

Jennifer Nelson Clark (7947)
Dominion Energy Utah
333 South State Street
P.O. Box 45433
Salt Lake City, Utah 84145-0433
(801) 324-5392
(801) 324-5935 (fax)
jennifer.clark@dominionenergy.com

Cameron L. Sabin (9437)
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Phone: (801)578-6985
Fax: (801)578-6999
Cameron.sabin@stoel.com

Attorneys for Dominion Energy Utah

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of Dominion Energy's Gas Line Coverage Letter	Docket No. 18-057-07 DOMINION ENERGY UTAH'S REPLY COMMENTS
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Pursuant to Scheduling Order and Notice of Technical Conference issued in this docket, Questar Gas Company dba Dominion Energy Utah ("Dominion Energy Utah") respectfully submits these comments in response to the Utah Division of Public Utilities' ("Division") Recommendation and the Utah Office of Consumer Services' ("OCS") Memorandum, both filed on June 28, 2018.

Dominion Energy Utah appreciates the opportunity to provide reply comments on the issues raised in this docket, and to provide additional information the Utah Public Service Commission ("Commission") may find helpful as it considers those issues. Specifically, the other parties to this docket contend the following, each of which is addressed in the Argument section below in the order stated: (I) that Dominion Energy

Utah violated Section 8.08 of its Utah Natural Gas Tariff No. 500 (“Tariff”); (II) that the marketing materials sent by HomeServe USA (“HomeServe”) did not adequately distinguish it from Dominion Energy Utah; (III) that HomeServe’s use of the Dominion Energy, Inc. logo violated the law and was improper; (IV) that Dominion Energy Utah illegally shared private customer information; (V) that Dominion Energy Utah either has engaged in disparate treatment under the Tariff or cannot administer the Tariff going forward in a non-discriminatory manner; (VI) that the Commission should impute some value to Utah customers for HomeServe’s use of the Dominion Energy, Inc. logo and/or the customer information that was shared; and (VII) that the Commission should penalize Dominion Energy Utah for the alleged misconduct asserted by the Division and the OCS. Dominion Energy Utah also provides additional factual information requested during the course of the Technical Conference held in this docket on June 14, 2018.

BACKGROUND

1. Dominion Products and Services (“DPS”) has been a provider of home repair service solutions since 1995. As of December 1, 2017, DPS had over one million contracts with customers in several states pursuant to which it provided home warranty services for water, sewer, gas and electric lines, as well as a variety of home appliances. With respect to Dominion Energy Virginia and Dominion Energy Ohio, DPS customers are offered the convenience of having the billing for such services included on their Dominion Energy Virginia or Dominion Energy Ohio utility bills, respectively.

2. In late 2016, DPS approached Dominion Energy Utah, seeking the ability to provide customers with that same option in Utah. Specifically, DPS discussed with Dominion Energy Utah whether its Utah customers who enroll in DPS services could have the charges for those services billed on their Dominion Energy Utah customer bills.

3. On June 1, 2017, Dominion Energy Utah filed an Application in Docket No. 17-057-T04 proposing changes to its Tariff to obtain authorization from the Commission to allow customers receiving qualifying third-party services, including services provided by DPS, to be billed for those services as a separate line item on Dominion Energy Utah's customers' bills. In its Application, Dominion Energy Utah expressly identified DPS as the first known applicant seeking this ability for its customers. On July 28, 2017, the Commission approved changes to the Tariff permitting that billing service.

4. In early 2017, HomeServe approached DPS with an unsolicited offer to purchase DPS' business. HomeServe is a leading, independent provider of home repair service solutions in the 48 contiguous U.S. states and serves over 3 million homeowners in the U.S. and Canada, the majority of which are served through relationships with over 500 municipal and regulated utility entities. Confidential discussions over that offer proceeded during the pendency of Docket No. 17-057-T04, but did not mature into a formal purchase agreement until the fall of 2017.

5. On October 13, 2017, DPS and Dominion Energy Utah entered into a Billing Services Agreement under which Dominion Energy Utah agreed to provide billing services for DPS. A copy of the Billing Services Agreement is attached as DEU Exhibit A. DPS satisfied all of the qualifying criteria set forth in the Tariff to have charges for its services provided to customers included on customer's Dominion Energy Utah bills. DPS also made all required payments under the Tariff. In addition, Dominion Energy Utah and DPS followed each of the remaining requirements of Section 8.08 of the Tariff.

6. To date, no party other than DPS has sought billing services under Section 8.08 of the Tariff. In addition, no third party service provider has claimed that it was

denied access to third-party billing services under the Tariff or that Dominion Energy Utah engaged in any disparate treatment.

