

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Request of Dominion Energy Utah for Approval of a Voluntary Resource Decision to Construct a Liquefied Natural Gas (LNG) Facility	<u>DOCKET NO. 18-057-03</u> <u>ORDER</u>
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ISSUED: October 22, 2018

SYNOPSIS

We decline to approve Dominion Energy Utah's voluntary request for approval of its energy resource decision to construct the proposed liquefied natural gas facility. The record is insufficient for us to make the required determination that the proposed facility is in the public interest. While this Order withholds the pre-construction cost recovery assurance available under Part 4 of The Energy Resource Procurement Act, it does not foreclose Dominion Energy Utah from constructing the facility and seeking to treat the construction costs as prudently constructed utility rate base.

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1. INTRODUCTION

A. SUMMARY

The Public Service Commission (“PSC”) declines to approve Dominion Energy Utah’s (“DEU”) resource decision¹ to construct a liquefied natural gas (“LNG”) storage tank, gas-pretreatment process, liquefaction facilities, gas vaporization facilities, and a connecting pipeline to DEU’s distribution system (combined, “LNG Facility”) in Salt Lake County pursuant to Utah Code Ann. § 54-17-402, “Request for review of resource decision.”

B. PROCEDURAL HISTORY

On April 24, 2018, pursuant to Utah Administrative Code R746-440-1(2)(a) and (2)(b), DEU provided public notice of its intention to file a voluntary request for approval of a resource decision to construct the LNG Facility on a proposed site near Magna, Utah.² DEU filed its Application for Voluntary Request for Approval of Resource Decision (“Application”) on April 30, 2018, pursuant to Utah Code Ann. § 54-17-401, *et seq.*, and Utah Admin. Code R746-440-1, *et seq.* Concurrent with the Application, DEU filed a Petition for Highly Confidential Treatment and Additional Protective Measures under Utah Administrative Code Rule R746-1-601(2)(a), which the PSC subsequently granted.³

¹ Application for Voluntary Request for Approval of Resource Decision, filed April 30, 2018.

² Public Notice of Intent to File Voluntary Request for Approval of Resource Decision, filed April 24, 2018.

³ Petition for Highly Confidential Treatment and Additional Protective Measures under Utah Administrative Code Rule R746-1-601(2)(a), filed April 30, 2018; and Order Regarding Petition for Highly Confidential Treatment and Additional Protective Measures Under Utah Administrative Code Rule R746-1-601(2)(a), issued October 2, 2018.

The Utah Association of Energy Users (“UAE”) and Magnum Energy Midstream Holdings, LLC (“Magnum”) filed for, and were subsequently granted, intervention in this docket.⁴

On August 16, 2018, the Division of Public Utilities (“DPU”), the Office of Consumer Services (“OCS”), and Magnum filed direct testimony. On September 6, 2018, the OCS and UAE filed rebuttal testimony. On September 7, 2018, DEU filed rebuttal testimony. On September 20, 2018, the DPU, the OCS, DEU, and Magnum filed surrebuttal testimony. The PSC received testimony and other evidence from parties at the hearings on October 1-2, 2018.

2. POSITIONS OF THE PARTIES

A. DEU

i. Overview

DEU seeks PSC pre-construction approval to build the on-system LNG Facility. The preliminary specifications for the facility call for construction of a 15-million gallon LNG storage tank, an amine gas-pretreatment process, a liquefaction cold box, and gas vaporization facilities. The proposed liquefaction rate is 8.2 MMcfd and the proposed vaporization rate is 150 MMcfd (approximately 150,000 Dth/day).⁵ DEU proposes to construct an intrastate pipeline to connect the LNG Facility directly to the high pressure infrastructure of DEU’s distribution system.⁶ DEU proposes to place the LNG Facility in service by 2022.

⁴ Petition to Intervene of the Utah Association of Energy Users, filed July 11, 2018; Order Granting Intervention of the Utah Association of Energy Users, issued August 1, 2018; Magnum Energy Midstream Holdings, LLC’s Petition to Intervene, filed August 16, 2018; and Order Granting Intervention of Magnum Energy Midstream Holdings, LLC, issued September 7, 2018.

