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. 22-057-03

REBUTTAL TESTIMONY OF

KELLY B MENDENHALL FOR

DOMINION ENERGY UTAH

September 21, 2022

DEU Exhibit 1.0R

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Kelly B Mendenhall. My business address is 333 South State Street, Salt Lake City, Utah.

Q. Have you previously filed testimony in this proceeding?

A. Yes, I filed direct testimony on behalf of Questar Gas Company dba Dominion Energy Utah (DEU, Dominion Energy or Company) in this proceeding on May 2, 2022.

Q. What is the purpose of your testimony?

A. Specifically, I address Office of Consumer Service (OCS) witness Ware's recommendation to disallow the restrictive covenant costs associated with the thermal exclusion zone of the Company's Liquified Natural Gas (LNG) facility. I also address Division of Public Utilities (DPU) Witness Coleman's assertion that Dominion Energy's settled Return on Equity in Wyoming is relevant in this case. I respond to OCS witness Lawton's recommendation to reduce the equity component of the Company's capital structure. Finally, I address Mr. Higgins proposal to eliminate the inflation adjustment on the infrastructure rate adjustment tracker.

II. LNG THERMAL EXCLUSION ZONE

Q. What is Mr. Ware's recommendation related to cost recovery for costs associated with the restrictive covenant related to the thermal exclusion zone of the Company's LNG Facility?

A. Mr. Ware recommends that the unexpected costs associated with procuring restrictive covenants around the LNG Facility should be disallowed based on four contentions: 1) DEU's original understanding of the exclusion zone requirement was not reasonable; 2) clarity on the issue was easily available and should have been known; 3) DEU disallowed certain third-party costs when such overruns were misestimated by its contractor; and 4) the OCS attempted to raise location and land use concerns with DEU during the first LNG preapproval docket, Docket No. 18-057-03. I disagree with these contentions and address each of them in more detail.

Q. Please explain why you disagree with Mr. Ware's assertion that DEU's original understanding of the exclusion zone requirement was unreasonable and that clarity on the issue was easily available and should have been known?

A. The issue is not as clear as Mr. Ware would like the Commission to believe. In 2017, the Company's retained consultant performed a thermal radiation calculations report. The parameters for that report were based on the National Fire Protection Association (NFPA) Code 59A Section 2.2.3.2 which provides much more detailed guidance on thermal exclusion zones than the Code of Federal Regulation (CFR) 193.007 definition section relied upon by Mr. Ware. The NFPA code 59A Section 2.2.3.2 states:

