BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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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

PHASE I HEARING (DAY 2)

ADVANCED REPORTING SOLUTIONS

Taken on October 20, 2022

9:00 a.m. to 3:10 p.m.

Reported by: Michelle Mallonee, RPR, CCR

APPEARANCES

Commissioners:

Chairman Thad LeVar
Commissioner David R. Clark
Commissioner Ron Allen

For Dominion Energy Utah:

JENNIFFER NELSON CLARK, ESQ.
DOMINION ENERGY UTAH
333 South State Street
P.O. Box 45433
Salt Lake City, Utah 84145-0433
jenniffer.clark@dominionenergy.com

CAMERON L. SABIN, ESQ.
MAYER BROWN, LLP
10 West Broadway, Suite 700
Salt Lake City, Utah 84101
(801) 907-2715
csabin@mayerbrown.com

For the Division of Public Utilities:

PATRICIA E. SCHMID, ESQ.
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114
(801) 366-0353
pschmid@agutah.gov

For the Office of Consumer Services:

ROBERT J. MOORE, ESQ.
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114
(801) 366-0353
rmoore@agutah.gov

For Utah Association of Energy Users:

PHILLIP J. RUSSELL, ESQ.
JAMES DODGE RUSSELL & STEPHENS
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
(801) 363-6363
prussell@jdrslaw.com

For Federal Executive Agencies:

MAJOR HOLLY L. BUCHANAN, ESQ.
DEPARTMENT OF THE AIR FORCE
139 Barnes Drive, Suite1
Tundall Air Force Base, Florida 32403
(850) 283-63347
holly.buchanan1@us.af.mil

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I N D E X

E X H I B I T S

P R O C E E D I N G S

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CHAIRMAN LEVAR: Okay. Good morning, everyone. We'll go ahead and start and go on the record.

We're here for the second day of the Phase I Revenue Requirement Hearing in Public Service Commission Docket 22-057-03, Application of Dominion Energy Utah to Increase Distribution Rates and Charges and Make Tariff Modifications.

Does anyone have any preliminary issue before we jump back into witnesses?

Okay. Ms. Clark?

MS. CLARK: Thank you. The Company calls Kelly B. Mendenhall.

CHAIRMAN LEVAR: Good morning, Mr. Mendenhall.

THE WITNESS: Good morning.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: I do.

CHAIRMAN LEVAR: Thank you.

KELLY B. MENDENHALL,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CLARK:

Q. Good morning, Mr. Mendenhall. Can you please state your full name and business address for the record.

A. Yes, my name is Kelly B. Mendenhall, and my address is 333 South State Street, Salt Lake City, Utah.

Q. And what position do you hold with the Company?

A. I'm the director of regulatory affairs for Dominion Energy Utah.

Q. In this case, the Company has submitted testimony under your name marked as DEU Exhibit 1.0 and rebuttal testimony as DEU Exhibit 1.0R, as well as accompanying exhibits DEU Exhibits 1.01 through 1.07.

Were all of these documents either prepared by you or under your direction?

A. Yes, they were.

Q. And do you adopt their contents as your testimony today?

A. I do.

MS. CLARK: The Company moves to admit Mr. Mendenhall's direct and rebuttal testimony, along with the accompanying exhibits.

CHAIRMAN LEVAR: Thank you. If anyone objects to that, please indicate your objections.

I'm not seeing any, so the motion is granted.

MS. CLARK: Thank you.

Q. (BY MS. CLARK:) Mr. Mendenhall, can you please summarize the testimony you've offered in this matter?

A. Sure. So in my direct testimony, I address three main issues. The first issue is the liquefied natural gas facility that we have in Magna. And I address some cost increases that we had that were due to supply chain and material price increases due to COVID.

So in testimony, Mr. Orton from the Division, supported cost recovery of those items. No other party filed testimony on that issue.

The second issue I discuss is the restrictive covenant at the Magna LNG facility. And as I explained in my testimony, back in 2017, we hired an expert to provide a thermal exclusion zone calculation for us. And at that point in time, it was determined that the thermal exclusion zone would go outside of the property line of our facility. But that area just needed to be secured at the time of siting. And so in defense of our consultant, we followed the Federal regulations.

In 2020, we found there were some additional guidance from PHMSA in a Q and A that indicated that that thermal exclusion zone needed to be secured for the life of the property. So at that point, we approached the adjacent landowners and were able to acquire restrictive covenants that would secure, that would comply with the PHMSA requirements, and that would keep that area secure for the life of the facility.

And as I mentioned in my direct testimony, when you take the price increases due to COVID and include the restrictive covenant, the LNG facility remains the lowest cost option when compared to the other resource options that were compared in the resource decision preapproval document in 2019.

So for those -- Mr. Orton, in his testimony, supported cost recovery. Mr. Ware also filed testimony. And while I think we agree that those costs are necessary to comply with the law, Mr. Ware contends that, because we should have known about the restrictive -- or the thermal exclusion zone issue at the time of the preapproval docket, those costs should be disallowed because we should have included it in that proceeding.

So obviously, we disagree with Mr. Ware. We believe that our consultant acted prudently, that we acted prudently, and because the costs are required to comply with the law, they should be included in cost recovery.

The third item I talk about in my direct testimony is the infrastructure replacement tracker. And I proposed that that tracker continue to operate as currently defined. Mr. Higgins proposes that the inflation adjustment rates, that be eliminated. And in my rebuttal testimony, I discuss that doing that would only prolong the replacement program and ultimately cause the program to be more expensive for customers over time. And I also point out the fact that this issue was recently litigated in the last rate case in Docket 19-057-02. And this is what the Commission said on that issue.

They said, "We conclude a spending cap index for inflation balances customer and shareholder interests. We conclude that indexing that spending cap for inflation balances ratepayer interest with the objectives of the ITP. The GDP deflater will continue to be used as an annual index to adjust the cap on an ongoing basis."

So Mr. Higgins has provided no new evidence that should cause the Commission to reverse its prior decision. And for that reason, his proposal should be rejected.

In my rebuttal testimony, I address Mr. Lawton's proposal to reduce equity from 53.2 to 51 percent. And I discuss how the Company has worked to reduce its equity portion of its capital structure from 60 in the last rate case, to 53.2 percent in this rate case.

I also discuss that it's Commission precedent in

Utah to use actual capital structures rather than hypothetical capital structures. And I also discuss our recent debt issuance that came in higher than what we had projected in the rate case. So that's going to create about a $720,000 headwind that the Company will need to overcome to meet its allowed return, and Mr. Lawton's proposal would just add another $6 million to that.

So for those reasons, we propose that the Company -- or that the Commission accept our proposed capital structure of 53.2 percent.

The last issue I discuss is really to Mr. Coleman's testimony. And I talked about the -- he refers to a return on equity determination that came about from a stipulation in a Wyoming rate case. And I discuss that that should not have any bearing in this proceeding because the stipulation was executed during the pandemic lockdown, and the facts that existed at that time don't exist today. And so it's a bit of an apples and oranges comparison.

So that concludes my summary. And I'm happy to take any questions.

MS. CLARK: Mr. Mendenhall is available for cross-examination.

CHAIRMAN LEVAR: Thank you.

Ms. Schmid?

MS. SCHMID: No questions. Thank you.
CHAIRMAN LEVAR: Thank you.
Mr. Moore?
MR. MOORE: Just a couple questions.

CROSS-EXAMINATION

BY MR. MOORE:
Q. Mr. Mendenhall, I would first like to address your testimony concerning DEU's request for a capital structure containing an equity percentage of 53.21 percent.
May I direct your attention to page 12 and 13 of your rebuttal testimony, Line 302, starting with the word, "Since."
A. Okay. I'm there.
Q. Starting with the word "Since," and ending with the word "range," I'll have you read those sentences into the record, please.
A. Sure. "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."

Q. DEU's equity ratio in 2019 resulted from the Tax Cut and Jobs Act of 2017, which reduced DEU's corporate tax rates from 35 percent to 21 percent, which constitutes a 40 percent reduction in taxes; is that correct?

A. Yes. That's partially correct. I mean, I think it was a combination of -- that definitely was a driver. I think also just the Company's capital requirements also had an impact on that.

Q. Isn't it true that the tax cut lowered the amount of deferred taxes which, in turn, reduced cash flows to DEU, and a higher equity percentage was thought to be needed to avoid credit downgrade?

A. Yes.

Q. Again, you testified that since the passage of the tax act, the Company has been working to reduce the equity portion of its capital structure. To paraphrase your testimony, you must balance many factors and circumstances to arrive at the appropriate capital structure.

Does that fairly characterize your testimony?

A. Yeah, I think that's fair.

Q. One of the factors impacting your decision to work hard to reduce the equity portion --

(Court reporter interruption.)

Q. (BY MR. MOORE:) One of the factors impacting your decision to work hard to reduce the equity portion of your capital structure is that debt is cheaper than equity, and interest on the debt is tax deductible; is that right?

A. Yes. Debt -- the cost of debt is tax deductible, and it is cheaper than equity.

Q. On page 13 of your rebuttal testimony, Line 307.

A. That's where we're at, right?

Q. Right.

A. Yep.

Q. You state, "The Company believes that its proposed 53.2 [sic] percent equity percentage is the level where capital requirements can be appropriately balanced without harming credit metrics"; is that correct?

A. That's correct.

Q. And the difference between the equity percentage in 2019 and 2022 is due to change in circumstances, most importantly the impact of the tax act on the cash flow; isn't that correct?

A. I think -- like I mentioned before, I think it's a combination of the tax act, but I think that's probably behind us at this point.

So at the end of 2020 -- or actually the end of last year -- so we're in 2022 now. Well, at the end of 2021, we were still at 60 percent. So what we're basically proposing is that by the 2023 test period, we will have our capital structure down to 53 percent. And we have a large amount of capital expenditures. I think there was a fair amount of discussion yesterday about our tracker mechanism and our capital budget and the fact that there was still a, rather a large gap that needed to be covered by capital. And so I think you've got to consider how much debt does the Company need? How much equity or retained earnings can a company use? How much short-term debt is necessary to manage our gas cost procurement.

And so it's a balance of all of those items is what causes our Treasury group to determine that 53 percent is kind of the sweet spot.

Q. Are you aware that DEU's capital expert, Ms. Nelson, in her capital structure analysis in her direct testimony only employs the years 2018 to 2020, years heavily impacted by the tax act and excludes the years 2021 and 2022, the years less impacted by the tax act?

A. Yeah, I can't speak to Ms. Nelson's testimony, so you'd have to ask her about the details of that. But I'll -- subject to check, I'll agree with what you just said.

