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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

FORMAL COMPLAINT OF REAL ESTATE: INVESTMENT, MANAGEMENT, BROKERAGE, DEVELOPMENT, LLC AGAINST DOMINION ENERGY UTAH	Docket No. 21-057-08 <b>RESPONSE TO FORMAL COMPLAINT</b>
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Pursuant to Utah Admin. Code §R746-1-101 *et seq.* and the Utah Public Service Commission’s (Commission) Notice of Filing and Comment Period issued on April 5, 2021, Dominion Energy Utah (Dominion Energy or Company) respectfully submits this written response to the Formal Complaint of Real Estate: Investment, Management, Brokerage, Development LLC (RE: IMBD LLC or Complainant).

**BACKGROUND**

1. In the fall of 2017, Mr. Todd DeFeudis (Mr. DeFeudis) contacted Dominion Energy, seeking natural gas service at a property located at 402 Aspen Road in Francis, Utah (the Property). As part of the request, Mr. DeFeudis stated he would be installing natural gas appliances with natural gas usage estimated at 289,000/btu. Based on the

information provided, Dominion Energy provided Mr. DeFeudis with a Service Line Agreement with an estimated cost for installation that assumed a standard sized residential meter. A copy of that Service Line Agreement is attached as DEU Exhibit A. Dominion Energy proceeded with the installation of the service line as set forth in that service line agreement.

2. Dominion Energy's standards require service lines to be placed at a depth of approximately three feet. Dominion Energy constructed the service line at the Property in accordance with this standard. The trench was not a depth of five feet or greater, and Dominion Energy's competent personnel on site determined that there were no conditions that would warrant the use of trench protection.
3. On April 13, 2018, DEU received notice from the City of Francis stating that the load on the natural gas line was anticipated to be 545,000/btu, significantly higher than that represented by Mr. DeFeudis. A copy of the Francis City Clearance and Fuel Gas Installation form showing the new load data is attached as DEU Exhibit B.
4. A standard residential meter is too small for the higher load indicated by the City of Francis, and Dominion Energy modified its initial design to include a larger meter that could accommodate the higher load. The larger meter is also more costly. Dominion Energy provided Mr. DeFeudis and RE: IMBD LLC each with a Work Estimate setting forth the additional costs. Mr. DeFeudis did not make payment for the additional construction costs and Dominion Energy sent a follow up invoice on November 20, 2018. A copy of that invoice is attached as DEU Exhibit C.

5. On November 26, 2018, Mr. DeFeudis sent correspondence to Dominion Energy forbidding Dominion Energy from entering the Property for any reason. He wrote:

**NO TRESPASSING ORDER AND CEASE AND DESIST ORDER**

a) As the reckless and illegal behavior of Whit Sargent and Dominion energy is getting out of hand and is illegal, at this time: Todd E DeFeudis and Cristy DeFeudis hereby order a NO TRESPASSING ORDER AND CEASE AND DESIST ORDER.

b) Do not visit the property or service anything on our property unless there is a gas emergency.

Email from Mr. DeFeudis to Abbie Magrane dated November 26, 2018, attached as DEU Exhibit D (emphasis in original). That email identified Mr. DeFeudis and Cristy DeFeudis as “Owners of Record” of the Property. *Id.*

6. On December 12, 2018, Dominion Energy sent a letter explaining that the larger meter was required based upon the usage requirements of appliances at the Property, as reported by the City of Francis. Letter from Abbie Magrane to Mr. DeFeudis dated December 12, 2018, attached as DEU Exhibit E. Dominion Energy also explained that Mr. DeFeudis would need to pay for the larger meter before Dominion Energy would place the meter and commence service to the Property. *Id.*
7. On that same day, Mr. DeFeudis sent an email to Dominion Energy’s counsel, requesting information about how to effect service of a civil complaint upon Dominion Energy. Emails between Mr. DeFeudis to Abbie Magrane dated December 12-13, 2018, attached hereto as DEU Exhibit F. Counsel for Dominion Energy responded to the email. *Id.* On December 13, 2018, Mr. DeFeudis sent another email, requesting the personal home addresses of Dominion Energy counsel and

employees. *Id.* Dominion Energy did not provide personal information, but promptly responded to that email. *Id.* Because Mr. DeFeudis had indicated an intent to file a civil lawsuit, Dominion Energy retained Justin T. Toth to represent it in the anticipated litigation. *Id.*, Letter from Justin Toth to Mr. DeFeudis dated December 14, 2018 and attached as DEU Exhibit G.