⁵ Application at 2.

⁶ Rebuttal Testimony of Bruce L. Paskett at 11:206-212, filed September 7, 2018.

ii. DEU's justifications for the LNG Facility

DEU testifies that based on recent events occurring on its distribution system, and in other areas near its system, there is currently a risk that during a severe cold weather event or other unpredictable natural disaster, a significant portion of DEU's gas supply will be disrupted. This disruption could interrupt firm service and cause DEU's customers adverse health and safety impacts, property damage, and productivity losses.⁷ According to DEU, based on evaluations of costs, risks, and reliability, the LNG Facility is the most reliable option to avoid these potential adverse consequences.⁸

As an example of the kind of supply disruption DEU's proposed LNG Facility is designed to overcome, DEU describes a New Mexico Gas Company and Southwest Gas Company event when approximately 40,000 of its customers lost gas service during February 2011.⁹ DEU also refers to an outage to 300 Northwest Natural Gas Company customers in 2009, and a 2018 ATCO Gas Distribution supply disruption at its gate stations, as additional events underscoring the need for the proposed LNG Facility.¹⁰ DEU testifies current peaking service contracts address the intra-day and seasonal variations in gas usage by firm customers. But, according to DEU, it is unable to mitigate effectively the risk posed by potential unpredictable gas supply disruptions through similar contracts, particularly if those disruptions occur during a severe cold weather event.¹¹

⁷ Direct Testimony of Kelly B. Mendenhall at 1:24-2:30, filed April 30, 2018.

⁸ Direct Testimony of Tina M. Faust at 21:552-556, filed April 30, 2018.

⁹ *Id.* at 5:122-127.

¹⁰ *Id.* at 5:129-135.

¹¹ *Id.* at 13:332-356.

DEU concludes that the LNG Facility is the ideal solution to mitigate the risks inherent in serving its firm sales customers by means of off-system gas supplies and storage facilities.¹² DEU testifies that in reaching this conclusion it evaluated many alternatives. DEU states it considered 19 different approaches (in addition to two LNG facility scenarios) for mitigating the supply disruption risk.¹³ It considered continuing the status quo by relying on back-up supplies (off-system), third party storage, and interstate pipelines for gas delivery. DEU states it has experienced issues that lead DEU not to have confidence in relying exclusively on this approach. DEU also considered two demand response techniques by which customers would be called on to reduce consumption voluntarily in response to a supply disruption but dismissed them as not the most reliable solution.¹⁴ Because of “negative experiences” DEU has had with a certain off-system storage facility, DEU rejected consideration of any such facility that was not located on or near its distribution system.¹⁵ Moreover, DEU states there are no known salt caverns or depleted gas reservoirs [i.e., storage facilities] on or near its system.¹⁶ Similarly, following two and one-half years of repeated meetings with Magnum, DEU concluded that a yet-to-be-constructed salt cavern storage facility located 80 to 100 miles from DEU’s demand center, connected by an interstate pipeline, and operated by a third party, is not the most reliable solution for meeting the supply reliability need.¹⁷ Finding the foregoing solutions wanting, DEU evaluated and decided to construct the on-system LNG Facility because it “would provide an

¹² Rebuttal Testimony of Faust at 1:22-23, filed September 7, 2018.

¹³ Direct Testimony of Faust at 13:332-19:509, filed April 30, 2018.

¹⁴ October 1, 2018 Hearing Transcript at 41:15-42:2.

¹⁵ October 1, 2018 Hearing Transcript at 43:3-6.

¹⁶ October 1, 2018 Hearing Transcript at 43:7-9.

