In the Matter Of:

In Re: Dominion Energy's Gas Line Coverage Letter

HEARING, DOCKET NO. 18-057-07

September 05, 2018

Job Number: 486696A

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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)   Docket No. 18-057-07
)
Dominion Energy's Gas Line   )   HEARING
Coverage Letter   )
)   CONTAINS HIGHLY
)   CONFIDENTIAL PORTION
)

_____

September 5, 2018
9:00 a.m.

Location: Utah Public Service Commission
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter

Job No. 486696A

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1   I N D E X

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11   E X H I B I T S

No.	Description	Admitted
12		
13 DEU Ex. 1.0	DEU Comments, 5-21-18	85
14 DEU Ex. 1.1	Gas Line Letter	85
15 DEU Ex. 1.2	DEU letter to customers	85
16 DEU Ex. 1.3	DEU sample invoice	85
17 DEU Ex. 2.0	DEU Proposed Plan for Unwinding Billing	
18	Arrangements	85
19 DEU Ex. 2.1	DEU letter to Customers Clarifying service is	
20	optional	85
21 DEU Ex. 2.2	DEU letter to advising Customers to contact	
22	HomeServe	85
23 DEU Ex. 2.3	DEU letter with timeline	85
24 DEU Ex. 3.0	DEU Reply Comments	85

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1 September 5, 2018   9:00 a.m.

2   P R O C E E D I N G S

3   COMMISSIONER LEVAR: Okay. Good morning.

4 We're here in Public Service Commission Docket

5 18-057-07, Dominion Energy -- or sorry. The

6 investigation of Dominion Energy Utah's gas line

7 coverage letter. Why don't we start with appearances

8 for the utility first.

9   MR. SABIN: Thank you very much. Cameron

10 Sabin from Stoel Rives, LLP here on behalf of Dominion

11 Energy Utah, with Jennifer Clark as cocounsel, in house

12 counsel. And then we have two witnesses here today,

13 Kelly Mendenhall and Jim Neal.

14   COMMISSIONER LEVAR: For the Division of

15 Public Utilities?

16   MS. SCHMID: Patricia E. Schmid with the Utah

17 Attorney General's Office on behalf of the division.

18 With me is the division's witness, Mr. Eric Orton.

19   COMMISSIONER LEVAR: Okay. For the Office of

20 Consumer Services.

21   MR. MOORE: Robert Moore with the Attorney

22 General Offices representing the Office of Consumer

23 Services. With me is Michele Beck, director of the

24 Office of Consumer Services.

25   COMMISSIONER LEVAR: Okay. Thank you. Are

1 there any other preliminary matters that any parties

2 have before we move forward? Mr. Sabin.

3   MR. SABIN: We have three. They are fairly

4 short, but I think that they were -- dealing with them

5 up front will expedite the proceedings, or at least I

6 would suggest they would.

7   First, we alerted the parties and the

8 commission to the fact that we would -- we were

9 considering offering our witnesses as a panel, in order

10 to just allow -- we weren't sure exactly how questions

11 would be asked, and having the two of them here

12 together, and I think it would facilitate them being

13 able to appropriately designate who the right person for

14 the question will be.

15   I don't think there's an objection from either

16 the division or the office in us doing that, but

17 certainly we would ask for the permission to do that

18 this morning. If there's a problem with that, we're

19 certainly prepared to go ahead separately as well, if

20 you would rather.

21   COMMISSIONER LEVAR: Okay. Is there any

22 objection to that from the division or the office?

23   MR. MOORE: No objection.

24   MS. SCHMID: No objection.

25   COMMISSIONER LEVAR: Okay. Then I'll also ask

1 the court reporter, is there any objection to having the

2 witnesses just sit at the table, all four witnesses

3 speak from the table?

4   COURT REPORTER: No, that's fine.

5   MR. SABIN: And what we would foresee is

6 there's -- each witness has prepared a few brief

7 comments of the areas that he will cover. We're hoping

8 that will alert both the commission and other counsel to

9 the areas that witness is prepared to handle today.

10   Secondly, we have prepared a binder of

11 exhibits. This is a little bit of an unorthodox docket

12 in the sense that we didn't submit prefiled testimony.

13 So in lieu of that, what we would propose is just to

14 submit these -- these hearing exhibits and ask that they

15 be admitted.

16   If you want to do them as we go along, of

17 course, we're prepared to do that as well. We just

18 suggested that it would be easier to do it up front

19 since they are materials that have already been filed in

20 this action but...

21   COMMISSIONER LEVAR: And so your -- this

22 binder are all the materials that Dominion Energy has

23 filed in this docket?

24   MR. SABIN: They are all the exhibits we

25 intend to use today, or to have formally in the record,

1 separate and apart from what's filed in the docket.

2   COMMISSIONER LEVAR: Oh, okay. I see. Let me

3 just ask the other parties, is there a desire to try to

4 deal with exhibits all up front, or is there a

5 preference to just deal with them as we move along the

6 various witnesses? Ms. Schmid.

7   MS. SCHMID: If I may ask Dominion Energy Utah

8 a question.

9   COMMISSIONER LEVAR: Yes.

10   MS. SCHMID: Would the witnesses be adopting

11 what's in this book as their file testimony?

12   MR. SABIN: They are not adopting it as their

13 filed testimony. They are adopting it as the position

14 of the company. Again, it's a little unorthodox docket

15 in the sense that we didn't have -- each witness can't

16 say that that would be their testimony, because some of

17 the material would be known by one witness and some by

18 the other. But the entirety of the document wouldn't be

19 known by one -- by both of them, if that makes sense.

20   What we would propose is just to have them

21 marked as Dominion exhibits, and then allow the

22 witnesses to speak to those portions of the exhibits

23 that they know, and allow cross-examination on those

24 portions that they know, and not have a particular

25 witness adopt any of the documents as their own.

 1   MS. SCHMID: With that explanation, the

 2   division would prefer that we deal with it on an exhibit

 3   by exhibit.

 4   COMMISSIONER LEVAR: Do you have any different

 5   feelings, Mr. Moore?

 6   MR. MOORE: No. We agree with the division.

 7   COMMISSIONER LEVAR: Okay. That seems to make

 8   sense to avoid a lot at the beginning.

 9   MR. SABIN: Well, then what we will do, if

10   this is okay with the commission, we'll just have the

11   witnesses refer to those at the beginning of their

12   testimony, and we'll ask that they -- that they

13   authenticate them as filings that either they prepared

14   or they prepared in conjunction with others at Dominion,

15   and allow the commission to decide if you are going to

16   admit them as exhibits or not. Does that sound okay?

17   COMMISSIONER LEVAR: Yes, I think that sounds

18   like an appropriate way to go forward.

19   COMMISSIONER CLARK: Could I ask one

20   clarifying question also, Chair LeVar? So is there

21   anything in this white binder that is before us that has

22   not already been distributed in the docket? Glancing

23   through it, most of the material looks familiar to me.

24   MR. SABIN: There's just two things which I am

25   about to address.

1   COMMISSIONER CLARK: Okay.

2   MR. SABIN: What they are is the licensure --

3   the renewal documentation from the Division of

4   Insurance. That was not submitted and we found out just

5   on Friday late morning about the action request. We

6   were not aware of that until that point, and so when we

7   became aware of that, we had both DPS and HomeServe

8   provide to us the documentation they received from the

9   Division of Insurance, because it's relevant to the

10 question the commission asked in the most recent action

11 request.

12   That's the only -- those are the only two

13 things that we haven't circulated, because we didn't

14 have time due to the holiday.

15   COMMISSIONER CLARK: Thanks, Mr. Sabin.

16   MR. SABIN: Yeah. So the last issue,

17 Commissioner Clark has actually raised it for me. So we

18 found out about this action request on Friday, late

19 morning. In your white binders, Exhibits 4 -- DEU

20 Exhibits 4.0 and 5.0, those are -- those are documents

21 that the division of -- Utah Division of Insurance sent

22 to both Dominion Products and Services and to HomeServe.

23   And I'll just address first, 4.0, you will see

24 is the certificate of renewal for Dominion Products and

25 Services that was issued March 1st, 2018, and goes until

1   February 28th, 2019. That's the current registration

2   that's in effect now, and you will see that that has

3   them listed as a contract -- a service contract

4   provider, which is different than what we saw from the

5   letter that was sent by the Division of Insurance.

6   I honestly can't explain to you why -- this is

7   a document from them to the DPS, and I don't know why

8   they have it marked different. I don't think at the end

9   of the day it matters, and I'll come to that in a

10 moment, but I wanted to make sure the commission had

11 that at your disposal.

12   And then if you look at 5.0. 5.0 is the

13 certificate for HomeServe repair -- USA Repair

14 Management Corp issued March 1st, 2018, and it goes

15 again through February 28, 2019. That has the company

16 listed as a home warranty company. Had -- had we been

17 able to file a response, what I would have said, and I

18 appreciate the division's response to the action

19 request. I am prepared today to walk the commission

20 through the Utah code and the insurance regulations.

21   We agree with the division. We don't think it

22 matters because the definition of a home -- certainly a

23 service contract provider is clearly what the tariff

24 refers to. But if you look in the regulations for the

25 home protection service contract rule, which is -- it's

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1   the regulation 590-166, that defines a provider of home

2   warranties as a home protection company. And a home

3   protection company is then defined as -- means a service

4   contract provider.

5   And so what I will -- our position is that a

6   home protection company is a subset of a service

7   contract provider under the -- under Utah code Section

8   31A6A-101. And so I mean, we can spend more time if you

9   would like. I just wanted you to know from the

10 company's position was that the Division of Insurance

11 has gone back and forth over the years calling it one

12 thing or the other.

13   And if we went back historically, we could

14 show you that there has been -- they have called them

15 service contract providers before or home warranty

16 providers. In either case we don't think it matters and

17 we think, as you look at that, you will agree. But I am

18 happy to discuss further if we need to.

19   I just didn't want to -- because that's more

20 of a legal issue, I didn't feel like the witnesses were

21 in a position to go through the statutes. We're going

22 to have them -- will have them authenticate the

23 documents we received, but I am happy to take any

24 questions or have any discussion on that. I just didn't

25 want that to kind of persist without at least giving you

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 1  our position so...

 2            COMMISSIONER LEVAR:  Thank you.  And with

 3  that, it seems to make sense as we move through the

 4  witnesses to allow you, if you want to present any legal

 5  proffer on that issue, to move through that as we move

 6  through the witnesses.  If we get to the end of the

 7  hearing and there's a desire for further legal

 8  clarification, we can discuss that at the end.

 9            I anticipate some of the questions the three

10  of us will have, some will be factual and some will be

11  legal also, so we'll probably be going back and forth

12  today on those issues.

13            MR. SABIN:  That's fine.  Okay.  That's all I

14  have from a preliminary standpoint.

15            COMMISSIONER LEVAR:  Okay.  Thank you, Mr.

16  Sabin.  Ms. Schmid or Mr. Moore, any other preliminary

17  matters?

18            MS. SCHMID:  Nothing from the division.

19            MR. MOORE:  We have a confidential exhibit we

20  would like to introduce, but we'll handle that during

21  cross if that's all right.

22            COMMISSIONER LEVAR:  Okay.  So there may be a

23  need to close the hearing or just not -- or just try not

24  to discuss if --

25            MR. MOORE:  There will be a need to close the
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 1 hearing.

 2   COMMISSIONER LEVAR: There will be a need to

 3 close the hearing?

 4   MR. MOORE: We were going to suggest that

 5 during the inquiry of cross the hearing remain closed,

 6 and then Dominion has a chance to redirect, and the

 7 commission has a chance to answer questions. And after

 8 that period, we will reopen the hearing and I'll

 9 continue cross on nonconfidential matters.

10   COMMISSIONER LEVAR: Okay. So you will alert

11 us when we get to that point of the witness's

12 confidential testimony?

13   MR. MOORE: Yes, Chairman.

14   COMMISSIONER LEVAR: Okay. Thank you. That

15 seems to be all the preliminary matters. This docket is

16 one where we are not acting on an application of the

17 utility. We have requests for agency action from the

18 division and the office. So it seems to make sense to

19 have those parties present their witnesses first. And

20 if there's no preference between the two, shall we just

21 start with Ms. Schmid and Mr. Orton?

22   MS. SCHMID: Thank you. We'd like to do that.

23   COMMISSIONER LEVAR: Okay. Mr. Orton, do you

24 swear to tell the truth?

25   THE WITNESS: Yes, sir.

1   COMMISSIONER LEVAR: Okay.

2   ERIC ORTON,

3   was called as a witness, and having been first duly

4   sworn to tell the truth, testified as follows:

5   DIRECT EXAMINATION

6   BY MS. SCHMID:

7   **Q.   Mr. Orton, could you please state your full**

8   **name, business address and employer for the record.**

9   A.   My name is Eric Orton. I am here in the Heber

10 Wells Building, 160 East 300 South, Salt Lake. I am a

11 utility consultant, technical consultant with the

12 Division of Public Utilities.

13   **Q.   In connection with your employment at the**

14 **division, have you participated on behalf of the**

15 **division in this docket?**

16   A.   I have.

17   **Q.   Did you participate in the filing -- in the**

18 **preparation and filing of the miscellaneous action**

19 **requests to which the division has responded? Let me**

20 **start again.**

21   **Did you participate in formulating the**

22 **division's action request responses?**

23   A.   I was a participant. Uh-huh.

24   **Q.   Did you participate in formulating the**

25 **division's comments that were filed in this docket?**

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 1       A.    Yes.

 2       Q.    Do you adopt those things as they are

 3  identified in the docket sheet as your testimony today?

 4       A.    I do.

 5       Q.    Do you have anything that you would like to --

 6  any summary statement that you would like to make?

 7       A.    I do have a summary statement.

 8       Q.    Please proceed.

 9       A.    Thank you.  Last year the utility received

10  approval to allow it to include billing services for

11  third party service providers on its bills, and to

12  charge those third parties for these billing services.

13  It did not seek approval to offer, sponsor, cosponsor,

14  partner or aid in the solicitation of customers for such

15  services.

16            The utility sought only permission to include

17  the line items of such services in its monthly bill,

18  which was granted, with a caution that it must

19  administer the tariff fairly.  The utility is

20  responsible for how its brand, customer information and

21  tariffs are used.

22            The core of the issue before us is this:  The

23  monopoly utility traded access to and information about

24  its captive customers to promote a specific company's

25  products, with the profits of that trade going to its
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1 affiliate. This breach of the commission's order and

2 the public interest should be remedied by revoking the

3 third party billing tariff and imputing the profits to

4 the utility to be credited to rate payers.

5   Dominion Energy solicited its utility

6 customers to sign up with HomeServe. Dominion Energy,

7 whether it was Dominion Products and Services, Dominion

8 Energy Corporation, or Dominion Energy Utah, could not

9 be distinguished. But it was clear that the intention

10 was to represent that Dominion Energy, the utility,

11 partnered with HomeServe. Were it otherwise, some

12 distinction between Dominion entities would have been

13 made.

14   Giving privileged access to captive utility

15 customers' information to one vendor and affiliate

16 plainly violates the commission's order, approving the

17 third party billing tariff. Additionally, a prudent

18 utility concerned about the welfare of captive customers

19 would not have just given away something that had had

20 their private information, or at least a marketable

21 value, the amount of which could be credited back to

22 rate payers.

23   The fact that this utility did both of these

24 was a blatant mishandling of customer and utility

25 resources. From a customer's perspective, the mailing

 1 in question are equivalent to the utility endorsing

 2 HomeServe. Therefore, the utility cannot apply to

 3 tariff Section 8.08, open quote, in a nondiscriminatory

 4 manner, close quote, as the commission ordered on

 5 November 20th, 2017. The utility clearly violated the

 6 commission order, which is law.

 7   The division will not here rehearse the

 8 details of our points made in previously filed comments

 9 but will let them stand on their own. Having said that,

10 there are still some items that need to be considered.

11   A rule making proceeding would best address

12 questions about protecting the public interest and

13 maintaining utility customers' information on a broadly

14 applicable level. One should be undertaken to allow all

15 interested parties input. Such rules should have a

16 broad general application.

17   The utility's conduct in this matter has made

18 clear the commission must take steps to protect the

19 captive customer's privacy. However, because this

20 utility has shown that it was willing to give away its

21 captive customer information, the utility recommends

22 that a provision expressly prohibiting such affiliate

23 type sharing be put into its tariff now. The utility's

24 tariff Section 8.08 cannot now be implemented fairly,

25 and it must be revoked.

 1   Additionally, the utility should compensate

 2 customers for the value of the information traded and be

 3 penalized for its behavior. The division references

 4 Utah Code 54-7-25, which addresses the penalties

 5 appropriate for utility violations, suggests a statutory

 6 penalty could be $2,000 for each customer whose personal

 7 information the utility gave away.

 8   This would capture each, open quote, separate

 9 and distinct offense, close quote, as the statute

10 allows. This would result in a very high penalty, even

11 if imposed at the lower $500 amount. Instead, something

12 less would be more appropriate and compensate customers

13 for their information.

14   The commission should impose a single $2,000

15 penalty under the statutory penalty structure, which

16 will be remitted to the general fund. Commission should

17 impute to the utility the revenue DPS received for

18 selling the customer's information. The funds derived

19 from this penalty should be used to offset the rates of

20 this solicited customer class.

21   In short, the commission should impose a

22 $2,000 fine and impute the contract proceeds DPS

23 receives from HomeServe as revenue to the utility

24 customers. Revoking the tariff, adding the customer

25 privacy information tariff provision and rule making and

 1 imposing the penalty and imputation is in the public

 2 interest. The division urges the commission to issue

 3 such an order. Thank you. That's all I have.

 4   MS. SCHMID: The division would like to -- the

 5 division would like to move for the admission of the

 6 division's corrected comments filed on May 11, 2018,

 7 comments from the Division of Public Utilities with

 8 Exhibit A and Exhibit B, filed with the commission on

 9 June 28th, 2018, and the division's response to the

10 action request that the division filed yesterday.

11   COMMISSIONER LEVAR: Does any party have any

12 objection to that motion?

13   MR. SABIN: No objection from the company.

14   COMMISSIONER LEVAR: Okay.

15   MR. MOORE: No objection from this office.

16   COMMISSIONER LEVAR: Okay. The motion is

17 granted. Thank you.

18   MS. SCHMID: Thank you. Mr. Orton is now

19 available for cross-examination and questions from the

20 commission.

21   COMMISSIONER LEVAR: Mr. Moore, do you have

22 any questions for Mr. Orton?

23   MR. MOORE: One quick question.

24   CROSS-EXAMINATION

25 BY MR. MOORE:

1   Q.   On page 15 of the division's June 28th, 2018,

2   recommendation, the division proposed tariff language

3   regarding the treatment of customer information. Does

4   the division recommend that this language be included in

5   Section 8.08 of Dominion's tariff relating to third

6   party billing or in a section of the tariff regarding

7   the treatment customer information in general?

8   A.   I didn't intend for that to be only limited to

9   Section 8.08. Customer information and privacy of that

10   should be applicable to all of the tariff.

11   MR. MOORE: Thank you. I have no further

12   questions.

13   COMMISSIONER LEVAR: Okay. Thank you, Mr.

14   Moore. Mr. Sabin?

15   MR. SABIN: Yes. One second.

16   CROSS-EXAMINATION

17   BY MR. SABIN:

18   Q.   Mr. Orton, could you -- there's a binder that

19   we have given to your counsel that has some exhibits in

20   there. If you could look at Exhibit No. 2 with me for a

21   moment. It's the original action request form. Is it

22   not in there? Oops. Okay. Sorry. It's Exhibit -- I

23   apologize, I'm looking at the wrong binder. It's

24   Exhibit 1. There is a -- let's just go to that letter.

25   You see that?

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1        A.   I see it.

 2        Q.   That's the letter that started this

 3   proceeding; do we agree?

 4        A.   It's one of them.

 5        Q.   Were there others that were sent out?

 6        A.   Yeah, I believe there were several different

 7   versions.

 8        Q.   Okay.  Do you agree with me that the scope of

 9   this proceeding was to investigate whether the service

10   set forth in that letter complies with all applicable

11   statutes, regulations, tariffs and prior PSC orders?

12             MS. SCHMID:  I object to the extent that the

13   question asks for a legal conclusion concerning the

14   scope.

15             MR. SABIN:  I'm -- I'll rephrase.

16        Q.   (By Mr. Sabin) Mr. Orton, the division was

17   asked -- was sent an action request by the Public

18   Service Commission; isn't that true?

19        A.   That is.

20        Q.   And wasn't the language in the action request

21   directed to the division to -- that directed the

22   division to investigate whether, and I'll just quoting

23   from the action request, "Investigate whether this

24   service offering complies with all applicable statutes,

25   regulations, tariffs and prior PSC orders."  That's
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1 true, isn't it?

2   A.   I believe what you are saying is probably

3 accurate. I don't have it in front of me.

4   Q.   Okay. You reference in your test -- in your

5 statement, statutory provision 54-7-25?

6   A.   That's right.

7   Q.   Would you agree with me that that provision is

8 only applicable if the commission determines that

9 there's been an actual violation of a statute, rule or

10 regulation as applicable to the company?

11   MS. SCHMID: Objection insofar as it asks for

12 a legal conclusion.

13   MR. SABIN: I'll just ask for his knowledge if

14 he knows.

15   COMMISSIONER LEVAR: Repeat the question

16 again.

17   MR. SABIN: The question was, he said under

18 54-7-25 that the commission was authorized to penalize

19 the company for a violation, and I just want to confirm

20 that he agrees with me. Maybe he doesn't, but that if

21 there is no violation, that there isn't a penalty

22 allowed under that statute.

23   COMMISSIONER LEVAR: I think I agree that that

24 question is a legal conclusion. I think -- I think you

25 will have a chance to discuss that in this hearing as we

1 move forward with questions and -- but I think I agree

2 that it's not a question that's appropriate for

3 Mr. Orton.

4   MR. SABIN: Okay.

5   **Q.   (By Mr. Sabin) Mr. Orton, you have stated that**

6 **the company. When you use that term, I assume you meant**

7 **the utility.**

8   A.   Generally. It's hard to determine between the

9 entities often. But generally, that would have been the

10 case.

11   **Q.   Okay. Well, the letter that's in Exhibit 1 in**

12 **the binder you are looking at --**

13   A.   Uh-huh.

14   **Q.   -- that was not sent out by the utility, was**

15 **it?**

16   A.   Well, we're told it wasn't mailed by the

17 utility, but I don't know who put postage on the

18 envelope and set it in the mailbox.

19   **Q.   Let me ask this question. You don't, as you**

20 **sit here, have any evidence that the utility sent that**

21 **letter, paid to have it sent, printed the letter, put it**

22 **in the envelope, and sent it to customers, do you?**

23   A.   I have no idea who did it other than Dominion

24 Energy's logo is on it, and it refers to Dominion Energy

25 many times.

1   Q.   Okay. And since you have referred to that,

2 the logo, Dominion Energy --

3   A.   Uh-huh.

4   Q.   -- that logo does not belong to the utility,

5 does it? There is a Dominion parent, right, that has

6 operated long before there was a merger here in Utah?

7 Isn't that true?

8   A.   There is a Dominion parent, and as I was

9 reading the data request response yesterday, it appeared

10 that Dominion Products and Services claims that they

11 have the right to that logo.

12   Q.   Okay. They may have -- that may be true.

13   A.   All right.

14   Q.   Yeah.

15   A.   Yeah.

16   Q.   But again, that logo, you don't have any basis

17 to say that that logo is within the control of the

18 utility itself, right?

19   A.   Oh, I doubt that it is.

20   Q.   Okay. So you agree with me that there are

21 unregulated -- there's at least one or two unregulated

22 entities here that have the right to use the name

23 Dominion Energy in their business practices?

24   A.   There are other entities involved. I assume

25 they have that right to use that, but I don't know that

1 they do or not.

2   **Q.   And so it's true, isn't it, that the mere use**

3 **of the name Dominion Energy on a -- what is otherwise an**

4 **unregulated business activity does not in and of itself**

5 **show any wrongdoing on the part of the utility?**

6   MS. SCHMID: Objection. Calls for legal

7 conclusion.

8   COMMISSIONER LEVAR: Do you want to respond to

9 the objection?

10   MR. SABIN: This witness has testified in his

11 opening statement that we, the utility, violated the law

12 by using -- by sending this letter out and using the

13 name Dominion Energy on the letter. And I'm just simply

14 trying to clarify with him that he doesn't have a basis

15 to say that there's been a violation by the utility in

16 the use of that mark.

17   COMMISSIONER LEVAR: Yeah, I think with his

18 statements and his summary, I think it's appropriate to

19 ask him the basis for those statements.

20   THE WITNESS: So will you try that again?

21   **Q.   (By Mr. Sabin) Sure. So the mere fact that**

22 **the name Dominion Energy appeared on a letter does not**

23 **in and of itself establish a basis that the utility did**

24 **anything wrong, correct?**

25   A.   I think that would be accurate.

1   Q.   Okay. So let's get down to you -- you also

2 said that the, quote, utility -- and I wrote down your

3 quote, said the utility partnered with HomeServe.

4   A.   From the customer's perspective that is

5 accurate.

6   Q.   Where do you -- tell me the basis where you

7 say -- where the utility has said that it partnered with

8 HomeServe.

9   A.   If you will refer to another solicitation

10 letter from Dominion Energy. The one I have in front of

11 me is dated 4-16-18, signed by James Neal. It said,

12 "Dominion Energy --

13   COMMISSIONER LEVAR: I'm sorry. Is that

14 connected to one of your filings?

15   THE WITNESS: I think it's one of the

16 company's filings.

17   MR. SABIN: Sorry. Can you tell me what the

18 date --

19   THE WITNESS: I pulled out a link pretty

20 quick. Let me --

21   MS. SCHMID: Could we perhaps have a moment?

22   MR. SABIN: Yes.

23   MS. SCHMID: For him to find what he is

24 looking for. Thank you.

25   The division is ready to resume with the

 1 permission of the commission.

 2   COMMISSIONER LEVAR: Yes.

 3   A.   So on our June 28th memo from the division, we

 4 had some attachments. One of those attachments from

 5 that date, April 16th, 2018, entitled Important

 6 Information Regarding Your Gas Line. You have that?

 7   **Q.   (By Mr. Sabin) Go ahead. I have got it.**

 8   A.   Thank you. The beginning of the second

 9 paragraph says, "Dominion Energy has partnered with

10 HomeServe." From the customer's perspective that means

11 the utility partnered with HomeServe.

