
Versant Power (“Versant” or the “Company”) files these comments pursuant to the Commission’s January 8, 2024, Notice of Rulemaking (“NOR”).

Background

Through this NOR the Commission solicits discussion of proposed edits to Chapter 815 of the Maine Public Utility Commission’s (the “Commission”) Rules. The Commission provided a proposed redline draft of Chapter 815 and made particular points in the text of the NOR itself. Versant Power submits these comments by referring to sections within Chapter 815, addressing the Commission’s redlines for the section at issue, if any, and providing comments and suggestions.

Comments

I. General Response

Versant is generally pleased with the changes to Chapter 815 that the Commission has proposed. If these comments do not discuss a particular change, Versant supports its implementation.

II. Section 2(H): Billing Error definition

a. Definitions in Chapter 320 and 815 should be consistent.

“Billing Error” is defined in both Chapter 815(2)(H) and Chapter 320(8)(A)(1), but the definitions are not consistent. Although these two chapters serve different purposes there does

not appear to be a reason to maintain different definitions in these two parts of the Commission's rules. Applying the same definition in both places makes sense. Versant tracks billing errors manually, which makes applying two different standards difficult and unwieldy.

III. Section 4: Confidentiality of Customer Information

a. Utilities should be permitted to disclose customer information to law

enforcement when there is good faith belief that a crime has been committed.

The Health Insurance Portability and Accountability Act ("HIPAA") is the gold standard for the protection of sensitive information. Its confidentiality requirements for covered healthcare entities are stringent but contain reasonable exceptions. One of those exceptions allows covered entities to disclose patient information to law enforcement when they believe that a crime has been committed:

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity. 45 CFR § 164.512(f)(5).

No similar exception exists for utilities in Chapter 815(4). This creates problems for utilities that the Commission should resolve because there is no reason to protect utility customer information more strictly than patient healthcare information.

First, Chapter 815 does not by its current terms allow utilities to report crimes against its employees or agents. So, if a line worker is the victim of a criminal threat or assault at a customer's residence, the customer's name and address would be needed to be disclosed to report the crime to law enforcement, but that information is confidential under the rule. The rule should make clear that this kind of reporting does not violate the Chapter.

Second, illegal marijuana growing operations are an escalating problem in Versant's service territory. Versant can identify these operations with a high degree of certainty based on the combination of consistent characteristics, which include, but are not limited to: rural residential service addresses, installation of or requests for 200 or 400 amp or other large service entrances, damage to Versant equipment caused by high usage or improper customer installations, extremely high energy consumption, and other commercial activities and installations unusual for a residence. The energy consumption for these locations is often over 3,000kWh per month. While it is possible for legitimate businesses or other operations such as bitcoin mining to consume large amounts of electricity, such situations, particularly when coupled with the other listed factors, are extremely uncommon.

Versant knows its assessment is accurate because the alleged illegal marijuana growing operations which have been raided by law enforcement in the past year or two meet the criteria set forth above, and many were being monitored by Versant. Versant has also received a number of subpoenas for information in conjunction with law enforcement investigation of illegal marijuana growing operations in its service territory which have been consistent with the accounts and locations Versant was aware of.

The problem with the subpoena process is that law enforcement must have reason to suspect the location is being used for such an operation before they can issue a subpoena. Law enforcement cannot simply issue a subpoena for locations Versant suspects are illegal operations; the subpoena must target a specific address or customer.

The confidentiality rule as currently constituted chills Versant's ability to cooperate with law enforcement to resolve this serious issue. This only serves to delay law enforcement investigation of these locations. Adding an exception along the lines of the HIPAA exception for

reporting of a crime would provide flexibility to allow Versant to assist in these investigations more effectively. The good faith requirement would protect customers from abuse, and law enforcement is further constrained by the warrant requirements in the criminal law context; so innocent customers are extremely unlikely to be inconvenienced by this change. For all these reasons, Versant proposes the Commission adopt new language in this section mirroring the HIPAA exception. Specific language is proposed in the attached redlined document.

IV. Section 6(C): Name Swapping

- a. The rules should account for circumstances where a Payment Arrangement has not been established, and thus no Catch-up Amount can be calculated.***

New Section 6(C)(1)(d) is a welcome addition to the rules. It will allow utilities more tools to combat name-swapping and payment avoidance and will also likely reduce the volume of waiver requests associated to the Consumer Assistance and Safety Division (the “CASD”). However, the 6(C)(1)(d)(1) is helpful only when a Payment Arrangement has been established.

Versant has been applying for waivers for situations where applicants are name-swapping, but the current account owner never established a Payment Arrangement, and thus there is no Catch-up amount. In this scenarios Versant has asked the CASD to allow Versant to condition new applications for service on payment of the current account holder’s past due balance. The CASD has been granting these kinds of waiver requests.

Versant proposes adding a new paragraph allowing utilities to require that the current account holder’s past due balance for the location in question be paid in full before the service transfers to the new Applicant. This avoids a scenario where customers in arrears without a

Payment Arrangement are in a better position than those who have established a Payment Arrangement. Specific language is included in the attached redlined document.

b. Section 6(C)(1)(d)(2) regarding Name Swapping by non-residential customers should be expanded.

Versant suggests that agents or employees of the partnership, business, corporation or other business entity applying for service also be included in this section. Specific edits are included in redlines addressing the error and this suggestion are attached hereto.

V. Meter Reading

a. Section 8(M)(2) should allow more flexibility.

Section 8(M)(2) requires actual meter readings by the following month when there is a malfunctioning meter issue. Especially with Versant's installation and testing of its new remote meters, which is ongoing, some malfunctions may cause issues for larger numbers of customers in an effected region. Requiring them all to be manually read within the following month creates timing and logistical issues for Versant. Versant respectfully requests this section be revised to allow for two months before the actual reading must be attained.

VI. Disconnection Notices during the winter period

Section 10(M)(1) prohibits certain communications to customers regarding disconnection during the Winter Period. Versant reads this section as allowing utilities to send disconnection notices to customers where the notice is mailed or sent during the Winter Period, but the effective date where disconnection may actually occur is outside the Winter Period. Thus, a utility would be permitted to send a customer a disconnection notice in March, so long as the effective period of potential disconnection specified in the notice began on or after April 15th.

The section as drafted, however, could be interpreted as prohibiting all disconnection notices from being sent during the winter period. Versant recommends this ambiguity be clarified as to the intent of the Commission.

Conclusion

Versant appreciates the opportunity to provide these comments and would be pleased to discuss any of these issues further.

Respectfully submitted on February 28, 2024.

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