

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Application of Dominion Energy Utah to Increase Distribution Rates and Charges and Make Tariff Modifications	<u>DOCKET NO. 19-057-02</u> <u>ORDER APPROVING SETTLEMENT STIPULATION</u>
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ISSUED: August 2, 2021

INTRODUCTION

On January 13, 2021, the Public Service Commission (PSC) issued a Request for Comments regarding the prudence review of investments related to Dominion Energy Utah's (DEU) Infrastructure Tracker Program ("ITP"). Specifically, the PSC sought to clarify the intent and timing of the prudence review of DEU's ITP-related investment. The PSC asked interested persons to file comments on March 15, 2021 and reply comments on April 12, 2021.

BACKGROUND

On March 15, 2021, the Division of Public Utilities (DPU), the Office of Consumer Services (OCS) and DEU filed comments, and on April 12, 2021, DEU and OCS filed reply comments.

**Comments**

DPU supports the current schedule of ITP filings and indicates that the ITP's scope is consistent with the scope that was approved in DEU's general rate case in Docket No. 13-057-05.<sup>1</sup> DEU states that the approved regulatory process implicitly includes prudence reviews,<sup>2</sup> and explains that while the ITP has evolved with additional project criteria, the procedural regulatory

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<sup>1</sup> DPU Comments, at 3-8.

<sup>2</sup> DEU Comments, at 2 (stating that the PSC initially approved the ITP in Docket No. 09-057-16 as part of the Settlement Stipulation that was filed in the docket).

framework approved in Docket No. 09-057-16 remains largely the same.<sup>3</sup> DEU also states that the current schedule provides ample opportunity for prudence review of ITP costs.<sup>4</sup> OCS states that it is unclear about the details of the prudence review and its timing.<sup>5</sup> OCS also states that the current process implies a prudence review will be conducted on all ITP investments before they are included in base rates,<sup>6</sup> and claims this does not appear to be the case.<sup>7</sup> OCS recommends the PSC (1) provide guidance on the proper timing and filings related to DPU's prudence review of ITP projects; (2) require DPU to provide more transparency reporting of its prudence reviews; and (3) require DEU to update its ITP tariff ("ITP Tariff") to incorporate a better description and timeline of its ITP filings.<sup>8</sup>

### **Reply Comments**

DEU states that current Section 2.07 of its Tariff sufficiently describes the ITP filings and timelines,<sup>9</sup> and agrees that an update to the ITP Tariff provide for annual updates of all projects and schedules in June rather than April.<sup>10</sup> OCS suggests that the prudence review process could be more transparent, and the PSC could provide specific direction to ensure stakeholders better understand the type of review that takes place at different points of the review process.<sup>11</sup> OCS

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, at 4.

<sup>5</sup> OCS Comments, at 2.

<sup>6</sup> *Id.*

<sup>7</sup> OCS Comments, at 2-3 (providing that in DPU's most recent Action Request response filed Dec. 8, 2020 related to DEU's ITP 2021 Annual Plan and Budget, DPU states that its recommendations are not an endorsement that the costs are prudently incurred or should be recovered).

<sup>8</sup> *Id.*, at 7.

<sup>9</sup> DEU Reply Comments, at 2.

<sup>10</sup> *Id.*

<sup>11</sup> OCS Reply Comments, at 2.

also asserts it would be helpful for DPU to provide an initial position on the prudence and reasonableness determination at the time of cost recovery through the ITP surcharge.<sup>12</sup>

On June 16, 2021, DEU filed a settlement stipulation among DPU, OCS, and DEU, dated June 15, 2021 (“Settlement”). The Settlement requires DEU to include a detailed description and timeline of anticipated filings, as illustrated in the attached Exhibit A.<sup>13</sup> The Settlement also requires DPU to act on each filed pleading, provides that interested parties may comment on such pleading, and indicates that DEU will request relief as provided in the attached Exhibit A.<sup>14</sup>

#### DISCUSSIONS, FINDINGS, AND CONCLUSIONS

The PSC initially approved the ITP as a pilot program for costs related to distribution infrastructure and an annual budget of \$55 million, as part of a settlement stipulation related to DEU’s 2009 general rate case in 2010.<sup>15</sup> At the time, DEU estimated it had approximately 10-plus years of specific infrastructure to be replaced.<sup>16</sup> The ITP has since evolved, expanding in scope and budget. For instance, as part of DEU’s general rate case in Docket No. 13-057-05 (“2013 GRC”), the PSC approved a settlement stipulation in which parties agreed to expand the ITP<sup>17</sup> to include both high pressure feeder lines and intermediate high pressure belt lines, an increased annual spending cap of \$65 million, and the ability to reset the annual spending cap in

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<sup>12</sup> *Id.*, at 3.

