

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of Alan Kruckenberg Construction, Inc. against Dominion Energy Utah	<u>DOCKET NO. 19-057-24</u> <u>ORDER DISMISSING COMPLAINT</u>
--------------------------------------------------------------------------------------------	------------------------------------------------------------------

ISSUED: December 6, 2019

1. Procedural History.

On June 5, 2019, Alan Kruckenberg Construction, Inc. (“Complainant”) filed a formal complaint (“Prior Complaint”) against Dominion Energy Utah (DEU) in Docket No. 19-057-15 (“Prior Docket”), alleging DEU had improperly installed a gas line (the “Line”). Complainant alleged the trench in which DEU had installed the Line subsided, causing damage to nearby asphalt. DEU moved to dismiss the Prior Complaint, asserting Complainant had neither requested nor paid for compaction and that DEU had properly performed the work, as requested. DEU further attributed subsidence at the property to causes other than DEU’s work. Complainant filed no response to the motion to dismiss, which the Public Service Commission (PSC) subsequently granted on August 1, 2019.

On August 12, 2019, Complainant filed a Request for Review and Rehearing (“Request”) in the Prior Docket. After the time for response elapsed with no response filed, the PSC denied the Request because Complainant failed to attach proof of service on DEU and it therefore “appear[ed] that DEU was not served with the Request.”

On September 3, 2019, Complainant filed a copy of an email to demonstrate it had, in fact, timely served DEU with a copy of the Request.

On September 4, 2019, the PSC opened this docket by issuing a Notice of Filing and Comment Period, noting that Complainant had filed proof of service in the Prior Docket and

explaining it would treat the Request as a new complaint (hereafter referred to as the “Complaint”) because it raised a new issue as to whether DEU failed to properly fill a trench with sand or other compactable fill.

On October 4, 2019, DEU filed its response in this docket (“Response”), moving to strike portions of Complainant’s Request that discussed settlement discussions between the parties. On October 21, 2019, Complainant filed a reply (“Reply”). On October 25, 2019, DEU filed a Motion to Strike Portions of Complainant’s Reply, again moving to strike references to settlement discussions between the parties.

2. Complainant’s Allegations and DEU’s Response.

Complainant alleges DEU installed the Line in a right of way “between [an] asphalt drive and the foundation” of a property. (Complaint at 1.) Complainant further alleges the trench in which DEU installed the Line “was improperly filled” and that “[s]and or other compactable fill was not used.” (*Id.*) “The trench has subsided and [the 20’] wide [adjacent] asphalt drive has been damaged.” (*Id.*) Complainant also outlines a history of settlement discussions between the parties (which DEU has moved the PSC to strike).

DEU argues Complainant did not request, contract, or pay for compaction. DEU alleges its representative prepared a “Service Line Worksheet” in conjunction with Complainant’s initial request to install the Line. (Response at 2.) DEU maintains that “[w]hen customers request compactable fill or trench compaction, or otherwise notify [DEU] that the service line will be placed below a hard service necessitating compaction,” the worksheet will reflect the request and the additional costs associated with it. (*Id.*) The worksheet DEU prepared in connection with

Complainant's request to install the Line does not reflect that Complainant requested compaction or any costs associated with the additional work and material. (*Id.* at 2 and Ex. A.)

Similarly, DEU asserts the Service Line Agreement that Complainant and DEU executed to govern DEU's installation of the Line contains no requirement that DEU "compact the trench above the installed service line or fill the trench with compactable fill." (*Id.* at 3 and Ex. B.) DEU represents that "[w]hen a customer makes such a request, the 'Construction Notes' section of the agreement, will specify that compaction or compactible fill is required and will include associated costs." (*Id.*)

DEU alleges it properly installed the Line under the terms of the Service Line Agreement and in the location specified therein. (*Id.* at 3-4.) DEU alleges it installed the Line "in a soft surface adjacent to, but not under, an asphalt driveway." (*Id.* at 4.) DEU further alleges that "[s]ubsequent to installation, [DEU] representatives observed and photographed heavy equipment parked over the service line" and that Complainant "installed water and sewer lines under the asphalt that runs adjacent to the service line." (*Id.*) DEU argues "[a]ny subsidence adjacent to the service line ... is the result of the installation of the water and/or sewer lines and/or the placement of heavy equipment ... and not [DEU's] service line trench." (*Id.*)

In its Reply, Complainant reasserts the allegations in its Complaint and outlines the current history of settlement discussions between the parties, attaching correspondence between the parties as exhibits. Complainant also represents it has filed a civil complaint in Murray Justice Court, attaching a copy of his complaint. (Reply at 2 and Ex. 13.) Complainant asks the PSC "rule in favor of the Complainant" and "provide Monetary Judgment in the amount of \$5,840.00 ... for removal and replacement of the damaged asphalt." (Reply at 3.)

3. Findings, Conclusions, and Order

Having reviewed the Complaint, Response, Reply, and associated exhibits, the PSC finds Complainant has not alleged DEU violated any provision of rule, statute, or tariff. Complainant seeks a remedy, and specifically monetary compensation, for damages it alleges it sustained as a result of DEU's work to install the Line. Complainant points to no provision of tariff, rule, or statute that DEU violated in its performance of this work. Notably, Complainant alleges, in its Reply, that DEU has offered to take action to resolve the Complaint but disagreement appears to exist among the parties as to the satisfactoriness of the offer.¹

The PSC concludes that whether Complainant is entitled to any remedy for the damages it alleges it has sustained as a result of DEU's performance presents civil questions of fact and law over which an appropriate court has jurisdiction, not the PSC. Indeed, Complainant represents in its Reply that it has already filed a complaint with the Murray Justice Court.

Because Complainant has not alleged DEU violated any provision of statute, rule, or tariff, and because the Complaint raises questions and seeks a remedy that can only be resolved in an appropriate court, the PSC dismisses the Complaint. In light of this conclusion, the PSC denies DEU's motions to strike as moot.

DATED at Salt Lake City, Utah, December 6, 2019.

/s/ Michael J. Hammer
Presiding Officer

¹ The PSC need not admit or evaluate the details of the settlement communications Complainant filed to consider Complainant's allegations that DEU has offered to take action to resolve the Complaint and that Complainant has deemed the offer unsatisfactory.

DOCKET NO. 19-057-24

- 5 -

Approved and confirmed December 6, 2019, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#311401

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 20 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 December 6, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By U.S. Mail:

Alan Kruckenberg Construction, Inc.
5411 S Vine St, Ste. 4A
Murray, UT 84107

By Email:

Alan Kruckenberg Construction, Inc. (akhomes@yahoo.com)

Jennifer Clark (jennifer.clark@dominionenergy.com)
Arminda I. Spencer (arminda.spencer@dominionenergy.com)
Leora Abell (leora.abell@dominionenergy.com)
Dominion Energy Utah

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Steven Snarr (stevensnarr@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Cheryl Murray (cmurray@utah.gov)
Office of Consumer Services

Administrative Assistant