

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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)	DOCKET NO. 18-057-T04
IN THE MATTER OF THE)	DPU Exhibit 1.0R
APPLICATION OF DOMINION)	
ENERGY UTAH TO MAKE TARIFF)	
MODIFICATIONS RELATING TO)	Rebuttal Testimony
TRANSPORTATION SERVICE)	Eric Orton
)	
)	

**FOR THE DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH**

**Rebuttal Testimony of
Eric Orton**

September 26, 2018

28 The Division is aware of at least one recent case of apparent miscommunication
29 between the Gas Utility and a customer that was finally resolved after a
30 significant period of discord. However, cases like this appear to be exceptions
31 rather than recurring problems. Therefore, in an effort to provide clearer
32 boundaries for all parties, the Division recommends tariff language that reflects
33 that objective.

34

35 **Utah Association of Energy Users**

36 **Q: What does UAE recommend?**

37 A: Mr. Higgins makes five recommendations in his direct testimony: 1) That the
38 \$25/Dth penalty should be \$5/Dth; 2) That the Hold Burn restriction should be
39 applied at an aggregated level rather than at an individual customer level; 3) On
40 Hold Burn OFO days that there should be no penalty assessed for positive
41 imbalances (+5%); 4) That if both a Hold Burn and a capacity interruption are
42 called on the same day, that only the highest penalty should apply - they should
43 not be summed; and 5) That some wording changes should be made to tariff
44 section 3.2.²

45

46 **Q: What is the Division's position concerning UAE's first recommendation,**
47 **that the \$25/Dth is too high and should instead be \$5/Dth?**

48 A: Mr. Higgins argues that the proposed \$25/Dth penalty is not cost based and
49 recommends it be set at \$5. While the Division does not take a position on what
50 the exact dollar amount should be, the penalty needs to be sufficiently large to
51 induce behavior change. In the Division's view, the penalty is not intended to
52 reflect costs but rather to induce behavior. This should be the case whether or
53 not behavior was "inadvertent." One of the reasons penalties exist is to call
54 attention to the fact that a customer's particular actions (or lack of actions) may

² Higgins, Direct Testimony, lines 52-54

55 have serious financial implications; the intent is that the customer will take action
56 to avoid the imposition of the penalty. Thus, the penalty needs to be of sufficient
57 magnitude from the beginning to induce attention sufficient to avert the penalty.
58 Frankly the Division was surprised to see the proposed penalty set at \$25 rather
59 than the \$40 failure to interrupt penalty.

60 UAE criticizes the Gas Utility's proposed penalty of \$25 for not being cost based.
61 However, UAE's proposed \$5 penalty is not based on cost causation either.
62 Thus, if this argument is valid then both parties are guilty of it and neither amount
63 would be justified.

64

65 **Q: What is the Division's position concerning UAE's second recommendation,**
66 **that the Hold Burn restriction be applied at an aggregated level rather than**
67 **at an individual customer level?**

68 A: The Division has not examined the implications of this recommendation and is
69 therefore not taking a position on this issue. However, we may revisit it in
70 surrebuttal testimony as it is possible that a scenario could exist where the
71 marketer is in balance at the aggregate level but a customer is short and the
72 supplies are not available on the part of the Gas Utility's system where it is
73 needed. Individual imbalances can matter.

74

75 **Q: What is the Division's position concerning UAE's third recommendation,**
76 **that on Hold Burn OFO days there be no penalty charges for positive**
77 **imbalances (+ 5%)?**

78 A: The Division agrees with this point. A scenario where excess gas (within the
79 tolerance limits) on the Gas Utility's system during OFO days could cause
80 problems to the Gas Utility or its customers seems unlikely and penalizing that
81 behavior could be inappropriate.

82

83 **Q: What is the Division’s position for UAE’s fourth recommendation, that if**
84 **both a Hold Burn and a capacity interruption are called on the same day,**
85 **that only the highest penalty should apply - they should not be summed?**

86 A: If conditions exist such that an OFO is called for both a capacity interruption and
87 a Hold Burn restriction, then every available means should be used to maintain
88 the load of customers who are dependent on the Gas Utility for supplying and
89 delivering that load. Therefore, if the transportation customers violate their
90 agreements in such a way as to impair the Gas Utility from providing that service,
91 then the stiffest penalties should be imposed. Therefore, the Division disagrees
92 with UAE on this point.

