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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Questar Gas
Company to Make Tariff Modifications to
Charge Transportation Customers for Peak
Hour Services

Docket No. 17-057-09

POST-HEARING BRIEF OF THE UTAH ASSOCIATION OF ENERGY USERS

The Utah Association of Energy Users (“UAE”) submits this post-hearing brief in this docket. As discussed more fully below, UAE submits that Dominion Energy Utah (“DEU”) failed to properly meet its burden in this docket to prove the necessity or prudence of its peak hour services or contracts. In addition, the weight of evidence supports denial of DEU’s Application at this time. In all events, DEU’s Application, which seeks a determination of class allocation of supplier non-gas (“SNG”) costs, must be denied because DEU’s tariff, which has the effect of law, expressly requires that SNG allocation decisions must be made in a general rate case.

UAE submits that DEU customers—transportation and sales alike—cannot properly be required to pay for new design day peak hour services unless and until (1) a finding is made, in a proper docket based on a full and proper record, that peak hour services are in fact necessary and

that the peak hour contracts executed by DEU are prudent, and (2) class allocation decisions are properly made in a general rate case.

I. DEU Failed to Meet its Burden of Proof to Demonstrate the Need or Prudence of Peak Hour Services or Contracts.

DEU’s arguments in this docket reflect an inappropriate and unlawful notion that its Application should be granted, at least in part, because the Division and Office allegedly failed, in various informal IRP meetings, to challenge DEU’s claimed need for peak hour services or the prudence of its proposed peak-hour contracts. This troubling “approval by estoppel” argument is contrary to law and inconsistent with the public interest. Moreover, in all circumstances it does not apply to UAE—the only actively participating representative of transportation customers, whose rates may be affected in this docket.

DEU improperly suggests that the absence of a challenge from state regulators regarding the need or prudence for peak hour services *prior to the filing of an Application for tariff modifications related to those services*, somehow relieves it of its heavy burden to demonstrate that increased rates resulting from this new and highly unusual peaking hour service are just and reasonable.¹ At the same time, DEU admits that UAE was not an active participant in those IRP discussions; indeed, UAE was affirmatively barred from participating in some such discussions.² Thus, in addition to the fact that DEU is not relieved of its burden of proof by prior actions or inactions of the Division and Office,³ no such approval by estoppel would or could extend to

¹ See, e.g., Post-Hearing Brief of Questar Gas Company DBA Dominion Energy Utah (“DEU Brief”) at 2-7, 12-15.

² See, e.g., Hearing Transcript, Docket No. 17-057-09, September 26, 2017 (“Tr.”), at 22:24 – 23:14.

³ It is a rather astonishing notion for a monopoly utility to claim that State regulatory agencies or other participants in informal discussions or presentations are somehow legally bound to raise

transportation customers or their representatives. Given that this docket poses the direct risk of potential rate increases *only* for transportation customers, it is particularly inappropriate for DEU to attempt to avoid its burden of proof by pointing to actions of other parties.

As was made clear in pre-filed testimony and at the hearing, DEU failed to demonstrate in its Application or direct testimony that peak hour services are necessary or that its peak-hour contracts are prudent. DEU seeks to excuse this failure by suggesting that those issues were only “introduced”⁴ or “brought ... to the Commission for decision”⁵ when the Division and UAE filed their direct testimony. This acknowledgment is a damning admission that DEU failed to carry its burden of proof in its Application and direct testimony, and reflects a serious misapprehension as to a utility’s burden to justify a proposed rate increase.

In proposing a rate increase for a new (and here, highly unusual) category of services for its captive customers, a monopoly utility has a heavy burden to demonstrate that the proposed rate increase is just and reasonable. As explained by the Utah Supreme Court:

In the regulation of public utilities by governmental authority, a fundamental principle is: ***the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant; to prove the contrary.*** A utility has the burden of proof to demonstrate its proposed increase in rates is just and reasonable.

Utah Department of Business Regulation, Division of Public Utilities v. Public Service

Commission, 614 P.2d 1242, 1245 (Utah 1980) (emphasis added). Similarly, in 2003 the Court reversed a Commission ruling that “fails to hold Questar Gas to its burden of proof,” finding “the

issues of prudence long before the utility files a formal application. As a practical matter, only after a formal filing has been made can most parties—state agencies included—be in a realistic position from a financial and time-management perspective to do a deep dive into the proposal or to hire outside experts as necessary to fully evaluate the proposal.

