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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| Proposed Rulemaking Concerning Utility/Customer Relations Regarding Third-Party Solicitations | Docket Nos. 18-R460-01, 18-057-19, and 18-035-40 REPLY COMMENTS OF DOMINION ENERGY UTAH |
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Questar Gas Company dba Dominion Energy Utah (DEU or Company) respectfully submits these Reply Comments in response to the Comments of the Utah Division of Public Utilities (Division) and the Memorandum issued by the Utah Office of Consumer Services (Office), both dated December 18, 2018.

BACKGROUND

On October 12, 2018, the Utah Public Service Commission issued a Notice of Proposed Rulemaking and Notice of Scheduling Conference. On November 8, the

Commission issued a Scheduling Order and Notice of Technical and Scheduling Conference, providing that initial comments in the docket would be due on December 18, 2018 and reply comments would be due January 11, 2019. On December 18, 2018, DEU, the Division and the Office filed Comments. DEU offers these Reply Comments in response to the Comments filed by the Division and the Office.

DISCUSSION

I. Commission Rules Should Be Designed to Avoid Customer Confusion and Disparate Treatment and Should Not Attempt to Regulate the Use of a Common Logo.

This rulemaking arose from the Commission's Report and Order issued on October 4, 2018 in Docket No. 18-057-07 ("Order"). Based upon the Discussion, Findings and Conclusions set forth in that Order, DEU believes that the heart of the Commission's concern lies not in the use of a shared logo, but in the potential confusion that could result from the use of such a logo by non-utility entities. DEU understands that concern and supports rules targeted at preventing customer confusion. As such, DEU recommends that, instead of attempting to regulate entities or practices that fall outside the Commission's jurisdiction, as is suggested in the Comments, the Commission should focus on rules that require utility action where a third party creates potential confusion by using the same or a similar logo. As discussed in greater detail in DEU's initial comments in this docket, DEU supports a rule that would require any utility operating within the state to take affirmative steps to ensure that communications, offerings or solicitations from third parties that use the same or similar logo and target utility customers clearly and expressly, in plain language, (a) identify the party sending the communication, offering or solicitation, (b) define the relationship, if any, between the sender and the utility, and (c)

state that the communication, offering or solicitation is not from the utility, is unrelated to utility service, and will not impact the customer's utility service. DEU also supports a rule that requires a utility to send clarifying communications, like that described in DEU's prior Comments in this Docket, if third-party correspondence does not comply with the principles set forth above.

The Division recommends that, if the Commission declines to regulate the use of a brand like Dominion Energy's, it should also include statements that (1) "the product or service is not endorsed or required by the utility", (2) "the affiliate or third party offering the product or service is a separate entity from the utility", and (3) "a utility number to call if the customer has questions." (Division Memorandum at 8.) The Company generally agrees with these principles and has offered similar recommendations. Therefore, the Company recommends that, if the Commission promulgates rules on this issue, those rules be designed to prevent customer confusion, and require utilities to take steps, including issuing corrective communications, to avoid customer confusion.

II. The Parties Agree that Utilities Should be Permitted to Share Customer Information for Operational Purposes Related to the Provision of Utility Service.

DEU agrees with the Office and the Division that utilities should be permitted to share customer information for operational purposes related to the provision of utility service. The Office recommends that a Commission rule "should distinguish between use of data for primary utility purposes (essential functions, billing, research, etc.) versus secondary (third party solicitations, etc.) purposes." (Office Memorandum at 2.) Similarly, the Division recommended that, while the Commission should have a default rule against sharing of customer information, a Commission rule should "[p]rovide for

certain standard exceptions to the bright-line rule.” (Division Memorandum at 6.) The Division recommends that standard exceptions should include “[o]perations directly related to the utility’s function. This includes essential functions outsourced to third parties, such as billing, collection, credit checks, etc.,” “[i]nformation used in or required by court proceedings, orders, warrants, subpoenas, Commission requests, and other valid legal or governmental obligations,” and “emergency situations where there is imminent threat to life or property.” (Division Memorandum at 7.) The Company generally agrees that any Commission rule addressing customer information should permit sharing of customer information for operational purposes related to providing utility service, and believes that interested parties can aid in drafting rules reflecting these agreed-upon principles.

III. Commission Rules Governing Customer Information Should Protect Customers and Be Consistent With Existing Utah State Law.

The Company urges the Commission to advance rules that protect customers, while also being mindful of existing legislative and legal parameters. The Company believes that public information can be shared under existing Utah State law, and that utilities should be permitted to share such customer information on a non-discriminatory basis, with the proper protections in place, for the purposes of providing information and/or solicitations customers may find to be valuable.

The Utah State Legislature has already explicitly addressed the use and handling of customer information and made its intent for what information must be protected clear. The Utah Notice of Intent to Sell Nonpublic Personal Information Act makes clear that a person’s name, address, and telephone number are considered “Public Information” and are not subject to the act’s notice requirements. Utah Code Ann. § 13-37-102(5)-(6).

Accordingly, the legislature intended customers' names, addresses and telephone numbers to be public information that may be shared.

