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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

FORMAL COMPLAINT OF DANE T. BARTHOLOMEW AGAINST ENBRIDGE GAS UTAH	Docket No. 24-057-15 ENBRIDGE GAS UTAH'S RESPONSE AND MOTION TO DISMISS
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Pursuant to the Utah Public Service Commission's ("Commission") Notice of Filing and Comment Period (the "Notice") issued on September 13, 2024, in this Docket, Questar Gas Company dba Enbridge Gas Utah (the "Company" or "Enbridge" or "EGU"), formerly known as

Questar Gas Company dba Dominion Energy Utah (“DEU” or “Dominion Energy”),¹ respectfully submits this Response and Motion to Dismiss.

BACKGROUND

On September 12, 2024, Dane T. Bartholomew (“Mr. Bartholomew”) filed a formal Complaint against Enbridge Gas Utah alleging that the Company’s efforts to recover overdue payments were disproportionate and in violation of state and federal consumer credit protection laws. *See* Compl. at p. 1. On September 13, 2024, the Commission issued the Notice, which provided that the Company could submit a written response to Mr. Bartholomew’s Complaint by Tuesday, October 15, 2024. Accordingly, the Company submits this Response, along with the attached sworn affidavit of Luis Ricardo Macias, EGU Exhibit 1.0, with accompanying exhibits, all of which are incorporated herein by this reference.

RESPONSE

The primary allegation listed in Mr. Bartholomew’s Complaint is that Enbridge failed to comply with federal and state credit collection laws and the Company’s Utah Natural Gas Tariff No. 600² (the “Tariff”) in collecting Mr. Bartholomew’s past due payments because the measures taken were grossly disproportionate to the unpaid balance on Mr. Bartholomew’s account. *See* Compl. at p. 1. Specifically, Mr. Bartholomew asks the Commission to determine whether

¹ Dominion Energy was acquired by Enbridge, Inc., in June of 2024. In light of this acquisition, the Company is referred to as “Enbridge” or “EGU” throughout this Response, despite Mr. Bartholomew referring to the Company as “Dominion” or “Dominion Energy” in his Complaint.

² The Utah Natural Gas Tariff No. 600 was the operative version of the Utah Natural Gas Tariff in 2023, the year in which the conduct and actions alleged in Mr. Bartholomew’s complaint occurred. Accordingly, any reference to “the Tariff” throughout this Response refers to the 2023 Utah Natural Gas Tariff No. 600 instead of the presently operative version of the Tariff: Tariff No. 700. Notably, the tariff provisions relied on below have remained unchanged between Tariff 600 and Tariff 700.

Enbridge “and its assigns [] complied with the letter and spirit of its alleged tariff provisions that purportedly allows for an unlimited legal sledgehammer to be used to enforce a modest unpaid gas bill[] without actually contacting the debtor.” Compl. at p. 3. The Company responds to the factual allegations set forth in Mr. Bartholomew’s Complaint in the pre-filed Direct Testimony of Ricky Macias, attached as EGU Exhibit 1.0, incorporated herein by this reference.

Mr. Bartholomew’s Complaint should be dismissed because (1) to the extent Mr. Bartholomew’s claims may be construed as challenging the reasonableness of charges to his account, such a claim for relief is not available to Mr. Bartholomew; (2) to the extent Mr. Bartholomew alleges that the Company and/or Express Recovery Services (“ERS”), the third-party debt collection agency used by Enbridge, have violated state or federal collections law, such claims exceed the Commission’s jurisdiction; and (3) the Company has complied with all relevant Tariff provisions governing gas service in the State of Utah. In short, the Company has, at all times, acted in accordance with all applicable statutes, rules, regulations, Tariff provisions, and Commission Orders.

