

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
(General Rate Case)

)
) **Docket No. 22-057-03**
)
) **Phase I Surrebuttal Testimony of**
) **Alex Ware**
) **On behalf of the**
) **Office of Consumer Services**
)

October 13, 2022

REDACTED VERSION

1 **INTRODUCTION**

2 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

3 A. My name is Alex Ware. I am a utility analyst with the Utah Office of
4 Consumer Services (OCS). My business address is 160 East 300 South,
5 Salt Lake City, Utah 84111.

6

7 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

8 A. I respond to the LNG thermal exclusion zone section of Dominion Energy
9 Utah (DEU) witness Kelly B. Mendenhall's rebuttal testimony.¹

10

11 **Q. WHAT IS THE PRIMARY ISSUE IN MR. MENDENHALL'S TESTIMONY**

12 **THAT YOU WILL REBUT?**

13 A. I will rebut Mr. Mendenhall's assertion that the PSC should authorize
14 ratepayer reimbursement of exclusion zone treatment costs (restrictive
15 land covenants in this instance) because it acted prudently with the
16 information it had at the time. I will also explain that the proper standard by
17 which the PSC should review this issue is not whether DEU acted
18 prudently based on what it knew, but rather what DEU should have
19 known.

20

¹ 22-057-03, Rebuttal Testimony of Kelly B. Mendenhall for DEU, September 21, 2022, lines 17 – 218.

21 **Q. DO YOU AGREE WITH MR. MENDENHALL'S ASSERTIONS ABOUT**
22 **THE EXCLUSION ZONE ISSUE RELATED TO THE LNG PLANT?**

23 A. No. In fact, I believe that Mr. Mendenhall's rebuttal testimony provides a
24 misleading timeline of events that is not supported by the facts on the
25 record in this case. Specifically, on line 141 of his rebuttal testimony, he
26 states that the company "relied on the available regulations and direction,
27 as well as the expertise of its retained consultant." However, my review of
28 the timeline, as presented in my direct testimony and supplemented here,
29 shows that statutory clarification on the exclusion zone issue was
30 available to DEU even before when the company now claims it received
31 incorrect advice from its consultant in 2017. Thus, the only conclusion one
32 can make is that DEU did not conduct sufficient due diligence on the
33 requirements for the LNG plant in a timely manner.

34

35 **Q. IN YOUR OPINION, WHY SHOULD DEU HAVE KNOWN ABOUT ITS**
36 **OBLIGATION TO HAVE LEGAL CONTROL OVER THE LNG FACILITY**
37 **THERMAL EXCLUSION ZONE FOR THE LIFE OF THE PLANT?**

38 A. As I presented in my direct testimony², the new LNG facility is subject to
39 federal regulation 49 CFR Part 193³, that incorporates NFPA 59A⁴, and

² 22-057-03, Direct Testimony of Alex Ware for OCS, August 26, 2022, lines 50 – 56 and 124 – 133.

³ Code of Federal Regulations, Title 49, Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards.

⁴ National Fire Protection Association 59A – Standard for the Protection, Storage, and Handling of Liquefied Natural Gas.

40 establishes safety standards for LNG facilities in the United States,
41 including the establishment of a perimeter around LNG tanks within which
42 certain activities are prohibited. Specifically, 49 CFR Part 193 defines an
43 exclusion zone as follows:

44 (193.2007 Definitions) Exclusion zone means an area surrounding
45 an LNG facility in which an operator or government agency **legally**
46 **controls all activities** in accordance with 193.2057 and 193.2095
47 **for as long as the facility is in operation.**⁵
48

49 Following the filing of my direct testimony, I have now also reviewed the
50 earliest version of 49 CFR Part 193 available at govinfo.gov and confirmed
51 this same definition of an exclusion zone has been in the code since at
52 least 1996.⁶

53

54 **Q. HOW DID MR. MENDENHALL RESPOND TO THIS CLEAR DEFINITION**
55 **OF AN EXCLUSION ZONE?**

56 A. Mr. Mendenhall makes no mention in his rebuttal testimony of when DEU
57 was first aware of this definition or other parts of 49 CFR Part 193.
58 Instead, starting on line 38 of his rebuttal testimony, he highlights NFPA
59 A Section 2.2.3.2 which outlines how a thermal exclusion zone is
60 measured and established “at the time of plant siting.” Also, on line 69 of

⁵ Bold added

⁶ 49 CFR 193.2007, 1996, <https://www.govinfo.gov/content/pkg/CFR-1996-title49-vol3/pdf/CFR-1996-title49-vol3.pdf>, page 89.