⁴ DEU Brief at 9.

⁵ *Id.*, at 12.

Commission abdicated its responsibility to find the necessary substantial evidence in support of the proposed rate increase in the record.” *Commission. of Consumer Services v. Public Service. Commission*, 2003 UT 29, ¶ 15, 75 P.3d 481. The Court further explained: “We are far from certain, moreover, that the Commission could conceivably determine whether a rate increase is just and reasonable, without examining whether the underlying cost-incurring activity was reasonable, which in turns seems to require some attention to the utility’s decisionmaking process...”. *Id.*

As Supreme Court rulings have long made clear, it was incumbent upon DEU—not the intervenors—to clearly demonstrate in its Application and direct testimony the necessity of the new peak hour services and the prudence of its contracts. DEU’s acknowledgment that prudence was only “introduced” into the docket by others when they filed testimony challenging DEU’s proof is an admission that DEU failed to meet its heavy burden to prove the necessity and prudence of its proposed rate increase in the first place.

In light of DEU’s failure to meet its heavy burden of proof, other parties properly pointed out DEU’s failure to justify the need for the new service or contract. DEU then made a belated attempt to cure its own failure through rebuttal testimony. Such an approach, however, is improper from both a procedural and a due process perspective. It did not provide the parties sufficient time to properly analyze the filing⁶, and it resulted in a confusing and incomplete record. Indeed, questions from Commissioners at the hearing clearly illustrate the confusing nature of DEU’s request and evidence.⁷ The result is that the Division was—*and remains*—in a position where it *cannot yet* reach a conclusion as to the need for peak-hour services or the

⁶ See, e.g., Tr. at 81:1 – 83:2; 86:15 – 87:9

⁷ See, e.g., Tr. at 28:9 – 33:4; 97:21 - 101:22.

prudence of DEU's contract.⁸ Indeed, Division witness Douglas Wheelwright confirmed that a prudence determination in this docket would impede the Division's 191 account audits.⁹ The results of those audits, and subsequent Commission proceedings, are critical to any final determination that *any* DEU customers should be charged for this new service. It is thus premature for the Commission to undertake any determination as to the need for or prudence of DEU's proposed peak hour services and contracts.

DEU, the Division, the Office and other parties have now agreed to a separate process in Docket 17-057-20 for an examination of the necessity and prudence of peak hour services and contracts.¹⁰ Until that process is complete, and unless and until the Commission ultimately finds, on the basis of a sound record in that docket, that these unusual peak-hour services are legitimately required and that the contracts signed by DEU are prudent, no DEU customers—transportation or sales—should be required to pay increased rates for them.¹¹

DEU's Application in this docket should be denied based on DEU's failure to provide a sufficiently robust record or allow sufficient due process protections to meet its heavy burden for

⁸ *See, e.g.*, Tr. at 86:15 – 100:15.

⁹ *Id.*

¹⁰ *See* Stipulated Motion for Entry of Scheduling Order, Docket 17-057-20, October 27, 2017.

¹¹ The muddled nature of the issues in this docket is further illustrated in the DEU Brief. DEU now claims, inconsistent with its testimony at the hearing (See. Tr. at 31:8-22), that it is seeking in this docket a “final determination on the prudence of the Contract and a determination that a portion of the Contract costs can be allocated to transportation customers (DEU Brief at 11-12 n.38). Perhaps recognizing, however, that the need for peak hour services and the prudence of contracts is directly at issue in Docket 17-057-20, and that specific cost allocation levels might change as a result of that docket, DEU now claims that the allocation to transportation customers in this docket should be “on an interim basis until the audit” of the Account 191 is completed. Aside from the obvious problem discussed below that the DEU tariff requires SNG cost allocation decisions to be made in general rate cases, DEU has offered no legal support for its notion that costs allocated to transportation customers in this docket can or should be done on an interim basis.

increased rates. Similarly, that portion of interim rates currently being paid by sales customers for these peak-hour services should be refunded. Only if and when DEU meets its heavy burden in Docket 17-057-20 to prove that rate increases for this new and unusual service are in fact necessary and prudent, and only after cost allocation decisions are properly made in a general rate case, should any customer be required to pay higher rates for the same.

