

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Dominion Energy's Gas Line Coverage Letter

DOCKET NO. 18-057-07

REPORT AND ORDER

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ISSUED: October 4, 2018

**1. BACKGROUND ON GAS COVERAGE SOLICITATION LETTER AND PROCEDURAL HISTORY**

This docket arises out of actions by Dominion Energy Utah (DEU) and Dominion Products and Services, Inc. (DPS), both affiliates of the parent company Dominion Energy, Inc., associated with the implementation of DEU's Tariff PSCU No. 500, Section 8.08 Billing for Other Entities (Section 8.08). Section 8.08 was approved by the Public Service Commission (PSC) on July 28, 2017 in Docket No. 17-057-T04.<sup>1</sup>

In late April to early May 2018, utility regulatory agencies in Utah began receiving inquiries regarding a solicitation letter (Solicitation Letter) from "Dominion Energy" offering third-party gas line coverage, the cost for which may be included on the recipient's bill (presumably, but not explicitly, the recipient's DEU bill). Prompted by these inquiries, on May 2, 2018, the PSC issued an action request to the Division of Public Utilities (DPU) to investigate whether the service offering complies with all applicable statutes, regulations, tariffs, and prior PSC orders (Action Request).

On May 11, 2018, the DPU and the Office of Consumer Services (OCS) submitted comments in response to the PSC's Action Request asserting the Solicitation Letter is misleading and confusing, and recommending suspension of Section 8.08 and further investigation. The DPU and the OCS also

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<sup>1</sup> See *Application of Dominion Energy Utah for Approval of a Third-Party Billing Rate* (Order, issued July 28, 2017), Docket No. 17-057-T04.

provided suggestions relating to the scope of the PSC's investigation. On May 14, 2018, the PSC issued Notices of Comment Period and Scheduling Conference.

On May 21, 2018, DEU filed comments responding to the DPU's and OCS's May 11, 2018 comments, arguing against suspension of Section 8.08 on the following grounds: 1) that comments from opposing parties cite no violation of Section 8.08, or any other statute, rule, or PSC order; 2) that DEU and HomeServe USA Repair Management Corp. (HomeServe)<sup>2</sup> have agreed to suspend all Solicitation Letter mailing campaigns until the instant proceeding concludes; and 3) that suspension of Section 8.08 would only serve to eliminate benefits customers receive, while potentially causing further confusion.

On May 23, 2018, the PSC issued Guidance to Parties in Preparation for the May 24, 2018 Scheduling Conference (Guidance). In its Guidance, the PSC declined to suspend Section 8.08 at that time.<sup>3</sup> On May 25, 2018, the PSC issued a Scheduling Order and Notice of Technical Conference (Scheduling Order).

On June 5, 2018, DEU filed a Proposed Plan for Unwinding Billing Arrangements (Unwinding Proposal). Following the June 14, 2018 technical conference, the DPU and the OCS filed comments on June 28, 2018. On July 19, 2018, DEU and the OCS filed reply comments.

On September 5, 2018, pursuant to the PSC's July 26, 2018 Notice of Hearing, the PSC heard from witnesses appearing on behalf of DEU, the DPU, and the OCS.

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<sup>2</sup> HomeServe is the business entity offering the gas line coverage in the Solicitation Letter.

<sup>3</sup> See Guidance to Parties in Preparation for the May 24, 2018 Scheduling Conference at 2. Utah Code Ann. § 54-7-12(6) arguably requires a hearing before the PSC suspends, alters, or modifies any tariff.

## **2. THE GAS LINE COVERAGE SOLICITATION LETTER**

The Solicitation Letter was sent to customers of DEU and offers them optional coverage of up to \$8,000 annually for eligible repair services made to customers' gas lines extending "from your utility's responsibility up to each gas appliance in your home."<sup>4</sup> Among other things, the Solicitation Letter: 1) indicates the repair service contract is offered by HomeServe at a rate of \$5.49 per month; 2) directs customers interested in applying for this service to "www.DECustomerHomeRepair.com;" 3) states the monthly charge will be billed using the customer's monthly Dominion Energy [presumably, but not explicitly, DEU] utility bill; and 4) states the service contract will be automatically renewed annually at the then-current renewal price. The letter does not contain any distinct references to DEU, the utility regulated by the PSC, or DPS. Instead, the letter refers generally and ambiguously to "Dominion Energy."

