
Formal Complaint of Nicole Rae
McLaughlan Lovato against Dominion
Energy Utah

DOCKET NO. 23-057-14
ORDER ON FORMAL COMPLAINT

ISSUED: February 6, 2024

I. Procedural Background

On August 31, 2023, Nicole Rae McLaughlan Lovato (“Complainant”) filed a formal complaint with the Public Service Commission (PSC) against Dominion Energy Utah (DEU) relating to DEU’s budget billing program (“Budget Program”). Complainant was enrolled in the Budget Program (Complainant’s “Plan”). The Complaint alleges several issues relating to the Budget Program, ranging from how her Plan was constructed and applied, to how it is applied and administered as it relates to anybody who is enrolled (“Complaint”).

On September 5, 2023, the PSC issued a Notice of Filing and Comment Period, providing DEU until October 5, 2023, to submit a written response to the Complaint, and allowing Complainant until October 20, 2023, to file a written reply to any response filed by DEU.

On October 5, 2023, DEU filed its response, which also included written testimony and exhibits (“DEU’s Response”). On October 12, 2023, Complainant filed a reply to DEU’s Response (“Complainant’s Reply”). Based on DEU’s Response and Complainant’s Reply, the PSC issued a Request for Response seeking clarification on whether Complainant and DEU had resolved the Complaint. By written submissions

dated November 14, 2023, DEU indicated that the Complaint had not been resolved (“DEU’s Supplemental Response”) and Complainant indicated likewise, but further indicated that resolution of the Complaint had been narrowed (“Complainant’s Supplemental Response”).

On November 20, 2023, the PSC issued a Notice of Virtual Hearing, setting a hearing for December 15, 2023 (“Hearing”). The Hearing was held as scheduled and was attended by Complainant, DEU’s legal counsel, and DEU’s witness. At the Hearing, the parties indicated that the issues for resolution had been further narrowed. All submissions of the Complainant and DEU were admitted into evidence.

II. General Factual Background

Complainant enrolled in the Budget Program in November 2022. Enrollment in the Budget Program is voluntary and allows customers to make equal monthly payments throughout the year for their estimated natural gas usage. The Budget Program averages the total amount of an enrollee’s estimated future natural gas usage and the estimated cost of that gas, then divides that number by 12, resulting in a set monthly payment. Because of this averaging, there are generally some months when a customer’s Budget Program payment will be less than the actual cost of the natural gas used, but there will also generally be months when the Budget Program payment is more than the actual cost of the gas used. The Budget Program is governed by DEU’s Utah Natural Gas Tariff, PSCU 600, Section 8.05 (“Tariff”).

When Complainant enrolled in the Budget Program in November 2022, her monthly Plan payment was set at \$117. On August 1, 2023, DEU recalculated Complainant's monthly Plan payment to establish it for the next 12 months. At that time, the price of natural gas had increased significantly. In the meantime, Complainant's natural gas service usage for the preceding period (i.e., between her initial enrollment date in November 2022, and August 1, 2023) had accumulated an under-collected amount of \$646.50.¹ That is, Complainant received \$646.50 worth of natural gas service that had not yet been paid for. Thus, DEU's recalculation of Complainant's new monthly Plan payment in August 2023 included that under-collected amount and a new estimate of Complainant's future gas usage and its cost. The result was that Complainant's new monthly Plan payment increased to \$211. However, that monthly payment amount was subsequently reduced to \$186.²

The Complaint raises issues that are both specific to Complainant's individual dispute with DEU relating to her Plan, and also that are more general to the Budget Program as it relates to any existing or prospective enrollee. However, as indicated above in the procedural background, what remains at issue for resolution has been narrowed since the filing of the Complaint. Complainant seeks the PSC to order DEU

¹ This amount was initially at dispute in the Complaint. DEU's records showed this balance to be \$646.50 as of August 1, 2023, but Complainant claimed it was only \$529.50. This dispute was resolved, however, because Complainant's claimed lower balance was based on a \$117 payment credited to her account on August 10, 2023, which was after DEU's recalculation on August 1, 2023.

² This reduction occurred because of Complainant's \$117 payment, which reduced the under-collected balance to \$529.50. See n.1, *supra*.

to: (1) make certain structural adjustments to her Plan;³ and (2) make similar and additional structural adjustments to the Budget Program as a whole as it applies to any customer who enrolls, including changes about when they can enroll and when DEU's monthly payment recalculations may occur.

