- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Questar Gas Company to Make Tariff Modifications to Charge Transportation Customers for Peak Hour Services	DOCKET NO. 17-057-09 ORDER

ISSUED: December 19, 2017

SYNOPSIS

The PSC denies the application for tariff modifications to charge transportation customers for peak hour services.

BACKGROUND

On May 1, 2017, Questar Gas Company (Questar), now Dominion Energy Utah (Dominion),[1] filed proposed revisions to Utah Natural Gas Tariff No. 400.[2] Dominion's filing "seeks to charge transportation customers for their use of Firm Peaking Services provided to [Dominion] . . . by Kern River Natural Gas Transmission Company[.]"[3] Dominion seeks to implement a proposed $0.56/Dth demand charge for FT-1, MT, and TS customers[4] by amending the Transportation Service section of its tariff, which would add the following provision, if approved:

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[1] After the Application in this docket was filed, Questar filed an application to modify its tariff to reflect its name change. *See Application of Questar Gas Company dba Dominion Energy Utah to Modify its Tariff to Reflect Name Change* (Application, filed May 12, 2017; Docket No. 17-057-T02), available at: https://psc.utah.gov/2017/05/12/docket-no-17-057-t02/. The PSC approved Questar's name change request on May 30, 2017. *See id.* (Tariff Approval Letter, issued May 30, 2017. For simplicity, this order will refer to Dominion.

[2] *See Application of Questar Gas Company to Make Tariff Modifications to Charge Transportation Customers for Peak Hour Services* (Application, filed May 1, 2017; Docket No. 17-057-09), available at: https://pscdocs.utah.gov/gas/17docs/1705709/293711QGCSignAppCOS5-1-2017.pdf.

[3] *See id.* (Application at 1).

[4] *See id.* (Application, Exhibit 1.7 at 5-9, 5-11, and 5-13), available at: https://pscdocs.utah.gov/gas/17docs/1705709/293720QGCEx1.7Leg5-1-2017.pdf.

PEAK HOUR DEMAND CHARGE

> *Customers taking service on rate schedules FT-1, MT and TS will be assessed an annual demand charge for services necessary to manage peak hour usage during the winter heating season. The annual charge will be assessed on a monthly basis.*[5]

(Emphasis added.)[6]

On May 10, 2017, the PSC held a scheduling conference attended by several interested parties and,[7] thereafter, issued a Scheduling Order and Order Suspending Tariff.[8] The Scheduling Order set forth deadlines for intervention, a technical conference, direct, rebuttal, and surrebuttal testimony, and a hearing.[9] Pursuant to these deadlines, a technical conference occurred on June 28, 2017; the PSC granted petitions to intervene to American Natural Gas Council, Inc. (ANGC)[10] and the Utah Association of Energy Users (UAE);[11] and Dominion, the Division of Public Utilities (DPU), the Office of Consumer Services (OCS), and UAE filed testimony in the docket.[12] No other party petitioned for intervention or filed testimony.

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[5] *See id.* (Application, Exhibit 1.7 at 5-2).

[6] Concurrent with Dominion's Application in this docket, Dominion filed its semi-annual 191, Pass-Through filing in Docket No. 17-057-07. See *Pass-Through Application of Questar Gas Company for an Adjustment in Rates and Charges for Natural Gas Service in Utah* (Application, filed May 1, 2017; Docket No. 17-057-07), available at: https://psc.utah.gov/2017/05/01/docket-no-17-057-07/.

[7] *See supra* n.2 (Scheduling Conference Sign-In Sheet, dated May 10, 2017), available at: https://pscdocs.utah.gov/gas/17docs/1705707/293921SignInSheetSchedConf5-10-2017.pdf.

[8] *See id.* (Scheduling Order and Order Suspending Tariff, issued May 11, 2017), available at: https://pscdocs.utah.gov/gas/17docs/1705709/2939391705709soaost5-11-2017.pdf.

[9] *See id.* at 1.

[10] *See id.* (Order Granting Intervention, issued July 10, 2017), available at: https://pscdocs.utah.gov/gas/17docs/1705709/2952151705709ogiangci7-10-2017.pdf.

