

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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

DOCKET NO. 17-057-T04

ORDER

ISSUED: November 20, 2017

The Public Service Commission denies the two Motions to Reconsider, filed August 29, 2017, and the Petition for Declaratory Ruling, filed September 1, 2017.

1. Procedural History

On June 1, 2017, Dominion Energy Utah (“Dominion”) filed an application (“Application”) in this docket, proposing changes to its tariff that will facilitate Dominion selling billing services whereby certain eligible third parties may pay Dominion established rates to include the third parties’ line item charges on Dominion’s customer bills. The Division of Public Utilities (“DPU”) and Office of Consumer Services (“OCS”) submitted written comments and Dominion submitted written reply comments. No party sought intervention.

The Public Service Commission (“PSC”) heard the Application on June 29, 2017, during which the DPU, OCS and Dominion provided testimony. At hearing, Dominion represented that, after conferring with the DPU and OCS, it had agreed to make modifications to the proposed tariff schedules it submitted with its Application. On June 30, 2017, the PSC issued an order suspending Dominion’s proposed tariff sheets and indicating its intention to approve revised tariff sheets consistent with the parties’ stipulation. Dominion filed revised tariff sheets on July 10, 2017. On July 28, 2017, the PSC issued an order (“July Order”) approving the revised tariff sheets.

On August 29, 2017, the Rocky Mountain Gas Association (“RMGA”) and the Utah Home Builders Association (“UHBA”) each filed a motion to reconsider (collectively, the “MTRs”). On September 1, 2017, RMGA, UHBA, the Utah Plumbing & Heating Contractors Association and the Independent Electrical Contractors Association of Utah (collectively, “Petitioners”) filed a Petition for Declaratory Ruling (“Petition”) in this docket, asking the PSC to rescind its approval in the July Order.

On September 12, 2017, Dominion filed a Joint Motion to Extend Briefing Schedule, requesting an extension to file responses to the MTRs. The PSC granted the motion on September 14, 2017, extending the briefing schedule on the MTRs and tolling the period under which the MTRs would be denied by operation of law under Utah Code Ann. § 63G-4-302.

Subsequently, the PSC held a scheduling conference on September 21, 2017, during which the parties agreed to a briefing schedule on the MTRs and the Petition. On September 28, 2017, UHBA filed a document styled Withdrawal of Motion to Reconsider and from Petition for Declaratory Ruling. RMGA did not file notice to withdraw its MTR, and none of the other Petitioners filed requests to withdraw the Petition.

On September 28, 2017, Dominion filed a consolidated opposition to the MTRs and the Petition. On October 13, 2017, the Petitioners, with the exception of UHBA, filed a reply in support of the Petition.

2. Positions of the Parties

a. Dominion

Dominion argues the MTRs and the Petition should be denied on both procedural and substantive grounds.

With respect to the MTRs, Dominion argues the MTRs were filed late under Utah Code Ann. § 63G-4-301. Further, Dominion argues, pursuant to Utah Code § 54-7-15, only parties and those who have a pecuniary interest in a utility may file a request for review or reconsideration. Because the MTRs were not timely and RMGA is not a party, Dominion concludes the MTRs should be denied.

Dominion similarly argues the Petition is a procedurally improper attempt to side-step Petitioners' failure to comply with the deadlines associated with filing an MTR. Dominion notes the Petition was filed in a docket in which the Petitioners are not parties and argues the filing of the Petition does not operate to make Petitioners parties to the proceeding. Dominion contends the Petitioners are required under Utah Code § 63G-4-207 to move for intervention to become proper parties to the docket. Additionally, citing Utah Code Ann. 63G-4-503(a) and R746-101-1, *et seq.*, Dominion argues the Petition is not a proper request for declaratory ruling because it does not seek an interpretation of the applicability of a statute, rule or order but rather seeks to overturn a prior order.

Substantively, Dominion argues the MTRs and Petition are baseless because (i) Utah Code § 54-4-37 allows for third parties to include charges on utility bills provided the statute's requirements are satisfied; and (ii) Dominion intends to comply with the statute's requirements and no showing has been made that it has acted inconsistently with the statute.

b. Petitioners

Petitioners argue that § 54-4-37 is permissive because it states an “aggrieved party may file a request for review within 30 days.”¹ On that basis, Petitioners assert the Petition is timely. Petitioners further assert they were not aware of Dominion’s third-party billing tariff in time to participate in the hearing on the merits in this docket and urge the PSC to consider their arguments despite their not having sought and obtained intervention. Petitioners do not address Dominion’s argument the Petition is not a proper request for declaratory ruling.