12   **Q.   Well, it's true that a customer might**

13 **understand that, but it's true, isn't it, that also the**

14 **mere use of the name Dominion Energy does not always**

15 **refer to the utility? Isn't that true?**

16   A.   It is true in some instances. I don't know

17 that it is in this. If we want to look at another

18 attachment to that same memo.

19   **Q.   Well, before we go there, let me just follow**

20 **up on the one we're looking at. This is not signed by**

21 **the utility; isn't that true?**

22   A.   Well, it's signed by Dominion Energy, which to

23 the customer is the utility.

24   **Q.   What's the name of the utility?**

25   A.   Dominion Energy.

1   Q.   It's Dominion Energy Utah; is it not?

2   A.   That's what it is legally.

3   Q.   Okay.

4   A.   To the customers it's Dominion Energy.

5   Q.   Okay. Right. How do you know that to all the

6   customers that means the utility?

7   A.   Everyone but you. Sorry. I didn't mean that

8   too flippantly. I believe that as we look at it, at

9   these letters from the customer's perspective, Dominion

10 Energy means the regulated utility. Now, it may be true

11 that there -- well, it is true there are other Dominion

12 companies that do other things, and they are probably

13 called, perhaps called Dominion Energy as well, but from

14 the Utah customer perspective, I propose that Dominion

15 Energy means the gas utility.

16   MR. SABIN: And I would like to object. I

17 don't think he can speak for all customers. I think he

18 can offer his opinion about what he thinks, but that's

19 where it should stop.

20   COMMISSIONER LEVAR: I think we'll note that

21 objection in connection with his answer.

22   Q.   (By Mr. Sabin) I have just two more questions.

23 I have read the Dominion Energy comments and the

24 company's responded to those. It's true, is it not,

25 that there has not been any third party that has come to

1 Dominion Energy Utah and that has been denied the right

2 to use -- to bill customers under the third party

3 billing tariff? Isn't that correct?

4   A.   I don't know what's happened inside the

5 Dominion Energy doors.

6   Q.   Okay.

7   A.   But it would seem -- I'm sorry.

8   Q.   Are you aware of any instance in which the

9 company has denied any third party the right to use the

10 third party billing tariff services?

11   A.   I am not aware of anybody that would be crazy

12 enough to -- to try to sign up for that when the utility

13 has clearly partnered with -- provided access to the

14 e-mail lists, the customer service lists, the phone

15 numbers, and clearly supported one entity. I would be

16 surprised if another entity would get on to such an

17 unlevel playing field.

18   Q.   In that respect, Mr. Orton, you are not aware

19 of any violation by the company of the tariff; isn't

20 that true?

21   A.   Are you meaning the violation of the tariff by

22 not allowing somebody else to?

23   Q.   Well, let's start there, sure. You are not

24 aware of the company violating the tariff by denying

25 anybody else the right to use the third party billing

1 **tariff, right?**

2   A.   No. I doubt anybody would even try, right.

3   **Q.   Okay.**

4   A.   The door has been shut to competitors.

5   **Q.   So help me understand what violation you claim**

6 **has occurred under the language of the tariff.**

7   A.   By simply partnering and taking HomeServe

8 under the utility's wing, it has not -- it has

9 prohibited others from entering that marketplace on any

10 sort of level playing field, and therefore, there cannot

11 be competition or a market in that field any longer.

12   **Q.   Mr. Orton, I note the distinct absence of any**

13 **intervenor complaining about the company's behavior**

14 **here. Are you aware of any other intervenor, any**

15 **business, any entity, that has criticized the company**

16 **for this behavior?**

17   A.   No. I would be surprised if anybody went that

18 far.

19   **Q.   Okay. So the violation you are talk -- the**

20 **violation you are talking about, Mr. Orton, is a**

21 **nonexistent violation; isn't that true? It's a**

22 **hypothetical one you are -- you believe may exist, but**

23 **you don't know exists?**

24   MS. SCHMID: I would object to the form of the

25 question. The question is asking for a very broad

1 conclusion, whereas the question before it referred to

2 the tariff. So I'd like the question to be restated.

3   COMMISSIONER LEVAR: Do you want to respond to

4 the objection?

5   MR. SABIN: I'll just restate. It's easier.

6   **Q.   (By Mr. Sabin) Mr. Orton, do you have the**

7 **language of the tariff in front of you?**

8   A.   I think I can find it.

9   **Q.   If you could, that would be great.**

10   A.   Hope you don't ask me to find much more

11 because my stack is pretty messed up now. I have the

12 tariff in front of me.

13   **Q.   I just want you to point to me the language or**

14 **the provision or the section of that tariff that you say**

15 **is violated or was violated by the company. Which**

16 **action of the company did something that violated the**

17 **language here?**

18   A.   I was referring to the language in the order,

19 commission's order.

20   **Q.   Which language is that?**

21   A.   Just a minute. So on the June 28th memo, the

22 November 20th order, at the top of page 7 we refer to

23 that order. It says, The commission's order concerning

24 the petition and motion filings disposed of the filing,

25 but cautioned the gas utility that, open quote, in

1 rolling out and administering this program, Dominion

2 must comply with all statutory requirements and act in a

3 nondiscriminatory manner, close quote.

4 **Q. Okay. So let's take that in two parts. Can**

5 **you point to me anything in 8.08 of the tariff that you**

6 **say the company has violated? Let's just start with**

7 **that language first.**

8 A. What I'm trying to say is that --

9 **Q. I understand. I want you to answer my**

10 **question first. Section 8.08, is there any language**

11 **there that dictates an obligation on the company that it**

12 **did not fulfill?**

13 A. No, it can't be fulfilled. It cannot be

14 fulfilled in a nondiscriminatory manner at this point.

15 **Q. Well, first off, again, I am just focusing on**

16 **the language of the 8.08. We'll come to the order in**

17 **second, and I'll let you answer that. But you agree**

18 **with me, right, that nothing you have alleged is covered**

19 **by the tariff language, right?**

20 A. Give me a minute to review it. Well, I can

21 say that it appears that the company has not excluded

22 entities that are authorized by the Utah insurance

23 department and that provide service contract programs

24 directly or indirectly related to utility service,

25 including electrical service, natural gas service, water

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1   service, sewer service or household appliance, paren.

2   third party services, that they may be eligible. I have

3   no evidence that you have not let anybody talk to you

4   about that.

5   Q.   Okay. So now let's go to the order. The

6   language you are seizing on in the order is language

7   that pertains to administering the program in this

8   nondiscriminatory way. And you're -- if I understand

9   your testimony today, you are saying that the company is

10 not doing that because the company is in some way

11 discriminating; is that right?

12   A.   Yeah, that's right.

13   Q.   Okay. In what way has the company

14 discriminated against another third party?

15   A.   Well, that's what I tried to explain earlier,

16 was that by buddying up with HomeServe and providing all

17 that information to them, and allowing the use of the

18 company logo, that there cannot be a full and complete

19 marketplace since a winner in that marketplace has

20 already been chosen by the utility.

21   Q.   Well, so let's break that apart. So --

22   A.   Okay.

23   Q.   We have already established that the Dominion

24 Energy logo itself is not the utility's to give. We

25 agreed on that, right?

1   A.   I don't remember. Did I --

2   Q.   Well, let's --

3   A.   I said there are others that can use it, and

4   have apparently claimed to have the right to use it.

5   Q.   Do you have any reason to believe that the

6   utility itself has the ability to license the name

7   Dominion Energy for use with other third parties?

8   MS. SCHMID: If you know.

9   MR. SABIN: If you know.

10   A.   I don't -- I don't know if they have the

11   right. I don't know what sort of parent and sibling and

12   child relationship there is in the corporation.

13   Q.   (By Mr. Sabin) Fair enough. That's fine. The

14   second part of what you said then was that the utility

15   allowed customer information to be used by HomeServe,

16   right?

17   A.   Yeah, I said that.

18   Q.   That would only be discriminatory in its -- if

19   at all, if that same right wasn't allowed to other third

20   parties, right?

21   A.   If every --

22   MS. SCHMID: Objection. Calls for legal

23   conclusion.

24   MR. SABIN: I'm just trying to get at what he

25   is saying is discriminatory.

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1   COMMISSIONER LEVAR: I am thinking about

2   whether I -- whether I agree that that's a legal

3   conclusion. I'm not sure I agree where Mr. Orton has

4   testified that the letter was discriminatory. I think

5   this goes to the basis of his testimony on that. So

6   I'll allow the question.

7   MS. SCHMID: Could we have a moment, please?

8   COMMISSIONER LEVAR: Yes.

9   MS. SCHMID: We're ready to proceed with

10 permission.

11   COMMISSIONER LEVAR: Okay. Thank you.

12   A.   It's my turn to answer the question?

13   Q.   (By Mr. Sabin) It's your turn, yes, unless you

14 want me to restate the question. I'm happy to.

15   A.   Yeah, I wish you would.

16   Q.   That's fine. No problem. We started with

17 your assertion that the company has discriminated

18 against others because it allowed HomeServe, according

19 to you, to use customer information, right?

20   A.   Yes.

21   Q.   And I am asking you if that -- if that same

22 right to use that information was provided to other

23 third parties who qualified, that allegation by you

24 would not have any foundation, right? I mean, there

25 wouldn't be any discrimination if everybody had had the

 1 **same right, correct?**

 2   A.   I suppose if the company were to give the

 3 information to all other people -- companies who wanted

 4 that detail of information to the customers, to the

 5 utilities customers, if they gave that to every company

 6 who wanted it, willy-nilly, then from the customers'

 7 point of view, that would be a violation of the trust

 8 that they have placed in the utility when they gave them

 9 that information on the condition of receiving service.

10   **Q.   And you will note in my question, I didn't use**

11 **the term "willy-nilly" or that they just --**

12   A.   I made that term up.

13   **Q.   -- threw it -- threw it into the wind and let**

14 **everybody gather it up in public, right?**

15   A.   Right. No, but what I am trying to say is

16 that that information from the customer's point of view

17 was given on the condition of receiving utility service

18 to stay warm in the winter. And all that information

19 and more was given to, or taken by, Dominion Products

20 and Services and sold to HomeServe. And I don't mean to

21 cut you off.

22   **Q.   No, no, go ahead. I'm letting you finish.**

23   A.   But if that -- if all that information were

24 given to other companies, then I think we would have a

25 different issue to address here, which would be -- well,

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1 it may not be different. It may be close, which would

2 be -- I don't know how you would -- how you would say --

3 it would be a severe violation of their trust in the

4 utility and -- but I don't mean to get off the point. I

5 do want to answer your question directly.

6   Q.   That's fine.

7   A.   I think if you gave it to everybody else, with

8 the same -- we have partnered with and we support this

9 other entity, then there might not be -- if that's even

10 possible. But I don't know that it is now, since you

11 already have partnered with and supported one entity.

12   Q.   Are you aware of any evidence that the company

13 has denied any other entity that qualified and that

14 sought that customer information that we have denied it

15 of them?

16   A.   I have no idea that anybody has asked.

17   Q.   Okay. And then on that customer information

18 point, I just want to ask you one last thing. The

19 company provides that information, and has historically

20 over the years to other service providers, has it not?

21   A.   I have no idea.

22   Q.   As necessary to provide energy efficiency

23 services or to providers who go to your home -- to a

24 customer's home and need to have service provided there.

25 There are other circumstances under which customer

1 **information, their name, their address, their phone**

2 **numbers has been used. Are you aware of that or are you**

3 **not aware?**

4   A.   I am not aware. I don't know that anybody

5 would have my landlord agreement or that sort of

6 information, or my e-mail address given to them.

7   **Q.   Your landlord agreement. What do you mean**

8 **your landlord agreement?**

9   A.   There is more information was given to

10 HomeServe than just the name and address. For me

11 personally, I have a landlord agreement with some

12 apartments I have, and the information was sent to me at

13 that address, which only means that they had access to

14 me.

15   **Q.   But you are not suggesting the company gave a**

16 **landlord -- the company had or gave a landlord agreement**

17 **to somebody?**

18   A.   Well, they must have to HomeServe.

19   **Q.   Given a landlord agreement?**

20   A.   The information from it.

21   **Q.   Okay. I got -- I'll just let my witnesses**

22 **deal with that. I don't think I have any other**

23 **questions. Thanks.**

24   COMMISSIONER LEVAR: Okay. Thank you. Any

25 redirect, Ms. Schmid?

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 1                    MS. SCHMID:  Yes.

 2                    REDIRECT EXAMINATION

 3   BY MS. SCHMID:

 4        Q.   Mr. Orton, would you please turn to the

 5   division's June 28th filing, and attached to that filing

 6   you will see that there were two exhibits, the first

 7   being a letter consisting of one page, and the second

 8   consisting of a letter of more than one page -- of three

 9   pages; is that correct?

10        A.   Yes, that's right.

11        Q.   So the utility customers received more than

12   one letter about HomeServe.  Can you testify to that?

13        A.   I don't know that --

14        Q.   Was there more than one variation of a letter?

15        A.   There were versions, different versions.  I

16   don't know if one customer received more than one

17   version.  I don't know how that happened, but there were

18   different versions of the solicitation letters.

19        Q.   Did customers call the division expressing

20   concern over the letters they received?

21        A.   We had hundreds call and complain about that.

22        Q.   Could you briefly summarize the heart of those

23   complaints?