Q. Mr. Mendenhall, I would now like to turn to the issue of recovery of the funds needed to control occupancy in the exclusion zone for the life of the LNG plant.

As I understand your testimony, initially DEU believed your responsibility to control occupancy in the exclusion zone that extended outside your property line was limited to the time of siting of the plant and not the life of the plant, correct?

A. That's correct.

Q. Specifically, on page 6 of your testimony --

A. My direct?

Q. Your rebuttal testimony, I'm sorry.

A. Okay. I'm there.

Q. Lines 135 to 136, you testified, "The original analysis was based on the NFPA code, and the Company's reliance on that code was reasonable."

A. That's correct.

Q. And on page 5 and 6 of your rebuttal testimony, Lines 115 and 117 --

A. Okay.

Q. -- you testify, "The Company's reliance on the

NFPA regulations and the advice of its consultant during the initial siting analysis was not unreasonable."

A. That's correct.

Q. You agree with me that the proper interpretation of the NFPA code presents a legal question, like the interpretation of any other federal regulation, correct?

A. Yes. But I also think the way that the NFPA code is written, it's fairly plain that the thermal exclusion zone should be secured at the time of siting.

But I will agree with you that it is a legal question, and they probably could have done a better job of clarifying that in their code.

Q. Mr. Mendenhall, as I understand your testimony, your position is that Section 2.2.3.2, that's the NFPA section we're discussing, clearly and unambiguously provides that DEU need only control occupancy in the exclusion zone for a period limited to the time of siting, that a nonlawyer can reasonably and prudently make that determination without, one, conducting the type of research that Mr. Ware of the OCS has done in this case into surrounding regulations and the Pipeline and Hazardous Materials Safety Administration's frequently asked questions; or, two, consulting a lawyer with expertise in this area to get a legal opinion on the legal issue; isn't that true?

A. So I think Mr. Ware, he started in the right place, but I don't think he went all the way down the regulatory rabbit hole. So let's turn to his testimony, and I can explain what I mean.

So if you go to page 7 of his direct testimony, he cites the PHMSA code or part of the statute related to exclusion zone. So on Line 130 through 134 of page 7, he correctly identifies -- and I will say this is the definition section of the CFR, so they're just defining terms.

"Exclusion zone" means an area surrounding an LNG facility in which an operator or a government agency legally controls all activities in accordance with 193.2057 and 193.0295 for as long as a facility is in operation.

I think he's using that to say, Hey, there's some contradiction here. But you need to go to those regulations that -- this is just a glossary, right? This is the definition section. So you need to go to those two sections, 193.2057 and 193.209 -- and it's actually -- he says 2095. 2095 doesn't exist, there's a typo. So it's actually 2059.

But let me read to you what Section 193.2057 and Section 193.2059 say.

Section 193.2057 is titled, "Thermal Radiation

Protection." And it says, "Each LNG container and LNG transfer system must have a thermal exclusion zone in accordance with section 2.2.3.2 of NFPA 59A (incorporated by reference, see 198.2013.)"

(Court reporter interruption.)

THE WITNESS: Section 193.2059 is titled, "Flammable vapor-gas dispersion protection." And it says, "Each LNG container and LNG transfer system must have a dispersion exclusion zone in accordance with sections 2.2.3.3 and 2.2.3.4 of NFPA 59A."

So if you turn to my testimony, I believe it's my rebuttal testimony.

Q. (BY MR. MOORE:) Page 2, I would imagine.

A. Page 2, you're exactly right. We go to 59A, Section 2.2.3.2, which is where the PHMSA code directs you.

And so paragraph (a), Subsection (2), you can see I've italicized and bolded. It's talking about the -- this is talking about the thermal radiation flux calculation, and it's talking about when you're calculating this, you need to find the location at the nearest point located outside the owner's property at the time of siting.

Then down at paragraph 3, "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."

So that's what our expert relied on. That's what we relied on. And then, as you mentioned, there was a PHMSA -- there's a PHMSA Q and A that clarifies this that our expert didn't know about.

So once we found out that that was -- that we needed to secure that during the life of the facility, at that point we went out and secured the restrictive covenant.

Q. Now, your initial interpretation of that section was incorrect; isn't that right?

A. Well, I think the consultants read it as it's written. And when you take the Q and A and cross reference it to this, he should have -- he should have understood that it was for the life of the facility.

But I can also see how our consultant got to that point. I don't think it's unreasonable, reading the code as written and assuming that the code, as written, should be followed.

Q. Have you ever heard of the rule of statutory interpretation?

MS. CLARK: I'm going to object to the extent that any question calls for Mr. Mendenhall to render a legal opinion.

MR. MOORE: I'm just asking if he's heard of it.

CHAIRMAN LEVAR: Have you completed the question? Let me hear the whole question, then I'll rule on the objection.

MR. MOORE: All right. First of all, I'd like to say that his testimony discusses an interpretation of a code section, which he admits is a legal question. Therefore, I think any objection into asking him a legal question on cross has been waived. He's opened the door.

Q. (BY MR. MOORE:) My question is: Have you ever heard of the legal statutory rule of construction, that words in a statute or rule cannot be interpreted in isolation, but must be -- to harmonize with similar words in the rest of the rules and related rules? Does that ring a bell to you?

CHAIRMAN LEVAR: I think I'm going to uphold the objection. I agree that he's opened the door to discussing what these -- how to interpret these CFR rules, but that's more of an isosteric concept of statutory interpretation that I -- I don't think Mr. Mendenhall's opened the door to that kind of a question.

MS. CLARK: And though it's a bit belated, I would like to respond to the argument that he has, indeed, opened the door.

I would remind the room that counsel for the

Office opened the discussion by citing his own witness's testimony that says, and I quote, "even nonlawyers on notice of the exclusion zone might need to be for the unoccupied life of the plant."

And as I understood it, his prior questioning, he was asking a nonlawyer from a nonlawyer's perspective what, Does this say to you? And I think Mr. Mendenhall has articulated what it says to him.

I don't believe we've engaged in any legal opining from the stand today at all.

CHAIRMAN LEVAR: And just to clarify: I do think the door is open for discussion of how Mr. Mendenhall has interpreted these guidelines in his testimony. But I think that kind of question about statutory construction generally, I don't think is in his testimony.

Q. (BY MR. MOORE:) Accordingly, your interpretation makes a distinction between protecting against the explosion causing a fire that reaches out of DEU's property line at the time of citing, but not protecting against an explosion that causes a fire that reaches outside of DEU's property line during the course of the plant's operation; isn't that correct?

A. Could you repeat the question?

Q. Yes. I believe you make a distinction, your interpretation, that the code protects against an exclusion that causes a fire that reaches outside of DEU's property line at the time of citing, correct?

A. So I'm going to try and answer the question.

I think the interpretation of our -- of our expert -- and I'm really just telling the news here. I would not make myself out to be an expert.

But our expert at the time believed that the thermal inclusion zone, which would be designed to protect, I think from what you're saying, an incident at the LNG facility, where there was thermal radiation or heat, or, as you say, an explosion -- we don't like to say that term in my business -- but reached outside of the property line, the thermal exclusion zone would be in place at the time of the siting. I think that is the interpretation of the expert. Hopefully that answered your question. I don't know if it did or not.

Q. Right. No, that answered my question.

But there's a distinction that the code does not protect against an incident causing thermal radiation that reaches beyond your property line during the operation of the plant?

A. After the time of citing?

Q. Yes.

A. Yes. That was the original interpretation of the expert, yes.

Q. Why do you believe that NFPA could be more concerned about an incident causing thermal radiation during the time of citing as opposed to during the time the plant is in operation?

A. Yeah, I think a lot of that -- and I was actually at the plant last week. And I've been to LNG facilities before. And last week, they were liquefying the facility. And we were required to wear clothes that were fire resistant, overalls. We were required to put all of our phones in the office and not take them out. I've never had that requirement at another LNG facility that's up and running.

So I think the reason why this is pertaining to the time of siting is, you've got this big plant that's up and running and it's beginning to go into operation. And it's not up and running yet, right? It's not fully functional. And so there's greater risk at the time that the facility is being built, at the time that the facility -- you're beginning to liquefy, you're beginning to vaporize.

Then once the facility is up and running and everybody knows, okay, all the processes are in place, we have no issues in the facility. So you're asking my opinion as an accountant who knows nothing about engineering LNG facilities. But I'm guessing that has something to do with it, is the uncertainty of getting a plant up and running.

Q.   Now, the time of siting of the plant occurs before the construction of the plant. In other words, you don't build the plant or construct a plant and then determine where it's going to go. You determine where it's going to go at the time of siting, and then you construct it. So there's two times: The time of siting, and the time of construction; is that correct?

A.   Yes. But I think our -- and once again, you're asking an accountant for an engineering opinion. But my understanding is the interpretation of time of siting was during the entire -- up until the in-service date.

Q.   Why did the code not say during construction, then, instead of at the time of siting?

A.   That's a good question. Why did the code say at the time of siting, when the PHMSA Q and A thinks it should be during the life of the facility? I mean, I think you and I both agree the code could use a work over.

Q.   Actually, Mr. Mendenhall, I have an interpretation of the code, which I won't get in during cross-examination. I don't think that would be a useful endeavor. But I may ask for some briefing on this issue.

That, in my interpretation, harmonizes the code with the Definitions sections and describes how the code can be read to allow for an exclusion zone to extend for the life of the plant. So I don't agree with you. I'm just asking you a question.

A. Fair enough. Fair enough.

Q. Now, can I direct your attention back to page No. 2.

A. Yes.

CHAIRMAN LEVAR: Is that rebuttal testimony, Mr. Moore?

MR. MOORE: Yes, this is rebuttal testimony. I apologize.

MS. CLARK: What page was that? I'm sorry.

MR. MOORE: Page 2.

MS. CLARK: Thank you.

Q. (BY MR. MOORE:) Now, on this page you're making a response to Mr. Ware's argument concerning the definition of the code. And while it's somewhat unclear to me, you seem to make the argument that even if DEU had known of this definition, it still would be reasonable and prudent for DEU not to do any additional research into the surrounding regulations and questions and asking -- or ask a legal opinion, because the NFPA code section at issue is more detailed than the regulation

Mr. Ware cites.

Is that correct, and could you correct me if I misstated that?

A. Yes. So I guess what I would say is I think it's prudent for a company, who does not have expertise in building a mega project like this, to hire an expert. And it's prudent for that company to rely on the expert's guidance.