[11] *See id.* (Order Granting Intervention, issued August 3, 2017), available at: https://pscdocs.utah.gov/gas/17docs/1705709/2956851705709ogiuae8-3-2017.pdf.

[12] *See id. passim.*

On September 26, 2017, the PSC held a hearing where the following parties appeared: Dominion, the DPU, the OCS, the UAE, and ANGC.[13] At the end of the hearing, Dominion moved to file post-hearing briefs, and the PSC granted the motion, noting that it was not mandatory.[14] Thereafter, all parties except ANGC filed a post-hearing brief, with Dominion filing an opening brief followed by response briefs from the DPU, the OCS, and the UAE, and Dominion filing a reply brief.

APPLICATION

Peak Hour Need

The Application seeks to modify Dominion's tariff to allocate to Dominion's transportation customers a portion of costs resulting from a peak hour contract. A key component of Dominion's ongoing resource planning process is ensuring Dominion has sufficient gas supply to serve its customers during high-demand periods on an extremely cold weather event. Based on its analysis, Dominion concludes that, were Dominion's distribution system to experience extremely cold temperatures, it would be unable to meet demand in excess of the average daily gas flow during periods of heaviest usage.

To address meeting the stated hourly-daily demand variance, Dominion entered into a pre-existing agreement (Contract)[15] with Kern River, who agreed to provide 100,000 decatherms (Dths) of firm peaking service in the 2017-2018 winter heating season. Dominion will nominate the gas on Kern River to be used during peak demand periods throughout normal

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[13] *See id.* (September 26, 2017 Hearing Transcript at 6, lines 9-25; 7, lines 1-19), available at: https://pscdocs.utah.gov/gas/17docs/1705709/297138RepTransSept26,201710-4-2017.pdf.
[14] *See id.* at 144, lines 4-6; 147, lines 20-25; 148, lines 1-2; 151, lines 19-25; 152, lines 1-13.
[15] The $864,500 contract was included in the 191, Pass-Through filing that Dominion filed. *See supra* n.6.

North American Energy Standards Board nomination cycles, packing the Kern River system prior to the peak hour to be drafted during the hours the service is in use.

Allocation of Peak Hour Contract Costs

Dominion asserts that its transportation customers would be partially responsible for hourly-daily variances in gas usage on a peak day. Dominion proposes that transportation customers be assigned 13.9% of the $864,500 Kern River peaking services contract using a demand charge of $0.56 per Dth, paid annually. Revenues would be treated as a reimbursement to sales customers to be credited through the 191 account in each pass-through application.

PARTIES' POSITIONS

The DPU

The DPU recommends the PSC find Dominion entered into the Contract imprudently because Dominion failed to demonstrate the Contract is necessary and in the public interest. The DPU faults Dominion's method of determining its design peak day. The DPU also notes the actual historic usage over the past 20 years has been well below design peak day levels, undermining Dominion's contract necessity argument. The DPU further notes the Contract has been used as an operational contract rather than a peak day contract.[16]

Even if the PSC finds sufficient record evidence to make a prudence determination in this docket, the DPU argues Dominion presented the bulk of its evidence too late in the discovery process, thereby prejudicing the DPU's ability to review that evidence. The DPU maintains that a prudence determination in this docket precludes a prudence determination by the DPU in its

[16] *See supra* n.13 at 83, lines 15-25; 84, lines 1-5.

audit of Dominion's PSC-approved interim rates in pass-through dockets; however, the DPU maintains the PSC may withhold a prudence determination in this proceeding.

The DPU recommends that if the PSC finds the Contract prudent, costs should be allocated based on how the Contract is used[17] and urges the allocation method proffered by its witnesses.[18]

The OCS

The OCS argues Dominion's Application provides insufficient evidence justifying the Contract. The OCS also argues Dominion's decision to wait until its rebuttal testimony, when Dominion provided a fuller evidentiary explanation to questions raised by other parties, is not the proper approach for a PSC proceeding and should not be endorsed.

Similar to the DPU, the OCS notes concerns with Dominion's assumptions used to determine the needs of the peak day. OCS's witness testifies that Dominion relied on an extreme set of circumstances that statistically does not have a reasonable likelihood of occurring.[19]

The OCS further argues that if the PSC finds Dominion acted prudently by executing the Contract, the PSC should find that a portion of those costs should be allocated to transportation customers. According to the OCS, a just and reasonable allocation of the costs associated with the Contract in this docket should be made on a final rather than an interim basis.