7. The Billing Services Agreement provided, among other things, as follows: “It is understood and agreed that [Dominion Products and Services] may market and sell the Programs directly or via a third party approved by [Dominion Energy Utah].” DEU Exhibit A, page 1, Section II.

8. On October 18, 2017, DPS entered into an Asset Purchase Agreement with HomeServe pursuant to which HomeServe agreed to purchase the assets of, and assume certain liabilities from, DPS, subject to the satisfaction of certain closing conditions.

9. In December of 2017, DPS and HomeServe closed on the first part of the Asset Purchase Agreement and entered into a “Commission Agreement.” The Commission Agreement provides, among other things, for DPS to facilitate the Billing Services under Section 8.08 of the Tariff, and to provide certain public customer information including customer name and address, as well as a unique identifier (not the customer’s account number with Dominion Energy Utah) to facilitate the marketing of home protection plans administered by HomeServe to customers, and third-party billing services under the Tariff for customers who both (1) enroll in an optional service plan, and (2) authorize billing for such services on their Dominion Energy Utah bills.

10. In 2017, in an effort to be consistent across all Dominion subsidiaries, Dominion Energy Utah’s parent company, Dominion Resources, Inc., rebranded its name to Dominion Energy, Inc. and changed its logo. These rebranding costs were paid for by shareholders, not Dominion Energy Utah customers. The logo is owned by Dominion Energy, Inc. and inures to the benefit of Dominion Energy, Inc.’s wholly owned subsidiaries authorized to use the logo, including Dominion Energy Utah and DPS. With

Dominion Energy, Inc.'s consent, under the Commission Agreement, DPS granted HomeServe a limited, non-exclusive, non-assignable, non-sublicensable, right and license to use, reproduce and display the Dominion Energy, Inc. logo pursuant to the terms of the Commission Agreement.

11. In mid-April 2018, prior to any mailings, DPS and HomeServe issued a press release in Utah, describing the services DPS would be offering in Utah through HomeServe. A copy of that press release was included on Slide 16 of the presentation provided at the June 14, 2018, Technical Conference in this docket. The press release was sent to thirteen local radio, television and news outlets, as well as the Business Wire which makes the release available to media outlets throughout Utah.

12. In late April of 2018, HomeServe commenced a marketing campaign in Utah in coordination with DPS. With that campaign, HomeServe mailed approximately 550,000 letters to Dominion Energy Utah customers offering gas line warranty protection. This mailing was attached as the Gas Line Letter to the Commission's Action Request in this Docket. The Gas Line Letter expressly stated that the coverage was optional and was being provided by HomeServe, a company identified as being independent of Dominion Energy Utah.

13. On April 30, 2018, the Division and Dominion Energy Utah began receiving calls from customers seeking information about the Gas Line Letter and, in some cases, noting concerns that varied, including (1) that the letter was unclear as to what facilities would be warranted under the programs, (2) that the letter was not sufficiently clear as to who was offering the programs, and (3) that the letter was not sufficiently clear that the warranty services were optional.

14. On May 1, 2018, HomeServe suspended any further mailings.

15. On May 1, 2018, the Division met with certain media representatives and provided to, and discussed with the media a Consumer Alert indicating that customers could contact the Division if they would like to be removed from the mailing list or to file a complaint. The Division posted that Consumer Alert on its own website data May 2, 2018.

16. On that same day, May 2, 2018, the Commission issued the Action Request in this matter.

17. On May 10, 2018, Dominion Energy Utah sent a letter to those customers who had contacted the Division or OCS about the Gas Line Letter, apologizing for any confusion the customer may have experienced and clarifying matters. A similar statement was also posted on Dominion Energy Utah's website.

ARGUMENT

I. Dominion Energy Utah Complied with Section 8.08 of the Tariff, and the Commission Should Decline to Suspend or Revoke that Section.

It is undisputed that Dominion Energy Utah acted in compliance with Section 8.08 of its Tariff. The Division and the OCS raise concerns related to perceived disparate treatment, and whether Dominion Energy Utah has improperly shared customer information. The Tariff deals with neither issue. The scope of Section 8.08 is solely and expressly limited to billing services, and there is no claim here that Dominion Energy Utah violated that language.

In fact, Dominion Energy Utah has offered billing services in strict accordance with the provisions of its Tariff. To date, DPS is the only entity that has sought such services from Dominion Energy Utah. DPS has paid all initial costs related to those services, and has, in all other regards, acted in compliance with the Tariff. Simply put,

there has been no violation of the Tariff and, therefore, no basis to suspend or revoke the Tariff.