¹⁷ October 1, 2018 Hearing Transcript at 42:21-43:2.

instantaneous and reliable source of supply that would be operated and dispatched by DEU in the event of a supply disruption.”¹⁸

Regarding the absence of a request for proposal (“RFP”) process in identifying market options, DEU testified: “Despite the claims of others that [DEU] should have conducted an RFP, DEU has provided abundant evidence and/or best analysis of the available alternatives.”¹⁹ DEU further testified that having conducted RFPs in 2016 for peak hour services and the LNG feed study, and dealing every day with gas suppliers, “[w]e know what they have to offer, and we saw what they offered for peak hour, and we talked to them about supply reliability. So it seems pointless to send out something else.”²⁰

iii. Cost and location of the LNG Facility

The estimated capital cost²¹ of the proposed LNG Facility and the property can be found in the confidential version of the Application at pages 7 and 8. DEU provides testimony on the process it utilized to select the location.²²

B. DPU

The DPU recommends the PSC reject DEU’s Application and order DEU to define clearly the necessary capabilities it requires to mitigate the supply risk and issue an RFP to meet the specified need and requirements.²³ The DPU explains that DEU has demonstrated neither

¹⁸ October 1, 2018 Hearing Transcript at 43:9-13. DEU also points to another potential benefit of the LNG Facility, namely that the LNG Facility could be used to provide service to remote, currently unserved, communities at a lower cost than extending pipeline facilities to these communities. Direct Testimony of Faust at 21:543-544, filed April 30, 2018.

¹⁹ October 1, 2018 Hearing Transcript at 43:16-19.

²⁰ October 1, 2018 Hearing Transcript at 57:13-16.

²¹ While this estimate includes everything required to bring the LNG Facility on-line, it does not include any estimated costs for the potential extension of service to unserved areas mentioned in DEU’s Application.

²² Direct Testimony of Michael L. Gill at 3:65-68, and at 6:154-163, filed April 30, 2018.

²³ Surrebuttal Testimony of Douglas D. Wheelwright at 11:272-273, filed September 20, 2018.

that the proposed LNG Facility is in the public interest nor that the LNG Facility is the lowest reasonable cost solution for the resource need DEU identifies. The DPU states unanswered questions remain regarding the quality of DEU's analysis of alternatives, ongoing LNG Facility operational costs, and the necessity of the large increase to DEU's rate base that would result from the LNG Facility cost. According to the DPU, the limited set of alternatives selected for comparison by DEU is inadequate to conclude that the LNG Facility is the lowest reasonable cost option available to meet the claimed need. The DPU contends that a narrow, focused RFP for a specific set of criteria "absolutely" is the best way to determine what potential supply solutions are available in the market.²⁴ Acknowledging DEU did not follow industry standard practice, the DPU's witness states, "I had expected to see several [RFP] responses from different companies hoping to provide that level [of] service, and [...] we didn't have a true apples-to-apples comparison."²⁵ The DPU recommends once the need has been clearly defined, an RFP process should be used to identify the supply reliability market options.²⁶

The DPU explains that the options DEU considered in its analysis appear to have been "hand selected"²⁷ to compete against the LNG Facility, instead of employing the gas distribution industry standard practice of issuing an RFP. As noted above, the DPU believes DEU's LNG Facility selection is the result of an inadequate evaluation process. The DPU concludes DEU has failed to show by standard utility methods that other less expensive options are not available to sufficiently mitigate the supply risk associated with a severe weather event or other natural

²⁴ October 2, 2018 Hearing Transcript at 414:15-19.

²⁵ October 2, 2018 Hearing Transcript at 383:21-25.

²⁶ Surrebuttal Testimony of Wheelwright at 7:172-174, and at 8:181-182, filed September 20, 2018.

²⁷ October 2, 2018 Hearing Transcript at 373:3-6.

disaster disabling gas delivery. The DPU states this is why it recommends a new RFP to solicit bids once a clear set of requirements has been specified.²⁸ The DPU also recommends the PSC order a new schedule in which to review the RFP results, allowing sufficient time to complete a robust proposal process, while also making available to that proceeding any filed testimony and evidence provided in this docket.²⁹

