Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Artie Powell, Manager
Doug Wheelwright, Utility Technical Consultant Supervisor
Eric Orton, Utility Technical Consultant

Date: August 5, 2022

Re: Docket No. 22-057-10, In the Matter of the Application of Dominion Energy Utah for Approval of Gas Affiliate Inventory Transfer Agreement.

Recommendation (Approval With Conditions)

The Division of Public Utilities (Division) has reviewed the Dominion Energy Utah's (Dominion or Company) filing and has determined that Dominion's Gas Affiliate Inventory Transfer Agreement (Agreement), in principle is reasonable, however the Division recommends certain additional conditions be established as a condition of approval. Therefore, the Division recommends that the Public Service Commission of Utah (Commission) approve the application with the five additional conditions outlined below.

Issue

The filing requests Commission approval of a limited purpose Agreement that would allow the Company to transfer inventory items to its affiliated sister Companies without requiring the Company to seek Commission approval each time. "The purpose of the Agreement is to establish the conditions under which the Company can transfer to or receive from other Dominion Energy gas affiliates certain items of inventory, spare parts, equipment, and other materials to address supply shortages resulting from manufacturing and shipping delays, market constraints and conditions, and other events and circumstances that are outside of the Company's or its affiliates' control."[1] The proposed Agreement would enable Dominion

[1] Application, page 1

and its affiliates to quickly transfer needed inventory items without a lengthy regulatory review process. By obtaining Commission pre-approval, the Agreement will streamline the process for transfers of materials and supplies between Dominion Energy affiliates to address supply shortages where possible, and to avoid delays in addressing system or customer needs. Prior to any transfer, the supplying Company would determine and verify that there would be no impact on its ability to provide service to current customers. The proposed Agreement would potentially place the Company and its affiliates in a position similar to the position gas utilities enjoy through the use of mutual aid agreements. The Company requests Commission approval of the Agreement and an Order indicating pre-approval for inventory transfers.

Background

During the past few years, the Company and its affiliates have experienced supply chain difficulties related to the COVID 19 pandemic. The supply chain issues, and market instability have caused the Company to experience shortages or delays in obtaining certain inventory Items. In May 2022, one of the Company's affiliates experienced difficulties with a delayed shipment of a common inventory item of meter risers and attempted to arrange an asset transfer between itself and a sister company. The other affiliate had several months of inventory and could have provided the risers without consequence, however, the transfer "could have required a filing with the affiliate's regulatory authority, and that approval, if provided at all, could take at least 30 days and perhaps more time."[2] Although the items were provided through another avenue, and the sister company did not need to get approval from its regulators, it brought to light the issue of Dominion Corporate inter-company transfers and the option of establishing a protocol for use by Dominion Energy and its affiliates "in all jurisdictions to enable the sharing of resources and to avoid the possibility of delays in the future".[3]

The draft Agreement was filed with the Commission on June 28, 2022. On that same day the Commission issued its Action Request to the Division directing it to review the application and make recommendations on or before July 28, 2022. On July 1, 2022, the

[2] Direct Testimony of Kelly B Mendenhall, page 2, line 42.
[3] Ibid, page 3, line 47.

Commission issued a Notice of Virtual Scheduling Conference to be held on July 11, 2022, resulting in it issuing a notice that Initial Comments will now be due August 5, 2022, with Reply Comments due August 22, 2022, and setting the Hearing for September 7, 2022. This memo is the Division's initial comments showing the results of its review and recommendation.

Discussion

There are regulatory rules, tariff provisions and merger agreements that may (but not necessarily) place boundaries around inter-company asset/inventory transfers like the ones in the Agreement. These are:

Commission Rule R 746-401-3 requires each public utility to "file with the Commission, at least 30 days before its being consummated, a report of the sale, transfer or other disposition by that utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission." The $10 million dollar threshold would apply for Dominion; however, it is unlikely that an inventory transfer of that size would be necessary.

DEU Tariff Section 2.06 states: "All other affiliate expenses, unless otherwise approved by the Commission or subject to regulation by another governmental agency, shall be either (1) cost of service based or (2) competitive with the market for similar services at the time the contract for the services was entered into." This provision requires that affiliate transactions be completed at cost or market-based value.