As discussed at greater length in Dominion Energy Utah's May 21, 2018, Comments, suspending Section 8.08 of the Tariff would cause harm to customers. More than 10,000 customers have opted to purchase Gas Line Coverage and other warranty coverage from HomeServe and expect those services to be billed on the Dominion Energy Utah bill. If a bill to one of these customers is sent by some other method and is discarded and not paid, customers who believe they have coverage could suffer a loss and find they have no coverage. Suspending or revoking Section 8.08 of the Tariff could inadvertently leave many who believe they have coverage without it.

Moreover, as it relates to current customers on HomeServe plans, suspension of the Tariff is likely to cause additional confusion and concern because these existing customers – who are currently billed on the utility bill – will be notified that they can no longer pay via their utility bills, and must provide credit card or other billing mechanisms information. Such notifications can appear to be phishing attacks and create a negative customer experience.¹

II. Future Mailings Will Address the Issues Raised in this Docket.

Dominion Energy Utah acknowledges that the Gas Line Letter resulted in confusion and created customer concern. The letter was based upon a template that had been used successfully earlier in the year with Dominion Energy Virginia and Dominion

¹ In its June 28th comments, the OCS expressed concern that customers could be double-billed (once by Dominion Energy Utah and once by HomeServe) for warranty plan costs. Dominion Energy Utah's unwinding plan would call for customers to terminate services through the utility billing arrangement, and sign up for service exclusively through HomeServe before HomeServe issues any independent billing. Accordingly, no double billing could occur.

Energy Ohio. Dominion Energy Utah, DPS and HomeServe all intended the mailing to be educational and informative and to offer an opportunity for additional services that some customers would find valuable. Dominion Energy Utah regrets that the mailing confused some customers, and has been working closely with DPS and HomeServe since that time, and all three are committed to take steps to clarify issues over which customers have expressed confusion.

The three entities' actions to date are a testament to this commitment. Customers began to voice concerns on April 30, 2018. On May 1, HomeServe agreed to immediately suspend any further mailings to Dominion Energy Utah customers. Just days later, Dominion Energy Utah reached out, via a follow-up letter to those customers who had voiced concerns, apologizing for any confusion and clarifying the matter. Dominion Energy Utah, DPS, and HomeServe have all promptly and proactively been working since that time to ensure that any confusion is addressed and to develop materials designed to avoid concerns in the future.

DEU Exhibit B to these Reply comments is a sample of revised mailing materials illustrating the type of changes HomeServe will incorporate in direct mailings it intends to send in the future if the Commission permits Section 8.08 of the Tariff to remain in place. Though the design and format may differ from piece to piece, HomeServe has confirmed and DPS will ensure, through its approval of marketing material rights in the Commission Agreement, that it will contain the elements outlined below.²

First, the materials will clarify what facilities the product covers. Marketing pieces will refer to the "fuel line" or the "gas fuel line" and will specifically identify the

² Any marketing materials will be sent by HomeServe or DPS, not Dominion Energy Utah. Dominion Energy Utah customers will not bear any costs associated with such materials.

covered facilities as those running “from the meter” to in-home appliances. The materials will also make clear that appliances are not included in the Gas Line Plan.³ Examples of these changes appear on pages 2 and 3 of DEU Exhibit B.

Next, future mailings will differentiate each entity: Dominion Energy Utah, DPS and HomeServe. Those mailings will, for example, refer to “Dominion Products and Services” as having partnered with HomeServe, not simply “Dominion Energy.” Each piece of marketing material will also contain prominent language clearly distinguishing DPS from Dominion Energy Utah and explaining the relationship between them.

Examples of changes to accomplish these purposes appear on page 2 of DEU Exhibit B.⁴

In addition, each solicitation letter that features the Dominion Energy logo will also bear the language “Repair Plans from HomeServe.” An example of this change is shown on page 2 of DEU Exhibit B. These changes will further aid in remedying any customer confusion, and ensure that future communications are clearer.

Also, to clear up any existing confusion, HomeServe has agreed that, for the next three mailings, it will include an additional cover letter that is clearly from DPS. These three mailings will reach the entirety of the eligible Dominion Energy Utah customer base. The cover letter will explain the relationship between DPS, Dominion Energy Utah and HomeServe and will describe why the product is being offered. These three mailings

³ In its June 28, 2018, comments on the proposed unwinding plan, the OCS proposed modifying item 3 of the plan to make clear that gas appliances are not covered by the HomeServe repair program. In its June 5 submission in this Docket, Dominion Energy Utah stated that if the Tariff remained in place, it would send a clarifying letter to its customers. Dominion Energy Utah would propose to include the OCS’s proposed clarification in that letter as well.