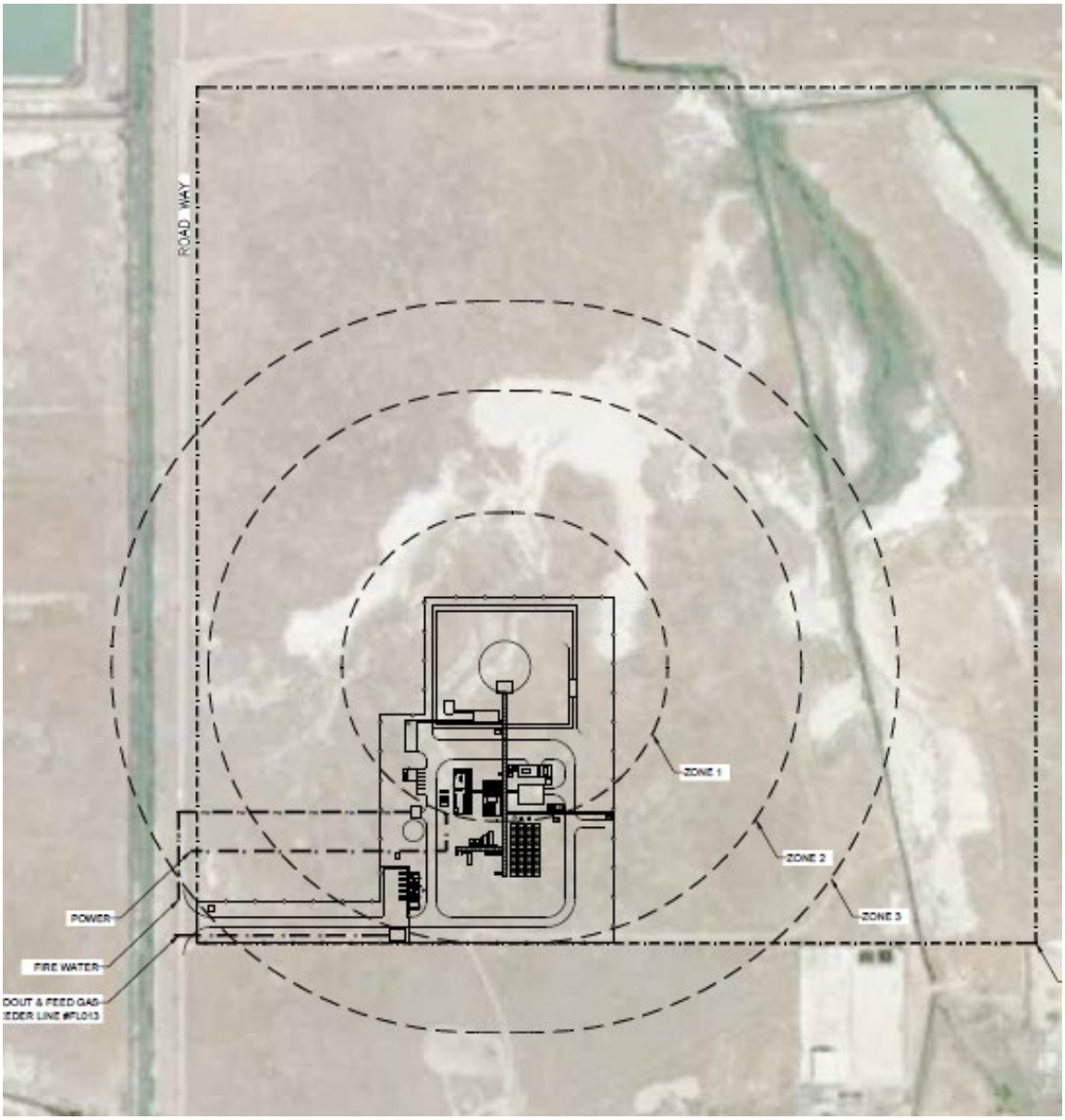
NFPA 59 A Section 2.2.3.2
a) Provisions shall be made to prevent thermal radiation flux from a fire from exceeding the following limits when atmospheric conditions are 0 (zero) windspeed, 70°F (21°C) temperature, and 50 percent relative humidity.

1) 1,600 Btu/hr/ft2 (5,000 W/m2) at a property line that can be built upon for ignition of a design spill (as specified in 2.2.3.5).
2) 1,600 Btu/hr/ft2 (5,000 W/m2) at the nearest point located outside the owner's property line that, ***at the time of plant siting***, is used for outdoor assembly by groups of 50 or more persons for a fire over an impounding area containing a volume, V, of LNG determined in accordance with 2.2.2.1
3) 3,000 Btu/hr/ft2 (9,000 W/m2) at the nearest point of the building or structure outside the owner's property line that is in existence ***at the time of plant siting*** and used for occupancies classified by NFPA 101®, Life Safety Code®, as assembly, educational, health care, detention and correction or residential for a fire over an impounding area containing a volume, V, of LNG determined in accordance with 2.2.2.1
4) 10,000 Btu/hr/ft2 (30,000 W/m2) at a property line that can be built upon for a fire over an impounding area containing a volume, V, of LNG determined in accordance with 2.2.2.1 (emphasis added)

As the italicized language shows, the NFPA states that thermal exclusion zones within the property boundary, or extending beyond the property, should be assessed based on known conditions at the *time of the siting*. It was clear, at the time of siting, that there was no indication of potential for assembly by groups of 50 or more, nor was there risk of prohibited occupancy of that area. In fact, to the north of the LNG facility there is a landfill that takes asbestos waste, on the East is the Salt Lake County landfill, on the West a Kennecott tailings pond, and on the southeast the Magna Sewer Treatment Plant. The

adjacent land is private property. The image below shows the LNG facility location and the adjacent properties.