III. Allegations and Responses of Parties

A. *The Complaint*

The Complaint alleges⁴ that DEU did not “inform[] complainant of increases to bill at the [six-month] mark.” Complainant believes DEU had an obligation to notify her of any price increases after 6 months of her enrollment in the Budget Program.⁵

Complainant also alleges that when DEU recalculated her Plan on August 1, 2023, the baseline natural gas usage and cost data was incomplete because it did not utilize 12 months of historical data. Complainant asserts that had DEU used 12 full months of data to construct the new monthly payment amount for her Plan, that payment would have been lower because the full 12-month period would have included months in which Complainant's natural gas usage was lower.⁶

³ Complainant is no longer enrolled in the Budget Program.

⁴ The Complaint also asserted that DEU had not credited Complainant for a payment, and thus was double billing her. That issue was addressed and resolved prior to the Hearing. *See* n. 1, *supra*.

⁵ In apparent support of this allegation, the Complaint provides quoted language that appears to address the Budget Program because a hyperlink to DEU's website is provided. However, it is unclear where that quoted language originated because that language does not state anything about DEU having a notification obligation and the hyperlink provided is non-functional. A review of the Tariff, however, indicates that the language is not from that source.

⁶ Complainant again provides quoted language in apparent support of this allegation, but as discussed above, it is unclear where that quoted language originated because the hyperlink provided is non-functional. This language is also not found in the Tariff.

The Complaint nowhere specifically references the language of the Tariff or of the Tariff being allegedly violated as the basis for the Complaint.

B. DEU's Response

DEU responds to the Complaint citing the language of the Tariff and relying on the written testimony provided with its response ("DEU Testimony"). DEU states it "was not obligated by Tariff to ... notify [Complainant] of budget bill increases after she had been on the [Budget Program] for six months," and was also not obligated "to refrain from recalculating [Complainant's Plan] until she had been on the [Budget Program] for 12 months."⁷ DEU further asserts that even if it was required to wait until Complainant's 12-month anniversary, the Tariff allows DEU to adjust the billing during the year "if actual and accrued billings deviate substantially."⁸

DEU's Response also explains, among other things, how it calculates a monthly payment amount for enrollees in the Budget Program. DEU explains that enrolled customers are only charged for the amount of natural gas used and the account is typically reevaluated in August.⁹ The DEU Testimony also explains benefits that the Budget Program provides enrollees.

The DEU Testimony further explains the reasons for the increased cost of natural gas in late 2022 and into 2023, and notes that Complainant had an under-

⁷ DEU's Response at 3.

⁸ *Id.*

⁹ According to DEU, the recalculations are done in August to allow them to be completed before the heating season begins.

collected balance as of August 1, 2023. DEU's Response concedes that some of the information provided on its website – not in its Tariff – may have been unclear and represents that such language has “now been modified to more accurately match the ... Tariff.”¹⁰

C. Complainant's Reply

Complainant, for the first time, makes an express reference to the Tariff. Complainant quotes language from the Tariff that states – “To spread gas bill amounts evenly over the entire year ...” – and asserts that for the Budget Program to “be billed ‘evenly’ over the entire year[,]” DEU's August 1 recalculation of her Plan should have included “bills and payments from the high winter months” and the lower non-winter months.¹¹ Complainant further asserts DEU “will significantly collect and keep revenue that does not to belong to [it], until the next review a year later, if allowed to only use winter months in” the August 1, 2023, recalculation of her Plan.¹²

Although not alleged in the Complaint, Complainant's Reply raises an issue concerning DEU's rate increases. It appears that Complainant believes the use of the phrase “current rates” in the Tariff is vague and “causes another illegitimate collection calculation for DEU revenue benefit.”¹³ It appears Complainant believes that the Tariff

¹⁰ DEU's Response at Ex. 1, pg. 7. There is nothing in the record indicating what was modified.

¹¹ Complainant's Reply at 1.

¹² *Id.* at 2.