I. MR. BARTHOLOMEW HAS FAILED TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED.

The Public Utilities Act (“PUA”) regulates public utilities, such as Enbridge, as well as the scope of complaints that can be brought against the Company. *See* Utah Code Ann. § 54-7-9. Under the PUA, the Commission may not entertain a complaint “concerning the reasonableness of any rates or charges of any gas . . . corporation” unless at least one of two conditions are met. Utah Code Ann. § 54-7-9(3). The Commission may only entertain a complaint regarding the reasonableness of rates where either, (1) the complaint is signed by “the mayor, the president or chairman of the board of trustees, or the commissioners, or a majority of the council, commission,

or other legislative body of the city, county, or town within which the alleged violation occurred;” or (2) the complaint is signed by “not less than 25 consumers or purchasers, or prospective consumers or purchasers, of the gas . . . service.” Utah Code Ann. § 54-7-9(3)(a) and (b).

Mr. Bartholomew asserts that he was incorrectly invoiced \$219.24, “which included three days of gas” after moving out of his apartment located at 7865 Bingham Junction Blvd A407, Midvale UT 84047, and an additional \$64.34 for a period of time the “apartment was either under the control of Parc View as landlord and its new tenant.” Compl. at p. 3 ¶¶ 3–4. To the extent Mr. Bartholomew’s allegations can be interpreted as challenging the “reasonableness of any rates or charges . . .” (Utah Code Ann. § 54-7-9(3)) made to his account, such allegations should be dismissed for failing to meet procedural requirements. Where Mr. Bartholomew and his father are the only signatories to the Complaint, neither of the two foregoing conditions have been met. Accordingly, Mr. Bartholomew has not requested relief that can be granted, his claim is barred by the PUA, and his Complaint must be dismissed.

Moreover, even if Mr. Bartholomew could meet the statutory requirements to challenge the reasonableness of the charges to his account, such a claim would be futile for the reasons explained in Sections II and III of this Response. *See Jensen v. IHC Hospitals, Inc.*, 2003 UT 51, ¶ 139, 82 P.3d 1076 (explaining the doctrine of futility).

II. CLAIMS THAT ENBRIDGE OR ERS VIOLATED STATE OR FEDERAL COLLECTIONS LAW EXCEED COMMISSION JURISDICTION.

Even if the Commission concludes that Mr. Bartholomew has a cognizable claim for relief, his Complaint should be dismissed because his allegations exceed the jurisdiction of the Commission. Under the PUA, the Commission:

Is [] vested with power and jurisdiction to supervise and regulate every *public utility* in this state, and to supervise all of the business of every such public utility in this state and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction. . . .

Utah Code Ann. § 54-4-1 (emphasis added). The Commission’s jurisdiction is limited to regulating public utilities. ERS is not a public utility as that term is defined by the PUA and is therefore not subject to Commission regulation. *See* Utah Code Ann. § 54-2-1(23); *see also Heber Light & Power Co. v. Utah Pub. Serv. Commn.*, 231 P.3d 1203, 1208 (Utah 2010) (holding that the Commission may act only pursuant to express power delegated from the legislature as expressed by statute). Accordingly, Mr. Bartholomew’s claims that ERS violated state or federal collections law, or any Tariff provisions for that matter, are beyond the jurisdiction of the Commission and must be dismissed.

Mr. Bartholomew also alleges that Enbridge failed to comply with state and federal collections law. The Company responds that this claim also exceeds Commission jurisdiction for the reasons set forth below.

In *In the Matter of the Formal Complaint of Michael Francis Niemi*, complainant brought an action against Questar Gas alleging that Questar refused to terminate his gas service, refused to refund a security deposit, instituted collection action against him, and continued to bill him for an unoccupied residence. No. 05-035-29, 2005 WL 5163752, at *1 (Aug. 17, 2005). Questar forwarded the matter to its respective collection agency when Complainant’s final bill became past due. *Id.* at *3. The Commission ultimately dismissed the complaint against Questar finding that “nothing in [Questar’s] initial collection actions . . .” violated its statutory or regulatory responsibilities. *Id.* at *4. The Commission further stated that “Complainant is free to pursue action

in another forum if he believes [Questar's] collection activities were unlawful. However, we find no violation of matters over which this Commission has jurisdiction and therefore conclude that . . . Questar [did not] violate[] any statute, rule or tariff obligation" *Id.*