And I'll also say -- I believe there's a little bit of Monday-morning quarterbacking going on here. There were numerous studies related to this facility. If you go into the feed study that Mr. Ware talks about, there are 68 separate reports that our consultant did related to this facility. And so it's very easy to sit here today and say, Well, you should have double-checked this specific report and gotten a legal opinion, gotten a second opinion on it. But there were a lot of moving pieces, and this was just one of those pieces. And so we relied on the expert, and I believe that was prudent.

When we found out that we needed to secure the facility for the life of the property, we went out and we did that. I believe that was prudent, to comply with the PHMSA regulations. So I guess that would be my answer to your question.

Q. Getting back to Mr. Ware's definition section, could I have you turn to page 5 of your rebuttal testimony?

A. Yep.

Q. Lines 111 to 114.

A. Yes.

Q. Where you say, "This language," and that's the language in the NFPA section at issue, "arguably conflicts with the regulations Mr. Ware cites, and the Pipeline Hazardous Materials and Safety Administration evidently recognized the same thing when it issued a FAQ to clarify."

A. Right.

Q. However, if the DEU was aware of the exclusion zone definition identified by Mr. Ware, given this confusion, wouldn't it create -- would it be reasonable and prudent to further investigate and perhaps ask a lawyer about this legal question?

A. All I can tell you is that all of the regulations point back to the NFPA section that we were just reading, and that was the language that was used to make the determination.

As I mentioned before, I mean, to get a legal opinion on 68 different reports, I just think is unreasonable. There is so much information related to this LNG facility that to get a legal opinion on every piece of it, would just -- it just makes no sense.

Q. But you did rely on the legal opinion of an engineer?

A. I wouldn't -- well, I wouldn't say -- we relied on an engineer's interpretation of the code.

Q. Yes. And we established earlier that that presents a legal question?

A. I guess -- I guess so.

Q. Now, I'd like to turn to your contention that the plant needed to be placed on the southwest portion of the property.

Could you turn to page 8 of your rebuttal testimony, Line 201.

A. 201?

Q. Line 201, page 8, rebuttal testimony.

A. Yep.

Q. In this case, you were talking about why the plant was constructed on the southwest corner. And you state -- correct me if I'm wrong -- "The Magna site met the criteria," this criteria for deciding of the site, "but had a wetland across a portion of the property that would require the LNG tank to be constructed on the southwest portion of the site."

A. Right.

Q. When you use the word "wetland," are you talking

about wetlands protected by Federal law?
A. Yes, I believe they are.
Q. Before making that determination that you were required to build on the southwest portion of the site, did you contact the Army Corps of Engineers, which, incidentally, has jurisdiction to issue permits for construction that may damage protected wetlands?
A. Yes.
Q. You did?
A. Yes. We had to receive a permit from the Army Corps of Engineers to build on that site because of those wetlands.
Q. Did you investigate as to the availability and cost of mitigation matters and compensation payments for unavoidable damages to wetlands cause by proposed construction of the site, possibly on another area of the site, as allowed by the Federal regulations? I'll just cite it here, but 33 CFR 332.3?
A. I have no idea. I can't speak to whether that -- so repeat your question one more time.
Q. Did you investigate the availability and costs of mitigation matters and compensation payments caused -- to compensate for any unavoidable damage to wetlands caused by proposed construction on the site?
A. Yeah, I'm not aware of any. I do -- I do not

think that the Company would want to damage any wetlands, so -- but I -- that's -- I cannot speak to what was actually done in that regard.

Q. Then to your knowledge, there's no analysis whether the cost of any mitigation or compensation associated with any damage to the wetlands caused by the construction located on the -- I'm sorry, let me start over again.

There has been, to your knowledge, no analysis of whether the costs of any mitigation or compensation associated with any damage to wetlands caused by construction on locations other than the southwest border would be more expensive or less expensive than the cost of obtaining restrictive covenants necessary for building on the southwest border of the site?

A. I have not seen an analysis like that.

MR. MOORE: Thank you. I'm done.

CHAIRMAN LEVAR: Thank you, Mr. Moore.

Major Buchanan, do you have any cross-examination for Mr. Mendenhall?

MAJOR BUCHANAN: No questions, thank you.

CHAIRMAN LEVAR: Thank you.

Mr. Russell?

CROSS-EXAMINATION

BY MR. RUSSELL:

Q. I do have a few questions, Mr. Mendenhall, about the infrastructure tracker program.

You mentioned in your summary this morning that eliminating the adjustment for inflation, as Mr. Higgins recommends, would prolong the program and increase costs for ratepayers over time, right?

A. Correct.

Q. Okay. I've just got a couple of follow-up questions on that.

A. Sure.

Q. Isn't it true that any cap does that?

A. You mean -- I guess I don't understand the question.

Q. Well, as I understand it, the discussion that the parties are having and the testimony is what is the appropriate spending cap -- I'm putting that in air quotes -- spending cap for the infrastructure tracker program?

A. Right.

Q. That spending cap isn't an actual cap on the amount of money that the Company can spend on capital projects, right?

A. That's correct. In fact, this year I was meeting with our infrastructure replacement team, and they're going to probably be $10 million over budget on the tracker, over the cap. And so yeah, we're going to have to absorb that until the next general rate case.

Q. And what we're talking about here, really, is a budget on how much you can pass through to avoid regulatory lag, right?

A. Correct.

Q. But the argument that you're making about prolonging the program is one that suggests there shouldn't be at cap at all, isn't it? That -- I mean, you've already mentioned they're $10 million over the budget this year. And if there were no cap, presumably, you'd pass all of that along.

And isn't that true for any dollars that you spend on capital expenditures, you just pass it through, and that would, I guess, theoretically, eliminate this problem of -- you're citing for prolonging the program, right?

A. Yeah. So I think you've got two options, right? You can try to manage your program within the cap of the rider, or you can, as you just mentioned, just spend and get it through a general rate case and file general rate cases more frequently.

So I think what we're trying to do is balance the two items so that we're -- we're replacing what we can replace within the bounds of the program, and sticking with the three-year time table of rate-case filings.

Q. And is it your understanding that the existence of a cap in the program is an attempt, really, to balance the interest of the ratepayers with the designs of the program, the intentions of the program, right?

A. Yeah, I think that's what the Commission said in their order, yeah.

Q. It's a paraphrase. I don't remember exactly. I think it's pretty close.

A. It's a balance, exactly.

Q. Right. Yeah. And you mentioned also in your summary that the ruling, I think it's February -- from the 2019 rate case, the Commission's ruling on this issue.

A. Right.

Q. It's true that in that same rate case the Commission denied the Company's request to increase the spending cap within the program to $80 million, right?

A. That's right. And I accepted that decision, and that's why I didn't propose it again in this case, because I try to just accept what the Commission determines. I don't know why Mr. Higgins decided he wanted to relitigate an issue that had already been determined by the Commission in the last case, but I guess that's his choice.

Q. Well, I think he explains why in his testimony. We can talk to him about that.

A. Well, he used the same reasons he did in the last case.

Q. He must still think they're true.

A. I guess so. They were convinced against his will, I guess, right?

Q. The cap that was set in that 2019 rate case was $72.2 million, right?

A. Yeah. Subject to check, yeah, I agree with that.

Q. I'm looking at the order now. Everybody can look at the order. I don't think we need to get there.

A. Fair enough.

Q. The cap with the inflation adjustment at the end of this year will be something like $77.4 million; is that right?

A. That sounds right, yeah.

Q. Do we know what it will be at the end of 2023, the test period?

A. We don't know. We will file that November 15th, and I have not had time to look at what that will be.

Q. Fair. But we're creeping up pretty close to the $80 million that was not allowed to be the cap in the last rate case, right?

A. Yeah, three years ago, yes, we'll be close to 80.

MR. RUSSELL: Okay. That's all the questions I have, thanks.

THE WITNESS: Okay. Thank you.

CHAIRMAN LEVAR: Thank you.

Ms. Clark, any recross -- I'm sorry, redirect?

MS. CLARK: Yes, I do. Although it would be fun to have some cross.

THE WITNESS: Maybe at lunch.

MS. CLARK: Maybe at lunch.

REDIRECT EXAMINATION

BY MS. CLARK:

Q. Thank you. Mr. Mendenhall, I want to return for a moment to some of the questions that Mr. Moore asked of you and to focus for a minute first on the thermal exclusion zone. And I appreciate that you walked us through those regulations.

And you opined that, as a nonlawyer, you could see how the consultant got where they did, correct?

A. Correct.

Q. And you also indicated that there were 60-some-odd studies within the feed study that the Company's consultant prepared, correct?
A. Yeah, I believe 68, yes.
Q. And that consultant may or may not have retained engineers, may or may not have retained attorneys to opine, may or may not have had conversations with other experts.
You don't really know what steps that consultant took to come to an understanding on this point; is that correct?
A. That's correct.
Q. Isn't that the reason the Company hired a consultant to begin with?
A. That's exactly right.
Q. And you believe it was prudent of the Company to rely on the consultant's advice?
A. Yes, they had a lot of experience building facilities all over the country.
Q. Would you also agree -- Mr. Moore spoke about perhaps providing briefs defining what these regulations mean.
Would you clarify for me whether or not the Company believes that procuring this additional property for a thermal exclusion zone is legally required?

A. Yes, it is legally required, as far as we're concerned.

Q. So we can all agree with Mr. Moore that it is a legal requirement by those regulations?

A. Correct.

Q. And the Company, when it learned that the prior interpretation was perhaps not correct, took steps to comply with those legal requirements?

A. Correct.

Q. I'd also like to talk for a moment about safety. I believe Mr. Moore pointed to Mr. Ware's testimony, where Mr. Ware indicated that even a nonlawyer could see that the life of the property might be a better way to protect this area.

So with that as background, I wonder if you could summarize for the Commission the part of your rebuttal testimony where you talked about the site selection and why the Company believes this location in particular, notwithstanding wetlands, is perhaps the safest place to locate a facility like this?

A. Sure. So as I mentioned in my testimony, we went out and tried to find a parcel where this facility could be built. And so there are a few requirements. You need a big enough piece of land. You need it to be in an area where it's not -- you don't have NIMBY issues, "not in my backyard" issues. And then it also needed to be located in an area where it's close to our system.

And so we went out, and we found four pieces of property that we thought would check those boxes. One was in Lehi, one was in the southwest part of the valley, one was near Legacy Highway, and then we had the Magna facility -- or the Magna site that we ultimately chose.

And the reason why we chose the Magna facility is because the Lehi and southwest properties were near residential areas.

The one that we call the Lark site in the southwest part of the valley was actually not for sale. The owner wanted to develop it for residential homes and was not willing to sell.

The Legacy Highway property was too small.