⁴ In its June 28, 2018, comments, the Division contended that Dominion Energy Utah’s proposed unwinding plan did not adequately distinguish between Dominion Energy Utah and DPS. If the Commission opts to suspend the Tariff, Dominion Energy Utah will make changes to the unwinding mailing to clarify that relationship. If the Commission permits Section 8.08 of the Tariff to remain in place, HomeServe and DPS will make the changes to marketing materials that are described in this section, and Dominion Energy Utah will offer clarification of its relationship with DPS in Exhibit B to Dominion Energy Utah’s Submission of Proposed Plan for Unwinding Billing Arrangements.

will also include a Q&A section explaining why DPS finds the services to be of value and why HomeServe was selected, again state that the offered plans are optional and not required as a condition of utility service, and an explanation about who is paying for marketing materials. Additionally, customers will be given information about how to opt out of future mailings. An example of such a letter is attached as DEU Exhibit C.

Additionally, those marketing materials mailed in an envelope bearing the Dominion Energy, Inc. logo will have a statement on the back flap containing the following statement: "Important information regarding Dominion Products and Services, Inc." Page 1 of DEU Exhibit B shows a sample of such an envelope.

Notwithstanding these proposed changes, Dominion Energy Utah emphasizes that the initial marketing materials did not violate Title 54, the Tariff, or any Commission rule, regulation, or order. The Division suggests that Dominion Energy Utah acted contrary to line 53 of the Direct Testimony of Judd E. Cook in Docket 17-057-T04, where Mr. Cook said, "[T]he bill and the third-party's marketing materials must clearly distinguish between Dominion Energy and the third party to ensure that customers are aware that the third party's services are not required in order to receive utility services." Indeed, the Division contends that Dominion Energy Utah made no effort to ensure that the materials distinguished between the service provider and Dominion Energy Utah. This is incorrect. As noted in previous comments, and acknowledged by the Division and OCS, the Gas Line Letter contained language expressly stating that the offering is "Gas Line Coverage from HomeServe"; that the coverage is optional; that the customer's "choice of whether or not to participate in this service plan will not affect the price, availability or terms of service from Dominion Energy"; and that HomeServe "is an independent company separate from Dominion Energy and offers this optional service plan."

While Dominion Energy Utah understands that, for some customers, these statements were not sufficiently clear, Dominion Energy Utah did not violate Title 54, the Tariff, or any Commission rule, regulation, or order. The OCS acknowledges as much in its memorandum. Therefore, as discussed below, there is no basis for imposing any penalty on Dominion Energy Utah for alleged violations of the Tariff. The remedy for this situation is to make the changes to future materials to ensure that there is additional clarity.

III. HomeServe's Use of the Dominion Energy, Inc. Logo was Not Improper or Illegal.

The Division contends that Dominion Energy Utah improperly permitted HomeServe to use the Dominion Energy, Inc. logo. This contention is without basis. Dominion Energy Utah *does not own the logo and did not license that logo to HomeServe*. Dominion Energy, Inc. owns the logo and licenses it to its subsidiaries, including Dominion Energy Utah and DPS. Dominion Energy, Inc. permitted DPS to license the logo to HomeServe. Dominion Energy Utah, the utility that is party to this action, had no involvement in that licensing decision or use of that logo, and any licensing, whether claimed to be disparate treatment or not, was not done *by the utility*.

In fact, there has been no disparate licensing of the logo at all. In Docket No. 17-057-T04, Dominion Energy Utah made clear that DPS was expected to be first applicant for billing services, and that DPS shared the same corporate name and the same logo. It should have come as no surprise to the Division that the billing services were offered by an entity using that name and logo.

The Division also complains, erroneously, that the use of the logo constitutes endorsement by Dominion Energy Utah, and that such an endorsement is improper.

Dominion Energy Utah has offered no endorsement. Nevertheless, the proposed modified marketing materials discussed herein will provide very specific clarifying detail.

However, even if Dominion Energy Utah was the entity offering use of the logo or an endorsement, doing so is neither unprecedented nor improper. Dominion Energy Utah has identified qualified service providers for customers in other contexts. For example, the ThermWise Energy Efficiency program vets and identifies “qualified contractors” who install attic, wall and duct insulation. A customer *must hire* one of the qualified contractors in order to qualify for a ThermWise Energy Efficiency rebate. Insulation installed by a contractor not identified by Dominion Energy Utah as a qualified installer is not eligible for rebates. The Division has never previously argued that such action was improper. Yet, in this proceeding, it argues that the HomeServe mailings are somehow an improper endorsement.

