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dba Dominion Energy Utah*

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE FORMAL
COMPLAINT OF SCOTT SOULIER
AGAINST DOMINION ENERGY OF UTAH

Docket No. 18-057-24

**QUESTAR GAS COMPANY DBA
DOMINION ENERGY UTAH'S
RESPONSE TO THE PUBIC SERVICE
COMMISSION OF UTAH'S
REQUESTS FOR ADDITIONAL
BRIEFING**

Respondent Questar Gas Company dba Dominion Energy Utah ("Dominion Energy" or "Company") respectfully submits this response to the Public Service Commission of Utah's ("Commission") February 14, 2019 Request for Additional Briefing ("Request").

BACKGROUND

1. This matter arises out of the closure of a Compressed Natural Gas Fueling Station ("Station") operated by Dominion Energy on property owned by the Board of Education of Canyons School District ("District"), located at 9150 South 500 West, Sandy City, Utah ("Property"). The Station was operated on the Property pursuant to a Compressed Natural Gas Fueling Station Agreement ("Agreement").

2. Under the Agreement, the District retained the right to terminate the Agreement (and the Company's right to operate the Station on the Property) without cause upon ninety (90) days written notice. In April 2018, the District exercised that right, and provided written notice to the Company to terminate the Agreement.

3. On October 2, 2018, the Company notified the public through postings at the Station and on social media that the Station was being closed.

4. On or about November 6, 2018, Dominion Energy was notified of an informal complaint regarding the closure of the Station made by Scott Soulier ("Mr. Soulier") ("Informal Complaint"). In his Informal Complaint, Mr. Soulier, who is the owner of a natural gas vehicle, expressed concern that the Station's closure would make his access to natural gas for his vehicle more difficult. Mr. Soulier asked whether Dominion Energy had obtained any public input regarding the closure of the Station and whether Dominion Energy had provided the public with prior notice of the closure.

5. On November 8, 2018, Dominion Energy responded to Mr. Soulier's Informal Complaint. In its response, Dominion Energy explained that, because the Station had been located on private property and the owner had decided to sell the Property, the new owner required the Station to be torn down. Dominion Energy also explained that the Company was in the process of evaluating potential new locations at which it could construct another NGV station.

6. Unsatisfied with Dominion Energy's response, Mr. Soulier filed a formal complaint with the Commission on December 7, 2018 ("Formal Complaint"). In his Formal Complaint, Mr. Soulier raised five issues: (1) whether the public had an opportunity to

comment on the closure of the Station prior to its closure; (2) the inconvenience Mr. Soulier would allegedly suffer as a result of the Station's closure; (3) his claim that Dominion Energy is behind on its maintenance of natural gas compressors and sensors at a 7-11 gas station in West Jordan, Utah; (4) his claim that the Company may have breached its obligation to the public by not having another natural gas station built and operational before or at the time of the Station's closure; and (5) his assertion that the south end of Salt Lake County has a dearth of natural gas stations.

7. On December 10, 2018, the Commission issued a Notice of Filing and Comment Period, which set January 7, 2019 as the deadline for the Company's response to the Formal Complaint, and January 22, 2019 as the deadline for Mr. Soulier to reply to Dominion Energy's response.

8. On January 7, 2019, the Utah Division of Public Utilities ("DPU") submitted an Action Request Response in which it recommended no action in response to the Formal Complaint.

9. Also on January 7, 2019, Dominion Energy filed its response to the Formal Complaint and a Motion to Dismiss the Formal Complaint ("Response"). In the Response, Dominion Energy explained that the Station's closure was the result of the District's notice of termination of the Agreement, not any action or decision by the Company. Dominion Energy also explained that, while it understands the inconvenience caused by the District's decision, the closure of the Station was required by the Agreement and was not a violation of any rule or statute.

