
Formal Complaint of Marcia Darger d/b/a Archimedes 5 LLC against Dominion Energy Utah	<u>DOCKET NO. 23-057-10</u> <u>ORDER ON REQUEST FOR REVIEW</u>
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ISSUED: November 6, 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) alleging that the gas meter at one of her rental properties was not functioning properly and/or not providing accurate gas usage readings. (“Complaint”).

The parties provided comments and evidence in support of their respective positions on the Complaint, including participating in an evidentiary hearing on August 25, 2023, where the parties put forth witnesses who, under oath, testified and offered evidence and facts relating to the Complaint (“Complaint Proceedings”). By order dated September 15, 2023, the Complaint was dismissed (“Order”).

On October 16, 2023, Complainant submitted an email stating, “I respectfully appeal this [court’s] decision. Supporting recordings will be provided in a couple of days.”¹ This October 16, 2023, submission included five attachments, one of which is an untitled document that apparently outlines the bases for Complainant’s appeal (“Request for Review”), and the other four attachments pertain to what appears to be a billing dispute between Complainant and DEU (“Billing Dispute”). There also appears

¹ Complainant did not submit anything after October 16, 2023, in this docket.

to be an email chain as part of this October 16, 2023, submission and that chain includes an email dated October 9, 2023, that addresses procedural issues. That October 9, 2023, email includes, among other things, an apparent explanation about the timing of this submission stating, “I apologize to the court, I had an accident and was delayed [in] completing my appeal.” That October 9, 2023, email also includes a short narrative outlining issues relating to the Billing Dispute.

The Complainant’s October 16, 2023, submission was timely filed. DEU did not file a response or otherwise respond to the Request for Review.²

None of the bases articulated in the Request for Review were addressed in the Order because they were not raised in the Complaint Proceedings, and therefore those bases are not appropriate for review.

Discussion, Findings of Fact, and Conclusions of Law

Utah law allows Complainant’s Request for Review by timely filing a request that includes specific information,³ including a statement of “the grounds for review and the relief requested.”⁴ If Complainant’s Request for Review “challenges a finding of fact ... [the request] shall marshal the record evidence that supports the challenged finding[.]”⁵ Subsumed in this standard is the requirement that only issues addressed in

² DEU was allowed fifteen days from the date Complainant filed the Request for Review to file a response. See Utah Code Ann. § 63G-4-301(2) and Utah Admin. Code R746-1-801(3).

³ See e.g., Utah Code Ann. §§ 63G-4-301(1) and 54-7-15(1)&(2).

⁴ Utah Code Ann. § 63G-4-301(1)(b)(ii).

⁵ Utah Admin. Code R746-1-801(2). See also, *State v. Nielsen*, 2014 UT 10, ¶ 41 (the focus of marshalling the record evidence is “on the ultimate question of whether the appellant has established a

the Order and raised in the Complaint Proceedings can be the subject of any type of review.

The Request for Review provides ten separate unnumbered paragraphs that make various assertions about what appear to be (1) the Billing Dispute; and (2) a claim of potential DEU bias in its testing of the gas meter at issue in the Complaint Proceedings (the “Meter Testing Issue”). Neither of these issues were addressed in our Order or raised in the Complaint Proceedings.

There is simply no connection between the allegations concerning the asserted grounds for review of the Billing Dispute and the Complaint Proceedings or our Order. The allegations concerning the asserted grounds for review of the Meter Testing Issue are, in essence, Complainant “feel[s] that there could be bias in [DEU’s meter testing] results[]” because DEU did not use “an independent company” to conduct that testing. However, while the functionality of Complainant’s gas meter was raised in the Complaint Proceedings, the new claim of DEU’s potential alleged bias in testing that meter was not.

It is axiomatic that any Request for Review may only include those issues addressed in the Order and raised in the Complaint Proceedings.⁶ We find nothing in

basis for overcoming the healthy dose of deference owed to factual findings[.]”).

⁶ See e.g., *State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346; c.f., Utah Code Ann. § 54-7-15(1), and (2)(a)&(b); and Utah R. App. Proc. 11(a) (the record for appeal includes only the evidence considered by the trial court in ruling on the matter in the proceeding at the trial court).

the Request for Review that was raised in the Complaint Proceedings or addressed in our Order, and thus conclude there is nothing for us to revisit or revise in our Order.

ORDER

For the reasons set forth herein, the Request for Review is denied.

DATED at Salt Lake City, Utah, November 6, 2023.

/s/ John E. Delaney
Presiding Officer

Approved and confirmed November 6, 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#330630

Notice of Opportunity for Judicial Review

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 6, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By USPS:

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