Similarly, Sections 9.05 and 9.06 of the Tariff indicate that customers may seek to install their own natural gas facilities if, and only if, they hire a contractor identified by Dominion Energy Utah as a “qualified contractor.” The Commission has, in other contexts, permitted and/or required Dominion Energy Utah to vet service providers and required customers to use those providers. This level of “endorsement” goes far beyond the Division’s concerns related to HomeServe. And all are in accordance with the law.

As discussed during the June 14 Technical Conference, DPS went to great lengths to vet HomeServe. Section 8.08 of the Tariff only permits qualified applicants who meet certain criteria to avail themselves of the billing services. This scenario is not unlike processes already in place in other regulated contexts, and Section 8.08 of the Tariff contemplates a vetting process before third parties may avail themselves of the services.

Dominion Energy Utah notes that the use of the logo is closely tied to the nature of the concerns expressed by the Division related to the marketing materials. Dominion Energy Utah acknowledges that some customers were confused by the marketing materials and it is committed to remedy that confusion by taking steps to prevent future confusion. As explained above, Dominion Energy Utah is working closely with both DPS and HomeServe to put in place additional marketing standards to clarify the relationships among the entities, the nature of products offered (including clarity as to what facilities are covered), and that those products are not required in order to receive utility service.

The Division also suggests that HomeServe's use of the Dominion Energy, Inc. logo may constitute a violation of federal trademark law. There absolutely is no evidence or legal basis for this contention, and no violation of the law. Interpretation and enforcement of federal law is outside the Commission's purview as well. Therefore, the Commission should decline to entertain this unsupported argument.

IV. DEU Did Not Violate Title 54, the Tariff, or any Commission Rule, Regulation, or Order in Sharing Customer Information.

All of the parties to this docket acknowledge that Title 54, the Tariff, and the existing Commission rules, regulations, and orders do not address the sharing of customer information. Dominion Energy Utah supports the Commission providing additional clarity about the circumstances under which that information may be shared or used in the future.

When that clarity has been provided, Dominion Energy Utah commits to take steps to ensure that customer information is handled and used accordingly, and requests that the Commission permit Dominion Energy Utah to modify Section 8.08 of the Tariff to include language to clarify how customer information may be shared and used, and under what circumstances.

In this regard, it is important to note that Dominion Energy Utah and HomeServe have both provided customers with a means to opt out of future marketing mailings. A phone call to either entity will terminate future marketing to that customer. HomeServe also adheres to requests from customers who have opted out of email, mail and telephone solicitation as may be required by Federal or Utah law.

Additionally, Dominion Energy Utah will implement a mechanism for customers to request “do not solicit” status with Dominion Energy Utah. Upon request from a customer, Dominion Energy Utah will place that customer on a do not solicit list, and convey their “do not solicit” status to HomeServe or any other third party biller in the future. Customers on this list will receive no future solicitations from third-party billers as defined in Section 8.08 of the Tariff. Dominion Energy Utah will also notify customers annually of the means to opt out of solicitations via a customer information bill insert. Further, Dominion Energy Utah requests that the Commission permit it to add language in its Tariff, to clarify that all qualified applicants (as defined in Section 8.08 of the Tariff) will have access to the same information about permitting customers to opt out.

Dominion Energy Utah opposes the tariff language changes proposed by the Division. The Division’s proposed language is too restrictive, and would adversely impact Dominion Energy Utah’s ability to carry on its daily activities, and to serve customers. For example, the Division’s proposed language states, “Dominion Energy may not share customer information with any other entity without compensation, except for purposes of billing and collection for the customer’s gas usage.” Dominion Energy Utah is often required by subpoena to provide customer information in other legal proceedings. Dominion Energy Utah has a long-standing policy that it will cooperate with legal authorities in Utah, and with other governmental agencies. It shares customer usage

information in aggregate with state agencies and municipalities that study energy efficiency. Dominion Energy Utah also shares customer information with HEAT, REACH and other entities participating in customer assistance programs. The ThermWise Energy Efficiency department shares customer information for the purposes of processing rebates, providing the Home Energy Report, and conducting surveys like the annual Light House survey. Dominion Energy Utah shares customer information with Western Union and Zions Bank in order to offer credit card payment options, and pay station options. Dominion Energy Utah also provides customer information to contractors who aid in managing electronic systems and facilitating the paperless billing program. The Division's language would expressly prohibit many of those activities. Dominion Energy Utah also opposes the restriction of sharing of customer information such that it cannot share information with its own subcontractors, or with third parties for other purposes such as those described above.

