
Formal Complaint of Real Estate: Investment, Management, Brokerage, Development, LLC against Dominion Energy Utah	<u>DOCKET NO. 21-057-08</u> <u>ORDER DISMISSING COMPLAINT</u>
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ISSUED: June 15, 2021

INTRODUCTION

On April 1, 2021, Real Estate: Investment, Management, Brokerage, Development, LLC (“RE: IMBD LLC” or the “Complainant”) filed a complaint (“Complaint”) with the Public Service Commission (PSC) against Dominion Energy Utah (DEU). Complainant alleges that DEU used its position to “abuse[]” Complainant in several ways including, without limitation, by (1) “refus[ing]” to provide gas service at the subject property (“Property”)¹ for two years; (2) including unexplained charges on Complainant’s bill without consent; (3) attempting to force Complainant to sign an illegal contract that forecloses the right to challenge or dispute a bill by requiring the payment of attorney fees, court fees, and collection agency fees related to unpaid bills; (4) installing gas lines on the Property without using proper safety procedures; (5) through its employee, “smoking” during the excavation of the gas line at the Property; (6) through its employee, intimidation and inappropriate behavior; (7) creating Complainant’s account in the wrong name; (8) trespassing on the Property; and (9) through its attorneys, inappropriately addressing its sole member and registered agent. Complainant then requests the PSC (i) provide Complainant with legal counsel and a jury, and (ii) rule that the attorney fees provision in the customer Service Line Agreement (“SLA”) dealing with the payment of legal fees is illegal.

¹ The physical address of the subject Property is 402 Aspen Road, Francis, Utah 84036. *See* Complaint, at 1, and Response, DEU Exhibit A.

On April 5, 2021, the PSC issued a Notice of Filing and Comment Period. On April 8, 2021, Complainant filed additional comments and on May 3, 2021, DEU filed its response including 18 exhibits, recommending the PSC deny the requested relief (“Response”). Complainant subsequently filed correspondence on May 4 and May 5, 2021.

BACKGROUND

1. DEU’s “refusal” to provide service to the Property for two years, DEU’s “unexplained” charges on Complainant’s bill, DEU trespassing on the Property, and DEU’s “improper” communication with the registered agent of RE: IMBD LLC.

The dispute between Complainant and DEU started in the fall of 2017 when Mr. DeFeudis, the sole member and registered agent of RE: IMBD LLC,² contacted DEU requesting gas service for the Property, and estimated the Property’s gas usage would be 289,000/btu.³ On this basis, DEU estimated installation meter costs of \$558.95,⁴ assuming a standard sized residential meter.

On April 13, 2018, the City of Francis estimated a load for the Property of 545,000/btu, significantly higher than Mr. DeFeudis’s estimate in its notice to DEU.⁵ DEU states that a standard residential meter is too small for the higher load and, consequently, modified its initial design to include a larger and costlier meter and related construction costs that could accommodate a higher load. DEU then modified its work estimate, requesting an additional \$604.00, to account for the additional costs in a follow-up invoice to Mr. DeFeudis.⁶

² See DEU Exhibit Q, Utah Business Search.

³ See DEU Exhibit A, SLA.

⁴ *Id.*

⁵ See DEU Exhibit B.

⁶ See DEU Exhibit C (revised invoice dated 11/20/18).

Mr. DeFeudis sent an E-mail to DEU on November 26, 2018 informing DEU that it was trespassing on the Property and ordering DEU to stop visiting the Property or providing service to the Property unless there was a gas emergency.⁷ DEU subsequently sent a letter to Mr. DeFeudis explaining that the larger meter was required to safely provide service based on the larger load, as reported by the City of Francis, and that Mr. DeFeudis would need to pay for the larger meter before DEU would install the meter and begin providing service to the Property.⁸ On December 27, 2018, Mr. DeFeudis filed an informal complaint with the Division of Public Utilities, and DEU responded.⁹ DEU states that it did not receive further communication from Mr. DeFeudis until February 4, 2021, when “Project Manager” sent an email to DEU’s counsel inquiring about gas service.¹⁰

2. Installation of gas lines in the Property “without taking” appropriate safety procedures; smoking during excavation at the Property; “inappropriate” behavior toward Complainant or its registered agent, and improper account billing.