Here, the Company similarly complied with its regulatory and Tariff obligations when it sent Mr. Bartholomew's debt to ERS for collection after his bill became past due, as set forth in Mr. Macias's pre-filed direct testimony and outlined in Section III below. Where the Company complied with its regulatory and Tariff obligations, the Commission is not the proper forum for Mr. Bartholomew's complaints. If Mr. Bartholomew believes the Company's collection activities were otherwise unlawful, he may pursue those allegations elsewhere, just as the Commission instructed complainant in *In the Matter of the Formal Complaint of Michael Francis Niemi*.

Moreover, even if the Commission were to conclude that Mr. Bartholomew's claim that Enbridge's collection actions violated state and federal collections law was within its jurisdiction, the Company responds that none of the applicable state or federal laws apply here. Mr. Bartholomew does not identify specific state or federal laws Enbridge allegedly violated. However, laws potentially applicable to Mr. Bartholomew's allegations are the Utah Consumer Sales Practices Act, the Utah Collection Agency Act, and the Federal Fair Debt Collection Practices Act. Each is addressed in turn below.

The Utah Consumer Sales Practices Act protects consumers from unfair business practices, but specifically exempts "any public utility subject to the regulating jurisdiction of the Public Service Commission of the state of Utah," including Enbridge, from application of the Act. *See* Utah Code Ann. § 13-11-1-22. Next, the Utah Collection Agency Act ("UCAA") governs

collection agencies in the State of Utah. Utah Code Ann. §§ 12-1-1 *et seq* (repealed).³ Enbridge is the “creditor,” as that term is defined under the Act. *See id.* at § 12-1-11(1)(a). Section 12-1-11 is the only provision of the UCAA that governs creditor conduct and is therefore the only section potentially applicable to Enbridge. Specifically, section 12-1-11 governs when a creditor may require a debtor to pay a collection fee in addition to any other amount owed to the creditor. Mr. Bartholomew’s complaint makes no mention of being assessed a collection fee, but instead focuses on “court costs and attorney fees” and “onerous legal fees.” Compl. at p. 7. Accordingly, section 12-1-11 is inapplicable here. It is also worth noting that section 12-1-11(c) provides that any “obligation to pay a collection fee . . . is *in addition to any obligation to pay attorney fees that may otherwise exist.* (emphasis added).

The Fair Debt Collection Practices Act (“FDCPA”) does not apply to Enbridge because the FDCPA only applies to “debt collectors,” which Enbridge is not. The FDCPA defines a debt collector as “an entity that uses any instrumentality of interstate commerce or mail in any business whose *principal purpose is the collection of debts* or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another party.” 15 U.S.C. § 1692a. The Company’s principal purpose is not the collection of debts—hence why it referred collection of Mr. Bartholomew’s debt to ERS, a third-party collection agency. The Company falls outside the scope of the FDCPA, thereby making it inapplicable to this action.

Where none of the applicable state or federal laws apply, the Tariff governs the Company’s responsibilities and obligations with respect to the conduct and actions alleged in Mr.

³ Much of the Utah Collection Agency Act was repealed in May of 2023. Notwithstanding, the UCAA was in effect in early January 2023, when the conduct and action supporting Mr. Bartholomew’s complaint occurred.

Bartholomew's complaint. The Company has complied with all relevant Tariff provisions, as outlined below.

III. ENBRIDGE HAS COMPLIED WITH ALL RELEVANT TARIFF PROVISIONS.

The Utah Natural Gas Tariff governs gas service in the state of Utah. The Tariff provisions relevant to Mr. Bartholomew's complaint involve the termination of customer service for nonpayment (section 9.08), customer requirements for discontinuing service (section 9.07), and collection costs (section 8.04). As set forth in Mr. Macias's testimony attached hereto, (1) the Company satisfied its requirements under section 9.08; (2) Mr. Bartholomew failed to satisfy his requirements for discontinuing service under section 9.07; and (3) the Company properly referred Mr. Bartholomew's debt to collections, the costs for which Mr. Bartholomew is now responsible for under section 8.04.

