UTAH DEPARTMENT OF COMMERCE
Division of Public Utilities

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Comments

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Brenda Salter, Assistant Director
Doug Wheelwright, Utility Technical Consultant Supervisor
Eric Orton, Utility Technical Consultant
Matthew Pernichele, Utility Analyst

Date: October 12, 2023

Re: **Docket No. 23-057-15,** Application of Questar Gas Company, dba Dominion Energy Utah and Fall West Holdco LLC for Approval of a Partial Corporate Reorganization.

Recommendation (Approval)

The Division of Public Utilities (Division or DPU) has reviewed *the Application of Questar Gas Company dba Dominion Energy Utah and Fall West Holdco LLC for Approval of a Partial Corporate Reorganization* (Application). The Division recommends the Public Service Commission of Utah (Commission) approve the Application. Approving the proposed reorganization likely poses no risks or costs to Utah consumers and is an intermediary step to the sale of Dominion Energy Utah (Company or DEU) to Enbridge Inc. (Enbridge). The Commission will have the opportunity to approve or deny Enbridge's purchase in a separate docket following a more thorough investigation.

Issue

Questar Gas Company (QGC) dba Dominion Energy Utah (DEU) and Fall West Hold Co LLC (Fall West), are jointly asking the Commission to approve the reorganization of 11 companies (Subsidiaries) owned by the Company's parent, Dominion Energy Inc. (DEI) into

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two separate holding companies to facilitate its proposed sale to Enbridge.[1] This type of reorganization requires Commission approval if it finds it to be in the public interest.[2]

Background

This docket originated from the Application filed with the Commission on September 8, 2023. A virtual scheduling conference[3] was held on September 21, 2023, and a scheduling order[4] was issued on September 25, 2023. The scheduling order called for a technical conference on October 3, 2023, initial comments due October 10, 2023, reply comments due October 16, 2023, and a hearing was also scheduled for October 19, 2023.[5] On September 26, 2023, the DPU submitted 27 questions to DEU that the Company addressed at the technical conference (Technical Conference).

Discussion

DEI proposes selling three regulated, natural gas local distribution companies (LDCs) and 8 related companies to Enbridge. The LDCs are Questar Gas Company, The East Ohio Gas Company (EOG), and Public Service Company of North Carolina, Incorporated (PSNC) which is a subsidiary of SCANA Corp. PSNC is not part of the reorganization proposed in this docket.[6] As explained in the Technical Conference on October 4, 2023, the proposed reorganization serves three purposes, 1) it reflects the different purchase agreements between DEI and Enbridge segmenting the LDC's and other companies into discrete business interests, 2) it allows for different approval and completion dates to conform to its different regulatory tracks in 3 different jurisdictions, and 3) it provides tax advantages to DEI.

Currently, QGC and the related companies along with EOG are all owned by Dominion Energy Questar Corporation (DEQC), which is a subsidiary of DEI.[7] DEU and Fall West propose a corporate reorganization by dividing the Subsidiaries with the EOG and two other subsidiaries owned by DEQC and QGC and all of the remaining subsidiaries owned by Fall West (Holding

[1]Docket Number 23-057-15, In the Matter of the Application of Questar Gas Company dba Dominion Energy Utah and Fall West Holdco LLC for Approval of a Partial Corporate Reorganization, page 2.
[2] Utah Code Ann. §54-4-28.
[3] Docket No. 23-057-15, Notice of Virtual Scheduling Conference
[4] Docket No. 23-057-15, Scheduling Order, Notice of Technical Conference, and Notice of Hearing
[5] Ibid, page 1
[6] Ibid, page 4
[7] Application, page 11

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Companies).[8] PSNC is not part of the reorganization proposed in this docket.[9] The acquisition by Enbridge has been structured into three separate agreements, one for each LDC (with a bundle of other companies), that can be completed as they are approved by regulators in its respective states. This structure also ensures that any approved acquisitions can still be completed even if some of the sales are not approved.

As explained in the confidential portion of the technical conference and a follow-up meeting with the Division, this proposed structure would also allow DEI to get into a [redacted] in the sale of some of the subsidiaries by arranging them in this manner.

Analysis

The Division's analysis of the Application, subsequent Technical Conference, and informal meetings and discussions led to two significant areas of concern in determining if the proposed reorganization is in the public interest for Utah ratepayers:

1. Is there a risk that it could violate [redacted] and could such a violation impose costs on Utah consumers [redacted]?
2. Would the proposed restructuring affect existing debt obligations and future access to capital markets (Debt Risk)?

[redacted]

The Company stated that any [redacted] of the proposed reorganization do not pose any risks to Utah consumers or any of the Subsidiaries associated with the LDC. [redacted] DEI emphatically declares that it would accept any potential risks created by the transaction. The [redacted] obligation is not created until the sales transaction has been completed and any additional [redacted] obligation would be borne by DEI and could not be passed on to ratepayers.

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[8] Ibid, page 12
[9] Ibid, page 4

Redacted

The intricacies of merger and acquisition [redacted] law are out of the Division's area of expertise and our analysis relies heavily on assertions made by DEI. DEI explained that the transactions allowing DEQC to record both the capital loss and the capital gain that it will offset, is due to the cost basis currently on the books and are not in response to the potential Enbridge acquisition. [redacted] DEI did not assert that the transaction has been pre-approved by the IRS with an opinion, advisory letter, or other, binding instrument. DEI explained that the [redacted] aspects of the transaction were proper both in form and substance. Proper in form because it violates no laws or regulations. Proper in substance because DEI would record the same gain if Enbridge purchased the assets in one larger transaction instead of three smaller ones.

The proposed reorganization does not pose significant risks to Utah consumers because it will be on DEI's [redacted] and only after the sale has occurred. The LDCs will no longer be owned by DEI when such a liability could arise. This is in addition to the rules that insulate Utah consumers from imprudent expenses incurred by a utility or its parent company.

Debt Risk

During the Technical Conference and in a subsequent meeting, DEI emphasized that Utah customers will not have increased exposure to debt and that QGC's access to capital markets will be unchanged as a result of the proposed reorganization. QGC and the other LDCs carry its own debt and have its own credit ratings, independent of its parent companies. QGC has not been relying on its parent companies to back any bonds or bank loans and does not guarantee any of the bonds or bank loans of its parent companies. QGC's and DEI's existing ringfencing restrictions[10] will remain in place after the reorganization.

[10] Docket 16-057-01, *Settlement* Stipulation, Page 9

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Other Points

- The reorganization would not violate any of the provisions of either the Wexpro or Wexpro 2 agreements, which would remain fully in effect after the reorganization.

- The reorganization would have no meaningful effect on QGC's current operations.

Conclusion

The Division recommends that the Commission approve DEI's proposed reorganization because it will likely impose no cost, risk, or other negative effects on Utah consumers and is a step toward the sale of the utility to Enbridge. The Commission will have the opportunity to approve or disallow the sale of QGC and related subsidiaries as it sees fit in a future docket.

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