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Formal Complaint of Marcia Darger d/b/a Archimedes 5 LLC against Dominion Energy Utah	<u>DOCKET NO. 23-057-10</u>
	<u>ORDER</u>

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ISSUED: September 15, 2023

**BACKGROUND**

On June 12, 2023, Marcia Darger d/b/a Archimedes 5 LLC (“Complainant”) filed with the Public Service Commission (PSC) a complaint against Dominion Energy Utah (DEU) regarding natural gas service at an address (“Unit A”) identified in the filing (“Complaint”).

On June 13, 2023, the PSC issued an Action Request to the Division of Public Utilities (DPU) requesting its review of the Complaint and to indicate whether it had a recommendation. On that same date, the PSC issued a Notice of Filing and Comment Period, providing DEU until July 12, 2023, to submit a written response to the Complaint, and providing Complainant until July 27, 2023, to submit a written reply.

On July 6, 2023, DPU responded to the Action Request, recommending the PSC to proceed with consideration of the Complaint. On July 3 and 7, 2023, Complainant filed correspondence with the PSC (“Correspondence”). On July 12, 2023, DEU filed a response to the Complaint, including numerous exhibits (“DEU’s Response”). On July 27, 2023, Complainant filed a reply (“Reply”).

On August 10, 2023, the PSC issued a Notice of Hearing and to Parties to be Prepared to Address Specific Questions at Hearing, setting a virtual hearing for

August 25, 2023, at 10:00 AM, and outlining several specific factual areas for discussion (“Hearing”). The Hearing was convened on August 25, 2023, at approximately 10:00 AM. Complainant was present. Counsel and representatives from DEU were present.

At the Hearing, Complainant attempted to – for the first time – proffer certain evidence in support of her Complaint. DEU objected on various grounds. Those objections were overruled, subject to Complainant providing that evidence in physical form within ten days of the Hearing and then allowing DEU five days thereafter to renew its objections or otherwise respond. On September 5, 2023, Complainant submitted additional information (“Complainant’s Supplemental Information”). On September 8, 2023, DEU did not object, but instead filed a written response and affidavit (“DEU’s Supplemental Response”).

### **COMPLAINANT’S WRITTEN SUBMISSIONS**

The Complaint generally alleges that Unit A’s gas meter is not functioning properly and/or not providing accurate gas use readings. According to Complainant, the address at issue has two units – units A and B – that are “identical in square footage and circumstances.”<sup>1</sup> Each unit has its own separate gas meter. Complainant asserts both units were vacant for a period of time and the gas bills for each unit were historically similar. However, on February 13, 2023, Complainant noticed that Unit A’s

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<sup>1</sup> Complaint at 2.

gas bill was higher than unit B.<sup>2</sup> Complainant then alleges that gas use at Unit A, as reflected in its gas bill, was over \$60 for the period of January 21, 2023, through February 16, 2023 (with a payment due date of March 10, 2023), in contrast to approximately \$25 for that same period in unit B.

Complainant asserts she turned down the gas service at Unit A and then ultimately completely shut off all appliances that use natural gas. Complainant “requested an evaluation from Dominion.”<sup>3</sup> Complainant asserts that a “Dominion Tech[] stated that sometimes the meter reader’s needles stick.”<sup>4</sup> Complainant states she is concerned that although the property is vacant, Unit A’s gas bill started to grow. Complainant seeks a “bill adjustment – credit for overcharges, fees and time while investigation [sic].”<sup>5</sup>

Complainant’s Correspondence<sup>6</sup> asserts that she determined that Unit A’s gas meter was spray painted, but that unit B’s was not and, according to Complainant, “spraying [Unit A’s meter] caused ... error readings.”<sup>7</sup> Complainant’s Correspondence states she received an urgent letter dated June 12, 2023, from DEU concerning non-

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<sup>2</sup> The Unit A gas meter is the only meter at issue in this Complaint.

<sup>3</sup> Complaint at 2. The Complaint is silent as to the date this evaluation was requested.

<sup>4</sup> *Id.* Neither the name of this “Tech” nor the date the statement was allegedly made are provided in the Complaint. As explained later in this order, the terms “needles,” “dials,” and “index” are used synonymously.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> It is not always clear whether Complainant’s Correspondence is directed to the instant docket or to Docket No. 23-057-09, which is a similar, but different complaint filed against DEU by Complainant.

