requiring Information, Requesting Comments, and Initiating Rulemaking*, and May 26, 2020 *Order Requesting Reply Comments*, in the above-captioned docket, and submit their reply comments on the proposed Commission Rules R8-51, filed by the Public Staff of the North Carolina Utilities Commission (“Public Staff”), North Carolina Sustainable Energy Association (“NCSEA”), the Environmental Defense Fund (“EDF”), the North Carolina Attorney General’s Office (“AGO”), and Mission:data Coalition (“Mission:data”).

As discussed in more detail herein, the Companies endorse a Commission Rule that governs access to their customers’ nonpublic data that:

- Provides customers with control of their data;
- Provides the utilities subject to the Rule with clear, unambiguous terms to foster and promote ready compliance; and
- Does not impose additional costs and burdens on customers that outweigh any benefits to customers.

With limited exceptions discussed herein, the Companies respectfully submit that the Public Staff's proposed Rule R8-51 best meets those goals.

**A. Introduction**

The Companies recognize that with smart meters and greater digitization of electric utility services, the clarifying, expanding, and fortifying of existing Commission Rule R8-51 is vital. To that end, with limited exceptions, the Companies support the Public Staff's proposed revisions to Commission Rule R8-51. The Companies note that the proposed Rules of the Public Staff, the AGO, and Mission:Data are consistent with respect to certain critical concepts. For example, the proposed Rules stress the necessity of a customer's consent to disclosure of its data, expressly provide some limited protection to the utility at the Commission from third parties that might misuse customer data after receiving it from the utility, and contrast and clarify the difference between a utility's necessary usage of customer data to provide regulated, electric services to its customers and the disclosure of customer data to "third parties" for activities that are not regulated by the Commission. *Cf.* AGO's Rule R8-51(d)(1) and Public Staff's Rule R8-51(b); AGO's Rule R8-51(d)(6) and Public Staff's Rule R8-51(c).

The Public Staff's proposed Rule R8-51, however, strikes the necessary balance between protecting customers' nonpublic data and implementing a workable and efficient process for compliance with that Rule. The Companies have maintained and protected nonpublic customer information since prior to the 2012 merger of Duke Energy Corporation and Progress Energy, Inc. in Docket Nos. E-2, Sub 998 and E-7, Sub 986 ("Merger"), as approved by the Commission in the *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, issued on July 2, 2012 ("Merger Order"). In

that Merger Order, the Commission approved a comprehensive framework of data protection, involving procedures for disclosure of data and self-reporting for violations of those procedures, as part of the Companies' Code of Conduct ("Code").<sup>1</sup> In the Merger Order, the Commission also directed that the Companies establish a Compliance officer and conduct annual trainings of their employees and the employees of their service companies on the provisions of the Code. *See* Regulatory Condition Nos. 14.1-14.4.<sup>2</sup>

The AGO's comment that the Code is primarily aimed at commercial competition between the Companies and their affiliates is accurate; the Companies agree that the Code's restrictions and limitations on the disclosure of nonpublic customer information were not intended for the singular purpose of protecting nonpublic customer data from disclosure. This does not mean the procedures that the Companies have developed to comply with the Code, however, have no value in the context of this Rulemaking. To the contrary, the Companies' Compliance team works to administer both the Commission-approved Code and the Companies' privacy policy, found online at <https://www.duke-energy.com/Legal/Privacy>. A review this policy shows that Duke Energy fully informs its customers about the customer information it collects and maintains and how that information is treated. The procedures and trainings that the Companies have established as a result of the Code restrictions and their privacy policies have already created a robust framework to protect nonpublic customer data from unauthorized or inappropriate

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<sup>1</sup> This is not to say that DEC and DEP were not subject to Codes of Conduct that protected customers' data prior to the 2012 Merger; they were, and the Codes of Conduct were similar to the current one. However, the Companies will refer to the Code of Conduct approved in the 2012 Merger for ease of reference in these Reply Comments.

<sup>2</sup> The most recent Commission order containing these Regulatory Conditions is the *Order Granting Motion to Amend Regulatory Conditions*, Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A, issued Aug. 24, 2018 ("2018 Reg. Con. Order").

disclosure to third parties by the Companies, their agents, and their affiliates, while also giving customers the ability to authorize disclosure to other third parties.<sup>3</sup> Incorporating some of this pre-existing framework into this Rule fosters the Companies' compliance and serves customers' interests.

