

Jenniffer Nelson Clark (7947)  
Dominion Energy Utah  
333 South State Street  
P.O. Box 45433  
Salt Lake City, Utah 84145-0433  
(801) 324-5392  
(801) 324-5935 (fax)  
Jenniffer.Clark@dominionenergy.com

*Attorney for Dominion Energy Utah*

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

FORMAL COMPLAINT OF SYMPHONY HOMES AGAINST DOMINION ENERGY UTAH	Docket No. 21-057-05 <b>DOMINION ENERGY UTAH'S WRITTEN RESPONSE TO FORMAL COMPLAINT</b>
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Pursuant to the Utah Public Service Commission's (Commission) Notice of Filing and Comment Period issued on March 15, 2021 and the subsequent Order Granting Motion for Extension of Time issued April 13, 2021 in this docket, Questar Gas Company dba Dominion Energy Utah (Dominion Energy or Company) respectfully submits this written response.

**DOMINION ENERGY'S RESPONSE**

Dominion Energy began communicating with Symphony Homes about Symphony Homes' planned Rock Mill Estates development in April of 2018. Affidavit of Kurtis E. Fredericks, DEU Exhibit 1.0. DEU Exhibit 1.0, and the accompanying exhibits, are incorporated herein by this reference.

Symphony Homes' plans required the relocation of a portion of an Intermediate High Pressure pipeline (the Main Line) to accommodate an entryway to the development and a sewer line. Dominion Energy expressed concern that the development plans called for the placement of a fence/wall over the Main Line. *Id.* Symphony Homes repeatedly assured Dominion Energy that the planned fence would be built to the north of the Main Line and would not conflict with the Main Line. *Id.* Dominion Energy and Symphony Homes entered into an agreement for the relocation of portions of the Main Line to accommodate the entryway and the sewer line.

Dominion Energy completed the agreed-upon relocation work. During that work, the Dominion Energy inspector on the job expressed concern that the fence/wall appeared to be planned in a fashion that would conflict with the Main Line. Symphony Homes representatives again assured Dominion Energy that the fence would be constructed to the north of the Main Line and would not conflict with the Main Line. *Id.*

However, as Symphony Homes constructed its development, it began placing footings and stone columns in conflict with Dominion Energy's Main Line. Upon discovery of this fact, Dominion Energy directed Symphony Homes to stop construction and indicated that another portion of the Main Line would have to be relocated to accommodate the fence. Symphony Homes began negotiating with Dominion Energy to enter into another relocation agreement. *Id.*

Dominion Energy initially planned to complete the relocation work to accommodate the fence/wall in 2019 but, Symphony Homes was participating in a home show during the summer of 2019 and asked Dominion Energy to delay construction until the home show was

complete. *Id.* The home show ended in July of 2019 but, by that time, Dominion Energy was experiencing a shortage of contractors in the area and was unable to take the pipeline out of service with the approaching heating season. *Id.* Dominion Energy advised Symphony Homes that the work could commence in the spring or summer of 2020.

Given the delay, Dominion Energy offered to permit continued construction of the fence provided that construction occur in the presence of a Dominion Energy inspector to ensure the safety of the pipeline. Notwithstanding its representations, and its agreement to relocate the pipeline, Symphony Homes constructed the remaining stone pillars and footings without consulting with Dominion Energy, and outside the presence of Dominion Energy's inspector. This construction of footings and stone pillars, directly over the top of Dominion Energy's pipeline, occurred in violation of Utah Code Ann. § 54-13-7 (2)(a) which provides that a building or structure requiring slab support may not be placed within one foot vertically or three feet horizontally of a main line. The Symphony Homes structures were directly over the top of Dominion Energy's facilities, and Dominion Energy believes that the concrete footings for the pillars may even have encased the line. *Id.* Dominion Energy has inspected the line to ensure its continued safety, and it has prioritized the relocation of the line.

On March 3, 2020, Dominion Energy and Rock Mill Estates, LLC (Rock Mills) entered into an agreement to relocate the pipeline located within the street right-of-way of 600 North Street in Farmington, to accommodate the fence/wall. Dominion Energy understands that Rock Mills Estates, LLC is a subsidiary of Symphony Homes, the Complainant in this docket. *See.* DEU Exhibit 1.02. Rock Mill Estates agreed to pay

Dominion Energy \$22,352.00 as contribution toward completion of the Relocation Work and payment was due prior to and as a condition to Dominion Energy's obligation to commence the Relocation Work.