C. OCS

The OCS recommends the PSC deny DEU's decision to construct the LNG Facility. The OCS notes no outages have occurred on the DEU system from supply disruptions.³⁰ Moreover, DEU's request lacks evidentiary support that a supply reliability problem exists on its system, and that the LNG Facility is the optimal solution. In addition, the OCS argues that DEU failed to: adequately investigate all potential supply reliability solutions, considering the resilient, inter-connected nature of the DEU system; demonstrate that 150,000 Dth/day is an appropriately sized plant to remedy its alleged supply reliability problem; and consider the risks of siting an LNG plant in a highly populated area.³¹

D. MAGNUM

Magnum testifies that it filed testimony in this docket because the representations and analysis DEU provided in its Application and direct testimony did not adequately or accurately represent the actual costs and benefits of Magnum's facilities and proposals, and the full array of risks they would ameliorate.³² Magnum notes that while it has been in talks with DEU for

²⁸ Surrebuttal Testimony of Wheelwright at 11:261-265, filed September 20, 2018.

²⁹ *Id.* at 11:268-276.

³⁰ Direct Testimony of Bela Vastag at 2:38-39, filed August 16, 2018.

³¹ *Id.* at 15:301-318.

³² Prefiled Direct Testimony and Exhibits of Kevin B. Holder at 5:93-100, filed August 16, 2018.

several years regarding the potential use of Magnum’s storage facilities, and it has provided DEU with several different proposals, the Magnum proposals included in DEU’s testimony for comparison to DEU’s LNG Facility are not comparable in performance capabilities to the proposed LNG Facility. In Magnum’s view, its services would provide much more functionality.³³ Magnum explains that two RFPs issued by DEU in 2016—one for peak hour services and the other for LNG-related engineering services (the LNG feed study)—were both issued for the purposes of resolving peak hour issues, not supply reliability issues. From that perspective, Magnum asserts, “when you build a storage facility to address peak hour needs, it is a different design than if it is strictly a supply reliability [facility].”³⁴

Magnum argues that it is capable of meeting DEU’s exact need to reduce supply disruption risk for less than the LNG Facility cost by providing DEU with the ability to use dispatchable salt cavern storage gas delivered to an interconnection point of DEU’s choosing.³⁵ Magnum further specifies that DEU would retain operational control of both injection and withdrawal, meaning DEU could use the facility’s capabilities without notifying Magnum in advance.³⁶ Magnum asserts that since adequate pressure and volume would be present at the interconnection point, the proposed facilities would provide DEU with instantaneous response times to address supply reliability issues as they occur.³⁷ Magnum further asserts its project can be customized to meet any reasonable need, including firm storage, no-notice storage, supply

³³ *See id.* at 7:134-8:144.

³⁴ October 2, 2018 Hearing Transcript at 338:14-16.

³⁵ *Supra* n.32 at 6:111-119.

³⁶ *Id.* at 17:328-332.

³⁷ *Id.* at 17:338-18:346, and at 19:377-382.

reliability, interruptible storage, firm and interruptible park and loan, firm and interruptible wheeling, load following, short-term cycling, risk management, system balancing, and other ancillary services—all at a much lower cost than the LNG Facility.³⁸

E. UAE

UAE filed testimony to establish that transportation customers should not be charged for any of the costs associated with the LNG Facility (should the PSC approve its construction). UAE states that if the PSC approves DEU’s request, the PSC should reject elements of OCS witness Mierzwa’s and DPU witness Neale’s proposals that would allocate some of the costs of the LNG Facility to transportation customers. UAE further asserts that this docket is not the appropriate forum for a discussion of, or rulings on, the allocation of costs of the proposed LNG Facility. As justification for this view, UAE explains transportation customers are responsible for their own gas supply and should not be allocated costs for a facility that is designed to mitigate supply shortfalls for DEU’s firm sales customers.³⁹

3. DISCUSSION, FINDINGS, CONCLUSIONS, DETERMINATIONS, AND CONSIDERATIONS

A. STATUTORY STANDARDS

Part 4 of the “Energy Resource Procurement Act”⁴⁰ (“Act”) allows DEU to request voluntary PSC approval to construct the LNG Facility. Importantly, Part 4 specifies factors we must weigh in evaluating such a request:

³⁸ *Id.* at 14:281-285.