As the Companies diligently work to protect customers' nonpublic data from unauthorized or inappropriate disclosure, they also agree that allowing customers greater access to their own energy usage data empowers them to make informed decisions about their energy usage. To that end, as the Companies noted in their initial comments, they are currently implementing customer access functionality like the access provided by "Green Button: Download my Data" current functionality. DEC and DEP customers with smart meters are already able to view and download their electric usage data from the Companies' websites in a standardized format. These customers can view and download their hourly and daily electric usage information from the online customer portal and through mid-cycle notifications with the Usage Alerts program.

As discussed later herein, the Companies do not support the entirety of the Public Staff's proposed Rule R8-51 because it imposes costs on customers that outweigh the benefits; however, the Companies agree that the Public Staff's proposed Rule generally provides for electric public utilities to maintain nonpublic customer data as necessary and to provide access to that data without imposing additional complexities or unnecessary costs on ratepayers. Moreover, as previously stated, the Companies appreciate the willingness of the Public Staff to adapt and enhance the pre-existing framework for

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<sup>3</sup> With respect to disclosure of nonpublic Customer data to the Companies' affiliates or nonpublic utility operations, the Commission has approved a "script" found in Attachment A of the Code to obtain customer authorization. For disclosure to other non-affiliated third parties, the Companies use other forms for customer authorization.

protecting Customer data. Expanding this existing framework minimizes costs to customers and facilitates compliance because the Companies already have in place compliance procedures and practices in operating with their affiliates as well as outside contractors and vendors that they can build on if the Commission approves the Public Staff's proposed Rule. In contrast, as discussed in more detail below, the AGO's and Mission:Data's proposed Rules, which are each in excess of 12 pages, are generally more complex and, thus, more complicated to administer or to explain to customers. The Companies' Reply Comments discuss in Section B why they support the Public Staff's Proposed Rule (except for Subsections (d), (g), and (h) that go into effect on January 1, 2022). In Section C, the Companies' Reply Comments describe how the Public Staff's Rule conforms to the Commission's authority under Chapter 62 of the General Statutes. In Section D, the Companies discuss the Public Staff's proposed subsections (d), (g), and (h) and similar proposals by the intervenors, which relate to the provision of Customer data to third parties through direct, electronic methods.

**B. The Public Staff's Proposed Rule R8-51 Protects Customers' Nonpublic Data and Privacy in Clear and Easy to Understand Terms that Expand on the Commission's History and Procedures in Protecting Nonpublic Customer Data.**

The Public Staff's Proposed Definitions are consistent with Chapter 62 of the North Carolina General Statutes and Commission Precedent.

The Companies generally agree with the Public Staff's proposed definitions of terms to be used in Rule R8-51. The definition of "Customer Data" is comprehensive and consistent with, although not identical to, the definition of "Customer Information" that the Commission approved in the Companies' Code. To illustrate, the Companies' Code defines "Customer Information" as

nonpublic information or data specific to a Customer or to a group of Customers, including but not limited to, electricity consumption, . . . load profile, billing history or credit history that has been obtained or compiled by DEC, [and] DEP, . . . in connection with the supplying of *Electric Services* . . . to that Customer or group of Customers.<sup>4</sup>

Code, Sec. I (Emphasis added.).<sup>5</sup> “*Electric Services*” is further defined 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.” Code, Sec. I. The Public Staff’s definition incorporates that definition and provides additional clarifying detail, such as that Customer data includes a customer’s participation in regulated utility programs, like energy efficiency programs. Public Staff’s Rule R8-51(a)(2) (i-iv).

The Public Staff’s proposed Rule also crucially and clearly defines the activities and parties that may be involved in the regulated utility’s potential disclosure of Customer data. First, the Public Staff defines “Nonpublic utility operations” as “all business enterprises engaged in by a utility that is not regulated by the Commission or otherwise subject to public utility regulation at a state or federal level.” Public Staff’s Rule R8-51(a)(3). This definition is consistent with the definition that the Commission approved in the Companies’ Code and in N.C. Gen. Stat. § 62-2(3)3. N.C. Gen. Stat. 62-(3)23 exempts enterprises that are not public utilities from Commission regulation, even if a “person” conducting a public utility also conducts that non-regulated enterprise. In other words,

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<sup>4</sup> The Companies have removed the references to Natural Gas Services related to Piedmont Natural Gas Company included in this definition for the Commission’s convenience.