24        A.   I think it would be most clear if I referenced

25   one of those exhibits that you just brought up.  I don't
```

1 know why you brought it up, but page 3 of 3 on the

2 acceptance form, down at the bottom there it says --

3 well not, maybe in the middle of the page.

4   "Complete and sign below. Yes, I want gas

5 line coverage from HomeServe. I authorize a $5.49

6 monthly charge plus applicable taxes to be included on

7 my Dominion Energy bill. This optional coverage is

8 billed monthly," dah, dah, dah. "I can cancel at any

9 time calling this number. I agree Dominion Energy may

10 provide my data."

11   Dominion Energy there and Dominion Energy on

12 the bill helped confuse people as to whether it was

13 someone else offering this, because those appear to be

14 the utility, and people were concerned and upset that

15 the utility was trying to get them to sign up for this

16 service.

17   **Q.   So it's true then that the letters caused**

18 **confusion about the relationship between the utility and**

19 **HomeServe, and customers were concerned about that?**

20   A.   Clearly.

21   **Q.   You discussed -- or you were asked questions**

22 **about whether there were intervenors in this docket. Do**

23 **you recall that?**

24   A.   I remember it, yeah.

25   **Q.   Is it true that this docket arose out of a**

1 **docket wherein the specific tariff language was**

2 **approved?**

3   A.   That's right, last year. TL4 I think was the

4 docket.

5   **Q.   Do you remember that there were intervenors in**

6 **that docket? Rocky Mountain Gas Association. Or do you**

7 **remember that concerns were expressed by Rocky Mountain**

8 **Gas Association, Utah Plumbing and Heating, independent**

9 **contractors about the tariff?**

10   A.   Yes. And as I recall, they were concerned

11 that it would be administered fairly.

12   MS. SCHMID: Those are all my redirect

13 questions. Thank you.

14   COMMISSIONER LEVAR: Thank you. Any recross?

15   MR. SABIN: No, thank you.

16   COMMISSIONER LEVAR: I think I have a few

17 questions for Mr. Orton.

18   THE WITNESS: Oh, good.

19   COMMISSIONER LEVAR: I wanted to start right

20 with this acceptance form that you were just talking

21 about.

22   THE WITNESS: Uh-huh.

23   COMMISSIONER LEVAR: That Ms. Schmid was

24 asking you. I think I understood your point, but just

25 to clarify, is it your position that this reference on

1 the acceptance form to quote, my Dominion Energy bill,

2 creates an inference that other references to the phrase

3 Dominion Energy refer to the utility throughout the

4 letter?

5   THE WITNESS: That's exactly what I meant.

6 Thank you.

7   COMMISSIONER LEVAR: What -- what would be

8 your position if Dominion Energy -- putting the issue on

9 the acceptance form aside, if Dominion Energy had

10 partnered with HomeServe to send this very letter, both

11 versions of this letter out, without utilizing Dominion

12 Energy Utah's customer lists? If they -- if Dominion

13 Energy had gone on the open market, had purchased a

14 generic customer list that's commercially available

15 without using the utility customer list, what would --

16 how would the situation be different?

17   THE WITNESS: If I could add one.

18   COMMISSIONER LEVAR: Assume the use of the

19 logo.

20   THE WITNESS: Oh.

21   COMMISSIONER LEVAR: Then I am going to ask

22 you a separate question that's different. But the first

23 question is, assuming the use of this logo, but not the

24 use of customer lists, what would be your view of that

25 hypothetical?

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1   THE WITNESS: It's really making me think. If

2   they had bought the list on the market and bought the

3   logo and there was no endorsement? Or there was an

4   endorsement.

5   COMMISSIONER LEVAR: Well, I think whether or

6   not there was an endorsement is one of the factual

7   disputes that's in front of us here. So I --

8   THE WITNESS: Oh, okay.

9   COMMISSIONER LEVAR: Let's put that aside. I

10 guess what I am asking you is, would there be an

11 endorsement, that's probably the question I am asking,

12 if a Dominion Energy affiliate and HomeServe had sent

13 this letter as written, without using the utility

14 customer lists?

15   THE WITNESS: I think it would be entirely

16 different. I don't think it would be an issue.

17 Perhaps -- probably wouldn't be an issue. There are

18 details I wouldn't know about but...

19   COMMISSIONER LEVAR: I think that takes care

20 of my second question. I have a few questions that I

21 think would be best addressed to Ms. Schmid, and just

22 because this is an unusual hearing where we don't have

23 filed testimony, I think I am going to go ahead and ask

24 those. And if you are not comfortable responding now,

25 we can talk later in the hearing about whether there's

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1 any other appropriate way to address these.

2   My first question for you is, the division has

3 asked that we suspend tariff 8.08. Let me find my

4 notes. If we were to do that, what independent

5 authority would Dominion Energy Utah have under Statute

6 54-4-37, to engage in third party billing absent the

7 tariff? In other words, was the tariff necessary for

8 the utility to have the authority to act under 54-4-37?

9   MS. SCHMID: I'd like to think about that for

10 a bit and answer it later.

11   COMMISSIONER LEVAR: Okay. The other legal

12 question I think I had at this point was under the

13 penalty section, 54-7-25. If the commission found a

14 violation by Dominion Energy Utah, what discretion do

15 you see that the commission might or might not have

16 under the phrase that describes, "is subject to a

17 penalty of not less than 500 nor more than 2,000 for

18 each offense," and then there's language describing

19 offense. What's your view of how much discretion that

20 gives the commission if a violation were to be found?

21   MS. SCHMID: I can answer that one. I believe

22 that the commission has the discretion to determine what

23 an instance is, and the commission could look at the act

24 of sending the letters each as an individual act, or the

25 commission could look at the combined effect of the

1 letters being sent and the customers being confused as

2 one action under the penalty section.

3   And then also to clarify, you asked about, or

4 you mentioned that the division had asked for the

5 suspension of 8.08. We initially asked for a

6 suspension, but in our later comments, after more

7 information had been gathered, we did request revocation

8 of the tariff.

9   COMMISSIONER LEVAR: Revocation of the tariff

10 rather than suspension.

11   I think I had one more question that goes back

12 to Mr. Orton. You've talked both -- you've proposed

13 tariff language. You've also suggested a rule docket to

14 address rules. Just to clarify, is it your position

15 that the commission should consider tariff language now

16 and should also consider rule language that's general to

17 all utilities, not just to gas utilities, but to all

18 utilities?

19   THE WITNESS: That's exactly right. We think

20 the tariff language would be a placeholder until the

21 rule is finished. It takes some time usually to get the

22 rules done. So that was our thought, yes.

23   COMMISSIONER LEVAR: Okay. Thank you.

24 Commissioner Clark, do you have any questions?

25   COMMISSIONER CLARK: Yeah, I have a few

 1 questions. Thank you.

 2   Mr. Orton, my first question is, in describing

 3 the transfer or sharing of customer name, address, the

 4 company also refers to a unique identifier. And I just

 5 wanted to make sure we understand in the record what

 6 that is, if you know.

 7   THE WITNESS: I don't know what it is. Now,

 8 in response to a data request to 1.10 U, there was other

 9 information provided other than those three to DPS and

10 HomeServe.

11   COMMISSIONER CLARK: And from your

12 recollection, can you --

13   THE WITNESS: Yeah, I have that here.

14   COMMISSIONER CLARK: -- define what the other

15 information you referred to is?

16   THE WITNESS: DPU data request 1.10 U from

17 July 19th -- the response was July 19th, 2018. We

18 asked, Please explain how HomeServe was provided access

19 to DEU customer information when, quote, Dominion does

20 not sell your personal information, comma, nor does

21 Dominion Energy provide such information to third

22 parties for the purposes of marketing products or for

23 services related to Dominion Energy services, closed

24 quote.

25   And then part of the answer -- I don't want to

1 read the whole thing necessarily because it's several

2 paragraphs, but it does say at the bottom of the main

3 paragraph, "At the onset of the program additional data

4 elements, phone number, e-mail address, landlord flag, a

5 residential commercial indicator were inadvertently

6 provided to HomeServe." So that was in addition to the

7 name and address.

8   COMMISSIONER CLARK: And you referred to your

9 personal experience as a landlord, and I think what you

10 were saying is that you received these -- the

11 solicitation --

12   THE WITNESS: Yeah.

13   COMMISSIONER CLARK: That would typically go

14 to the customer of the services, but you received it

15 either also or in behalf of your tenants, I guess. Is

16 that -- is that what you were saying?

17   THE WITNESS: Yeah, it would be also. Also,

18 yeah. Well, I don't know if they received it. What I

19 meant by also was one was sent to my home address. One

20 was sent to my name at those addresses as well. Some

21 were sent.

22   COMMISSIONER CLARK: Thank you. Would you

23 look at form DEU hearing Exhibit 1.1, which you have

24 already referred to.

25   THE WITNESS: All right.

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 1   COMMISSIONER CLARK: So in the conversation

 2 with counsel about logos, are there any logos on this

 3 page? Corporate logos?

 4   THE WITNESS: There is one.

 5   COMMISSIONER CLARK: And would you describe it

 6 please?

 7   THE WITNESS: Dominion Energy at the very

 8 header of the page.

 9   COMMISSIONER CLARK: Okay. Now, I want you to

10 turn to Exhibit 1.2 -- DEU hearing Exhibit 1.2. And

11 this is a letter from Colleen Larkin Bell, vice

12 president and general manager of Dominion Energy Utah,

13 correct?

14   THE WITNESS: Yes, sir.

15   COMMISSIONER CLARK: Is there any logos on

16 this letter?

17   THE WITNESS: Dominion Energy.

18   COMMISSIONER CLARK: Is it identical to the

19 logo that you referred to in Exhibit 1.1? Or at least

20 substantially the same?

21   THE WITNESS: I can't see any difference,

22 including the registered trademark at the bottom right.

23   COMMISSIONER CLARK: So is this what you were

24 trying to describe, when you said when a customer sees

25 this logo, they think utility in Utah?

1   THE WITNESS: That's exactly what I was trying

2   to describe.

3   COMMISSIONER CLARK: And so if material

4   came -- comes to a customer of Dominion Energy Utah that

5   has this logo on it, and assume that it comes through

6   some address process that is other than the utility's

7   customer information system --

8   THE WITNESS: Okay.

9   COMMISSIONER CLARK: -- but it endorses a

10 provider of another service, I think you said you don't

11 have any concern about that. And I just want you to

12 reassess that.

13   THE WITNESS: Okay. Let me try to understand

14 then, because I think maybe I misunderstood the

15 question. So if a customer receives a solicitation for

16 something like this service, with the Dominion Energy

17 logo on it, without an endorsement by Dominion Energy.

18   COMMISSIONER CLARK: I am saying if it comes

19 with -- with an endorsement that bears that logo, an

20 endorsement of a third party product of any particular

21 kind, to a Utah customer, regardless of who provides the

22 address, what is your -- what is your view of how a

23 customer will perceive that?

24   THE WITNESS: There is -- I don't know that

25 there is virtually any other way than that it is from

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1 the gas utility. For nearly every customer.

2   COMMISSIONER CLARK: That concludes my

3 questions. Thank you.

4   COMMISSIONER LEVAR: Commissioner White?

5   COMMISSIONER WHITE: Yeah. Good morning,

6 Mr. Orton.

7   THE WITNESS: Good morning.

8   COMMISSIONER WHITE: Regarding the

9 recommendation regarding revenue imputation --

10   THE WITNESS: Uh-huh.

11   COMMISSIONER WHITE: -- perhaps you can break

12 it down a little bit in terms of -- there's discussion

13 of it in the recommendation from June 28th about

14 compensation to customers. Is the compensation for

15 their information or is the compensation for the value

16 of the goodwill or trademark? What is the -- what is it

17 intended to compensate, I guess?

18   THE WITNESS: All of the above. It's not just

19 the mailing list, because they could have bought it.

20 It's the endorsement. It's the goodwill of Dominion

21 Energy. It's the whole compass of all that. And that

22 is hard to put a dollar amount on, but I assume Dominion

23 Energy wouldn't give away their endorsement and logo for

24 free.

25   COMMISSIONER WHITE: If -- is this -- based

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1 upon the recommendation, is this -- I mean, is it your

2 opinion that we have the appropriate facts in this

3 setting to make that determination of the, you know,

4 valuation, essentially of goodwill to -- or is that

5 something that would be more appropriate for another

6 proceeding, or is it a future rate case? Or I guess I

7 am just trying to think that mechanically, if we were to

8 follow that line of reasoning.

9   THE WITNESS: Yeah. So we tried to figure

10 that out as well. And at this point, it would be

11 difficult to find out exactly what that dollar amount

12 should be. But we think that the proper avenue would be

13 to determine it in a rate case and go to a certain time

14 period. Because one of those agreements is a commission

15 agreement, meaning that Dominion Products and Services

16 receives a commission from HomeServe for each sale and

17 each monthly payment.

18   So we can't just right now determine what that

19 amount will be. So it's difficult to find a particular

20 dollar amount that would be appropriate now and in the

21 future. So we assume that a rate case would be the best

22 place to put the final point on that.

23   COMMISSIONER WHITE: In addition, I guess to

24 the actual fact finding, the actual mechanics of flowing

25 that through to the rate payers would be -- potentially

 1 require a rate case proceeding?

 2   THE WITNESS: Yes, yeah.

 3   COMMISSIONER WHITE: To figure out the proper

 4 allocation?

 5   THE WITNESS: Uh-huh.

 6   COMMISSIONER WHITE: Okay. That's all the

 7 questions I have. Thank you.

 8   THE WITNESS: Thanks.

 9   COMMISSIONER LEVAR: I think I have one

10 follow-up question to that. Are you aware of any

11 appraisal services for any of those values? Whether

12 there exists any appraisal services for any of those

13 values?

14   THE WITNESS: I don't know, but I would assume

15 there would be -- because trademarks and those sort of

16 things are purchased or used, but I don't know. I would

17 be glad to do some research.

18   COMMISSIONER LEVAR: Okay. I just have one

19 follow-up question -- one more follow-up question.

20 You've recommended administrative rule -- an

21 administrative rule docket to deal with customer

22 information, correct?

23   THE WITNESS: Yes.

24   COMMISSIONER LEVAR: In your opinion should

25 the administrative rule also deal with use of logos?

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1   THE WITNESS: Yes, it would be appropriate --

2   it would be appropriate, because the main objective of

3   that is to protect the customers. And that's the point

4   we are looking at this issue, is to protect the

5   customers. And so misuse of their information and of

6   perhaps misleading use of logos would certainly be a way

7   to make it difficult for customers to make an informed

8   decision. And so it would be appropriate.

9   COMMISSIONER LEVAR: Okay. Thank you.

10   Commissioner Clark or Commissioner White, any other

11   follow-ups?

12   COMMISSIONER WHITE: I think you may have

13   answered this with respect to cross already, but this

14   concept of discrimination, I mean, if we were to go back

15   in time at the approval of this tariff, would it remedy

16   that concern if there would have been some mechanism for

17   allowing access to the customer information from any

18   party?

19   I guess that's the first question. And I

20   guess the follow-up question to that, would that -- your

21   belief, I guess with that would be wholly inappropriate

22   even if we were to do that?

23   THE WITNESS: Yeah. I don't think any

24   customer information should have been given away for

25   this sort of service. Given away for free.

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1   COMMISSIONER WHITE: I mean, what other was --

2   I mean --

3   THE WITNESS: They could buy mailing lists and

4   find out where people live in many other -- many other

5   ways and then use that. Once they got those customers

6   and then put that bill on the tariff, input -- include

7   that bill in the third party billing tariff as a line

8   item on Questar Dominion Energy Utah's bill, that's what

9   we believed was going to happen. Yeah.

10   So there wouldn't be the issue of company

11   giving away customer information. They would get it on

12   their own, and then after that business was going, they

13   would impute the -- or put the invoice amount on the

14   utilities bill.

15   COMMISSIONER WHITE: Are you aware of any

16   other utilities or even, you know, Dominion's other

17   operating companies, having a similar type of business

18   arrangement, you know, letterhead? Is this something

19   that's commonly practiced?

20   I guess what I am trying to get at is, I

21   just -- is it just the -- this is not the way that the

22   customer relationship has evolved over the course of,

23   you know, the history of, you know, Questar now Dominion

24   Energy? What is unique about -- is there something

25   wholly unique about this, or is it just that --

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 1              THE WITNESS:  We are told that -- well, we're

 2  told by the gas utility that it happens other places.

 3  But I don't know -- have any specifics about that.  Our

 4  main concern is to protect the customers.

 5              COMMISSIONER WHITE:  I think that's all I have

 6  got.  Thanks.

 7              COMMISSIONER LEVAR:  Commissioner Clark, did

 8  you have any follow-up?

 9              COMMISSIONER CLARK:  No.  No further

10  questions, thank you.

11              COMMISSIONER LEVAR:  Thank you, Mr. Orton.  We

12  appreciate your testimony today.

13              THE WITNESS:  Thank you.

14              COMMISSIONER LEVAR:  Ms. Schmid, anything

15  further from you?

16              MS. SCHMID:  Nothing further from the division

17  at this point.

18              COMMISSIONER LEVAR:  Okay.  Mr. Moore.

19              MR. MOORE:  The office calls Michele Beck.

20              COMMISSIONER LEVAR:  Ms. Beck, do you swear to

21  tell the truth?

22              THE WITNESS:  Yes.

23              COMMISSIONER LEVAR:  Thank you.

24                        MICHELE BECK,

25  was called as a witness, and having been first duly
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1   sworn to tell the truth, testified as follows:

2   DIRECT EXAMINATION

3   BY MR. MOORE:

4   **Q.   Please state your name, title and business**

5   **address for the record.**

6   A.   My name is Michele, spelled M-I-C-H-E-L-E,

7   Beck, B-E-C-K. I am the director of the Utah Office of

8   Consumer Services located at 160 East 300 South in the

9   Salt Lake City.

10   **Q.   Did you prepare or cause to be prepared two**

11 **memos filed with the office -- filed by the office in**

12 **this document? The first called Office of Consumer**

13 **Services comments dated June 28th, 2018, and is four**

14 **page long. And the second also called Office of**

15 **Consumer Services comments, dated July 19th, 2018, which**

16 **is also four pages long?**

17   A.   Yes.

18   **Q.   Do you have any changes to those memos today?**

19   A.   Yes, I do. In that June 28th memo, the

20 heading on the second page and the pages thereafter

21 should say June 28th, not July 28th. In the July 19th

22 memo, it should be titled reply comments. Also, in the

23 July 19th memo, the first full paragraph on page 3,

24 that's the one that starts with, "While the office does

25 not oppose," should be deleted. And finally, in the

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1   first line of the following paragraph, the word also

2   should be deleted.

3   **Q.   With those changes do you adopt those two**

4   **memos as your testimony today?**

5   A.   Yes, I do.

6   MR. MOORE: At this point I'd like to move for

7   the admission of these two memos into evidence.

8   COMMISSIONER LEVAR: Is there any -- if

9   there's any objection to the motion, please indicate to

10   me.

11   MR. SABIN: I had a hard time following it,

12   but I think we're okay with it.

13   THE WITNESS: Would you like me to --

14   COMMISSIONER LEVAR: I think it was clear on

15   the record, but let me clarify for my own purpose now.

16   Your change to the paragraph on page 3 of the July 19th

17   memo, the paragraph starts, "While the office does not

18   oppose," what was the correction to that paragraph?

19   THE WITNESS: Delete it.

20   COMMISSIONER LEVAR: Delete the entire

21   paragraph?

22   THE WITNESS: Yes.

23   COMMISSIONER LEVAR: Okay. So I -- is it

24   correct that I am seeing no opposition to the motion?

25   MR. SABIN: That's fine. No opposition.

1   COMMISSIONER LEVAR: Okay. The motion is

2   granted. Thank you.

3   **Q.   (By Mr. Moore) Have you prepared a summary of**

4   **your testimony?**

5   A.   Yes, I have.

6   **Q.   Please proceed with your summary.**

7   A.   The office asserts that the threshold issue

8   for the commission in this docket is to decide whether

9   it is in the public interest to maintain Section 8.08 of

10   Dominion Energy Utah's tariff, authorizing third party

11   billing.

12   The only way that Section 8.08 could be

13   administered in a nondiscriminatory manner would be

14   allow other providers use of the Dominion logo, which is

15   not allowed under the commission agreement, signed by

16   both Dominion Energy Utah and the parent company

17   Dominion Energy, and then also to allow other providers

18   use of Dominion's customer specific information, which

19   the office asserts would not be in the public interest.

20   Thus, the office recommends that the commission revoke

21   Section 8.08 of the tariff.

22   The office also recommends the following. The

23   commission should initiate rule making to set clear its

24   parameters for the utility use of customer data. The

25   value associated with the provision of Dominion's

1 customer specific information should accrue to utility

2 customers.

3   The commission should require clarifications

4 to Dominion's unwinding proposal as recommended by both

5 the office and the division, or if the commission does

6 not revoke Section 8.08, it should require

7 clarifications to Dominion's proposed information

8 letters, as recommended by both the office and division.

9 And fourth, the office supports the division's

10 recommendation for a small penalty.

11   I also note that in reply comments the office

12 opposed the division's recommendation for specific

13 tariff language addressing the sharing of customer

14 information. This is part of what I have now deleted as

15 testimony.

16   This opposition was primarily due to the

17 office's preference for a rule making to have a more

18 comprehensive approach to the issue of customer privacy.

19 However, some of our opposition was based on a

20 misreading of the division's proposal. To clarify, the

21 office does not oppose the concepts raised by the

22 division so long as such tariff language applies

23 generally to the treatment of customer information, not

24 solely to the issues addressed in the third party

25 billing tariff.

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1   The office's primary recommendation remains

2   that sharing customer information should be prohibited

3   until a rule making establishes parameters to apply to

4   all utilities. That concludes my statement.

5   MR. MOORE: Ms. Beck is available for cross

6   and questions from the commission.

7   COMMISSIONER LEVAR: Thank you. Ms. Schmid,

8   do you have any questions for Ms. Beck?

9   MS. SCHMID: The division has no questions.

10   Thank you.

11   COMMISSIONER LEVAR: Thank you. Mr. Sabin?

12   MR. SABIN: I just have a couple.

13   CROSS-EXAMINATION

14   BY MR. SABIN:

15   **Q.   You have addressed the value of customer**

16   **information, and I just want to ask you, do you**

17   **understand the company to have any opposition to that**

18   **proposal by the office to have the value for -- the**

19   **market value for customer information be returned to**

20   **customers?**

21   A.   Well, I certainly don't understand that the

22   company has supported it.

23   **Q.   The company's reply comments did not address**

24   **that issue in your mind, or didn't address it clearly**

25   **or --**

1   A.   It could be my faulty memory. Perhaps you

2 should direct me to the --

3   **Q.   Yeah, I'll do that. And I didn't mean to**

4 **try -- I'm not trying to make you do a memory guess**

5 **here. But if you will turn to exhibits, DEU Exhibits**

6 **3.0 to 3.4. Toward the back of that, that is the reply**

7 **comment -- 3.0 is the reply comments, and you will see**

8 **that on the very last page -- or last page of the text,**

9 **page 22 of 24, so it's item Roman numeral 6.**

10   A.   Okay. I am there. Thanks.

11   **Q.   Go ahead and read that and then tell me if --**

12 **if we are on -- in agreement that that can happen and**

13 **that the company is not -- if the commission determines**

14 **that's necessary, the company doesn't oppose that.**

15   A.   So item 6 reads, "Approving the payment of

16 $25,000 per year from all recipients of customer

17 information to Dominion Energy Utah customers is

18 adequate payment for the sharing of customer name,

19 address and unique identifier as discussed above."

20   So thank you for reminding me of the reply

21 comment. Of course, I haven't had an opportunity to

22 respond to that yet. I think in our view that's

23 possibly an insufficient, but a good start, because I

24 think how do you divide the value of the customer

25 specific information as compared to the use of the logo,

1   et cetera.

2   But I do think you have reminded me that our

3   positions are perhaps not quite as far apart as I

4   indicated.

5   **Q.   Yeah, and I just will submit I am not aware of**

6   **any evidence from the division or the office indicating**

7   **a market value that's different than that. Do you have**

8   **any evidence or are aware of any evidence that the**

9   **market value of that information is different than what**

10 **Dominion Energy Utah has suggested?**

11   A.   Well, I think that your question has an

12 implication inside of it. So there's the issue of what

13 is the market value of names and address, and then

14 there's the issue of, does the value of Dominion's

15 specific customer information exceed the market value of

16 just a set of names and addresses. And then there's the

17 further issue of the value of the -- of the logo and to

18 whom should that value accrue.

19   And so I would -- so I will also acknowledge

20 that I don't think there's really any additional

21 evidence on the record as to value. And I do -- I think

22 that one of the commission's questions sort of got to

23 that. So, you know, if we were to explore value, I

24 think it would take a second phase of this proceeding.

25   **Q.   Well, I guess for purposes of this docket,**

1   let's just stick to this docket then, would you agree

2   with me that the company is the only party that went out

3   and determined what it could buy lists of these

4   customers on the open market?

5   A.   Yes.

6   Q.   With regard to the logo, is it your

7   understanding that that logo is owned by Dominion

8   Energy, the parent corporation, by Dominion Energy Utah

9   or some other entity?

10   A.   It's my understanding, although I am not sure

11   I could point to it in the record, but it is owned by

12   Dominion Energy, the parent company.

13   Q.   So it's true, isn't it, that -- let's say

14   Dominion Energy corporation decided to independently

15   send letters to every Utah customer to advertise its own

16   programming, separate and apart from the utility. The

17   utility had -- I want you to assume for this

18   hypothetical that the utility didn't even know that was

19   coming and it's sent out. Is there anything that can be

20   done about that? Does the commission have regulatory

21   authority to stop that from happening?

22   A.   Well, it's my opinion that we shouldn't

23   underestimate the commission's regulatory authority.

24   And I think a lot of it would depend on the text of the

25   letter. So if Dominion Energy sends out a letter to --

1 first of all, it cannot send a letter to Dominion Energy

2 Utah's customers without conferring with Dominion Energy

3 Utah, because otherwise, it would have to get public

4 name, address data, not customer-specific data.

5   **Q.   Let me make sure you understand my**

6 **hypothetical. I didn't do a very good job of clarifying**

7 **that point. Let's say Dominion Corporation decides to**

8 **go on the open market, acquire the customers' names and**

9 **addresses, and sends letters to every customer on that**

10 **list, and it just so happens that that includes all or**

11 **many of the utility's customers. It could do that,**

12 **couldn't it?**

13   A.   Okay. Thank you for the clarification. Yes,

14 I think it could do that.

15   **Q.   And it's an unregulated entity, right?**

16   A.   It is. But I do think that the text of the

17 letter matters. And if there's an -- if there's an

18 implication that it's representing the utility, then

19 certainly this commission does regulate the utility, and

20 that's when it would bring it in.

21   **Q.   I agree, and I want to just say that Title 54**

22 **and these regulations implementing it are applicable to**

23 **public utilities, right?**

24   A.   Yes.

25   **Q.   Okay. And but in that circumstance, customers**

1 might be confused that those letters are coming from the

2 utility, right?

3   A.   Absolutely. I think they will -- they might

4 be confused.

5   Q.   Okay. And so what we're really talking about,

6 isn't it, that reasonable minds can disagree about the

7 right way to do that, but the only way to really be

8 clear if it's coming from a corporation or an

9 unregulated entity in the utility is to do a better job

10 of in the text specifying that it's not the utility, or

11 it is the utility.

12   Isn't that really the only way, given the fact

13 that the Dominion logo is available for use in an

14 unregulated world, that we just need to do a better job

15 of in the text explaining who the letter is coming from?

16   A.   Well, I absolutely agree that you need to do a

17 better job in the text explaining who is sending the

18 letter.

19   Q.   Wouldn't you agree, Ms. Beck, that that's

20 probably really the only way we can ensure customers

21 know, one way or the other, is to try in the text, hope

22 the customer will read the letter, and do a better job

23 of putting language in there that explains that? Isn't

24 that really the only way we can do it?

25   A.   Well, I guess I don't understand the question.

1 The only -- that is the only way that you as Dominion

2 can do it. But I don't know what you are excluding when

3 you say the only way.

4   **Q.   Well, I am just trying to say I -- I mean, if**

5 **the -- as Commissioner Clark pointed out, if you have**

6 **the logo on the top and customers could see that logo**

7 **and say, I think it's from the utility and we would need**

8 **to explain that in the letter to make that clear who**