10. On January 14, 2019, Mr. Soulier filed his reply to the Company's response ("Reply"). In his Reply, Mr. Soulier stated, among other things, that he wanted Dominion to replace the Station with a natural gas station "of comparable size and quality VERY NEAR the location of the one just demolished." Mr. Soulier also raised, for the first time, the question of whether Utah Code § 54-3-3 required the Company to have provided 30-days' prior written notice of the Station's closure before it closed the Station.

11. Because Mr. Soulier had not referenced § 54-3-3 in his Formal Complaint, on February 14, 2019, the Commission issued the Request and provided the Company the opportunity to address Mr. Soulier's argument under that provision. The Commission also stated, "The PSC prefers to understand DEU's position on the matter before deciding DEU's Motion to Dismiss or scheduling this matter for hearing." (Request at 1.)

QUESTION PRESENTED

Whether the 30-day notice requirement of § 54-3-3 applies to the closure of the Station.

DOMINION ENERGY'S RESPONSE

For the reasons set forth below, Utah Code § 54-3-3 is inapplicable to the closure of the Station. Accordingly, the Company was not required to comply with the notice provision of the statute.

I. SECTION 54-3-3 IS INAPPLICABLE TO THE CLOSURE OF THE STATION.

A. The Plain Language of § 54-3-3 Demonstrates that It Is Inapplicable to the Station's Closure.

Section 54-3-3, which is titled "Changes by utilities *in schedules* – Notice," provides in pertinent part, as follows:

Unless the commission otherwise orders, ***no change shall be made by any public utility in any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract*** relating to or affecting any rate, toll, fare, rental, charge, classification or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission, and keeping open for public inspection, new schedules ***stating plainly the change or changes to be made in the schedule or schedules*** then in force, and the time when the change or changes will go into effect. . . . ***When any change is proposed*** in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreement, or in any rule, regulation or contract relating to or affecting any rate, toll, fare, rental, charge, classification or service, or in any privilege or facility, ***attention shall be directed to such change on the schedule filed with the commission*** by some character to be designated by the commission immediately preceding or following the item.

(Emphasis added.)

By its own terms, this provision is intended to apply *only* when (1) a utility proposes (2) to make changes to (i) its rate, fare, toll, charge or classification *schedules*, or (ii) to any rules, regulations or contracts relating to or affecting any *schedule* concerning “any rate, toll, fare, rental, charge, classification or service, or in any privilege or facility” That the statute is intended to apply only to changes made to utility schedules or rules, regulations or contracts concerning those schedules is further demonstrated by the statute’s notice requirements. Specifically, the statute requires, as part of the notice process, that the utility keep “open for public inspection, *new schedules* stating plainly the change or changes to be made in the *schedule or schedules* then in force” (*Id.*) (emphasis added). In addition, the last sentence of the provision requires that “attention be directed to such change *on the schedule filed with the commission*” (*Id.*) (emphasis added). These

requirements would make no sense if the statute were intended to apply outside of a proposed change to a utility schedule.

This construction is wholly consistent with how the Commission and courts have applied § 54-3-3. They have applied § 54-3-3 in circumstances where a utility proposes to change the fees, rates, tolls, charges or classifications contained in a tariff schedule, or where a utility proposes to modify amounts charged or collected under a balancing account established through a tariff or statute.¹ Dominion Energy has located no Commission decision or case where § 54-3-3 has been applied to a context remotely similar to this one, let alone where the action at issue was precipitated not by the utility but by a third party's decision to terminate an agreement.

Here, Dominion Energy did not propose to make any change to any rate, fare, toll, charge or classification in its tariff schedules, nor did it propose any change to a rule, regulation or contract affecting its its "rates, tolls, fares, rentals, charges, classifications or