<sup>5</sup> Although this provision of the Code can be found in several Commission orders, including the Merger Order, the most recently-approved version of the Code was in 2018 Reg. Con. Order.



nonpublic utility operations are not subject to the provisions of Chapter 62, which establishes the Commission's jurisdiction over the Companies' public utility operations. The Public Staff also defines "third party" to be any person that is not the customer and clarifies that it does not include an agent of the customer (such as an adult child acting on behalf of an elderly parent), and a contracted agent for the utility. Additionally, "third party" includes both nonpublic utility operations and affiliates of the utility. This definition is likewise consistent with the Commission's distinctions in the Code and the Companies' practices that result from the Code's provisions.<sup>6</sup> Finally, the Public Staff, further defines "aggregated data," "personal information" and "unique identifier" in simple, easy to understand terms. In sum, the definitions included in the Public Staff's proposed Rule collectively protect Customer Data and help guide how appropriate or authorized access to may be allowed.

In contrast, the AGO's and Mission:Data's proposed Definitions appear to be more complex and, therefore, may be more difficult for customers and utility employees to understand. For example, the AGO's rule includes at least four different categories of data in addition to aggregated data such as: (i) covered information; (ii) standard customer data, (iii) "unshareable personal data" and (iv) "usage data." Distinguishing between these various types of data may be confusing to customers and difficult to administer by the Companies' employees. Accordingly, the Companies respectfully believe that the Public Staff's distinctions between "personal information" and "Customer data" in its proposed

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<sup>6</sup> See Code at Sec. III(A)(2)(a)-(f). (In these provisions, the Commission approved essentially treating the nonpublic utility operations and affiliates of DEC and DEP as similarly situated to non-affiliated third parties for purposes of disclosing nonpublic Customer data.)

Rule are more easily understood and administered by utility employees, while still providing no less protection to customers' privacy.

The AGO and Mission:Data's proposed Rules also introduce new terms, such as "primary purposes" for definition. Primary purposes, however, appear to mirror "Electric Services" as included by the Public Staff and defined in the Code. "Secondary purpose or use" appears to correspond to the Public Staff's definition of "nonpublic utility operations," a well-established term that the Commission has employed since at least 2006 to refer to those activities carried out by the utility that are not subject to the Commission's jurisdiction under Chapter 62.<sup>7</sup> The Companies respectfully submit that the Definitions sections of the Public Staff's, Mission:Data's and AGO's proposed Rules appear similar in concept; however, the Public Staff's version uses less complex and less novel terms that reflect prior Commission orders.<sup>8</sup> The Companies' personnel are more accustomed to these terms in the context of their compliance efforts, and therefore can strengthen pre-existing compliance policies to conform to this Rule.

#### Customer Consent

The Companies continually work to maintain a culture of protecting nonpublic Customer data. Obtaining customer authorization prior to the disclosure of nonpublic Customer data is central to those efforts. In only limited circumstances, discussed later herein, do the Companies disclose nonpublic Customer data without customer authorization to do so. In short, as outlined in their Code, the Companies do not disclose

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<sup>7</sup> *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket No. E-7, Sub 795, Attachment B (Code of Conduct) at p. 2, issued March 6, 2006.

<sup>8</sup> Merger Order, Code at Sec. I; *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, issued Sept. 29, 2016.

nonpublic Customer Information to: (i) non-affiliated third parties, (ii) affiliates, or (iii) nonpublic utility operations without customer authorization to do so.<sup>9</sup>

