



GARY HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

Department of Commerce Division of Public Utilities

FRANCINE GIANI CHRIS PARKER
Executive Director Director, Division of Public Utilities

Action Request Response

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powel, Manager

Doug Wheelwright, Utility Technical Consultant Supervisor

Eric Orton, Utility Technical Consultant

Date: October 31, 2019

Re: **Docket No. 19-057-25**, Informational Filing of Dominion Energy Utah Concerning the Transponder Replacement program and Request for a Waiver of Applicable Commission Rules.

Recommendation (No Approval)

The Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) not approve the application of Dominion Energy Utah (Gas Utility) filed on October 1, 2019 to waive two Commission rules and one tariff relating to back billing and meter reading.

Issue

As the Gas Utility stated, it may have been violating Commission rules by not reading all meters in a two-month period and by exceeding the six-month transponder-related errors in its own tariff regarding estimated bills. It seeks a waiver to the extent that it has violated the rules and tariffs. It also states that it has begun a process it believes will return its operations to compliance. It claims that to remedy these violations it has instigated the transponder replacement program,

which it says will be complete in 2020. This, the Gas Utility believes, will solve the estimated bill issue and return it to compliance with its Customer Service Standards, and the applicable tariff and rules.

Background

In 2015, the Gas Utility discovered that its transponders were failing at an unusually high rate because of failing batteries. The Gas Utility determined that it needed to replace the transponders and began to do so the next year. In a January 9, 2018 technical conference, the Gas Utility discussed the effect the transponder failures was having on its customer service standard metrics. In particular, billing metric 1, "Read each meter monthly" and customer care metric 3, "average wait for customer after menu selection."

The Gas Utility's position is that "As a result of the failure rate of these transponders, the Company has been unable to obtain meter reads from some meters and has, instead, estimated bills for those meters until it could obtain an actual meter read." Some customers are receiving estimated bills for longer than six consecutive months without an actual meter read.

On October 1, 2019, the Gas Utility filed an application officially informing the Commission of its violations, identifying its proposed solution, and requesting" a "Waiver of Commission Rules." On that same day, the Commission issued an Action Request to the Division directing it to "Review Request for Agency Action and Make Recommendations." On October 2, 2019, the Commission issued a Notice of Filing and Comment period stating that, "Any interested party may submit comments on DEU's Request on or before Thursday October 31, 2019" and stating that reply comments are due November 15, 2019. On October 9, 2019, the Office of Consumer Services (Office) issued its first set of Data Requests to the Gas Utility and on October 17, 2019, the Division issued its first set.

On October 21, the Gas Utility invited the Division and Office personnel and counsel to a meeting at its facility the following day to address the discovery request questions in a more open setting, as opposed to the formal process of written responses to Data Requests. Accordingly, the Office and Division met with the Gas Utility, reviewed the questions and had a

productive back-and-forth dialog. As a result, the Division obtained the necessary information to provide its recommendation. These are the Division's Comments and Action Request Response.

Discussion

In its filing, the Gas Utility seeks a Commission waiver of "Some of the Commission's rules, and the Company's Tariff govern billing estimates." ¹ Rule 746-200-4(B)(2) sets the procedures for when the utility is unable to obtain actual meter reads for "two regular route visits." Also, the Tariff states that the Gas Utility can adjust bills for transponder-related errors for only six months. In its application, the Gas Utility provided Exhibit 3 showing that the Company has exceeded this 6-month limitation for some customers.

As a result of the failure to read certain meters for extended periods of time the Gas Utility has not remained in compliance with certain rules governing billing. Specifically, Utah Admin. Code R746-320-8, which addresses catch up bills and back bills. (The definitions may be subject to some interpretation.) At least some of the bills seem to fall into the category of catch up bills and some are backbills. Many may not comply with the rule or tariff provision 8.2.

The Gas Utility "believes it has acted in compliance with the Commission Rules and its Tariff, [but] it recognizes that there could be room for disagreement. Therefore, the Company requests that the Commission expressly waive compliance with applicable provisions of the Utah Admin. Code and the Company's Tariff until the conclusion of the transponder replacement program."² The Division disagrees that the Gas Utility has complied with rules and tariff provisions.

Issues

The Gas Utility should have been attempting physical readings of the meters and/or informing customers of the requirement to allow access to read the meters after two months of estimated bills. The rules make this clear. Its decision to rely on estimated billing for extended periods of time has resulted in non-compliance with administrative rules and tariff provisions.

¹ DEU 19-057-25 page 3

² DEU 19-057-25 page 5

According to R746-200-4(B)(2) “if a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading.” The utility is required to, at a minimum: schedule a meter read at other than normal business hours, make an appointment for meter reading, or provide a prepaid postal card on how the customer may record a meter reading. However, “[i]f after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.” (Emphasis added.) The Gas Utility has not followed these procedures for many of the failing transponders.

During the discussion with the Gas Utility it was discovered that the Gas Utility has not been following the requirement to “notify the customer that he must make arrangements to have the meter read as a condition of continuing service” after two regular route visits as prescribed. Moreover, “[i]f, after compliance with Subsection R746-200-4(B)(2) a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(C)(1)(f), reasons for termination.” However, the Gas Utility may only terminate service for failure to provide access to meters after it has made the attempts according to R746-200-4(B)(2). In short, R746-200-4 requires a meter actually be read at least once in a two-month period, that the utility implement measures to get an actual reading if something prevents a regular utility reading, and authorizes an estimated bill only after the measures have been attempted and failed.

The Gas Utility has been sending estimated bills without also pursuing meter reads consistent with the procedures set forth in rule. Rather than making the necessary attempts to access the meter and then send an estimated bill, the Gas Utility automatically sends an estimated bill before attempting the remedies.