And the Magna facility worked out really well because it was in a location that was far from any residential area. It had an asbestos dump on the north side, a landfill on the east, a tailings pond on the west, and a wastewater treatment plant on the south.

So as far as neighbors go, that's pretty good neighbors to have near an LNG facility. And you can see by the fact that we were able to procure the restrictive covenant, that they were amenable to having us there and to working with us to make the facility work.

So that's why we chose that site. And I don't think that, you know, if we had a do-over, I don't think we would have chosen a different site. I just think that was the best location to meet all the requirements.

MS. CLARK: I don't have any additional questions. Thank you.

CHAIRMAN LEVAR: Okay. Thank you.

Mr. Moore, any recross?

MR. MOORE: No recross. Thank you.

CHAIRMAN LEVAR: And I don't think she addressed any other issues.

Commissioner Clark, do you have any questions for Mr. Mendenhall?

COMMISSIONER CLARK: Just a couple of questions.

CROSS-EXAMINATION

BY COMMISSIONER CLARK:

Q. I think you expressed the view that, including the thermal, the exemption, the thermal -- what's the phrase?

A. Restrictive covenant? Thermal exclusion zone?

Q. "Exclusion" is the word I'm looking for.

Including the cost of the thermal exclusion zone and the restrictive covenants that you've since obtained or are in the process of obtaining with the other costs of the project, and examining those costs in relation to the costs of the other alternatives that were examined in the docket in which we approved the construction of the LNG plant --

A. Correct.

Q. -- the LNG plant would still be the most cost-effective option?

A. That's right.

Q. And I'm just wondering if you can help us with understanding the order of magnitude or the level of difference in some rough terms in relation to the other options?

A. Sure. I have that. I may need a minute to find it, but yes, I have it.

Q. Do we have it in the record?

A. I think I have it in my testimony, yes, in my direct.

MS. CLARK: And I would just caution Mr. Mendenhall that if you need to cite to confidential or highly-confidential information, let's make sure we alert the court reporter and the stream.

THE WITNESS: Once I find it, let's have a discussion. Let's see.

MS. CLARK: Mr. Mendenhall, I might draw your attention to DEU Highly-Confidential Exhibit 1.05 in your testimony.

THE WITNESS: Thank you for that.

Yeah, so I don't know if we want to read these numbers into the docket, or if we just want to direct --

Q. (BY COMMISSIONER CLARK:) All I was looking for was a reference. I couldn't recall where to find it. If you would just --

A. Yeah.

Q. I forgot we had the color pink. I was looking for yellow. And it's a pink one.

A. I will add to that. So the DEU highly-confidential exhibit shows the various proposals. And you can see that the on-system LNG is still the lowest.

And in additional testimony, Mr. Orton identified, I believe it was just under $700,000 of O&M expenses that were lower, which haven't been incorporated into this. So you can almost take an additional 700,000 off of the LNG on-system updated in Column B, and that would get you the right number.

COMMISSIONER CLARK: That's my only question. Thank you.

THE WITNESS: Thank you.

CHAIRMAN LEVAR: Commissioner Allen?

COMMISSIONER ALLEN: Yes, I have one question.

CROSS-EXAMINATION

BY COMMISSIONER ALLEN:

Q. When you were talking about your testimony or rebuttal on, I think it's page 5, and you mentioned that there was -- in dealing with the confusion between the interpretation of the two different rules, that the PHMSA issued an FAQ, which I understand means "frequently asked questions" of the common vernacular.

A. Right.

Q. Did you use "FAQ"? Is that your term, or did they specifically call it an "FAQ"?

A. I think they call it an "FAQ." Yeah. That might be short for "frequently asked questions," but, yeah.

COMMISSIONER ALLEN: Thank you.

CHAIRMAN LEVAR: Thank you. I just have one, I think.

CROSS-EXAMINATION

BY CHAIRMAN LEVAR:

Q. In your opinion, if you had known, if your engineering consultant had come out with the recommendation that you obtain the exclusion zone for the life of the plant, considering the volatility in real estate prices, do you believe you could have obtained the restrictive covenants at a lower cost at that time than you obtained them when you did?

A. Yeah, I don't know. I will tell you that the restrictive covenant, when we purchased it, it was based on fair market value. There were a couple appraisals that were made, and we based it off of that -- actually, a little bit lower than what the appraisals came in at. So I can only speak to the time of the purchase. I don't know what it would have been.

Q. And what's the time gap? I mean, if it had been in the engineering consultant's report, how much sooner would you have obtained them?

A. So we -- I believe we worked with the parties, beginning, like, I think it was the middle of last year, like May/June time frame. We were able to finally secure those, I think it was in January of this year. So that gives you kind of a timetable.

The original land purchase was, I believe, in February or March of 2020. So that's kind of the -- so you're looking, maybe, 18 months to two years later restrictive covenant was purchased.

Q. Thank you. That's all the questions I have.

A. Thanks.

CHAIRMAN LEVAR: Thank you for your testimony this morning.

Ms. Clark?

MS. CLARK: Thank you. The Company calls Jordan Stephenson.

CHAIRMAN LEVAR: Good morning, Mr. Stephenson.

THE WITNESS: Good morning.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: Yes.

CHAIRMAN LEVAR: Thank you.

JORDAN K. STEPHENSON,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CLARK:

Q. Good morning, Mr. Stephenson.

A. Good morning.

Q. Could you please state your name and business address for the record.

A. Yes. My name is Jordan Stephenson. My business address is 333 South State, Salt Lake City, Utah 84111.

Q. And what position do you hold with the Company?

A. The manager of regulation.

Q. Mr. Stephenson, you've submitted direct testimony with accompanying exhibits. The testimony is labeled "DEU Exhibit 3.0," and it has accompanying Exhibits 3.01 through 3.34, as well as rebuttal testimony labeled as "DEU Exhibit 3.0R," with accompanying Exhibits 3.35R through 3.39R.

Were all of those documents compiled and prepared by you or under your direction?

A.   Yes.

Q.   And do you adopt those as your testimony today?

A.   Yes.

MS. CLARK: The Company moves for admission of Mr. Stephenson's direct and rebuttal testimony, along with the accompanying exhibits.

CHAIRMAN LEVAR: Thank you. Please indicate if anyone has an objection to the motion.

I'm not seeing any, so the motion is granted.

MS. CLARK: Thank you.

Q.   (BY MS. CLARK:) Mr. Stephenson, can you please summarize your testimony for the Commission today.

A.   Yes, I can.

Good morning, Chairman LeVar, Commissioner Clark, and Commissioner Allen, and to all of you who are participating in today's proceedings.

Nearly three years ago, I sat in the same seat as the Company's revenue requirement witness in its last general rate case. The rates in that docket took effect on March 1, 2020.

As you are aware, March of 2020 also happened to usher in a historic period of uncertainty and disruption caused by the COVID-19 pandemic. With that in mind, I can truly say that I am happy to be here this morning with all of you. I'm not sure if you would all agree with me.

Conditions have significantly changed since the Company's current rates took effect in that docket. Due to these changes, the Company will be operating at a substantial deficiency in 2023, absent the Company's proposed raise change in this docket.

Before summarizing this projected deficiency, I would like to point out that the Company has agreed to reduce its requested revenue requirement in this case by $4.5 million, as presented in the statement of contested and uncontested issues presented yesterday to the Commission.

As I discussed in my direct testimony, there are two main contributors to the Company's 2023 deficiency. They are, one, significant capital investment by the Company to support a safe and reliable distribution system for customers; and two, operating and maintenance expenses have increased since the 2020 test period.

Regarding capital expenditures, the Company's average 2023 gross plant balance is projected to be $924 million higher than the balance in the 2020 test period. This rate-base increase reflects substantial capital investments made by the Company to meet customer growth, replace aging infrastructure, and to expand the distribution system. It also includes the completion of the new LNG facility, as addressed by Mr. Mendenhall.

Consistent with the Company's prior rate case proceedings, I projected the 2023 average plant balances by using the Company's capital budgets for 2022 and 2023. As I explained in response to Mr. Defever's direct testimony, some individual projects within the Company's capital budgets include contingency amounts that are based on events that are expected to occur on a statistical basis. The vast majority of these contingencies reside in projects with budgets that have already been approved by the Commission. These include the LNG facility, the infrastructure tracker replacement program, and the rural expansion program.

Based on two dates' spend in these projects, the Company will spend more than the total budgeted amount of contingencies included in the capital budget.

In my rebuttal testimony, I addressed the ratemaking treatment of certain capitalized labor overhead costs. Total labor overhead costs include the incentive compensation and the pension credit. Total labor overhead is booked as either operating and maintenance expense or capital cost, depending on how employees code their time.

In this rate case, the Company's treatment of the capitalized incentive compensation and capitalized pension credit is consistent with all past Commission orders regarding these items.

Some parties have proposed that the Company should remove a portion of the capitalized labor overhead from this case related to incentive costs because the expense portion is also removed. The Company does not agree with this proposal. However, if the Commission determines that capitalized portions of labor overhead should be removed consistently with their O&M counterparts, then that treatment should apply to all adjusted labor overhead items, which would include the incentive adjustment and the pension credit. Removing these two items would increase the revenue requirement from the level I've proposed.

Turning to operating and maintenance expense, the Company's total operating and maintenance expense has increased by $18 million in the 2023 test period, when compared with a 2020 test period amount that was used to set current rates.

I summarized the change in O&M on page 3 of my direct testimony. This increase includes new costs to operate the Magna LNG facility that didn't exist in 2020, increased costs of labor and wages, and also increased costs in the Company's pipeline integrity program and other general expense inflation.

The two most significant areas of dispute related to O&M are the Company's labor costs and the pension credit. The recommended labor expense levels proposed by Mr. Higgins and Mr. Defever failed to reflect the current and forecasted labor count, specifically the employee count.

As the Commission is aware, the Company offered an early retirement incentive program beginning in June of 2019. These retirements took effect in January of 2020. The Company's intention had always been to backfill those positions. However, hiring efforts were greatly hampered by the pandemic in 2020 and 2021, as I described in my direct testimony.

Throughout 2022, the Company has been restoring its employee head count to nearly prepandemic levels, and plans to average 924 total employees in 2023.

As I shared in DEU Exhibit 3.39R of my rebuttal testimony, the Company's total head count reached 897 total employees through August of this year, and the Company has posted 26 additional positions, bringing the total to 923 employees, which is within one employee of the assumed 2023 test period average of 924.

DEU Exhibit 3.39 also shows that the posted positions are for engineering, operations, and customer experience jobs. These are critical areas to the Company's success in safely delivering natural gas to customers throughout the state.