The Companies support the Public Staff's proposed Rule R8-51(b)-(c) and (g) – (k) (except for the amendments to those subsections that the Public Staff propose to go into effect on January 1, 2022). These subsections clarify that the utilities may use Customer data for regulated purposes under N.C. Gen. Stat. § 62-3(23), further underscoring that the utilities may not disclose Customer data to their nonpublic utility operations or an affiliate without customer authorization. Public Staff's Rule R8-51(b).<sup>10</sup> The Public Staff's Proposed Rule also provides that the utilities must inform the Commission of any disclosure of the customer's data without the customer's consent. *Id.* This is consistent with the Code's requirement that the Companies report any inappropriate disclosure of DEC or DEP Customer data, describing the circumstances of the disclosure, the Customer data disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences, to the Commission. Code Sec. III(A)(2)(k). The Companies have filed these reports in Docket Nos. E-7, Sub 986C, E-7, Sub 1100C and E-2, Sub 1095C. In short, the provisions in the Public Staff's Proposed Rule fortify and expand on the Companies' Code's requirements for customer authorization for

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<sup>9</sup> Code, Sec. III(A)(2)(b); *see also* Code Sec. III(A)(1) (DEC, DEP and other affiliates shall operate independently of each other and the Companies' nonpublic utility operations shall maintain separate records from public utility operations).

<sup>10</sup> The AGO's initial comments state that the Code does not appear to require a utility to obtain consent to use customer information for "secondary purposes." AGO Comments at 26. Although the Code does not use the term "secondary purposes," it does unequivocally provide that the Companies may not disclose Customer Information (or as used in this context "Customer data") without customer authorization to nonpublic utility operations, which are business operations not related to the electric utility service that the Commission regulates. To the extent that prohibition was not clear in the Code (which the Companies do not concede), the Companies believe that the Public Staff's proposed Rule R8-51 fully accomplishes and explains this prohibition in terms that the Commission has previously used in the merger dockets and that are understandable to the affected utilities.

disclosure of nonpublic Customer data, without imposing additional complexity on the Companies' compliance efforts. Although the Companies support these subsections, they discuss certain aspects of them in more detail below.

1. Consent Form or Process

The Public Staff's proposed Rule requires that a utility shall not disclose Customer data to a third party unless the customer submits a paper or electronically signed consent form. The Public Staff's proposed Rule also provides that the contents of the electronic consent form must follow the format of a Commission-prescribed form, but does not require Commission approval of the form. This provides the customers with protection, but, by not requiring the Commission to approve the actual form itself, allows for less cumbersome administration of the process because it allows the Companies to compose their own forms, consistent with the Rules, but does not compel them to submit them to a Commission approval process for any subsequent alterations, material or not, to the form.

2. Limited Disclosure to Utility Contractors Working on Behalf of the Companies

The Public Staff's proposed Rule also accurately reflects how the Companies operate with outside contractors or Duke Energy affiliates who provide services to the Companies or to the Companies' customers on behalf of the regulated utility. Under the Public Staff's Rule R8-51(c), "a utility may, . . . in its provision of regulated utility service, disclose Customer data to a third party, 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." This provision is consistent with the Commission's

2011 approval of an amendment to Dominion’s North Carolina Code of Conduct, where Dominion requested to use non-affiliated vendors and consultants in implementing, evaluating, measuring, and verifying Dominion’s energy efficiency and demand-side management programs. *Order Approving Code of Conduct Amendment*, Docket No. E-22, Sub 380A, issued May 10, 2011 at p. 2. The Public Staff’s Rule additionally provides a workable method for Duke Energy affiliates, such as the Duke Energy service company, Duke Energy Business Services (“DEBS”), to provide services, such as legal representation, to the Companies. Under the Public Staff’s proposed Rule, DEBS, other affiliates and non-affiliated third parties will have limited access to the Customer Information necessary to provide services to the regulated utility, while protecting that Customer Information from any additional disclosure.<sup>11</sup> This process has been in place for the Companies since at least 2012. The Companies require their outside contractors and their affiliates to maintain the confidentiality of Customer data needed to perform the service.