9 **it's coming from.**

10   **Isn't that -- isn't that really the best way**

11 **to figure that out?**

12   A.   That is the best way. But I think that if a

13 letter that is unclear -- so let's -- so yeah, if you

14 send a completely clear letter, then probably we won't

15 be in front of the commission. But a letter that is

16 unclear, even if it's sent by the parent company, can

17 still land in front of the commission through the

18 complaint process, or a request for agency action.

19   **Q.   I totally agree with that. I think we have**

20 **covered what I need to there.**

21   **I think I heard you say that the commission**

22 **agreement was between HomeServe and Dominion Energy**

23 **Utah. Did you say that, or did I misunderstand you?**

24   A.   My understanding of the commission agreement

25 is that it included HomeServe, its parent company, and

1   Dominion Energy Utah and the parent company of Dominion

2   Energy.

3   **Q.   And could you be wrong that Dominion Energy is**

4   **not a party to that agreement?**

5   A.   Well, I have been on this planet long enough

6   to know that I can be wrong.

7   **Q.   Well, your counsel has got a copy right there.**

8   **I am happy to let you look at the top paragraph, which**

9   **specifies the parties of the agreements, and also the**

10 **signature page if you want to look at that. Can you**

11 **just take a minute and tell me if you agree with me that**

12 **it was not involving the utility? They are not a party**

13 **to that agreement at all?**

14   A.   So I thought you just asked me if the Dominion

15 Energy parent company. So you are suggesting --

16   **Q.   I thought I heard you say the commission**

17 **agreement was between HomeServe and Dominion Energy**

18 **Utah. If you didn't say that, then I will move on.**

19   A.   I may have said that, but let's clarify for

20 the record. What do I -- that it's between HomeServe

21 and the -- it's Dominion Products and Services and

22 Dominion Energy parent company. And so if I said

23 Dominion Energy Utah, I will withdraw that as having

24 been in error.

25   COMMISSIONER LEVAR: I am just going to

1 interject. We are reading from pink paper.

2   MR. SABIN: I am okay with her identifying the

3 parties. I'm okay with her identifying the parties. We

4 won't go into the text of it.

5   THE WITNESS: And just to clarify, I did try

6 to only say, in the memo and in spoken testimony issues

7 that were also addressed in the technical conference,

8 which was the portion that was public. So I was trying

9 to be careful.

10   But to be clear, if I said DEU was a party,

11 that was in error, and I apologize.

12   MR. SABIN: No, you don't need to. I wanted

13 to just make clear for the record so we didn't have any

14 confusion on the record.

15   Q.   (By Mr. Sabin) Two final things. Would you

16 agree with me that the only reason -- and I want your

17 opinion. I realize that you are not offering a legal

18 opinion here, but I heard you say that you support the

19 imposition of a penalty here, and I just want to make

20 clear that a penalty couldn't be applied unless there is

21 some sort of violation. Isn't that your understanding?

22   A.   That is my understanding. And in my opinion,

23 if you -- if you take action that makes it impossible to

24 administer the tariff in a nondiscriminatory way, then

25 that is an implicit violation of the tariff and the

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1 commission order approving the tariff.

2   Q.   And what action are you specifically referring

3 to?

4   A.   Well, I thought I was very clear in my summary

5 that the only way can you do it in a nondiscriminatory

6 way would be to let others use the logo and have access

7 to the customer-specific data. And so I think that, you

8 have an agreement that prohibits the use of the logo to

9 any competitor, and I think you -- and I have asserted

10 on behalf of the office, it would be against the public

11 interest to provide other entities customer-specific

12 data.

13   Q.   So under the logo issue, when you say the --

14 the person -- the only entity that could possibly be in

15 violation of the statute, that's the utility, right?

16 DEU.

17   A.   So you asked in violation of the statute.

18   Q.   Right.

19   A.   And I --

20   Q.   Can Dominion Corporation be in violation of

21 that statute?

22   A.   Which statute do you refer to?

23   Q.   Well, the one you are referring to to impose a

24 penalty or the tariff. Whether it be the tariff, the

25 commission's order or any statute under 54, that's only

1   extending to the utility; do we agree?

2   A.   We agree.

3   Q.   Okay.

4   A.   But I am not an attorney.

5   Q.   That's fine. That's fine. So back to the

6   Dominion logo usage issue. Are you aware of any reason

7   or any way that the utility itself can control the way

8   in which Dominion Corporation decides to license its

9   logo, its brand, its name, its -- any of that kind of

10   information?

11   A.   No, I am not, but that doesn't change the

12   position that the logo creates preferential treatment.

13   So I feel like that creates an implication that Dominion

14   Energy parent company's actions has created a situation

15   where Dominion Energy utility -- Dominion Energy Utah,

16   the utility, is now -- has no possibilities of

17   administering it in a nondiscriminatory manner.

18   Q.   Well, so let's be clear. Do you agree with me

19   that we don't have any evidence in the record that DEU

20   licensed the right to use the Dominion Energy logo to

21   anybody?

22   A.   I agree with that.

23   Q.   So don't we come down to the point where, if

24   the utility didn't license or give the right to use the

25   logo, that it can't have violated either Title 54 or the

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1   tariff or this commission's rules or orders by the fact

2   that the parent corporation licensed that right?

3   A.   No. I absolutely do not agree with that.

4   Q.   You would charge the utility with a violation

5   for something it did not do?

6   A.   If the parent company creates a situation that

7   forces Dominion -- the utility into a corner where it

8   can't -- it can't administer its tariff in a

9   nondiscriminatory manner, it still has the result that

10 the utility cannot administer its tariff in a

11 nondiscriminatory manner.

12   Q.   Okay. I just -- so my question is just this,

13 and you can just say yes or no. Is it your testimony

14 that the licensing of the Dominion Energy name, wherever

15 it occurs, is -- puts the utility in violation of the

16 statute, or the tariff, automatically, without anything

17 being done by the utility?

18   A.   I am sorry. I cannot answer that with yes or

19 no.

20   Q.   Okay. Lastly, as it relates to customer

21 information, I wanted to talk about the scope of this

22 proceeding a little bit. Would you agree with me that

23 customer information is not referenced or governed or

24 dictated in any way by Section 8.08 of the tariff?

25   A.   Yes, I would agree with that.

1   Q.   Okay. And are you aware of any statutory

2   provision in Title 54 that the company has violated, or

3   you allege has violated, through the use of customer

4   information, whether public or not public?

5   A.   Not in Title 54.

6   Q.   What about outside of Title 54? I didn't see

7   that argument -- I didn't see anything in your papers.

8   A.   I haven't testified to that, but part of the

9   office's case will include additional research that we

10   have done.

11   MR. SABIN: Okay. No further questions.

12   COMMISSIONER LEVAR: Any redirect, Mr. Moore?

13   MR. MOORE: No redirect.

14   COMMISSIONER LEVAR: Okay. Commissioner

15   White, do you have any questions for Ms. Beck?

16   COMMISSIONER WHITE: Not at this time. No

17   thanks.

18   COMMISSIONER LEVAR: Okay. Commissioner

19   Clark?

20   COMMISSIONER CLARK: I'm going to risk beating

21   a dead horse here. I apologize for that. But it is, I

22   think, a hinge on which a lot of our considerations

23   turn. And so if you would look at page 2 of your June

24   28th, 2018, comments.

25   MR. SABIN: Did you say page 2?

1   COMMISSIONER CLARK: Page 2.

2   THE WITNESS: Yes.

3   COMMISSIONER CLARK: I think there might be a

4   reply -- are they reply comments?

5   THE WITNESS: June 28th were legitimately

6   comments.

7   COMMISSIONER CLARK: Okay. So I am looking at

8   the paragraph, the third full paragraph, is starting --

9   the initial sentence, where you say, "The commission

10 agreement makes it clear that the use of the name and

11 logo as provided to HomeServe through an exclusive

12 arrangement, and would not be offered to other

13 providers." I think we have established the commission

14 agreement -- DEU is not a party to the commission

15 agreement. That's --

16   THE WITNESS: Yes. Let's clarify one more

17 time for the record, since I misstated.

18   COMMISSIONER CLARK: Well, that's -- but I

19 think you remain of the opinion that the affiliate's

20 agreement to these provisions and the use of -- by the

21 utility of the same logo as the affiliate, and the

22 parent for that matter, that that agreement disables the

23 utility from -- from operating in a nondiscriminatory

24 matter vis-a-vis other providers of this same service;

25 is that --

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1   THE WITNESS: Right. That's exactly my -- my

2 view. Well, the office's position. And to me, it's

3 a -- it's sort of an internal matter. So I find it

4 offensive and frankly kind of aggressive that the

5 utility would come to this -- this hearing and suggest,

6 well, it's our parent company, not us, who has control

7 over that. So we haven't violated anything. Well, I'm

8 sorry, it's your parent company. So, I just think it

9 still puts them in the position of not being able to

10 administer it in a nondiscriminatory manner.

11   COMMISSIONER CLARK: Thanks. That concludes

12 my questions.

13   COMMISSIONER LEVAR: I think I just have one

14 more for you, Ms. Beck. In your June 28th comments on

15 page -- I'm sorry, I think we're in the July 19th reply

16 comments. July 19th reply comments. You and Mr. Sabin

17 were discussing the value of the customer lists and the

18 goodwill of the logo. They had suggested 25,000.

19   On page 2 about the 4th paragraph down at the

20 end, your comments state -- recommend that the

21 commission, quote, impute revenues associated with the

22 transaction whereby DEU customer information was

23 provided to DPS and HomeServe. Would you further

24 clarify what you meant by "revenues associated with the

25 transaction."

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1   THE WITNESS: Right. So our assumption, and

2   we have not brought forward the evidence, but we were

3   just trying to support the division in one of its

4   recommendations as well, is that there was, you know, a

5   value cost associated with getting the -- the -- giving

6   HomeServe the use of the logo and the customer data, and

7   there was probably a transaction involved with that.

8   And that's the value that we think should go to

9   customers.

10   COMMISSIONER LEVAR: Okay. Thank you. And

11 then I want to give Mr. Moore the same opportunity I

12 gave Ms. Schmid before, either now or if we decide by

13 the end of the hearing a better way to have your legal

14 position on this. I have two questions. One is

15 whether, if we were to adopt the recommendation to

16 either suspend or revoke 8.08, what independent

17 authority does the utility still have under a 54-4-37?

18   And then my other question was about what kind

19 of flexibility the comission has under the penalty

20 statute if the commission were to find that a violation

21 had occurred. Do you want to address either of those

22 now, Mr. Moore?

23   MR. MOORE: Whenever the commission would find

24 more helpful.

25   COMMISSIONER LEVAR: Well, I'm happy to hear

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1 anything you have to say on that now. If you want to

2 come back to it at the end of the hearing to either

3 discuss it or suggest another way to address it, we can

4 do that also.

5   MR. MOORE: I think the tariff is revoked. I

6 don't believe Dominion Energy can continue the program.

7 I believe the statute requires that the third party

8 billing be done in the public interest, and I think the

9 revocation of the tariff, it might be different if there

10 was never a tariff, but the revocation of the tariff

11 would signal that is not in the public interest. So I

12 don't -- for Dominion to proceed in this manner anyway,

13 they would be prohibited from.

14   I think the case law has established that the

15 commission has a great deal of latitude in determining

16 what is an instance under the penalty statute. And it

17 is a discretionary standard, and the commission can

18 pick, as the Supreme Court says, one of several

19 propositions that are reasonable. The request is not

20 either right or wrong, but you have a reasonable

21 discretion to pick what constitutes an instance, yes.

22   COMMISSIONER LEVAR: Okay. Thank you. I

23 appreciate those two answers. And I think we'll take a

24 break.

25   COMMISSIONER WHITE: Sorry. I hate to do this

1 before a break. The one question I guess I have for

2 you, Ms. Beck, is, maybe it's a two-part question. In

3 your mind what would it look like, based upon the tariff

4 that the commission approved, what would a proper

5 legal -- I mean, putting aside the issue of imputation

6 of revenue and potential penalties, what would that -- I

7 guess -- what would that have looked like if it would

8 have been in your mind appropriate?

9   THE WITNESS: It would be a letter that

10 clearly explains that it's coming from someone that is

11 not the utility. And I think it would be use of truly

12 publicly available customer data, as opposed to the, I

13 mean, should say public data -- personal public data, as

14 opposed to customer-specific data.

15   CHAIRMAN WHITE: And again, putting aside the

16 questions of revenue, imputation and penalties, I mean,

17 in your mind is there any -- let me preface this by

18 saying, part of it is just wondering about the folks

19 that actually signed up for this. But is there any way

20 to rehabilitate this, or has the damage been done and

21 this needs to be revoked and never again shall we go in

22 this direction?

23   THE WITNESS: I don't see how to move it

24 forward. And in particular, when we speak to the data

25 part of it, and that, you know, how do we -- there's

1 value, and we learned this in the technical conference.

2 HomeServe itself said there is additional specific value

3 in having the names as identified on your Dominion bill,

4 and, you know, things like the -- it being sent to the

5 landlord instead of to the tenants and other elements

6 that are specific to Dominion's customer information as

7 opposed to the publicly available information.

8   But at the same time, I think we really

9 learned from the outcry from customers, and I think in

10 the, you know, 11 plus years that I have been here, this

11 issue has had the single largest response from

12 customers. And I think what we learned from that in

13 part is that they are upset by their data being used,

14 and certainly in the context of what we're seeing in a

15 broader customer data privacy setting right now, where

16 people are used to, you know, having to click on privacy

17 data, you know, privacy policies every time they use

18 things, and having a clear understanding of customer use

19 and opt-outs and all of that.

20   I think in that context, we have heard very

21 clearly from customers who have said, hey, we don't

22 think this was right. And so to move it forward, I

23 don't know. I mean, to me, it would have to at a

24 minimum be suspended so that we can clean up the

25 customer data side of it. And even then, I just am not

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 1 sure how we could move it forward fairly.

 2   COMMISSIONER WHITE: Thank you. That's all

 3 the questions I have.

 4   COMMISSIONER LEVAR: And before we take a

 5 break, I am going to ask Mr. Orton a follow-up question

 6 that I meant to ask earlier. Since you testified about

 7 your specific situation with your tenants, are your

 8 tenants' gas bills in their name or in your name?

 9   MR. ORTON: They are in their name.

10   COMMISSIONER LEVAR: But these letters came to

11 your name?

12   MR. ORTON: To my name.

13   COMMISSIONER LEVAR: Okay. Thank you.

14   COMMISSIONER CLARK: Can I have a follow-up

15 with Ms. Beck, please?

16   COMMISSIONER LEVAR: Yes.

17   COMMISSIONER CLARK: So back to Commissioner

18 Jordan's line of --

19   COMMISSIONER LEVAR: Commissioner White.

20   COMMISSIONER CLARK: Oh, thanks for that. Our

21 dear friend Jordan, Commissioner White's line of

22 questioning with you. It seems to me that at least some

23 of this reaction might have also occurred had HomeServe

24 not been, or and Dominion Products and Services not been

25 affiliated with the utility or in any arrangement with

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1 the utility in any way, but just the customer seeing

2 another party's services on their bill. How do you feel

3 about that now as a representative of customers?

4   THE WITNESS: Well, I was always uncomfortable

5 with it, just because of the long history of slamming

6 and cramming in the telephone side of things. But since

7 it was our opinion that it was statutorily authorized,

8 we didn't oppose it, but just tried to get the customer

9 protections we could think of into -- into the tariff.

10 And now it's obvious that we didn't think of everything.

11 And you know, that's just an issue with it.

12   So yes, it might have happened -- and I think

13 another element of confusion was unrelated to the

14 providers and the letterhead, and there was just maybe

15 some terminology that was used differently so that folks

16 misunderstood what even the product being offered was.

17 And some -- a significant portion of the individual

18 complaints that I read are people who I personally spoke

19 to, were concerns that the risk was being shifted in

20 terms of at what point is it the homeowner's

21 responsibility. So that also is a point of -- well, I

22 would just say confusion.

23   COMMISSIONER CLARK: So you are referring to

24 questions about whether the line from the -- running to

25 the meter, but on the property of the customer, was what

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 1 was the subject of the service or after the meter?

 2   THE WITNESS: Right, right. And there was a

 3 map in the one that I received, but in the first

 4 paragraph of it was -- was a little confusing, and I had

 5 neighbors come and ask me about it.

 6   COMMISSIONER CLARK: Thanks. That concludes

 7 my questions.

 8   COMMISSIONER LEVAR: Thank you. Thank you,

 9 Ms. Beck. Why don't we just break until right on the

10 hour, eleven o'clock. So we'll be in recess.

11   (Recess from 10:42 a.m. to 11:00 a.m.)

12   COMMISSIONER LEVAR: Okay. We'll be back on

13 the record. Mr. Moore, do you have anything else?

14   MR. MOORE: No, Your Honor.

15   COMMISSIONER LEVAR: Okay. Thank you.

16 Mr. Sabin?

17   MR. SABIN: Yes. The company calls as a panel

18 witnesses Mr. Kelly Mendenhall and Mr. Jim Neal.

19   COMMISSIONER LEVAR: Okay. I'm not sure your

20 microphone is on.

21   MR. SABIN: I apologize. Let me try that

22 again. The company now calls its two witnesses as a

23 panel as previously discussed, Mr. Kelly Mendenhall and

24 Mr. James Neal.

25   Mr. Mendenhall and Mr. Neal, could you please

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1 provide your name, your title and the scope of your

2 responsibilities with respect to the company?

3   COMMISSIONER LEVAR: Why don't I go ahead and

4 swear them in --

5   MR. SABIN: Oh, sorry.

6   COMMISSIONER LEVAR: -- first. Mr. Mendenhall

7 and Mr. Neal, do you swear to tell the truth?

8   THE WITNESSES: Yes.

9   KELLY MENDENHALL and JAMES NEAL,

10 were called as witnesses, and having been first duly

11 sworn to tell the truth, testified as follows:

12   DIRECT EXAMINATION BY MR. SABIN

13   MR. MENDENHALL: I'll go first. My name is

14 Kelly Mendenhall. My address is 333 South State, Salt

15 Lake City, Utah, and my position is director of

16 regulatory and pricing for Dominion Energy Utah.

17   MR. NEAL: Good morning. My name is James

18 Neal. I go by Jim. I'm the general manager of retail

19 with responsibilities for Dominion Products and

20 Services. Address is 120 Tredegar Street, in Richmond,

21 Virginia.

22   MR. SABIN: Thank you. The company has

23 provided to the commission and other parties a binder

24 with Exhibits 1.0, 1.1, 1.2, 1.3, 2.0, 2.1, 2.2, 2.3,

25 3.0, 3.1, 3.2, 3.3, 3,4, and 4.0 and 5.0. Are those

1 documents, with the exception of Exhibits 4 and 5,

2 documents that were prepared and filed in this docket by

3 the company?

4   MR. MENDENHALL: Yes, they were.

5   MR. SABIN: With respect to Exhibits 4 and 5,

6 Exhibit 4 appears to be a certificate of renewal from

7 the Utah Insurance Department for Dominion Products and

8 Services. Exhibit 5.0 is a certificate of renewal

9 for -- from the Utah insurance department for HomeServe

10 USA Repair Management Corporation. Can you -- can you

11 indicate where those documents come from?

12   MR. MENDENHALL: So those documents came from

13 Dominion Products -- well, from the Utah insurance

14 agency to Dominion Products and Services and HomeServe.

15   MR. SABIN: And to the best of your knowledge,

16 are those true and correct copies of the certificates

17 provided by the department of insurance?

18   MR. MENDENHALL: Yes, they are.

19   MR. SABIN: We would move the admission of

20 Exhibits 1 through 5.0.

21   COMMISSIONER LEVAR: Okay. If any party

22 objects to that motion, please indicate to me. I am not

23 seeing any objection, so the motion is granted.

24   MR. SABIN: Great. Thank you. Mr. Mendenhall

25 and Mr. Neal, have you prepared statements, opening

 1 statements for the commission?

 2   MR. MENDENHALL: Yes.

 3   MR. NEAL: Yes.

 4   MR. SABIN: Would you proceed and do them in

 5 order, with Mr. Mendenhall to go first and Mr. Neal to

 6 go second.

 7   MR. MENDENHALL: Yes. So good morning. I

 8 just wanted to highlight some of the comments that we

 9 made in our July 19th filing with the commission. I

10 think you can find in -- as hearing Exhibit 3.0 in your

11 binder. So a lot of our comments kind of cover both

12 Dominion Energy Utah and Dominion Products and Services,

13 and so I will be covering some issues, and I'll turn the

14 time over to Mr. Neal to summarize the points that

15 relate to him.

16   I just want to express appreciation to

17 Mr. Neal for coming today and answering questions. And

18 I also want -- want to thank all the parties in this

19 proceeding for the feedback they have given us. I think

20 we have tried to take into consideration the concerns

21 and the feedback and incorporate where we can. And I

22 think that at the end of the day, we have a better

23 product going forward. And I -- I hope we have created,

24 by taking this feedback into consideration, a workable

25 solution that we can use going forward.

1   So if you start on page 6, Section 1 of our

2   comments, we talk a little bit about the tariff. And we

3   make the point that we do not believe that anyone has

4   violated the tariff.

5   So if you go back to the nexus of the tariff

6   and why it was created, I think the main driver was, we

7   needed a way to compensate customers for the use of the

8   third party billing. And so that's certainly a portion

9   of the tariff.

10   In addition to that, there were some

11   requirements that we came up with that would allow us to

12   kind of manage the third party billing tariff. And so

13   in order to qualify to be on the company bill, there are

14   some requirements. For instance, you have to have Utah

15   insurance department authorization. You have to have a

16   toll free call center. The customer has to be allowed

17   to cancel at any time. They must be able to -- or they

18   must pay for all initial programming and setup costs.

19   And then in addition, they must pay for the customers

20   who were billed.

21   In this instance -- in the instance of

22   Dominion Products and Services and HomeServe, they have

23   complied with those provisions of the tariff, and so we

24   don't believe that the notion that the tariff should be

25   eliminated because it's been violated, we don't think

1 that's a valid argument. We believe that the parties

2 have complied and have checked all the boxes that need

3 to be checked, and so there isn't a violation in that

4 regard.

5   Section 2, which starts on page 7, discusses

6 future mailings. And Mr. Neal is going to go into more

7 detail on how those mailings will look going forward and

8 the feedback that we have tried to incorporate to make

9 sure that we have more clarity and transparency in the

10 mailings going forward.

11   Section 3, which begins on page 11, is a

12 discussion about the logo, and Mr. Neal will go into

13 more detail on that.

14   Section 4, we talk about customer information.

15 And it's the company's position that we have not

16 violated any tariff or statute or law with regard to the

17 sharing of customer information. And we -- we try to

18 incorporated a few items that can help us going forward.

19   We are sensitive to the fact that there are

20 some customers who simply don't want to receive these --

21 these third party solicitations, and so we are proposing

22 a do not solicit list, whereby they can call and get

23 their name put on that list, and going forward, we would

24 make sure that they would not receive any of those third

25 party marketing materials going forward.

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1   We also would propose to let the customer know

2   that they have that right through an annual billing cert

3   to let them know about their -- how their information is

4   being used, and that they have the ability to call in

5   and be put on that list.

6   We also have proposed tariff -- or tariff

7   language that because right now the third party billing

8   tariff is silent with regard to customer sharing, we

9   have add -- we've proposed some information that would

10   allow going forward for that customer information to be

11   shared. And there's some requirements on how that --

12   that information would be used and what information

13   would be used. And it's very specific in how it is used

14   and what can be shared.

15   The division proposed in their comments some

16   alternative tariff language, and in our opinion, that

17   due to the -- how narrowly it's written, it would make

18   it difficult for us to do some of our business practices

19   going forward.

20   For example, we share customer information,

21   for energy efficiency purposes, with contractors. We

22   share -- we share customer information for billing

23   purposes with Western Union and Zions Bank. And so the

24   way that that language is crafted would prohibit us from

25   using customer information in those methods. It would

 1 prohibit us from basically using a lot of our normal

 2 day-to-day operations.

 3   There was a question asked by Commissioner

 4 Clark about unique identifier. I just wanted to add a

 5 little more color about that. So the way the unique

 6 identifier works is, it allows the utility to give

 7 the -- the -- what would happen, let's say we would

 8 create a unique identifier for Commissioner Clark. His

 9 unique identifier would be 33.

10   And then in our system we would tie that

11 unique identifier to his account number, and then when

12 we gave that information to -- to Dominion Products and

13 Services or HomeServe, they would get that unique

14 identifier. And if Commissioner Clark got the mailer

15 and decided, hey, I would like to sign up for this, they

16 would have that unique identifier that they would be

17 able to give back to the company, and then we would be

18 able to use that unique identifier to connect that

19 service to the account number which would then go on the

20 bill.

21   So it's a way for Dominion Products and

22 Services and Dominion Energy Utah to coordinate that --

23 that -- putting that service on the bill without sharing

24 any personal identifiable information. So that's kind

25 of how that works.

1   Section 5, we talk a little bit about

2   disparate treatment, and Dominion Energy does not

3   believe that we have engaged in disparate treatment.

4   No -- no parties to this point have come before us to

5   ask to be -- to receive third party billing services.

6   But if a party came to us, and they were able to comply

7   with the provisions of the tariff, they would be able to

8   have that service offered to them.

9   So I don't think going forward the company

10 would have any plans to discriminate between parties.

11 If you can meet the requirements of the tariff, we're

12 going to allow you to be on our bill.

13   Section 6, which begins on page 19, talks a

14 little bit about the value of customer information, and

15 some of the parties have proposed that customers be

16 reimbursed for the value of these -- of this customer

17 information. And so we went out and we found a company

18 who -- that provides that information to get a market

19 value, and that market value came back at about $25,000

20 a year.

21   So should the commission decide or determine

22 that customers should be reimbursed for the value of

23 that, we would propose that the market value of $25,000

24 be used. And I would also point out that at this point

25 in the proceeding, I haven't seen any other alternative

1 proposal. So I believe that's the only proposal

2 dollar-wise that's before the commission at this time.

3   And I would -- I would add, this $25,000 would

4 be in addition to the amount that's already being

5 reimbursed to the company for having customers on the

6 bill. So I mentioned earlier, in the tariff there's a

7 per bill charge that is charged to Dominion Products and

8 Services, and that amount is credited back to customers.

9   Currently we have about 10,000 customers who

10 have signed up, so if you pencil that out, it's just

11 under $2 per year per customer. So that $25,000 would

12 be in addition to the $20,000 that we are currently

13 receiving for the ability to have those customers on the

14 bill.

15   A couple last sections on page 20. We talk a

16 little bit about the penalty. We have talked about this

17 a lot today, but it's the company's position that we

18 haven't violated the statute or law, and so for that

19 reason, no penalty should be assessed.

20   And then in Section 8, there was some

21 additional data that we provided to try and be

22 responsive to some questions in that technical

23 conference.

24   So that completes my summary, and I'll turn a

25 little bit of time over to Mr. Neal so he can address

 1 some of the other issues in this docket.

 2   MR. NEAL: Good morning again. My name is Jim

 3 Neal, and I'm a representative lead for Dominion

 4 Products and Services. I have been an integral part of

 5 the process and the due diligence for offering products

 6 and services to Utah customers and also to HomeServe

 7 relationship. I just want to spend a few minutes on

 8 some brief background, relevant background, and then

 9 talk very specifically and briefly, though, on the

10 customer information, the Dominion Energy logo, and then

11 most importantly the gas line letter.

12   So by way of a little bit of background,

13 Dominion Products and Services has been in this business

14 since 1995. And prior to HomeServe, the business had

15 been built up to roughly 1.1 million customer contracts

16 across the U.S. The decision to move forward with

17 HomeServe was driven by the consideration with what's in

18 the best interest of Dominion Energy, its customers and

19 stakeholders.

20   So for Dominion Energy, this was an important

21 but a noncore business. And from an overall

22 perspective, it was determined that having HomeServe

23 administer and service the program was again, in the