It is worth noting that these numbers were higher than the assumption in Mr. Higgins' and Mr. Defever's original assumptions, causing both of them to revise their proposals in rebuttal.

From May of 2022 through August of 2022, the Company has increased its total head count at a pace of ten employees per month. At this pace, the Company is on track to exceed 924 employees by the end of the year, suggesting that the Company's forecasted level for 2023 is reasonable and supported by the actual data to date.

Compared to the level of labor expense used in the 2020 test period, which included a $7.2 million savings amount for early retirements, the Company's total adjusted labor in this case computes to an average increase of .5 percent per year through 2023, which is a very reasonable percentage of growth in the labor environment in which we operate today.

Regarding the pension expense, the Company's treatment of the pension in this case is consistent with the Commission's order in the previous general rate case. The pension credit is the result of significant company contributions to the pension fund and does not provide a cash benefit to the Company that can be used to support test period operating costs. The credit accrues in the pension account and serves as a benefit to both the Company and customers in future periods as it continues to generate returns that offset benefit costs going forward.

The proposal submitted by the Office and the UAE constitute an attempt to relitigate this issue and are inconsistent with the Commission's order from the prior case.

Parties in this docket have suggested various other adjustments that are addressed in my rebuttal testimony. These include various employee benefits. The benefits at question -- in question are moderate and reasonable, especially in today's labor environment. The Company's experiencing a historic and uniquely challenging labor market that makes employee retention efforts critically important. The value of offering the benefits discussed by Mr. Defever far outweighs the minor cost of those benefits, in that it helps create a competitive culture that attracts and retains employees. Removing these programs would complicate hiring and retention efforts the Company is undertaking.

In conclusion, the Company requests that rates be adjusted in this case to recover an additional $67 million in the 2023 test period. And this concludes my summary. I'm available for questioning.

MS. CLARK: Mr. Stephenson is now available for cross-examination.

CHAIRMAN LEVAR: Thank you.

Ms. Schmid?

MS. SCHMID: No questions. Thank you.

CHAIRMAN LEVAR: Okay. Thank you.

Mr. Moore?

MR. MOORE: Just one very brief question.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Mr. Stephenson, may I direct your attention to page 12 of your rebuttal testimony, Line 292?

A. Yes, one moment. Line 292, you said?

Q. Yes. On 292 beginning with the word "No" to 294, ending with the word "board," could you please read that sentence into the record, please?

A. Yes. It says, "No. Directors and Officers Liability Insurance (D&O Insurance) is standard within the utility industry (and the broader market as well) and is absolutely necessary to attract and retain qualified candidates willing to serve on the Company's board."

Q. Now, can you look at Line 299, beginning with the word "As" and ending with the word "case" and read that sentence into the record.

A. Yes. It says, "As such, this is a necessary expense that should be included in the revenue requirement in this case."

Q. Can I direct your attention to page 20 of your rebuttal testimony.

A. Okay.

Q. Line 526 to 529. Could you please read that question and answer into the record.

A. Yes. It says, "Should lobbying costs be removed from the 2023 test period expense as proposed by Mr. Defever?"

Answer, "The Company supports an adjustment to remove the lobbying expenses proposed by Mr. Defever."

Q. Do you agree with -- do you agree with me that both D&O insurance and lobbying expenses are legitimate business expenses?

A. Yes, I agree.

Q. Therefore, you agree with me that, simply because an expense is a legitimate business expense, such as a lobbying expense, image-building advertising, does not mean these costs are recoverable in rates; isn't that true?

A. Yeah. I think what establishes what's recoverable in rates is what the Commission has ordered in the past and may order in this case.

In the case of lobbying expenses dating back to the '90s, we've consistently removed those in appliance with the Commission orders from those dockets. We do not have a similar order related to D&O insurance.

MR. MOORE: Thank you. I have no further questions.

CHAIRMAN LEVAR: Thank you, Mr. Moore.

Major Buchanan, do you have any questions for Mr. Stephenson?

MAJOR BUCHANAN: No questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Mr. Russell?

MR. RUSSELL: Thank you. I do have a few.

CROSS-EXAMINATION

BY MR. RUSSELL:

Q. Let's start with labor expense in the testimony, in the conversation you've been having with Mr. Defever and Mr. Higgins about employee count.

At the Company's request, the requested revenue requirement in this docket includes a labor expense for the test year that is approximately 13.8 percent higher than the 2021 base year, right?

A. Correct.

Q. Okay. And then let's set a little baseline about how you got there.

As I understand it from your testimony, there's a budget projection based on the number of employees you're going to have in each month of 2022. And then you expect that the employee count in 2023 will average that same number that you reach at the end of 2022; is that right?

A. Right.

Q. Yeah, then you assign a dollar figure to the number of employees, and then you inflate that dollar figure by 3 percent for the 2023 rate?

A. Yeah, that's a high-level look at it. In reality as the Company sets its labor budget, there's a lot more detail by category of cost. But you could say, yeah, 2 1/2 to 3 percent cost inflation on labor.

Q. Okay. Fair enough. And I don't want to get any more detailed than that. I'm sure it is more detailed than that.

But as you note in your testimony, the total forecasted labor expense is driven primarily by the employee head count, right?

A. Right.

Q. And just to offer a little bit of clarification or request it, there's two numbers that we're really working with here. There's the actual number of employees and then the FTE, or the "full-time equivalent," right? The actual number is the number of full-time employees plus the number of part-time employees, and that's just a raw number.

And then can you tell me what the full-time equivalent is?

A. Yeah.

Q. Or FTE?

A. Yeah, the full-time equivalent just represents a calculation of a full-time equivalent amount of employees that -- it factors in the amount of time employees are working. So I think there's some labor -- there's some overtime component to that as well.

Q. I was wondering if it included overtime because it's higher than the actual number.

A. Right.

Q. Yeah. Okay. Got it. And I only raise that because some of the witnesses reference the actual number of employees and some reference the FTE, and I just want to make sure we're keeping things straight here.

So your labor expense number, as you mentioned, is based on an actual employee head count of 924 and an FTE of 955, right?

A. Correct.

Q. I'd like you to turn, if you would, to your rebuttal testimony, Line 385.

A. Okay. Okay.

Q. Okay. I'll go ahead and read this, and then we'll just kind of talk about it here.

Question: "Do Mr. Higgins or Mr. Defever assume any forward-looking growth in company head count in their adjustments?

Answer: "No. Mr. Defever's adjustment assumes that 2023 test period headcount will equal the level in May 2022. Mr. Higgins assumes that the 2023 test period FTE level will equal the 13-month average FTE as of June 2022. Both assumptions include no consideration of growth in total headcount, despite the trends present in the data use for their adjustments and the Company's expected head count growth."

Did I get that right?

A. You did.

Q. Okay. And as an initial matter, Mr. Defever's adjustment that you're referencing here is from, I assume, his direct testimony, right?
A. Correct.
Q. And in his rebuttal testimony, he updated his adjustment to September of 2022; is that right?
A. Correct. He adjusted it for the amount that I included in my rebuttal testimony.
Q. Whatever the actual number was as of September 1, 2022, which I think is 897 actual employees, right?
A. Correct.
Q. Okay. Does your critique in the last sentence here of -- given that update, does your critique of Mr. Defever stand?
A. I believe it does, yes. When I'm talking about employee growth, one of the objectives that I set out to meet in providing the Commission with a forecasted test period to consider is what will be the conditions that the Company experiences in 2023?
And if you look at the Company's internal plans for where employment will be as well as the current pace of growth, we are on track to get to 924 employees. I think drawing a line in the sand, whether it be in September or whether it be in May of 2022, drawing a line

in the sand and using historical data does not account for that growth and, as such, does not reflect conditions that the utility will experience in 2023. So I still stand by that sentence.

Q. Okay. Fair enough. Do you happen to have the testimony of the other witnesses up there?

A. I do, yes.

Q. Okay. Great. Can you turn to -- this is an exhibit in Mr. Higgins' testimony. I can offer this as a cross exhibit, but it will be introduced later. It's UAE Exhibit RR1.6, and it's pages 2 and 3 of that exhibit.

A. You said UAE Exhibit RR1.6?

Q. Yes, it's an exhibit to his direct testimony.

A. I got it. Which --

Q. It should say "page 2 of 18" in the upper right-hand corner. It is a reproduction of a data request that UAE sent to Dominion. It's UAE Data Request 1.08. You see the question and then the response. So this is the response.

And then the second page that I reference is page 3, which is an attachment that was provided in connection with the response; do you have that, too?

A. Yeah. I have page 2 and page 3.

Q. Okay. I really want to focus on page 3. And just to orient us, what I see on page 3 is a number of

charts which show the actual employee count and employee FTE, and the budgeted employee count and FTE for the years 2020, 2021, and partial year 2022. It does show the remaining budget employee count and budgeted FTE for the rest of 2022 and all of 2023; do you see that?
A.   Yes.
Q.   Okay. And to your point about the adjustments proposed by Mr. Defever and Mr. Higgins not taking into account growth, they do, of course, take into account growth since the base year, right?
A.   Yeah. They've been updated for actuals into 2022, that's correct.
Q.   And then I'd like you to focus on the budgeted numbers that you've used for 2022. Just looking there at the actual account in June of 2022, the budget number there shows 922 actual employees, right?
A.   It does.
Q.   Okay. So the budget doesn't actually expect much growth between June of 2022 and the end of the year, where you expect 924 actual employees, right?
A.   Yeah, you're right. And I think the process to come up with that monthly -- that monthly pattern is just based on historical trends we've had. So when the budget department comes up with that, they look at, Okay, how has this happened in the past? And I think -- I don't

know that we'd all agree, but I can say that the Company's experience in 2022 has been atypical. We're in a highly constrained labor market.

The amount of applicants that we've received per job posting are way below what we typically see as a company. And so it has taken longer. It's been a much more gradual increase to get to where we want to be. But we are pleased that we're on track to get there by 2023.

Q.   And then in September, we mentioned that Mr. Defever's updated surrebuttal testimony references or utilizes the actual number of employees hired by September of 2022, which was 897, right?

A.   Yeah. And that -- yep, as of the end of August, I think, specifically.

Q.   Okay. I think it was September 1 was the number.

A.   September 1, okay.

Q.   And then as of September, you have an estimated actual of 924, right?

A.   Correct.

Q.   And the budget shows that hiring would -- expects hiring to remain flat for the rest of the year from that September date, right?

A.   Right. And it was the same process used. I think that 924 was just based on what the Company typically sees in a typical year, looking historically. This year has been abnormal, so it's taking us longer than expected to get to that amount.