Section 9.08

Section 9.08 of the Tariff describes the Company's obligations when terminating service for nonpayment. It provides:

A customer having a utility service bill which remains unpaid beyond the next monthly billing date will receive a notice of delinquent account. To avoid termination and a reconnection charge, payment in full of a delinquent balance must be received and acknowledged by the Company's credit personnel prior to the expiration date of a final termination notice. . . .

A bill for residential service is considered to be delinquent when not paid within 20 days of the date the bill is rendered. The Company may terminate residential service by reason of nonpayment after issuing a notice of delinquent account and upon not less than 10 days' written notice of proposed termination. The notice of proposed termination will be sent to the account holder and to any third party previously designated by the account holder. . . .

During the months of October through March, at least 48 hours prior to termination of service, the Company will make a good-faith effort to notify the account holder or an adult member of the household by telephone or personal visit of the

scheduled termination. If personal notification cannot be made, the Company will leave written notice of proposed termination at the residence.⁴

As set forth more fully in Mr. Macias’s pre-filed direct testimony, the Company complied with section 9.08 of the Tariff by (1) sending multiple bills to Mr. Bartholomew regarding his payment obligations from October 2022 through December 2022; (2) sending an urgent notice regarding Mr. Bartholomew’s past-due balance and alerting him that his gas service may be terminated if he did not pay the past-due balance within ten days; and (3) leaving a “JJ” notice at Mr. Bartholomew’s apartment prior to the termination of his gas service.

Only after taking all steps required under section 9.08 did the Company terminate Mr. Bartholomew’s service and refer Mr. Bartholomew’s delinquent account to ERS on or about May 2, 2023. Based on the above, the Company complied with all Tariff and regulatory requirements for terminating Mr. Bartholomew’s gas service for nonpayment.

Section 9.07

Section 9.07 of the Tariff sets forth a customer’s responsibility to provide notice when discontinuing gas services. It provides:

A customer may request discontinuance of service in writing or by telephone. . . .

A sales customer shall provide notice to the Company at least three days in advance of the day service is to be disconnected. The Company will complete the service disconnection or final meter read within four working days after the requested date. . . .

The customer will be held responsible for all gas consumed until notice to discontinue service is given and a final meter read is taken or disconnection completed within four working days of the requested date. If the meter is not

⁴ The Company notes that Utah Administrative Code R746-200-7 provides near identical requirements for terminating service as outlined in section 9.08 of the Tariff. *See* Utah Admin Code R746-200-7(B)-(C) and (G). Thus, just as the Company has complied with section 9.08, as set forth in Mr. Macias’s pre-filed direct testimony and above, it has also complied with R746-200-7.

readily accessible, the customer will be responsible for providing access to complete a final read or disconnection.

Mr. Bartholomew made no attempt to notify Enbridge about his need to terminate gas services prior to moving and provides no evidence to the contrary in his complaint. *See* Compl. at p. 3–6 ¶¶ 1–41. Additionally, Mr. Bartholomew never notified Enbridge of the need to discontinue his gas service after he moved and again, offers no evidence to the contrary in his complaint. *Id.* Accordingly, Mr. Bartholomew failed to satisfy the notice requirements mandated by section 9.07.

Mr. Bartholomew contends that he did not receive any notices from Enbridge after he moved on January 17, 2023. *See* Compl. at p. 3 ¶¶ 6–7. To the extent this is true, and without admitting as much, any failed notice attempt is a direct result of Mr. Bartholomew’s failure to provide the Company information about his move or update his contact information. The Company sent communications based on the contact information it had on file for Mr. Bartholomew, as it had done throughout the duration of Mr. Bartholomew’s tenancy at 7865 Bingham Junction Blvd A407, Midvale UT, 84047.

Based on the above, Mr. Bartholomew failed to satisfy his notice obligations required by section 9.07 of the Tariff. As such, he is responsible for “all gas consumed,” even extending beyond his departure date. Thus, any claims that he was unfairly charged for gas service are unfounded and should be dismissed.

