

---

Formal Complaint of Scott M. Soulier against Dominion Energy Utah	<u>DOCKET NO. 18-057-24</u>
	<u>ORDER</u>

---

ISSUED: April 19, 2019

**1. Background**

On December 7, 2018, Scott M. Soulier (“Complainant”) initiated this docket by filing a formal complaint (“Complaint”) against Dominion Energy Utah (“DEU”), complaining that DEU closed a Natural Gas Vehicle (“NGV”) service station (the “Station”) without sufficient notice or opportunity for public comment and alleging the closure has meaningfully inconvenienced him.

On January 7, 2019, DEU filed a Response and Motion to Dismiss (“Response”), representing that DEU operated the Station by leave of an easement granted to DEU pursuant to an agreement (the “Agreement”) with the Board of Education of Canyons School District (“the District”). The Agreement gave the parties the right to terminate without cause upon 90 days’ written notice to the non-terminating party. DEU represents the District provided written notice to terminate the Agreement to DEU on or about April 18, 2018. DEU states, upon receipt of the notice of termination, it began preparations to decommission the Station. DEU further represents, on or about October 2, 2018, it provided public notice, through postings at the Station and through social media, indicating the Station would be permanently closed eight days later, on October 10, 2018.

DEU emphasizes it had no discretion as to whether to continue operating the Station and that DEU violated no law, rule, regulation, or tariff provision in closing the Station as the Agreement required.

On January 15, 2019, Complainant filed a reply (“Reply”), followed by additional correspondence on January 25, 2019. In his Reply, Complainant asserted Utah Code Ann. § 54-3-3 required DEU to provide 30 days’ notice before closing the Station and noted DEU had failed to do so.

On February 14, 2019, the PSC issued a Request for Additional Briefing, explaining that because the Complaint did not reference § 54-3-3, DEU had not had a reasonable opportunity to address Complainant’s argument on this point. The Request for Additional Briefing invited DEU to file additional briefing and Complainant to file a response to any such filing.

On March 18, 2019, DEU filed a Response to the PSC’s Request for Additional Briefing (“Second Response”), arguing § 54-3-3 is not applicable to DEU’s closing of the Station. DEU argues § 54-3-3 applies “only to changes made to utility schedules or rules, regulations or contracts concerning those schedules.”

On March 28, 2019, Complainant filed a Response to DEU’s Second Response (“Second Reply”), representing that, in his view, “issues such as time required for notification of the public before closure of an NGV station ... [are] ‘water under the bridge’ ... even if there is merit to the complaint of short notice.” Complainant “pleads for laser-beam-like focus on building a new station and for the public to be given meaningful information ... about [when] and [where] the replacement station is going to be available.”

## **2. Findings, Conclusions, and Order**

The scope of § 54-3-3 and whether it applies to DEU's closure of an NGV service station presents a question of law. The provision is subtitled "Changes by utilities in schedules – Notice" and the language in the provision generally focuses on changes in schedules filed with the PSC. The statute also states "no change shall be made by any public utility ... in any privilege or facility, except after 30 days' notice to the [PSC] and to the public as herein provided." Title 54 does not define "privilege" or "facility."<sup>1</sup>

Any conclusion as to what qualifies as a "privilege" or "facility" under § 54-3-3 may have ramifications far outside the scope of the Complaint, and the PSC would be much better poised to render such a conclusion on a fuller record that provided an opportunity to all interested parties, including but not limited to the Division of Public Utilities and the Office of Consumer Services, to provide input and argument. More pertinently, the PSC concludes resolution of the Complaint does not require the PSC to answer the question. Indeed, in his Second Reply, Complainant represents he is not interested in pursuing this question and prefers DEU devote its resources to selecting and developing an alternative site.

Assuming, without concluding, for the sake of this analysis that § 54-3-3 applies to DEU's closure of the Station, the PSC finds and concludes no penalty or additional adverse action against DEU would be required or appropriate. The record before the PSC shows DEU

---

<sup>1</sup> The PSC approves prices DEU's customers pay at NGV service stations and DEU includes these prices in its tariff on file with the PSC. However, DEU's filed tariff includes no other provisions, of which the PSC is aware, that expressly address or govern DEU's operation of its NGV stations.

had no discretion as to whether to continue to operate the Station because it operated the Station on an easement at the pleasure of the District, which revoked the easement in April 2018. Therefore, the Station's closure was inevitable, and the PSC could not have compelled an alternative outcome even if DEU had provided 30 days' notice. While we appreciate the Station's closure has inconvenienced Complainant, the PSC finds the lack of notice itself was harmless. Additionally, the applicability of § 54-3-3 to DEU's service stations presents a question of law that the PSC has not, to our knowledge, previously addressed. Under these circumstances, where the PSC finds the alleged violation to be harmless *and* genuine ambiguity existed as to whether the utility's conduct would constitute a violation, the PSC concludes it would be inappropriate to impose a penalty.

Aside from Complainant's allegation that DEU failed to give adequate notice under § 54-3-3, the PSC finds no allegation exists that DEU has violated any provision of statute, rule, tariff, or applicable administrative order. The PSC recognizes the hardship and inconvenience the Station's closure has caused Complainant and appreciates Complainant's desire for DEU to establish a new station in a location that is convenient for him. However, Complainant has cited no provision of law, rule, or tariff that requires DEU to construct or maintain NGV stations for the convenience of its customers, and the PSC is not independently aware of any such requirement.

For the foregoing reasons, the PSC dismisses the Complaint. Although the PSC does not reach here the question of whether § 54-3-3 expressly requires 30 days' notice, the PSC

DOCKET NO. 18-057-24

- 5 -

encourages DEU to provide as much notice as is practicable to affected customers with respect to future closures of its NGV service stations.

DATED at Salt Lake City, Utah, April 19, 2019.

/s/ Michael J. Hammer  
Presiding Officer

Approved and Confirmed April 19, 2019, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#

DOCKET NO. 18-057-24

- 6 -

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 this written 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 20 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 April 19, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

Scott M. Soulier ([smsoulier@reagan.com](mailto:smsoulier@reagan.com))  
([smsoulier@gmail.com](mailto:smsoulier@gmail.com))

Jenniffer Nelson Clark ([jenniffer.clark@dominionenergy.com](mailto:jenniffer.clark@dominionenergy.com))  
Arminda I. Spencer ([arminda.spencer@dominionenergy.com](mailto:arminda.spencer@dominionenergy.com))  
Leora Price ([leora.price@dominionenergy.com](mailto:leora.price@dominionenergy.com))  
Dominion Energy Utah

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))  
Justin Jetter ([jjetter@agutah.gov](mailto:jjetter@agutah.gov))  
Robert Moore ([rmoore@agutah.gov](mailto:rmoore@agutah.gov))  
Steven Snarr ([stevensnarr@agutah.gov](mailto:stevensnarr@agutah.gov))  
Utah Assistant Attorneys General

Erika Tedder ([etedder@utah.gov](mailto:etedder@utah.gov))  
Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services  
160 East 300 South, 2nd Floor  
Salt Lake City, Utah 84111

---

Administrative Assistant