¹³ *Id.* at 7.

only allows DEU to recalculate her monthly Plan payment using the natural gas rates in effect at the time her Plan was first constructed.¹⁴

D. Complainant's Supplemental Response

Complainant asserts "DEU's own Tariff and websites continue to reflect improper descriptions, stating time and again the Budget Bill review will occur annually."¹⁵ Complainant continues in her assertions concerning what she characterizes as "illegitimate charges" and as to the timing of recalculating any enrollees' Budget Program payment amount.

E. DEU's Supplemental Response

DEU addresses Complainant's request that DEU modify its administration of the Budget Program, stating the suggested modifications are not "consistent with ... the Tariff[.]" because the Tariff places "no restriction on the timing of enrolling in the Budget Bill program, and it contemplates [DEU] forecasting a Budget Bill customer's usage based on historic usage and *anticipated* rate increases."¹⁶ DEU asserts that Complainant's "proposal would not only require modification of the Tariff, but it would also impose requirements that are not practical or workable as the program is designed."¹⁷

¹⁴ See *id.* at 6.

¹⁵ Complainant's Supplemental Response at 1.

¹⁶ DEU's Supplemental Response at 2 (*italics in original*).

¹⁷ *Id.*

F. The Evidentiary Hearing

1. Complainant's Testimony

Complainant testified that she is no longer enrolled in the Budget Program.¹⁸

Complainant also testified that the relief she seeks from the PSC has been narrowed, stating she now seeks the PSC to either (1) allow DEU to only recalculate the monthly Budget Program payment amount after a full 12 months after an enrollee's enrollment date, or (2) only allow consumers to enter the Budget Program at a specific time of the year.¹⁹

Complainant testified that she believed the Tariff's language that states "[t]he monthly budget plan payment amounts may be adjusted by the company during the year if actual and accrued billings deviate substantially or if a rate change of 5 percent or greater is approved[.]" meant that DEU would not conduct a review of the monthly payment amount until the one-year anniversary of her enrollment date.²⁰

Complainant also testified that "when [her] review occurred at the seven month mark, that allowed [DEU] to not take into account the lowest months' use so that [her] bill would increase by an extreme amount."²¹ Complainant testified that DEU's information about the Budget Program does not inform consumers about when it will review the plan.

¹⁸ See Hearing transcript at 11-12.

¹⁹ See *id.* at 14. Complainant admitted that this requested relief impacts many more people than just her. See *id.* at 43-44.

²⁰ *Id.* at 22.

²¹ *Id.* at 16.

Complainant further testified that her enrollment in the Budget Program was harmful for her. However, Complainant admitted that DEU never over-collected her account, meaning that Complainant never paid DEU more for the cost of the gas she used. Complainant further admitted she benefitted from paying less for the amount of gas she used at some points while she was enrolled, i.e., while her account was in an under-collected position.²²

2. DEU's Testimony

DEU testified that it “believes that the concerns [Complainant] has raised related to her own account have been resolved.”²³ DEU also testified “the early months of 2023 saw unprecedented events in the natural gas commodities market that resulted in increased rates” that were reflected in the recalculation of Complainant’s monthly Plan payment amount on August 1, 2023.²⁴ DEU also testified how rate increases are calculated into the Budget Program monthly payment.²⁵ DEU further testified that while Complainant was enrolled in the Budget Program, “she only paid the actual cost of the natural gas services she received[,]” and DEU “did not over-collect from [Complainant].”²⁶

DEU reiterated that the Tariff does not require it to notify Complainant at the six-month mark about any increase in her monthly Plan payment amount nor does the

²² See *id.* at 25-26.

²³ *Id.* at 32.

²⁴ *Id.* at 33.

²⁵ See *id.* at 57.

²⁶ *Id.* at 32.

Tariff require it to refrain from recalculating Complainant's Plan until she had been on the Budget Program for 12 months. DEU disputed Complainant's assertion that DEU over-collects from its Budget Program customers and keeps those over-collections. DEU acknowledged that "there will temporary periods where a customer may be in an over-collected or under-collected position," but asserts that all customers "will ultimately only pay for their actual usage of natural gas service."²⁷

Regarding Complainant's suggested modification to the Budget Program, DEU testified that such could likely require revisions to the Tariff and therefore "should be addressed in a separate docket when the Utah Division of Public Utilities, the Utah Office of Consumer Services, and other interested parties can participate."²⁸ DEU testified that it currently has approximately 188,000 customers enrolled in the Budget Program.²⁹

Addressing Complainant's specific request that DEU's Budget Program be changed to only allow enrollment at one specific time of the year, DEU testified that the "[T]ariff contains no such limitation[,] and "[r]equiring a specific enrollment period would be a disadvantage to customers who want to participate in the program but are unaware of or miss a deadline."³⁰ According to DEU, "allowing enrollment at any time during the year is a benefit to all interested" customers.³¹

²⁷ *Id.* at 35.

