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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN THE MATTER OF THE )  
APPLICATION OF DOMINION )  
ENERGY UTAH TO INCREASE ) Docket No. 22-057-03  
DISTRIBUTION RATES AND )  
CHARGES AND MAKE TARIFF )  
MODIFICATIONS )

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**FEDERAL EXECUTIVE AGENCIES’ RESPONSE TO DOMINION  
ENERGY UTAH’S MOTION TO STRIKE PORTIONS OF PHASE II  
DIRECT TESTIMONY OF BRIAN C. COLLINS**

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Pursuant to Utah Code Ann. § 63G-4-206, Utah Admin. Code R746-1-301, and the Scheduling Order, Notice of Technical Conferences, Notice of Public Witness Hearings, and Notice of Hearings (“Scheduling Order”) dated May 25, 2022, the Federal Executive Agencies (“FEA”), through its undersigned counsel, hereby submits its response to Dominion Energy Utah’s (“DEU” or the “Company”) Motion to Strike Portions of the Phase II Testimony of Brian C. Collins (“Motion”) in the above-captioned matter. Specifically, for the reasons discussed below, FEA requests the Public Service Commission of Utah (“Commission”) deny the Motion.

## **I. INTRODUCTION**

In the Motion, DEU argues that the Commission should strike certain portions of FEA witness Mr. Collins’s Phase II Direct Testimony<sup>1</sup> regarding the Company’s Infrastructure Rate Adjustment Tracker (“IRAT”) from the record.<sup>2</sup> The Company specifically moves for the Commission to strike the material contained in paragraph 6 on page 3 and from line 2 on page 32 through line 14 on page 35.<sup>3</sup> DEU’s basis for arguing these portions of Mr. Collins’ Direct Testimony should be stricken is DEU’s assertion that any testimony regarding the IRAT should be included only in Phase I testimony.<sup>4</sup> For the reasons set forth below, FEA opposes the Motion and requests the Commission deny the Motion.

## **II. BACKGROUND**

On May 2, 2022, DEU filed its Verified Application and supporting direct testimony, which was not divided into separate phases. On May 10, 2022, FEA filed a petition to intervene in this proceeding because the Company’s service and rates are critically important to the missions of Hill Air Force Base, among other federal customers.<sup>5</sup> The Commission issued the Scheduling Order in this proceeding on May 25, 2022, which divided the proceeding into two phases. According to the Scheduling Order, “Phase I will address all issues necessary to determine Dominion Energy Utah’s (DEU) cost of capital and revenue requirement” and “Phase II will address cost of service among customer classes and rate design.”<sup>6</sup> FEA officially became a party to this proceeding on June 1, 2022 when the Commission granted FEA’s petition to intervene.<sup>7</sup>

In accordance with the Scheduling Order, FEA filed Mr. Collins’ Direct Testimony

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<sup>1</sup> FEA Ex. 2.0, Direct Testimony of Brian C. Collins, September 15, 2022.

<sup>2</sup> Motion at 1-2.

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

<sup>4</sup> *Id.* at 4-6.

<sup>5</sup> Petition for Leave to Intervene of Federal Executive Agencies, May 10, 2022.

<sup>6</sup> Scheduling Order at 1.

<sup>7</sup> Order Granting Intervention, June 1, 2022.

addressing Phase II issues on September 15, 2022. Mr. Collins' Direct Testimony comments on and provides recommendations regarding class cost of service, class revenue allocation, Transportation Service class split, and how DEU's IRAT (which DEU proposes be renewed in this proceeding) is designed.<sup>8</sup> As noted in the Motion, DEU counsel reached out to FEA counsel regarding its assertion that Mr. Collins' Direct Testimony addresses Phase I issues on September 22, 2022.<sup>9</sup> FEA counsel set up a telephone call with DEU counsel on September 27, 2022 and informed him during the call that FEA would not agree to withdraw any portions of Mr. Collins' Direct Testimony as such testimony concerns only Phase II cost of service and rate design issues. DEU filed its Motion seven days later on October 4, 2022.<sup>10</sup>

### III. RESPONSE

#### A. The Contested Portions of Mr. Collins' Direct Testimony Address Phase II Rate Design Issues.

DEU incorrectly asserts in its Motion that the contested portions of Mr. Collins' Direct Testimony should be stricken as untimely and improper.<sup>11</sup> In support of its assertion, DEU relies on the fact that other witnesses addressed issues concerning the IRAT in their Phase I testimony.<sup>12</sup> FEA agrees there are Phase I and Phase II issues in this proceeding related to the IRAT. This is demonstrated by the different contexts in which the IRAT has been addressed in the direct testimonies filed by the Division of Public Utilities ("DPU"), Utah Office of Consumer Services ("OCS"), Utah Association of Energy Users ("UAE"), and FEA.

DPU witness Casey J. Coleman's Phase I Direct Testimony addresses the IRAT in relation

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<sup>8</sup> See generally FEA Ex. 2.0 (Collins' Direct).

<sup>9</sup> Motion at 4.