According to DEU, the following agreements preceded HomeServe's offering. On October 13, 2017, DEU and DPS entered into an agreement (Billing Services Agreement) allowing DPS to take third-party billing services under Section 8.08. The Billing Service Agreement provides, among other things, that DPS "may market and sell [programs] directly or via a third party approved by [DEU]."<sup>5</sup> On October 18, 2017, DPS entered into an Asset Purchase Agreement (Asset 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.<sup>6</sup>

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<sup>4</sup> PSC's May 2, 2018 Action Request and DEU's May 21, 2018 Comments, DEU Exhibit A – Gas Line Letter.

<sup>5</sup> DEU's July 19, 2018 Reply Comments, DEU Exhibit A, Page 1, Section II.

<sup>6</sup> See DEU's July 19, 2018 Reply Comments at 4.

In December 2017, DPS and HomeServe closed on the first part of the Asset Agreement and entered into another agreement (Commission Agreement).<sup>7</sup> The Commission Agreement provides for DPS to facilitate the Billing Services under Section 8.08, and to provide certain DEU customer information including customer name and address, as well as a unique identifier, to facilitate the marketing of home protection plans administered by HomeServe. Further, 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.<sup>8</sup>

### **3. DEU's PROPOSAL FOR UNWINDING BILLING ARRANGEMENTS**

In response to the Scheduling Order, DEU filed a proposal for unwinding the billing arrangements in the event the PSC suspends or revokes Section 8.08. DEU proposes to send to those customers who have signed up for the home repair programs from HomeServe: 1) an initial notification of the PSC's decision and informing the customer that they must contact HomeServe and make alternative billing arrangements or their home repair program will be canceled; 2) two additional communications via mail to ensure customer wishes are clearly understood and that customers know the steps they must take to maintain the home repair program; and 3) if a customer cancels the policy, a cancellation notification will be sent. According to the Unwinding Proposal, customers will have 135 days from initial notification until they are automatically canceled unless alternate billing arrangements have been made. As a final measure, DEU also recommends HomeServe notify customers of the cancellations 150 days after the initial notification letter.

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<sup>7</sup> See Hearing Transcript, OCS Cross Exhibit A, Part 2 – Commission Agreement (Highly Proprietary).

<sup>8</sup> See *supra* n.6.

DEU proposes that if the PSC leaves Section 8.08 in place, a clarifying letter will be sent to those customers who have signed up for a home repair program from HomeServe with the following points: (1) the coverage is optional, (2) the coverage is from HomeServe, and not DEU, and (3) with respect to gas line coverage, clarifying which facilities are covered by the program and which facilities are maintained by DEU. The letter also will remind customers that coverage can be terminated by the customer at any time.

#### **4. PARTIES' COMMENTS AND RECOMMENDATIONS**

**A. The DPU:** The DPU recommends the PSC revoke Section 8.08 because it can no longer be administered in a non-discriminatory manner, impute the contract proceeds DPS receives from HomeServe as revenue to DEU customers, and impose a \$2,000 fine against DEU for violating the PSC's November 20, 2017 Order in Docket No. 17-057-T04.<sup>9</sup> The DPU also recommends the PSC should make rules to enable customer control of information sharing for all regulated utilities as utility customers "have little or no choice but to deal with a monopoly utility."<sup>10</sup> In the event the PSC wishes to adopt changes to DEU's tariff prior to approving new rules, the DPU suggests new language for inclusion in DEU's tariff to prevent sharing of DEU's customer-specific information. The DPU asserts the language should include a general prohibition on sharing without compensation, except for routine billing and collection using shared corporate resources.<sup>11</sup>

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<sup>9</sup> On November 20, 2017, the PSC issued an Order in Docket No. 17-057-T04 denying two motions to reconsider and a petition for declaratory ruling (November Order). In the November Order, the PSC states: "The PSC acknowledges the tariff provision allowing third-party billing services is new and reiterates that, in rolling out and administering this program, [DEU] must comply with all statutory requirements and act in a non-discriminatory manner."

<sup>10</sup> DPU's June 28, 2018 Comments at 14.

<sup>11</sup> See *id.* at 14-15.

The DPU states the core of the issue is that DEU, a monopoly utility, “traded access to and information about its captive customers to promote a specific company’s products, with the profits of that trade going to its affiliate. This breach of the [November Order] and the public interest should be remedied by revoking the [third-party] billing tariff and imputing the profits to the utility to be credited to [ratepayers].”<sup>12</sup> According to the DPU, a general rate case would be the best place to determine the value of the imputation.