II. The Evidence in this Docket Does Not Support Approval of DEU’s Application.

Beyond its failure to even attempt to meet its burden of proof in its Application and direct testimony, the weight of evidence in this docket supports denial of DEU’s Application. DEU seriously overstates its case in claiming that the evidence “overwhelmingly demonstrates that the Contract is necessary and in the public interest.”¹² While the Company’s witnesses attempted in rebuttal testimony to make a case for prudence, the overwhelming weight of evidence from every independent expert and other party confirms that neither the peak hour services nor the Kern River peak hour contract have yet been shown—even in light of the Company’s delinquent rebuttal and hearing testimony—to be necessary or prudent.¹³ The clear weight of the evidence refutes DEU’s claim of prudence.¹⁴ Moreover, DEU, the Division, the Office and UAE have

¹² DEU Brief at 16.

¹³ *See, e.g.*, Tr. at 81:17 – 82:14 (Division witness Wheelwright); Tr. at 109:1 – 110:25 (Division witness Lubow); Tr. at 122:18 – 123:18 (Office witness Mangelson); Mierzwa Rebuttal at 3:62 – 68; 8:202 – 9:214; Mierzwa Surrebuttal at 3:57 – 4:92; Tr. at 139:14 – 142:10 (UAE witness Townsend).

¹⁴ DEU can take no comfort in Office witness Mierzwa’s statement in surrebuttal that DEU witness Platt’s rebuttal testimony “may indicate the need for the 200,000 Dth/day of peak hour service from Kern River” (Mierzwa Surrebuttal at 5:100-102). An offhanded observation that DEU “may” have shown in rebuttal a possible need is hardly an endorsement that DEU has, in fact, met its burden of proof. Nor is need or prudence shown by the fact that upstream pipelines—one of which is an affiliate and both of which stand to gain financially from the new service created and proposed by DEU—support the services.

now acknowledged the necessity of a separate process to review the need and prudence of these service and contracts, confirming DEU's failure to prove the same in this docket.

III. Supplier Non-Gas Cost Allocation Decisions Can Legally Be Made Only in a General Rate Case.

DEU's Application in this docket must be denied because, as a matter of law, class allocation of supplier non-gas costs such as those at issue here can be determined only in a general rate case. DEU's tariff unequivocally requires that "supplier non-gas cost class allocation levels" are to be established in "general rate cases."¹⁵ The Utah Supreme Court has confirmed that a Commission-approved utility tariff has the effect and force of law.¹⁶ Indeed, a reviewing Court gives no deference to the Commission's interpretation of a tariff approved by it, because interpretation of a tariff is interpretation of the law.¹⁷ DEU is inviting the Commission to violate the law by ignoring a mandatory legal requirement of its Tariff.

DEU's primary justification for inviting the Commission to violate the law is to point to another occasion on which the law may have similarly been violated.¹⁸ That is hardly a legal justification. There is no need here to debate whether or not it was lawful to impose a new charge on transportation customers in the daily imbalance docket due to differences in the nature of costs involved there. No party to that docket raised or challenged the lawfulness of imposing daily imbalance charges on transportation customers outside of a general rate case. Here, in

¹⁵ Dominion Energy Utah, Utah Natural Gas Tariff, PSCU 500 ("Tariff"), Section 2.06, page 2-13. The Tariff further acknowledges that the Commission established this procedure in a docket opened more than two decades ago.

¹⁶ *E.g., Ellis-Hall Consultants, LLC v. Pub. Serv. Commn. of Utah*, 2016 UT 34, ¶ 31, 342 P.3d 256 (stating that "Schedule 38 is law," and that the words used in Commission tariffs "have the force of law.").

¹⁷ *Id.*, ¶¶ 32-33.

¹⁸ *See* DEU Brief at 26-29.

contrast, the issue has been raised directly—most significantly by the Commission itself.¹⁹ Thus, the lawfulness of allocating supplier non-gas costs to the transportation customer class outside of a general rate case is directly at issue in this docket. Under DEU’s Tariff, it is not lawful to allocate SNG costs among rate classes outside of a general rate case.