24 best interests of Dominion Energy and its customers.

25   HomeServe's focus is on customer service.

 1 They have a state of the art customer service center.

 2 It's their core competencies, and we feel like that's

 3 the best outcome for paying customers. This is their

 4 sole business. This is what they do.

 5   That said, the deal wasn't gone into lightly.

 6 It was consummated after extensive due diligence that

 7 culminated with a corporate level approval that included

 8 a risk assessment, and then also just confirmation that

 9 HomeServe would treat Dominion Energy customers in the

10 same high regard that Dominion Products and Services had

11 done over the years.

12   So very briefly, we have already talked a bit

13 about the customer information. The unique identifier,

14 the only thing I will add to what Mr. Mendenhall said is

15 that it is randomly generated and there's no personally

16 identifiable information included in that. And

17 although -- and we talked about this in the technical

18 conference. Although this information, name and address

19 is considered public, it's still handled all within a

20 very secure environment, using the highest standards of

21 file transfer protocol, and also in data encryption

22 throughout the process.

23   Also per the agreement, HomeServe is only

24 allowed to use the information for marketing purposes

25 for a very limited number of very specific products and

1 services, and they are explicitly not allowed to share

2 that information with anybody. So again, that was kind

3 of briefly on the customer information.

4   The logo, we have again talked a lot about

5 that. It's the Dominion Energy logo. It's a corporate

6 asset. But by way of a little bit of background, back

7 in 2017, in an effort to be consistent across all its

8 subsidiaries, Dominion Energy went into an extensive

9 shareholder paid rebranding effort that resulted in the

10 blue Dominion Energy logo that we're talking about.

11   And it's now used by well over hundred

12 different business entities under the Dominion Energy

13 umbrella. Dominion Products and Services and Dominion

14 Energy, the utility, are just two of those businesses.

15   As part of the arrangement with HomeServe, DPS

16 was allowed to grant the right to use the logo under

17 strict contractual provisions about how the logo was to

18 be used and for what purposes.

19   Additionally, Dominion Products and Services

20 has approval rights on any of the marketing material

21 that uses the Dominion Energy logo. There's brand

22 guidelines and other things that must be followed, and

23 we get that approval right before any mailings go out.

24   So let me pivot to the logo and kind of

25 clearly distinguishing the entities involved and the

1 services being provided, and that's where admittedly we

2 fell short in the mailings. So let me kind of turn to

3 the customer letter.

4   I know that DPS, DEU, and HomeServe, we all

5 regret the customer concern and confusion. It was not

6 intended. There was no intent. There was no deception

7 that we were trying to do. Both DPS and HomeServe have

8 been in this business for both well over 20 years.

9 Similar business structures and marketing approaches

10 have been used in other jurisdictions by DPS, and then

11 other states, cities and municipalities by both DPS and

12 HomeServe.

13   So the situation that we find ourselves here

14 in Utah really has not been experienced by either

15 company, HomeServe nor Dominion Products and Services.

16   So you might ask, were we surprised by the

17 reaction? Admittedly the answer was yes. We were

18 surprised. Should we have been surprised? I would say

19 probably not. In hindsight, we should have and we could

20 have done better in our communications. And what I

21 would like to talk about is kind of getting us on the

22 right track.

23   But believe me, like we get it. We take full

24 accountability. You know, it was under our

25 responsibility to not confuse and concern customers. To

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 1 that end, we're going to talk about some very specific

 2 remedies to resolve the concerns.

 3   So as you know, as soon as the consumer alert

 4 went out, myself and many others at DPS and HomeServe,

 5 we spent countless hours trying to proactively and

 6 effectively address all of the concerns. This business,

 7 HomeServe, in DPS's perspective, it's built on customer

 8 and consumer confidence and trust, and if we don't have

 9 that, then there's no business -- there's no business to

10 be had. So that's paramount.

11   So as you know, as soon as the alert came out,

12 we talked with HomeServe. We immediately suspended

13 mailings to make sure we understood what was going on.

14 A few days later we supported Dominion Energy Utah in

15 sending out the apology letter.

16   But we really, and me personally, in those

17 first few days, really were kind of seeking first to

18 understand the issues, and I, personally, in those first

19 couple or three days, I didn't get it. But it didn't

20 take very long once we heard the feedback, you know,

21 from the regulators.

22   So we listened to the regulators. We listened

23 to the customers, to the very specific concerns, and

24 again, they were broader than I had initially -- than I

25 had initially anticipated.

1   So at that point, we basically began coming up

2   with a plan, and given the nature of the concerns, we

3   talked regularly with Kelly and his team, just to make

4   sure -- because they have got the unique Utah

5   perspective, just to make sure that we were getting

6   feedback and input from them to make sure we were

7   hitting in the mark in addressing those concerns.

8   So with that, and I don't know procedurally I

9   need to deal with anything with Exhibit B or C, or can I

10   just talk to them, reference them?

11   MR. SABIN: Exhibit B and C have been

12   admitted, so you can -- the commissioners have copies of

13   those, so you can refer directly to them.

14   MR. NEAL: Okay.

15   MR. MENDENHALL: So that would be hearing

16   Exhibits 4 and 5.

17   MR. SABIN: Sorry. Hearing exhibits -- let me

18   get the numbers there. These are hearing Exhibits DEU

19   2.2 and 2.3, I believe are the two. Hang on one second.

20   Yes, I'm sorry. No, I'm sorry. I told you the wrong

21   number. They are 3.1, 3.2, 3 -- yeah, 3.2. So 3.1 and

22   3.2.

23   MR. NEAL: Okay. Thank you. Can everybody

24   hear me okay?

25   COMMISSIONER LEVAR: Yes. And I think your

1 microphone is picking up, and that's important for the

2 streaming. We also stream it.

3   MR. NEAL: Okay. So yeah. I'd like to refer

4 people to, I guess, what is Exhibit 3.1. It's four

5 pages, and it's basically taking the feedback and trying

6 to very directly address the concerns that have been

7 brought forth in the docket. On the -- and I'm not

8 going to read everything to you, but if we can flip

9 through on the first page, it's one of four. We note on

10 the back flap of the envelope that this is important

11 information from Dominion Products and Services.

12   COMMISSIONER LEVAR: And I think you meant

13 3.2; is that right?

14   MS. CLARK: That's correct.

15   MR. NEAL: Oh, I'm sorry. It's the fourth

16 page that starts with the envelope looking picture.

17 Okay, sorry.

18   So that's the envelope. And then this is the

19 actual gas line -- revised gas line letter, where we

20 clearly said at the top that this is repair plans from

21 HomeServe. And then using what we now understand is the

22 Utah terminology, we -- and the OCS referred to this, we

23 have changed gas line to fuel line. And then right in

24 the first paragraph, made it -- made the language much

25 clearer than what it was before, about specifically what

1 is covered, and I'll hit that again in a second.

2   We very clearly say right at the beginning

3 that Dominion Products and Services has selected

4 HomeServe. Again, mentioned that it's optional, which

5 we had that in the last letter. And then bolded at the

6 bottom we have, "Dominion Products and Services is an

7 affiliate of Dominion Energy Utah, but not the same

8 company, and that Dominion Products and Services has

9 partnered with HomeServe."

10   Another important thing that we have just

11 above that is that the choice of whether to participate

12 does not affect your service with Dominion Energy Utah.

13   So moving to page 2 of -- I'm sorry, page 3 of

14 that same exhibit, and I believe Ms. Beck referred to

15 this. In the drawing, we have worked with HomeServe,

16 and HomeServe has changed the mailing and added some

17 color coding to show very specifically the lines that

18 are covered.

19   And also again per OCS's suggestion, we very

20 clearly have bolded and say, "Repair and replacement of

21 appliances are not included in the coverage." And then

22 down at the bottom there's additional information about

23 HomeServe being independent from the Dominion Energy

24 companies.

25   And then finally on page 4, which is the

1 acceptance form, we have added -- before it said just

2 Dominion Energy. It now says Dominion Energy Utah, as

3 it relates to billing related services.

4   So I'd like to now refer you to Exhibit 3.1.

5   MR. SABIN: 3.3.

6   MR. NEAL: I'm sorry, 3.3. So given the

7 situation that we have been in here, we felt like we

8 needed to go an additional step here. So what you will

9 see is a two page -- two page attachment. This would go

10 into the next three mailings that would go to all

11 eligible Utah customers.

12   So the first sheet is a letter that has been

13 signed by me, Dominion Products and Services, that very

14 clearly talks about the relationship with HomeServe, the

15 better language on the fuel lines that are covered, and

16 again, Dominion Products and Services is the recommended

17 provider.

18   And then again, very clearly at the bottom we

19 show Dominion Products and Services is an affiliate of

20 Dominion Energy, but not the same company. And again,

21 Dominion Products and Services has partnered with

22 HomeServe.

23   And the second -- the second sheet in a little

24 different format kind of a frequently asked question

25 format. So this is the second page of Exhibit 3.3. We

1 very explicit, in a little bit more detail, talk

2 specifically about the fuel line program. Are they

3 required to purchase it, which is no. Will it affect

4 their utility service? The answer is no. Who is paying

5 for the mailings? It's HomeServe. A little bit about

6 how they were selected, and then again very

7 specifically, what's the relationship between Dominion

8 Energy Utah and Dominion Products and Services.

9   So as I noted, what we would do is basically

10 this would be the cover pages of the next three mailings

11 that would go out to all eligible Utah customers.

12   So one other item I'd like to mention is, back

13 early in the docket in early June, on June 5th, and this

14 is the unwinding plan. If the billing tariff is

15 retained, all existing customers, so the customers that

16 have signed up, would get a clarifying letter. Now, as

17 we have gone through this, we need -- there is a

18 modification that we need to do to that letter to make

19 it conforming to the information that we've provided

20 here, making it very, absolutely clear about the

21 entities involved and what's covered.

22   So what you will see in that unwinding plan,

23 there will be revisions to that. But basically all

24 existing customers will get that same information about

25 it being an optional service. Gas appliances are not

1 covered, again, as OCS has suggested.

2   So in closing -- in closing, I'd just like to

3 say that I think the parties agree that possibly the DEU

4 has complied with the tariff. We know we should have

5 done better on these customer communications. We

6 appreciate the feedback, and we hope that we show, kind

7 of demonstrated through their actions here, that we want

8 to kind of get this on the right track.

9   And we certainly hope that Utah customers are

10 able to participate and make the choice if they so

11 choose, and also that they are allowed to do that with

12 the efficiencies and the convenience of having it on the

13 utility bill, which is something that's a good positive

14 and a desire of the customers, especially as we noted

15 for the 10,000 plus customers that have signed up.

16   So finally, the last thing that I would like

17 to note, per Kelly's note, is I really do appreciate the

18 opportunity that I had to participate in the technical

19 conference. I thought that was a great forum to get

20 clear and candid feedback where the parties can, you

21 know, in a more informal setting talk specifically about

22 the issues and concerns.

23   In the technical conference and outside, I

24 appreciate Mr. Parker and Ms. Beck and their respective

25 teams. Again, with their -- even though we didn't agree

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1 on every part of the docket, it was very respectful and

2 open and we were able to have good communication. So

3 I'm thankful for that, and that concludes my statement.

4   MR. SABIN: Okay. I just have a couple of

5 follow-up questions.

6   Mr. Mendenhall, could you address whether

7 Dominion Products and Services, in its participation in

8 the third party billing services tariff, was

9 contemplated when the tariff was being discussed, and

10 when it was being -- during the hearing when that was

11 being proposed?

12   MR. MENDENHALL: Yes. At the time of the

13 hearing, I wasn't involved. But I do know at that point

14 in time, Dominion Products and Services is anticipated

15 they were going to be the warranty service provider.

16   MR. SABIN: Mr. Orton brought up that he as a

17 landlord has received a copy of the letter and that his

18 tenants in this building are also utility customers.

19 Can you explain how that could be if the information

20 beyond the address and name and customer identifier was

21 not used?

22   MR. MENDENHALL: Yes. So the way a

23 landlord -- the way the landlord agreement works is,

24 most landlords don't want frozen pipes, and so they also

25 have customers -- tenants who are moving in and out all

1 of the time.

2   So the way it works is, let's say I am a

3 tenant of Mr. Orton, and I move out. A landlord

4 agreement would allow when I call and say, I am moving

5 out, I want -- I don't want to be a customer at this

6 address any more, and Dominion Energy comes out and

7 turns off my meter, that bill goes to the landlord. So

8 they actually wouldn't turn off the meter.

9   They leave the meter on, but they would switch

10 the gas service to the landlord at that point. The

11 landlord would pay for that service for the week or two

12 weeks or month between when I left and the new customer

13 comes in. Most landlords have it set up that way.

14   So my guess is what happened is, because he's

15 a landlord, he is considered a customer at that premise

16 on our records, and so when we sent that out, we used

17 that customer name and address to send it to that

18 landlord.

19   MR. SABIN: Okay. Mr. Neal, could you

20 address -- there was some information that you note was

21 inadvertently provided along the way. Can you address

22 how that happened and what's been done to address that?

23   MR. NEAL: Yes. So the inadvertent data that

24 was exchanged emanated from an IT data management

25 process, whereby a template that had been used in other

1 jurisdictions had extraneous fields in it. So part of

2 the process was that the appropriate fields needed to

3 be, say yes or no, does it need to be included. The

4 appropriate field said yes.

5   And this is where we have actually gone

6 through a process and have a process document to ensure

7 this doesn't happen again. Other -- other fields that

8 were extraneous, not part the agreement, not part of the

9 data we wanted to exchange, didn't have any -- they were

10 just blank.

11   So in kind of the bowels of the process, those

12 basically the same process that had been used in other

13 jurisdictions, that data was populated. And I will note

14 that all of this happened, and again, that same secure

15 kind of encrypted environment.

16   And HomeServe, when they got the data,

17 unencrypted it. They immediately notified us of that

18 inadvertent data, and there's procedures in place such

19 that once that's recognized, that they go in and

20 essentially just purge the data. And they have also --

21 we have a certified letter showing that they haven't

22 used the data and that the data is no longer in their

23 system.

24   The other thing I would note is, we take IT

25 and risk management to the highest levels in the

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1 company. So our senior vice president of IT and risk

2 management became involved in this, and we did a full

3 root cause analysis, and we now have a procedure that's

4 in place that has certain checkoffs along the way to

5 ensure that nothing like this would happen again.

6   MR. SABIN: And then finally, could you

7 address -- you referenced that these kinds of programs

8 where either DPS or HomeServe have paired with utilities

9 in some fashion, or have been able to send letters to

10 customers in this fashion in other jurisdictions. Could

11 you address some of those jurisdictions or how this

12 works elsewhere, and if it's happened here in Utah, talk

13 about that?

14   MR. NEAL: So Dominion Products and Services

15 has relationships with several other partners that are

16 very similar. I won't list them all. For example, the

17 SCANA companies, South Carolina Electric and Gas, and

18 Public Service of North Carolina is an example.

19 Duquesne is another example for DPS. I believe

20 HomeServe has a relationship in -- with Salt Lake City.

21   So it's -- there's maybe not necessarily in

22 Utah, but in many other states. I think surrounding

23 states, and also in Ohio, Pennsylvania, areas that we're

24 a little bit more familiar with, it is a normal business

25 structure.

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1   MR. SABIN: Thank you. We have no further

2 questions or comments. These witnesses are now

3 available for cross-examination.

4   COMMISSIONER LEVAR: Ms. Schmid, do you have

5 any questions for Mr. Mendenhall or Mr. Neal?

6   MS. SCHMID: I do. And I am going to ask the

7 questions to specific witnesses.

8   CROSS-EXAMINATION

9   BY MS. SCHMID: Mr. Neal, do you have a copy

10 of the division's Exhibit A to its June 28th memorandum

11 in front of you? It's a one page letter dated 4-16-18,

12 that says, "Important information regarding your gas

13 line. For fastest processing please visit DEU customer

14 repair," and is signed by you. If not, I can give you a

15 copy.

16   MR. NEAL: I believe I have it. It's -- yes.

17   MR. SABIN: I don't think it says DEU customer

18 repair though. Where are you seeing that?

19   MS. SCHMID: Sorry, DEU -- you're right. I

20 made a mistake. DE customers home repair?

21   MR. NEAL: Yes, ma'am.

22   MS. SCHMID: Thank you. Can you please tell

23 me where DPS is mentioned in this letter?

24   MR. NEAL: DPS is not on that letter.

25   MS. SCHMID: Where in the letter is the

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1 utility identified?

2   MR. NEAL: I would say --

3   MS. SCHMID: Would you agree with me that it's

4 not there?

5   MR. NEAL: It's indirectly in the bottom

6 paragraph all the way at the bottom of the page, and I

7 guess this encapsulates all of the Dominion Energy

8 companies. That it says, "HomeServe is independent of

9 Dominion Energy."

10   MS. SCHMID: Would you also agree with me that

11 the rest of -- that that paragraph concludes with the

12 sentence, "Your choice of whether to participate in this

13 service plan will not affect the price, availability or

14 terms of service from Dominion Energy"?

15   MR. NEAL: What was the question part of that?

16 I'm sorry.

17   MS. SCHMID: Will you agree that I read that

18 last sentence correctly?

19   MR. NEAL: Yes, ma'am.

20   MS. SCHMID: Would you look at the second

21 paragraph, and the first sentence of that, I'll ask you

22 if I read this correctly. It states, "Dominion Energy

23 has partnered with HomeServe to offer its eligible

24 customers gas line coverage for repairs to their gas

25 line." Did I read that correctly?

1   MR. NEAL: Yes, ma'am.

2   MS. SCHMID: That makes no distinction between

3   DPS and the utility; is that correct?

4   MR. NEAL: Correct.

5   MS. SCHMID: So how was a customer -- would

6   you agree with me that there was no reasonable way for

7   the customer to distinguish between the utility and

8   Dominion Energy, based upon this letter as it is

9   presented?

10   MR. NEAL: We don't specifically put Dominion

11 Products and Services. And again, that's kind of where

12 we fell short in the letter, by not distinguishing

13 appropriately between the two entities.

14   MS. SCHMID: Who is the third party biller

15 under the tariff? Is it DPS?

16   MR. SABIN: Do you mean for HomeServe purposes

17 or --

18   MS. SCHMID: Yes. Sorry. For HomeServe

19 purposes, and the purposes of this hearing, is DPS the

20 third party biller? And that's to Mr. Neal. When I

21 switch to Mr. Mendenhall, I'll indicate.

22   MR. NEAL: Can I reference the billing

23 services agreement to --

24   MS. SCHMID: Yes, please.

25   MR. NEAL: -- to just verify the definitional

1   terms. I'm sorry, this is the whole docket. I don't

2   have that particular piece partitioned out.

3   MS. SCHMID: I'm sorry. Could you please

4   repeat that?

5   MR. NEAL: I'm struggling to find it, sorry.

6   MR. SABIN: We have got it now.

7   MS. SCHMID: Okay. Thank you.

8   MR. NEAL: I'm sorry. Could you repeat the

9   question now?

10   MS. SCHMID: Is DPS the third party biller

11   that is at the heart of this -- that is part of the

12   heart of this issue in front of the commission?

13   MR. NEAL: I believe as the billing services

14   agreement reads, yes.

15   MS. SCHMID: In the letter that we just walked

16   through, is there a mention of a third party biller?

17   Would you agree with me that there is not?

18   MR. NEAL: There is not.

19   MS. SCHMID: We talked a little bit about a

20   partnership with HomeServe, and in the letter which we

21   have been discussing, there is the statement, "Dominion

22   Energy has partnered with HomeServe." Do you recall

23   that in the -- one of the press releases attached as an

24   exhibit in this docket, it's represented that Dominion

25   Energy has partnered with HomeServe as well?

 1   MR. SABIN: Which press release are you

 2   talking about? Can you refer to us a document?

 3   MS. SCHMID: I can, one moment please. Just

 4   one second.

 5   MR. NEAL: Is it the press release from 4-19?

 6   MS. SCHMID: Yes, it is. Thank you.

 7   MR. NEAL: Okay. I have that in front of me.

 8   MS. SCHMID: And does it use the word

 9   partnering or partnered?

10   MR. NEAL: Yes, it does.

11   MS. SCHMID: So is there any cause to believe

12   from this letter that a Dominion Energy customer,

13   Dominion Energy Utah customer receiving this letter

14   would think that it's from anyone other than the

15   utility?

16   MR. NEAL: If I understand your question, I am

17   not sure I can put myself in a Utah -- look at it from a

18   Utah customer perspective. I can tell you based on my

19   experience, I have worked for probably six or eight

20   different entities that use this -- that are now using

21   that same Dominion Energy logo.

22   So from my perspective, I see Dominion Energy

23   probably differently than Utah customers. And again,

24   that's one of the things that we, -- that me,

25   personally, I understand much better now, as far as

 1 like, the Utah customers, what they have been exposed to

 2 and such.

 3   MS. SCHMID: And now I'd like to turn to

 4 what's been referenced as DPU attachment B to the DPU's

 5 filing on June 28th. And it's also been identified, I

 6 believe, as DEU hearing Exhibit 3.3. And that's another

 7 letter to the customer. Can you find that?

 8   MR. NEAL: Does it begin with information

 9 regarding your gas line?

10   MS. SCHMID: It does.

11   MR. NEAL: Just -- I want to just make sure

12 I'm a hundred percent sure. So it's DEU Exhibit A, page

13 1 of 3?

14   MS. SCHMID: Yes.

15   MR. NEAL: Okay. Thank you.

16   MS. SCHMID: So I am going to try and make

17 this quicker. So would you agree that DPS is not

18 referenced in this letter?

19   MR. NEAL: Yes, ma'am.

20   MS. SCHMID: Would you agree that third party

21 billing is not referenced in this letter?

22   MR. NEAL: Yes, ma'am.

23   MS. SCHMID: Okay. I'd now like to move to

24 Mr. Mendenhall, and I have some of the same questions,

25 but more. So Mr. Mendenhall, could you move to what

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1 Mr. Neal and I first discussed, the letter which was

2 attachment A, dated 4-16 to the division's 6-28-filing?

3   MR. MENDENHALL: Yes.

4   MS. SCHMID: Would you agree that DPS is not

5 identified?

6   MR. MENDENHALL: This is DPU Exhibit A; is

7 that right?

8   MS. SCHMID: B.

9   MR. MENDENHALL: B. Okay.

10   MS. SCHMID: No. I'm sorry. I lied. I

11 didn't lie, bad word to say. Yes, it is DPU Exhibit A.

12 I misspoke.

13   MR. MENDENHALL: So the question is, do I

14 agree that Dominion Products and Services is not shown

15 on that letter?

16   MS. SCHMID: That is the question.

17   MR. MENDENHALL: And I would say I agree that

18 Dominion Products and Services is not on that letter.

19   MS. SCHMID: Would you agree that the utility

20 is not identified in this letter?

21   MR. MENDENHALL: I -- yes, I would agree.

22   MS. SCHMID: Would you agree that there's

23 nothing in the letter that gives the customer a way to

24 distinguish the utility from DPS?

25   MR. MENDENHALL: In this letter, no.

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1   MS. SCHMID: I could ask you the same

2   questions about B, DPU Exhibit B, but I believe that

3   Mr. Neal covered that, so I don't want to take any more

4   time than I need. So did the utility give its customer

5   information to its affiliate?

6   MR. MENDENHALL: By customer information do

7   you mean name and address?

8   MS. SCHMID: Right. And the other things that

9   have been referenced during this hearing. Landlord

10   affiliation, et cetera.

11   MR. MENDENHALL: Did Dominion Energy Utah give

12   the information to Dominion Products and Services? Yes.

13   MS. SCHMID: Did the utility know what its

14   affiliate intended to do with that information?

15   MR. MENDENHALL: Yes.

16   MS. SCHMID: Did utility personnel see the

17   drafts of the customer letters before they went out?

18   MR. MENDENHALL: Yes.

19   MS. SCHMID: Did utility personnel provide

20   input as to the content of the letters?

21   MR. MENDENHALL: Yes.

22   MS. SCHMID: Did the utility personnel suggest

23   changes to the letters, such as identification of DPS?

24   MR. MENDENHALL: I don't know what changes

25   were proposed and what changes were implemented. I

1 wasn't part of that review process.

2   MS. SCHMID: If I need to call witnesses to

3 speak to that, whom would I call?

4   MR. MENDENHALL: Well, there are probably two

5 witnesses who were involved. One of them is retired.

6 The other one would be the corporate communications

7 manager.

8   MS. SCHMID: And could you please give me

9 their names?

10   MR. MENDENHALL: Darren Shepherd.

11   MS. SCHMID: Is he the one that retired?

12   MR. MENDENHALL: No. The one that retired

13 would be -- now I have already forgotten his name.

14   MS. SCHMID: Mr. Marcus.

15   MR. MENDENHALL: Brad Marcus, yes. Thank you.

16   I will tell you, I was involved with this --

17 this most recent letter, and along with Mr. Shepherd,

18 and we were given the opportunity to both review the

19 letter and provide input, and a large amount of the

20 input that we provided was -- was used in -- in the

21 letter.

22   MS. SCHMID: And by the most recent letter,

23 are you referring to the letters that the utility --

24 that are proposed to be sent out to the customers who

25 received the letters? The initial customer letters?

1   MR. MENDENHALL: Are you talking about the

2 unwinding document?

3   MS. SCHMID: The unwinding document.

4   MR. MENDENHALL: I am talking about -- well,

5 yeah, that one. But I am talking about DEU hearing

6 Exhibits 3.2 and 3.3. Those are the -- the letters that

7 Mr. Neal went through with the -- they incorporated the

8 feedback that we received from the regulators. So I

9 wasn't involved in the first round, but I am just

10 sharing my experience with this -- this version. I was

11 involved, along with Mr. Shepherd, and that's -- that's

12 how the process went.

13   MS. SCHMID: I'd like to turn now to DEU

14 Exhibit C, which was attached to DEU's 5/21 comments.

15 It is a copy of a bill. It's also, I believe, hearing

16 Exhibit 1.3.

17   MR. MENDENHALL: Okay.

18   MS. SCHMID: Could you point to me where

19 Dominion Energy Utah is referenced on this bill?

20   MR. MENDENHALL: I do not see Dominion Energy

21 Utah.

22   MS. SCHMID: So you agree that the reference

23 is to Dominion Energy; is that correct?

24   MR. MENDENHALL: Correct.

25   MS. SCHMID: Okay. I'd like to switch back to

1 Mr. Neal, and I have a few more questions for you. Am I

2 correct that you were present at, and participated in,

3 the technical conference in this docket held June 14th,

4 2018?

5   MR. NEAL: Yes, ma'am.

6   MS. SCHMID: Mr. Orton is passing out pages

7 from that technical conference packet. I am wondering

8 if you independently have a copy of that packet.

9   MR. NEAL: I do.

10   MS. SCHMID: Okay. Perfect. Could you please

11 turn to page 10 of that packet, and just for cross

12 reference, Mr. Orton has passed out a double-sided

13 document. The first page is entitled technical

14 conference, and gives the title and the date and the

15 docket. And the second back side of that page is

16 entitled customer experience. Do you see that?

17   MR. NEAL: Yes.

18   MS. SCHMID: Will you accept my representation

19 that this is a true and correct copy of page 10?

20   MR. NEAL: Yes, ma'am.

21   MS. SCHMID: Would you agree that having a

22 utility performing necessary due diligence to partner

23 with a customer service company improves the customer

24 experience?

25   MR. SABIN: Before we go into substantive

1 questions, I believe she needs to admit or seek to have

2 this admitted as an exhibit.

3   MS. SCHMID: I am happy to do that. That

4 would be DPU hearing Exhibit 1.

5   COMMISSIONER LEVAR: Okay. Is there any

6 objection to that motion?

7   MR. SABIN: I don't think this is complete. I

8 think under the rules of evidence for completeness, that

9 normally we would only admit the full document because

10 it doesn't clarify, I'll just note here, who the highly

11 rated company is talking about. Whether it's DPS or

12 whether it's talking about HomeServe. But I think that

13 having the entire document would help us get there so --

14   MS. SCHMID: The division would be happy to

15 provide copies of the entire document. The division

16 notes that the entire presentation is available on the

17 commission's website, and the division would like to ask

18 the commission if it would like to take a brief recess

19 so the division can make 7, 10 copies of the -- maybe a

20 dozen copies of the 31 page -- oh, it's more than that.

21 Of the 33 page exhibit.

22   MR. SABIN: That's fine if they want to do

23 that. My point was just that if we're going to admit it

24 as an exhibit, I want the entirety of the document

25 admitted as an exhibit, not just this for record

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1 purposes. We want to make sure that we can refer to

2 everything in there and that that's all being put in the

3 record. And it is on -- it was part of the technical

4 conference, that's fine, but if we're putting it in the

5 record, I want the whole thing in.

6   COMMISSIONER CLARK: Was this not attached to

7 the May 21st filing of the -- of the Dominion Energy

8 Utah? Maybe it wasn't. I am looking at a binder that I

9 have got that has random material.

10   MR. SABIN: I don't believe so. I think it

11 was provided at the technical conference, and again, I

12 don't --

