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## State of Utah

### Department of Commerce Division of Public Utilities

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## Reply Comments

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

David Williams, Utility Analyst

**Date:** January 11, 2019

**Re:** **Division of Public Utilities Comments: Proposed Rulemaking Concerning Utility/Customer Relations regarding Third-Party Solicitations, Docket Nos. 18-R460-01, 18-057-19, and 18-035-40**

The Division of Public Utilities (“Division”) makes the following reply comments concerning the proposed rulemaking regarding utility customer information with respect to third-party solicitations.

### Background

The three above-captioned dockets were created so that the Public Service Commission of Utah (“Commission”) can create rules regarding utility customer information issues. The Commission is receiving comments. In this memorandum the Division replies to comments from Dominion Energy Utah (“DEU”).

### Sharing of Utility Customer Information Should Be Limited

In its comments in the above-captioned cases, DEU states three circumstances where it thinks the Commission should permit sharing of utility customer information:

1) for purposes of conducting ongoing business operations, 2) in conjunction with third-party billing services, and 3) in other circumstances where the Commission finds that such sharing is in the public interest.<sup>1</sup>

The Division agrees with DEU that the first and third circumstances are appropriate cases for sharing information (with some caveats), but not the second, insofar as DEU proposes that mailing lists for third-party billing services solicitations are opt-out.

The Division agrees that core business operations should be able to utilize utility customer information. As DEU notes, billing, collection, and efficiency programs all may require third parties to utilize some utility customer information. However, the phrase “ongoing business operations” should be clarified. For example, does it include marketing of ancillary services? When it comes to information sharing that does not require prior customer approval, the Division encourages the Commission to only permit utility customer information to be shared for core regulated utility functions.

The Commission could start with an approved list of cases where use of information is appropriate, and take future “business” uses of information on a case-by-case approval basis. When sharing of information is warranted, the Division agrees with DEU that such sharing should be “subject to contractual provisions protecting the confidentiality of that information and requiring data security measures.”<sup>2</sup> The easiest and simplest standard for any third party to use is: all third parties should protect utility customer information at the same level and with the same restrictions that the utility protects the information.

The second set of circumstances—third-party billing services, if it includes mass solicitation mailings to all utility customers—is the very situation that prompted the customer complaints described in Docket No. 18-057-07, regarding DEU and a letter that was sent to its customers by DEU affiliate Dominion Products and Services (“DPS”) and a third-party provider

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<sup>1</sup> See *Comments of Dominion Energy Utah*, Docket Nos. 18-R460-01, 18-057-19, and 18-035-40, December 18, 2018, p. 2.

<sup>2</sup> *Id.*

(“HomeServe”).<sup>3</sup> The Commission should not create a rule that allows the very same practice that led to numerous customer objections when DPS and HomeServe sent their solicitation letter. The Division believes that problems will arise even if an opt-out disclaimer is added. When it comes to products and services that are not core utility functions, customers should by default not be on third-party mailing lists, but should receive third-party mailings only if they specifically opt in.

The Division also notes that the third-party billing itself was not the immediate cause of the customer complaints detailed in Docket No. 18-057-07; the marketing letter for the service caused the complaints. Thus the first issue to resolve is the marketing and the distribution of utility customer information, not the third-party billing itself. Given the confusion that resulted from the HomeServe letter, the default rule should be: sharing of customer information should be limited to opt-in cases. The Commission could determine exceptions to the default rule if needed.

With respect to the third set of circumstances, the Division agrees that the Commission needs the ability to authorize sharing in special cases (e.g. emergencies or circumstances that are unforeseen at present). However, in the Division’s view the Commission would still need to evaluate the public interest along with the customers’ heightened standard of privacy resulting from the monopoly relationship.

## **Branding Issues**

In its initial comments, DEU states that “DEU does not own the ‘Dominion Energy’ logo and does not control the branding of that logo outside of its own use in its service territories in Utah, Wyoming and Idaho.”<sup>4</sup> While this is true, it is not the whole story. For one thing, DEU doesn’t fully control the use of the logo within its territory either.<sup>5</sup> Therefore, it is not clear what effect it

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<sup>3</sup> See *Dominion Energy’s Gas Line Coverage Letter* (Report and Order, issued Oct. 4, 2018), Docket No. 18-057-07.

<sup>4</sup> See *Comments of Dominion Energy Utah*, Docket Nos. 18-R460-01, 18-057-19, and 18-035-40, December 18, 2018, p. 4.

<sup>5</sup> See *id.*, e.g. “Dominion Energy, Inc. owns the logo and makes it available to both utility and non-utility companies in several states, including DEU.”

would have if DEU provided written notice to its parent or affiliate as indicated on p. 5 of its comments:

DEU supports a rule that any utility... is required to provide written notice to any parent or affiliate that will use the same logo or branding as the utility in the state of Utah for communications **directed specifically at that utility's customers**, stating that communications, offerings, or solicitations to utility customers in the state must clearly and expressly [spell out certain facts about the parties and their relationship].<sup>6</sup>

(Bolded emphasis added.) It is not clear that DEU has the power to dictate such terms to its parent and affiliate, nor is it clear that the Commission would have the power to force the parent company or affiliate to comply.

It is better to prevent the parent or affiliate from getting the utility customer information in the first place—as the bolded part indicates, the way the parent or affiliate would be able to send communications to utility customers is to get the list from the utility. The Commission does have authority over that step of the process.

The branding issue is partially resolved by an appropriate rule on the utility customer information issue. The first question to address is: “What names and addresses of utility customers can be given to third parties for non-utility solicitations?” Our recommended answer to that question is: “Only those customers who give specific case-by-case consent.” The second question is what the branding can look like in the solicitations, once customers have agreed to use of their names and addresses. Note that express specific consent makes confusion less likely—for example, if a customer actively consents to receive information about gas appliance insurance, he or she is less likely to be confused when that information arrives.

For customers who do receive solicitations, there are three main options for branding:

1. Allow no logos from any company (whether affiliate of the utility or not).

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<sup>6</sup> See *Comments of Dominion Energy Utah*, Docket Nos. 18-R460-01, 18-057-19, and 18-035-40, December 18, 2018, p. 5.

2. Allow logos from any company except those that are the same as the utility's logo.
3. Allow all logos.

The Division believes that any use of the Dominion logo will be misleading to customers (especially if the solicitations are opt-out instead of opt-in), and so we recommend the first or second option.<sup>7</sup> Whichever option the Commission chooses, however, we agree with DEU that the communication should identify the party sending the solicitation, define the relationship (if any) of the party with the utility, and make clear that the solicitation is not from the utility and is not related to utility-provided service. This information should be separate and prominent. In addition, there should be a utility number to call if utility customers have questions. As the Division has stated in our initial comments, if confusion persists due to the use of Dominion's logo by affiliates and the utility alike, the Division will likely ask the Commission to order a rebranding of the utility.

## **Conclusion**

When it comes to information sharing that does not require prior customer approval, the Division encourages the Commission to permit utility customer information to be shared only for core regulated utility functions. Uses of utility customer information for third-party services or marketing should be on a specific opt-in basis. On these points we are in substantial agreement with the Office of Consumer Services ("Office"). We also agree with the Office that any rules created should apply to all regulated utilities, not just DEU.

Cc: Michele Beck, Office of Consumer Services  
Kelly Mendenhall, Dominion Energy  
Jana Saba, Rocky Mountain Power

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<sup>7</sup> Note that the Commission does have authority in this area, since the third parties in question will be receiving the utility customer information from the utility, and any limitations on branding can simply be contractual. The Commission may also require utility rebranding in the case of repeated abuses.