DEU also claims—without support—that the Commission’s general powers to regulate utilities somehow permit the Commission to ignore the specific requirements of DEU’s Tariff.²⁰ That claim is incorrect. As to any notion that the Commission’s general regulatory powers might permit the Commission to issue a ruling forbidden by the specific language of the Tariff, the Utah Supreme Court has made clear that, when two requirements of law conflict, “the provision more specific in application governs over the more general provision.”²¹ As such, the Commission must reject DEU’s argument that a specific Tariff requirement that SNG costs are to be allocated in a general rate case can be ignored in favor of general grants of power that do not address the issue of cost allocation.

IV. The Record Does Not Include a Supportable Basis for Allocating Any Specific Percentage of Design Day Peak Hour Costs to Transportation Customers.

Transportation customers are not the cause of DEU’s alleged need for a firm upstream hourly peaking service, are required to make their own upstream transportation arrangements, have not requested this upstream service, and should not be forced to accept it or pay for it.²²

Moreover, and in addition to the fatal deficiencies in DEU’s Application noted above, the record

¹⁹ See, e.g., Tr. at 28:10 – 33:4, 102:10-22.

²⁰ See DEU Brief at 29-31.

²¹ E.g., *Taghipour v. Jerez*, 2002 UT 74, ¶ 11, 52 P.3d 1252 (“[O]ur rules of statutory construction provide that ‘when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision.’” (quoting *Hall v. State Dep’t of Corr.*, 2001 UT 34, ¶15, 24 P.3d 958)).

²² See, e.g., Townsend Direct at 5:99 – 8:170; Townsend Rebuttal at 3:45-57.

does not include any supportable basis for allocating any specific level of design peak day costs to the transportation customer class.

The peak hour “problem” posited by DEU is based solely on expected differences between *average* hourly gas usage during a design peak day and *actual* hourly usage on that day.²³ It is not disputed that existing upstream rights held by DEU and firm transportation customers are fully adequate to accommodate delivery of *average* hourly gas usage, even on a design peak day. DEU’s concern is that the *actual* hourly usage on that design peak day may vary from the *average* hourly usage. DEU proposes to address this concern with a new peak hour service, the necessity and prudence of which it will seek to demonstrate in another docket. In this docket, DEU seeks to allocate costs for the service intended to address this variability. To properly allocate costs for a peak hour service, it is necessary to determine the extent to which each customer class is expected to contribute to the variance in actual vs. average gas usage on a design peak day. There is simply no evidence in the record to support a conclusion that transportation customers contribute to this variance and, as such, there is no current basis on which the Commission can allocate costs for peak hour services to transportation customers.

As set forth below, the evidence in this docket does not support an allocation of design peak day contract costs to the transportation class because record evidence in this docket (1) fails to show that, or the extent to which, transportation customers will contribute to hourly usage variance on a design peak day; and (2) confirms that transportation customers’ actual hourly usage variance will be much lower or non-existent on a design peak day as compared to non-peak days.

²³ See, e.g., Mendenhall Direct at 1:17 – 2:32.

1. Record evidence fails to demonstrate that transportation customers contribute to usage variance on a design peak day.

DEU proffers two evidentiary bases for its claim that transportation customers should be allocated costs for peak hour services, neither of which demonstrates that transportation customers will contribute to any hourly variance in design peak day usage. First, DEU evaluated variability between average and actual hourly deliveries in *all hours of all days for all transportation customers combined* for three winter months last year, calculated at 17%.²⁴ This data set, however, is clearly meaningless in predicting variance between firm transportation customers' actual vs. average hourly usage on a design peak day. As an initial matter, the data set includes both firm and interruptible transportation volumes; it is clearly not appropriate to include interruptible loads in allocating costs for a firm peaking service.²⁵ Moreover, average variability during all hours of an entire winter season is hardly predictive of behavior during one design peak day likely to occur no more than once in fifty years or more.