8. On December 27, 2018, Mr. DeFeudis filed an informal complaint with the Division of Public Utilities (Division). Informal Complaint attached as DEU Exhibit H (First Complaint). Dominion Energy timely responded to the First Complaint, and the matters raised therein were resolved. A copy of that response is attached hereto as DEU Exhibit I.
9. DEU did not receive further communication from Mr. DeFeudis until February 4, 2021, when “Project Manager” sent an email to counsel for Dominion Energy asking what needed to be done to have natural gas service at the Property. A copy of that Email is attached as DEU Exhibit J. Dominion Energy believes that Project Manager may be Mr. DeFeudis but because Project Manager has refused to identify himself/herself, Dominion Energy is unsure. Dominion Energy promptly responded, indicating that in order to get service, an authorized representative would need to sign a Service Line Agreement and pay costs associated with the larger meter, as required by Dominion Energy’s Utah Natural Gas Tariff No. 500 (Tariff). DEU Exhibit K.
10. Project Manager expressed objection to the Service Line Agreement provisions pertaining to indemnity but paid the remaining balance.

11. On February 23, 2021, Project Manager called Dominion Energy seeking to commence service to the Property. A transcript of that call is attached as DEU Exhibit L. Project Manager refused to provide his name, or the name of any person associated with the Property or the account. *Id.* Project manager was very specific and directed Dominion Energy to place gas service in the following name: “Real Estate: Investment, Management, Brokerage, Development LLC”. *Id.* Dominion Energy informed Project Manager that in order for service to commence, Project Manager would need to provide a Service Line Agreement and a Francis City clearance permitting installation of a meter. *Id.* Dominion Energy sent a Gas Service Signature-Identification Agreement to the address designated by Project Manager. A copy of that Agreement is attached as DEU Exhibit M.
12. On February 26, 2021 Dominion Energy completed installation of the meter at the Property. Dominion Energy then sent Project Manager a Gas Service Signature-Identification Agreement for Project Manager to complete, a copy of which is attached as DEU Exhibit N. Project Manager has not returned the agreement.
13. Notwithstanding Project Manager’s refusal to sign the Gas Service Signature-Identification Agreement, Dominion Energy commenced natural gas service to the Property.
14. The natural gas bill included a charge of \$16.55 for a Limited Connection Fee plus tax. A copy of that bill is attached as DEU Exhibit O.
15. On March 1, 2021, Project Manager called Dominion Energy again. Again, Project Manager refused to identify himself/herself, or to provide a name of a person

associated with the Property. A transcript of this phone call is attached as DEU Exhibit P. Again, Project Manager was very specific and directed Dominion Energy to place the account in the name “RE: IMBD LLC”. *Id.* Project Manager asked that Dominion Energy re-send the Gas Service Signature-Identification Agreement with the name “RE: IMBD LLC”. *Id.* Dominion Energy agreed to do so. *Id.*

16. On April 1, 2021, RE: IMBD LLC filed the Complaint in this matter (Complaint). On April 8, 2021, RE: IMBD LLC submitted additional correspondence (Additional Correspondence).
17. The Utah Department of Corporations indicates that Todd Edward DeFeudis is both the sole Member and the Registered Agent for Real Estate: Investment, Management, Brokerage, Development LLC. A copy of the results of a Utah Business Search is attached as DEU Exhibit Q.

### **RESPONSE**

As a preliminary matter, it is important to note that Dominion Energy is a public utility providing natural gas service pursuant to Utah Code. Ann. §54-1-1 *et seq.* It offers service under the terms and conditions set forth in its Commission-approved Utah Natural Gas Tariff No. 500 (Tariff), and the rules and regulations promulgated by the Commission. Many of the allegations advanced by RE: IMBD LLC appear to suggest not that Dominion Energy violated any statute, rule, regulation, or Tariff provision, but instead appear to show RE: IMBD LLC’s dissatisfaction with those terms and conditions.

Though the Complaint and the Additional Correspondence reference myriad of issues, RE: IMBD LLC’s complaint appears to allege the following: (1) that Dominion

Energy withheld service to the Property for two years; (2) the indemnity and attorneys' fees provisions in the Service Line Agreement and the Gas Service Signature-Identification Agreement are illegal; (3) that Dominion Energy has not placed service to the Property in the proper name; (4) that Dominion Energy violated regulations requiring trench support during construction; (5) that Dominion Energy personnel have trespassed upon the Property; (6) that counsel for Dominion Energy has harassed and defamed an individual causing harm to him and his family; (7) that Dominion Energy acted improperly by referring to an individual by his personal name; (8) that Dominion Energy has charged rates that were not disclosed or agreed-upon; (9) that Dominion Energy employees, and employees of the entity charged with marking underground facilities pursuant to Utah Code Ann. § 54-8a-1 *et seq.* engaged in objectionable behavior like smoking and mistreating an individual at the Property; (10) that RE: IMBD LLC is entitled to various relief including a jury review of this docket and a Commission-provided attorney. The Company responds to each above-referenced allegation below. The Company denies, for lack of information, any other allegations contained in the Complaint and the Additional Correspondence.