The surrounding property was deemed to be extremely unlikely to be used for gatherings or occupied facilities. At the time of siting, nothing indicated that additional property right purchases would be necessary. The thermal exclusion zone is represented in the image below by rings. Though the third ring (Zone 3) of the exclusion zone extended beyond the LNG property boundaries (as shown below), the Company was advised that it did not need to purchase additional property rights because the regulations and circumstances did not appear to require it. The Company made this decision based on the specific advice of the Company's retained consultant on the issue. Based on what the Company knew, and reasonably could have known at the time it made the decision, including the advice it received from a retained professional on the issue, it acted reasonably.



Q. In your direct testimony you noted[1] that, in the fourth quarter of 2020, after detailed design reviews, the Company learned that it would be required to control the entire exclusion zone for the life of the plant and that it would need to procure additional

[1] DEU Confidential Exhibit 1.0, lines 349-362.

property rights to do so. How did the Company learn that it would need to procure additional property?

A. During the detailed design review, the Company learned that the Pipeline and Hazardous Materials Safety Administration (PHMSA) had recognized that the regulations may not be clear, and had issued LNG frequently asked questions response specifically addressing the issue. The FAQ (phmsa-faqs-2014-2017.pdf (dot.gov) provides:

> H5. Can an exclusion zone extend beyond the operator's LNG plant property line?
>
> Answer: As long as the facility is in operation, the operator is responsible for assuring compliance with the limitations on land use within exclusion zones, according to the descriptions in NFPA 59A Sections 2.2.3.2, 2.2.3.3, and 2.2.3.4. For example, an exclusion zone that extends past a property line into a navigable body of water or onto a public road is typically acceptable. This may not hold true if that body of water contains a dock or pier that is not controlled by the operator of the LNG plant, or if another entity could erect a building or members of the public could assemble within the exclusion zone. It is possible to assure compliance by legal agreement with a property owner affected by the exclusion zone, such that the land use is restricted for the life of the LNG plant.

Though the Company's consultant had correctly referenced the NFPA standard in the initial analysis, the PHMSA's FAQ clarified the expectation from PHSMA that all thermal exclusion zones must be controlled for the life of the facility. When the Company obtained this information, it again reasonably acted to comply with this rule by obtaining a restrictive covenant from the adjacent landowners.

Q. At line 115 of his testimony, Mr. Ware suggests that it "defies logic" that the Company would interpret these regulations in this fashion. Do you agree?

A. I do not. The NFPA regulation cited above expressly state that the Company should ensure that the zones are not available for use by large groups of people or for certain types of occupancy "at the time of siting." This plain language indicated that the Company was not required to address these concerns for the life of the project. This language arguably conflicts with the regulations Mr. Ware cites, and PHMSA evidently recognized the same thing when it issued a FAQ to clarify. It was that FAQ that caused the Company to reconsider the need for purchasing property rights. The Company's reliance on the NFPA regulation and the advice of its consultant during the initial siting analysis was not

unreasonable. Its decision to revise its approach upon learning of the PHMSA FAQ was also a reasonable action. In both cases, the Company was acting to comply with legal requirements.

Q. If the Company had been aware of the requirement during its LNG pre-approval docket, would it have changed the Company's approach to the project?

A. No, the Company's approach would not have been materially different. The Company would have sought the Utah Public Service Commission's (Commission) pre-approval for increased costs to include the costs of the thermal exclusion zone. In its Order in Docket No. 19-57-13, the Commission found that DEU's concerns related to supply reliability favored approval of the proposed LNG facility. Further, as I indicated in my pre-filed direct testimony, even with the inclusion of these additional costs, the proposed LNG facility would have been and still is the most economic and best option. In addition, for the reasons discussed below, even with the restrictive covenant, the Company would have still selected the Magna property because that property is best suited for the project. Given these facts, there is no obvious reason why the Commission would not have approved the project and its associated costs, even with the need for a restrictive covenant.