<sup>7</sup> Complainant does not provide a date regarding when Unit A’s meter was allegedly spray painted or identify who did the painting.

payment and possible termination of gas service.<sup>8</sup> Complainant asserts “[w]e have not used the GAS, the residence is empty, it has been for 1 year and 4 months.”

Complainant reiterates that “[t]he [g]as appliances have been turned off for at least 4 months” and asserts that “this was verified by the Dominion Tech that was sent and who changed the meter.”<sup>9</sup> Complainant further states she had discussions with DEU about her concerns, and those discussions lead her “to believe that there was something wrong with the meter readings that were spray-painted.”

Complainant’s Reply does not address the merits of DEU’s Response or otherwise further support the Complaint.<sup>10</sup>

### **DEU’S WRITTEN RESPONSE**

DEU’s Response provides a detailed narrative and timeline, along with supporting exhibits, relating to the Complaint. DEU’s Response states Complainant contacted DEU on March 10, 2023, with concerns that the Unit A gas bill seemed unusually high.<sup>11</sup> According to DEU, Complainant explained that the only appliance in Unit A was a relatively new hot water heater.<sup>12</sup> DEU requested a photograph of Unit

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<sup>8</sup> The PSC has no record of this alleged letter.

<sup>9</sup> The Complaint does not provide the name of the Dominion Tech or the date of these events.

<sup>10</sup> The Reply appears to assert that DEU’s Response was untimely and mailed to an incorrect address. However, the certificate of service for DEU’s Response indicates it was sent via email to Complainant at the email addresses of record on July 12, 2023, and Complainant has not asserted she did not receive that email. Complainant also does not assert that she did not receive the copy of the Response sent via US mail. Finally, Complainant has not alleged that she has suffered any prejudice because of the alleged untimeliness or DEU’s use of an allegedly incorrect physical mailing address.

<sup>11</sup> See DEU’s Response at 1.

<sup>12</sup> See *id.* at 1-2 and Exhibit A.

A's gas meter from Complainant. On March 24, 2023, DEU contacted Complainant and advised that, based on a review of the photograph and the gas bill, the meter read for Unit A was accurate.<sup>13</sup> According to DEU, Complainant then spoke to a DEU supervisor and that supervisor offered to investigate whether Unit A's gas meter was properly measuring the gas use.<sup>14</sup>

DEU states that a service technician met with Complainant on March 30, 2023. At this meeting, Complainant provided the DEU technician with copies of the gas bills for Unit A and for unit B. DEU acknowledges that its "technician noted a discrepancy in the sales tax rate charged for each unit and recommended [Complainant] contact [DEU's] billing department to address the issue."<sup>15</sup> DEU represents that its technician replaced the gas meter for Unit A, installing a new meter and sending the old meter for testing.<sup>16</sup> DEU states that as part of this replacement process, the new meter was painted and asserts "[p]ainting a meter does not impair the functioning of that meter."<sup>17</sup>

DEU's Response states that Unit A's old meter was tested on May 11, 2023, asserting the tests revealed the meter was measuring accurately.<sup>18</sup> DEU further

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<sup>13</sup> See *id.* at 2 and Exhibit B.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* DEU states that this discrepancy did not apply to Unit A. See *id.* at n. 1. Complainant has not disputed this explanation.

<sup>16</sup> See *id.*

<sup>17</sup> *Id.*

<sup>18</sup> See *id.* and Exhibit C.

asserts that it “has, at all times, acted in accordance with all applicable statutes, rules, regulations, and Tariff provisions[]” and seeks denial of the Complaint.<sup>19</sup>

Finally, DEU’s Response explains that in “February 2023, [Complainant] stopped paying the bill for Unit A, and those bills began to grow.”<sup>20</sup> Thus, according to DEU, “though [Complainant] may have turned her appliances off in the spring of 2023, she retained a natural gas account [with DEU,]” and was still “required to pay a [monthly] basic service fee [of \$6.75 per month] and other [monthly] charges[].”<sup>21</sup>

### **HEARING**

Complainant was present at the Hearing, was sworn, and proffered live testimony. DEU was present at the Hearing and presented several witnesses in support of many of the assertions, arguments, and exhibits submitted in its Response (“DEU Witnesses”). The DEU Witnesses were sworn and proffered live testimony. All witnesses were available for cross-examination and questions from the presiding officer. DEU also moved for the admission of the DEU Response, which was unopposed, and the motion was granted.