The DPU asserts that DEU should be assessed a \$2,000 penalty pursuant to Utah Code Ann. § 54-7-25 for violating the November Order. This penalty, combined with the proposed imputation, will adequately respond to DEU conduct that violated a PSC order, while compensating customers for that violation.

The DPU generally supports DEU’s Unwinding Proposal as reasonable, offers a few changes to eliminate confusion, and mentions a few items relating to its interpretation of the plan.

**B. The OCS:** The OCS asserts that the threshold issue in this docket is whether it is in the public interest to maintain Section 8.08.<sup>13</sup> According to the OCS, the only way Section 8.08 could be administered in a non-discriminatory manner would be to allow other service contract providers: 1) use of DEU’s customer-specific information, which the OCS asserts would be contrary to the public interest, and 2) use of the Dominion Energy logo, which is not allowed under the Commission Agreement. The OCS recommends the PSC revoke Section 8.08, as it cannot be administered in a non-discriminatory manner consistent with the public interest.

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<sup>12</sup> Hearing Transcript at 17:23-25 and 18:1-4.

<sup>13</sup> See the OCS’s June 28, 2018 Comments at 2.

The OCS also recommends the value associated with DEU's customer-specific information should accrue to utility customers and that the PSC should consider imposing on DEU a small penalty. As proposed by the OCS, the exploration of the value of specific customer information and the Dominion logo would take a second phase of the proceeding.<sup>14</sup> Further, the OCS recommends the PSC require clarifications to DEU's Unwinding Proposal as recommended by the OCS and the DPU. Specifically the OCS recommends DEU's Unwinding Proposal should address avoidance of duplicate billing, and the associated letter should explain that gas appliances are not covered by the HomeServe repair agreement.

Further, the OCS recommends the PSC initiate a rulemaking process to set clear parameters for utility use of customer data, and suggests sharing customer information should be prohibited until those parameters are established. If the PSC determines a change to DEU's tariff is necessary prior to the outcome of the rulemaking, the OCS does not oppose the concepts in the DPU's proposed new tariff language, and asserts the language should apply generally to the treatment of customer information, not solely to the issues addressed in Section 8.08.

**C. DEU:** DEU recommends the PSC decline to suspend or revoke Section 8.08, arguing it is undisputed DEU acted in compliance with Section 8.08. Furthermore, DEU adds that suspending Section 8.08 would cause harm to more than 10,000 customers who have purchased home warranty coverage contracts from HomeServe expecting those services to appear on their DEU utility bills. DEU asserts that 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.

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<sup>14</sup> See Hearing Transcript at 64:19-24.

Suspending or revoking Section 8.08 also could inadvertently leave many who believe they have coverage without it.<sup>15</sup>

DEU argues there is no basis to penalize DEU because it has not violated Title 54, its tariff, or any PSC rule, regulation, or order and thus the PSC should also decline to impose any penalty on DEU.<sup>16</sup> Likewise, DEU asserts it has not engaged in discriminatory treatment. DEU admits that language in the Solicitation Letter stating that the gas coverage offering was from HomeServe was not sufficiently clear to some customers,<sup>17</sup> and that the appropriate remedy is to ensure future solicitation materials provide added clarity.

DEU 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. To address the DPU's and the OCS's belief that customer information has value, DPS agrees to compensate DEU customers \$25,000 per year for the sharing of customer names, addresses, and unique identifiers. According to DEU, this amount represents the value of independently purchased customer lists and would be treated as a reduction to operation and maintenance expense in future ratemaking proceedings.<sup>18</sup>

DEU states both DEU and HomeServe have separately provided customers with a means to opt out of future marketing mailings and DEU will implement a mechanism for customers to request "do not solicit" status with DEU. In addition, DEU proposes to inform its customers annually via bill inserts on how customer information is used by DEU, and of its do not solicit list for those who elect to disallow

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<sup>15</sup> See DEU's July 19, 2018 Reply Comments at 7.

<sup>16</sup> See *id.* at 20-21.

<sup>17</sup> See Hearing Transcript at 67:12-18.