The Complaint states that “D[EU] installed gas lines on the property without using proper trench digging safety procedures such as barriers for its ‘in trench workers,’”¹¹ one of DEU’s employees or contractors was smoking while “visit[ing] to ‘blue stake’ the gas lines before [] excavat[ing] [at the Property],”¹² an employee or contractor acted inappropriately by harassing Complainant or his builders “for wearing safety equipment such as a mask during the Covid-19 pandemic and a helmet during height, siding work,”¹³ and DEU improperly opened

⁷ See DEU Exhibit D, E-mail from Mr. DeFeudis to DEU’s counsel, Ms. Magrane, dated November 26, 2018.

⁸ See DEU, Exhibit E.

⁹ See DEU Exhibits H and I.

¹⁰ *Id.*, Exhibit J.

¹¹ Complaint, at ¶ 2.f.

¹² *Id.*, at ¶ 2.g.

¹³ *Id.*, at ¶ 2.b.

Complainant's account in the wrong name.¹⁴ DEU responds, in the order of the allegations, that it installed the gas line in accordance with proper safety procedures, it will deal with its employees' or contractors' inappropriate behavior, and the account is now in Complainant's name, acknowledging DEU's confusion given Mr. DeFeudis's initial request for service in his name, and the second request for service in the name of Complainant.¹⁵

3. The Indemnity and Attorney Fees Provisions in the SLA and the Gas Service Signature-Identification Agreement.

The chief complaint alleged by Complainant is that the indemnity and legal fees provisions in the applicable agreements are illegal because they foreclose any opportunity for Complainant to dispute inappropriate bills or charges. Specifically, the Complaint states that the customer "does NOT want to sign an agreement that requires [the customer] to [p]ay [DEU]'s legal costs in case of any legal dispute."¹⁶ The Complaint explains that the nature of the legal fees provision in particular, "creates a situation in which the 'customer' cannot contest or challenge any wrongful billing or charges that [DEU] claims ..."¹⁷ The Complaint further states that given this clause, Complainant "refused to sign two ... such agreements and [that] [DEU] responded by [w]ithholding [] gas [service] for [more] than two years ..."¹⁸

¹⁴ Complaint, at ¶ 2.c.

¹⁵ Response, at 11, 15-16, and 10.

¹⁶ Complaint, ¶ 1.

¹⁷ *Id.*, at ¶ 1.a.

¹⁸ *Id.*, at ¶ 2.a.

DEU responds that the SLA and Gas Service Signature-Identification Agreement are legal and enforceable, and that the provisions in question which govern the installation of service lines and meters are consistent with its Tariff.¹⁹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. DEU's "refusal" to provide service to the Property for two years, DEU's "unexplained" charges on Complainant's bill, and DEU's "improper" communication with the registered agent of RE: IMBD LLC.

The PSC has carefully reviewed the evidence provided by the parties including exhibits representing correspondence between the parties, executed agreements, transcripts of phone calls between the parties and miscellaneous items. In addition, we also consider that Complainant did not address or dispute, in any follow-up correspondence, that (1) the revised load as represented by the City of Francis, Utah, for the Property was significantly larger than Mr. DeFeudis's initial estimate; (2) the revised work estimate reflects higher costs for construction costs and the larger meter needed to accommodate the higher load; (3) Mr. DeFeudis is Complainant's sole member and registered agent; (4) Mr. DeFeudis sent an E-mail notifying DEU that it was trespassing on the Property, and should cease and desist from providing service to the Property; (5) DEU stopped visiting the Property once it received notice from Mr. DeFeudis that DEU was trespassing on the Property; (6) Mr. DeFeudis did not follow up with DEU again until February 4, 2021 as the "Project Manager"; and (7) Mr. DeFeudis is the "Project Manager."

Therefore, based on the evidence presented, the PSC concludes that it was reasonable for DEU to inform Mr. DeFeudis that it would begin providing service to the Property upon payment

¹⁹ Response, at 8-10.

of the invoice reflecting the revised expected load and larger meter necessary to safely accommodate such load. The PSC also concludes that DEU's policy to require a signed SLA and payment before installing the larger meter and providing service is reasonable and consistent with DEU's Tariff.²⁰ The PSC finds that Mr. DeFeudis's failure to pay the revised invoice, his notification to DEU that DEU was trespassing on the Property, and his lack of follow-up regarding service to the Property until February 4, 2021 were the reasons why DEU did not provide service to the Property before February 2021. The PSC finds that DEU stopped visiting the Property when it received notice from Mr. DeFeudis that DEU stop trespassing on the Property.²¹ Finally, the PSC concludes that it was reasonable for DEU, including its attorneys, to communicate with Mr. DeFeudis, as the sole member and registered agent of Complainant, regarding the dispute, RE: IMBD LLC's invoice, and service related to the Property.