<sup>13</sup> Settlement Stipulation, at ¶ 7.

<sup>14</sup> *Id.*, at ¶ 8.

<sup>15</sup> See *In the Matter of the Application of Questar Gas Company to Increase Distribution Non-Gas Rates and Charges and Make Tariff Modifications*, Docket No. 09-057-16, Report and Order, issued June 3, 2010, at 12.

<sup>16</sup> *Id.*, at 5 (in the Positions of the Parties section, stating “[t]he Company estimates it has ten-plus years of specific infrastructure to be replaced...”).

<sup>17</sup> The parties also agreed that the ITP would no longer be a pilot program.

each general rate case.<sup>18</sup> As noted by DPU, in the stipulation approved in the 2013 GRC, parties also agreed to a long list of required parameters related to ITP filings.<sup>19</sup>

As part of DEU's 2019 general rate case in Docket No. 19-057-02, the PSC approved the continuation of the ITP and reset the annual spending cap to \$72.2 million, indexed for inflation using the GDP Deflator.<sup>20</sup> We generally describe the ITP's evolution in recognition that it has grown in scope, budget, and complexity. We find its evolution merits an examination of the current process to determine if we can improve it. We find that the Settlement in this case provides a prudence review process for the ITP that is better defined and more transparent than the current process. It also clarifies expectations with respect to actions to be taken before approval of final ITP rates.

As set forth in Utah Code Ann. § 54-7-1, settlements are encouraged. The PSC may approve a settlement proposal if it finds the proposal is in the public interest. Utah Code Ann. § 54-7-1(2)(a). The PSC may adopt a settlement stipulation if the PSC finds, based on the evidence, that the proposal is just and reasonable in result. Utah Code Ann. § 54-7-1(3)(d)(i)(A)-(B).

The PSC finds that the Settlement, including the attached Exhibit A, outlines a refined, detailed, and transparent prudence review process that will ensure that DPU and interested parties have ample opportunity to evaluate DEU's ITP expenditures. Therefore, for the reasons

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<sup>18</sup> See *In the Matter of the Application of Questar Gas Company to Increase Distribution Rates and Charges and Make Tariff Modifications*, Docket No. 13-057-05, Report and Order, issued February 21, 2014, at i.

<sup>19</sup> *Id.*, Appendix A (Partial Settlement Stipulation), at ¶¶ 17-25.

<sup>20</sup> See *Application of Dominion Energy Utah to Increase Distribution Rates and Charges and Make Tariff Modifications*, Docket No. 19-057-02, Report and Order, issued February 25, 2020, at i.

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set forth in this Order and based on our review of the record, the Settlement, the parties' support of the Settlement, and given the lack of opposition, the PSC finds the Settlement is just, reasonable, and in the public interest.

ORDER

The Settlement Stipulation filed June 16, 2021, is approved.

DATED at Salt Lake City, Utah, August 2, 2021.

/s/ Yvonne R. Hogle  
Presiding Officer

Approved and Confirmed August 2, 2021 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#319769

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Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 30 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on August 2, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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**EXHIBIT A**

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

IN THE MATTER OF THE APPLICATION OF DOMINION ENERGY UTAH TO INCREASE DISTRIBUTION RATES AND CHARGES AND MAKE TARIFF MODIFICATIONS	Docket No. 19-057-02  <b>SETTLEMENT STIPULATION REGARDING PRUDENCY REVIEW FOR THE INFRASTRUCTURE TRACKER PROGRAM</b>
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Pursuant to Utah Code Ann. § 54-7-1, Dominion Energy Utah (Dominion Energy or Company), the Utah Division of Public Utilities (Division), and the Utah Office of Consumer Services (Office) (collectively the Parties) submit this Settlement Stipulation in resolution of the issues raised in response to the Utah Public Service Commission's (Commission) January 13, 2021 Request for Comments in this docket.