61 his rebuttal testimony Mr. Mendenhall states, “At the time of siting, nothing
62 indicated that additional property right purchases would be necessary.”

63

64 **Q. HOW DO YOU RESPOND?**

65 A. First, I disagree with any implication in Mr. Mendenhall’s rebuttal testimony
66 that NFPA code is more pertinent or applicable to DEU’s LNG project than
67 CFRs because they provide more detail about how exclusion zones are to
68 be established at the time of siting.⁷ Also, I take issue with Mr.
69 Mendenhall’s assertion that there was no indication a treatment might be
70 needed for an exclusion zone extending beyond DEU’s property line. The
71 question is not whether DEU had any indication of this need but whether
72 DEU should reasonably have known of this need.

73 I have clearly established that this statutory requirement was easily
74 knowable at the time. Again, it is unfortunate that DEU may have been
75 poorly advised by a consultant in 2017, but it is ultimately the Company’s
76 responsibility to research, understand, and address all of its legal
77 obligations when undertaking a new capital project. DEU’s ignorance of
78 applicable statute is certainly not prudent or reasonable and is not a
79 compelling reason to assign new costs to ratepayers now.

80

⁷ 22-057-03, Rebuttal Testimony of Kelly B. Mendenhall for DEU, September 21, 2022, line 35.

81 **Q. STARTING ON LINE 80 OF HIS REBUTTAL, MR. MENDENHALL**
82 **DISCUSSES HOW IN 2020 DEU LEARNED OF A PHMSA FAQ THAT**
83 **CLARIFIED ITS EXCLUSION ZONE RESPONSIBILITIES. DO YOU**
84 **FIND THIS INFORMATION PERSUASIVE?**

85 A. No. I reviewed the hyperlink that Mr. Mendenhall included on line 88 of his
86 rebuttal testimony that shows the FAQ of interest on PDF page 7 of the
87 PHMSA FAQ document. While DEU states it learned about this FAQ in
88 2020 and that this is what prompted the Company to seek out restrictive
89 land covenants with neighboring landowners, I note that this clarifying
90 guidance was published March 25, 2014⁸ – well in advance of the pre-
91 engineering work on the LNG facility completed in 2017. (The FAQs are
92 provided by date published and the FAQ concerning exclusion zones that
93 extend beyond LNG facility property lines was included in the section
94 dated March 25, 2014.) This is simply another example that indicates DEU
95 did not research all applicable LNG facility codes early enough in the
96 planning process to determine the full extent of its obligations.

97

98 **Q. STARTING ON LINE 120 OF HIS REBUTTAL TESTIMONY, MR.**
99 **MENDENHALL STATES DEU WOULD NOT HAVE ACTED**
100 **DIFFERENTLY IF IT KNEW OF THE EXCLUSION ZONE**

⁸ <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/technical-resources/pipeline/liquified-natural-gas/55491/phmsa-faqs-2014-2017.pdf>, PDF page 7 of 79.

101 **REQUIREMENTS DURING THE LNG FACILITY PREAPPROVAL**
102 **DOCKETS. HOW DO YOU RESPOND?**

103 A. Mr. Mendenhall makes an unknowable conclusion as interested parties
104 such as the OCS were never given the opportunity to review and consider
105 detailed LNG facility siting engineering plans during the LNG facility
106 preapproval dockets – as I will document later in my surrebuttal. As I
107 stated in my direct testimony in this case, the OCS did raise concerns in
108 the preapproval docket about reactions by neighboring businesses and
109 residents. Knowing during the preapproval docket about the exclusion
110 zones and associated costs could have led to a different outcome in the
111 preapproval dockets, including potential requirements for additional
112 analysis. Mr. Mendenhall may be confident about DEU’s theoretical
113 actions if it had done its due diligence earlier in the process, but, in my
114 opinion, the Company quite likely would have taken different actions if the
115 PSC had requested additional analysis or imposed additional
116 requirements.