²⁸ *Id.* at 34.

²⁹ *Id.* at 45.

³⁰ *Id.* at 35.

³¹ *Id.*

Addressing Complainant's specific request that Budget Program participants' plans should only be adjusted after a full 12 months participating in the program, DEU testified that it "has purposely designed the program to adjust [all] participants' [monthly payment amounts] at the same time because it is best to adjust budget bills before the heating season begins and because concurrent recalculations of billing amounts can be automated in [DEU's] system."³² DEU further testified that "[a]n individual review of each [Budget Program] participant's bill at individual [one-year] anniversaries throughout the year cannot be automated within [DEU's] current system and would require a significant effort of manually recalculating each and every bill."³³

III. Discussion, Findings, and Conclusions

The scope of the PSC's jurisdiction to adjudicate complaints against public utilities is specifically enumerated in the Utah Code. The PSC may not adjudicate a complaint unless the issues that require resolution 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]."³⁴

The Complainant asserts that information found in the Tariff and various DEU informational materials relating to the Budget Program are inconsistent with her

³² *Id.* at 35-36.

³³ *Id.* at 36.

³⁴ Utah Code Ann. § 54-7-9.

experience as an enrollee of that program. The Budget Program is governed by the Tariff, which specifically provides:

8.05 BUDGET PLAN

To spread gas bill amounts evenly over the entire year, General Service customers may elect to utilize the Budget Plan and pay a predetermined monthly amount. On the basis of prior usage history or estimated usage, the customer's annual bill is computed under current rates and divided into 12 equal payments. Actual billings for customers utilizing the Budget Plan will be calculated each month according to the regular provisions of this Tariff. The monthly budget plan payment amounts may be adjusted by the Company during the year if actual and accrued billings deviate substantially or if a rate change of 5% or greater is approved.

If at the end of the Budget Plan Year, there is an overpayment or an underpayment on an account, the customer's projected monthly budget plan payment amount will be adjusted, spreading the difference over the next 12 months, interest free, unless a customer requests an immediate refund or credit.

A customer will be dropped from the plan if two consecutive payments are missed, resulting in a 60-day delinquency. To be eligible for the Budget Plan, a customer's account must not be delinquent.

Complainant's allegations are addressed as follows.

Complainant alleges DEU had an obligation to notify her of any increase in her monthly Plan payment amount at the six-month mark of her enrollment in the Budget Program. We find the Tariff imposes no such obligation. Moreover, to the extent Complainant asserts that other DEU information led her to believe DEU had a notification obligation, we find there is nothing of record supporting that belief.

Complainant also alleges DEU could not recalculate her monthly Plan payment amount until after she had participated in the Budget Program for 12 full months.

Apparently relying on the word “evenly” in the Tariff language that states, “To spread gas bill amounts evenly over the entire year ...”, Complainant asserts that DEU’s recalculation in August 2023 should have included bills and payments from both the high winter months and the lower non-winter months. According to Complainant, this methodology would have resulted in a lower new monthly Plan payment amount. Similarly, Complainant asserts DEU’s Budget Program must be based on an annual review to prevent what she characterizes as illegitimate over-collection revenue generation practices.

We find there is no evidence of record showing that the Budget Program does not, in fact, bill an even monthly amount, i.e., the enrollee pays the same monthly amount, subject to adjustments allowed under the Tariff. We also find there is no evidence of record showing that DEU has engaged in over-collection revenue generation practices. Most importantly, we find the Tariff does not require DEU to calculate a Budget Program enrollee’s bill at any particular time of year. In fact, the Tariff specifically allows DEU to adjust a monthly Budget Program payment amount at any time during the year if “actual and accrued billings deviate substantially or if a rate change of 5 percent or greater is approved.”³⁵

³⁵ Complainant also alleges DEU’s website represents that it could not recalculate her monthly Plan payment amount until after she had participated in the Budget Program for 12 full months. However, as indicated above, we find there is inadequate record evidence supporting this claim.