<sup>10</sup> FEA notes that DEU did not serve the Motion on FEA's counsel. As demonstrated by the Certificate of Service attached to the Motion, DEU included incorrect email addresses for all three of FEA's counsel of record in this proceeding (i.e., Maj Holly Buchanan, Capt Marcus Duffy, and Mr. Thomas Jernigan).

<sup>11</sup> Motion at 4-6.

<sup>12</sup> *Id.* at 6.

to the Company's financial and business risk.<sup>13</sup> Similarly, OCS witness Daniel J. Lawton addresses the impact of the IRAT on the Company's risk and an appropriate rate of return in his Phase I Direct Testimony.<sup>14</sup> To the extent the impact of the IRAT on the Company's risk is considered in this proceeding in determining an appropriate rate of return for DEU, FEA agrees that is a Phase I issue. Further, UAE witness Kevin C. Higgins' Phase I Direct Testimony belongs in Phase I because it includes a proposal to cap the amount of revenue collected through the IRAT.<sup>15</sup>

FEA witness Mr. Collins, on the other hand, appropriately addressed the IRAT tariff formula's components used to calculate the IRAT surcharge in his Phase II Direct Testimony.<sup>16</sup> This is clearly testimony regarding the design of the tariff. While DEU points to the fact that Mr. Collins mentions "rate base" and "revenue requirement" in the contested portions of his Direct Testimony,<sup>17</sup> it is important to note that any change in the design of any rate will inherently have an impact on revenue requirement because all rates are designed to recover revenue requirement.<sup>18</sup> This fact does not require that all rate design issues must be addressed in the revenue requirement portion of a bifurcated proceeding rather than the rate design phase.

Mr. Collins' proposal to modify the IRAT does not affect the level of revenue requirement approved by the Commission in this proceeding and does not include a specific recommended level of revenue to be collected through the IRAT.<sup>19</sup> Rather, Mr. Collins' proposal affects the calculation of the IRAT surcharge resulting from the formula components included in the IRAT or, in other words, the actual rate design of the IRAT surcharge.<sup>20</sup> Mr. Collins' proposal adds a

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<sup>13</sup> See, e.g., DPU Ex. 2.0 DIR, Direct Testimony of Casey J. Coleman, August 26, 2022, at 46:1170-47:1179.

<sup>14</sup> See, e.g., OCS Ex. 3.0, Direct Rate of Return Testimony of Daniel J. Lawton, August 26, 2022, at 29:516-31:557.

<sup>15</sup> UAE Ex. RR 1.0, Phase I Direct Testimony of Kevin C. Higgins, August 26, 2022, at 27:510-513.

<sup>16</sup> See FEA Ex. 2.0 (Collins Direct) at 32-35.

<sup>17</sup> Motion at 5.

<sup>18</sup> See, e.g., DEU Exhibit 4.0, Direct Testimony of Austin C. Summers, May 2, 2022, at 29:745-30:772 (addressing that the Conservation Enabling Tariff requires that the annual revenue per GS customer be calculated).

<sup>19</sup> See FEA Ex. 2.0 (Collins Direct) at 32-35.

<sup>20</sup> *Id.* at 32:18-34:8.

component to the surcharge formula, which is used to design the IRAT rate.<sup>21</sup> More specifically, Mr. Collins' proposes to include in the IRAT tariff's surcharge formula the accumulated depreciation of the legacy investments similar to the investments that are subject to the IRAT tariff when calculating the appropriate IRAT surcharge.<sup>22</sup> Contrary to DEU's assertions,<sup>23</sup> Mr. Collins has not proposed any rate base adjustments in his testimony; he merely suggests an additional component that should be considered in the rate design of the IRAT surcharge that will be in effect in some future period and does not affect DEU's current revenue requirement.<sup>24</sup>

Further, it is worth noting that in DEU counsel's email dated September 22, 2022, which DEU attached to the Motion as Exhibit A, he states that DEU addressed the IRAT issue in its Phase I direct testimony. DEU filed its Verified Application and supporting direct testimony on May 2, 2022 and did not label or distinctly separate its direct testimony as either Phase I or Phase II, which is logical because an order bifurcating the proceeding had not been issued at that time. For example, in Company witness Kelly B. Mendenhall's Direct Testimony, Mr. Mendenhall addressed a variety of issues that are now considered to be Phase I and Phase II issues, including capital structure, rate base, the IRAT, as well as a section titled "Cost of Service/Rate Design."<sup>25</sup> It is not clear from this testimony that the Company considered how the IRAT was designed to be a revenue requirement issue instead of a rate design issue. To claim this and the rest of their testimony was distinctly separated into the two separate phases of the case prior to the order to bifurcate when their own witness intermixed testimony on both phases is a distortion of the facts. Further, it does not make it clear the design of the IRAT should be addressed in Phase I of the

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 3:35-37.

<sup>23</sup> Motion at 5.

<sup>24</sup> FEA Ex. 2.0 (Collins' Direct) at 32:18-34:8.

<sup>25</sup> *See generally* DEU Redacted Ex. 1.0, Redacted Direct Testimony of Kelly B. Mendenhall, May 2, 2022.

proceeding.