Paragraph 27 of the Dominion/Questar merger stipulation states that[4]: "Dominion Questar Gas will not transfer material assets to or assume liabilities of Dominion or any other Dominion subsidiary without Commission approval." The term materiality is not defined in the merger stipulation, however, Commission Rule R 746-700-22A.3 provides a definition of materiality stating that "a change in requested Utah jurisdictional revenue requirement equal

[4] Docket No. I 6-057-01

to or greater than 0.1% of total state revenue requirement or $500,000, whichever is less." The $500,000 floor would be applicable to Dominion.

Commission rule R 746-700-22D.5 states that: “costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or costs allocated or directly charged to Utah regulated operations included in the general rate case application, between the utility and/or its parent company and affiliated companies for services and/or goods rendered between or among them.” This information is required at filing with sufficient evidence to support the application.

DIVISION’S PROPOSED CONDITIONS OF APPROVAL OF THE AGREEMENT:

The Division recognizes the current supply chain difficulties and acknowledges the potential benefits of inventory transfers. The Division does not oppose the proposed agreement and recognizes that it will likely have limited use and applicability. Supply chain issues appear to be easing, and the proposed agreements would provide additional transparency for affiliate transactions. As a condition of approval, the Division would recommend the following five conditions or clarifications.

1. The witness for the Company, Mr. Kelly B. Mendenhall, states that “the Company proposes that the Commission approve the Agreement, and that this preapproval fulfill any conceivable obligation set forth in the Dominion/Questar Merger Stipulation. Then, if any party in the future disagreed with the Company's reading of the merger provision, the Commission's order in this docket would settle the matter.”[5] The Division does not believe that this statement is intended to shift the burden of providing the Commission substantial evidence from the utility to other parties or that this Agreement would fulfill any conceivable obligation on the Company’s part. However, if that is the intent of the statement, then the Division opposes the Agreement outright. The Division requests clarification from the Company on this matter and direction from the Commission.

[5] Ibid, page 4, line 79.

2. The Company states that "Approval of the Agreement would constitute Commission pre-approval for the exchange of inventory between Dominion Energy affiliates. The transfer of inventory could be made in exchange for money at cost, or it could be a like-kind exchange so long as the value of the exchanged Inventory is comparable."[6] The Division recommends that a condition of approval be included. If the value of the transfer is equal to or greater than $500,000, evidence be provided to the Commission explaining the propriety of the transfer as soon as possible but not later than 30 days after the transfer.
3. The Company proposes that its annual Affiliate Transaction Report "will provide full transparency to the Commission while eliminating any unnecessary delays to the transfer."[7] The Division proposes that the Affiliated Transaction Report provide evidence showing that the Company is still in compliance with DEU Tariff section 2.06 and provide an accounting showing that the transactions held the Company's customers harmless and that the items transferred were the lower of cost or market.
4. The application states that "The purpose of the Agreement is to establish the conditions under which the Company can transfer to or receive from other Dominion Energy gas affiliates certain items of inventory, spare parts, equipment, and other materials to address supply shortages resulting from manufacturing and shipping delays, market constraints and conditions, and other events and circumstances that are outside of the Company's or its affiliates' control."[8] The Division is unclear what the exact conditions, events and circumstances that may or may not be deemed "outside of the Company's or its affiliates' control". As a condition of approval, the Company should be required to provide an explanation for each inventory transfer that describes the "events and circumstances" and demonstrate that the difficulties causing the transfers are "outside of the Company's or its affiliates' control" as part of its annual Affiliate Transaction Report.

[6] Ibid, page 4, line 85.
[7] Direct Testimony of Kelly B. Mendenhall line 97
[8] 22-057-10 Application, page 1.

5. In accordance with Commission Rule R 746-401-3 which requires each public utility to “file with the Commission, at least 30 days before its being consummated, a report of the sale, transfer or other disposition by that utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.” That, even with the approval of this Agreement, that no asset or inventory transfer exceed $10 million without preapproval by the Commission.

Conclusion

The Division reviewed the application, Agreement, Tariff, Rules, and the accompanying testimony as filed by the Company and supports the concept of gas utilities mutual aid agreements. The Division believes that the practicality of the Agreement could be met with the current mutual aid agreements, but the proposed agreement will provide additional transparency if needed and does not oppose the agreement if the five conditions outlined above are included. This filing is not requesting any change in the Company’s current rates.

cc: Kelly B. Mendenhall, Dominion Energy Utah
Michele Beck, Office of Consumer Services