Complainant's allegation that the Tariff's language that states "[t]he monthly budget plan payment amounts may be adjusted by the Company during the year if actual and accrued billings deviate substantially or if a rate change of 5% or greater is approved[.]" means that DEU cannot do a review of the monthly payment amount until the one-year anniversary of her enrollment date is not well founded. Complainant appears to interpret the term "year" as a period specific to her individually, but that interpretation ignores the language that "payment amounts may be adjusted ... **during** the year[.]" (emphasis added). Taken in context, we find the Tariff language allows DEU to make adjustments at any time during a year.³⁶ There is no dispute that Complainant had accrued an under-collected balance on her account or that rate changes occurred. Moreover, even if the Tariff allowed Complainant her own personal calendar year,³⁷ DEU's adjustment on August 1, 2023, occurred "during [Complainant's own personal - calendar] year[.]"

Complainant also alleges an issue concerning DEU's rate increases. Although unclear, by focusing on the phrase "current rates" in the Tariff it appears Complainant believes that the Tariff only allows DEU to recalculate her Plan's monthly payment amount using the natural gas rates in effect at the time her Plan was first constructed. However, as with the earlier discussion about specific language of the Tariff, the

³⁶ Complainant admitted at the Hearing that DEU could make adjustments during the year but qualified that admission as subject to her belief that she had her own personal calendar year. See Hearing transcript at 23-24.

³⁷ Complainant enrolled in the Budget Program in November 2022, and thus her own personal calendar year would have been through October 2023.

phrase “current rates” must be read in context of the complete Tariff. Specifically, because the Tariff explicitly allows DEU to adjust the “monthly budget plan payment amount[] ... during the year ... if a rate change of 5% or greater” occurs, we find that the Tariff’s use of the phrase “current rates” does not mean that a monthly Budget Program payment amount based on rates as they existed at the time of construction cannot change.

We also find that Complainant’s request that DEU be required to make structural changes to its Budget Program is not appropriate in this docket. Allowing (1) DEU to only recalculate the monthly Budget Program payment amount after a full 12 months after an enrollee’s enrollment date, or allowing (2) consumers to only enter the Budget Program at a specific time of the year, would be a significant change to the Budget Program as presented in the evidence of record in this docket.

The changes would directly impact at least 188,000 current enrollees. None of those enrollees are a party to this docket.³⁸ For example, the evidence of record shows that Complainant’s request that Budget Program plans should only be adjusted after a full 12 months participating in the program would interfere with DEU’s purposeful design of allowing the automation of monthly payment amount adjustments before the heating season begins and would likely require a significant

³⁸ See *Bradshaw v. Wilkinson Water Co.*, 2004 UT 38, ¶ 36 (proceedings before the PSC consider more than just the interests of the litigating parties and must also consider the interests of all the utility’s customers and the interest of the public).

effort of manually recalculating every bill. Similarly, Complainant's request that DEU's Budget Program be changed to only allow enrollment at one specific time of the year could be a disadvantage to customers who want to participate in the program but are unaware of or miss a deadline.

Moreover, both of Complainant's requested structural changes could likely require a formal modification of the Tariff. We find that any such modification is not appropriate in a complaint docket such as this. Instead, a request for any such modifications should follow the appropriate statutory regime relating to such requests.³⁹

The PSC acknowledges Complainant's apparent frustration with her experience with the Budget Program. The PSC also acknowledges the benefits many other DEU customers have enjoyed from that program. The Budget Program, however, is governed by the Tariff, and the interpretation of the Tariff as set forth herein is consistent with its language and reasonable in its application.

ORDER

Based on the foregoing, the PSC finds and concludes the Complaint fails to demonstrate DEU violated any governing statute, rule, order, or tariff provision. For the reasons set forth herein, the Complaint is denied.

³⁹ See Utah Code Ann. §§ 63G-4-201 and 54-7-9.

DATED at Salt Lake City, Utah, February 6, 2024.

/s/ John E. Delaney
Presiding Officer

Approved and confirmed February 6, 2024, as the Order of the Public Service
Commission of Utah.

/s/ David R. Clark, Commissioner

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

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#332246

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 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. §§ 63G4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 6, 2024, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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