³⁹ Rebuttal Testimony of Neal Townsend at 2:39-3:48, filed September 6, 2018.

⁴⁰ *See* Utah Code Annotated § 54-17, *et seq.*

(3) In ruling on a request for approval of a [significant energy] resource decision, the [PSC] shall determine whether the [significant energy resource] decision:

...

(b) is in the public interest, taking into consideration:

(i)(A) whether it will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an affected energy utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;

(E) financial impacts on the energy utility; and

(F) other factors determined by the [PSC] to be relevant.⁴¹

The PSC has previously interpreted, in Docket No. 17-035-40, how Utah Code Ann. § 54-17-402(3) applies to a resource decision.⁴² In that order, we noted the statute does not dictate the weight we give to each factor in making our determination of the public interest. Rather, it enumerates factors for our consideration and allows us discretion, both to exercise our judgment in weighing them, and to consider other factors we deem relevant. Additionally, we conclude that the statutory terms “determine” and “taking into consideration” do not, of themselves, dictate a requirement for enumerated findings on all issues. A determination may be implicit in a project approval, and consideration of various factors may occur during the adjudicative process without explicit written findings on each factor. Considering both the significant record in this docket and the costs associated with the resources we have been asked to approve, though, we consider it appropriate to make detailed findings that might not be necessary in another context.

⁴¹ Utah Code Annotated § 54-17-402(3).

⁴² Order (Docket No. 17-035-40) at 16, issued June 22, 2018.

B. DETERMINING THE PUBLIC INTEREST

This matter involves DEU's assessment of gas supply disruption risks, beyond its control, that would disable DEU from fully satisfying the requirements of its firm sales customers.⁴³ DEU fears such a supply shortage could result in service curtailments or even broad service outages to as many as 650,000⁴⁴ DEU customers, were the shortage to occur at or near design peak day weather conditions.⁴⁵ The record shows that DEU has contracted for sufficient gas supplies to meet its firm sales customers' needs.⁴⁶ Consequently, while some parties have examined the proposed LNG Facility from the standpoint of resource need, we view it as supply disruption risk mitigation, because DEU has already provided for the totality of customer gas requirements through its existing gas supply contracts. Moreover, some of these contracts provide DEU with the right to receive additional gas volumes up to firm entitlements to satisfy non-forecasted firm sales customers' demand, for example, when unusually cold weather causes demand to approach design peak day levels.⁴⁷

Additionally, while the LNG Facility may reduce the risk of supply disruption resulting in curtailments or outages, it does not entirely remove it. Consequently, the record includes evidence on the attributes of the LNG Facility, the nature and likelihood of the perceived supply disruption risk, the degree to which the LNG Facility would mitigate the risk, and the adequacy of DEU's process to identify and evaluate alternative risk mitigation products and strategies. Our

⁴³ Direct Testimony of Mendenhall at 1:24-2:27, filed April 30, 2018.

⁴⁴ Direct Testimony of Michael L. Platt at 14:372-15:375, filed April 30, 2018.

⁴⁵ Direct Testimony of Faust at 4:95-98, filed April 30, 2018. The OCS contests this claim by DEU. *See* Direct Testimony of Vastag at 10:213-11:226, filed August 16, 2018.

⁴⁶ Direct Testimony of Faust 4:106-5:109, filed April 30, 2018; *see also* Rebuttal Testimony of Faust at 8:209-9:216, filed September 7, 2018.

⁴⁷ Direct Testimony of Faust at 4:106-5:109, filed April 30, 2018 (assuming contracted gas supplies are delivered).

challenge in evaluating the Application is to judge the public's interest in the reliability of gas supply delivery in relation to the remote risk DEU seeks to mitigate and the costs of that mitigation. This challenge is heightened by the fact that the confluence of events (at or near design peak day conditions combined with a large enough supply disruption to cause demand center outages) has never as yet materialized on DEU's system, nor has it been an element of DEU's annual resource planning process until its most recent planning cycle.⁴⁸

Nevertheless, we recognize DEU's need to balance both risk and consequence. While the OCS has disputed DEU's estimation of the risk of a supply disruption on a day with design peak day weather conditions, no party in this proceeding has meaningfully disputed DEU's testimony regarding the severe consequences of an outage caused by that kind of a supply disruption, including the time and resources necessary to restore service and the resulting public safety and health risks. A prudent utility should plan for such a low risk, but high consequence, event. But in this instance, we conclude the analysis performed to date simply does not support the public interest determination DEU asks us to make.