The Division urges the Commission to take action inconsistent with this legislative directive, arguing that public utilities should be held to a higher standard, despite the fact that there is no legislative support for this proposition, either generally or in Title 54 of the Utah Code. Indeed, the Division points to state *statutes* from Washington, Colorado and California as evidence of the fact that other states are more restrictive.¹ It is significant that, in those states, *the legislatures*, not public service commissions, addressed how customer information was to be used by utilities. This makes sense given that Commission authority is limited to that granted to it, and state regulations in conflict with such laws are unenforceable. (Utah Code § 54-1-2; *Heber Light & Power Co. v. Utah Pub. Serv. Comm'n*, 2010 UT 27 ¶ 17, 231 P.3d 1203 (holding that the Commission has “no inherent regulatory power other than those expressly granted or clearly implied by statute.”) (citations omitted); *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (holding that the Commission’s powers are derived from those created by statute, and any reasonable doubt about the extent of that authority is “resolved against the exercise thereof.”). The Company opposes any Commission rule that would be inconsistent with or that would otherwise seek to modify the stated intent of the Legislature in an existing statute.

It cannot be the case, as the Division urges, that when a utility shares what would otherwise be statutorily-defined “public information,” the information suddenly becomes non-public or private information because the recipient is “getting the information that the

¹ It is important to note that most state legislatures have not addressed the issue of utility customer

person is a utility customer.” (Division Memorandum at 4.) The Legislature has made no such determination or statement. Indeed, any business sharing customer information will inherently be sharing that the information is for a customer of *that particular entity*. For example, a dentist sharing customer information would not only be sharing name and address, he or she would be sharing the information that the customer sought dental treatment with that dentist. A plumbing supply company would be sharing information related to customers who purchase plumbing supplies from that company. A credit card company would be sharing information related to credit card customers. The fact that a company is sharing only information related to its own customer base is not a relevant factor in applying the current statute. The Commission should decline to modify a state statute through a rulemaking.

Instead, the Company supports creating safeguards that protect customers and afford customers the opportunity to opt out of any non-essential solicitations. The Company supports recommendations of both the Office and Division for providing such protection. For example, the Office suggests some safeguards including (1) that utilities “should disclose the scope of the customer information it stores,” (2) that customers “should be informed by the utility what information will be shared, who it will be shared with, and how the information will be used,” and (3) that customers “should be able to revoke the approved sharing of information by the utility at any time and should be informed of this right by the utility.” (Office Memorandum at 2.)

The Division offers some similar recommended safeguards, should the Commission agree that some sharing should be permitted. The Division indicates that

information.

correspondence to customers receiving affiliate or third-party materials “should make clear that the utility is not requiring or promoting the service” and that “[a]ffiliate names that could reasonably be confused with the utility’s name should come with a clear statement that the utility is not involved. . . .” (Division Memorandum at 6.) The Company generally agrees with these concepts and recommended similar protections in the Comments it previously submitted in this Docket.

The Office also recommends that third parties who contract for the use of utility customer information should follow certain principles, including (1) verification of authorization from the account holder to provide and bill for services, (2) a thirty-day grace period in which to cancel the third-party service contract without penalty, (3) a complaint process, (4) that solicitations comply with the Utah Consumer Sales Practices Act, and (5) that a utility should only provide non-discriminatory access to utility customer information, and that affiliates should not receive preferential treatment. Again, DEU agrees with these principles and is confident that the parties can aid in drafting rules that address each item.

The Company notes that the Office and the Division both urge the Commission to permit sharing of information only when customers opt-in for such sharing. An opt-in approach is another means of revising the legislature’s definition of “public information.” Indeed, this sort of opt-in approach appears oppositional to the requirements of the Utah Notice of Intent to Sell Nonpublic Personal Information Act. The Act permits the sharing or selling of such information without any notice requirements, and a Commission Rule requiring not only notice, but an affirmative “opt-in” would conflict with the language of the Act and what the legislature contemplated. The Company suggests that, instead,

customers should be permitted to opt-out of the sharing of customer information for solicitation purposes, and that utilities should take steps to ensure that customers are aware of that right.

The Company notes that there is substantial agreement among interested parties about what steps the Commission should take to protect customers whose information may be shared. DEU believes that the parties can help craft rules that address many of the concerns raised in the Comments in this docket.

IV. The Commission has Already Determined that Imputation of Revenue for Sharing of Customer Information Should be Addressed in a Utility's General Rate Case.

The Company believes that any value conveyed by a utility through the sharing of customer information, if any, should be addressed in the context of a general rate case, and that separate imputation of revenue is unnecessary. The Division recommends “that revenue from customer lists be imputed to the utility in question” and that the “amount of the revenue should be based on the estimated revenue from any third-party mailings.” The Company disagrees with the Division’s proposed methodology, but suggests that the appropriate valuation should be discussed in a utility’s general rate case, not in a rule.

It is important to note that the Commission has already made a determination on this issue in Docket No. 18-057-07. It said, “[w]hile we conclude that an imputation is appropriate, the amount of the imputation and its allocation will be considered during the next general rate case.” (Report and Order issued October 4, 2018, in Docket No. 18-057-07.) The Company believes this approach is the proper approach for addressing this issue generally. The Commission need not promulgate a rule that defines what is to be imputed,

or how that value should be allocated when it already has processes in place to make that determination. A general rate case is the appropriate venue.

The Company appreciates the opportunity to offer these comments and looks forward to further discussions with interested parties to advance Commission rules that are both consistent with Utah State statutes and protect customers.

RESPECTFULLY SUBMITTED this 11th day of January, 2019.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Reply Comments of Dominion

Energy Utah was served upon the following persons by e-mail on January 11, 2018:

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