Q. Do you believe these facts adequately address Mr. Ware's argument that the Company was unreasonable and that the rule was clear?

A. Yes. The original analysis was based on the NFPA code, and the Company's reliance on that code was reasonable. As discussed above, that code only specified that areas of Zone 3 extending beyond the property line were compliant with code requirements at the time of siting. The fact that this question was addressed in the PHMSA frequently asked LNG Q&A's later demonstrates that there were inconsistencies in the regulations and shows that there were other parties that had also sought clarification of the rule. In both instances, the Company relied on the available regulations and direction, as well as the expertise of its retained consultant. It is not reasonable under those circumstances to prevent the Company from recovering the additional costs it incurred when it learned that compliance would require a restrictive covenant from the adjacent landowner.

Q. Mr. Ware also argues that, because DEU disallowed some contractor costs, the Commission should also disallow the thermal exclusion zone costs. Is this a relevant comparison?

A. No. The contractor dispute Mr. Ware references arose out of *the contractor's* performance of work for DEU under the terms of a contract. In other words, DEU's contractor sought additional payment under the contract. That contract had specific provisions regarding the parties' obligations and rights and clarified how disagreements between the parties would be handled. DEU and its contractor followed the contractual guidance for resolving the dispute and eventually agreed to resolve their differences.

By contrast, here the Company seeks cost recovery for payments made to third parties, not its contractor, for additional property rights it had to obtain for the LNG project. There are no contractual rights at issue. Rather, the Company is seeking cost recovery from the Commission under applicable rules and statutes of the state of Utah for costs the Company was required to incur to comply with the law.

Q. Is Mr. Ware correct in his assertion that, because the thermal exclusion zone costs were not included in the preapproval docket, they should be disallowed by the Commission?

A. No. Any suggestion that a cost should be disallowed because it was not included in the preapproval docket is contrary to the Utah Public Utility Code. Indeed, Utah Code Ann. § 54-17-403 sets forth a process for seeking cost recovery for unanticipated increases in costs associated with an approved resource decision like this one. The statute expressly contemplates circumstances when unanticipated costs may arise and authorizes that a utility like DEU may recover those costs if approved by the Commission. The Company is properly requesting to do so in this docket. The Company has provided evidence that the restrictive covenant is a PHMSA requirement that was clarified only after the pre-approval docket and thus necessary to comply with legal requirements associated with the operation of the facility. No party in this case argues otherwise. The Company has plainly incurred these costs in complying with regulatory requirements, regardless of the timing of the Company getting clarity on the legal requirements for the thermal exclusion zone. As explained above, knowing of this requirement at some earlier date would not have changed

the determination of need for the LNG facility. Nor would it have changed the fact that the LNG facility is the lowest cost option to address that need. Stated simply, the thermal exclusion zone property costs were appropriately and prudently incurred for the construction of the LNG facility, and the Commission should approve recovery of those costs.

Q. Does any other witness raise issues relevant to Mr. Ware's argument that the thermal exclusion zone should be disallowed because it wasn't included in the preapproval docket?

A. Yes. Mr. Orton testified that the budgeted LNG O&M expense is about $669,934 lower than what had originally been approved by the Commission. This proposed adjustment reduces the revenue requirement by $672,319. This reduction more than offsets the increase in revenue requirement of the thermal exclusion zone costs of $508,203. So while the thermal exclusion zone costs were not approved to be included in Docket No. 19-057-13, the netting of these two items results in a negligible change in cost to customers.

Q. Mr. Ware also argues that the Company would likely have learned of the thermal exclusion zone requirements if it had been more attentive to the OCS's concerns about the potential for "NIMBYism" in prior dockets.[2] How do you respond?