Second, and presumably in recognition of the unrepresentative nature of a data set based on average winter-long hourly variability of all transportation customers, DEU proposes to allocate 13.9% of the peak hour contract costs to transportation customers, based on its internal estimate of firm transportation customers' share of *total design peak-day usage*.²⁶ That data set, however, is no more predictive than the other of the *hourly variability* in usage expected on a design peak day. In other words, DEU's estimate of *total* daily gas usage by firm transportation customers on a design peak day says nothing about such customers' likely contribution to *hourly usage variance*, which is the issue at hand.

²⁴ See DEU Exhibit 1.5.

²⁵ See Mendenhall Rebuttal at 9:211-214; Townsend Rebuttal at 2:32 – 5:89.

²⁶ See Mendenhall Direct at 5:98-113.

Put another way, DEU proposes to purchase a new service not requested by any customers based on expected variance between actual and average hourly usage on a design peak day. The only way DEU could justify allocating any portion of the cost of this new peaking service to any customer class is to show the extent to which that customer class is expected to contribute to the projected variance. In this docket, DEU has offered no data to demonstrate that, or the extent to which, the firm transportation customer class is likely to contribute to that variance. Rather, it relies upon an estimate of total design peak day usage—which says nothing about expected hourly variance.

Nothing in the record supports a claim that either hourly usage variances over an entire winter season or estimated total design peak day usage is a valid proxy for peak day hourly usage variance—the problem that the peak hour service is designed to solve. Indeed, not only is DEU’s evidence not a valid proxy for expected design peak day variance in gas usage, as demonstrated below actual variance in gas usage by transportation customers during a design peak day would be non-existent or much lower than on other days.

2. Transportation customers’ actual usage variance will be much lower on a design peak day than on a non-peak day.

On a design peak day that includes the extreme circumstances assumed by DEU—if one indeed ever really occurs²⁷—there would be significant changes in the normal or average behavior or gas usage patterns of transportation customers. This is true for several reasons. First, interruptible transportation customers will have been interrupted on a design peak day, subject to significant penalties for non-compliance.²⁸ Second, firm transportation customers will

²⁷ See Tr. at 38:15 – 40:1.

²⁸ See Tr. at 65:23 – 66:4.

have been subjected to significant hourly usage restrictions and stiff potential penalties for excess hourly usage—penalties that are then credited back to firm sales customers, thus reducing the cost of upstream SNG services for those customers.²⁹ Restrictions on firm transportation customers' gas usage apply to *each hour of a design peak day* and are based upon the *lesser of* (a) upstream supplies actually delivered for the customer on that day; (b) the firm contract demand; or (c) the nomination for that day.³⁰ DEU imposes significant penalties on a customer that fails to limit its average hourly usage during periods of interruption or restriction.³¹ Third, after interruptible customers, firm commercial and industrial load would be shed first and restored last in the event of an emergency.³²

Both intuitively and, as discussed below, in fact, firm transportation customers would be expected to contribute much less to hourly variability on a design peak day than they do on an average non-constrained winter day, and much less than their percentage of total usage on a design peak day. No party offered any evidence as to the predicted hourly variance of firm transportation customers' usage on a design peak day. DEU Exhibit 1.10RC, however, demonstrates that DEU's proposed 13.9% cost allocation is clearly excessive.

Undisputed data included in DEU Exhibit 1.10RC shows that variation in actual vs. average usage last winter for firm transportation customers averaged only 7.3%³³—a number that under all circumstances sets a *ceiling* on any fair cost allocation to the firm transportation class for projected contribution to hourly variability on a design peak day. That is, if the variance in

²⁹ See Tr. at 92:5-16.

³⁰ See Tr. at 62:24 – 67:15.

³¹ See Tr. at 67:2-22.

³² See Tariff § 7.03, page 7-4.

³³ See, e.g., Tr. at 23:23 – 24:7; DEU Exhibit 1.10RC ((5205/4851) – 1 = 7.3%); Townsend Surrebuttal at 5:93 – 6:108.

actual vs. average hourly usage by firm transportation customers for *all* non-constrained winter days averages just 7.3%, it is certainly not reasonable to assume that those same customers will exhibit a *greater* hourly variance on a design peak day, particularly given that they will be subject on that day to the severe usage restrictions and penalties described above.