<sup>18</sup> See DEU's July 19, 2018 Reply Comments at 20.



third-party solicitation campaigns.<sup>19</sup> DEU supports providing additional clarity about the circumstances under which customer information may be shared or used in the future, but DEU opposes the DPU's proposed tariff language changes because they are too restrictive, and would adversely impact DEU's ability to carry on its daily activities, and to serve customers.<sup>20</sup> DEU offers alternative language to be added to Section 8.08 to address this issue.<sup>21</sup>

## **5. DISCUSSION, FINDINGS, AND CONCLUSIONS**

### *a. DEU's actions in implementing Section 8.08 were contrary to the public interest.*

DEU asserts “[t]he scope of Section 8.08 is solely and expressly limited to billing services, and there is no claim here that [DEU] violated that language.”<sup>22</sup> We find that statement by DEU to be true. DEU has offered billing services in strict accordance with the provisions of Section 8.08 and no party has identified any violation of the tariff. Consistent with this finding, we decline to assess the monetary penalty the DPU and the OCS recommend. We also decline to make any conclusion on the question of whether a utility can engage in third-party billing agreements in the absence of a PSC-approved tariff under the authority of Utah Code Ann. § 54-4-37. We have no authority to modify that statute, and no party to this proceeding has requested a declaratory ruling related to our interpretation of that statute in the absence of a tariff. The record suggests, though, that the statute does not address utility/customer relations with respect to third-party solicitations, which we intend to address through rulemaking.

Notwithstanding DEU's adherence to provisions in Section 8.08, obfuscatory and confusing Solicitation Letter materials are sufficient reasons for the PSC to conclude DEU's actions in administering Section 8.08 conferred an unfair competitive advantage on its affiliate. Thus, we find that

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<sup>19</sup> See Hearing Transcript at 89:1-5.

<sup>20</sup> See DEU's July 19, 2018 Reply Comments at 14.

<sup>21</sup> See *id.* at 15.

<sup>22</sup> *Id.* at 6.

continued future operation of Section 8.08, in the absence of prospective administrative rules discussed later in this order, is not in the public interest.

i. The Solicitation Letter was obfuscatory and confusing.

DEU's actions, through its participation in the preparation and distribution of the Solicitation Letter, contributed to the obfuscation of the actual service being offered and the true identities of the parties that would provide it. Many Solicitation Letter recipients were confused as to who was offering the gas line coverage and what equipment would be covered, as evidenced by the numerous customer inquiries that initiated this docket. For example, the reference on the Acceptance Form<sup>23</sup> to "my Dominion Energy bill" creates an inference that other references to the phrase "Dominion Energy" refer to DEU, the utility, throughout the remainder of the Solicitation Letter. The Solicitation Letter does not include any mention or branding of DPS, the third-party under the Billing Services Agreement. The signature line refers to Dominion Energy, not to DPS. A clarification correspondence<sup>24</sup> that was subsequently sent by DEU to DEU customers maintained the obfuscation of the relationships between the various affiliates by using the same Dominion Energy logo that appeared on the Solicitation Letter and referring to the service provider as "our partner." Furthermore, given DEU's recent post-merger rebranding efforts, we find it reasonable that a typical DEU sales customer would associate "Dominion Energy" with DEU, the utility. DEU conceded at hearing that, for a typical gas customer in Utah, there is probably no distinction between DEU and its parent corporation.<sup>25</sup> We find that none of the correspondence at issue in this docket made any reasonable attempt to inform DEU's captive monopoly customers of any distinction between Dominion Energy, Inc. (the parent company), DPS, and DEU.

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<sup>23</sup> See Hearing Transcript, DEU Hearing Exhibit 1.1.

<sup>24</sup> See Hearing Transcript, DEU Hearing Exhibit 1.2.

<sup>25</sup> See Hearing Transcript at 184:20-24.

- ii. Endorsement of third-party solicitor was implemented in a way that was not in the public interest.

DEU is the monopoly natural gas service utility for its Utah residential customers, so its participation in third-party solicitations of those captive utility customers in Utah is a matter of public concern. We find DEU's failure to ensure proper entity distinctions in the solicitation materials constituted DEU's endorsement of a third-party solicitor (i.e., HomeServe), an endorsement confirmed by various communications that referred to HomeServe as its partner. None of the communications at issue make any distinction otherwise.<sup>26</sup> This partnering between DEU, DPS, and HomeServe included endorsements and arrangements that conferred an unfair competitive advantage on HomeServe and DPS with respect to potential competing providers<sup>27</sup> seeking third-party billing arrangements under Section 8.08, a concern expressed by Rocky Mountain Gas Association (RMGA) in Docket No. 17-057-T04 regarding equitable administration of Section 8.08.<sup>28</sup> We find that DEU's improper actions "likely diminished the prospects for meaningful competition among service contract providers,"<sup>29</sup> giving rise to a circumstance under which DEU can no longer administer Section 8.08 going forward in a way that is consistent with the public interest until we have completed rulemaking that will foreclose future abuse of utility/customer relationships.<sup>30</sup> The way in which DEU shared customer information with non-regulated affiliates and third party solicitors for solicitation purposes was contrary to the public interest.