A. This argument lacks merit. In 2016 the Company began to identify properties that would be suitable for an LNG site. The site needed to be located in the central part of the population center along the Wasatch front, it needed to be close enough to a high-pressure pipeline that the gas could easily flow to the distribution system, and it needed to be large enough to handle the safety requirements. Using these criteria, there were four sites selected for further evaluation. A site near legacy highway, the Lark site in the southwest part of the valley, a site in Lehi, and the Magna site. The legacy site ultimately was too small. The Company rejected the Lehi site specifically because it was near a residential area and that NIMBY concerns might arise. The Lark site had an unwilling seller, making it a less favorable site. The Magna site met the criteria but had a wetland across a portion

[2] Witness OCS – 1D Ware, lines 165-186.

of the property that would require the LNG tank to be constructed on the southwest portion of the site. While the Magna site was not a perfect site, of the four options, it was the only feasible site. The Company's site selection process was sound.

Moreover, as I mentioned previously, the site is bounded by two landfills, a tailings pond, and a sewer treatment plant and the property seller was a willing seller. The adjacent property owners were also willing to sell property rights to the Company. There was not any suggestion that there were any "NIMBY" concerns from adjacent property owners, nor are there any facts that would support a suggestion that further inquiry with adjacent property owners would have revealed the contents of the PHMSA FAQ referenced above.

Q. Should the Commission allow recovery of the thermal exclusion zone costs?

A. Yes. The restrictive covenant is necessary to comply with PHMSA guidelines and so it is a prudent cost. Had the Company known about the requirement before the construction of the facility, it would have included that cost in its original estimate, and the outcome most likely would have been the same because the Magna property was then and still is the best available property for the Company to construct the LNG facility, particularly given that it is the property where a restrictive covenant could be obtained and satisfy the PHMSA requirements. I recommend that the Commission approve these costs.

III. RETURN ON EQUITY

Q. What issue are you addressing in the return on equity testimony?

A. I address Mr. Coleman's testimony that, because Dominion Energy Wyoming settled for a 9.35% Return on Equity in its 2019 Wyoming general rate case, a lower return than that proposed by Ms. Nelson would adequately compensate investors.[3]

[3] Exhibit No. DPU 2.0 DIR, lines 1104-1106.

Q. Do you agree with Mr. Coleman's assertion that the Company's settled ROE in its 2019 Wyoming general rate case should have bearing on the ROE in this case?

A. No. Mr. Coleman's assertion is inappropriate and inaccurate. As with any settlement, the Wyoming settlement involved a variety of gives and takes that were resolved as a package. Mr. Coleman's attempt to try to pick out one item from that settlement and infer that it has meaning in a different jurisdiction at a different time is improper. Indeed, the Settlement Stipulation to which Mr. Coleman refers expressly provides:

> Neither the execution of this Settlement Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgement by any Stipulating Party of the validity or invalidity of any principle or practice of ratemaking and no Party will be deemed to have agreed that any principle, method or theory of regulation employed in arriving at this Stipulation is appropriate for resolving any issue in any other proceeding. . . .[4]

The Settlement Stipulation, by its very express terms, makes clear that it *does not* constitute an admission contrary to Ms. Nelson's testimony, and that it *may not* be used to resolve any issue in any other proceeding (including this one). Mr. Coleman's attempt to utilize it in a way contrary to its express terms is inappropriate and should be disregarded.

Q. Do you have any additional concerns with Mr. Coleman's assertion?

Yes. The events that were occurring at the time the Company entered into the subject settlement in 2020 were unprecedented. Even if Mr. Coleman could rely on this settlement stipulation as evidence of some admission, which he cannot, the circumstances surrounding the settlement do not exist today.

Q. Can you summarize those circumstances?

A. Yes. The stipulation was signed on May 15, 2020, three months after the Commission order in the Utah General rate case. As everyone is aware, it was an eventful time between the Utah Order on February 25, 2020, and the Wyoming general rate case stipulation in May 2020. On February 29, 2020, the first COVID related death was reported in the United

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[4] Settlement Stipulation, Paragraph 15, Docket No. 30010-187-GR-19 (Record No. 15383); *Approved in* Memorandum Opinion, Findings of Fact, Decision and Order issued August 21, 2020, Docket No. 30010-187-GR-19 (Record No. 15383).