The unreasonable nature of any assumption or projection that firm transportation customers will exhibit greater than average hourly variability on a design peak day is particularly unreasonable given uncontested testimony that a relatively small percentage of gas transportation load is used for heating purposes, while firm sales customers—representing 86.1% of the projected design peak day load—use gas primarily for heating, and heating loads typically increase by 35% during peak hours.³⁴ Thus, even a 7.3% allocation of peak hour costs to transportation customers is unreasonably high.

In summary, DEU's proposed allocation of peak hour costs to firm transportation customers is unreasonable and unsupported given undisputed evidence that (a) the variance in actual vs. average hourly usage for all firm transportation customers averaged just 7.3% for the entire last winter season; (B) significant usage restrictions and potential penalties will be imposed on firm transportation customers a design peak day; and (c) 86.1% of the total projected peak-day load for firm sales customers will be primarily heating load, with a 35% average hourly increase in flow.

No party even attempted to rebut UAE's evidence in this regard. An Office witness, however, made an aborted attempt to suggest higher peak-day hourly variability by firm transportation customers by preparing an exhibit that was never accepted into the record and that

³⁴ See Townsend Surrebuttal at 4:83 – 5:92.

was based on a misunderstanding and misapprehension of data included in DEU Exhibit 1.10RC.³⁵ In fact, the data that was misapprehended by Office witness Mierzwa relating to January 6, 2017—a day on which DEU interrupted interruptible load and imposed hourly usage restrictions on firm transportation customers,³⁶—actually proves UAE’s point that hourly variability in usage by firm transportation customers disappears during periods of restriction.

Mr. Mierzwa looked at the firm transportation volumes shown in DEU Exhibit 1.10 RC for January 6, 2017³⁷ and calculated 5,512 Dth of average hourly usage by firm transportation customers on that peak day.³⁸ Mr. Mierzwa then calculated the actual variance each hour that day, noting that firm transportation volumes were 127% of the average in hour 9.³⁹ What Mr. Mierzwa failed to recognize was that DEU’s interruption/restriction notice on January 6, 2017 was issued after 11 a.m., and customers were given two hours to comply.⁴⁰ Comparing the data in Exhibit 1.10RC for every hour that day *after* the interruptions/restrictions went into effect (starting in hour 13, or 1 p.m.), shows that the variance in actual vs. average hourly usage for firm transportation customers *during all hours of interruption/restriction* was well below the hourly average for the day—ranging from 82-99% of average.⁴¹ In other words, the actual

³⁵ See Tr. at 126:13 – 128:14; 135:10-13.

³⁶ The Commission can take administrative notice of public documents in Docket No. 17-057-13, including Exhibit B to the Answer of Dominion Energy Utah to Complaint of US Magnesium, LLC, which includes an email notification of the interruption of interruptible supplies and restrictions on firm transportation supplies. The email is dated January 6, 2017 at 11:11 a.m., with a requirement to comply within two hours.

³⁷ DEU Exhibit 1.10RC, Tab “Hourly Usage Average”, Rows 1242 - 1265.

³⁸ *Id.*; 132,289 DTH (the sum of cells D1242 – D1265) divided by 24 (hours) = 5,512 Dth/hour average actual usage.

³⁹ *Id.*; (7,009 (Cell D1250)/5,512 (average)) – 1 = 27%; Tr. at 127:18-21.

⁴⁰ See fn 35, *infra*.

⁴¹ DEU Exhibit 1.10RC, Tab “Hourly Usage Average”, Rows 1242 – 1265 (Volumes shown in each of cells D1254 to D1265)/5,512 (average) = 82% to 99%). Attached to this brief is a

hourly variation in firm transportation customer usage compared to the daily average was *negative 1% to negative 17%* that day. This data confirms that firm transportation customers not only did not contribute *anything* towards positive average vs actual hourly variation in usage during the highest peak day of the 2016-2017 winter season—the precise variability that DEU’s proposed peak hour contracts are intended to address⁴²—they actually contributed to *reducing* hourly gas usage variability on that peak day.