117

118 **Q. MR. MENDENHALL ALSO CITES DPU WITNESS ERIC ORTON WHO**
119 **STATED THAT KNOWING THE COSTS ASSOCIATED WITH THE**
120 **EXCLUSION ZONE WOULD NOT HAVE CHANGED THE OUTCOME**
121 **OF THE PREAPPROVAL DOCKETS.⁹ HOW DO YOU RESPOND?**

⁹ 22-057-03, Rebuttal Testimony of Kelly B. Mendenhall for DEU, September 21, 2022, lines 183 – 188.

122 A. In my opinion, DPU witness Mr. Orton did not address the correct
123 question. His analysis was limited to the financial comparison from the
124 RFP but did not include an evaluation of the qualitative aspects of the
125 exclusion zone issue. DEU should not be relieved of its obligation to do a
126 complete due diligence of all knowable costs as part of the pre-approval
127 docket.

128


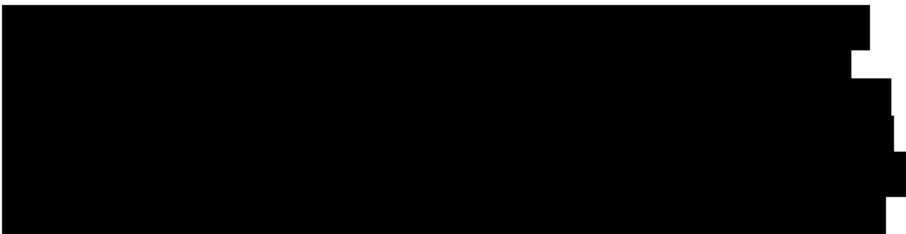
129 **Q. TO WHAT EXTENT WERE LNG FACILITY SITING ENGINEERING**
130 **PLANS INCLUDED IN THE LNG PREAPPROVAL DOCKETS?**

131 A. In both LNG preapproval dockets, 18-057-03 and 19-057-13, a front-end
132 engineering and design (FEED) study was filed with the direct testimony of
133 DEU witness Michael L. Gill.¹⁰ I note that the FEED studies filed by DEU
134 are the same in both preapproval dockets - dated February 16, 2018.

135 Interestingly, **HIGHLY CONFIDENTIAL INFORMATION BEGINS**

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143 

¹⁰ 18-057-03, Direct Testimony of Michael L. Gill for DEU, Confidential Exhibit 5.02 &
19-057-13, Direct Testimony of Michael L. Gill for DEU, Highly Confidential Exhibit 5.02

145 [REDACTED] .11

146

Q. [REDACTED]

[REDACTED]

[REDACTED]

158 [REDACTED] **HIGHLY CONFIDENTIAL INFORMATION**

159 **ENDS** included in the confidential response to DPU 1.05 because DEU
160 added a heading to the page: **CONFIDENTIAL INFORMATION BEGINS**

161 [REDACTED] 14

162 **CONFIDENTIAL INFORMATION ENDS** This context shows that the
163 **HIGHLY CONFIDENTIAL INFORMATION BEGINS** [REDACTED]

¹¹ 19-057-13, Direct Testimony of Michael L. Gill for DEU, Highly Confidential Exhibit 5.02, page 32 of 45.
¹² Docket No. 22-057-03, OCS Confidential Exhibit 1.1D, page 180 of 184.
¹³ 19-057-13, Direct Testimony of Michael L. Gill for DEU, Highly Confidential Exhibit 5.02, page 7 of 45.
¹⁴ Docket No. 22-057-03, OCS Confidential Exhibit 1.1D, page 180 of 184.