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<sup>26</sup> See Hearing Transcript at 18:6-13.

<sup>27</sup> See *id.* at 187:2-16.

<sup>28</sup> See Motion to Reconsider from the Rocky Mountain Gas Association at 1-2 (Docket No. 17-057-T04, filed August 29, 2017).

<sup>29</sup> DPU's June 28, 2018 Comments at 6.

<sup>30</sup> While we have found DEU's actions to be contrary to the public interest and to confer unfair competitive advantages on its affiliate, the record is not sufficient to make a finding that DEU committed discriminatory conduct. There is no record of a person or entity other than DPS or HomeServe seeking, and being denied, the same treatment given to DPS and HomeServe. Therefore, we decline at this time to find that DEU violated our order approving Section 8.08. Accordingly, it is unnecessary for us to address whether the scope of Utah Code Ann. § 54-3-8 extends beyond the utility/customer relationship.

Hundreds of DEU's customers contacted the DPU or DEU because they were confused by the solicitations and frustrated that their information was used by DEU for marketing other services.<sup>31</sup> The DPU asserts and we find that the "monopoly utility's captive customer base was leveraged as the primary value in a transaction between [DEU's] affiliate and a third-party. This was done with [DEU's] knowledge and approval or acquiescence. For this, [DEU] received little or no compensation and its name and brand were used to endorse a specific service contract provider in mailings."<sup>32</sup> We also find, as the OCS states, "[c]ustomers rightly have an expectation that their information will not be shared without their specific consent."<sup>33</sup> While Utah Code Ann. § 13-37-102(6) provides that a person's name, telephone number, and street address are public information, this does not mean DEU's actions in sharing its customers' information with affiliated solicitors was in the public interest. Inherent in the disclosure of name and address in this instance was the identity of the person as a DEU customer. The monopoly relationship between DEU and its captive customers requires a higher standard of care with respect to customer information.

b. *DEU's actions violated the public interest with respect to the captive customer/monopoly utility relationship.*

For several decades, DEU and its predecessor companies have served ratepayers in Utah on the basis of a regulatory compact that presumes integrity, openness, and mutual commitment to the public interest. Public confidence in DEU's commitment to these values has suffered an authentic injury as a result of the conduct at issue in this docket. The DPU's and the OCS's reports of customer complaints regarding DEU's sharing of customer information for independent third-party solicitations and the

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<sup>31</sup> See *supra* n.29 at 4.

<sup>32</sup> *Id.*

<sup>33</sup> OCS's June 28, 2018 Comments at 2.

allegedly misleading solicitation material are evidence that the public trust forged over generations of monopoly utility service has been blemished. Given the rarity in Utah of a monopoly utility's solicitation of its customers for another companies' products under a third-party billing tariff arrangement, greater care should have been taken to prominently highlight the affiliate relationships and the optionality of the service being advertised.<sup>34</sup> Moreover, it is understandable the pervasive use of the Dominion Energy logo common to both DEU and DPS,<sup>35</sup> the imprecise description of the equipment<sup>36</sup> for which the customer assertedly bears repair responsibility,<sup>37</sup> and the insinuation that HomeServe is a utility partner,<sup>38</sup> caused the DPU and the OCS to characterize Dominion Energy's communication as preferential and possibly misleading.<sup>39</sup>

c. *We prospectively suspend Section 8.08.*

We find that circumstances created by DEU's actions have caused prospective operation of Section 8.08 to be in conflict with the public interest. Until we have resolved public interest issues with respect to third-party marketing to utility customers in a separate rulemaking docket, we find that it is not in the public interest to allow any additional customers to receive third-party billing under Section 8.08. Rather than revoking Section 8.08, in deference to the interests of a small set of DEU customers who subscribed to a HomeServe offering and may not want to be foreclosed from the convenience of multiple service charges on a single utility bill, we *prospectively suspend* Section 8.08. The suspension

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<sup>34</sup> See DPU's June 28, 2018 Comments at 8.

<sup>35</sup> See Hearing Transcript at 18:5-13.

<sup>36</sup> See OCS's July 19, 2018 Comments at 2, ¶ 7.

<sup>37</sup> We recognize that issues surrounding the description of the home repair coverage product are more properly under the jurisdiction of the Utah Insurance Department instead of the PSC.

<sup>38</sup> See Hearing Transcript, DEU Hearing Exhibit 1.2 – "Letter to Customers" that mentions a partnership between Dominion Energy and HomeServe.