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<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.*

***Complainant's Testimony***

Complainant testified that Unit A's January 2023 bill (which was for gas used from December 16, 2020, through January 20, 2023) motivated her to first contact DEU because that bill was higher than the bill for unit B. It was around this time when, according to Complainant's testimony, the appliances in Unit A were turned down. Complainant further testified that receipt of the February 2023 bill (which was for gas used from January 21, 2023, through February 16, 2023) prompted her to shut off all the appliances in Unit A.

Complainant also testified that the gas meter for unit B has never been painted<sup>22</sup> and has had a consistent billing history, in contrast to Unit A's meter. Complainant further testified that Unit A has been vacant from October 31, 2021, through the date of the Hearing, whereas unit B was being shown to potential renters and thus had people coming and going, yet its gas use stayed consistent. Complainant also authenticated DEU's Exhibit D, testifying they were copies of Unit A's gas bills.

Complainant further testified about meeting with a DEU technician on March 30, 2023, at Unit A. According to Complainant, that DEU employee uninstalled, and then replaced with a different meter, Unit A's gas meter. According to Complainant, this

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<sup>22</sup> This testimony is not necessarily consistent with Complainant's Supplemental Information. See footnote 26, *infra*.

DEU employee also advised her that he had identified some billing inconsistencies between the bills for Unit A and unit B.

Finally, Complainant raised a new issue regarding the “fogginess” of the plastic cover over the gas meter’s “dials.”<sup>23</sup> Complainant asserted the fogginess indicates that there was moisture inside that plastic cover, and thus impacted their functionality, or that the fogginess impeded DEU’s ability to properly read the dials on the meter.

DEU did not cross-examine Complainant.

***DEU’s Witnesses’ Testimony***

DEU witness Jace Gordon, a supervisor for gas training and development, testified that painting a gas meter does not impair its functionality. Mr. Gordon also testified that painting gas meters is done to comply with federal regulations regarding anti-corrosion standards. Mr. Gordon further testified that it is DEU’s procedure that if a meter is replaced (as was done with Unit A’s gas meter on March 30, 2023), the gas line from the service valve to the customer’s home is painted.

On cross-examination, Mr. Gordon testified that DEU gas meters are pressure contained devices, are sealed, and would not allow anything external to penetrate it, including spray paint. Mr. Gordon also testified that, according to DEU’s procedures, an employee who replaces a meter and then paints the meter uses various means and

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<sup>23</sup> DEU Witnesses referred to these “dials” as the “index,” which is the part of a gas meter that has dials and which show the amount of gas used. The index is covered by a clear plastic protective housing.



methods (e.g., cardboard or tape) to shield the clear plastic cover of the gas meter's "index" (or dials) so it doesn't get painted.

DEU witness Shawn Goodfellow, a senior meter shop technician, testified about DEU's meter testing methodologies. Mr. Goodfellow further testified about the test results for the specific gas meter associated with Unit A. According to this testimony, the May 19, 2023, letter from DEU to Complainant and Exhibit C to DEU's Response show the results of Unit A's gas meter testing. Mr. Goodfellow specifically testified that for a meter to surpass the 3% threshold set forth in DEU's tariff, which is explained in greater detail below, the reported results would be presented as "+3.XX," in contrast to the "+01.0" and "+01.5" presented in the May letter and in Exhibit C.

On cross-examination, Mr. Goodfellow testified that when a meter is tested, the index is taken off and separately inspected. Mr. Goodfellow testified that he followed this process in testing Unit A's gas meter and found nothing wrong. Mr. Goodfellow also testified that although he has no specific recollection of any DEU employee complaining about a meter's needles sticking, he acknowledged that sometimes meters have issues, but again affirmatively testified that there were no issues with Unit A's meter.