Q. I want to look back at the data in 2020 and 2021. Off to the right, the rightmost column, excuse me, on this chart shows the average number of employees throughout the year. I gather that's a 12-month average, just based on the numbers to the left of it, right?

A. Right.

Q. Okay. So it shows the average, both actuals and FTEs for the actual numbers, and then the average for the budget for both of those numbers, right?

A. Correct.

Q. Okay. And what we can conclude from this in looking at the 2021 -- or excuse me, 2020 data, is that there was a budgeted actual employee count of 871, but an actual employee count of only 844, right?

A. On average, yes.

Q. Yes.

A. That's correct.

Q. And then in 2021, we had a budgeted number of employees of 896 actuals, but on average, the number of employees throughout the year was actually 846, right?

A. That's correct.

Q. And in looking into 2022, we're seeing some of that same trend, where the budget is higher than the actuals, just based on the data that we have here through June, where the budget average is 919 actuals versus an average of 880 employees actually retained, right?

A. That's right. Yep. And I think it's been a period of uncertainty for our budgeting department to know how the pandemic is going to play out. So I think you're seeing some of that in these numbers.

Q. Sure. And that's been true for the past couple of years, has it not?

A. It has, yep.

Q. Okay. Bear with me for a moment.

You mentioned in your -- I believe it was in your rebuttal testimony, but it was certainly in your summary this morning, that you've got a number of jobs posted that, if you add it to the number of employees hired, gets you fairly close to the number of jobs you expect to have filled by the end of the year; is that right?

A. That's right.

Q. Okay. Presumably, you had jobs posted in each of the previous months of this year, right?

A. Yes.

Q. Presumably, that would have gotten you to the budgeted amount, or you had jobs posted that would have been targeted to get you to the budgeted amount in each of those months, right?

A. I'm not sure. I'm not sure what the budgeted -- what the precise numbers were and if it would have gotten me to the budgeted amount.

Q. Okay. But you've been trying to hire -- you said earlier it's a bit of a challenging environment to hire folks, and it's a little slow. Presumably, you've had jobs posted that just don't get filled, right?

A. No, I think generally when a job has been approved and posted, it eventually gets filled. It may take longer than expected, but, yeah, it will get filled.

Q. And the expectation is that you're going to get to 924 by the end of this year?

A. Correct.

Q. But the expectation has been that you were going to get to 924 by the end of August, right?

A. Are you referring to the budget numbers?

Q. Yep.

A. The monthly budget numbers?

Q. Yep.

A. That's what the budgeting group had modeled.

Q. Okay. And you're not there yet?

A. Correct.

Q. Okay. Let's move on from that topic to the --

the discussion about the capitalized incentive compensation in rate base.

CHAIRMAN LEVAR: Mr. Russell, why don't we take a quick break before we move to that topic?

MR. RUSSELL: Great.

CHAIRMAN LEVAR: Why don't we come back at 10:40.

(A break was taken from 10:21 a.m. to 10:41 a.m.)

CHAIRMAN LEVAR: Okay. Thanks. We'll go back on the record.

Mr. Russell, you can continue.

MR. RUSSELL: Thank you.

I actually have two housekeeping items I'd like to address. First, one relates to the exhibit that I used with the witness. It is, as I indicated, included with Mr. Higgins' testimony. I don't intend to introduce it separately as a cross exhibit, unless the Commission is going to tell me that it would be easier for it when reviewing the transcript to have it introduced as a separate cross exhibit. I'm happy to do it either way. I just don't want to confuse the record by introducing the exhibit twice.

CHAIRMAN LEVAR: If either of my colleagues see a need to have it introduced now, I'm not saying anything.

So I think we're good.

MR. RUSSELL: And the other is I want to make a note that the witness and I both pronounced the name of the Office's witness incorrectly. It's "Defever" rather than "Defever." So apologies, sir.

Q. (BY MR. RUSSELL:) And with that, while I indicated prior to the break, Mr. Stephenson, that I was going to head to the capitalized incentive compensation, I actually want to detour very quickly to the stipulation that the parties presented. And this is probably clear from the stipulation. I just want to make it even more clear than maybe we need to.

The stipulation includes some texts in the first couple of pages and then this chart as an exhibit, the Appendix A to the chart.

For the clarification of the record, the issues that are referenced as uncontested issues are ones that essentially the parties have agreed on a total adjustment to revenue requirement, right?

A. Correct.

Q. And that total adjustment is referenced in the stipulation. I think it's -- what's the number?

A. 4.5 million.

Q. And that's a total adjustment for all of those six line items, correct?

A. That's correct.
Q. Okay. I just wanted to make that clear in case it wasn't.
So with that, let's move on to the capitalized incentive compensation in rate base.
A. Yep.
Q. You mentioned in your summary that UAE and the Office have recommended that the amount of financial incentive compensation included in rate base should be excluded because it was excluded as an expense, I think is what you said. If I got that wrong, let me know.
A. Yeah, I think that's probably the way I said it. And I guess you could -- I could probably clarify: For, I guess, the same reasons that the O&M has been removed, and they would like to remove the capitalized portion. That's how I understand it.
Q. Yeah. Okay. All right. I mean, those witnesses can speak for themselves. But I understand their positions to be that it does not belong in rates and, therefore, it should be excluded both from the expense and from the capitalized portion, right? Is that your understanding?
A. That's my understanding.
Q. Okay. As you indicate in your prefiled testimony, the Company's incentive-based program is a

component of the total labor cost, right?

A. Correct.

Q. And total labor costs are booked either to O&M as an expense or to capital, kind of depending on the activities in which the employees are engaged; is that right?

A. Right. Yeah, there's a booking process. The employees will book their time. And then total labor, which includes direct labor that gets booked there. The overhead is allocated out to projects, based on that time coding that happens.

Q. Okay. And as you've indicated, the portion of total labor costs booked to expense for ratemaking purposes, anyway, excludes the amount for financial incentive compensation, but that hasn't been removed from the portion that was booked to capital.

And I gather from your prefiled testimony that your position on this is that there are just inherent differences between O&M and capital, right?

A. Yeah. Yeah, and I'm not sure that I can speak for the Commission back in the '90s when that decision was made. But there are significant differences between capital and O&M. And so we've just been consistent with the Commission order since that time and addressed the O&M period.

And my point, my testimony was I don't know that you can necessarily assume that capital should be included in that, just based on a Commission order from the '90s that addressed O&M.

Q. Now, I just want to make sure that I understand the various, sort of, compensation -- incentive compensation that the Company offers. There is a separate operating-goals-type compensation that the Company offers to employees, right?

A. Right. Yep. There's various goals, operating, safety, diversity. There's all kinds of goals in a menu of important objectives that the Company pursues. And then there's a financial-related goal as well.

Q. Okay. So the operating one is separate and distinct from the financial-related goals that we're talking about here?

A. Right.

Q. Okay. Let's look at your direct testimony at Line 449, if you would.

A. Okay, I'm at 449.

Q. Yeah. And it's the third line of a longer sentence that does reference some previous Commission dockets. But I wanted to focus on this because I think this is where you explain what this incentive compensation program is.

It is, quote, "... incentive-compensation expenses related to net-income, earnings-per-share, and return-on-equity goals," right?

A. Right.

Q. And you reference where the money comes from. But these are all, sort of the financial incentive compensation that you offer to various employees, right?

A. Right. Yep.

Q. And those metrics, the net income earnings per share and return on equity, those are all metrics that benefit shareholders, right?

A. Yeah, you're getting to kind of the rationale that I think, if you go back to the '90s, that was what was decided, I think. But I don't know that I agree with it today. And if you'd like, I can explain why.

But I think it does benefit shareholders, but I don't know that it exclusively benefits shareholders. I think it benefits -- you could make a case that it benefits customers as well.

Q. Sorry. I didn't mean to cut you off.

A. No, you're good.

Q. And I was just going to ask, is there some spot in your prefiled testimony, where you make the case that it benefits ratepayers?

A. No, because I haven't recommended departing from the established precedent from that '90s case. I'm consistent with all orders since that time, including the capitalized portion of the financial incentive. But I'm just -- because I am consistent with those orders, I didn't try to make a case to depart from them. I think that has now been recommended by Mr. Defever and Mr. Higgins, as well, to include capital in that adjustment, which is a departure. But, yeah, I don't know that I would agree with the '90s rationale of how these goals impact customers.

Q. Do you have Mr. Defever's direct testimony?

A. I do.

Q. Okay. Would you turn to -- I don't have the page number, but it's Line 179.

A. Okay. 179. I'm there.

Q. So 179 through line, I think it's 194, Mr. Defever quotes from a Commission order, and it's a Commission order in one of the dockets that you reference in your direct testimony, a couple lines up from where we were just looking at, right?

A. Right.

Q. I want to actually read from line -- starting on Line 191, and it says, "To summarize, our policy has been to allow recovery of expenses if ratepayer benefit is demonstrated and is not merely conjectural. We reaffirm this policy here and disallow expenses for financial goals and the net income trigger."

Did I read that right?

A. Yes.

Q. In -- at least in that portion that I just read, the rationale there doesn't distinguish between costs booked to expense and costs booked to capital, does it?

A. I think in line -- let me make sure I'm on the right spot, Line 190, where it starts with, "To summarize, our policy has been to allow recovery of expenses."

So as I read that, I think we're talking about the expenses. To me, as an accountant, that signals to me that we're talking about an income statement item.

Q. Okay. It's your understanding that the Commission's use of the word "expenses" there means those items booked to O&M but not those items booked to capital?

A. Yeah. That's how I understand it.

Q. Okay. But that's your understanding as an accountant. It may not be the Commission's understanding as a Commission?

A. I guess it may not. But I do think these are very common terms. I think any time you say "expenses," at least in my mind, usually everyone is on the same page about what an "expense" is from an accounting standpoint. But I can't speak for the Commission on that.

Q. From a ratemaking perspective, can you think of a rational reason why financial incentive compensation should be excluded for those costs booked to expense but not excluded for those costs booked to capital? Just from a ratemaking perspective and not from an accounting perspective.

A. Well, I think there could be reasons. When an item is booked as capital, you're reflecting the cost of an asset, whether it's a pipeline in the ground or a building, or whatever that property plant equipment is. And in my mind, it makes sense that the cost of these assets that we are allowed to earn our return on rate base on reflect the actual cost of that asset over the life of the asset. And so that is a significant departure from a one-time expense that happens in a given year. And so to me, it makes sense that what we consider is rate base in this case match what our accounting group is calling the cost of these assets.