In summary, the Company ignores the fundamental difference between Mr. Collins' testimony and other witnesses. Specifically, unlike other witnesses who chose to address revenue requirement aspects of the IRAT in Phase I, Mr. Collins focused on the rate formula, or design, of the IRAT. This is clearly a Phase II rate design issue and thus is properly addressed in Phase II per the Scheduling Order. The Scheduling Order provides no guidance specific to the IRAT and given the context in which the IRAT is addressed in Mr. Collins' Direct Testimony, it would have been improper for FEA to have filed the contested portions of the testimony as Phase I testimony because such testimony does not address the Company's revenue requirement in this proceeding. Therefore, DEU's argument that the contested portions of Mr. Collins' Direct Testimony should be stricken as untimely Phase I testimony should be rejected.

**B. No Party is Prejudiced by the Contested Portions of Mr. Collins' Direct Testimony.**

Contrary to the Company's assertion,<sup>26</sup> addressing the rate design aspect of the IRAT as detailed in Mr. Collins' Direct Testimony in Phase II of the proceeding is appropriate and will not prejudice any party as FEA is offering Mr. Collins as a Phase II witness. As noted above, FEA filed Mr. Collins' Direct Testimony, including the contested portions, on September 15, 2022 in accordance with the Scheduling Order and, thus, DEU and all other parties to the proceeding had access to this testimony on that same date. Additionally, pursuant to the Scheduling Order, the deadline for filing Phase II rebuttal testimony is October 13, 2022, the deadline for filing Phase II surrebuttal testimony is November 3, 2022, and the Phase II portion of the hearing will commence on November 17, 2022.<sup>27</sup> Within this agreed upon Phase II timeline outlined in the Scheduling

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<sup>26</sup> Motion at 6-8.

<sup>27</sup> Scheduling Order at 2-3.

Order, DEU and the other parties have ample time to address the issues raised in Mr. Collins' Direct Testimony within the Phase II portion of the proceeding. Notably, to date, FEA has received no discovery requests from DEU or any other party in this proceeding.

In light of the above, DEU's reliance on the provisions of Utah Code Ann. § 63G-4-206 regarding affording a reasonable opportunity for the parties to present their evidence and positions to support the Company's request to strike the contested portions of Mr. Collins' Direct Testimony is misplaced.<sup>28</sup> In fact, the provisions DEU relies upon support the conclusion that the contested portions of Mr. Collins' Direct Testimony should remain in the record to be considered by the Commission. Striking this portion of the testimony, which as demonstrated above is properly included in FEA's Phase II testimony, would deprive FEA of due process and the opportunity to present its evidence and positions. Further, DEU's discussion of Rule 12(f) of the Utah Rules of Civil Procedure and related case-law is irrelevant because Mr. Collins' Direct Testimony does not contain any "redundant, immaterial, impertinent, or scandalous matter."<sup>29</sup> To the contrary, this testimony is material and pertinent to the matters at issue in Phase II of the proceeding as DEU is requesting that the Commission allow the IRAT to continue<sup>30</sup> and, pursuant to Utah Code Ann. § 63G-4-206, FEA should not be deprived of the opportunity to present such evidence.

Furthermore, there is nothing confusing about addressing rate design aspects of the IRAT in the Phase II portion of the proceeding. Phase II is precisely the portion of the proceeding in which this subject should be addressed as it concerns rate design issues. The Commission and all parties are aware that Mr. Collins addressed the IRAT in his Phase II Direct Testimony and, as discussed above, that his testimony only discusses the rate design, unlike the DPU, OCS, and UAE

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<sup>28</sup> See Motion at 6.

<sup>29</sup> See *id.* at 7 (quoting Rule 12(f) of the Utah Rules of Civil Procedure).

<sup>30</sup> DEU Redacted Ex. 1.0 (Mendenhall Redacted Direct) at 17:398-400.

witnesses' discussion of the revenue requirement aspects of the IRAT in their Phase I testimony. Therefore, in addition to not prejudicing any of the parties in the proceeding, the presentation and consideration of the contested portions of Mr. Collins' Direct Testimony in Phase II will not result in confusion for the parties, the Commission, or the public.

#### **IV. CONCLUSION**

FEA properly and timely filed Mr. Collins' Direct Testimony, including the contested portions, as Phase II testimony and intends to present Mr. Collins' testimony during the Phase II portion of the hearing. The Commission should reject the Company's attempt to strike this properly filed testimony. For the reasons discussed above, the contested portions of Mr. Collins' Direct Testimony are appropriate Phase II testimony and the presentation and consideration of such testimony in Phase II will not prejudice any party, nor will it cause confusion with respect to any phase of the proceeding. Therefore, FEA respectfully requests the Commission deny the Motion.

DATED this 12th day of October 2022.

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**CERTIFICATE OF SERVICE**

I CERTIFY that on October 12, 2022, a true and correct copy of the foregoing Federal Executive Agencies' Response to Dominion Energy Utah's Motion to Strike Portions of Phase II Direct Testimony of Brian C. Collins was served by e-mail to the following:

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