**I. Dominion Energy Did Not Improperly Withhold Service to the Property for Two Years.**

Section 9.04 of the Tariff provides, among other things, that customers seeking installation of a service line and a meter must (1) pay all of the Service Line Costs, including meter costs above the cost of a standard residential meter, (2) “grant to the Company permission to go upon the applicant’s premises to install, inspect, maintain service and repair service lines.” The Company advanced a standard Service Line Agreement, a form provided to all new customers, to Mr. DeFeudis. Mr. DeFeudis refused to pay the costs of the meter,

above the cost of a standard meter. He also expressly directed Company not to enter the Property.

Additionally, Mr. DeFeudis initially refused to sign the Service Line Agreement. Had the Company commenced construction without an enforceable agreement, it would have done so at its own risk. It would also arguably be in violation of Utah Admin. Code § 54-3-7 by giving Mr. DeFeudis an improper privilege related to the conditions of service.

After indicating an intent to file a lawsuit and forbidding Dominion Energy personnel to enter the Property, Mr. DeFeudis did not contact the Company again for nearly two years. The Company did not refuse service, rather Mr. DeFeudis failed to meet the conditions required to receive service. Once Mr. DeFeudis signed the Service Line Agreement, once RE: IMBD LLC paid for the Service Line Costs, and granted the Company access to complete construction, the Company promptly did so.

**II. The Indemnity and Attorney's Fees Provisions in the Service Line Agreement and the Gas Service Signature-Identification Agreement are Legal and Enforceable.**

RE: IMBD LLC appears to object to the indemnity and attorney's fees provisions in both the Service Line Agreement and the Gas Service Signature-Identification Agreement. Both are legal and enforceable.

The Service Line Agreement governs the installation of service lines and meters and provides:

To the fullest extent permitted by law, Customer shall release, indemnify, hold harmless, and defend Company its parent company, affiliates at any tier, and contractor(s) at any tier and their respective directors, officers, employees, and agents (collectively "Indemnified Parties") from and against any and all liabilities, losses, claims, demands, liens, fines, and actions of any nature whatsoever, including but not limited to attorney fees and defense costs (collectively "Liabilities") arising out of, related to, or in connection with any



Work contemplated by this Agreement: however, in no event shall customer be required to indemnify or defend the Indemnified Parties from and against any Liabilities to the extent caused by the negligence or willful misconduct of Company or Company's contractors at any tier . . . .

DEU Exhibit A, paragraph 12.

The Gas Service Signature-Identification Agreement is an agreement relating to provision of natural gas service. It provides that "Customer agrees to pay interest charged on unpaid accounts at the rate provided by the governing tariff, as well as court costs, attorney fees and collection-agency fees incurred in the collection of unpaid accounts. The interest rate is also applicable to judgment interest."

These provisions are consistent with Dominion Energy's Tariff. Section 7.02 of the Tariff provides that "[t]he customer will indemnify the Company against all claims, demands, cost or expense for loss, damage, or injury to persons or property in any manner directly or indirectly connected with or growing out of the serving or use of gas service by the customer, at or on the customer's side of the point of delivery."

Section 9.04 of the Tariff, which pertains specifically to the installation of service lines and meters, provides that applicants who fail to grant access to facilities, or permit actions on the premises that result in damage to Dominion Energy's facilities "must pay any costs incurred for damage, repair, or relocation due to the failure or refusal of applicant" to comply with those requirements.

Section 8.04 of the Tariff, which pertains to payment for natural gas service, provides that "Customer will be responsible for any court costs, attorney's fees and/or collection agency fees, incurred in the collection of unpaid bills."

The indemnity and attorneys' fees provisions in both the Service Line Agreement and the Gas Service Signature-Identification Agreement are both consistent with applicable Tariff provisions—provisions applicable to any customer who accepts natural gas service with, or without an agreement. Notwithstanding RE: IMBD LLC's objection to these provisions, they are fully legal and enforceable, and are appropriately included in each agreement.

### **III. Dominion Energy Has Placed Service In the Requested Customer Name.**

Admittedly, there has been a great deal of confusion about who, specifically, desires to be the customer at the Property. Mr. DeFeudis made initial contact with Dominion Energy to request installation of a service line and meter. Mr. DeFeudis returned the original signed Service Line Agreement. He is the only named person with whom Dominion Energy has communicated on the subject.