¹ See, e.g., Report an Order, *In the Matter of the Formal Complaint of Duncan, Gavrila, Workman, Bates, et al. against Eagle's Landing Water Company, LLC*, Docket No. 13-2477-02 (2014 WL 1005231, at *11 (Utah PSC, March 6, 2014) (holding that § 54-3-3 applies when a utility desires to made a change to a tariff); Report and Order Granting Rate Increase for Fire Service User Fee, *In the Matter of the Application of WaterPro, Inc. for a Culinary Water Rate Case*, Docket No. 12-2443-01, at *1 (Utah PSC June 13, 2013) (approving a fire service user fee after the petitioner has complied with § 54-3-3); Report and Order, *In the Matter of the Application of WaterPro Inc. for a Culinary Water Rate Case*, Docket No. 12-2443-01, 2013 WL 871338 (Utah PSC Feb. 22, 2013) (applying § 54-3-3 to a utility's request to impose a fire service user fee rate"); Report and Order, *Re Utah Gas Service Company, Corp.*, Docket No. 99-059-01, 1999 WL 547986 (Utah PSC April 27, 1999) (applying § 54-3-3 in the context of a utility request to make adjustments to its gas balancing account and to increase rates due to cost increases); Order, *Re Mountain Fuel Supply Company*, Docket No. 92-057-T01, 1993 WL 263585 (Utah PSC April 8, 1993) (holding that § 54-3-3 imposes "the requirements for modification of Mountain Fuel's tariff"); Order, *Re Utah Public Pay Telephone Association*, Docket No. 87-049-10 (Utah PSC Sept. 14, 1988) (holding that "Utah Code Ann. Section 54-3-3 allows tariff modifications which change the rates charged or which change 'any rule, regulation or contract relating to or affecting any rate...or service' upon thirty days' notice in the manner therein provided."); *American Salt Co. v. W.S. Hatch Co.* 748 P.2d 1060, 1063 (Utah 1987) (discussing § 54-3-3 in the context of a potential "special commodity rate.").

services, or in any privilege or facility” Accordingly, the Company was not required to provide 30-days prior written notice under the statute before the Station was closed.²

B. The Closure of the Station Was the Result of the Termination of the Agreement, Not Any Voluntary Change by the Company.

In addition, § 54-3-3 is inapplicable because the Station’s closure was the result of action by a third-party, not Dominion Energy. As set forth in the Company’s Response, the Station, though operated by Dominion Energy, was located on land owned by the District pursuant to the terms of that Agreement.³ Under the Agreement, the District had the unfettered right to terminate the Agreement by giving 90-days’ written notice to Dominion Energy. That is precisely what happened. The District exercised its right to terminate the Agreement by providing the Company with written notice of termination in April 2018. Consequently, § 54-3-3 would not apply because Dominion Energy had no choice regarding whether to close the Station, and notice to the Commission and the public would not have changed the outcome.

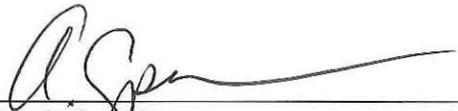
The clear purpose behind § 54-3-3 is to allow the Commission and the Company’s customers time to weigh in on proposed changes to tariff schedules before those changes go into effect. Whether and when the change goes into effect is within the Commission’s clear authority to regulate. The same was not true here. The Station’s closure was the result of the District’s decision to terminate the Agreement, not any voluntary proposal by the Company. And, regardless of whether customers opposed the closure, the Commission

² Moreover, while § 54-3-3 is inapplicable, the Company has not ceased providing NGV gas services. While it was forced to close one NGV location, it continues to provide NGV gas service in the valley, and the Company is evaluating options to open other NGV locations.

³ The Board of Education of Jordan School District was originally a party to the Agreement, but assigned its rights in the Agreement to the District on July 1, 2009.

lacked the jurisdiction to prevent the District from taking this action. Therefore, because the closure was not at Dominion Energy's instigation and was outside of the Commission's authority to prevent, the Company was not required under § 54-3-3 to provide 30-day's prior notice before the Station closed.

DATED: March 18, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2019 a true and correct copy of the foregoing
**QUESTAR GAS COMPANY DBA DOMINION ENERGY UTAH'S RESPONSE TO
THE PUBIC SERVICE COMMISSION OF UTAH'S REQUESTS FOR ADDITIONAL
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