The combination of restrictions/penalties that caused firm transportation customers to actually reduce their hourly usage below the daily average on the peak days of the 2016-2017 winter season would clearly have the same effect on a design peak day. Thus, contrary to claims made by the Office and DEU,⁴³ record evidence clearly demonstrates that average transportation customer hourly variability on non-curtailment days does not fairly reflect actual hourly

printout of an excerpt from DEU Exhibit 1.10RC reflecting the referenced data. The first four columns (A–D) shown on the attachment were copied directly from DEU Exhibit 1.10RC. Data for January 6-7, 2017 are highlighted. Data in yellow highlight are for the 24 hours during which interruptions/restrictions were in place on January 6-7. The variance and other calculations and information shown to the right of column D were added to illustrate calculations referenced in this brief.

⁴² As shown on the printout attached to this brief, the same is also true of the first twelve hours of the next day, January 7, 2017, while the interruptions/curtailments remained in place. A comparison of the actual hourly usage in hours 1-12 shown in Cells D1266-D1277, compared to the average hourly usage for that day (4,962, computed by dividing the sum of Cells D1266-D1289, or 119,081, by 24 hours), shows that the variability on January 7 between actual hourly usage for the twelve hours of restriction compared to the daily average ranged from 92-95% (calculated by dividing each of Cells D1266-D1277 by the 4,961 daily average). Thus, for every one of the 24 restricted hours on two peak days last winter, firm transportation customers contributed nothing towards, and actually reduced, positive variability between the daily hourly average and actual hourly usage.

⁴³ The DEU Brief (at 33) makes a weak and unsupported statement that UAE’s testimony on this issue is “inconsistent with actual usage”—presumably in reference to the Office’s aborted attempt to demonstrate greater hourly variability on January 6, 2017. As demonstrated above, however, DEU’s own data confirms UAE’s argument that actual hourly usage by firm transportation customers declines significantly during periods of restriction to levels below the daily average, thus contributing to the solution, and not the problem.

variability during a peak design day, on which interruptions and restrictions will clearly be in place.⁴⁴

Other than the data discussed above, there is no meaningful record evidence of reasonably expected variance in actual vs. average design peak day hourly usage for firm transportation customers. There is thus no record evidence of any sound basis to allocate peak hour contract costs to transportation customers.⁴⁵ For that reason, and because SNG cost allocation decisions must be made in a general rate case in any event, no allocation of peak hour costs to firm transportation customers is appropriate in this docket. Indeed, no such costs should be charged to any customers until after DEU first demonstrates in Docket 17-057-20 that there is a legitimate need for peak hour services and that its peak hour contracts are reasonable, necessary and prudent, and after a general rate case in which class allocation decisions can properly be made.

Conclusion

For the reasons discussed above, UAE respectfully submits that DEU failed to satisfy its burden of proof to demonstrate the necessity or prudence of its peak hour contract. Moreover, the clear weight of evidence on the record supports denial of DEU's application. Finally, DEU's tariff, which has the effect of law, requires that supplier non-gas costs are to be allocated in a

⁴⁴ See Tr. at 65:18-22.

⁴⁵ The suggestions of Division witness Wheelwright that cost allocation of peak hour contract costs should be based on average relative gas usage must be disregarded as inconsistent with all mainline theories of causation-based cost allocation. Indeed, Mr. Wheelwright acknowledges that "you look at cost causation" in allocating costs (Tr. at 91:3-6). Peak hour services would not be needed but for expected positive variances between actual and average hourly design peak day usage. Any allocation based on cost causation principles must thus focus on the customer classes who contribute to the expected positive variation between actual and average hourly use on a design peak day.

general rate case. Collection of peak day costs by DEU from any of its customers must thus await both a demonstration in Docket 17-057-20 that there is a legitimate need for peak hour services and that the peak hour contracts are reasonable, necessary and prudent, as well as class allocations decisions that can properly be made only in a general rate case.

DATED this 17th day of November 2017.