13   COMMISSIONER CLARK: And I just stuck it in my

14 binder.

15   MR. SABIN: That's fine. I just want for

16 record purposes the whole thing to be in.

17   COMMISSIONER LEVAR: And I think the point on

18 entering the whole -- the whole document makes sense.

19 If that would be appropriate to break and make some

20 copies before we start questioning about it, that

21 probably would be an appropriate use of a few minutes to

22 do that.

23   Let me just ask the parties, though, if it

24 makes sense to stop and do that now before you

25 continuing -- before you continue questioning on this?

1 And just in terms of how much more time we are planning

2 to use today, would it make sense to use a lunch break,

3 or if we're within 30 or 45 minutes, we could take just

4 a short break and come back.

5   I don't know if there's a preference of those

6 in the room. Ms. Schmid and Mr. Moore probably have a

7 sense for how much time you think you'll need to

8 continue going, and if a longer break now makes sense, I

9 think we are happy to accommodate that.

10   MS. SCHMID: I have many more questions, and

11 it takes time to make copies. So I would propose that

12 we take a lunch break now.

13   COMMISSIONER LEVAR: Okay.

14   MR. SABIN: I am not suggesting we need

15 copies. We do have copies of this. I don't think for

16 our purposes, unless the commission wants copies.

17 That's fine. I just want to make sure.

18   COMMISSIONER LEVAR: We have at least two

19 copies up here on the stand.

20   MR. SABIN: So I don't want to hold up the

21 proceeding to go copy. That wasn't my objection. My

22 objection was, I want the whole thing in.

23   MS. SCHMID: But you were objecting to

24 entering what I have identified as DPU Hearing Exhibit

25 1, and it appears that the only way I can the get DPU

 1 Exhibit 1 admitted is to provided it in a copy

 2 containing the rest of the pages from the technical

 3 conference, and I would like the ability to do that.

 4   MR. SABIN: That's fine. I'm -- I'm not

 5 requiring that. I am happy to stipulate that the full

 6 entire document has been submitted to the parties in the

 7 technical conference, and if you want to substitute in

 8 as Exhibit 1 the entirety of that presentation as

 9 Exhibit 1, I am happy to stipulate that I'll let that be

10 admitted.

11   MS. SCHMID: Given the contentious nature of

12 this docket, and the unusual nature of this docket,

13 particularly being that there has been no testimony

14 admitted, except for at this point the DPU adopting as

15 its testimony the prewritten filings and the oral

16 testimony of Mr. Mendenhall and Mr. Neal, I respectfully

17 request a break to make the copies necessary to have it

18 admitted officially, traditionally, and a lunch break at

19 this time.

20   MR. SABIN: I'll do whatever you want. I'm

21 not requiring that but...

22   COMMISSIONER LEVAR: I don't see any reason

23 not to grant that request though. So why don't we

24 reconvene at one o'clock.

25   MS. SCHMID: Thank you.

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1   (Recess from 11:56 a.m. to 1:00 p.m.)

2   COMMISSIONER LEVAR: Okay. We're back on the

3 record, and I think we will continue with Ms. Schmid's

4 cross-examination of Mr. Mendenhall and Mr. Neal.

5   MS. SCHMID: Thank you very much. At this

6 time the division would like to withdraw its request to

7 have what it identified as DPU Hearing Exhibit 1

8 admitted.

9   In front of you is a packet from the technical

10 conference marked, if you can read my handwriting, DPU

11 Hearing Exhibit No. 2. I will represent that this is a

12 true, correct and complete copy of what the commission

13 posted June 14th on its website, as the technical

14 conference packet or something -- or identified

15 something similar to that.

16   With that, the division would like to move for

17 the admission of DPU Hearing Exhibit 2.

18   COMMISSIONER LEVAR: If anyone objects to that

19 motion, please indicate to me.

20   MR. SABIN: No objection.

21   COMMISSIONER LEVAR: Okay. I am not seeing

22 any objection, so it's granted.

23   MS. SCHMID: Thank you. Mr. Neal, could you

24 please turn to page 10 of what has been admitted as DPU

25 Hearing Exhibit No. 2.

1   MR. NEAL: Okay. I got it.

2   MS. SCHMID: And you're employed by Dominion

3   Energy, and as part of your duties, do you represent or

4   engage in activities on behalf of Dominion Products and

5   Services, did I get that correct?

6   MR. NEAL: Yes, ma'am.

7   MS. SCHMID: Thank you. So you are a -- you

8   are a products and services provider in a way, yes?

9   MR. NEAL: Yes.

10   MS. SCHMID: Okay. So would you agree, as

11   it's represented on page 10, that a customer could get

12   comfort from its utility performing necessary due

13   diligence to partner with a servicing company? Do you

14   agree that there's value in the association between a

15   utility and a service company? Let me rephrase that.

16   MR. SABIN: Sorry. The question is which one?

17   Would you say that one more time?

18   MS. SCHMID: Yes. Would you agree that there

19   is value with a products and service company partnering

20   with a utility?

21   MR. NEAL: I would say yes. But also this

22   slide was meant to be kind of a generic representation

23   of the business. I am -- I apologize. I don't recall

24   if you were at the technical conference. This was just

25   trying to explain a little bit about kind of how the

1 business works. It could be a utility. It could be

2 another company.

3   MS. SCHMID: Okay. And I was not at the

4 technical conference so I appreciate that.

5   So in general would you agree then with this

6 slide, that branding improves the chances a customer

7 will open mail? For example, if a letter has the

8 Dominion Energy logo on it, and the customer has seen

9 that Dominion Energy logo on its utility bills, do you

10 believe that the occurrence of the logo on the mailing

11 and on the utilities bills adds value?

12   MR. NEAL: I could see where that could be

13 confusing. But in other cases, in other instances, the

14 Dominion Energy logo is Dominion Products and Services.

15 So there's value in that, if I am understanding your

16 question.

17   MS. SCHMID: So are you saying that the value

18 is only if DPS is mentioned? Did I understand that

19 correctly?

20   MR. NEAL: I guess what I am saying is the

21 value is related to the company that's providing the

22 services and that brand and brand recognition.

23   MS. SCHMID: Is it your opinion then -- let me

24 scratch that.

25   Let's turn to the list of customers that DPS

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 1 got from the utility. Would you agree that getting a

 2 customer list from a utility, in this case a gas

 3 utility, increases the chances that letters sent by the

 4 products and services provider or its third party

 5 biller, however we want to have it done, get to people

 6 who have gas service and don't get to people who have

 7 electric only homes?

 8   MR. NEAL: I am sorry. I didn't understand

 9 that question.

10   MS. SCHMID: Okay. Dominion Products and

11 Services, as I understand it, was provided a customer

12 list from the utility; is that correct?

13   MR. NEAL: Yes.

14   MS. SCHMID: And do you agree with me that

15 that customer list reflected parties who took gas

16 service from the utility?

17   MR. NEAL: So the customers were gas service

18 customers, yes.

19   MS. SCHMID: Yes?

20   MR. NEAL: Yes.

21   MS. SCHMID: Do you agree that getting a list

22 of customers from a gas utility, where those customers

23 take gas service from the utility, increases the chance

24 that the letters will get to people who have gas service

25 and not only electric service?

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1   MR. NEAL: If they are gas customers, yes.

2   MS. SCHMID: So DPS provides a sort of

3 administrative service for HomeServe; is that correct?

4 I mean, in general terms. I don't want to go through

5 the contract.

6   MR. NEAL: I mean, we have a partnership that

7 has -- it's very complex, and there's lots of pieces and

8 parts to it, our contract with DPS and HomeServe. So I

9 wouldn't characterize it as just administrative, if that

10 was your question.

11   MS. SCHMID: Okay. Could other entities

12 perform the service that DPS is doing for HomeServe if

13 HomeServe decided to contract with those entities?

14   MR. NEAL: If you are asking could HomeServe

15 work with another company --

16   MS. SCHMID: Uh-huh.

17   MR. NEAL: -- the answer is yes.

18   MS. SCHMID: Okay. If other companies could

19 do the same thing, would you agree that the real value

20 that DPS brings to the table is its affiliation with the

21 utility?

22   MR. NEAL: Can you ask that again?

23   MS. SCHMID: Yes. Would you agree that the

24 real value that DPS brings to the table is its

25 affiliation with the utility?

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 1   MR. NEAL: No.

 2   MS. SCHMID: Is there any value in that

 3   affiliation?

 4   MR. NEAL: The affiliation between -- say

 5   it -- I'm sorry.

 6   MS. SCHMID: Is there any value provided to

 7   HomeServe from the affiliation between DPS and the

 8   utility?

 9   MR. NEAL: The agreement and the value is with

10   the corporate Dominion Energy entity.

11   MS. SCHMID: Isn't the utility part of the

12   bigger corporate entity?

13   MR. NEAL: Yes. Dominion Energy Utah is a

14   subsidiary of Dominion Energy the corporate company, as

15   is Dominion Products and Services.

16   MS. SCHMID: And I am not asking for a

17   specific number. Did the utility charge DPS for a copy

18   of its customer list?

19   MR. NEAL: It did not.

20   MS. SCHMID: So given what was presented at

21   the technical conference and is admitted DPU Hearing

22   Exhibit 2, and given that the utility, and I'll call you

23   DPS, are here presenting towards the commission, isn't

24   it reasonable for the commission to look at an affiliate

25   transaction and scrutinize it?

 1   MR. NEAL: The transaction that DPS has

 2 entered into is with HomeServe. So I am not sure...

 3   MS. SCHMID: Isn't there an agreement with DPS

 4 and the utility for billing services?

 5   MR. NEAL: Yes. Yes.

 6   MS. SCHMID: Okay. So that's an affiliate

 7 contract, right? A contract between affiliates?

 8   MR. NEAL: Yes.

 9   MS. SCHMID: And would it surprise you that

10 the commission in this case, this commission, has

11 required utilities to report dealings with affiliates?

12   MR. NEAL: I am not sure what the requirements

13 are.

14   MS. SCHMID: Let's talk about branding and

15 trademarks. Is there value in something like the Nike

16 swoosh?

17   MR. NEAL: Sure.

18   MS. SCHMID: In your opinion?

19   MR. NEAL: Sure.

20   MS. SCHMID: And so would you agree then that

21 there is value in the Dominion Energy logo?

22   MR. NEAL: There is value in the Dominion

23 Energy logo, which was part of the rebranding effort in

24 2017 is, Dominion Energy wanted to rebrand and have

25 that -- that positive brand associated with its

1 businesses.

2   MS. SCHMID: And so would it surprise you that

3 the Dominion Energy tariff for Utah identifies the

4 utility and -- as the company or Dominion Energy?

5   MR. NEAL: I didn't understand the question.

6   MS. SCHMID: Would it surprise you that the

7 Utah tariff refers to Dominion Energy, not Dominion

8 Energy Utah in many instances? And if you don't know,

9 that's fine.

10   MR. NEAL: I'm sorry. I don't know.

11   MS. SCHMID: The division would like the

12 commission to take administrative notice of the tariff

13 that is on file with it, because the division

14 wouldn't -- chose not to make copies of the entire

15 tariff and present that as a hearing exhibit.

16   MR. SABIN: Can I respond to that?

17   COMMISSIONER LEVAR: Yes.

18   MR. SABIN: So I have not gone through the

19 tariff to confirm or deny or dispute the point she is

20 making. I do know that at the very beginning it's

21 Dominion Energy Utah, and then defined is Dominion

22 Energy. So that's not unusual. I don't dispute that

23 it's defined that way, but the very introduction of it

24 was Dominion Energy Utah, and for ease of reference,

25 shortened to that point.

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1   So I don't think it's fair to imply that there

2   was intended to be some sort of confusion by the

3   definition or use of Dominion Energy itself. She wants

4   to have you to take administrative notice of the tariff.

5   I don't have any problem with that. I just don't think

6   the implication is a fair implication.

7   MS. SCHMID: In that case I just have maybe a

8   couple of extra questions for Mr. Mendenhall if I may.

9   COMMISSIONER LEVAR: That issue wasn't a

10 motion, right? You were just commenting.

11   MS. SCHMID: No, no.

12   COMMISSIONER LEVAR: Okay.

13   MS. SCHMID: Mr. Mendenhall, what is the logo

14 on the truck that would respond to a gas leak to a

15 customer served by the utility? Is it Dominion Energy

16 or is it Dominion Energy Utah?

17   MR. MENDENHALL: It would be Dominion Energy.

18   MS. SCHMID: Thank you very much. That is all

19 that the division has.

20   COMMISSIONER LEVAR: Thank you, Ms. Schmid.

21 Mr. Moore?

22   MR. MOORE: Yes. I think I'll go over my

23 nonconfidential questions first, then we can finish up

24 with the commission agreement. I think Mr. Mendenhall

25 would be the proper witness to answer these questions.

1   CROSS-EXAMINATION

2   BY MR. MOORE: Isn't it true on page 16 of

3   Dominion's July 19th reply comments, the statement is

4   made that, "As previously discussed, names and addresses

5   are considered public information under Utah code and

6   13-37-102, paren. 5, dash, paren. 6, paren."?

7   MR. MENDENHALL: Yes, it says that in the

8   comments at page 16.

9   MR. MOORE: The comments provide, again on

10   page 16, that because Dominion Energy only provided

11   information related to GS customers, the rate class of

12   each customer was also evident; isn't this correct?

13   MR. MENDENHALL: Hold on. I'm just going to

14   read that. So it's correct that the information only

15   related to GS customers was provided to Dominion

16   Products and Services. I don't know if that was evident

17   to Dominion Products and Services, but it was certainly

18   evident to the company, to Dominion Energy Utah.

19   MR. MOORE: I am going to hand out a copy of

20   the -- of the statute that we're both citing here. I am

21   not going to make it an exhibit, because it's just a

22   statute. I don't want to burden the record, but just

23   for everybody's reference.

24   COMMISSIONER LEVAR: Yes.

25   MR. MOORE: Isn't it true that list of public

1 information contained in Sections 13-37-102-6 does not

2 include whether a person is a Dominion customer or what

3 rate class the customer belongs to?

4   MR. MENDENHALL: Are you looking at a certain

5 page on this document?

6   MR. MOORE: The second page.

7   MR. MENDENHALL: Okay. It's labeled

8 13-37-102, definitions?

9   MR. MOORE: Six. It's the third page.

10   MR. MENDENHALL: Okay.

11   MR. MOORE: Public information means --

12   MR. MENDENHALL: It means a person's name,

13 telephone number or street address.

14   MR. MOORE: And it doesn't relate to whether

15 they are a Dominion customer and their rate class?

16   MR. MENDENHALL: Correct. I would point out

17 that the general service class is pretty much all

18 inclusive. I mean, we have over 1 million customers,

19 and probably 97 percent of those customers are GS. So I

20 don't know that you would be gleaning much information

21 by knowing that they were a general service customer.

22   MR. MOORE: Can I direct your attention to

23 Section 13-37-1025? This defines nonpublic information.

24 Can I ask you to read that section?

25   MR. MENDENHALL: Sorry. I am not following

1 where you are at.

2   MR. MOORE: It's on the second page.

3   MR. MENDENHALL: Okay.

4   MR. MOORE: At the bottom, paren. 5. Then

5 there's an A and two Is and II.

6   MR. MENDENHALL: Yeah, I follow you. You want

7 me to read all of Section 5?

8   MR. MOORE: No. Just 5A.

9   MR. MENDENHALL: 5A. "5A. Nonpublic personal

10 information means information that is not public

11 information and, either alone or in conjunction with

12 public information, identifies a person in distinction

13 from other persons."

14   MR. MOORE: How do you maintain that the

15 information DEU provided to Dominion Products and

16 Services, and Dominion Products and Services provided to

17 HomeServe, is public information, given the fact that

18 you disclosed that a particular person is a Dominion

19 customer, which identifies a person in distinction from

20 another person, and that you also provide information

21 that particular person is a general service customer,

22 which also identifies the person in distinction from

23 another person?

24   MR. SABIN: I will object. I think this is

25 verging on, if not directly legal issues, I don't know

1 how the witness could possibly answer that question

2 without legal training.

3   MR. MOORE: Your Honor.

4   COMMISSIONER LEVAR: Mr. Moore, do you want to

5 respond to the objection?

6   MR. MOORE: Yes. That argument is waived.

7 They made a statutory argument in their comments. They

8 cited this statute, and they made legal conclusions

9 stemming from the statute. Any argument that I cannot

10 recross on that, because it's a legal argument, has been

11 waived.

12   COMMISSIONER LEVAR: Let me ask you to respond

13 to the fact that, since in this docket these comments

14 haven't been adopted as testimony, but he has been

15 commenting on them, I don't recall if Mr. Mendenhall has

16 in his verbal testimony today addressed that issue.

17 Having said all this, I think I am agreeing with the

18 objection.

19   However, we have some legal issues that we're

20 still probably going to continue to talk about, and this

21 seems to be a relevant one to explore. I am just not

22 sure Mr. Mendenhall is the right one to answer the

23 question.

24   MR. MOORE: All right. I'll go on. On page

25 15 of Dominion Energy Utah's reply comments, you

1 suggested a tariff change regarding the use of customer

2 information. Could you read your suggested tariffs

3 language into the record please?

4   MR. MENDENHALL: Sure. It's found on the

5 bottom of page 15. It says, "Customer information.

6 Company may share customer names, customer addresses and

7 a numerical identifier, not the account number, with an

8 eligible third party for purposes of facilitating

9 billing services and permitting the third party to

10 market the services to be billed to Dominion Energy Utah

11 customers pursuant to this Section 8.08 provided that

12 the third party agrees in writing to, 1, maintain the

13 security, confidentiality and privacy of the customer

14 information provided hereunder; 2, use the information

15 only for the purposes stated above; 3, destroy any

16 customer information provided hereunder as soon as

17 practicable, consistent with legal requirements after

18 termination of the billing services; 4, comply with

19 customer direction to not contact at the customer; and

20 5, remit all required payments for services provided

21 hereunder, including initial cost, rates and the market

22 value established for customer information."

23   MR. MOORE: Thank you. This language allows

24 you to continue to take the action that you have already

25 undertaken in your dealings with Dominion Products and

1   Services and HomeServe; isn't that correct?

2   MR. MENDENHALL: Yes, that is correct.

3   MR. MOORE: It's also true that the commission

4   does not adopt this language, but adopts more

5   restrictive language. Dominion Energy Utah could not

6   offer the same information to future customers -- same

7   information regarding future customers as it already

8   provided DPS and HomeServe; is that correct?

9   MR. SABIN: And I'll object to that. Again, I

10 think what he is asking, if I understand his question,

11 is that there's no other way legally to do this, and I

12 have yet to hear anybody tell me where it's precluded.

13   But I don't think Mr. Mendenhall -- I think

14 that's a question I'm sure the commission would like to

15 discuss, but it's one that really goes to what do the

16 statutes allow -- what do the statutes allow, what rules

17 or regulations exist relating to the management of

18 customer information. That would be my objection. I

19 don't think -- I think that's a discussion for lawyers

20 with the commission, if you want. I just don't think

21 Mr. Mendenhall is the guy to do that.

22   COMMISSIONER LEVAR: Mr. Moore, do you want to

23 respond to the objection?

24   MR. MOORE: I think it's rather a simple

25 question. It's based on a hypothetical. The statement

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1 is that if they provide the tariff language as they

2 suggested, they can continue to operate as they have in

3 the past. The question just is, well, if -- if the

4 commission adopts a more restrictive statement, that

5 they will not be able to continue to apply the same

6 behavior they had for future customers that they had

7 with Dominion Products and Services. I don't think

8 that's overly legalistic.

9   COMMISSIONER LEVAR: Let me make sure I

10 understand your question. You are asking him if we

11 adopted specified tariff language, I mean, I think the

12 way Mr. Sabin has characterized it is, you are asking

13 Mr. Mendenhall what would the statute allow if this --

14 if more restrictive tariff language were imposed. Or

15 maybe is it a fair characterization of the question, can

16 tariff restrict statute? Is that what you are asking or

17 am I missing the point?

18   MR. MOORE: No, no. My -- I think it's been

19 made clear that there's nothing in the statutes that

20 relates to client information. My question is just

21 simply a straightforward one. They suggested tariff

22 language that -- they request the commission to adopt,

23 that would allow them to continue their business

24 practices.

25   It's just an obvious question that if the

1 commission refuses their tariff language, and adopts

2 more restrictive ones, then they will not be able to

3 continue to administer the tariff in a nondiscriminatory

4 way.

5   MR. SABIN: That's not what I am saying. Let

6 me make sure. What I am saying is, his question assumes

7 that right now there is some provision that doesn't

8 allow us to do what we did. And I have yet to hear

9 that.

10   Secondarily, he is saying we are putting

11 forward tariff language to allow us to do something.

12 That's not what our comments say. Our comments say, we

13 put forward the proposal as a way of addressing this

14 going forward to clarify the ground on which the

15 information would be used. Purely -- we're purely

16 offering it up as a suggested course of action.

17   We're not suggesting that the Utah legislature

18 hasn't already spoken. It has. It's spoken in the

19 statute, and nobody yet has pointed out that there's any

20 violation of the statute. So we're just trying to be

21 proactive. So the assumption that if you didn't adopt

22 the tariff, that somehow we would be in violation of the

23 law, is just not right.

24   And that's a legal question, not a question

25 for a witness. And if Mr. Mendenhall can answer

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1 portions of that, I'm fine to let him go, but I think

2 that's a question for us to discuss with you, under the

3 statute and the existing regs and the orders and

4 whatever is there, and I just don't see it.

5   COMMISSIONER LEVAR: Mr. Moore, if you could

6 indulge me one more clarification so I understand your

7 question better, I think it might help us go forward.

8 Is your question premised on the division's proposed

9 more restrictive tariff language, or is it -- are we

10 talking about that specific proposal, or are you talking

11 more generally if we required more restrictive tariff

12 language?

13   MR. MOORE: I was speaking more generally. I

14 wasn't suggesting that anybody violated the law. My

15 question simply goes to the fact that there have been in

16 the record proposed tariff languages. They propose a

17 tariff language that allows them to proceed with

18 business as usual. That language has not been adapted.

19   If this commission determines it's in the

20 public interest to adopt more restrictive tariff

21 language, then they will have a problem complying with

22 the order that requires them to administrate the tariff

23 in a nondiscriminatory fashion. That's just what my

24 statement is. My statement just -- my question just

25 goes to the facts that if their tariff language -- my

1 statement just goes to the fact that the -- what the

2 tariff is going to say, if it's going to change at all,

3 we don't know now.

4   COMMISSIONER LEVAR: So what I am struggling

5 with is the hypothetical nature of the question then,

6 because I think it would be appropriate to ask

7 Mr. Mendenhall how he might interpret specific language

8 or to ask him his view on the division's proposal. I am

9 not sure it's appropriate to ask him the question, in

10 what I am understanding the question to be hypothetical

11 terms, unless I am misunderstanding it.

12   MR. MOORE: I don't want to argue with the

13 commission. It is a hypothetical question. But I think

14 he is testifying as an expert. So hypothetical

15 questions is allowed, but I can move on.

16   COMMISSIONER LEVAR: Yeah. I mean, if you

17 have a way to rephrase it, but I am not sure I am

18 comfortable with the question yet or at least not

19 understanding it enough to be comfortable with it.

20   MR. MOORE: I'll move on. Thank you,

21 Commissioner.

22   Why did you propose to place the language in

23 section -- the proposed tariff language in Section 8.08

24 instead of section of Dominion's tariff applying to the

25 treatment of customer information in general?

1   MR. MENDENHALL: Well, so the -- really the

2   issue in this case is whether the company violated the

3   tariff or not, and there have been concerns addressed

4   that during the contemplation of the tariff, we didn't

5   discuss customer information, and we were silent on it.

6   So it was our attempt to be responsive to those concerns

7   and to put some language in there so that going forward

8   parties had clarity about how information could be used

9   and in what way. So that's why we put it in that

10 section.

11   And I would add that we didn't -- we didn't

12 add this to the tariff to allow us to continue to do

13 what we have been doing. We really added it to provide

14 clarity to all the parties on how the language would be

15 used. That was the intent.

16   MR. MOORE: I was wondering if I could have

17 one minute with my client?

18   COMMISSIONER LEVAR: Yes.

19   MR. MOORE: May I direct your attention to

20 page 18 of your reply comments?

21   MR. MENDENHALL: Yes. I'm there.

22   MR. MOORE: In the first full paragraph, you

23 state that Dominion Energy Utah only provides two

24 benefits to DPS, one providing customer information, and

25 two, providing billing services. And then you assert

1 that DEU is required -- that is all DEU was required to

2 do in a nondiscriminatory matter as set out in the

3 commission order. Is that correct?

4   MR. SABIN: Can you point out -- I'm sorry. I

5 think I was in -- on page 18. You said first full

6 paragraph that starts the divisions predictions.

7   MR. MENDENHALL: Yeah. That's what I am

8 reading on page 18.

9   MR. MOORE: Yes, that's correct.

10   MR. SABIN: Okay. Where in that -- can you

11 just point which sentence you are starting on.

12   MR. MOORE: I was paraphrasing. Why don't you

13 read the paragraph for yourself, and when you are ready,

14 let me ask the question again, and then you can correct

15 me.

16   MR. MENDENHALL: Okay. Just that paragraph?

17   MR. MOORE: Just that paragraph.

18   MR. MENDENHALL: Okay. I'm ready.

19   MR. MOORE: Okay. My question is, you state

20 that DEU only provides two benefits to DPS. One

21 providing customer information, and two, providing

22 billing service. Then you assert that is all DEU is

23 required to do in a nondiscriminatory manner as set out

24 in the commission order; is that correct?

25   MR. MENDENHALL: Yes.

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1   MR. MOORE: Do you assert that DEU can avoid

2 regulation by the commission over the operations of a

3 tariff, by contracting out its nonregulated affiliate

4 and parent corporation significant aspects of the

5 administration of the tariff?

6   MR. MENDENHALL: I -- it sounds to me like a

7 legal question, but I would say I would not assert that.

8   MR. MOORE: Isn't it true that if you are

9 administrating the tariff, DEU has no responsibilities

10 concerning HomeServe marketing, including the use of

11 logo, but rather, only has responsibility with regards

12 to providing customer information and billing services,

13 DEU could not administer the tariff in a

14 nondiscretionary -- discriminatory manner because DEU is

15 not meaningful in administrating the tariff at all?

16   MR. MENDENHALL: That seems like many

17 questions. Could you read your question again, because

18 I am not really following.

19   MR. MOORE: Isn't it true that if in

20 administrating the tariff DEU has no responsibilities

21 concerning HomeServe's marketing, including the use of

22 the logo, but rather only has responsibility with

23 regards to providing customer information and billing

24 services? DEU cannot administer the tariff in a

25 nondiscretionary manner if DEU is not meaningfully

1 administrating the tariff at all?

2   MR. SABIN: Can we maybe break that into --

3   COMMISSIONER LEVAR: I think it was at least

4 two or three questions.

5   MR. MENDENHALL: Yeah, I think I am prepared

6 to answer the first question. So how about you -- I

7 apologize. If you can read your question again, I will

8 stop you when I think you have completed a question,

9 I'll answer it, and then we can move on. That might be

10 easier for me.

11   COMMISSIONER LEVAR: Is that okay for you,

12 Mr. Moore, to proceed that way?

13   MR. MOORE: Yes. Let me just ask a brief

14 question. My memory is that you stated that all DEU is

15 required to do in a nondiscriminating manner, as set out

16 in the commission's order, is to provide DPS with two

17 benefits, providing customers information and providing

18 billing services. My memory was, you answered that's

19 correct.

20   MR. MENDENHALL: That's what we said in that

21 paragraph.

22   MR. SABIN: If you're asking if that's all

23 they are required to do under the tariff, I think that's

24 a different question. That's where I think the

25 confusion comes. Are you asking if that's all that was

1 covered in that paragraph? Or are you asking if that's

2 all that is required to do under the tariff to

3 administer it?

4   MR. MOORE: I am just referring to the

5 paragraph.

6   MR. MENDENHALL: So the paragraph, I believe,

7 is talking about the tariff, and the tariff is very

8 narrow. Actually, the tariff really just explains how

9 the company will administer third party billing. So

10 that's really all that's required under the tariff.

11   Now, the customer information is a different

12 issue. There are state statutes that deal with that,

13 and we're proposing language that would include how

14 that's treated going forward. But for purposes of the

15 tariff as it's written today, the only thing that's

16 required of Dominion Energy Utah under the current

17 existing section of the tariff related to their party

18 billing is how that third party billing would be

19 administered. I don't know if that answers your

20 question.

21   MR. MOORE: Yes, but let me read you a direct

22 quote from the commission's November 20th, 2017, order.

23 "The PSC acknowledge the tariff provision allowing third

24 party billing service is new, and reiterates that in

25 rolling out and administrating the program, Dominion

1 must comply with all statutory requirements and act in a

2 nondiscriminatory manner."

3   And your statement is, and correct me if I am

4 wrong, you interpreted that commission's order applying

5 only to providing billing services and providing

6 customer information.

7   MR. MENDENHALL: Well, when I read that