[17] *See supra* n.2 (Redacted Surrebuttal Testimony of Douglas D. Wheelwright for the Division of Public Utilities, filed September 19, 2017 at 13, lines 331-333).
[18] *See id.* (Corrected Post-hearing Brief of the Utah Division of Public Utilities, filed November 17, 2017 at 8).
[19] *See id.* (Surrebuttal Testimony of Jerome D. Mierzwa for the Office of Consumer Services, filed September 19, 2017 at 4, lines 81-84).

UAE

UAE argues Dominion's acknowledgement that the prudence issue was introduced into the docket by other parties only after the other parties filed testimony challenging Dominion's proof is an admission that Dominion failed to meet its burden to prove the Contract was prudent.[20] UAE also argues, "[Dominion] did not provide the parties sufficient time to properly analyze the filing, and [this failure] resulted in a confusing and incomplete record."[21] Accordingly, UAE argues the Application should be denied for lack of a more robust record or, alternatively, because Dominion has not allowed sufficient due process protections.

UAE states the Application should be denied, as a matter of law, because class allocation of SNG costs can only be determined in a general rate case proceeding according to Dominion's tariff. UAE cites caselaw supporting the conclusion that PSC-approved utility rate tariffs have full effect and force of law.

Dominion

Dominion contends the Contract is ripe for a prudence determination, and there is no statute or precedent prohibiting the PSC from making that determination. Dominion asserts a prudence determination in this docket does not preclude the DPU's 191 Account, pass-through audit and review. Dominion notes it is not seeking to make interim rates final by sole virtue of a prudence determination in this proceeding. Dominion adds, in this tariff proceeding, it need only bear the burden of proof with respect to cost allocation, not prudence. Dominion asserts the Application is well supported.

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[20] *See id.* (Post-hearing Brief of the Utah Association of Energy Users, filed November 17, 2017 at 4).
[21] *Id.*

Concerning the DPU's argument that the discovery process prejudiced the outcome of the proceeding because of the introduction of new evidence during the rebuttal phase of testimony, Dominion asserts the DPU had over a year to review evidence on the peak hour issue, and that neither the OCS nor UAE argued they were prejudiced during the discovery phase.

Dominion asserts it has provided sufficiently robust evidence of prudence, and that barring the Contract would expose customers to unreasonable risk. Based on Dominion's research of the options available, the Contract represents the most reasonable and cost-effective means of addressing the peak hour supply issue relative to other options considered.

Because the Contract was prudently executed, Dominion argues, a portion of the Contract costs should be allocated to transportation customers, "who, while receiving benefits from the Contract, are currently not paying for [it]."[22] While Dominion conceded its tariff states that SNG cost class allocation levels are to be established in general rate cases, it contends the tariff provides no basis to justify a different allocating approach between existing SNG costs and new costs,[23] pointing to a transportation imbalance proceeding in Docket No. 14-057-31[24] as justification that the PSC has authority to determine cost allocation in this docket. Furthermore, with respect to the tariff provision requiring Dominion to give 60-days' notice when it includes "a new account or the first time inclusion of other [new] material items,"[25] Dominion states this circumstance does apply in this case.

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[22] *See supra* n.2 (Post-Hearing Brief of Questar Gas Company dba Dominion Energy Utah, filed October 27, 2017 at 25).
[23] *See id.* at 28.
[24] *See id.* at 27.
[25] *See id.* at 29 (quoting Tariff, Section 2.06).

Dominion argues, because the PSC is within its authority to address SNG cost allocation outside a general rate case, and because its tariff language does not apply to the circumstances in this docket, the PSC can and should accept as just and reasonable its proposed allocation of the Contract costs to the transportation customers. Dominion cites the OCS's agreement with Dominion's proposed cost allocation method and that the DPU does agree that a portion of the costs are to be borne by the transportation customers in the event the PSC determines the Contract was prudent.[26]

In sum, Dominion urges the PSC to find the Contract prudently executed, that the transportation customers contribute to the hourly-daily usage variance on a peak day and should pay for its fair share of the costs of the Contract, and that the proposed cost allocation method results in just and reasonable rates.