States. In March 2020 the Federal reserve cut the fed funds rate twice by 1.5 percentage points to 0%. It also announced a quantitative easing program where it would buy $700 billion in securities. On March 27, 2020, counties in Utah began issuing stay at home orders, and the country subsequently went into a near complete lockdown. The stipulation was signed during that lockdown. Those circumstances are much different than those that exist now, or that have existed at other times in the Company's history. Decisions made during that anomalous time simply do not inform today's circumstances.

IV. CAPITAL STRUCTURE

Q. In his testimony, Mr. Lawton proposes to reduce the Company's capital structure from the proposed 53.21% to 51%. Does the Commission have a history of using a hypothetical capital structure in Dominion Energy Utah general rate cases?

A. No. In each rate case docket between 1993 to 2002, the Commission approved a capital structure that was either the Company's actual capital structure, or its anticipated capital structure. In Docket No. 93-057-01, the Commission determined: "We find it is proper to use Mountain Fuel's actual capital structure to derive overall return on rate base".[5] In Docket No. 99-057-01, the Commission similarly stated, "Using the actual capital structure reported by the Company consisting of 44.96 percent debt and 55.04 percent common equity, with a cost of debt of 8.38% and a Commission-determined cost of equity of 11.0 percent, we conclude that a rate of return on investment of 9.82 percent is fair and reasonable."[6] In Docket No. 02-057-02, the Commission also adopted the Company's recommended capital structure, which was based on the Company's actual capital structure. The Commission did not approve a hypothetical capital structure like that proposed by Mr. Lawton. In the Company's most recent general rate case (Docket 19-057-02), the Commission determined that a 55% equity level was appropriate, as that was the maximum allowable capital structure per the terms of the Dominion/Questar merger in Docket No. 16-057-01.

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[5] Report and Order, Docket 93-057-01 January 10, 1994, page 23.
[6] Report and Order, Docket 99-057-01, August 11, 2000, page 3.

Q. Is there anything else the Commission should consider with respect to the Company's capital structure?

A. Yes. The Company recently issued $250 million in debt. These issuances were included in the rate case, but the actual cost of these issuances was higher than what was originally anticipated and included in the rate case.

Q. How did the filed projected debt cost differ from the actual $250 million issuance?

A. The Company issued two series of notes in August 2022, each totaling $125M and with separate interest rates of 4.39% and 4.70%, respectively. This ultimately equates to $250M of new debt issued at a cost of 4.545%. At the time of filing this case, the Company had assumed a $250 million issuance at a cost of 4.25%.

Q. Have you calculated the impact on the revenue requirement with the updated debt costs?

A. Yes. Including the updated debt costs in the revenue requirement calculation results in an increase of $721,865.

Q. Are you proposing to update the debt cost in rebuttal testimony?

A. No. Nonetheless, it is important to note these changes because these higher debt costs will create a headwind that the Company will need to overcome to meets its allowed return. An additional adjustment in the capital structure, as proposed by Mr. Lawton, would only exacerbate this problem. As such, this provides another reason why the Company's proposed capital structure is the more reasonable and appropriate structure.

Q. What would be the impact on revenue requirement if Mr. Lawton's proposal were approved?

A. Using the originally filed model, Mr. Lawton's proposal would reduce the revenue requirement by an additional $6.3 million.

Q. Couldn't the Company just reduce its capital structure to 51%?

A. Since its last general rate case in 2019, the Company has been working to reduce the equity portion of its capital structure. In that case, the actual capital structure was 60.04%. In the last three years the Company has been able to reduce that level to 53.21%. The Company must balance its capital requirements, debt and equity issuances and dividend payments to

ensure that its credit metrics stay within a reasonable range. A degradation of these metrics could impact the Company's ability to affordably access capital in the future. The Company believes that its proposed 53.21% equity percentage is the level where capital requirements can be appropriately balanced without harming credit metrics.