8 sentence, I think that sentence says, the third party

9 billing tariff. Well, I'll just reread it. I have it

10 in front of me. "Dominion must comply with all

11 statutory requirements and act in a nondiscriminatory

12 manner." So to me that means the tariff as well as any

13 state law.

14   MR. MOORE: All right. You would agree with

15 me that the commission, rather than me or you, know what

16 they meant by act in a nondiscriminatory manner?

17   MR. MENDENHALL: I would agree the commission

18 knows what they mean, yes.

19   MR. MOORE: And my final answer on this

20 question is, that -- well --- I'd leave it with that,

21 and we'll leave it with the commission. Okay.

22   COMMISSIONER LEVAR: I'd like --

23   MR. MOORE: I'd like to make a motion now to

24 go into closed session to enable the commission to

25 examine relevant provisions of the commission agreement,

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1 which was discussed in the technical conference, and has

2 been designated as highly confidential. This agreement

3 is highly relevant to the question of whether DEU can

4 administer the tariff in a nondiscriminatory manner,

5 which is a central and probing issue in this docket. It

6 is in the public interest to close the hearings for the

7 commission to have a better understanding of the impact

8 of this agreement.

9   COMMISSIONER LEVAR: Okay. Thank you. So

10 with that motion, it would require the commission to

11 make finding that closing the hearing to the public is

12 in the public interest. Let me ask the parties, is

13 there any objection to the motion?

14   MR. SABIN: We have discussed it with Robert

15 before the hearing. We're fine with that.

16   COMMISSIONER LEVAR: Okay. Do either of my

17 colleagues see a need to deliberate or step out?

18   COMMISSIONER WHITE: No.

19   COMMISSIONER LEVAR: Okay. The motion is

20 granted. We will discontinue the streaming, and this

21 portion of the hearing will be designated as

22 confidential in the transcript. Let me know when the

23 streaming has been disconnected.

24   MR. SABIN: I think we also need to make sure

25 anybody here --

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1   COMMISSIONER LEVAR: Yeah, is there anybody in

2 the room who is not privy to highly confidential

3 information? I will ask the parties to look around the

4 room and tell me. There's only one person in the room I

5 don't know who you are so...

6   MR. MARGETTS: I'm George Margetts, Dominion

7 Energy.

8   COMMISSIONER LEVAR: Okay.

9   MR. SABIN: I just would wonder if everybody

10 has signed the protective order.

11   COMMISSIONER LEVAR: You need a moment to

12 figure that out?

13   MR. SABIN: I don't know who has or who

14 hasn't.

15   COMMISSIONER LEVAR: Shall we take a two or

16 three minute recess to work that out? Okay. I'll turn

17 the speaker volume down and the hearing loop system off

18 while we're in closed.

19   (Discussion off the record.)

20   * * *

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 1                OPEN PUBLIC HEARING RESUMED

 2                        * * *

 3           COMMISSIONER LEVAR:  Okay.  No other

 4  objections.  Okay.  We're back open to the public.

 5  We'll start the streaming, and the transcript will

 6  reflect open hearing from this point.

 7           Mr. Moore, do you have any more

 8  cross-examination.

 9           MR. MOORE:  No further questions.

10           COMMISSIONER LEVAR:  Okay.  Any other

11  redirect?  Mr. Sabin.

12           MR. SABIN:  Yes.  Just a few items.

13                REDIRECT EXAMINATION

14           MR. SABIN:  Mr. Neal, are you aware of any

15  instance where the utility has conveyed, or any party

16  has purchased, the goodwill of the utility in any

17  agreement anywhere?

18           MR. NEAL:  No.

19           MR. SABIN:  And I think you referenced this,

20  but I just want to make clear.  As far as the parties,

21  and this isn't highly confidential information, but with

22  regard to the commission agreement, I think you made it

23  clear earlier that Dominion Energy Inc. is a party in

24  its own right, not as it -- not in its capacity as an

25  owner of DEU.  DEU is specifically carved out of that?
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1   MR. NEAL: Yes.

2   MR. SABIN: Is that correct?

3   MR. NEAL: Yes.

4   MR. SABIN: Mr. Mendenhall, in Section 1.3, or

5 exhibit -- excuse me, DEU Exhibit 1.3, if you could open

6 that up. You were asked about this exhibit earlier in

7 the day by counsel for the division, and she showed you

8 the document, said, do you see HomeServe or Dominion

9 Products and Services referenced on that page. Do you

10 recall that?

11   MR. MOORE: This is outside the scope.

12   MR. SABIN: She directly asked about this

13 page.

14   COMMISSIONER LEVAR: I think he is responding

15 to Ms. Schmid's cross-examination.

16   MS. SCHMID: And I will object, saying it is

17 outside the scope.

18   COMMISSIONER LEVAR: Okay. We're -- this is

19 the Dominion Energy Utah billing page?

20   MR. SABIN: Yes. That she showed

21 Mr. Mendenhall earlier, and I want to ask about that

22 question.

23   COMMISSIONER LEVAR: I think I remember her

24 asking if Dominion Energy Utah was on this page

25 anywhere. Can you repeat your question again?

1   MR. SABIN: Well, she may have asked that. I

2   am not really probing that question.

3   COMMISSIONER LEVAR: Sure.

4   MR. SABIN: I want him to turn to the next

5   page, if I could, and just ask if HomeServe is

6   referenced on that document?

7   MS. SCHMID: And I would object saying it's

8   beyond the scope of my cross.

9   COMMISSIONER LEVAR: I think where you asked

10   questions about what companies are represented on this

11   billing statement, I'm going to -- I think it's within

12   the scope of that.

13   MR. MENDENHALL: Yes.

14   MR. SABIN: In what context is HomeServe

15   referenced there?

16   MR. MENDENHALL: So on page 2, that is the

17   section where the customer would receive their charge

18   for signing up for HomeServe service, and so it says,

19   "HomeServe products and services," and then it indicates

20   which service plan the customer signed up for and the

21   charge.

22   MR. SABIN: Okay. Earlier you talked about

23   DPS being brought up during the tariff proceedings. I

24   failed to ask you, why was that? Why did the utility

25   bring up DPS expressly during the tariff proceedings for

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1 the proposed tariff under 8.08?

2   MR. MENDENHALL: During the proceeding, at

3 that point, it was planned that Dominion Energy would be

4 entering into agreement with Dominion Products and

5 Services for third parties billing services, and because

6 that was -- that was really the only entity that was

7 being considered, they -- they were talked about at

8 length during that proceeding.

9   MR. SABIN: Do you see a benefit to a

10 utility -- to DEU being involved in the process of third

11 party billing in the way that it currently is?

12   MR. MENDENHALL: Yes. I think there's -- I

13 think there are some customers who see value in having

14 this product. I think from a billing standpoint, having

15 the ability to have, you know, multiple products on one

16 bill for convenience reasons adds value for customers,

17 as well as the services that they sign up for. Peace of

18 mind that comes from signing up for warranty services.

19   MR. SABIN: And you were asked a question

20 about -- by Mr. Moore about rate class being disclosed,

21 and I think -- I just want to make sure the record is

22 clear. Do you know -- do you know whether there was any

23 specific disclosure of rate class to HomeServe or DPS?

24   MR. MENDENHALL: No. My understanding is that

25 we gave them the customers that would qualify, which

1 would be our residential and commercial customers, which

2 just happened to be all part of the general service

3 class.

4   MR. SABIN: And then finally, the division,

5 it's come up a couple of times, the division's tariff

6 changes as opposed to the company's tariff change. Can

7 you just comment on the division's proposed change and

8 why that would or would not be workable for the company?

9   MR. MENDENHALL: Yeah, as I mentioned in my

10 comments, it's very narrow in the language. And I think

11 it would make it difficult for us to move forward

12 utilizing third party providers, which is banks and

13 rebate processors who use our customer information to do

14 their job and to, you know, deal with day-to-day

15 operations.

16   MR. SABIN: That's all the questions I have on

17 this for redirect.

18   COMMISSIONER LEVAR: Okay. Ms. Schmid, any

19 recross?

20   MS. SCHMID: Actually, yes.

21   RECROSS EXAMINATION

22   BY MS. SCHMID: Based upon the questions that

23 utility counsel asked, if the utility contemplated DPS

24 as participating when the tariff provisions were in

25 front of the commission and that docket was being

1 discussed, how did the utility plan to distinguish the

2 service as different? And I would like to address that

3 to Mr. Mendenhall.

4   MR. MENDENHALL: So give me that last part of

5 the question.

6   MS. SCHMID: How -- if the -- since the

7 utility contemplated that DPS would be a provider under

8 the tariff, how did DP -- how did the utility plan to

9 distinguish the service as being different from the

10 utility itself? I'd like to address that to

11 Mr. Mendenhall.

12   MR. MENDENHALL: So if you can give me a

13 moment. I wasn't involved in the docket, so I prefer to

14 take a moment to look at what we said and maybe answer

15 the question that way, to give you a better answer than

16 me just guessing.

17   MS. SCHMID: I think that would be beneficial.

18   MR. MENDENHALL: I'm not seeing anything in

19 the direct testimony, but I believe the plan was to

20 distinguish the difference between Dominion Energy Utah

21 and Dominion Products and Services. So they would know

22 that it was an affiliate providing the service.

23   MS. SCHMID: Since in actuality DPS is the

24 third party biller, why was there not a distinction made

25 between DEU, the utility, and DPS in the letters and

1 other communications?

2   MR. MENDENHALL: I think actually HomeServe is

3 the third party biller. I mean, as we just went through

4 on the bill, it's HomeServe Products and Services' name

5 that's on the bill.

6   MS. SCHMID: I thought that I heard Mr. Neal

7 say that the third party billing agreement, and the

8 agreement itself, reflects that DPS is the third party

9 biller. Am I incorrect on that?

10   MR. MENDENHALL: We're going to turn to the

11 agreement. To answer your prior question, I think the

12 way we would have contemplated it on the bill is instead

13 of HomeServe Products and Services, you would have seen

14 a Dominion Products and Services, or some kind of a

15 distinction between the utility and its affiliate, when

16 they saw their charge come through on their bill.

17   MS. SCHMID: And if I may, I will refer to the

18 billing services agreement, which is attached as DEU

19 Exhibit A, having nine pages to its reply comments

20 submitted on --

21   MR. MENDENHALL: I have got it.

22   MS. SCHMID: -- on the 19th?

23   MR. MENDENHALL: Yes.

24   MS. SCHMID: Wherein Questar Gas Company, dba

25 Dominion Energy Utah, is delineated and identified as

1   the company, and Dominion Products and Services Inc. is

2   the service recipient. And if I -- will you accept my

3   representation that paragraph 2, Roman numeral 2,

4   states, "Third party service providers. It is

5   understood and agreed that the service recipient may

6   market and sell the programs directly via a third party

7   approved by the company."

8   MR. MENDENHALL: Is that --

9   MS. SCHMID: Did I read that correctly?

10   MR. MENDENHALL: Yes, you did. You did read

11   that correctly.

12   MS. SCHMID: That's all the redirect -- or

13   recross I had. Thank you.

14   COMMISSIONER LEVAR: Thank you. Mr. Moore,

15   any recross?

16   MR. MOORE: No.

17   COMMISSIONER LEVAR: Okay. Why don't we take

18   a 10 minute recess and then we'll have questions from

19   commissioners.

20   (Recess from 2:27 p.m. to 2:36 p.m.)

21   COMMISSIONER LEVAR: Okay. We're back on the

22   record, and I think we're ready for questions from the

23   commission for Mr. Mendenhall or Mr. Neal. So I will

24   start with Commissioner Clark.

25   COMMISSIONER CLARK: Thank you. I have a few

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 1 questions. The initial questions are really background,

 2 and I think their answers are in the paper somewhere,

 3 but they haven't come out today yet. To help us have a

 4 complete record, I want to ask them. By complete

 5 record, I mean a transcript that covers the topics.

 6   So first, I am going to ask a couple of

 7 questions about the settlement stipulation in Docket No.

 8 16-057-01. The stipulation formed the basis of the

 9 commission's approval of the merger of Questar

10 Corporation and Dominion Resources Inc.

11   And my first question pertains to paragraph 27

12 of this agreement which says, "Dominion Questar Gas will

13 not transfer material assets to or assume liabilities of

14 Dominion or any other subsidiary of Dominion without the

15 commission's approval." And Dominion Questar Gas is now

16 Dominion Energy Utah, correct, Mr. Mendenhall?

17   MR. MENDENHALL: That's correct.

18   COMMISSIONER CLARK: So what's the company's

19 perspective with respect to this stipulation covenant

20 and the information and the transfers that we -- have

21 been the subject of this hearing between Dominion Energy

22 Utah and Dominion Products and Services?

23   MR. MENDENHALL: Right. So with respect to

24 customer information, I guess, when I read that

25 provision of the stipulation, to me I -- the transfer of

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1 assets to me is something that the company owns and then

2 transfers to another entity.

3   In this case with customer data, we are not

4 transferring ownership of that data anyone. We are

5 letting Dominion Products and Services use that data,

6 but Dominion Energy Utah continues to own that data.

7 And at any point if we said, we want it back, I think

8 that the provisions of the agreements allow us to get

9 that back.

10   So that's why we -- we once a year report --

11 we have an affiliate transaction report that we provide,

12 I believe it's July 1st of every year. And that's why

13 when we filed the most recent one this year, you didn't

14 see any discussion of customer information. I think

15 it's our way we look at it is not as an asset.

16   COMMISSIONER CLARK: Okay. Thank you. And

17 then paragraph 32 describes an advisory board that,

18 "Dominion would establish for its western region

19 operations composed of regional business and community

20 leaders, and that this board will meet and receive

21 information and provide feedback on, among other things,

22 community issues, economic development opportunities,

23 and other related activities that affect Dominion's and

24 Dominion Questar Gas or Dominion Energy Utah local

25 stakeholders."

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1   So your -- I believe you have informed us, at

2   least at the technical conference, and maybe it's in the

3   record or in the papers somewhere, that the service

4   offering that we're talking about today was not

5   discussed with this advisory board; is that correct?

6   MR. MENDENHALL: That's correct. The board

7   meets, I believe, three times a year. And then I think

8   there's a field trip that they go on. And if you look

9   at the time line, I think the most recent meeting that

10   we had had when this -- these mailings went out, is --

11   these mailings went out in April, I think.

12   The meeting prior to that had been in, I'm

13   going from my memory here, but November, December of the

14   prior year. So at that point in time, it hadn't been

15   discussed. It hasn't been discussed with the advisory

16   group in subsequent meetings either.

17   COMMISSIONER CLARK: Including the most recent

18   meetings?

19   MR. MENDENHALL: That's correct.

20   COMMISSIONER CLARK: Thank you. As far as you

21   know, has Dominion Energy Utah or its predecessor

22   utility company ever sold its customer address list to

23   any entity?

24   MR. MENDENHALL: Not to my knowledge, no.

25   COMMISSIONER CLARK: And to your knowledge,

1 does any other entity in Utah do business in Utah as

2 Dominion Energy or Dominion Energy Utah or any other

3 form of the Dominion Energy name?

4   MR. MENDENHALL: Dominion Energy Utah, no. I

5 do know that Dominion Energy owns some solar properties

6 in central Utah, and I would assume that they use the

7 Dominion Energy name with those properties. That's the

8 only other instance I can think of.

9   COMMISSIONER CLARK: And the energy generated

10 is disposed of how, if you know?

11   MR. MENDENHALL: I believe it is sold onto the

12 open market and ultimately ends up in California. But

13 I'm not a hundred percent sure. But I'm fairly certain

14 that's the arrangement.

15   COMMISSIONER CLARK: Could we safely assume

16 that unless you are in the energy -- renewable energy

17 trading business, one probably wouldn't know about that

18 aspect of Dominion Energy's presence in Utah?

19   MR. MENDENHALL: Yes, I would agree with that.

20   COMMISSIONER CLARK: So is it fair for us all

21 to conclude that Dominion Energy and Dominion Energy

22 Utah are basically synonyms, in this state at least?

23   MR. MENDENHALL: For a customer in this state,

24 there is probably no distinction.

25   COMMISSIONER CLARK: I'd like you to look at

1 DEU Hearing Exhibit 1.2. I referred to this earlier.

2 It's the letter that was sent out a couple of weeks

3 after the customer questions started to come to both, I

4 think to Dominion Energy Utah and also to the DPS and to

5 the office and to the commission, regarding the

6 HomeServe offer. And so do you have that in front of

7 you?

8   MR. MENDENHALL: I do.

9   COMMISSIONER CLARK: And the letter is

10 addressed dear customer, and its signed by Colleen

11 Larkin Bell, vice president and general manager. So

12 she's the general manager of what?

13   MR. MENDENHALL: Dominion Energy Utah.

14   COMMISSIONER CLARK: Okay. And as we -- as I

15 noted earlier, the logo -- the only logo on the letter

16 is Dominion Energy, correct?

17   MR. MENDENHALL: Correct.

18   COMMISSIONER CLARK: And the final sentence in

19 the first paragraph, "These services are offered by our

20 partner, HomeServe USA." Isn't the fair conclusion from

21 that sentence that Dominion Energy Utah is a partner of

22 HomeServe USA, because this letter is coming from the

23 general manager of Dominion Energy Utah?

24   MR. MENDENHALL: I could see how a customer

25 reading that -- this letter would come to that

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1 conclusion.

2   COMMISSIONER CLARK: Is there anything in the

3 letter that would lead to a different conclusion?

4   MR. MENDENHALL: The only thing in the letter

5 I guess that would distinguish Colleen Larkin Bell and

6 their company would be on the top left side of the

7 letter where it says, Dominion Energy Utah, and it has

8 the mailing address. But other than that, I don't see

9 anything.

10   COMMISSIONER CLARK: And correct me if I'm

11 wrong, but to me that just more firmly connects Dominion

12 Energy Utah and HomeServe USA as in a partnership

13 relationship?

14   MR. MENDENHALL: It could. Yes, I can see how

15 someone could interpret it that way.

16   COMMISSIONER CLARK: So I have a hypothetical

17 question for you. I represent in this hypothetical ABC

18 home services products, and I come to Dominion Energy

19 Utah, and I say to you, I would like to engage your

20 third party billing services for products and services

21 that are basically the same as HomeServe USA. Are you

22 willing to bill for me?

23   MR. MENDENHALL: So I would give you the

24 tariff provisions, and I would say, if you can comply

25 with these tariff provisions, then yes, you can be in

1 our bill.

2   COMMISSIONER CLARK: And if I say to you, and

3 I would like to put Dominion Energy's logo on my

4 solicitation materials that I mail to your customers,

5 are you willing to allow me to do that?

6   MR. MENDENHALL: So the utility doesn't own

7 the logo. It doesn't have the right to license the

8 logo. So I would at that point have to direct them to

9 the corporate parent, and they would have to get in

10 touch with them and have them answer that question.

11   COMMISSIONER CLARK: And in fact the covenants

12 in an agreement that we have talked about today would

13 prevent that, would they not?

14   MR. MENDENHALL: If it were similarly

15 situated, I am not an expert on the agreement, but it

16 seems to be that it would prevent it.

17   COMMISSIONER CLARK: And if I say to you, I'd

18 like to represent that you're my business partner in

19 offering these services to your utility customers, are

20 you willing to allow me to do that?

21   MR. MENDENHALL: I think what we would be

22 willing to do, as a utility would be, to put you on the

23 bill as a third party, and that's probably as far as the

24 utility would be willing to go.

25   COMMISSIONER CLARK: So you wouldn't allow me

1 to represent myself as the partner -- your partner in

2 offering the services that I am offering?

3   MR. MENDENHALL: Probably not.

4   COMMISSIONER CLARK: Earlier you described the

5 market value of the customer list as you have determined

6 it, and I assume from your answer that that was a list

7 of 550,000 people's addresses in Utah -- or of your

8 customers in Utah; is that correct?

9   MR. MENDENHALL: Yes. So we have about 95

10 percent market saturation in the state. So it --

11 basically you could get a list of all of the customers

12 in Utah by zip code, and based on that information, you

13 could come pretty close to recreating our customer list

14 using that information.

15   COMMISSIONER CLARK: Okay. And I think what

16 you were saying is that I could go and buy that from

17 somebody that had gone to that trouble for $25,000?

18   MR. MENDENHALL: Right. It's available on the

19 market for that price.

20   COMMISSIONER CLARK: Right. But that -- would

21 that include then Dominion Energy Utah's endorsement of

22 the product, my product that I want to offer to the

23 people that are on that list of 550,000? In other

24 words, your valuations, does it include Dominion Energy

25 Utah's endorsement or its characterization of being a

 1 business partner --

 2   MR. MENDENHALL: Oh no.

 3   COMMISSIONER CLARK: -- with or anything like

 4 that?

 5   MR. MENDENHALL: No. It would simply be

 6 customer name and address.

 7   COMMISSIONER CLARK: And now a question or two

 8 for Mr. Neal. I think it was that you talked about the

 9 use of the logo?

10   MR. NEAL: Yes.

11   COMMISSIONER CLARK: And strict contractual

12 provisions that govern that use?

13   MR. NEAL: Yes.

14   COMMISSIONER CLARK: And can you provide us

15 with some representative provisions that restrict the

16 use of that logo? Are you conversant enough with the --

17   MR. NEAL: I can tell you from kind of a

18 business perspective --

19   COMMISSIONER CLARK: Sure.

20   MR. NEAL: -- as it relates to this. And if I

21 am going off track, obviously get me in the right place.

22 That we have a corporate branding group. I am not sure

23 if that's the name of it. But they have actually got a

24 document that very clearly describes exactly how the

25 Dominion Energy logo can be used, down to the color, the

1 white space around the Dominion Energy logo.

2   So basically any of these hundred plus

3 entities that are using the Dominion Energy logo have to

4 abide by kind of all those rules and regulations that

5 are included in that corporate branding guideline. Was

6 that what you were asking.

7   COMMISSIONER CLARK: Yes.

8   MR. NEAL: Okay.

9   COMMISSIONER CLARK: Do any of those

10 provisions have as their purpose avoiding confusion

11 between Dominion Energy Utah and its parent Dominion

12 Energy, or avoiding confusion between any affiliated

13 entity and the parent company?

14   MR. NEAL: To my knowledge, there aren't any

15 specific tie-ins to any of those entities, subentities

16 that use the logo.

17   COMMISSIONER CLARK: And in fact, isn't the

18 purpose of the logo the opposite of that? That is to

19 drape all of the entities with the corporate cachet that

20 goes with Dominion Energy as a parent company?

21   MR. NEAL: I wasn't part of the actual

22 detailed branding effort, but I would assume -- I know

23 just with some of the terminology that we use, in some

24 cases it was Dominion and in some cases it was Dominion

25 Energy. In some cases it didn't have Dominion in it at

1 all. So part of that rebranding was to kind of get it

2 all under the same umbrella.

3   And I'm not sure again, if the ultimate

4 objective was to leverage or do anything off of the

5 cachet. But do I think that this is more of a layman's

6 or business perspective, that Dominion is -- I mean,

7 it's proud of its affiliates and how we treat customers.

8 So basically wanted to, you know, have that consistency

9 across the entities. But again, I don't know that for a

10 fact as far as all of the rationale behind that.

11   COMMISSIONER CLARK: Okay. Thank you very

12 much. Those conclude my questions. Those are my

13 questions.

14   COMMISSIONER LEVAR: Okay. Thank you.

15 Commissioner White?

16   COMMISSIONER WHITE: Yeah. Just wanted to

17 follow up on a line of Commissioner Clark's questioning.

18 I think what we're talking about here is, you know,

19 discrimination, you know, as among or between the

20 potential third party, you know, services, you know,

21 under the tariff, et cetera.

22   Let me ask you a question, you know, with

23 respect to 54-3-8, which is the -- which is the statute

24 that addresses preferential treatment. I just want to

25 be careful about the term discrimination because, you

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1 know, we use that term a lot in our world. Typically,

2 what that addresses is discrimination as between or

3 among customer -- customers classes, I guess. This is

4 probably a question for one of the attorneys, I guess.

5   But what -- what is your -- or do you have an

6 opinion as to your interpretation of that in the context

7 of what is potentially, you know, being alleged in the

8 circumstance, I guess as among potential noncustomer

9 parties? And I guess an argument could be made that,

10 you know, these are, are they customers of the utility?

11 Help me understand here. I am just trying to wrap my

12 head around what kind of discrimination we are talking

13 about here.

14   MR. SABIN: Well, I think we have to be

15 careful first off, because it is not uncommon and hasn't

16 been historically, regardless of whether it was Questar

17 or Mountain Fuel or whatever. There are affiliated

18 third parties that do lots of business with the company

19 that go out, under our kind of approval.

20   And sometimes it's been approval specifically

21 telling customers, this service provider is awesome, use

22 them. And if you don't -- we have even gone so far as

23 to say, if you don't use them, you won't get a rebate.

24 So it can't be that -- I don't think the statute was

25 intended to mean that the utility can never express an

1 opinion about a service provider who could provide

2 quality services to its customers within that field.

3   I have always understood the statute to mean

4 that in the context of the way you treat customers and

5 the way you provide services to customers, you can't

6 give some preference to one group over another, because

7 if you do that, and certainly that -- rates is the easy

8 one, right? I mean, you can't charge an unfair rate to

9 a specific group, you know, and it's also pretty easy,

10 charges and, you know, facilities. I mean, I don't

11 actually know that that's ever come up to my knowledge.

12   So the only language here that I am not

13 absolutely clear on is, you know, who any person --

14 advantage any person relates to. I don't know that

15 there's a definition. I've actually done research on

16 the statute back to when it was created, and I don't

17 think the legislature expressed a view on that.

18   But I -- I know, Commissioner, that it can't

19 mean, at least nobody has ever asserted that it means

20 that the utility cannot express a view, or cannot

21 provide information to a customer about a service

22 provider, because that has been allowed and has been

23 done historically a long time.

24   Now, I'll grant you, this is slightly a

25 different circumstance. But I don't think the statute

1 means that you cannot say -- you can't say this service

2 is good or, you know, we think you ought to consider it

3 or this service provider is good. That's happened and

4 is happening today in all sorts of contexts.

5   COMMISSIONER WHITE: And again, I don't want

6 to -- I don't know if I got the answer to this in terms

7 what the legislature was thinking. I guess, if we are

8 trying to protect customers, by customers I mean, you

9 know, gas customers of the DEU, is there -- is there a

10 potential benefit from having a lower case

11 nondiscriminatory treatment of potential service

12 providers in the sense that there will be higher levels

13 of competition that will flow?

14   I mean, is that -- I mean, I'm just trying to

15 think about the twists in terms of what this means in

16 this context.

17   MR. SABIN: I guess I'd say two things on

18 that. First, I think you do want your utility to have

19 the ability to provide customers with information the

20 utility determines is helpful to them. Now, there's

21 limits to that for sure.

22   Second point I think I would make is that if

23 the utility could never speak to say we don't like this

24 or we do like this, then you are really tying the

25 utility's hands in its ability to make sure customers

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1 get good information.

2   Now, we can all debate whether that's in play

3 here or whether, I mean, I guess reasonable minds can

4 disagree whether they think warranty services are good

5 or not. Some customers clearly thought that they are or

6 they wouldn't be paying for it.

7   But I don't think that -- I think the

8 preference and the discrimination that we are talking

9 about historically in the cases that I have seen come

10 out of the commission or their orders has been where

11 there's been an out-and-out financial benefit given by

12 the utility itself to somebody or group.

13   And I want to point out here, Commissioner,

14 that this is the utility, you may not do something,

15 right? The utility can't go out and do it. So we have

16 to distinguish there, too. It has to be the utility

17 taking the action. Has to be a preference, and it has

18 to be a preference that is intended to be covered by the

19 statute. I don't know if that answers your question.

20   COMMISSIONER WHITE: Yes. You know, that's

21 helpful. And I think with the Chair's indulgence, I

22 mean, I am wondering if we want to just offer a quick

23 response from the division and office. Their attorneys?

24   COMMISSIONER LEVAR: Yeah. Maybe we can

25 finish questions for the witnesses.

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1   COMMISSIONER WHITE: Yeah. I just want to

2   make sure they understood. I can see they are champing

3   at the bit at this, so I want to make sure they -- but

4   yeah, that's all the questions I have with respect to

5   this issue.

6   COMMISSIONER LEVAR: You are done?

7   COMMISSIONER WHITE: Yes, I am done.

8   COMMISSIONER LEVAR: Mr. Neal, I apologize if

9   this is a completely obvious question, or if it's in the

10   record, or it's not in the record, because it doesn't

11   need to be because it's so obvious, but on your Exhibits

12   3.2 and 3.3, on both of those exhibits that are proposed

13   marketing materials, depending on the outcome of this

14   hearing, the yellow highlighting on both of those

15   exhibits is not intended to be in them when they are

16   mailed out. Am I assuming correctly?

17   MR. NEAL: Yes. I'm sorry, I should have made

18   that distinction, yes. This was as part of our comments