Finally, DEU witness Elia Lopez, a customer relations and energy assistance representative, offered testimony concerning various aspects of the background of Complainant's communications with DEU, including DEU's May 19, 2023, letter to

Complainant reporting the testing results for Unit A's gas meter. Ms. Lopez also testified about many of the exhibits submitted in conjunction with DEU's Response, including to the authenticity of Exhibit D, the copies of the DEU bills for Unit A's gas meter. Ms. Lopez confirmed that the date the Unit A gas meter was uninstalled was March 30, 2023, and that a new gas meter was installed for Unit A on that same date.

On cross-examination, Ms. Lopez could not provide the name of the DEU employee who replaced the Unit A gas meter, did not know whether that employee submitted anything reflecting any concern about the old Unit A gas meter, and had no information about whether this employee spray painted the meter.

**PARTIES' SUPPLEMENTAL INFORMATION AND RESPONSE**

Complainant's Supplemental Information consists of: (1) a document referred to as "Previous Chart showing the difference in the billing between each unit A & B;"<sup>24</sup> (2) two audio files; (3) two images referred to as "Photos ... Two views of gas meter at Unit A[.]"<sup>25</sup> (4) one image referred to as "Photo ... of gas meter at Unit B[.]"<sup>26</sup> and (4) a document titled "PSC-Final Closing Statement."

As previously noted, DEU also submitted its own supplemental response to Complainant's Supplemental Information.

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<sup>24</sup> This is a duplicate of a document Complainant previously submitted in June 2023.

<sup>25</sup> The images have a note stating, "[t]hese photos were taken before the Tech changed the meter on his visit March 30<sup>th</sup> 2023[.]"

<sup>26</sup> This image has a note stating, "[t]his photo shows that this meter was partially spray-painted as of June 2023[.]"

Although there are some evidentiary problems<sup>27</sup> with Complainant's Supplemental Information, DEU did not object to that submission. Accordingly, to the extent it is necessary in resolving this Complaint, Complainant's Supplemental Information is considered. DEU's Supplemental Response and the accompanying affidavit are similarly considered.

**DISCUSSION, FINDINGS OF FACT, AND ORDER**

The scope of the PSC's jurisdiction to adjudicate complaints against public utilities is specifically enumerated in the Utah Code. The PSC can only adjudicate a complaint raising issues that are within its statutory jurisdiction. By statute, any such complaint must "specify the act committed or omitted by the public utility that is claimed to be in violation of the law or a rule or order of the [PSC]."<sup>28</sup>

Complainant alleges, in essence, that Unit A's gas meter was not functioning properly and/or not providing accurate gas use readings. Thus, Section 8.01 Gas Measurement of DEU's Tariff applies here, specifically Meter Testing at Customer's Request, which states:

**METER TESTING AT CUSTOMER'S REQUEST**

Upon written request of the customer, the Company will promptly complete a meter test after receipt of such request. ... If a tested meter shows an average error of more than 3% (plus or minus), the Company

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<sup>27</sup> Much of Complainant's Supplemental Information lacks important foundation. For example, the audio files are undated, do not disclose the name of the alleged DEU technician, and do not establish that this technician was an employee or a contractor of DEU. Similarly, the photographs are undated and, other than unsworn assertions noted in the submission, there is no showing that they are photographs of what they claim to be, i.e., photographs of gas meters for Unit A or unit B.

<sup>28</sup> See Utah Code Ann. § 54-7-9(2).

will refund any overbilling if the meter is fast, and the customer will pay any under billing if the meter is slow, based on the nearest corresponding equal period of use by the customer at the premises when the meter was operating accurately. ...<sup>29</sup>

Complainant's main assertion is that the painting of Unit A's gas meter is the cause, or a cause, of that meter's improper functionality and/or inaccurate gas use readings. This is supported, Complainant asserts, by the fact that Unit A is very similar to unit B, both units have historically had similar gas bills and use, Unit A's gas bills and use suddenly increased dramatically while unit B's did not, and only Unit A's gas meter has been spray painted.

The evidence supports some of Complainant's general allegations, such as the historically similar gas use of Unit A and unit B and that Unit A's gas bill reflects an increase in relation to unit B. Specifically, evidence shows that beginning with what Complainant has identified as the bill due date of February 13, 2023 (the "February 13 Bill"),<sup>30</sup> and continuing to the bill due date of March 10, 2023 (the "March 10 Bill"),<sup>31</sup> Unit A's bill was much higher than unit B's. However, the evidence does not support the express allegation that the spray painting of Unit A's gas meter is the cause of Unit A's relative spike in gas use.