I don't know that any party has pointed at our asset costs on our book to say that they are overvalued in some way. And so, yeah, I do think there could be reasons why you would want to, I guess, reflect the actual cost of the asset in rate base that is distinct from an O&M or an expense conversation.

Q. But when you include these costs as a cost of the asset, you're also including these expenses related, again, to net income, earnings per share, and return on equity goals that aren't specific to the asset.

They're just -- it's because the employee booked a certain amount of time to that asset that they did include it in the first place, right?

A. Right. And we consider that a cost of the asset. So in order to put that asset into service, there's certain events that happen, including employee work and time, and that employee's cost is booked there because it was a necessary activity. So it does become, and necessarily so, a cost of that asset when all is said and done.

Q. Does the difference between booking something to expense or booking something to capital, does it change the analysis of whether a ratepayer is benefited by that expense -- or by that cost? I guess I should use that term.

A. Not necessarily. I think the cost -- before looking at where it ends up, where it "settles" is the term we use at the end of the day. Yeah, the cost of the incentive.

The incentive program works the same, whether it's capitalized or O&M, and I think that's what you're getting at.

I think what has changed if you look from the '90s to today is the circumstances of how the Company makes money. There was no CET adjustment. There was no weather normalization when these first occurred. So financially, the Company could have large swings in income. So I think today, some of these concerns that existed at the time have changed. But like I said, we have not proposed departing from previous rate case orders in this case.

Q. Okay. Thanks. And we'll move on to net periodic pension costs, which everybody loves.

The Company's afforded recovery on the cost in its qualified pension plan, based on the net periodic pension cost, is included in the revenue requirement in general rate cases, right?

A. Sorry, I was orienting myself. Would you repeat that?

Q. Yeah, sure. You get to recover the cost of the qualified pension plan, and that recovery is based on what's called a "net periodic pension cost," included in the revenue requirement, right?

A. We get to recover the cost of that? Because I think as of today, there is no cost. So we are not --

we're including zero cost to customers in that item.
Q. Well, there is a cost that is booked for an accounting purpose. But for ratemaking purposes, you're asking to zero out that cost, right?
A. Correct.
Q. And you're asking to zero out that cost because it's a negative cost, right?
A. Right, because you've had a return on plan assets that are much larger than the service cost component of that expense, correct.
Q. From an accounting perspective, employer contributions to a pension plan in any given year often differ from the net periodic pension costs recognized in that year, right?
A. Right.
Q. And rather than have me do this, can you just give a general explanation about how net periodic pension cost is determined?
A. Yeah. So there's a lot of moving parts to it. But simply summarized, you have a service-cost component which represents the anticipated obligation to employees that will be fulfilled now and into the future. As that changes, there is an expense that the Company recognizes. There's another part of the total cost, which is a return on plan assets. And it's not considered a service cost

but rather a return.

What we have seen happen since 2017, which is when shareholders contributed $75 million to fully fund the pension, that created a very large pension asset. And you'll recall that that was part of the merger docket to, I guess, complete the merger. Dominion Energy, Incorporated, offered that as a benefit to the utility and to the utility customers. That created a very large pension asset that now generates a substantial return on those plan assets. That return is a credit to total net periodic pension costs. It offsets the service cost component.

So prior to 2017, we had a positive pension expense because the service-cost component ruled the day at the time. If you added all those things up, the service cost was larger than any potential return we were getting on plan assets.

After that significant contribution of 75 million, we now generate a substantial return on plan assets that completely wipes out any services costs. So today, the customers bear no cost to the pension. And the return on those plan assets we propose to be removed as well.

The reason for that being that the cost -- that return cannot legally be culled out by the Company. So there is no -- there is no benefit, cash benefit to the Company of that return. And the Commission did agree with us in the 2019 docket on that.

Q. Isn't it the case that the cumulative sum of the annual gap pension costs will equal the cumulative sum of the Company's funding contributions?

A. I'm not sure that I would agree. I did read that in Mr. Higgins' testimony. And I think it could leave out -- and admittedly, there's a lot of moving parts to the pension. The accounting is somewhat complex. I think it was thoroughly reviewed in the last general rate case when the prior decision was made.

But I'm not sure that Mr. Higgins, when he says it will match company contributions, is accounting for the return on plan assets that's also a cash flow item into that pension fund that would have to be included. So I'm not sure that his statement is complete, as he's characterized it.

Q. Has there been any effort by the Company to sort of quantify the amount of the return that is attributable to the 75 million that was provided by -- as part of the merger versus the -- what was in the plan or what was contributed to the plan through ratepayer funds?

A. Yeah. There has been efforts to do that, and I think that was thoroughly discussed in the 2019 docket.

And I believe the conclusion was -- and we had an expert witness walk through this, so I'll try to summarize, channel some of that, Mr. Felsenthal.

But when you look at ratepayer contributions or customer contributions to the pension fund, we were including in rates a pension expense. That does not necessarily match contributions made by shareholders. And to create a pension asset, contributions must be, by definition, larger than expense. Because if you're only contributing the expense, you would not grow the balance of an asset. You cannot have a pension asset if contributions are less than or equal to pension expense. And so I think, by definition, any pension asset has been created because of contributions above and beyond expense included in rates.

At the time, looking at just the asset balance of the 75 million versus where we're at today at 100 -- and I can't recall, it's in my testimony, 140-some-odd million-dollar asset, I think the vast majority is caused by that $75 million contribution. But I think all of the contributions prior to that are above and beyond the pension expense that was being booked at the time.

Q. You mentioned that that effort to sort of try to quantify the value of the pension asset from some contributions versus others was done three years ago.

Has that effort been done for this case?

A. No. But I think if you were to look at 2019 and look at the relationship between what was the asset at the time, what was the asset after, the growth in that asset, I think you could assume the relationship is the same because now you're earning a return on all plan assets. So as the growth -- as the cake bakes and continues to grow, I think that relationship stays true because they're all growing together. I don't know if that makes senses but ....

Q. I think I understood the point.

How is the pension asset affected by movement in the stock market?

A. Well, it's a return on plan assets, and I can't tell you exactly where the funds have been invested by the entity that's managing the pension fund. But as it's a return on plan assets, any, I guess, part of that fund that is in stocks that had moved would be impacted by those stocks. But I couldn't tell you to the extent and how it's been impacted.

Q. Right. And the reason I asked that question is you just indicated that the growth of the asset, you indicated, would be mainly attributable to 75 million. I'm just wondering, from any point where the stock market is going down, the reduction in the value would also be mostly attributable to that $75 million contribution, wouldn't it?

A. Yeah, I can see your point. Yep.

Q. Okay. Let's assume that in the next rate case, pension costs are positive. Does that necessarily mean that the ratepayers are no longer benefiting from that $75 million contribution?

A. No, it doesn't. It doesn't. Because that $75 million contribution will always generate some return on plan assets. So -- well, to the extent that there's any return on plan assets, that benefits the Company and its customers. So that 75 million will exist into perpetuity and, theoretically, always generates some level of return. Maybe some years not. I can't guarantee every year it will. But that 75 million doesn't go anywhere. It stays there, and it continues to generate returns into perpetuity.

Q. And if the $75 million contribution made by shareholders as part of the merger is benefiting ratepayers now, and for that reason we eliminate pension expense now, shouldn't we eliminate pension expense in the future if it's also benefiting ratepayers in the future?

A. Well, I think we've gone down that road in Mr. Higgins' direct testimony and my rebuttal. And what

I've said in my rebuttal is you're talking about a hypothetical situation. This pension accounting is complex enough as it is with actual data, and I don't have an opinion for a future hypothetical situation. But -- and I don't think that's before the Commission at this point. So I would probably -- if that event ever occurs, we address it at that time.

Q. Sure. One of Mr. Higgins' recommendations in this docket is that if we're not going to include pension expense when it's negative, that we should have a commitment not to include it when it's positive.

That's not a recommendation you've agreed with, correct?

A. Correct.

Q. Right. You prefer to address it at some point in the future. But as it stands, if the Commission adopts the Company's position without some -- without addressing what may happen in the future, isn't that just a recipe for always excluding pension expense when it's negative and including it when it's positive?

A. I don't know if that's the recipe. I think if ever we were to flip to a positive pension expense, it would have to be addressed in that proceeding.

Q. Do you know what happens if the Company terminates its pension plan when it has a positive pension asset or overfunded pension asset?

A. I'm not sure.

MR. RUSSELL: Okay. All right. I'll leave that one alone.

And I think that's all I have for you, thanks.

THE WITNESS: Thank you.

CHAIRMAN LEVAR: Thank you, Mr. Russell.

Ms. Clark, any redirect?

MS. CLARK: Just a little, thanks.

REDIRECT EXAMINATION

BY MS. CLARK:

Q. Mr. Stephenson, earlier in your testimony, Mr. Moore was asking you about costs associated with the board of directors and specifically what you call "D&O insurance."

What is your understanding what the board of directors, what role the board of directors serves for a company like this one?

A. Yeah. So the board of directors provide critical oversight over business decisions, financial risk, operating risk, all kinds of things.

Q. Do you view that as being beneficial to customers?

A. Yes, absolutely. And I think you don't have to look too far to find very costly scenarios where board of directors may not have fulfilled that obligation. So I think having a highly credible board of directors is essential, and it serves all stakeholders, including customers.

Q. And to contrast that with the lobbying costs, would you view the lobbying costs as being as critical and as beneficial to customers as perhaps maintaining a highly qualified board of directors would be?

A. No. No. I view a board of directors as much more critical to the success of our company than lobbying expense.

Q. Mr. Stephenson, I want to turn your attention again to the costs associated with the employees. And there was a great deal of discussion earlier about head count.

Could you refresh your testimony -- or not refresh your testimony, excuse me, could you restate your testimony about how many employees the Company has today and how many it has budgeted or expects to have by 2023?

A. Yes. So, as in my rebuttal testimony, we've reached 897 actual employees hired. And then we -- with posted positions, when you add posted positions to that, you get up to 923 total employees.

Q. And on average, how many employees has the

Company been adding per month for the last several months?

A. Ten per month, on average, since May through August.

Q. So how many months do you think it would take the Company to achieve the head count that is budgeted and that we've requested in this case?

A. So that puts you ten per month. You would add 30 over three months, and you would be there.

Q. You would be there. So you would be there before 2023 or early in 2023?

A. Yes.

Q. I want to turn now to the discussion about the capitalized costs associated with incentive.

Do you remember that conversation?

A. Yes.

Q. Do you view -- let me ask this a different way.

Would you agree that capitalizing such costs is beneficial to ratepayers because they're necessary for these employees to continue performing their duties, whether they're capitalized activities, if you will, or not?