HATCH, JAMES & DODGE



/s/ _____

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Excerpt from DEU 1.10RC, "Hourly Usage Average"

	A	B	C	D	E	F	G	H	I
1234	20170105	17	1/5/17 17:00	5,571					
1235	20170105	18	1/5/17 18:00	5,650					
1236	20170105	19	1/5/17 19:00	5,566					
1237	20170105	20	1/5/17 20:00	5,647					
1238	20170105	21	1/5/17 21:00	5,550					
1239	20170105	22	1/5/17 22:00	5,568					
1240	20170105	23	1/5/17 23:00	5,455					
1241	20170106	24	1/6/17 0:00	5,611			1/6/17		
1242	20170106	1	1/6/17 1:00	5,680			132,289	1/6/17 Total Usage	
1243	20170106	2	1/6/17 2:00	5,643			5,512.05	1/6/17 Average Hourly Usage	
1244	20170106	3	1/6/17 3:00	5,737					
1245	20170106	4	1/6/17 4:00	5,800					
1246	20170106	5	1/6/17 5:00	5,924			1/7/17		
1247	20170106	6	1/6/17 6:00	5,995			119,081	1/7/17 Total Usage	
1248	20170106	7	1/6/17 7:00	6,369			4,961.69	1/7/17 Average Hourly Usage	
1249	20170106	8	1/6/17 8:00	6,543					
1250	20170106	9	1/6/17 9:00	7,009					
1251	20170106	10	1/6/17 10:00	6,592					
1252	20170106	11	1/6/17 11:00	6,292					
1253	20170106	12	1/6/17 12:00	6,289					
1254	20170106	13	1/6/17 13:00	5,469					
1255	20170106	14	1/6/17 14:00	4,885			99%		
1256	20170106	15	1/6/17 15:00	4,733			89%		
1257	20170106	16	1/6/17 16:00	4,564			86%		
1258	20170106	17	1/6/17 17:00	4,503			83%		
1259	20170106	18	1/6/17 18:00	4,678			82%		
1260	20170106	19	1/6/17 19:00	4,725			85%		
1261	20170106	20	1/6/17 20:00	4,811			86%		
1262	20170106	21	1/6/17 21:00	4,901			87%		
1263	20170106	22	1/6/17 22:00	5,101			89%		
1264	20170106	23	1/6/17 23:00	5,255			93%		
1265	20170107	24	1/7/17 0:00	4,789			95%		
1266	20170107	1	1/7/17 1:00	4,607			87%		
1267	20170107	2	1/7/17 2:00	4,555			93%		
1268	20170107	3	1/7/17 3:00	4,543			92%		
1269	20170107	4	1/7/17 4:00	4,584			92%		
1270	20170107	5	1/7/17 5:00	4,560			92%		
1271	20170107	6	1/7/17 6:00	4,572			92%		
1272	20170107	7	1/7/17 7:00	4,687			94%		
1273	20170107	8	1/7/17 8:00	4,698			95%		
1274	20170107	9	1/7/17 9:00	4,564			92%		
1275	20170107	10	1/7/17 10:00	4,577			92%		
1276	20170107	11	1/7/17 11:00	4,547			92%		
1277	20170107	12	1/7/17 12:00	4,544			92%		
1278	20170107	13	1/7/17 13:00	4,565					
1279	20170107	14	1/7/17 14:00	4,927					
1280	20170107	15	1/7/17 15:00	5,142					
1281	20170107	16	1/7/17 16:00	5,773					
1282	20170107	17	1/7/17 17:00	5,676					
1283	20170107	18	1/7/17 18:00	5,735					
1284	20170107	19	1/7/17 19:00	5,480					
1285	20170107	20	1/7/17 20:00	5,262					
1286	20170107	21	1/7/17 21:00	5,201					
1287	20170107	22	1/7/17 22:00	5,511					
1288	20170107	23	1/7/17 23:00	5,432					
1289	20170108	24	1/8/17 0:00	5,338					
1290	20170108	1	1/8/17 1:00	5,107					
1291	20170108	2	1/8/17 2:00	4,959					
1292	20170108	3	1/8/17 3:00	5,008					
1293	20170108	4	1/8/17 4:00	4,943					
1294	20170108	5	1/8/17 5:00	5,007					
1295	20170108	6	1/8/17 6:00	4,948					
1296	20170108	7	1/8/17 7:00	5,036					

Certificate of Service
Docket No. 17-057-09

I hereby certify that a true and correct copy of the foregoing was served by email this day 17th day of November 2017 on the following:

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/s/