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<sup>29</sup> DEU Utah Natural Gas Tariff PSCU 600 at pages 8-2.

<sup>30</sup> Because DEU bills after the fact for gas used, the February 13 Bill due date is for gas used between December 16, 2022 through January 20, 2023. See DEU Response, Exhibit D13.

<sup>31</sup> Similarly, the March 10 Bill due date is for gas used between January 21, 2023 through February 16, 2023. See *id.*, Exhibit D17.

First, there is no evidence demonstrating the claimed causal relationship. Instead, at best the record supports that Unit A's gas meter was painted and unit B's was not, and that Unit A's February 13 Bill and March 10 Bill were higher than unit B's. However, there is no evidence supporting that such differences are *because* of the spray painting.

Second, and critically, the facts cannot support this claim. The February 13 Bill shows the first increased gas bill, which was for gas used between December 16, 2022 through January 20, 2023, and the March 10 Bill shows the increase for gas used between January 21, 2023 through February 16, 2023. Thus, Unit A's gas meter would have had to have been painted sometime between December 16, 2022 through February 16, 2023, for painting to be a possible cause of the alleged improper meter functionality. However, there is no evidence that Unit A's gas meter was painted during that time frame. To the contrary, March 30, 2023, is the only date for which there is clear evidence of when Unit A's gas meter was painted.<sup>32</sup>

Moreover, Complainant's more general allegation that, in essence, there was something wrong with Unit A's gas meter, regardless of an identified cause, is similarly unsupported by the record. Instead, the record evidence supports that Unit A's gas meter was tested and the test results fell within the DEU tariff limitations. In

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<sup>32</sup> Moreover, the meter that was painted on March 30, 2023, was the newly installed gas meter, not the old meter that is the subject of the Complaint.

addition, Complainant's more specific assertion that the needles of Unit A's gas meter could have gotten stuck, thus resulting in Unit A's high gas bills, is similarly unsupported. Mr. Goodfellow testified DEU inspected the index and found no such problems. Moreover, and somewhat intuitively, the Lopez Affidavit states that "if the dial on the meter were to 'stick' ... more gas would flow through the meter than the dials registered[,]” thus resulting “in an under-billing[, not] ... an over-billing.”<sup>33</sup>

Finally, Complainant has at least implied that the alleged “fogginess” of the plastic cover of the index may either indicate that moisture was inside the index, or the fogginess could have made the dials difficult to read and therefore lead to inaccurate readings. However, the evidence also does not support these theories. Mr. Gordon testified that the meters are pressure contained devices, are sealed, and would not allow anything external to penetrate the meter. In addition, a review of the photographs submitted in Complainant's Supplemental Information indicates that the dials are clearly visible. Moreover, the Lopez Affidavit explains that transponder technology is used to read the meters, that they are not read visually, and thus “a cloudy plastic cover ... would not impact [the] accuracy of [a] gas meter read.”<sup>34</sup>

Based on the written submissions of the parties, including the exhibits, the testimony of Complainant and the DEU Witnesses at the Hearing, the evidence

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<sup>33</sup> DEU Supplemental Response, Affidavit of Elia Lopez at ¶13.

<sup>34</sup> *Id.* at ¶12.

admitted at the Hearing, consideration of the parties' supplemental submissions, and the foregoing discussion, we find and conclude that the Complaint fails to show DEU violated any governing statute, rule, order, or tariff provision.

**ORDER**

For the reasons set forth herein, the Complaint is denied and therefore dismissed.

/s/ John E. Delaney  
Presiding Officer

Approved and confirmed September 15, 2023, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#329846

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 written 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 September 15, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By USPS:

Marcia Darger d/b/a Archimedes 5 LLC  
618 N 2720 E, Unit A  
St. George, UT 84790

By Email:

Marcia Darger d/b/a Archimedes 5 LLC ([fleetwood\\_matters@yahoo.com](mailto:fleetwood_matters@yahoo.com))

Jenniffer Nelson Clark ([jenniffer.clark@dominionenergy.com](mailto:jenniffer.clark@dominionenergy.com))  
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Office of Consumer Services

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Administrative Assistant