In considering that public interest and weighing the statutory factors, we have determined that the evidence presented in this docket does not support pre-construction approval of the LNG Facility. Nevertheless, while this Order withholds the pre-construction cost recovery assurance available under Part 4 of the Act, it does not foreclose DEU from constructing the facility and seeking our approval to treat the construction costs as prudently constructed utility rate base in a

⁴⁸ Direct Testimony of Vastag at 10:213-219, filed August 16, 2018; and Direct Testimony of Alex Ware at 2:23-10:213, filed August 16, 2018.

future general rate case or a filing made under Utah Code Ann. § 54-7-13.4, “Alternative cost recovery for major plant addition.” We now describe our consideration of the statutory factors.

- i. Whether the LNG Facility will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an affected energy utility located in this state.*

As explained by witnesses from both the DPU and Magnum, DEU could have followed standard industry practice by issuing a well-defined RFP to identify the market options available to mitigate the specific risk DEU seeks to address in this docket.⁴⁹ Neither of the two 2016 RFPs issued by DEU addressed the supply reliability risk DEU relies on to justify its decision to construct the LNG Facility. As a result, the responses to those RFPs are both inadequate and stale as support for DEU’s decision. Magnum asserts that at the time of its initial response to the 2016 RFPs, specific aspects of DEU’s resource supply requirements were not sufficiently clear. Despite Mangum’s ongoing discussions with DEU, DEU’s current resource objective (i.e., to mitigate the risk of supply disruption) was not disclosed until DEU filed its direct testimony in this docket describing the need for greater gas supply reliability as supporting LNG Facility construction.⁵⁰ Learning of the need stated in the Application, Magnum testifies it submitted a revised proposal showing how its storage capacity could be used cost effectively to satisfy DEU’s supply reliability requirements. Magnum further testified DEU has not responded to its proposal.⁵¹

⁴⁹ See October 2, 2018 Hearing Transcript at 394:1-11, and at 329:1-6.

⁵⁰ See October 2, 2018 Hearing Transcript at 340:2-7.

⁵¹ See *id.* at 339:5-340:10.

The record includes unrefuted testimony from Magnum, the DPU, and the OCS that, in comparison to the LNG Facility, other solutions with varying levels of risk mitigation can likely be achieved at a lower cost.⁵² The Magnum salt cavern facility is the alternative discussed in the most detail on this record as being lower in cost and potentially comparable in mitigating supply risk. DEU asserts the LNG Facility offers material advantages because it will be located on the DEU system and near the center of retail demand. With respect to effectiveness in mitigating supply disruptions, DEU argues design differences between the LNG Facility and Magnum's salt cavern gas storage and transportation options show the LNG Facility's superiority. Gas stored in Magnum's salt caverns would need to be transported over 80 to 100 miles of pipeline before being delivered to DEU's distribution system. Moreover, DEU questions whether that 80 to 100 miles of pipeline facility would be used solely to transport DEU's gas (as opposed to sharing the pipeline with other potential shippers). Considering both Magnum's and DEU's testimony, however, we find the record does not conclusively establish DEU's asserted disadvantage from a functional perspective in addressing the perceived supply risk using Magnum's storage capacity. Under either scenario, the gas deliverability would be under the control of DEU dispatchers, and either alternative would provide instantaneous gas supplies directly into DEU's distribution system. Magnum testifies DEU would have a greater range of flexibility to respond to changing conditions with Magnum's facilities as they would be capable of more turns, or cycles, per season and much faster injection and withdrawal rates than the

⁵² Direct Testimony of Holder at 6:111-119, filed August 16, 2018; *see also* Wheelwright, Surrebuttal Testimony at 10:255-11:265, filed September 20, 2018; and *see also* Surrebuttal Testimony of Vastag at 9:214-10:217, filed September 20, 2018.