The AGO’s and Mission:Data’s proposed Rule also appears to allow for the disclosure of Customer data to “utility contractors” in certain circumstances, but imposes limits on that disclosure that both may harm customers and impede effective administration. For example, the AGO’s and Mission:Data’s proposed Rule states that utilities are always prohibited from providing “unshareable personal data to any other party other than the customer.” AGO’s Proposed Rule R8-51(d)(9). “Unshareable” personal data includes, for example, credit reporting information, health information, or the network

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<sup>11</sup> The Companies’ Code imposes restrictions on DEBS’ use of DEC’s and DEP’s nonpublic Customer data that protect Customer data from inappropriate disclosure and complement the Public Staff’s proposed Rule R8-51.

or internet protocol address of the customer. As noted, the Companies treat this type of information currently as nonpublic “Customer Information” under their Code and would continue to treat it as nonpublic Customer data or personal information under the Public Staff’s proposed Rule R8-51, if it is approved. The Companies, however, typically after receiving customer authorization to do so, have on occasion shared limited health information (such as a customer’s requirements for electric medical devices) about their customers with a social assistance agency (or the Public Staff) to the extent necessary to help obtain assistance for those customers. Under this provision of the AGO’s and Mission:Data’s Proposed Rule, it appears that the Companies would never be allowed to share such information with any third party - Public Staff or otherwise - even with customer authorization. Additionally, as noted above, the Companies’ attorneys work for a third-party affiliate that provides services to the utility under a contract with that utility —DEBS. Therefore, a blanket prohibition on sharing such information may impede the Companies’ attorneys from defending the Companies against complaints at the Commission, as they would not have access to certain potentially relevant information. If a customer had an excellent credit history with one Duke affiliate, that affiliate would be unable to share that credit history with another affiliate, if the customer wanted to initiate service in the affiliate’s service territory. For example, customers may not understand why they must undergo a separate and new credit check to establish new service in the Companies’ North Carolina service territories when they have had an excellent payment record with the Companies’ affiliate, Duke Energy Florida, LLC. Under the AGO’s proposed Rule, it is not clear that Duke Energy Florida, LLC could validate a customer’s good payment record

or credit history for DEC or DEP.<sup>12</sup> Finally, as noted above, the Companies have engaged outside contractors to assist in the evaluation, measurement, and verification of energy efficiency and demand-side management measures. Accordingly, it appears in these instances listed above that the AGO's and Mission:Data's proposed Rule would never allow for the sharing of potentially relevant information (notwithstanding the customer's authorization), which works to the detriment of customers seeking assistance and participating in energy efficiency and demand-side management programs and the Companies' ability to receive necessary services. Therefore, the Public Staff's proposed Rule better protects customers in a workable, straightforward manner.

**C. The Public Staff's Proposed Rule R8-51 Comports with the Commission's Authority to Protect Customer Data and Regulate Electric Utilities.**

As noted above, with limited exceptions, the Companies support the Public Staff's proposed R8-51 as a comprehensive framework to protect Customer data while providing the utilities the circumstances under which they may allow customers and third parties access to nonpublic Customer data. The Companies note that the AGO's and Mission:Data's proposed Rule R8-51(h) and (k)-(u) impose requirements that are: (i) beyond the Commission's authority under Chapter 62 and potentially superfluous because of requirements already in place.

1. Rule R8-51 does not require its own Complaint Procedure in Addition to the Commission's Complaint Procedure outlined in Rule R1-9.

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<sup>12</sup> The Companies have shared with the Public Staff that under their Customer Connect platform, which they are currently implementing, they will expressly seek authorization to use a customer's good credit history with one Duke affiliate to establish credit for that customer in other Duke Energy affiliate's service territory. The Companies will not, however, use customer's poor credit history with a Duke Energy affiliate against the customer in any circumstances.

The AGO's proposed Rule provides that complaints under this Rule shall be treated as Complaints under R1-9. Commission Rule R1-9 provides a sufficient and well-established procedure for customers to raise complaints against public utilities. The AGO's and Mission:Data's proposed Rule further provides, however, that "If a utility has a reasonable suspicion that an authorized third party has engaged in conduct rendering it ineligible to access information under [Rule R8-51], the utility shall expeditiously inform the Commission and the Public Staff of any information regarding possible ineligibility." The proposed Rule does not explain how this report to the Public Staff or the Commission is helpful to either, and, indeed, the Commission has stated that its complaint jurisdiction does not extend to third parties that are not public utilities:

As stated in G.S. 62-73 and G.S. 62-74, the subject matter of any complaint may only relate to "any act or thing done or omitted to be done by any public utility." This subject matter jurisdiction does not include acts done by persons . . . that are not a public utility. Subject matter jurisdiction cannot be agreed upon by the parties, nor waived, as it may be raised as a defense at any time. Time Warner Entertainment Advance/Newhouse Partnership v. Town of Landis, N.C. App., 747 S.E.2d 601 (2013). Therefore, the Commission does not have jurisdiction over the subject matter of a potential complaint by Duke[.]