2. Installation of gas lines in the Property "without taking" appropriate safety procedures; smoking during excavation at the Property; and other "inappropriate" behavior toward Complainant or its registered agent.

As noted in the Response, the United States Department of Occupational Safety and Health Administration provides that, "[e]ach employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) and (c) of this section except when ... [e]xcavations are less than 5 feet (1.52 m) in depth and examination

²⁰ See Tariff, Section 9.04 of the Tariff which states: "Service Line Costs shall include, but are not limited to the following: pipe; trenching; fill; riser; use of special equipment and facilities; accelerated work schedules; special crews or overtime wages to meet the applicant's request; or difficult construction problems due to rock, frost, etc." It also states: "Meter and bracket costs greater than the cost of a standard residential meter and bracket are included in Service Line Costs and are the responsibility of the customer. The customer will be given written notice of the Service Line Costs, which shall be due and payable prior to commencement of construction." See also Section 9.01 which states: "For completion and acceptance of an application, the applicant may be required to sign for service."

²¹ See Response, at 12.

of the ground by a competent person provides no indication of a potential cave-in.”²² According to the Response, DEU places service lines at a depth of three feet, and the line at the Property was placed at approximately 3 feet in depth, in accordance with that standard.²³ We note that Complainant did not challenge or dispute the Response’s explanations regarding DEU’s safety procedures, nor reference any standard or guideline that DEU violated. Therefore, on this basis, we conclude that the gas line at the Property was installed in accordance with applicable safety procedures and standards.

Regarding the alleged inappropriate employee or contractor behavior, the PSC appreciates DEU’s commitment to investigate and address any inappropriate or unsafe employee or contractor behavior targeting Mr. DeFeudis which took place at the Property, and find that DEU’s commitment in this regard is undisputed. With respect to the appropriate account billing for service at the Property, DEU has placed the account in the name of “RE: IMBD LLC,” consistent with the request made by the Project Manager on March 1, 2021;²⁴ thus, PSC action or ruling is no longer necessary with regard to this claim.

3. The Indemnity and Attorney Fees Provisions in the SLA and the Gas Service Signature-Identification Agreement.

The indemnity provision in the SLA that governs the installation of service lines and meters 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

²² *Id.*, at 11.

²³ *Id.*

²⁴ *See* Response, at 10.

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. Emphasis added.

The Gas Service Signature-Identification Agreement (“GSA”) governs the provision of natural gas service. It provides that “[c]ustomer 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.”

DEU states that the referenced provisions are consistent with its 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 DEU’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 “[c]ustomer will be responsible for any court costs, attorney’s fees and/or collection agency fees, incurred in the collection of unpaid [bills].”

The PSC concludes that the provisions in question are consistent with DEU's approved Tariff. However, an explanation of the language may be helpful to Complainant. The indemnity provision in the GSA limits the liability to which Complainant objects and assures that Complainant will not be obligated to indemnify against DEU's negligence or malfeasance. Thus, if the liability, loss, claim, demand, lien, fine, or action, including but not limited to attorney fees and defense costs, is caused by DEU's failure to exercise reasonable care, or by DEU's intentional misconduct, Complainant is not required to indemnify DEU. Therefore, we conclude that the indemnity provision in the GSA is legal, enforceable, and consistent with the Tariff.

With regard to the legal fees provision, the PSC concludes that the language in the SLA is also consistent with the Tariff. Any fees related to collection of unpaid bills are only the customer's responsibility if DEU's charges are legitimate and owed by Complainant and the attorney fees are necessarily incurred to compel payment. If it is determined that Complainant does not owe the unpaid charges, Complainant is not responsible for any legal fees or other fees incurred in pursuing collection. We conclude, therefore, that the legal fees provision in the SLA is legal, enforceable, and consistent with the Tariff.

Finally, in regard to Complainant's request for a PSC-appointed legal counsel and a jury, the PSC does not have the authority to appoint legal counsel to represent any party or to convene a jury.

ORDER

In our review of the record, we surveyed all the facts and drew all reasonable inferences in the light most favorable to Complainant, and find no genuine dispute exists as to any material

fact that would benefit from holding an evidentiary hearing. Therefore, based on our findings of fact and conclusions of law as explained above, we dismiss the Complaint.

DATED at Salt Lake City, Utah, June 15, 2021.

/s/ Yvonne R. Hogle
Presiding Officer

Approved and confirmed June 15, 2021, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW319110

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 30 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. §§ 63G4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on June 15, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Real Estate: Investment, Management, Brokerage, Development, LLC (re.imbd.llc@gmail.com)

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