On the merits, Petitioners argue Dominion’s requiring participants to pay “\$200,000 up front to cover all initial programming costs ... severely limits the number of third-party providers able to take advantage” of the billing services. (Petitioner’s Reply at 4.) Petitioners also argue requiring a toll-free telephone number and maintaining a customer call center constitute additional barriers to entry.

Finally, Petitioners express concern ratepayers will be confused as to the identity of their warranty services provider where Dominion’s subsidiary utilizes the third-party billing service and concern Dominion will use customer invoices as an opportunity for its subsidiary to advertise.

¹ While Petitioners quote § 54-4-37, this language is not found in that section. It is found in § 63G-4-301, which pertains to agency review. Additionally, while Petitioners make this argument with respect to their Petition, § 63G-4-301 is applicable to the MTR, not the Petition.

c. The DPU and OCS

Neither the OCS nor the DPU filed responses to the MTRs or Petition. At the hearing on the merits of Dominion's original application, the DPU's and the OCS's witnesses recommended the PSC approve Dominion's proposed tariff sheets (as modified by the parties' stipulation).

3. Discussion and Order

Because the styling of the MTRs and Petition were somewhat unorthodox and ambiguous, we note at the outset that we treat the MTRs as requests for agency review under § 63G-4-301 because that is the available procedural mechanism that most closely resembles the filings. We treat the Petition as a petition for declaratory ruling under Utah Admin. Code R746-101-1, *et seq.*

Petitioners are simply incorrect in asserting § 63G-4-301 is "permissive," as though the 30-day deadline established therein were merely a suggestion. Additionally, non-parties to the underlying docket may not generally seek review or reconsideration. *See* Utah Code Ann. § 63G-4-301 (enumerating the rights of "parties to the adjudicative proceeding" to seek review). The MTRs are procedurally defective on both grounds.

An entity need not have been a party to a prior proceeding to file a new request for agency action that addresses the subject matter of a prior docket, which is how we treat the Petition.² However, the Petition is not a proper request for declaratory ruling. Such a request is appropriate where the petitioner seeks an interpretation or determination as to the applicability of one or more statutes, rules or orders to particular circumstances. *See* Utah Admin. Code R746-

² Although Petitioners filed the Petition under the same docket number as the MTRs, substantively, we treat the Petition as an original request for agency action.

101-1(B)(2); R746-101-3(A)(2), (3). The Petition does not do so, rather it asks the PSC to overturn a prior order.

We find the MTRs are untimely and, more importantly, improperly filed by non-parties. We further find the Petition fails to meet the requirements of a request for declaratory ruling. These procedural bases are sufficient to warrant denial of the MTRs and the Petition.

To avoid additional unnecessary action or confusion, we also briefly address the merits. As we noted in the July Order, § 54-4-37 expressly contemplates the inclusion of third-party charges on utility bills provided the utility complies with the consumer protection provisions enumerated in the statute. Here, no evidence has been presented and no specific allegation has been made suggesting Dominion has failed to comply with the statute. Indeed, some of the problems Petitioners argue constitute “barriers to entry” are statutory requirements, *e.g.*, a toll-free number for resolution of disputed charges.

In their reply, Petitioners refer to a \$200,000 “up front” fee to cover initial programming costs. The tariff, as approved by the PSC, provides “[a]n eligible third party seeking ... [third-party billing service] must pay all initial costs required ... to conduct such billing including, but not limited to, costs associated with programming for billing and IT system, equipment costs, legal costs, project management costs, and contracting costs.” The PSC cannot identify the source of the alleged \$200,000 fee and has no basis on this record to determine whether Dominion is actually requiring or contemplating such a fee and, if so, whether it may be reasonable or justified.

In sum, the MTRs and Petition are procedurally defective. Further, Petitioners have not presented persuasive evidence or argument that Dominion has acted inconsistently with the law

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or the public's interest. The PSC acknowledges the tariff provision allowing third-party billing services is new and reiterates that, in rolling out and administering this program, Dominion must comply with all statutory requirements and act in a non-discriminatory manner. If any party obtains evidence to the contrary, such party should file a request for relief with the PSC.

For the foregoing reasons, the MTRs and the Petition are denied.

DATED at Salt Lake City, Utah, November 20, 2017.

/s/ Michael J. Hammer
Presiding Officer

Approved and Confirmed November 20, 2017, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#298059

CERTIFICATE OF SERVICE

I CERTIFY that on November 20, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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