*Order on Jurisdiction and Dismissal of Complaint*, Docket No. E-7, Sub 1038, issued March 5, 2014 (DEC and the City of Greensboro had agreed that DEC could file a complaint against customers living in Greensboro that refused to allow DEC to carry out its tree trimming obligations to provide electric utility service as approved by the Commission, but the Commission concluded such an agreement was outside the Commissions' jurisdiction) (Emphasis in the original). Therefore, it is unclear what authority the Public Staff and the Commission have over these reported third parties under this provision of the AGO's and Mission:Data's R8-51(h)(2) or (3).



The proposal above appears to link the utilities' obligations to report this type of information to the Commission and Public Staff to the Commission's confirmation that a third party is or has become ineligible for receipt of nonpublic Customer data. It does not explain how the Commission would make such a determination, however, or how the Public Staff would police such matters with information provided by the utility. Moreover, it is unclear with respect to the utility's ability to contract with third parties regarding the provision of nonpublic Customer data. For example, the AGO's proposed Rule R8-51(h)(2) provides that if a utility believes it is necessary to terminate an authorized third party's access to Customer data, the utility shall file a request to do so. Rule R8-51(h)(4) provides that the Commission shall allow the utility to refrain from providing Customer data to that third party. Neither subsection, however, explains how the Commission would make such a determination or provides a time frame for such a determination to be made. Therefore, the Companies respectfully request that the Commission decline to adopt the AGO's and Mission:Data's proposed Rule R8-51 with respect to Complaints.

2. The Companies are already Subject to Reporting and Auditing Requirements Related to their Maintenance of Nonpublic Customer Data; therefore, Additional Requirements are Unnecessary and Impose Unnecessary Costs on Customers.

Mission:Data's proposed R8-51(k) and (q) impose reporting requirements on the utilities with respect to the provision of Customer data. According to the AGO's Rule R8-51(k)(1), for example, the utilities shall report the Commission the number of demands received for the disclosure of Customer data and the number of customers whose records were disclosed. Under the AGO's Rule R8-51(p)(3), the utility shall file an annual report with the Commission that notifies it of all the security breaches (which appears undefined) within the calendar year affecting the covered information directly or indirectly through

one of its contractors. The proposed rule does not provide, however, what the Commission would do with the information contained in these reports or how these reports would benefit customers. The AGO's and Mission:Data's proposed Rule also requires the utilities to be accountable for complying with the requirements here and imposes additional auditing and reporting requirements upon them.

The Companies are always accountable for complying with the requirements of the Commissions' Rules and orders and are always willing to provide information to the Public Staff and Commission regarding how they maintain, protect, and provide access to Customer data. The Commission has already provided that the Companies shall report to the Commission any inappropriate disclosure of nonpublic Customer data to a non-affiliated third party, an affiliate or to nonpublic utility operations in the Code.<sup>13</sup> In the past, because of the Code, the Companies have notified the Public Staff when an inappropriate disclosure of nonpublic Customer data has occurred prior to filing the self-report. Additionally, the Companies' Regulatory Condition No. 5.1 provides unequivocally that the Commission and the Public Staff shall continue to have access to the books and records of the Companies, the Companies' affiliates and nonpublic utility operations. Accordingly, the reporting and auditing requirements included in the AGO's and Mission:Data's proposed Rule R8-51 are not necessary because of the Commission directives already in place. Additional reporting requirements imposed on the Companies will result in additional costs being imposed on customers without clearly providing any additional benefit. For this reason, the Companies respectfully request that the

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<sup>13</sup> Code at Sec. III(A)(2)(k).

Commission decline to adopt the auditing and reporting requirements in the AGO's and Mission:Data's proposals in this context.