On February 23, 2021, an individual who identified himself only as "Project Manager" contacted Dominion Energy to commence natural gas service. Project Manager was express in asking that service be placed in the name of "Real Estate: Investment, Management, Development, Brokerage, LLC". Dominion Energy placed gas service into that name. On March 1, 2021, Project Manager called Dominion Energy again and asked that service be placed in the name "RE: IMBD LLC" instead. Dominion Energy complied.

In the Complaint, Project Manager has requested that service be placed in still another name: "4021884036 Asset Protection Trust, Irrevocable, Inception Date 05.08.2019 c/o and Property Managed by "Real Estate: Investment, Management, Brokerage, Development, LLC" (or RE: IMBD LLC for short)." In the attachment to the Complaint seems to suggest that the account should be in the name of "RE: IMBD LLC".

The Company regrets the confusion relating to the proper name of the customer on the natural gas account. The Company believes it has placed service in the name of “RE: IMBD LLC” in accordance with RE: IMBD LLC’s wishes. The Company looks to Complainant to identify the proper person/entity to be named on the account.

**IV. Dominion Energy Did Not Violate Any Safety Regulations or Standards Relating to Cave-In Protection.**

Complainant indicates that “[t]he gas line installer did not use trench barriers to protect workers who are working in a trench.” The United States Department of Occupational Safety and Health Administration is clear about this requirement. 1926 CFR 1926.652 provides that “Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when . . . Excavations are less than 5 feet (1.52 m) in depth and examination of the ground by a competent person provides no indication of a potential cave-in.”

Dominion Energy places service lines at a depth of three feet. The line at the Property was placed at a depth of approximately three feet, in accordance with this standard. The trench for the service line was not at a depth of five feet or more. Dominion Energy’s competent personnel on site determined that there was no indication of a potential cave in. Therefore, no trench reinforcement was required.

**V. Dominion Energy Employees Have Not Trespassed on RE: IMBD LLC’s Property.**

Dominion Energy’s employees have only entered onto RE: IMBD LLC’s property in order to construct facilities to provide gas service to the property, and to take other actions necessary to ensure the safety of that service.

Section 9.04 of the Tariff, the section pertaining to the installation of service lines and meters, provides, “Each applicant for a service line will grant to the Company permission to go upon the applicant’s premises to install, inspect, maintain service and repair the service lines.”

Section 7.05 of the Tariff provides that “Every customer, applicant, individual or entity (Requestor) requesting the installation of pipelines and related facilities (Facilities) necessary or incidental to the furnishing of natural gas service will provide, as required by the Company, rights-of-way, easement, public utility easement, or other property rights (collectively “rights-of-way”) necessary for the facilities.” Access to the premises for purposes of construction is a property right necessary for the facilities.

Section 7.04 of the Tariff, the section governing customer obligations, provides that “The Company may at any time examine, change, or repair its property on the premises of the customer . . . .”

Mr. DeFeudis previously prohibited Dominion Energy from entering the Property to do work. Dominion Energy complied with this directive, and now RE: IMBD LLC claims that Dominion Energy “refused to provide service.”

Subsequently, Project Manager, on behalf of RE: IMBD LLC, asked Dominion Energy what was required for the installation of the service line and meter. Dominion Energy indicated that RE: IMBD LLC would need to pay the additional meter costs and set up an account in order to get service. Project Manager, on behalf of RE: IMBD LLC, did so. By accepting service, RE: IMBD LLC has agreed to permit Dominion Energy access to the

Property for purposes of providing that service. Complainant has not alleged any actions beyond those necessary to provide natural gas service to the Property.

RE: IMBD LLC has an obligation to permit Dominion Energy access to the service line and meter, both for purposes of construction, and for continued service. It cannot claim, on one hand, that Dominion Energy's employees are in trespass for entering the Property for purposes of providing service, and on the other that Dominion Energy has denied it service. If RE: IMBD LLC wishes to have natural gas service, it must provide the Company with access to the Property for purposes of providing that service and maintaining its facilities, as provided in the Tariff.

**VI. Dominion Energy's Counsel Has Acted Appropriately and Professionally at All Times.**

In 2018, Mr. DeFeudis indicated an intention to sue Dominion Energy, its operations personnel, and its in-house counsel. At that time, Dominion Energy retained Justin T. Toth to act as outside counsel. Mr. Toth communicated with Mr. DeFeudis, and later with RE: IMBD LLC, on behalf of Dominion Energy only in response to demands or communications from Mr. DeFeudis, Project Manager, or RE: IMBD LLC. All of Mr. Toth's communications are attached hereto as DEU Exhibit R. Mr. Toth communicated to Mr. DeFeudis only when necessary and those communications were professional and appropriate. RE: IMBD LLC has provided no evidence that would suggest otherwise.

