State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

THOMAS BRADY
Deputy Director

CHRIS PARKER
Director, Division of Public Utilities

GARY HERBERT.
Governor

SPENCER J. COX
Lieutenant Governor

ACTION REQUEST RESPONSE

To: Public Service Commission

From: Division of Public Utilities
Chris Parker, Director
Energy Section
Artie Powell, Manager
Doug Wheelwright, Technical Consultant
Eric Orton, Technical Consultant

Date: June 16, 2017

Subject: Action Request Response and Initial Comments regarding Docket No. 17-057-T04.

In the Matter of the Application of Dominion Energy Utah for Approval of a Third-Party Billing Rate

RECOMMENDATION

The Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) conditionally approve the tariff sheets filed by Dominion Energy Utah (Company) on June 1, 2017 and make them effective after fulfillment of the condition or revision. The primary condition is that the Company provide evidence that the proposed charges to third-party billers are the higher of the utility's cost or the market value of such a service.

BACKGROUND

On June 1, 2017, the Company submitted its Application to the Commission with the attached Direct Testimony of Judd Cook and six exhibits including its proposed Tariff 8.08 Billing for

Other Entities, its Calculation of Per-Line Billing Rate as well as three pages promoting its affiliate, Dominion Products and Services, Inc. (DPS). On that same day, the Commission issued an Action Request to the Division directing it to Review Tariff Compliance and perform an Investigation. On June 2, 2017, the Commission issued its Notice of Scheduling Conference held on June 13, 2017. The order from the Scheduling Conference specified that initial comments are due June 20, 2017, with reply comments due June 23, 2017, and the hearing to be held on June 29, 2017. This memorandum is the Division's Action Request Response and Initial Comments.

DISCUSSSION

The practice of Third-Party billing began many years ago when telephone utilities initiated the inclusion of outside parties' bills contained within the telephone utility's bills. This practice resulted in many complaints filed and was the genesis for the terms "Slamming" and "Cramming". These terms become the nomenclature for unwanted, unauthorized, and unsolicited items included on the utility bill, and to a lesser extent, the practice of inserting or stealthily including non-utility charges within the utility bill. Over the years, however, as the telecom industry has changed many of the problems related to Third-Party billings have diminished.

In principle, the Division is not opposed to the concept of Third- Party billing on utility bills. Having said that, the Division's sees its main objective in this filing is to ensure that the Company's ratepayers are held harmless either from the unintentional or intentional decision of the Company to enter this market. Additionally, the Division is concerned about discrimination and abuses, which are addressed by the Company's proposal.

Ratepayer Costs

The Company's exhibit, DEU Exhibit 1.2, describes certain billing costs to the Company and the proposed charge for providing third party billing services. The Division has reviewed the calculations and does not dispute the accuracy of the Company's Exhibit. However, there could still be costs that were missed. The Division is deeply concerned about the stated costs and benefits of this proposed venture and wants to make certain that there will be no costs, financial risk, or other burdens that could be foisted onto ratepayers.

Ratepayer Benefit

The claims in the Company's filed testimony that this new service would provide many benefits to its ratepayers are suspect. The issue at hand is not the validity of the third party's operations; rather, in this arena, the issue is the impact to ratepayers. Based on our estimate, any financial "benefits" to ratepayers will not be material unless the Company charges a market rate for the service that is above cost.

The Division notes that affiliate transactions generally are restricted to the lower of cost or market for purchase and the higher of cost or market for sales. Affiliate transactions are very hard to regulate because they are rarely arm's length. The risk of unfair advantage to the affiliate is high. The Commission addressed this issue in its August 11, 2000 Order in *In Re Questar Gas Co.* Docket No. 99-057-20 at p.23[1];

> Economic regulation of public utilities has long understood, and we have repeatedly acted upon this understanding, that affiliate transactions can be used by the controlling corporate entity as the means to exceed the rate of return allowed by regulators as a cost of providing utility service. When the utility provides a product or a service to an affiliate company, this Commission's decisions require a charge for it which reflects the higher of the cost the utility incurs to provide the product or service (the embedded cost), or an appropriate market price for it. The higher-of-cost-or-market policy protects ratepayers and prevents the subsidy that otherwise would flow from the utility to the affiliate.

[1] *Rev'd on other grounds, Committee of Consumer Services v. Public Service Com'n of Utah,* 2003 UT 29, ¶ 1, 75 P.3d 481, 481, (Utah 2003).

Charging the higher of market or cost may be appropriate to ensure that the full value of the service is being captured for the benefit of ratepayers. It is possible that the value of access to customers and billing services is significantly higher than the incremental cost of providing the service.

The Company has not provided and the Division has not yet determined what a market rate for third party billing would be. In the absence of such evidence, approval of the tariff is premature.

Affiliate First

The Division sees no other reason for the Company to offer this particular service other than that the first proposed offeror is its affiliate. In fact, the Division doubts that the Company would entertain the idea if it were proposed by an outside party. This is especially so given the Company's recent reluctance to entertain the possibility that its transportation customers employ an agent in their dealings with the Company. The Division also recognizes that the following factors provide significant affiliate benefits:

- the affiliate is the first Third-Party biller on the Company's invoice:
- the affiliate is already working with the Company to get the system set up and ;
- making companies that may want this service in the future pay the entire cost for an additional page; and
- Dominion name recognition.

The Division is concerned about the apparent preferential treatment being given to the Company's affiliate and will monitor closely, to the extent possible, how the Company treats other offerors. Nevertheless, the tariff's terms generally protect against discrimination and allow roughly equal access to the bill.

Second Page

It is not proper to burden future businesses that may want the service to pay for the entire cost for an additional page (compared to just 11 lines for DPS). Any additional costs for a second page should be shared among all Third-Party billers and not by the one company that happens to be first on the second page.

CONCLUSION

The Division finds that, in spite of the concerns mentioned above, the Company's proposal, as it is outlined in the application, Mr. Cook's testimony, and the attached exhibits could be in the public interest. Therefore, the Division recommends the Commission condition approval of the new tariff sheets on the receipt of substantial evidence that the market value of the third party billing service is less than the cost proposed in the tariff. If the market value is higher, the tariff should be revised to reflect that market value. The Commission should provide an adequate period of time after the filing to allow interested parties to comment on the evidence. Additionally, the Commission should spread the cost of added bill pages among all offerors, not merely the one responsible for the incremental need.

CC: Maria Wright, Division of Public Utilities
Kelly Mendenhall, Dominion Energy Utah
Michele Beck, Office of Consumer Services