Section 8.04

Section 8.04 of the Tariff sets forth payment procedures the Company must follow when billing and collecting payment from customers. The Tariff provides in relevant part:

All bills are due and payable within 20 days of the billing date. . . .

Gas service charges remaining unpaid at the time the next month's bill is processed will be subject to a monthly interest charge, as set forth in § 8.03. The monthly interest charge will continue to accrue on unpaid balances until paid in full. . . .

Customer will be responsible for any court costs, attorney's fees and/or collection agency fees, incurred in the collection of unpaid accounts.

As set forth in Mr. Macias's pre-filed direct testimony, the last payment the Company received from Mr. Bartholomew was on October 11, 2022, despite the Company sending him bills on October 21, 2022, November 17, 2022, and December 16, 2022. Enbridge appropriately assessed a monthly interest charge for each month Mr. Bartholomew's balance remained unpaid. After terminating his service on February 13, 2023, the Company sent a final letter to Mr. Bartholomew on April 3, 2023, stating, "payment for your final bill has not yet been received," informing Mr. Bartholomew that failure to dispute the charges within seven days would render the amount valid, and indicating that "[f]ailure to pay the balance due will result in referral to a collection agency." On April 19, 2023, the Company regenerated an e-billing statement of the final bill which was sent to dtbartholomew32@gmail.com. Also on April 19, 2023, a copy of the final bill was sent to 7865 Bingham Junction Blvd #A407, Midvale, UT, 84047 and 13304 Nashi Ln, Draper, UT, 84020. Mr. Bartholomew did not dispute the charges and did not pay his final balance. As such, the Company referred Mr. Bartholomew's delinquent account to ERS on or about May 2, 2023.

Within two to three days of receiving Mr. Bartholomew's account, ERS sent notice informing Mr. Bartholomew that the debt associated with his Enbridge account had been referred to ERS. Between May 2, 2023 and August 15, 2023, ERS engaged in exhaustive measures to contact Mr. Bartholomew regarding satisfaction of his debt. After months with little to no progress, ERS referred Mr. Bartholomew's account for legal review and received authorization for legal

action from Enbridge on August 15, 2023. ERS filed suit in the Third Judicial District Court in Salt Lake County in the State of Utah seeking the past due balance of \$286.41 plus interest and attorney fees. The court ultimately granted summary judgment on behalf of ERS, and awarded a judgment of \$1,499.19 which included interest, court costs, and attorney's fees. According to ERS, the judgment has been paid and ERS filed a Satisfaction of Judgment with the court on September 9, 2024.

Mr. Bartholomew now challenges the inclusion of "court costs and attorney fees as a remedy." Compl. at p. 7. Section 8.04 is explicit: a "[c]ustomer will be responsible for any court costs, attorney's fees and/or collection agency fees, incurred in the collection of unpaid accounts." The language of section 8.04 is broad covering "*any* court costs, attorney's fees and/or collection agency fees . . ." (emphasis added). ERS incurred costs and attorney's fees in bringing their collection action against Mr. Bartholomew, costs and fees that ERS is entitled to recover, and Mr. Bartholomew is responsible for, under the Tariff.

CONCLUSION

Based upon the foregoing, the Company respectfully requests that the Commission dismiss Mr. Bartholomew's Complaint with prejudice. If the Commission declines to dismiss

Mr. Bartholomew's Complaint, it should deny the Complaint for the reasons set forth herein, and in Mr. Macias's testimony attached as EGU Exhibit 1.0.

RESPECTFULLY SUBMITTED this 15th day of October, 2024.

ENBRIDGE GAS UTAH

A handwritten signature in black ink, appearing to read "Rebekah M. Watts". The signature is written in a cursive style with a large initial "R".

Rebekah M. Watts

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **ENBRIDGE GAS UTAH’S RESPONSE AND MOTION TO DISMISS** was served upon the following persons by e-mail on the 15th day of October, 2024:

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