V. INFRASTRUCTURE RATE ADJUSTMENT TRACKER PROGRAM

Q. What changes does Mr. Higgins propose to the infrastructure Rate Adjustment Tracker program (Tracker)?

A. Mr. Higgins proposes that annual expenditures be capped at no more than $77.4 million without future adjustments for inflation.[7]

Q. Has Mr. Higgins made similar proposals in prior proceedings?

A. Yes. in Docket 19-057-02 he made a near identical proposal.[8]

Q. And how did the Company respond to this proposal?

A. As I testified in my rebuttal testimony in that case, Mr. Higgin's argument would actually increase, not decrease costs over time. For each year that replacements are deferred for lack of adequate budget, inflation will increase the ultimate cost of those projects for customers.[9]

I also indicated that, although the Company can replace additional pipe outside of the Tracker, those projects do not generate any incremental revenue and recovery is not included in rates until a general rate case. Replacing pipe outside of the Tracker will increase the frequency of rate cases – one of the challenges the Tracker was designed to address to begin with. [10] These statements are as true today as they were in 2019.

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[7] UAE Exhibit RR 1.0, lines 510-513.
[8] UAE Exhibit 1.0, lines 472-484.
[9] Rebuttal Testimony of Kelly B Mendenhall, Docket No. 19-057-02, Pages 6-7, Lines 139-164.
[10] *Id.*

Q. What did the Commission order in that case?

A. In its order dated February 25, 2020[11], the Commission stated:

> We conclude a spending cap indexed for inflation (by the same GDP deflator index included in the most recent stipulation) balances customer and shareholder interests. Accordingly, we find that a spending cap of $72.2 million is just and reasonable in result and we approve a spending cap at that level. We conclude that indexing that spending cap for inflation (by the same GDP deflator index we approved in the most recent GRC) balances ratepayer interests with the objectives of the ITP. The GDP deflator will continue to be used as an annual index to adjust the cap on an ongoing basis.

Q. Has Mr. Higgins provided any new evidence that should cause the Commission to reverse its decision in the prior case?

A. No. Mr. Higgins argument is exactly the same as it was in the last case. As such the Commission should reject his proposal.

VI. CONCLUSION

Q. Would you please summarize your recommendations?

A. Yes. As I stated in my direct testimony, the restrictive covenants related to the LNG plant were necessary to comply with PHMSA safety requirements and should be approved as part of the revenue requirement of this case. Had the Company known of the thermal exclusion zone at the time of the siting, the circumstances would be no different than they are at present. The Company would still have had to incur the cost and would have sought preapproval as part of the other costs that were approved. Moreover, as noted in my direct testimony, even including the cost of the restrictive covenants, the LNG facility is still the lowest cost option and the outcome of the preapproval docket would likely have been the same.

[11] Report and Order, Docket 19-057-02, page 13.

Mr. Coleman's attempt to utilize a settlement stipulation in Wyoming as evidence in this case is inappropriate and the Commission should disregard his argument.

The Company's proposed capital structure represents the level of debt and equity necessary to secure its existing credit metrics and credit ratings, while also meeting future capital requirements without degrading current credit metrics. As such, it should be approved as proposed. Approving an equity level of 53.21% would also be consistent with Commission decisions in prior general rate cases.

Mr. Higgins proposal to eliminate the inflation adjustment on the infrastructure rate adjustment should be rejected because he has provided no new evidence to reverse the Commission's order in the last case and this would ultimately cost more for customers as it would delay some replacements into later years.

Q. Does this conclude your testimony?

A. Yes.

State of Utah)

) ss.

County of Salt Lake)

I, Kelly B Mendenhall, being first duly sworn on oath, state that the answers in the foregoing written testimony are true and correct to the best of my knowledge, information and belief. Except as stated in the testimony, the exhibits attached to the testimony were prepared by me or under my direction and supervision, and they are true and correct to the best of my knowledge, information and belief. Any exhibits not prepared by me or under my direction and supervision are true and correct copies of the documents they purport to be.

Kelly B Mendenhall

SUBSCRIBED AND SWORN TO this September 21, 2022.

Notary Public

GINGER JOHNSON
Notary Public State of Utah
My Commission Expires on:
August 4, 2023
Comm. Number: 707241