[REDACTED]

165 [REDACTED] . HIGHLY

166 **CONFIDENTIAL INFORMATION ENDS** However, the **CONFIDENTIAL**

[REDACTED] **INFORMATION BEGINS** [REDACTED]

[REDACTED]

169 [REDACTED]

170

[REDACTED] Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

179 [REDACTED] **CONFIDENTIAL**

180 **INFORMATION ENDS.** Perhaps other parties would have shared the
181 OCS's concerns if they had known this information. This context makes it
182 clear that Mr. Mendenhall cannot now claim the exclusion zone issue
183 would not have impacted the results of the LNG preapproval dockets –
184 that is unknowable as interested parties were not provided with all
185 available pertinent information at the time.

186

187 **Q. STARTING ON LINE 159 OF HIS REBUTTAL TESTIMONY, MR.**
188 **MENDENHALL STATES UTAH CODE 54-17-403 ENACTS A PROCESS**
189 **FOR THE COMPANY TO RECOVER “UNANTICIPATED INCREASES**
190 **IN COSTS” IN APPROVED RESOURCE DECISIONS. DOES THIS**
191 **STATUTE APPLY HERE?**

192 A. No, in my opinion based on the evidence I have cited, it is unreasonable
193 for DEU to claim in this docket that costs associated with exclusion zone
194 treatment were unanticipated. **CONFIDENTIAL INFORMATION BEGINS**

197 **CONFIDENTIAL INFORMATION ENDS** However, DEU apparently did not
198 similarly review and apply 49 CFR Part 193 to its LNG project before the
199 preapproval dockets or else it would have known about the requirement to
200 legally control the exclusion zone for the life of the facility as well as
201 known of the PHMSA FAQ published in 2014. **CONFIDENTIAL**

202 **INFORMATION BEGINS**
204 **CONFIDENTIAL INFORMATION ENDS** According to DEU itself, it was
205 not until 2020¹⁵ that it realized the requirements of 49 CFR 193 regarding
206

¹⁵ 22-057-03, Rebuttal Testimony of Kelly B. Mendenhall for DEU, September 21, 2022, lines 80 – 84.

207 impacted neighbors. Ratepayers should not now be required to pay more
208 because DEU did not conduct timely and comprehensive due diligence.

209

210 **Q. STARTING ON LINE 180 OF HIS REBUTTAL TESTIMONY, MR.**
211 **MENDENHALL STATES THAT BECAUSE LNG O&M EXPENSES ARE**
212 **LOWER THAN ORIGINALLY ESTIMATED, RATEPAYERS ARE HELD**
213 **HARMLESS IF DEU IS ALLOWED TO RECOVER THE COSTS OF THE**
214 **RESTRICTIVE LAND COVENANETS. HOW DO YOU RESPOND?**

215 A. I recognize and appreciate DEU's every effort to minimize costs to
216 ratepayers, but Mr. Mendenhall's argument linking LNG O&M savings to
217 new thermal exclusion zone treatment costs lacks merit. The prudence of
218 incurring these new costs should be evaluated on its own.

219

220 **Q. WHAT IS YOUR RECOMMENDATION REGARDING DEU'S REQUEST**
221 **TO RECOVER NEW COSTS ASSOCIATED WITH ENFORCEMENT OF**
222 **THE EXCLUSION ZONE SURROUNDING THE LNG FACILITY?**

223 A. The PSC should deny DEU's request for recovery of costs associated with
224 the restrictive covenants it executed with neighboring property owners to
225 address the LNG facility exclusion zone requirements. Mr. Mendenhall's
226 rebuttal testimony does not provide any new information to support these
227 costs as being unforeseen or extraordinary. Rather, I have shown that
228 DEU had every opportunity to know of these costs and should have
229 properly included them in original LNG facility cost estimates preapproved

230 by the PSC in Docket No. 19-057-13 or engineered the facility in a manner
231 that avoided costs associated with enforcement of exclusion zone
232 requirements. Also, in light of interested parties not being provided all
233 available information of detailed exclusion zone estimates during the
234 preapproval dockets, I believe cause to deny DEU's request is even more
235 clear.

236

237 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

238 **A. Yes.**

239