Instead, Dominion Energy Utah recommends that the following language be added to Section 8.08 of the Tariff:

Customer Information

Company may share customer names, customer addresses and a numerical identifier (not the account number) with an eligible third party for purposes of facilitating billing services and permitting the third party to market the services to be billed to Dominion Energy Utah customers pursuant to this Section 8.08 provided that the third party agrees in writing to (1) maintain the security, confidentiality, and privacy of the customer information provided hereunder; (2) use the information only for the purposes stated above; (3) destroy any customer information provided hereunder as soon as practicable, consistent with legal requirements, after termination of the billing services; (4) comply with customer direction to not contact the customer; and (5) remit all required payments for services provided hereunder including initial costs, rates, and the market value established for customer information.

The additional steps Dominion Energy Utah proposes above will ensure that

customers who receive solicitations can take steps to request that they will not be contacted in the future, and will ensure that all qualified applicants are treated the same way Dominion Energy Utah has treated DPS. Taking these steps will ensure that customers can control whether their information is shared, and that Dominion Energy Utah is plainly bound to offer the same benefit of sharing customer information to qualifying parties.

Dominion Energy Utah also noted in its May 21 comments that the sharing of information did not violate any Utah statute. Specifically, the Commission Agreement between DPS and HomeServe calls for the sharing of a customer's name, address and a unique identifier in order to facilitate billing services and the marketing of home warranty products. As previously discussed, names and addresses are considered "Public Information" under Utah Code Ann. 13-37-102(5) - (6), and that sharing of that information therefore cannot violate the statute.

In order to maintain an accurate record, and in the interest of full disclosure, Dominion Energy Utah recently discovered that additional customer information, not required by contract or authorized by management, was inadvertently provided to DPS and HomeServe. Specifically, in addition to name, address and unique identifier, Dominion Energy Utah provided customers' telephone numbers, a flag identifying landlords, information distinguishing between commercial and residential customers, and email addresses. Because Dominion Energy Utah only provided information related to GS customers, the rate class of each customer was also evident. The inadvertent disclosure occurred when Dominion Energy Utah filled extraneous fields in a standard DPS template that had been used in other jurisdictions with other partners.

The Commission Agreement did not call for the disclosure of any information

other than name, address and unique identifier. In addition, the Commission Agreement calls for the deletion of information not intended to be disclosed. The disclosure of the additional items was inadvertent, but not in violation of any Utah statute, and HomeServe and DPS have deleted all of the additional items from all databases.⁵ HomeServe has certified to DPS in writing that all extraneous information has been deleted and was never used. Dominion Energy Utah is also implementing procedures to prevent such inadvertent disclosure in the future.

V. Dominion Energy Utah Has Not Engaged in and Will Not Engage in Disparate Treatment.

There is no evidence that Dominion Energy Utah has engaged in any form of disparate treatment. DPS is the first, and only, entity to seek billing services under Section 8.08 of the Tariff. Dominion Energy Utah does not own Dominion Energy, Inc.'s logo, and Dominion Energy Utah cannot license that logo to any other entity. Further, no other similar entity has requested access to customer names and addresses. No other similar entity has requested any form of billing service or related services from Dominion Energy Utah. And, as noted, there have been no intervenors in this docket claiming to have been harmed or treated in a disparate manner. Given these facts, there is simply no way Dominion Energy Utah could have engaged in disparate treatment.

Implicitly acknowledging this, the Division argues instead that Dominion Energy Utah should be penalized because, in the Division's view, Dominion Energy Utah is likely to engage in disparate treatment *in the future*. The Division states that the Commission

⁵ Even the inadvertent provision of this additional information did not violate any Utah statute. Utah Code Ann. 13-37-101 et seq. requires notice when an entity provides (1) non-public information, (2) to a third party, (3) primarily in exchange for compensation. UTAH CODE ANN. 13-37-201. The customers' name, address, and telephone number are Public Information under the referenced statute. The remainder of the information, some of which was nonpublic, was provided inadvertently, and not in exchange for compensation.

should revoke Section 8.08 of the Tariff “because it can no longer be administered fairly” and that Dominion Energy Utah’s “*future* inability to grant the same preferences it gave DPS and HomeServe result in discrimination that is not in the public interest and is likely to deprive utility customers of robust competition for service contracts.” Division Recommendation at pp.1 and 5 (emphasis added).