**VII. It Is Not Improper for Dominion Energy and Its Counsel to Refer to Mr. DeFeudis by His Personal Name.**

In the Additional Correspondence, Complainant requests that "a person's" individual name should be redacted from all pleadings and correspondence because to be named is

damaging to that person's personal life and home. Dominion Energy presumes the person referenced is Mr. DeFeudis. Mr. DeFeudis is the only named individual to interface with the Company on this matter, the person who sought service at the Property to begin with, the person whose name is on the Service Line Agreement, the person who authored the correspondence to Dominion Energy in 2017 and 2018, and the person identified by the Department of Corporations as the sole member and registered agent of Complainant. His identity and involvement in this matter are directly relevant to many of Complainants' allegations. There is no basis, in fact or in law, to shield him from disclosing his identity or from being identified as the actor in a series of relevant events. Dominion Energy's references to him are appropriate in this matter and provide no basis for relief.

Additionally, Complainant's unsupported statement that to use the individual's name results in interference with that person's "life and home," without some evidence, is not sufficient evidence to support the anonymity that the Complainant seeks.

**VIII. Dominion Energy Has Appropriately Disclosed All Charges on  
RE: IMBD LLC's Bill.**

Dominion Energy has only imposed rates and charges set forth in the Tariff. In the Complaint and the Additional Correspondence, Complainant suggests that Dominion Energy has "bill[ed] charges to our account without notification or consent." Dominion Energy is uncertain which charges Complainant finds objectionable, but based on the record, believes that Complainant may be referring to the charge for a Limited Connection Fee, and the charging of Tariff-based rates.

The last page of the Additional Correspondence is a copy of the Gas Service Signature-Identification Agreement with some handwritten notes. Paragraph 1 of that agreement says, “Customer agrees to pay for natural gas service at the above address in accordance with applicable Utah and Wyoming rules and tariffs now in effect or as lawfully amended. . . .” The handwriting below paragraph 1 reads, “What are these charges? Customer must be informed.”

As noted above, Dominion Energy provides service pursuant to the rates approved by the Commission and set forth in the Tariff. To the extent that these are the charges Complainant deems objectionable, they are fully transparent to Complainant and all of Dominion Energy’s customers. The Tariff is available on Dominion Energy’s website and is available at its offices. Each proceeding to modify rates is a public proceeding where Complainant, and any other interested party, may participate. Complainant’s concern seems to be that it is not familiar with those charges, but lack of familiarity with the Company’s Tariff does not constitute a violation for which relief against the Company should be granted.

Additionally, during the March 1, 2021 phone call depicted in DEU Exhibit P, Project Manager asked about a \$16.55 charge on Complainants bill. That charge represents a \$15.00 Limited Connection Fee plus tax and is permitted pursuant to Section 8.03 of the Tariff.

Complainant has made no showing that any of the charges on its Dominion Energy bill are improper.

**IX. Dominion Energy Will Address Any Inappropriate Employee or Contractor Behavior**

Dominion Energy requires all employees and contractors to behave with professionalism and civility. It appreciates Complainant’s reports of alleged misbehavior on

the part of Dominion Energy employees and its contractors. Dominion Energy has undertaken to investigate those claims and it will take appropriate action based upon the results of that investigation.

**X. RE: IMBD LLC's Remaining Claims are Outside the Commission's Jurisdiction.**

RE: IMBD LLC complains that it does not have counsel and requests that the Commission provide it with counsel. Though RE: IMBD LLC is free to retain counsel, the statutes, rules, and regulations governing these proceedings do not provide a right to counsel, or the right to have counsel provided at Commission expense.

Similarly, Complainant appears to demand a jury. Again, the statutes, rules and regulations governing these proceedings do not include the opportunity or right for a jury to hear Complainant's matter. Should Complainant wish to bring any meritorious claims before a jury, it is free to do so using the civil court system.

**CONCLUSION**

Dominion Energy has at all times complied with all applicable statutes, rules, regulations, Tariff provisions, and Commission orders. For the reasons detailed above, the Commission should deny the relief requested in RE: IMBD LLC's Complaint and Additional Correspondence.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of May, 2021.

DOMINION ENERGY UTAH

/s/ Jenniffer N. Clark  
Jenniffer Nelson Clark  
*Attorney for Dominion Energy Utah*



## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the RESPONSE TO FORMAL COMPLAINT was served upon the following persons by e-mail on May 3, 2021:

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