The result of the extended period of estimated billing for some customers is potential noncompliance with the rules on catch up and backbills. Rule 746-320-8(A)(1) defines a backbill as “that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer before the current billing cycle.” Arguably this includes any estimated bill that may be lower than what would have been

charged had the correct bill been issued. Rule 746-320-8(A)(2)(B) describes how a customer may be notified of a backbill and specifies that the “notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error, or condition that caused the underbilling ...”

This is not how the Gas Utility has been operating. It has been sending an automatically generated estimated bill with no “written explanation of the reason for the backbill.” It is not “sufficiently detailed to apprise the customer of the circumstances, error, or condition that caused the underbilling.”

Rule 746-320-8(A)(2)(C) further outlines the “Limitation on Providing a Backbill,” which explicitly states that “[a] utility shall not provide a backbill more than three months after the utility actually became aware of the circumstances, error, or condition that caused the underbilling ...” Exhibit 3 clearly shows that if the definition of backbill above is correct many customers have been billed for “more than three months after the utility actually became aware” of the issue. There remains a question of whether the estimated bills were known to be underbilling, however the most reasonable interpretation is that any catch up for inaccurate estimates represents underbilling for one or more periods. The Gas Utility knew it was not receiving actual meter reads and why it was not receiving them. In many cases the utility did not follow the procedures to read the meters consistent with the rule requirements. Its failure to follow the rules should not excuse it from following other ones.

Similarly, R746-320-8(2) states in relevant part that “a catch-up bill which exceeds by 50 percent or more the bill that would have been provided under the utility’s standard estimation program is presumed to be a backbill.” The difficulty in applying this provision for gas billing is that monthly bills vary significantly depending on the season and outside temperatures. Therefore, a small variation if billed in July or August might easily exceed the typical summer bill while not exceeding a winter billing cycle. This issue is exacerbated by the extended period of estimated bills for some customers. There is no way of knowing in what month the estimated bill was off as compared to actual use. The result is that it is difficult to apply this provision. This illustrates

why the meter reading rules are important. The Division recommends that the presumption be that the bills are backbills given that the Gas Utility is expected to have been diligently pursuing actual meter readings. Additionally, the Gas Utility states that it knew about transponder failures and the effect that this may have on customer bills since 2015 (nearly four years), yet it neither requested resolution through regulatory channels nor followed applicable rules and tariffs as the problem grew.

In addition to the rules, the Gas Utility's tariff section 8.02 states that "Corrections will be limited to the periods described in the following table." For Transponder-related billing error, the Gas Utility can adjust back only six months. Again, the Gas Utility's Exhibit 3 shows that many customers have estimated meter reads well over six months (assuming that the Gas Utility is correct that the reason for these estimates is because of transponder problems). There is no way of knowing what portion of the actual use registered on a meter occurred during the 6-month period prior to a correction or catch-up bill when the customer meter has not been read for greater than 6 months if the transponder has not recorded that information. This inability to know the usage for each period is solely the utility's fault. To the extent that the Gas Utility can recover the data to determine the monthly usage its billings must be limited to the adjustments for the 6-month period immediately preceding the bill.

Summary

Commission Rule 746-200-4(B)(2) requires that the Gas Utility notify the customer that the customer must make arrangements to have the meter read as a condition of continuing service. The Gas Utility did not "notify the customer that he must make arrangements to have the meter read as a condition of continuing service" in many circumstances. The rule requires this be done after two unsuccessful reads during two regular route visits.

Commission Rule 746-200-4(B)(3) requires that "If, after compliance with Subsection R746-200-4(B)(2)," which requires a utility to undertake specific measures before "it may give an estimated bill." The Gas Utility has not been following this requirement. Rather than making these attempts and then sending an estimated bill, it automatically sends an estimated bill before attempting the remedies specified.

Commission Rule 746-320-8(A)(2)(B) specifies that “This notification shall be followed by, or include, a written explanation of the reason for the backbill.” The Gas Utility is not complying. Rather it is sending an automatically generated estimated bill with no “written explanation.”

Commission Rule 746-320-8(A)(2)(C) specifies that, “A utility shall not provide a backbill more than three months after the utility actually became aware of the circumstances, error, or condition that caused the underbilling.” The Gas Utility states that it knew about transponder failures and the effect that this may have on customer bills since 2015. Whether this is properly interpreted to include knowledge that the customer estimated bill results in underbilling is uncertain under the language of the rule. Nevertheless, multiple failures to read a meter indicate a problem the utility should work diligently to correct within the rules.

The Gas Utility’s tariff section 8.02 specifies that for Transponder-related billing errors, the Gas Utility can adjust back only six months. The Gas Utility Exhibit 3 shows billing based on estimated meter reads exceeding six months.

Finally, the Division has received a number of customer inquiries that may be related to the transponder/estimated billing issue. In general, the Gas Utility has responded to these questions in a professional manner. However, it has often used a form letter by way of reply, rather than an individualized assessment of each customer’s inquiry. Further, the Division has noticed that in these responses there is no mention of tariff or Commission provisions, which is common when it responds to customer complaints forwarded from the Division.

Conclusion

Based on the application and discussions with the Gas Utility’s representatives, it is clear that the Gas Utility has violated Commission rules and its own tariff for an extended period of time. The Division recommends that the Commission not approve the Gas Utility’s request for waiver of applicable Commission rules and its own tariff as requested in its October 1, 2019 filing. The Division recommends that the Commission order the Gas Utility to diligently pursue the meter

readings as required by rule and to limit the backbills consistent with the Commission's rules and the Gas Utility's tariffs.

Also, the Commission may want to determine if a penalty under Section 54-7-25 is appropriate in this instance and if so, the extent of that penalty.

Cc: Kelly Mendenhall, Dominion Energy Utah
Michele Beck, Office of Consumer Services