LNG Facility.⁵³ Moreover, Magnum asserts it can provide the storage and transportation of the stored gas at a meaningfully lower cost than the LNG Facility.

Nevertheless, we recognize the intuitiveness of DEU's assertion that longer pipelines result in different, potentially greater, risks. While we make no finding here as to the superiority of one approach over the other, the evidence regarding the Magnum alternative raises substantial questions regarding the relative cost-effectiveness of the LNG Facility. It highlights the weakness in DEU's evaluation process that failed to solicit proposals from the market to address DEU's specified need for additional supply reliability under weather conditions near or at design peak day parameters. Had DEU conducted an RFP specific to supply reliability, DEU could have crafted non-cost-scoring criteria that addressed the risks of longer pipelines as well as other factors that might impact the ability of on-system and off-system solutions to mitigate the identified risk.

As already mentioned, the evidence shows Magnum's proposals, made in response to the 2016 RFP, had initially been intended to address peak hour needs rather than supply reliability because that is the need DEU articulated in 2016.⁵⁴ Magnum testifies a formal RFP process in which DEU states specifically its supply reliability objectives is necessary for DEU to learn what the market can provide to meet its supply reliability concerns.⁵⁵ We conclude that an RFP is not an absolute statutory requirement in this scenario, but we find that it is an industry standard method of providing the analysis the statute requires. We find that if DEU had solicited bids for a

⁵³ Direct Testimony of Holder at 10:181-183, filed August 16, 2018.

⁵⁴ *Id.* at 11:218-15:291.

⁵⁵ October 2, 2018 Hearing Transcript at 329:3-11.

resource that could provide essentially instantaneously⁵⁶ 150,000 Dth/day of gas for eight days⁵⁷ to DEU's distribution system,⁵⁸ i.e., the resource requirement specified in the Application, DEU would have a more complete record on which we could consider whether its selected supply reliability resource option is in the public interest. We do not accept DEU's assertion that an RFP would have been pointless when a seasoned market participant presents credible evidence of a supply assurance alternative it testifies to be less costly and comparable in functionality, and DEU has not responded to its proposal. Again, while we make no finding regarding the relative merits of Magnum's offering, its existence, and DEU's failure to consider it prior to reaching the LNG Facility decision, illuminate the flaw in DEU's decision not to issue an RFP specific to supply reliability. Such an RFP could be crafted to evaluate and balance both costs and the ability of the proposals to mitigate the identified supply reliability risk.

In sum, we find that because DEU did not follow the common industry practice of requesting proposals from the market to address the risk it seeks to mitigate through the LNG Facility, it has not adequately supported its conclusion that its chosen solution is in the public interest. Too many questions regarding the availability of lower cost options, that could mitigate supply reliability risk to varying degrees, remain unanswered for us to determine at this time that the LNG Facility is the lowest reasonable cost option.

⁵⁶ October 1, 2018 Hearing Transcript at 140:4-13.

⁵⁷ Direct Testimony of Faust at 12:308-309, filed April 30, 2018.

⁵⁸ Direct Testimony of Platt at 5:114-6:131, filed April 30, 2018; *see also* October 1, 2018 Hearing Transcript at 94:5-12.

ii. Long-term and short-term impacts

The DPU testifies that the proposed LNG Facility would put upward pressure on retail rates,⁵⁹ while noting a recent trend of DEU's increasing retail gas rates relative to the other states surrounding Utah.⁶⁰ The DPU states that “[a]dding significant long-term cost to customer rates for an LNG facility that will have limited use does not serve the public interest.”⁶¹

DEU counters that, as a local distribution company, the *non-commodity* costs should determine whether DEU is efficiently providing gas to its customers.⁶² DEU also suggests that, after the initial investment, the LNG Facility costs would be limited to operation and maintenance, serving to hedge against possible future storage pricing volatility.⁶³

The rates for natural gas service are primarily determined based on the level of costs prudently incurred in providing that service to customers. While the addition of the LNG Facility and its attendant rate base increase would have an upward effect on rates, this result alone is insufficient reason to withhold approval in this docket. As stated earlier, the issue before us is to determine whether the cost of mitigating the stated risk is reasonable and in the public interest. In light of our earlier finding that DEU's decision-making process was flawed, we cannot conclude the short- or long-term impacts, including the attendant rate impacts of adding the LNG Facility to the rate base, would be in the public interest.