The Division’s predictions are unfounded and are unsupported by the evidence. That said, in the interest of making the record absolutely clear, Dominion Energy Utah reiterates its position on the matter. Dominion Energy Utah has offered, and intends to continue to offer, all similarly situated entities the same access to billing services that it has offered DPS. It will continue to offer any billing services permitted under the Tariff, according to the terms of the Tariff. Moreover, as discussed in greater detail above, it will continue to provide access to customer information to any qualified entity, to the extent permitted under the Tariff. These are the only benefits Dominion Energy Utah has made available to DPS, and they are and would be available to any other qualifying entity.

Although Title 54, the Tariff, and existing Commission rules, regulations, and orders do not expressly prohibit the sharing of customer information, the OCS contends that additional protections may be necessary. Dominion Energy Utah discussed above the steps it recommends be implemented to ensure the Tariff is clear as to the handling of customer information by Dominion Energy Utah or the sharing of that information with any qualified entity, including DPS. Whether the Commission accepts Dominion Energy Utah’s recommendations, and/or commences a rulemaking to address these issues as the OCS urges, future actions related to sharing of customer information will be governed by the Commission’s directions. The notion that Dominion Energy Utah should be penalized

or punished in the face of non-existent restrictions, or because the Division fears that, at some point in the future, Dominion Energy Utah may engage in disparate treatment, is inappropriate, arbitrary and capricious.

The Division also argues that HomeServe's use of the Dominion Energy, Inc. logo constitutes disparate treatment. As discussed above, the Division overlooks the fact that Dominion Energy Utah *does not own the logo at issue and did not license the logo at issue to HomeServe*. The Commission should not punish Dominion Energy Utah for actions it did not take, and that are beyond its control. Further, it was contemplated throughout the Tariff process that an entity not regulated by the Commission would market home protection products, such as the Gas Line Plan, to Dominion Energy Utah customers using the Dominion Energy, Inc. logo. These facts were present at the time the Tariff was approved and remain unchanged.

VI. The Commission Should not Impute the Value of the Customer Information to Customers.

Dominion Energy Utah maintains that because it did not receive consideration for customer information or for the use of the Dominion Energy, Inc. logo, there is no revenue to impute to customers. Dominion Energy Utah has received, and will continue to receive, all appropriate payment for billing services under Section 8.08 of the Tariff. It has not received any revenue for sharing of customer information, or for HomeServe's or DPS' use of the Dominion Energy, Inc. logo. Therefore, there is no revenue to be imputed to customers. As discussed above, because Dominion Energy Utah does not own the logo and did not license the logo to HomeServe, neither Dominion Energy Utah nor its customers are entitled to any revenue associated with that license.

Nonetheless, the Division and OCS believe that the customer information has value, and that Dominion Energy Utah's customers should receive the value of that information.

DPS and HomeServe have received quotes for the purchase of customer databases from independent providers at a cost that approaches \$25,000 per year. Therefore, DPS will agree to compensate Dominion Energy Utah customers \$25,000.00 per year for the sharing of customer name, address and unique identifier. This amount represents the value of independently-purchased customer lists. This amount would be treated as a reduction to O&M expense in future ratemaking proceedings.

Dominion Energy Utah, DPS and HomeServe agree that the information provides value in terms of enhancing customer experience and ensuring that customer service, both from a billing services perspective and from a marketing perspective, proceeds in an efficient and effective fashion. That said, that information provides the same type of value to customers, suggesting that no imputation of additional value is needed above the cost to purchase that data from independent providers. Therefore, crediting customers the \$25,000 value for the customer information is appropriate recognition of the value exchanged.

VII. There Is No Basis to Penalize Dominion Energy Utah.

As discussed above, Dominion Energy Utah has not violated Title 54, the Tariff, or any Commission rule, regulation, or order. Utah Code Ann. § 54-7-25 provides that “[a]ny public utility that violates or fails to comply with this title or any rule or order issued under this title . . . is subject to a penalty of not less than \$500 nor more than \$2000 for each offense.” No party has identified any violation of Title 54, or any rule or order issued under that title. Fears that future violations may occur do not constitute violations

and are therefore not a proper legal basis for imposing a penalty under the cited statute. Therefore, the Commission should decline to impose any penalty upon Dominion Energy Utah.

