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PUBLIC SERVICE COMMISSION OF UTAH

NADRA HAFFAR

Claimant,

v.

DOMINION ENERGY.

Respondent.

**NADRA HAFFAR'S REPLY IN
SUPPORT OF COMPLAINT AND
OPPOSITION TO DOMINION
ENERGY'S MOTION TO DISMISS**

Docket No. 19-057-08

Nadra Haffar, by and through undersigned counsel, respectfully submits this combined Reply in Support of her Complaint and Opposition to Dominion Energy's Motion to Dismiss.

Where "Dominion" is referenced, its predecessors and applicable parent companies or subsidiaries are also referenced.

I. The evidence shows that Dominion caused the crossed meter condition

Evidence may be direct or circumstantial, and both types of evidence should be treated alike. *See Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100, 123 (2003) ("The reason for treating circumstantial and direct evidence alike is both clear and deep rooted: 'Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.'" (quoting *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 508, n. 17 (1957))).

Here, the meter serving Ms. Haffar's property was properly assigned prior to 1986. In 1986, Dominion connected a second meter to serve a new customer. Dominion connected the second meter in the same meter box that housed the meter serving Ms. Haffar's meter. When Dominion finished this work, Ms. Haffar's meter was no longer properly assigned to her property. Dominion alone had access to the meter box and the meters at issue. Dominion alone was authorized to make changes to meter assignments. This is substantial circumstantial evidence that Dominion caused the incorrect assignment of Ms. Haffar's meter. *Cf.* MUJI 2d CV 120 (explaining circumstantial evidence).

Dominion argues that Ms. Haffar did not initiate contact Dominion in 2010 regarding her gas bill. It is possible that this contact was made in 2011. Regardless of when Dominion inspected the meter box and/or Ms. Haffar's home, the original cause of the crossed-meter condition was Dominion's re-assignment of Ms. Haffar's meter in 1986.

II. There is no evidence that a third-party improperly designated fuel lines

Dominion argues that a third party might have misidentified fuel lines, and that Dominion might have relied on such an error when assigning meters. However, there is no evidence that such a designation occurred or that Dominion actually relied on any other party.

III. Even if a third party had improperly designated fuel lines, that would not explain Dominion's error

At the relevant time, there was only one fuel line connected to a meter in the meter box at issue, and only one home served through that meter box. Even if Dominion could show that a third party had improperly marked fuel lines, it would not explain why Dominion employees would reassign the meter serving a pre-existing, active fuel line to a new customer. That scenario would and should have at the very least put Dominion on notice that the designation of

lines was incorrect. Dominion employees could not reasonably have relied on a third party under those circumstances.

IV. Whether a third party designated the lines is irrelevant

The regulation at issue only requires that the crossed meter condition be “caused by” the utility. The regulation does not require a claimant to prove negligence, that the utility is the sole cause, or even that the utility was the substantial or primary cause. “Cause” is defined as “something that produces an effect or result.” Black’s Law Dictionary, *cause* (10th ed. 2014). Here, Dominion alone assigned Ms. Haffar’s meter to the incorrect fuel line. Dominion’s actions were the actual cause of the problem, because without Dominion’s actions, “the event could not have occurred.” *See id., but-for cause*. Even if others assisted—and there is no evidence that anyone did—Dominion’s actions would still be at least a concurrent or contributing cause. *See id., concurrent cause, contributing cause*.

V. Ms. Haffar has stated a claim upon which relief can be granted

Utah Admin. Code R746-320.C.4 makes utilities liable for overpayments which occurred more than 24 months before the customer submitted a complaint where the utility caused a crossed meter condition, the overbilling can be shown to be due to some cause, the date of which can be fixed. Ms. Haffar has alleged facts supporting each of those elements. In addition, R746-320.C.7 provides that disputes regarding the “level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.” Therefore, Ms. Haffar has stated a claim upon which relief can be granted.

DATED this 26th day of April, 2019.

PECK HADFIELD BAXTER & MOORE, LLC

/s/ Loren K. Peck
Loren K. Peck
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on April 26, 2019, a true and correct copy of the foregoing **NADRA HAFFAR'S REPLY IN SUPPORT OF COMPLAINT AND OPPOSITION TO DOMINION ENERGY'S MOTION TO DISMISS** was served upon the following as indicated below:

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