19   just to demonstrate where we are attempting to be

20   responsive.

21   COMMISSIONER LEVAR: Okay. I think you

22   clarified that, but I wasn't sure.

23   MR. NEAL: Can I add one other quick thing.

24   I -- and I think that's definitely the case for Exhibit

25   3.3. So when this would go out with the letter, none of

1 the highlighting would be on it. But if you refer to

2 Exhibit 3.2, I do believe -- I guess I am not going to

3 say I believe it's the case, but the repair and

4 replacement of appliances are not included in the

5 coverage, and the typical homeowner's responsibility may

6 be highlighted.

7   COMMISSIONER LEVAR: Okay. Thank you. That

8 answers that question. I believe I heard you this

9 morning talking about a few examples from other states

10 where similar third party warranty service issues were

11 provided. I remember one example you gave was SCANA.

12 And am I correct that that's currently, or at least

13 until recently or maybe still, is an affiliate of

14 Dominion, correct, in South Carolina?

15   MR. NEAL: It is not.

16   COMMISSIONER LEVAR: It's not any more or

17 never was?

18   MR. NEAL: It is not.

19   COMMISSIONER LEVAR: Okay. I know I have read

20 some trade press recently on SCANA so I don't know if

21 there's sensitive things that --

22   MR. NEAL: A deal, it hasn't been consummated.

23 I don't know the right legal way to say that. I mean,

24 we are attempting --

25   COMMISSIONER LEVAR: Well, let me just ask

 1 this question.

 2   MR. NEAL: -- to partner with them.

 3   COMMISSIONER LEVAR: Let me change my

 4 question. A year ago -- oh, I was thinking the

 5 opposite. Never mind. Yeah. Okay. Let me ask the

 6 question in a different way.

 7   Were any of the examples that you gave of

 8 utilities that operate in a state under the Dominion

 9 name where the marketing materials were also sent out

10 under the Dominion name but not on behalf of the

11 utility?

12   MR. NEAL: Yes.

13   COMMISSIONER LEVAR: Yes. Okay. Do you know

14 of any?

15   MR. NEAL: Yes. In Ohio and also in Virginia.

16   COMMISSIONER LEVAR: Okay. Mr. Mendenhall,

17 you were -- Commissioner Clark was asking you some

18 questions about value of customer lists. What value is

19 there to knowing that a name and address on the customer

20 list is a utility accountholder? For example, if I had

21 four adult family members living in my home, what value

22 is there to being able to identify this name of those

23 four is the utility account holder?

24   MR. MENDENHALL: So I think there's -- there's

25 a couple pieces of value that getting the information

1 from the utility provides. First of all, it gives you,

2 you know the person who, I guess, make those kind of

3 decisions in the household. So it's being directed to

4 the right person.

5   The other thing, the other piece of value I

6 think it adds, and I mentioned the do not solicit list,

7 is when we have a customer call and say, hey, I don't

8 want to receive these materials any more, we can flag

9 that and make sure that those names and addresses are

10 not provided. And so it adds additional value for those

11 who may want to receive the information as well as those

12 who do not. We can ensure that those who do not want to

13 receive it don't -- don't get it. So...

14   COMMISSIONER LEVAR: Okay. Both the division

15 and the office have talked about a need for a rule

16 making docket to establish rules for marketing to

17 utility customers, third party marketing to utility

18 customers.

19   MR. MENDENHALL: Right.

20   COMMISSIONER LEVAR: From just a public policy

21 perspective, I'm asking you your thoughts on public

22 policy. What would you see, if we were in the middle of

23 a process like that, is the pros and cons of a customer

24 of a monopoly utility having an option to opt out of

25 marketing from third parties, because they are a

 1 customer of a monopoly utility, versus the requirement

 2 that the customer opt in to third party marketing?

 3   MR. MENDENHALL: The benefits? The pros and

 4 cons? Or --

 5   COMMISSIONER LEVAR: Any thoughts you have on

 6 those two policy options.

 7   MR. MENDENHALL: Yeah, so I guess --

 8   COMMISSIONER LEVAR: And I know I am getting

 9 off of the testimony.

10   MR. MENDENHALL: That's fine. So I guess, it

11 all depends on what kind of a customer you are, right?

12 If you are a customer who doesn't want to receive any of

13 that information, then the opt in is going to be a

14 better option for you, because then you don't have to

15 deal with it.

16   If you are a customer who could potentially

17 see value in that, then the opt out option would be

18 better for you, because you would be able to receive

19 that information and then make a decision once you

20 receive it, whether this is something of value to me

21 going forward or not. So I guess it just depends on the

22 type of customer and what people's preferences are.

23   COMMISSIONER LEVAR: Would you see value to

24 administrative rules dealing with issues like third

25 party marketing of companies with names like Dominate

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1 Energy Utah or Public Service Company of Utah? Are

2 those issues that you think would be appropriate to deal

3 with in an administrative rule?

4   MR. MENDENHALL: So the name and brand.

5   COMMISSIONER LEVAR: Yeah. Names similar to a

6 utility name or similar to a government agency.

7   MR. MENDENHALL: Oh to --

8   COMMISSIONER LEVAR: You know, for example, if

9 a company wanted to market warranty services under the

10 name Dominant Energy Utah, or Public Service Company of

11 Utah.

12   MR. MENDENHALL: Got it. Right. Well, I

13 guess if the commission saw potential issues of

14 confusion with providers like that, and saw that it

15 could be a potential problem down the road, then it

16 would probably be worth addressing that. I guess I

17 would leave that to the discretion of the commission.

18   COMMISSIONER LEVAR: Okay. I think that's all

19 the questions I have.

20   And so I know we have gone through several

21 legal topics that I think some of the attorneys might

22 want to still continue a little bit of proffer or

23 discussion or however that ought to move forward.

24 Ms. Schmid, you seem like you have some issues you want

25 to jump into right away, so we'll go to you.

1   MS. SCHMID: Thank you. I would like to --

2   the opportunity to address Commissioner White's question

3   regarding 54-3-8. In addition, if the commission

4   believes it's appropriate after I finish that, I can

5   address the question asked earlier if the third party

6   billing could be done absent a tariff, or I can do that

7   at a later time. It's up to the commission. But now I

8   would like to address 54-3-8. Thank you.

9   I respectfully disagree with the

10   interpretation of Mr. Sabin. I believe that 54-3-8 is

11   applicable to the situation at hand, and I believe that

12   it is determinative in part at the situation in hand.

13   It goes to the heart of what we are contesting here.

14   What we're contesting here is that the utility unfairly

15   discriminated, giving someone an advantage, and that

16   advantage was its DPS and HomeServe through the use of

17   the word Dominion and Dominion Energy in the letters.

18   It's important to note that 1A doesn't just

19   talk about rates charges and service or facilities, it

20   says, "or in any other respect." That respect should be

21   applied to situations involving the application of an

22   approved tariff and the actions of the public utility.

23   In addition, that provision states "person."

24   That provision doesn't state "subject any customer." It

25   says "subject any person." And if we look at other

1 statutory provisions, and the one that jumped out at me

2 because of IRP issues was 54-3-31, and in that statute

3 customer is specifically referenced. Whereas here it's

4 any person.

5   So it's the opinion of the division that the

6 statute applied and that it has been violated by the

7 actions of the utility. Thank you.

8   COMMISSIONER LEVAR: And did you want to

9 address the 54-4-37 issue now?

10   MS. SCHMID: I would love to. The division

11 believes that third party billing must be done through a

12 tariff and an order approving that tariff, that it

13 cannot be done absent those two things. And the

14 division looks at 54-3-2, schedule of rates and

15 classifications, where it says that things on a bill

16 must be approved by the commission. Looks at 54-3-7,

17 54-3-8, and 54-3-23-4, as evidencing that fact.

18   I could go into greater detail, but I believe

19 that unless the commission desires more discussion,

20 simply the reference to the statutes should be

21 sufficient in explaining the division's position.

22   COMMISSIONER LEVAR: That satisfies my

23 questions, but if the other two commissioners have

24 further questions for Ms. Schmid.

25   MS. SCHMID: Thank you.

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1   COMMISSIONER LEVAR: Okay. Mr. Moore, do you

2   have anything to add to those or to your discussion of

3   Title 13 earlier?

4   MR. MOORE: Well --

5   COMMISSIONER LEVAR: I know you addressed some

6   of these issues already.

7   MR. MOORE: I have addressed some of those

8   issues already, and I concur with the division, with

9   Ms. Schmid's analysis.

10   Just quickly on Section 13-37-102, it is the

11 office's position that the information provided to DPS

12 and eventually to HomeServe does not qualify as

13 nonpublic information or public information under the

14 statute. Rather, the statute Section 13-37-102505 would

15 identify it as nonpublic information because it does

16 identify a person, a distinction from another relating

17 to the fact that they are customers, and what class of

18 customers they are, even though it's a large group of

19 people.

20   Our major underlying point is the statute

21 provides no cover for Dominion's activity, because their

22 activity is defined as nonpublic information. Thank

23 you.

24   COMMISSIONER LEVAR: Okay. Thank you.

25   MS. SCHMID: Um.

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1   COMMISSIONER LEVAR: Let's see. I have a

2 question for Mr. Moore, and then I'll see if there's any

3 other questions. But then if anyone else wants to

4 comment on the same issues we'll allow --

5   MR. SABIN: Yeah. I haven't addressed the

6 other statutes and had some comments to Ms. Schmid's

7 comment, but go ahead.

8   COMMISSIONER LEVAR: Yeah. So I'll come to

9 you.

10   Just one question. When you look at

11 13-37-203, which is liability under that chapter, it

12 seems to vest jurisdiction for interpretation of this

13 chapter with the courts. What would be your view on

14 whether we have any jurisdiction to interpret this

15 chapter?

16   MR. MOORE: Well, I think the commission has

17 jurisdiction to apply standard law. We are not arguing

18 that they are liable under the statute for paying a

19 penalty. Rather our argument is just countering their

20 argument that the statute, what they did is provided for

21 in the statute, and we think no, it is not. We are not

22 asking, you know, for a penalty or anything like that.

23 That would be outside the purview of the commission.

24   COMMISSIONER LEVAR: Okay. Thank you.

25 Commissioner Clark, did you have any questions?

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1   COMMISSIONER CLARK: No questions.

2   COMMISSIONER LEVAR: Commissioner White, any

3   questions?

4   COMMISSIONER WHITE: No questions.

5   COMMISSIONER LEVAR: I will go to Ms. Schmid

6   next. You had one more comment and then we'll finish

7   with you.

8   MS. SCHMID: Thank you. I neglected to

9   address 13-37-101 et cetera. The division agrees with

10 the office's conclusions that this does not provide

11 cover or permission for the utility to provide the

12 information. Thank you.

13   COMMISSIONER LEVAR: Thank you. Mr. Sabin.

14   MR. SABIN: So let me start with the

15 13-37-102, et seq. I think the first issue Mr. Moore

16 raised that I want to comment on is, nonpublic versus

17 public information, and I note this only because I think

18 it's worthwhile for the commission to consider this as

19 it thinks about customer information.

20   The legislature has spoken on what information

21 it allows businesses to use in particular ways. There's

22 two statutes in the state of Utah, this one and another

23 one, and businesses in the state of Utah are allowed to

24 use customer information as public information and

25 private information where they comply with the statutes.

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1   Now, why do I bring that up? Because where

2 the legislature has spoken on something, especially on

3 an issue where it's telling businesses how you can

4 operate, that's statewide. That's utility and

5 nonutility businesses that it's applicable to. I think

6 this is applicable to the company. I think it

7 absolutely is.

8   If the company is violating the statute, it

9 can be held to account for it under the provisions. But

10 I think we need to be very careful about legislating

11 over the top of the legislature where they have set out

12 the boundaries that they want their businesses in the

13 state to operate within. We are a pro business state.

14 We're a state that, you know, customers, if I am in eBay

15 or if I am whatever company operating in the state of

16 Utah, I can use that information, public information for

17 my business purposes. Right.

18   So I say that as by way of introduction. I

19 don't think that when you look at the definition of

20 public information, it's not -- it's not really subject

21 to debate. The name, telephone number and street

22 address are public information. Why? Because you can

23 go get them anywhere. And where you are dealing with in

24 this case a utility that operates in basically the

25 entire state of Utah, except some very small areas,

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1 customers are going to be customers of the utility.

2   And so from a practical standpoint, there's

3 nothing really you are getting that's super valuable

4 here. I mean, convenience and an ability to monitor,

5 sure, but there's no doubt that it's public information

6 we are dealing with here. They haven't cited to any

7 information that was given that was used that was not

8 public. So that's number one.

9   On your question, I think it's an excellent

10 question, and one I hadn't thought about. I don't know

11 how, where the commission cannot generally award

12 penalties other than outside of its -- its specific --

13 specifically granted jurisdiction. This, you have to

14 have a determination that there's been a violation and

15 then you have to have a determination of, by somebody

16 that -- that applies this $500 per penalty damages. The

17 commission doesn't normally award damages. You award at

18 the most penalties under your own provisions. I think

19 this is outside of that.

20   I think if they want to complain, and by the

21 way, I don't have customers saying anything about that,

22 but if they want to complain, that's the right way to

23 deal with it. So unless there's questions, I'll move on

24 to the other two statutes.

25   COMMISSIONER LEVAR: I'd like to ask one

1 follow-up question to that.

2   MR. SABIN: Sure. Uh-huh.

3   COMMISSIONER LEVAR: On the definition of

4 nonpublic information --

5   MR. SABIN: Yeah.

6   COMMISSIONER LEVAR: -- I want to repeat the

7 question I asked Mr. Mendenhall before. If there were

8 four adult family members living in my home, the

9 identification of which one of those adults is the

10 utility account holder, is that public information?

11   MR. SABIN: I think if it's the name,

12 telephone number and street address, it's not nonpublic

13 information. That's in any context. Because that's

14 going to be true in any business. If I am American

15 Express and I got my customers' information, it's going

16 to reveal who the cardholder is. But the Utah State has

17 said that's public information because it's a name,

18 street address that you can go find in any phone book.

19 And if you want to market to everybody, you can.

20   So I don't think -- I don't think there's a

21 distinction there. I think you would have to know

22 some -- I think the nonpublic definition says you have

23 to know -- something else has to be disclosed in

24 conjunction with it that allows it to become not a

25 public issue, and I don't think there's anything

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1 disclosed here.

2   COMMISSIONER LEVAR: And status as a customer

3 of a particular company you don't fully qualify as that?

4 American Express customer or the --

5   MR. SABIN: Well, my understanding from the

6 way the list was produced, is it's a name, an address

7 and an identifier, that identifier number we talked

8 about. So I don't know how -- I don't know how that

9 provides something else other than it's coming from the

10 utility perhaps, right?

11   I think the statute is to be read to say you

12 have to have something more. You have to have some

13 information more that's being provided by the company

14 that allows you to personally identify that individual

15 beyond their name, address. Okay.

16   So 54-4-37 --

17   COMMISSIONER LEVAR: Do either of you have

18 questions about 13?

19   MR. SABIN: Oh, sorry. So 54-4-37 is the

20 statute that deals with when the -- any utility can

21 allow services other than utility services to be

22 included on the bill. I have looked at this carefully.

23 I think you can -- I think the company could have

24 operated under this absent a tariff.

25   So you say to yourself, well, why do you want

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1 a tariff then? My understanding after consulting with

2 my client is, that A, they wanted to bring it to your

3 attention and be up front about their intentions. I

4 think that shouldn't be punished. I think that's an

5 important thing where you have got a utility trying to

6 not slide something under your nose. They want to come

7 out and say, here is what we are doing. And the fact

8 that they mentioned DPS to me speaks volumes.

9   Why else might you want a tariff? Well, I

10 think it's helpful. This statutory language is kind of

11 convoluted, and you have to work your way through it.

12 Having a tariff that says one, two, three, four, that's

13 your requirements and you are good to go is very

14 helpful.

15   So I don't think you have to have it. I think

16 it makes if more convoluted when you have a third party

17 come to you and say we want to include these. You have

18 to walk them through this kind of morass, which is not

19 as clear as the tariff.

20   That's my own opinion, but that's my

21 understanding of what DEU came to you last year and

22 wanted it to be clear so that it would be easy to

23 administrate.

24   But I think legally you are allowed to do

25 this. I think I heard Mr. Moore say that if there's

1 been a determination of nonprudence, you couldn't -- I

2 disagree. You can't have a nonprudence determination

3 that overrides a legislative law. I mean, the

4 legislature says you can do it. As long as you do it

5 this way, I don't care what you are doing. As long as

6 you comply, that's what the legislature says.

7   Finally, on 54- -- let me find the other

8 reference. 54-3-8 -- oh yes. Just wanted to respond to

9 Ms. Schmid on this point. If I harken back to the

10 energy efficiency docket, you will recall -- you might

11 not, but let me do my best to help you recall.

12   The company was actually instructed that

13 they -- the commission wanted the company out and being

14 careful to clear up for customers which entities were

15 trustworthy and which ones were not. And that's an

16 example I provide of, that's clearly a preference if

17 what Ms. Schmid says, that wasn't allowed.

18   And there, I could cite to you many other

19 examples where over the years, the company is put in the

20 position of trying to help customers with various issues

21 that come up over time. And you provide information to

22 those individuals, and some of that information is so

23 and so is a good provider. As long as you go with them,

24 we will rebate you. Or if you comply with the energy

25 efficiency stuff, if you go with those people.

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1   And I am just suggesting that I know the case

2   law out there says that you are given a great deal of

3   discretion in how you apply the Title 54.

4   I also note that it states under subsection 3,

5   or excuse me, under subsection 2, "The commission shall

6   have the power to determine any question of fact arising

7   under this section." I think the legislature intended

8   you to figure out how to apply this. You know, and you

9   may disagree with me, but I think you want your utility

10 under this provision providing information that it

11 determines is important for its customers.

12   And again, reasonable minds can disagree if

13 they get it right every time, and maybe we all agree, I

14 think, that the original letter here could have been

15 better. But -- but I think you -- you need to decide as

16 a policy matter when interpreting that statute if, as

17 applied to the company, if you really want to put duct

18 tape over the utility's mouth in all respects as it

19 relates to service providers, because there's a lot of

20 service providers that coordinate with us in providing

21 services to customers.

22   So I'll pause there and ask if there's any

23 questions.

24   COMMISSIONER LEVAR: Commissioner Clark, do

25 you have any questions?

1   COMMISSIONER CLARK: Yeah. I think I'd like

2   to just ask Mr. Sabin, and in the recent statements that

3   you have just made to us though, shouldn't the

4   commission have some concerns when the service provider

5   is an affiliate of the utility? I mean, doesn't that

6   give rise to a whole new set of circumstances that ought

7   to be a caution to the commission?

8   MR. SABIN: Absolutely. A, you have not only

9   jurisdiction, but I think you should look at those

10   relationships and ensure that what is going on is not

11   doing harm to customers. I totally agree with that. I

12   can think of instances where had that authority not been

13   there, that customers could have been disadvantaged.

14   You know, generally affiliate rules do that, right?

15   That's the purpose.

16   I do think, though, that in this particular

17   circumstance you need to ask yourself, there may not

18   have been appropriate distinction, or it could have been

19   done better. I think I will -- I think my client is

20   saying that, and has said it over and over, but I think

21   the question you ask yourself is, what is the fix? If

22   the customer hasn't really been harmed by getting

23   information that was -- that they were harmed in the

24   moment but for confusion, right.

25   But, you know, and I wish I could have told

1 Ms. Bell that, you know, it's probably not the right

2 language in an apology letter to explain it that way,

3 but that wasn't my decision to make.

4   But I think that, Commissioner, to answer your

5 question, to me it's the remedy has to fit what you are

6 really trying to get at in that circumstance. And if an

7 affiliate relationship, where an affiliate is out doing

8 something that's harmful and the utility is contributing

9 to the harm, absolutely you could put the brakes on that

10 with the utility and make sure that never happens again.

11   But if in this case, I think you are dealing

12 with customer confusion, that can be rectified. And

13 that can be rectified in a way that is not -- I don't

14 think that has anything to do with, you know, penalizing

15 the company. I think it has to do with making sure it's

16 done right.

17   And I do think you have the jurisdiction to

18 make sure that as the utility goes out, or its

19 affiliates in its name, that that be done appropriately

20 and not confuse customers. Absolutely.

21   COMMISSIONER CLARK: Thanks. That concludes

22 my questions.

23   COMMISSIONER LEVAR: Commissioner White, any

24 questions?

25   COMMISSIONER WHITE: I don't have any.

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1   COMMISSIONER LEVAR: Thank you. Did have

2   anything else you wanted to cover, Mr. Sabin?

3   MR. SABIN: Did you need me to address the

4   penalty question? You asked the other two parties and I

5   just looked at my notes.

6   COMMISSIONER LEVAR: You are free to, if you

7   like.

8   MR. SABIN: I will be very brief. The only

9   thing I would say on that is, I don't -- I have read the

10   provisions a couple of times, and I just don't know how

11   you can -- you asked the question of the other parties,

12   and let me just find that statute. So I am looking at

13   54-725. I would just point out that you have to first

14   have an establishment that the utility has violated or

15   failed to comply with this title, which I take to mean

16   Title 54, or any rule or order issued under this title.

17   And then that's number one.

18   And then it says, "In a case in which a

19   penalty is not otherwise provided for," which, you would

20   have to consider if there's another penalty that's

21   provided, "provided that the public utility is subject

22   to," and I think the "is subject to" language goes to

23   your question earlier, which is if you find a violation

24   are you required.

25   I think the "subject to language" is not

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1 shall. It means the legislature has told you that if

2 you choose to impose a penalty, you are free to do so

3 but not required, or otherwise you would have said

4 shall.

5   And then I think the other question you asked

6 them was, are we required to find a penalty within the

7 500 to $2,000 for -- do I have any discretion in how I

8 apply that? I think it -- you are vested with some

9 discretion because it says later on that it's for each

10 offense, and when you look at what each offense means,

11 it's a violation or a continuing violation depending on

12 how you determine it.

13   And a violation is a separate and distinct

14 offense. And in the case of a continuing violation,

15 each day's continuance shall be a violation, or a

16 separate and distinct offense. So I think you get to

17 determine, are we talking about a day's offense, or a

18 continuing one, that you determine should be applied?

19 Or is it a separate offense? In which case you can

20 determine how to apply that. That's at least my take

21 based upon your question earlier.

22   COMMISSIONER LEVAR: Thank you. And Ms.

23 Schmid seems to wants to add a little more. We don't

24 want to keep going back and forth all afternoon, but if

25 you have a little bit more to add.

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1   MS. SCHMID: I do. Mr. Sabin made some

2 representations about the tariff docket, and I would

3 like to point the commission towards the direct

4 testimony of Mr. Judd E. Cook at lines 34 and 35, in

5 which he stated, "Dominion Energy," and Mr. Cook was

6 testifying on behalf of Dominion Energy Utah, if you

7 look at the first page.

8   "Dominion Energy will comply with the

9 provisions of Utah code annotated, 54-3-8 to 16, and

10 will not grant any preference or advantage to any person

11 with regard to the billing services."

12   So indeed, I believe that Dominion Energy

13 itself said that statute applies. And also, Mr. Sabin's

14 comments could be construed as sort of a final closing

15 argument, and if they are to be construed that way, I

16 would like the opportunity to present the same. And if

17 that's not needed, that's fine.

18   COMMISSIONER LEVAR: Okay. Well, I think

19 that's kind of what we have been doing for the last few

20 minutes on legal issues. But if any party desires to

21 supplement what we have just done, post hearing or now,

22 I think we have kind of for today exhausted things,

23 unless you have a few verbal comments you would like to

24 add.

25   MS. SCHMID: I do. And they are actually

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1 quite short.

2   COMMISSIONER LEVAR: Okay.

3   MS. SCHMID: So in terms of the legal

4 arguments, a commission order must be obeyed. That's by

5 statute, 54-3-23. The November order in the tariff

6 saying that the statute -- the tariff must be applied in

7 a nondiscriminatory manner is therefore law. The

8 utility violated the order, and thus the statute, and

9 thus the nondiscrimination statute that we were talking

10 about just a few moments ago, in the administration of

11 the tariff.

12   It was the utility's actions that caused this

13 violation. The utility participated in the preparation

14 or review of what I'll call the customer letters. The

15 utility allowed the letters to be sent out, where there

16 was no distinguish -- no distinguishing -- no

17 distinction made between the utility and DPS. The

18 letters just referred to Dominion Energy.

19   The utility allowed the letters to go out,

20 giving rise to the reasonable interpretation that the

21 utility was endorsing HomeServe. Key to this is that it

22 was DPS, Dominion Products and Services, and Dominion

23 Energy, because the confusion is tied to the fact that

24 it's a Dominion entity. And as we have heard, Utah

25 customers are unlikely to think of Dominion Energy as

1 anything but the utility. It's not back east. This is

2 here. This is now. This is in Utah.

3   Dominion Inc. -- Dominion Energy Inc., the big

4 parent, committed to certain things when it, quote,

5 merged with Questar Corporation. One of those things

6 was that decisions affecting the local utility would be

7 made locally. And it appears here that either a

8 decision was made to allow letters to go out that

9 allowed confusion, or that -- and because we don't know

10 what comments were relayed up the chain by Dominion

11 Energy Utah, that maybe the corporation as a whole, the

12 big corporation, decided it would be more beneficial to

13 let the confusion remain.

14   I don't know that, and I don't want to allege

15 that, but I am concerned that local decisions aren't

16 being made locally.

17   The value that DPS gave to HomeServe was the

18 connection with Dominion Energy, Dominion Energy Utah.

19 A penalty is warranted because of the ways in which the

20 utility violated the order and the statute. The utility

21 must held accountable and must be made to honor its

22 obligations as a regulated Utah public utility. Thank

23 you.

24   COMMISSIONER LEVAR: Thank you, Ms. Schmid.

25 Do we have anything further from any party?

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1   MR. SABIN: We don't.

2   COMMISSIONER LEVAR: Mr. Moore?

3   MR. MOORE: No, thank you.

4   COMMISSIONER LEVAR: Okay. Thank you. Thank

5 you for your participation in this hearing today. This

6 has been a complicated issue. We will take this under

7 advisement and issue a written order in a reasonable

8 time. That's our statutory requirement, is a reasonable

9 time. So we're adjourned. Thank you.

10   (The hearing concluded at 3:34 p.m.)

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 1              C E R T I F I C A T E

 2   STATE OF UTAH        )

 3   COUNTY OF SALT LAKE )

 4        THIS IS TO CERTIFY that the foregoing proceedings

 5   were taken before me, Teri Hansen Cronenwett, Certified

 6   Realtime Reporter, Registered Merit Reporter and Notary

 7   Public in and for the State of Utah.

 8        That the proceedings were reported by me in

 9   Stenotype, and thereafter transcribed by computer under

10   my supervision, and that a full, true, and correct

11   transcription is set forth in the foregoing pages,

12   numbered 6 through 221 inclusive.

13        I further certify that I am not of kin or otherwise

14   associated with any of the parties to said cause of

15   action, and that I am not interested in the event

16   thereof.

17        WITNESS MY HAND and official seal at Salt Lake

18   City, Utah, this 14th day of September, 2018.

19

20                         Teri Hansen Cronenwett, CRR, RMR
21                         License No. 91-109812-7801

22   My commission expires:
     January 19, 2019
23

24

25
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