**D. The Companies Currently Provide for Customers to Download Their Energy Usage Data and Provide it to Third Parties.**

As noted in their initial comments, the Companies oppose the Public Staff's proposed revisions to Commission Rule R8-51(d), (g) and (h), which mandate a "Green Button Connect" functionality where third parties, other than the customer, may access customer energy usage data electronically through the North American Energy Standard's Board ("NAESB") Reg. 21, the Energy Services Provider Interfact ("ESPI") or a Commission-approved electronic machine-readable format. Other intervenors, such as the AGO and Mission:Data, have espoused the same position and have included similar requirements in their proposed Rules, although unlike the Public Staff's proposal, these proposed requirements appear to be effective immediately. Although the Companies fully support allowing customers access to their energy usage data to better inform their energy usage in the future, the Companies oppose these proposed mandates because, by authorizing third parties to have ready access to customers' energy usage data, they impose costs on customers that outweigh any benefit customers may obtain.

As noted, the Companies are implementing Customer Connect, a program designed to bring new capabilities to the Companies' customers. Delivering Customer Connect is foundational to transforming the Companies' customers' experience. To allow for successful testing, training, conversion and implementation of the core solution, in March 2020 the Companies stopped ingesting changes to many IT systems and business applications. Although the Companies recently updated the Commission to indicate that they will accelerate the program timeline to deliver the new customer service platform five

months earlier than originally reported and planned for DEP, the new Customer Connect deployment date for DEP is November 2021. The time frame remains April 2021 for DEC. Even with this change in the time frame for DEP, the Companies have already invested resources in delivering these new customer capabilities. Additionally, if the Commission approves the Public Staff's proposed revisions, the Companies note that they could not begin such a project until late 2022 or early 2023, after full implementation and stabilization of Customer Connect. Moreover, they already have a process to field third-party data requests for customer usage and billing information, and they are prepared to comply with all other provisions of the Public Staff's proposed Rule R8-51.

This proposal also appears to potentially place on the Companies considerable responsibility (and costs) in implementing this capability for third parties. *See e.g.* the AGO's proposed R8-51(f) (2)-(9) (describing, among other things, the utilities' obligations with respect to providing third parties access to Customer data through electronic means). Furthermore, the Companies would be required to secure the transfer of this data to third parties. The numerous obligations in the AGO's proposed Rule create administrative burdens and would likely increase the cost of compliance to provide third parties direct electronic access to Customer data that they may already request through the existing processes.

Notably, the Companies are already providing Customer data access functionality to their customers like the access currently provided by Green Button: Download my Data functionality. Customers with smart meters are already able to view and download their electric usage data from the Companies' websites in a standardized format. These customers can view and download their hourly and daily electric usage information from

the online customer portal. Additionally, the following table shows that from February 26, 2020 until July 14, 2020, relatively few of the Companies' North Carolina customers accessing their accounts online chose to use this feature:

Jurisdiction	February 2, 2020 through July 14, 2020	"Download My Data" Sessions	% of Sessions using Feature
DEC NC	2,591,840	2,782	0.11%
DEP NC	1,895,693	1,766	0.09%

Because their customers have demonstrated minimal demand for this information themselves, the Companies are reluctant to invest the required additional resources and time adding functionalities to their Customer Connect platforms that are not responsive to customer needs and demands and that will benefit third parties. There would be operational implications including ongoing administration costs to support the scaled collection and management of customer consent, the cost to assemble requirements and build, test, and maintain the capability annually and support required within customer services to manage customer inquiries related to the capability. Based on the foregoing, and contrary to EDF's initial comments, it would be "costly and duplicative" to adopt the "Green Button Connect My Data" as urged by the Public Staff and other intervenors.<sup>14</sup> As such, the Companies do not believe that the Commission should mandate this investment of resources and time to deliver a product that customers would have to pay for, when there has been no demonstration of customer demand.

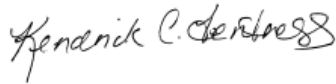
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<sup>14</sup> EDF Initial Comments at 3.

Accordingly, the Companies respectfully request that the Commission approve the Public Staff's proposed Rule R8-51, excepting the Public Staff's proposals that go into effect in the 2021.

Respectfully submitted this the 17<sup>th</sup> day of July 2020.

DUKE ENERGY CAROLINAS, LLC  
DUKE ENERGY PROGRESS, LLC



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