

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Dominion Energy Utah for a Waiver of Utah Admin. Code R746-460 to Allow Sharing with Low Income Assistance Program Administrators

DOCKET NO. 22-057-19
ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR WAIVER

ISSUED: November 17, 2022

On October 24, 2022, Dominion Energy Utah (DEU) filed the above captioned application (“Application”) with the Public Service Commission (PSC). The Application requests the PSC waive certain compliance obligations with “portions of Utah Admin. Code [R746-406] to permit [DEU] to share customer usage and billing information with governmental agencies and non-profit entities administering low-income-assistance programs.”¹ The Application “further requests that [R746-406’s requirement] that [DEU] obtain and retain express consent of the customer [regarding the sharing of customer information] also be waived for this limited purpose.”² The Application seeks expedited consideration.³ On October 26, 2022, we issued a Notice of Filing and Comment Period providing that any person could submit comments by November 10, 2022. The Division of Public Utilities (DPU) filed comments on November 10, 2022 (“Comments”).

BACKGROUND

According to DEU, Utah Admin. Code R746-460 allows utilities like it to share customer data, such as billing and usage data, “only if the customer provides Express Consent for such sharing”⁴ DEU states the rule requires such consent be given in writing and retained by the

¹ Application at 1.

² *Id.* at 4.

³ *Id.* at 3.

⁴ Utah Admin. Code R746-460-3(2)(a). “Express Consent” is defined in Utah Admin. Code R746-460-2(1).

utility.⁵ Although the rule permits sharing without permission “in relation to the [utility’s] conduct of its core utility function or to maintain safe and reliable service to customers[,]”⁶ DEU states it does not expressly permit DEU to share customer billing and usage data with third parties who administer low-income energy assistance (“Agencies”).⁷

DEU currently works directly with Agencies who participate in and/or administer low-income assistance programs like Utah’s Low Income Home Energy Assistance Program, the Utah Home Energy Assistance Target, DEU’s REACH program, and the Energy Rental Assistance Program (collectively the “Programs”).⁸ Qualified low-income customers seeking assistance for payment of their natural gas bill through the Programs are required to provide certain information to the Agencies.⁹ DEU states that it has become common for customers to provide only some of the required information to the Agencies, resulting in administrative burden.¹⁰ Specifically, DEU claims that “the Agency and the customer contact [it] and a [DEU] employee provides the current usage and billing information.”¹¹

According to DEU, it is attempting to address this issue by developing and deploying a software solution that it claims will allow the Agencies to have limited access to the required customer information in order to provide it to DEU on the customer’s behalf. DEU also represents it will meet certain specific conditions in the implementation and use of this

⁵ Application at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ Application at 2.

¹⁰ *Id.*

¹¹ *Id.*

solution.¹² However, DEU believes that its “proposed software solution to the burden imposed by the current process could, arguably, run afoul of [Utah Admin. Code R746-460]”¹³ and thus seeks the waiver.

DPU views the Application as two separate requests: “First, [DEU] wants permission to share Customer Data (as defined in the Rule) with certain [Agencies]. Second, [DEU] wants permission to not be required to obtain Express Consent (as defined in the Rule) and to not be required to retain records of the Express Consent.”¹⁴ DPU recommends conditional approval as to the first request (the “Sharing Component”), but recommends denial of the second (the “Express Consent and Retention Component”).¹⁵

DPU states the “rules referenced by [DEU in the Application] are designed ‘to establish and enforce certain uniform practices governing’, among other things ‘Customer Usage Data by Large-Scale Utilities with utility affiliates or third parties’ when the utility is given, (and retains) ‘Express Consent’ to share the customer’s usage and billing data. [DEU] is not requesting to share more information than customer usage and billing data.”¹⁶

DPU agrees that DEU must meet the specific conditions DEU identifies in the Application,¹⁷ but – and after consultation with DEU¹⁸ – recommends additional conditions¹⁹ with respect to the Sharing Component. However, DPU does not support the Express Consent

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

¹⁴ Comments at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 3-4 (listing DPU’s articulation of five specific conditions identified by DEU in its Application at 2-3).

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 4-5 (listing six additional conditions).

and Retention Component, asserting allowing a waiver of this element of the rule is not substantially justified by the Application.²⁰ DPU also asserts that, after “extensive communication with” DEU, the Express Consent and Retention Component can be “sufficiently fulfilled by” DEU.²¹

FINDINGS AND CONCLUSIONS

DEU seeks a limited waiver of its compliance obligations found in portions of Utah Admin. Code R746-460. The PSC may grant a request to deviate from a rule provided the movant has shown compliance would impose a hardship that outweighs the benefits of the rule.²² Here, DEU claims administrative burden as the basis for a waiver. The benefits of Utah Admin. Code R746-460 are, among other things, uniformity among administratively defined utilities regarding the sharing of certain customer information and the confidentiality obligations associated with that information.²³

As for the Sharing Component of the Application, DEU’s proposed conditions, coupled with additional conditions DPU proposes, provide DEU with the ability to address at least part of its claimed administrative burden. Specifically, DEU’s proposed software solution would allow access by the Agencies to required information of customers participating in the Programs. At the same time, the benefits of the rule would be maintained. Accordingly, we find and conclude that a limited waiver of Utah Admin. Code R746-460 as to the Sharing Component is, subject to

²⁰ *Id.* at 6.

²¹ *Id.*

²² Utah Admin. Code R746-1-109.

²³ *See* Utah Admin. Code R746-460. Both the Application and the Comments appear to acknowledge these purposes. *See* Application at 2-3, and Comments at 3 and 4-5.

DOCKET NO. 22-057-19

- 5 -

DEU's compliance with the conditions specifically articulated (1) by it in the Application,²⁴ and (2) by DPU in the Comments,²⁵ in the public interest. We thus grant the Application on that issue.

As for the Express Consent and Retention Component, the Application does not provide sufficient facts concerning the extent of the claimed burden on this specific point. The Application does not expressly claim the asserted administrative burden of compliance is such a hardship that it outweighs the benefits of the rule. Accordingly, we find and conclude that on the record currently before us, a waiver of Utah Admin. Code R746-460 as to the Express Consent and Retention Component is not shown to be in the public interest. We thus deny the Application on that point.

ORDER

The Application is granted in part and denied in part, as set forth herein.

²⁴ Application at 2-3.

²⁵ Comments at 4-5 (titled "Division Proposed Additional Customer Data Safeguards").

DOCKET NO. 22-057-19

- 6 -

DATED at Salt Lake City, Utah, November 17, 2022.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#326187

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on November 17, 2022, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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