## PROCEDURAL HISTORY

1. On February 25, 2020, the Utah Public Service Commission (Commission) issued a Report and Order in the above-referenced docket. In that Order the Commission noted that “OCS requests we clarify the intent and timing of the prudence review of ITP-related investments and monitor the size and scope of the ITP going forward. We find this request reasonable since the only guidance related to this subject was included in the Stipulation we approved in our June 3, 2010 order in Docket No. 09-057-16. Accordingly, we will soon invite comments in this docket to help refine ITP prudence review and procedures.” Report and Order issued February 25, 2020 at p. 14, Docket No. 19-057-02.

2. On January 13, 2021, the Commission issued a Request for Comments in this docket, seeking “comments regarding the prudence review of investments related to Dominion Energy Utah’s Infrastructure Tracker Program.” Request for Comments issued January 13, 2021, Docket No. 19-057-02.

3. On March 15, 2021, the Office, Division and Company each submitted comments. On April 12, 2021 the Office and the Company submitted reply comments. No other parties submitted comments or took a position in this Docket.

4. In its March 15, 2021 memorandum, the Office recommended that Dominion Energy update its Utah Natural Gas Tariff No. 500 (Tariff) to include a more detailed description and timeline of all Infrastructure-Rate-Adjustment-Tracker-related filings either in its Tariff or as an exhibit in its annual infrastructure replacement budget filings. The Office also requested that the Commission provide guidance as to the proper timing and filings for the Division to review the prudence of such expenditures.

5. Since that time, the Parties have engaged in settlement discussions. The Parties have reached a settlement agreement, as set forth below.

### **TERMS AND CONDITIONS**

6. In settlement of the matters arising as a result of the Commission's Request for Comments issued on January 13, 2021, the Parties submit this Settlement Stipulation for the Commission's approval and adoption.

7. The Parties agree for purposes of settlement that when Dominion Energy files its annual budget for the Infrastructure Rate Adjustment Tracker replacement work, it will include a detailed description and timeline of anticipated filings. The form of that description and timeline is attached hereto in a spreadsheet as Settlement Stipulation Exhibit A. Column B of the spreadsheet will be populated with the anticipated filing date of each referenced document.

8. The Parties agree for purposes of settlement that the Division will act on each pleading, interested parties may comment, and the Company will request that the Commission provide relief, as set forth more fully in Columns C, D and E of Settlement Stipulation Exhibit A, respectively.

### **GENERAL**

9. The Parties agree that settlement, taken as a whole, is just and reasonable in result and in the public interest.

10. The Parties have reached a full and final resolution of those issues identified in the Commission's January 13, 2021 Request for Comments issued in this docket.

11. The Parties agree that no part of this Settlement Stipulation, or the formulae or methods used in developing the same, or a Commission order approving the same, shall in any

manner be argued or considered as precedential in any future case. This Settlement Stipulation does not resolve, does not provide any inferences regarding, and the Parties are free to take any position with respect to, any issues not specifically identified and settled herein. All negotiations related to this Settlement Stipulation are confidential and subject to the applicable rules of evidence, including Utah R. Evid. 408, and no Party shall be bound by any position asserted in negotiations not specifically identified and settled herein. Neither the execution of this Settlement Stipulation nor an order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle or practice of ratemaking, nor shall they be construed to constitute the basis of an estoppel or waiver by any Party, nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Settlement Stipulation.

12. Dominion Energy will, and the Division and the Office may, each make one or more witnesses available to explain and support this Settlement Stipulation to the Commission. Such witnesses will be available for examination. The Parties shall support the Commission's approval of the Settlement Stipulation. As applied to the Division and the Office, the explanation and support shall be consistent with their statutory authority and responsibility. So that the record in this docket is complete, the Parties agree to recommend that comments and reply comments submitted in response to the Commission's January 13, 2021 Requests for Comments issued in this docket be admitted as evidence.