<sup>39</sup> See Hearing Transcript at 72:11-17. See also Hearing Transcript at 18:5-13; 54:24-25; 55:1-8; and DPU's June 28, 2018 Comments at 12.

will prevent new customers from receiving third-party charges on their DEU monthly bill pursuant to Section 8.08, while providing DEU customers who have already subscribed to a HomeServe plan sufficient clarification regarding the service offerings for which they subscribed and a fully informed opportunity to either cancel or retain the coverage. After we have completed the separate rulemaking docket, we will determine whether we should lift the prospective suspension of Section 8.08 or otherwise modify it.

For those DEU customers who have enrolled in a HomeServe policy, we find DEU's proposed Clarification Letter<sup>40</sup> inadequate to correct possible misunderstandings that might still exist. Accordingly, we require a revised Clarification Letter, with input and concurrence from the DPU and the OCS, at least addressing the following: 1) full and adequate disclosure of all entities involved in offering the solicitation, 2) clear descriptions of the offered service(s) and the opportunity to cancel, and 3) sufficient information and clarification to dispel the confusion the Solicitation Letter materials caused. If parties are unable to agree on the Clarification Letter revisions within 30 days from the date this order is issued, DEU shall bring the matter before the PSC.

d. *Imputation is in the public interest.*

We agree with the DPU and find that it "was not in the public interest for [DEU] to effectively foreclose the possibility that competing providers could enter the market on equal footing by giving customer information for no consideration and failing to object to mailings that did not clearly distinguish between it and DPS."<sup>41</sup> DEU has argued that customer information comparable to that which DEU sent to HomeServe would cost approximately \$25,000 purchased from the open market, and DPS

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<sup>40</sup> Hearing Transcript, DEU Hearing Exhibit 2.1.

<sup>41</sup> DPU's June 28, 2018 Comments at 6-7.

has agreed to compensate DEU customers \$25,000 per year for the continued use of customers' name, address, and unique identifier.<sup>42</sup> The DPU and the OCS assert an imputation should incorporate more than the cost to secure a list of potential customers from an open market resource. We find that the record in this docket has not settled this issue; accordingly, while we conclude that an imputation is appropriate, the amount of the imputation and its allocation will be considered during the next general rate case.<sup>43</sup>

*e. Initiation of rulemaking is in the public interest.*

At hearing, Ms. Beck from the OCS explained, “[S]ince it was our opinion that [the practice of third-party billing] was statutorily authorized, we didn’t oppose it, but just tried to get the customer protections we could think of [into the tariff]. And now it’s obvious that we didn't think of everything.”<sup>44</sup> Issues raised throughout this proceeding, particularly those discussed above, underscore both the OCS’s acknowledgment of inadequate customer protections and a public interest need for rulemaking to address customer privacy rights for all captive customers of a monopoly utility. Parties agree or show no opposition to a rulemaking proceeding. The OCS recommends rules that make clear to both a utility and its customers if and under what circumstances sharing customer personal information with a utility’s affiliate or independent third-party solicitors is allowed. We find 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.

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<sup>42</sup> See DEU’s July 19, 2018 Reply Comments at 20.

<sup>43</sup> It appears intuitive that because of the captive customer/monopoly utility relationship, a utility customer list has more value than other commercially available mailing lists.

<sup>44</sup> Hearing Transcript at 82:6-10.

**6. ORDER**

We order:

1. Section 8.08 is suspended prospectively in that new customers who are not receiving third-party billing under Section 8.08 on the date of this order may not begin to receive third-party billing under Section 8.08 unless or until the PSC revokes or modifies this suspension;
2. DEU shall file an updated Section 8.08 to reflect that suspension;
3. DEU shall initiate a collaborative process with the DPU and the OCS to develop a revised Clarification Letter to be sent to customers currently receiving third-party billing under Section 8.08;
4. Within 30 days after the date this order is issued, DEU shall either file with the PSC a clarification letter approved by the DPU and the OCS or inform the PSC that consensus was not reached;
5. Revenue imputations associated with DEU's conduct at issue in this docket shall be considered in DEU's next general rate case.

DATED at Salt Lake City, Utah, October 4, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#304779



Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on October 4, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Kelly Mendenhall ([kelly.mendenhall@dominionenergy.com](mailto:kelly.mendenhall@dominionenergy.com))  
Austin Summers ([austin.summers@dominionenergy.com](mailto:austin.summers@dominionenergy.com))  
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Administrative Assistant