VIII. Additional Data.

During the June 14, 2018, Technical Conference, Commissioner Clark asked questions related to the number of claims HomeServe has received related to gas lines, and the general value associated with those claims. The OCS served data requests seeking the same information. HomeServe deems that information to be Highly Confidential and on June 19, 2018, Dominion Energy Utah filed a Petition for Highly Confidential Treatment and Additional Protective Measures Under Utah Administrative Code Rule R746-1-601(2)(a) and Motion for Expedited Treatment. On June 20, 2018, the Commission Granted the Petition and HomeServe and Dominion Energy Utah subsequently provided the requested information to the OCS. The OCS did not include the information in its comments. Dominion Energy Utah has provided copies of the Data Requests and the Highly Confidential Responses as DEU Highly Confidential Exhibit D for the convenience of the Commission.

CONCLUSION

Based upon the foregoing, Dominion Energy Utah respectfully requests that the Commission issue an order:

- (I) finding that Dominion Energy Utah acted in accordance with Section 8.08 of its Tariff;
- (II) acknowledging the changes that Dominion Energy Utah, DPS and HomeServe have proposed for future mailings from HomeServe;

(III) finding that HomeServe's use of the Dominion Energy, Inc. logo is beyond the jurisdiction of this Commission and is not a violation of Title 54, the Tariff or any applicable Commission rule or regulation;

(IV) finding that Dominion Energy Utah acted in accordance with Title 54, the Tariff, and all applicable Commission rules and regulations, in sharing customer information, and approving the additional steps proposed above to ensure that customers who wish to opt out of receiving such marketing materials may do so;

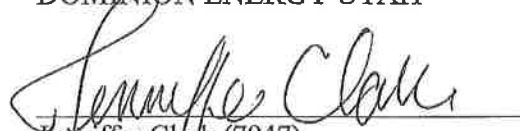
(V) finding that Dominion Energy Utah has not engaged in disparate treatment under the Tariff and that it can administer the Tariff going forward in a non-discriminatory manner;

(VI) approving the payment of \$25,000.00 per year from all recipients of customer information to Dominion Energy Utah customers as adequate payment for the sharing of customer name, address and unique identifier as discussed above; and

(VII) find that because Dominion Energy Utah did not violate Title 54, the Tariff or any Commission rule or regulation, it should not incur any penalty.

RESPECTFULLY SUBMITTED this 19th day of July, 2018.

DOMINION ENERGY UTAH

A handwritten signature in cursive script, reading "Jennifer Clark", written over a horizontal line.

Jennifer Clark (7947)
Dominion Energy Utah
333 S. State Street
PO Box 45433
Salt Lake City, Utah 84145-0433
(801) 324-5392
Jennifer.clark@dominionenergy.com

Cameron L. Sabin (9437)
Stoel Rives LLP
201 S. Main Street, Suite 1100
Salt Lake City, Utah 84111
(801) 328-3131
Cameron.sabin@stoel.com

Attorneys for Dominion Energy Utah

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Dominion Energy Utah's Reply

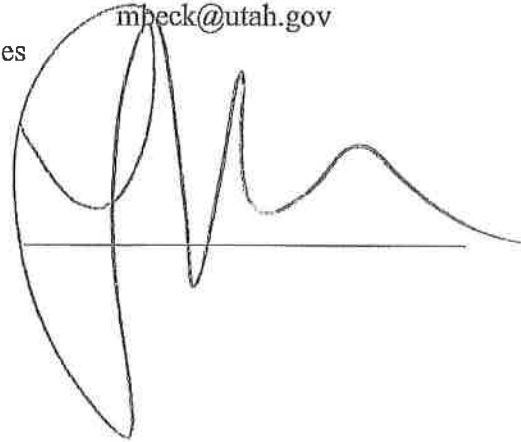
Comments was served upon the following persons by e-mail on July 19, 2018:

Patricia E. Schmid
Justin C. Jetter
Assistant Attorney Generals
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857
pschmid@agutah.gov
jjetter@agutah.gov
Counsel for the Division of Public Utilities

Chris Parker
William Powell
Utah Division of Public Utilities
160 East 300 South
PO Box 146751
Salt Lake City, Utah 84114-6751
chrisparker@utah.gov
wpowell@utah.gov

Robert J. Moore
Steven Snarr
Assistant Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857
rmoore@agutah.gov
stevensnarr@agutah.gov
Counsel for the Office of Consumer Services

Michele Beck
Director
Office of Consumer Services
160 East 300 South
PO Box 146782
Salt Lake City, UT 84114-6782
mbeck@utah.gov

A handwritten signature in black ink, appearing to be 'Michele Beck', written over a horizontal line. The signature is stylized with a large initial 'M' and a long, sweeping tail.