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To: Public Service Commission

From: Office of Consumer Services  
Michele Beck, Director  
Alex Ware, Utility Analyst  
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Date: January 11, 2019

Subject: Proposed Rulemaking Concerning Utility/Customer Relations regarding  
Third-Party Solicitations: Docket Nos. 18-R460-01, 18-057-19, and  
18-035-40

## Background

In its Report and Order for Docket No. 18-057-07, Dominion Energy's Gas Line Coverage Letter, the Public Service Commission (Commission) wrote that:

"... the public interest is served by rulemaking that can address proper use of utility customer lists, appropriate utility-related solicitation communications, use of monopoly utility branding, and other issues that may arise in that docket which we will initiate shortly after the issuance of this order."

The Commission initiated the three rulemaking dockets referenced above giving parties the opportunity to file initial and reply comments on the proposed rulemaking. Parties submitted initial comments on December 18, 2018.

The Office of Consumer Services (Office) provides these reply comments in response to the initial comments submitted by Dominion Energy Utah (DEU) and the Division of Public Utilities (DPU or Division). The Office also takes this opportunity to reiterate some principles from its initial comments. In the scheduling order for these dockets, the Commission set a due date for reply comments of Friday, January 11, 2019.

## **OCS Response to DPU Comments**

In its comments on December 18, 2018, the Division suggested using the term “utility customer information” instead of “personal information” in new rules when describing information the utility should maintain confidential. The Division explained the use of this terminology would help avoid confusion as the term “personal information” has a specific definition in Utah Code section 13-44-102(3)(b) which may be too limited for the needs of the new rules. The Office supports this recommendation.

Also, the Office understands that sharing of utility customer information is necessary for certain aspects of a utility’s business. On page 7 of the Division’s comments, it recommended the following exceptions to rules barring the sharing of utility customer information:

1. Operations directly related to the utility’s function. This includes essential functions outsourced to third parties, such as billing, collection, credit checks, etc. The line can be drawn at regulated functions.
2. Information used in or required by court proceedings and orders, warrants, subpoenas, Commission requests, and other valid legal or governmental proceedings.
3. In emergency situations when there is an imminent threat to life or property.

The Office agrees with the Division’s recommended “standard exceptions” to a rule that restricts the sharing of utility customer information.

In addition, the Division recommends that the “default position be that utilities cannot share [utility customer information], but customers can opt-in to sharing the information.” The Office reiterates that we too believe the process should be an opt-in system that requires customers to actively agree to the permitted sharing of their information.

Lastly, On page 9 and 10 of the Division’s comments, the Division recommends that revenue from utility customer information lists be imputed to the utility in question. The Office asserts the utility should not profit from selling utility customer information. All fees paid to the utility for the authorized use of customer information by a third party should be returned to customers. However, there is inherent value in utility customer information, and the rules may need to prohibit the giving away of such information. If the rules do not explicitly prohibit the giving away of utility customer information, then the Office agrees with the Division in that revenue from that exchange should be imputed to the utility and returned to customers.

## **OCS Response to DEU Comments**

In its December 18, 2018 comments on page 4, DEU states:

DEU suggests that any Commission rule governing the sharing of customer information permit customers to opt out of such sharing in all circumstances other than those where such sharing is necessary for the conduct of the Company's day-to-day business (like billing, rebate processing, etc.).

Thus, DEU advocates for a rule that allows the default position of utility customer information to be that it can be shared with affiliates and third parties, but to give customers the option to opt-out. The Office opposes DEU's suggestion that customers opt-out of the utility being able to share customer information. It is important for the utility to recognize that they are a regulated monopoly and that customers are unable to source utilities elsewhere. Because customers are captive customers of the utilities, the Office asserts that an opt-in system is appropriate. The Office continues to assert that, outside of essential utility operations (i.e. for primary purposes), utility customer information should only be shared when the utility has received prior affirmative consent from the customer. Additionally, customers must have the ability to opt-out or withdraw that consent at any time. The ability to withdraw consent to share customer information must be, at least, as easy as the ability to opt-in.

On page 3 of its comments, DEU also states:

"...any Commission rule governing the sharing of customer information should also provide a means of seeking prospective authorization to share customer information in circumstances that the parties to this docket cannot yet foresee."

The Office affirms that such a remedy as DEU suggests is currently available as the Company is able to petition the Commission for one-time waivers of rules. Nonetheless, the Office supports a mechanism in the rules where the utility may apply to the Commission for permission to share utility customer information for secondary purposes. Such a mechanism for prospective authorization should allow the Office and the Division, as well as other interested parties, the opportunity to weigh in on the reasonableness of any utility request to share utility customer information.

As new rules are created to address how utility customer information should be used by contracted third parties, the Office continues to recommend that such rules should be applied to other regulated utilities including telecom providers, as well as electric and gas utilities. The Office also believes rules should be created that guide utility actions in the case of a breach of customer information.

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