93 However, the Division is sympathetic to the financial impact these penalties might
94 have on customers, and sincerely hope that the amount of the potential penalty is
95 a sufficient deterrent so that no customers are required to pay these penalties. It
96 is the Division’s understanding that it is unlikely that both a capacity interruption
97 and a Hold Burn restriction would be imposed at the same time.

98

99 **Q: What is the Division’s position concerning UAE’s fifth recommendation**
100 **regarding the proposed tariff language in section 3.2?**

101 A: UAE makes two recommendations relating to the Gas Utility’s tariff section 3.2.
102 One recommendation addresses the phrase “in its sole discretion” referring to
103 when the Gas Utility “determines interruption is required to serve customers with
104 firm service.” UAE claims that this language might enable the Gas Utility to
105 “abuse its discretion with impunity” or “diminish the Commission’s ability to grant
106 relief to customers.” The Division believes that the Commission has broad
107 latitude and that this language cannot diminish its ability to fulfill its mandate. If
108 the Gas Utility abuses its discretion, the Commission can impose penalties and
109 other consequences. The Commission should stand ready to do so, if necessary.

110 But, the Gas Utility must make such determinations. It is the only one with the
111 requisite information at its disposal and it is responsible to provide service to its
112 firm customers.

113 UAE's second recommendation removes "will" and inserts "may," inserts
114 "properly," and adds a sentence exempting transportation customers from the
115 penalty if it was "inadvertent" or "not likely to reoccur."³ Here is the sentence as
116 UAE proposes: "The conditions specified in this paragraph will be imposed
117 unless the customer is able to demonstrate that a failure to interrupt was
118 inadvertent and due to circumstances that are not likely to reoccur." The Gas
119 Utility should not be given latitude in determining when to impose a financial
120 penalty and when not to. Exchanging "may" for "will" does just that. Phrases
121 such as these add to the possibility of greater confusion surrounding the
122 interruptible provisions rather than greater clarity. Additionally, inserting the word
123 "properly" leaves more room for interpretation, which is likely a point of future
124 dispute. This increases the chance for utility and Commission interpretation on
125 a case-by-case basis, creating greater uncertainty for customers. This is
126 unnecessary. The Division supports tariff revisions that help reduce confusion
127 and limits the ability for the Gas Utility to make or to take discretionary actions
128 and its opportunity for variance and ambiguity in applying penalties.

129 Also, whether the cause for failure to interrupt was "inadvertent" or "not likely to
130 reoccur" is not the issue and again gives the Gas Utility too much latitude in
131 subjective decision making. The point of the penalties is to induce the customer
132 to alter its behavior and prepare for such events so the penalties are avoided,
133 which would imply some level of concentrated effort on the customer's part.
134 Customers who pay an advantageous rate because they are subject to such
135 interruptions should be responsible for interrupting when required to do so.

136

³ Higgins, Direct Testimony, lines 348-350.

137

CONCLUSION

138 **Q: Please provide a summary of the Division's positions regarding ANGC's**
139 **and UAE's recommendations.**

140 A: OFO communications from the Gas Utility, of necessity, need to be clear, certain,
141 and pointed so that there should be no room for misinterpretation or
142 misunderstanding. Also, the Hold Burn restriction penalty should be large enough
143 to induce behavior change. Small positive imbalances should not be penalized
144 on Hold Burn OFO times. Finally, UAE's proposed tariff language changes
145 provide too much latitude and subjectivity to the Gas Utility and should be
146 rejected.

147

148 **Q: Do the concerns raised by these parties give sufficient cause for the**
149 **Division to alter its position?**

150 A: No. With the exception of no penalty for small positive imbalances, the Gas
151 Utility's proposed changes are a progressive step toward clearer and more
152 manageable tariff language.

153

154 **Q: Does this conclude your direct testimony?**

155 A: Yes.