The Agreement provides, in part, that Dominion Energy could adjust its schedules without notice as required to handle emergencies on its system but indicated it would complete all relocation work on or before July 31, 2020. DEU Exhibit 1.02 at ¶4. The Agreement further provides that "Neither Party shall be liable for any failure to perform this Agreement when the failure is due to any cause which is not reasonably within the control of the Party affected." *Id.* at ¶ 6(e). On March 18, 2020, Rock Mill Estates, LLC delivered the signed contract with payment. DEU Exhibit 1.0.

Shortly after the contract was executed, the COVID-19 pandemic disrupted business in Utah and around the globe. As a result, of the pandemic, Dominion Energy was forced to delay work in order to establish safety protocol and procure personal protective equipment for its employees. *Id.* Dominion Energy's contractors grappled with the same issues. *Id.* As a result of the pandemic, and the Company's subsequent efforts to ensure the safety of its workforce and the public, the agreed-upon relocation was not completed by July 31, 2020. On June 25, 2020, Dominion Energy provided Symphony Homes with notice of the force majeure associated with the COVID-19 pandemic.

Though Dominion Energy established safety protocols and obtained personal protective equipment for its employees, and its contractors did the same, Dominion Energy was not able to commence work on the project in the fall of 2020. In order to complete this project, Dominion Energy will need to take an intermediate-high pressure pipeline out of

service. The pipeline serves residences and businesses in Farmington, Utah and cannot be taken out of service during the heating season. The earliest the Company could begin construction on the project would be the spring of 2021. The Company notified Complainant of this fact in August of 2020 and subsequently offered to amend the Agreement to reflect a new completion date of July 31, 2021. Since that time, Dominion Energy has been working with contractors to begin preparation for this project and fully anticipates that this project will be completed by July 31, 2021.

Complainant seeks a written commitment that: (1) the work be completed before July 31, 2021; (2) it will not be responsible for any cost increases due to the delayed construction; (3) Dominion Energy will assume the liability for any “property damage or issues of any kind that arise because of the gas line’s location between July 31<sup>st</sup> 2020 and the completion of the work”.

Dominion Energy agrees that, absent a force majeure or other cause beyond its control, it will complete the work by July 31, 2021. Dominion Energy also agrees not to increase any charges to Symphony Homes for the work. However, there is no basis in fact or law that would require Dominion Energy to assume liability for Symphony Homes’ own negligent or intentional acts. Dominion Energy declines to assume those liabilities and the Commission should decline to impose those liabilities upon Dominion Energy. Indeed, the Commission may not have the statutory authority to do so.

Dominion Energy has, at all times, acted in accordance with all applicable statutes, rules, regulations, Commission orders, and Tariff provisions. Its failure to relocate the subject pipeline by July 31, 2020 was caused by an event beyond any party’s control, and

Dominion Energy has been diligent in pursuing and completing the relocation of the line.

Therefore, the Commission should deny Symphony Homes Complaint and request for relief.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of April, 2021.

DOMINION ENERGY UTAH

*/s/ Jenniffer S. Clark*

Jenniffer Nelson Clark

*Attorney for Dominion Energy Utah*

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the was served **DOMINION ENERGY UTAH'S WRITTEN RESPONSE TO FORMAL COMPLAINT** upon the following persons by e-mail on April 19, 2021:

Patricia E. Schmid  
Justin C. Jetter  
Assistant Attorneys General  
160 East 300 South  
P.O. Box 140857  
Salt Lake City, UT 84114-0857  
[pschmid@ugutah.gov](mailto:pschmid@ugutah.gov)  
[jjetter@ugutah.gov](mailto:jjetter@ugutah.gov)

*Counsel for the Division of Public Utilities*

Chris Parker  
William Powell  
Utah Division of Public Utilities  
160 East 300 South  
P.O. Box 146751  
Salt Lake City, UT 84114-6751  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)  
[wpowell@utah.gov](mailto:wpowell@utah.gov)

Rock Mill Estates, LLC  
c/o Symphony Homes  
Attn: Jared Schmidt  
111 South Frontage Road  
Centerville, UT 84014  
[jschmidt@symphonyhomes.com](mailto:jschmidt@symphonyhomes.com)

Kevin Anderson  
Anderson Call & Wilkinson  
110 South Regent Street, Suite 200  
Salt Lake City, UT 84111  
[kanderson@lawwest.com](mailto:kanderson@lawwest.com)  
*Counsel for Symphony Homes*

/s/ Shalise McKinlay