FINDINGS AND CONCLUSIONS

A. Dominion's Tariff Precludes Us from Approving the Application.

The Application proposes a change to the allocation of certain SNG costs. Under Questar Gas Company, Utah Natural Gas Tariff, PSCU 400, which was in effect at the time the Application was filed, it states:

> **SUPPLIER NON-GAS COST RATE DETERMINATION**
>
> Using the procedure established in PSCU Case No. 84-057-07, *supplier non-gas cost class allocation levels will be established in general rate cases.* Concurrently with the determination of costs (above), supplier non-gas costs will be adjusted by class (from those rate levels established in general rate cases) on a uniform percentage increase or decrease basis to reflect FERC-approved increases or decreases in the supplier non-gas cost related

[26] *See id.* at 32.

> components of upstream pipeline suppliers' rates. The supplier non-gas cost adjustment will reflect the supplier non-gas revenue collected from the interruptible customers and 90% of the credit from released capacity collected from upstream interstate pipelines. The remaining 10% of capacity release credit will be recorded as DNG revenue.[27]

(Emphasis added). The relevant tariff language from the above provision requires "supplier non-gas cost class allocation levels" to be established in "general rate cases."[28] We recognize that the exclusivity of that language could be clearer in the tariff. For example, the language could have, but does not, state that supplier non-gas cost class allocation levels will be established *only* in general rate cases. The language also could have, but does not, state that those allocation levels will be established in general rate cases *and in other appropriate proceedings*.

Considering the language in context, we conclude that the more reasonable interpretation of the tariff language is that it was intended to be exclusive. That interpretation is more consistent with general rate-making principles about the treatment of allocation issues in between general rate cases. We recognize that the 191 account adds a different dynamic to those general principles because that account can result in new costs being imposed in between general rate cases to some customers and not to others. That dynamic might warrant reconsideration of the tariff language, but that is an issue we would consider in context of a proposed tariff change, not in this docket.

Because of the way we have interpreted this tariff language, we are bound to abide by it as having the force of law. In *Ellis-Hall Consultants v. Public Service Commission of Utah*, 2016

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[27] Questar Gas Company, Utah Natural Gas Tariff, PSCU 400, Section 2.06 at 2-13 (on file with PSC).

[28] *Id.*

UT 34, ¶ 31, 379 P.3d 1270, the Utah Supreme Court held that the PSC approved tariffs "have the force of law[.]" Accordingly, barring an approved change to Dominion's tariff, we have no authority to override its terms. *See id.* Thus, as a matter of law, we deny Dominion's Application.[29]

B. A Prudence Determination Will Be Addressed in Docket No. 17-057-20.

We have a schedule that will allow us to address the prudence of both the Kern River and the Questar Pipeline peak hour contracts in Docket No. 17-057-20. We recognize that we could make a prudence determination in this docket for the Kern River contract, leaving Docket No. 17-057-20 to address only the Questar Pipeline contract,[30] but we decline to do so because our decision on the tariff language makes it unnecessary to address that issue now. Considering both the argument of parties that prudence was raised too late in this docket to address the issue adequately, and Dominion's position that it addressed prudence once it was contested, we conclude that the more responsible path forward is to address the prudence of both contracts in Docket No. 17-057-20.

ORDER

Based on the findings and conclusions above, we deny Dominion's Application in this docket. We also decline to address the prudence of the Kern River contract, and will address that issue in Docket No. 17-057-20.

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[29] Also, contrary to Dominion's position, our general statutory authority under Title 54 does not permit us to ignore the plain and specific language of Dominion's tariff. *See generally, Taghipour v. Jerez*, 2002 UT 74, ¶ 11, 52 P.3d 1252 ("when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision." (Internal quotations and citations omitted)).

[30] *See Pass-Through Application of Dominion Energy Utah for an Adjustment in Rates and Charges for Natural Gas Service in Utah* (October 31, 2017 Hearing Transcript at 14; Docket No. 17-057-20).

DATED at Salt Lake City, Utah, December 19, 2017.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#298580

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 20 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. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on December 19, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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