⁵⁹ Direct Testimony of Wheelwright at 15:349-16:373, filed August 16, 2018.

⁶⁰ *Id.* at 14:315-333.

⁶¹ October 2, 2018 Hearing Transcript at 371:12-14.

⁶² Rebuttal Testimony of Mendenhall at 3:63-71, filed September 7, 2018.

⁶³ Direct Testimony of Platt at 12:319-323, filed April 30, 2018.

iii. Risk and reliability

Given DEU's stated objectives in proposing to construct the LNG Facility, we address the "risk" and "reliability" factors together. Clearly, potential well freeze offs and forces like natural disasters that disable pipelines and gas processing plants constitute risks to gas supply reliability. Moreover, no party disputes that the LNG Facility would have some beneficial effect in mitigating such risks and enhancing reliability. But the record also reveals that the conditions that bring the reliability risks DEU seeks to mitigate into reality are extremely rare, so rare they have never as yet been experienced on DEU's system.⁶⁴ We recognize that the rarity of the risk at issue must be balanced against the potentially devastating consequences of the type of supply disruption DEU is trying to prevent. Nevertheless, because we have an inadequate record on which to determine what, if any, cost-effective alternate options may exist to improve gas supply reliability by mitigating these risks, we cannot now determine the public interest in reducing those risks would be best served by construction of the LNG Facility. Generally, some level of risk will exist in any supply and delivery function.⁶⁵ Moreover, improvements to the reliability of that function will always be possible. A crucial question is: At what cost? We reiterate, we cannot now properly evaluate the reasonableness of the LNG Facility as a means of improving supply reliability, because we do not have adequate assurance other more cost-effective options are not available. In fact, the record contains representations from one market participant that it can satisfy the reliability assurance objective with a storage proposal that DEU did not consider prior to reaching its decision to construct the LNG Facility.

⁶⁴ Direct Testimony of Vastag at 10:213-219, filed August 16, 2018.

⁶⁵ See October 2, 2018 Hearing Transcript at 408:5-8.

iv. Financial impacts on the affected energy utility

The Application provides DEU's expectations of financial impacts resulting from the construction and operation of the LNG Facility. DEU expects the LNG Facility to increase the rate base⁶⁶ and add ongoing operating and maintenance costs. No party disputes DEU's showing that it has the financial capacity to construct the LNG Facility without destabilizing its ability to raise capital and carry out its gas utility duties.⁶⁷

v. Other factors determined by the PSC to be relevant

DEU has presented information in testimony that the LNG Facility would provide the opportunity to extend service to remote, currently unserved, locations at a lower cost than building pipeline facilities;⁶⁸ however, neither the costs of such service extensions, nor the cost of building alternative facilities to serve such areas, are part of the record. We conclude that the ability of the LNG Facility to serve remote, currently unserved locations could qualify as a relevant factor under our required analysis, but we find that the record in this proceeding is insufficient to consider that factor.

4. ORDER

Consistent with the foregoing, we deny DEU's voluntary request for pre-construction approval of its resource decision to construct the LNG Facility.

⁶⁶ Direct Testimony of Mendenhall at 6:133-135, filed April 30, 2018.

⁶⁷ *Id.* at 10:228-232.

⁶⁸ Direct Testimony of Faust at 21:543-544, filed April 30, 2018.

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DATED at Salt Lake City, Utah, October 22, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#305129

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

CERTIFICATE OF SERVICE

I CERTIFY that on October 22, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

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