13. The Parties agree that, if any person challenges the approval of this Settlement Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Settlement Stipulation, each Party will use its best efforts to support the terms and conditions of the Settlement Stipulation. As applied to the Division and the Office, the phrase "use its best

efforts” means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Settlement Stipulation, no Party shall take a position in that judicial review opposed to the Settlement Stipulation.

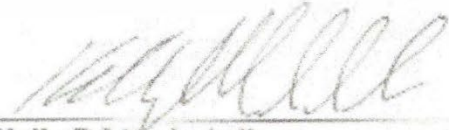
14. Except with regard to the obligations of the Parties under Paragraphs 11, 12 and 13 of this Settlement Stipulation, this Settlement Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission. This Settlement Stipulation is an integrated whole, and either Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission’s approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Settlement Stipulation or imposes any material change or condition on approval of this Settlement Stipulation, or if the Commission’s approval of this Settlement Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Settlement Stipulation consistent with the order. No Party shall withdraw from the Settlement Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Settlement Stipulation, the remaining Parties retain the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses and no Party shall be bound or prejudiced by the terms and conditions of the Settlement Stipulation.

15. This Settlement Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

RELIEF REQUESTED

Based on the foregoing, the Parties request that the Commission issue an order approving this Settlement Stipulation and adopting its terms and conditions.

RESPECTFULLY SUBMITTED: June 15, 2021.



Kelly B Mendenhall  
Dominion Energy Utah  
*Director Regulatory and Pricing*



Chris Parker  
Division of Public Utilities  
*Director*



Michele Beck  
Office of Consumer Services  
*Director*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Settlement Stipulation Regarding Prudency Review for the Infrastructure Rate Adjustment Tracker was served upon the following persons by e-mail on June 16, 2021:

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/s/ Ginger Johnson

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	<b>Due Date</b>	<b>Division Action</b>	<b>Opportunity for Interested Party Comments</b>	<b>Action Requested of</b>
Annual Infrastructure Plan and Budget	November 15 of each year.	Division Review and Action Request Response	Parties can file comments consistent with PSC notice	Acknowledge Plan and
Tracker Variance	June 30 of each year.	Division Review		
Technical Conference	June of each year.	No Action	Parties can attend public portion of Technical Conference and confidential portion subject to meeting confidentiality requirements	Schedules Technical
Master List Update	June 30 of each year.	Division Review		
Tracker Variance	September 30 of each year.	Division Review		
Rate Adjustment Filing 1	At least once annually.	Division Review and Filed Comments	Parties can raise concerns regarding the prudence review of the plan. Parties can request additional process if short turnaround for interim rates is insufficient for issues to be addressed.	Approve interim rate prudence review of the plan (which lines to replace when); prudence of the plan carried out the plan; accuracy of costs, prudence carrying out construction yet final.
Tracker Variance	December 31 of each year.	Division Review		
Rate Adjustment Filing 2	At Dominion Energy's Option.	Division Review and Filed Comments	Parties can raise concerns regarding the prudence review of the plan. Parties can request additional process if short turnaround for interim rates is insufficient for issues to be addressed.	Approve interim rate
Tracker Variance	March 31 of each year.	Division Review		
Accounting Audit	Before filing of General Rate Case	Division Report to Commission. Division completes audit, determines final prudence of plan but reserves the right for	Parties can file comments on the DPU Audit and final prudence of plan but have the right to comment in the future	Commission to establish comment period and any additional process determines final prudence

	Due Date	Division Action	Opportunity for Interested Party Comments	Action Requested of
		out of cycle period adjustments or changes until next general rate case.	on out of cycle period adjustments or changes until next general rate case.	plan based on parties' recommendations.
Rate Case	No less than once every three years.	Division raises any final issues before resources are in base rates	Parties can challenge prudence of how the Company carried out the plan (i.e. accuracy of costs, prudence in carrying out construction).	Final approval of prudence of accuracy of costs (i.e. accuracy of costs, prudence in carrying out construction).

Notes:

include an updated version of this schedule in its Annual Plan and Budget through the remaining life of the ITP  
include in its procedural background of the rate adjustment filings, a listing of the dockets which have addressed the  
included in the updated rates