A. Yeah. And to expound a little bit on that, I think the way that the Company establishes its total labor -- its total labor cost or the offers to employees, including their salary, including incentive, including various benefits, the Company is looking at the market. It's looking at peers. It's doing surveys to determine what is the total labor package that will allow us to attract the employees we need to successfully operate as a company, and to safely operate, reliably operate. And the incentive is one of those things.

So the total incentive, no matter how it's paid to employees, whether it's an operating goal or a safety goal or a financial-related goal, that total incentive is necessary, in the Company's view, to attract those employees. And I think attracting those employees is critical for the Company to operate safely.

Q. Would you agree that if the Commission determines that the capitalized portion of financial incentives should be removed from the rate base, the capitalized portion of the pension credit should also be removed from the rate base?

A. Yes, I think they're just -- they're the same. So they're both in the category of labor costs. So if you imagine -- I'll illustrate. It's a little bit complicated, so I'll try to think of how to explain this.

But if you imagine total labor costs as a stream running down the mountain, that total labor cost includes all kind of things. It includes pension credit, it includes incentive payments, benefits, and all those overheads. And we try to redirect some of that stream toward capital, based on a load factor or a percentage, based on how employees code their time.

To say we are going to selectively dip into that stream and pull out the financial incentive for this adjustment, because that's how we do it on the O&M side, and not pull out the pension credit, which is also removed on the O&M side, it would be inconsistent. And so, yeah, I think if the Commission determines that the capital -- the cost of capital assets should be adjusted, you know, consistently with the O&M adjustment, then it should happen to both of those adjustments, the pension credit, as well as the incentive payment.

MS. CLARK: I don't have any additional questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Any recross from Ms. Schmid?

MS. SCHMID: None. Thank you.

CHAIRMAN LEVAR: Thank you.

Mr. Moore?

MR. MOORE: No, thank you.

CHAIRMAN LEVAR: Major Buchanan?

MAJOR BUCHANAN: No, thank you.

CHAIRMAN LEVAR: Mr. Russell?

MR. RUSSELL: Just a few.

RECROSS-EXAMINATION

BY MR. RUSSELL:

Q. Mr. Stephenson, Ms. Clark asked you a couple of questions relating to the employee head count. I just want to revisit those.

The question related to the number of posted positions that the Company has in addition to the current employee head count, right?

A. Correct.

Q. And you indicated that if you add the current head count of 897 to the number of posted positions, you get to -- I think it was 923, right?

A. Right.

Q. Okay. And posted positions are just unfilled positions, right? They're not -- they don't represent expenditures by the Company on actual employees, right?

A. I'd say they're committed expenditures. To give you a little bit of, I guess, context into what goes into a posted position, internally, as a culture, I could say it almost -- we joke around that it would take an act of divine intervention to get a posting approved from our management. So it's not a small task to get to the point where a job has now become a posted position. That has been approved up all the way through management to add that position, and then yes, it gets posted. But once it's been approved, the Company then plans for that expense, and the funding is made available. And I don't think there is any manager that will relinquish that approval, and that posting will be filled.

Q. The funding may be made available to hire somebody, but that doesn't mean that that money is actually going out to an employee that has been hired until you actually hire an employee, right?

A. That's correct.

Q. Okay. So by kind of combining the posted positions to the actual positions, you're sort of equating job openings with actual employees, aren't you?

A. Right, and I'm doing that for a 2023 test period. And as I made clear, my objective, and consistent with the code in 54-4-4, is to reflect the test rate conditions that the Company will encounter in 2023, which is when rates will take effect.

So yes, those positions are not filled yet, but at the pace we're hiring, they will be filled for the test period and should be reflected.

Q. Let's talk a little bit about capitalized incentive costs. You kind of walked through with Ms. Clark your views about whether these types of incentives are required to compete for employees.

Now, it may be that some level of compensation is required to hire employees, but it's not required that the Company pay those incentives on financial outcomes that strictly benefit shareholders, right?

A. Right, and I think we've talked about the benefit to shareholders. I wouldn't agree that they strictly benefit shareholders today with the way the Company is allowed to collect revenues. But I'd agree that we don't have to set goals by any particular criteria. We have flex -- we have options.

Q. And one of those options is offering incentives based on operating goals. And that is an incentive you do provide your employees, right?

A. Right.

Q. Okay. I think that's it. Thanks.

CHAIRMAN LEVAR: Thank you, Mr. Russell.

Commissioner Allen, do you have any questions for Mr. Stephenson?

COMMISSIONER ALLEN: No questions. Thank you.

CHAIRMAN LEVAR: Commissioner Clark?

COMMISSIONER CLARK: Couple of questions.

CROSS-EXAMINATION

BY COMMISSIONER CLARK:

Q. The pension credit that you were discussing in relation to the capitalization of incentive compensation, it's not in any way tied to incentive compensation, is it, or to financial goals that are inherent in incentive compensations?

A. It's related. It's a sibling. So the way I think of it is you have total labor overhead. I gave that analogy as a stream. It's in one stream of costs. They get allocated similarly, they're accounted for similarly. Some end up in O&M, and the Commission has ruled that we take those out of ratemaking for O&M. And then some end up going to capital as a branch of that stream. And so the origination of the costs are different, but for accounting purposes, they're all treated the same in that stream of costs.

So that's where I was saying the rationale would apply to both. It's -- if you're going to say we should remove these from ratemaking in total, both O&M and capital, for the incentive, it would make sense that -- at least in my mind, it would make sense to do the same for the pension credit as well, for saying that should not be included in rates.

Q. Because it receives the same accounting treatment as -- as the capitalized incentive costs?

A. Right.

Q. To your knowledge, has the Commission ever consciously addressed the capitalization of financial goals, goals related to incentive costs?

A. Not to my knowledge.

COMMISSIONER CLARK: Thank you. Those are all my questions.

THE WITNESS: Thank you.

CHAIRMAN LEVAR: Thank you.

CROSS-EXAMINATION

BY CHAIRMAN LEVAR:

Q. My first question is probably restating the obvious. But when you talked about increase of ten per month from May through August, was that ten hires per month, or was that a net increase, net head count increase, ten per month?

A. That's net. That's net. And, of course, we have attrition. So some employees go, some come. So that's all -- all numbers embedded together. So it's the net number.

Q. Can you describe -- switching topics.

Can you describe what kind of total compensation analysis Dominion conducts to evaluate what kind of perks and benefits are necessary, considering who you're competing with for employees and that kind of thing?

A. Yes. And I'll say I'm not personally involved, but I do have some knowledge of what the Company does. We rely on a third-party expert to conduct surveys for us on an annual basis to look at both industry data as well as, you know, national data and see what are employers offering?

That looks at a few things. It looks at base compensation rates for specific job types. It also includes benefits as well. And so that's done.

Another act that the Company engages in, the benefits department specifically, is they have a list of 17 peer groups that are similar to Dominion Energy Utah, and they are comparing with that annually to see what are the benefits being offered to those employees in those companies? And are we keeping pace, or are we reasonable and competitive with those? And that happens annually as well.

CHAIRMAN LEVAR: Thank you. That's all the questions I have. Thank you for your testimony this morning.

THE WITNESS: Thank you.

CHAIRMAN LEVAR: Anything else from DEU?

MS. CLARK: Nothing more at this time.

CHAIRMAN LEVAR: Ms. Schmid.

MS. SCHMID: Thank you. The Division has three witnesses and would like to call its first witness, Mr. Eric Orton.

CHAIRMAN LEVAR: Good morning, Mr. Orton.

THE WITNESS: Good morning.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: I do.

CHAIRMAN LEVAR: Thank you.

ERIC ORTON,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. SCHMID:

Q. Hello. Would you state and spell your full name for the record.

A. My name is Eric Orton, E-R-I-C, O-R-T-O-N.

Q. By whom are you employed and what is your title?

A. Utah Division of Public Utilities. I'm a utility technical consultant.

Q. For the record, what is your business address?

A. 160 East 300 South, Salt Lake City.

Q. In conjunction with your employment by the Division, have you participated on behalf of the Division in this docket?

A. I have.

Q. Did you participate in the preparation and filing of DPU Exhibit -- just one moment -- 3, which has been pre-marked as DPU Exhibit No. 3.0DIR?

A. That's right.

Q. Do you have any changes or corrections to your prefiled testimony?

A. I do have one correction. I misspelled a word on Line 71. I misspelled "associated."

Q. Okay. With that correction, if you were asked the same questions that are in your prefiled testimony today, would your answers be the same?

A. They would.

Q. Do you adopt your prefiled testimony as your testimony here today?

A. I do.

MS. SCHMID: With that, the Division would like to move for the admission of Mr. Orton's testimony premarked as DPU Exhibit No. 3.0 DIR.

CHAIRMAN LEVAR: Thank you. Please indicate if anyone objects to the motion.

I'm not seeing any objection, so it's granted.

MS. SCHMID: Thank you.

Q. (BY MS. SCHMID:) Mr. Orton, do you have a summary to present today?

A. I do.

Q. Please proceed.

A. Thank you.

In my direct testimony, I recommended two reductions to the Company's requested revenue requirement in the ongoing operating and maintenance expenses for the LNG facility.

The first one was a reduction of $669,934 based on a revised estimate provided by the Company. Specifically, the estimate provided in DEU's Exhibit 3.10 was $2,784,143, while its later estimate in response to OCS Data Request 3.06 was $2,114,209. The difference between these two numbers was the recommended reduction.

The second recommendation came as a result of the Division supporting the Company's recommendation to move $2,131,234 to the supplier non-gas portion of the 191 pass-through account, which represent electrical cooling costs -- costs to cool and liquefy the natural gas in the LNG facility. These costs were ordered and included in that pass-through docket, and they were also included in the current general rate case. They should not be in both. Accordingly, I recommended removal of these costs from this case.

In his rebuttal testimony, Company witness

Mr. Jordan Stephenson accepted both of my recommended revenue requirement adjustments.

In summary, I recommended two reductions in the Company's request for recovery of ongoing costs of the LNG facility in this case. These two adjustments were accepted by the Company and are just, reasonable, and in the public interest.

That concludes the summary of my direct testimony. Thank you.

MS. SCHMID: Mr. Orton is now available for cross-examination questions and questions from the Commission.

CHAIRMAN LEVAR: Thank you.

Mr. Moore, do you have any questions for Mr. Orton?

MR. MOORE: I have no questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Major Buchanan?

MAJOR BUCHANAN: No questions. Thank you.

CHAIRMAN LEVAR: Mr. Russell?

MR. RUSSELL: No questions. Thank you.

CHAIRMAN LEVAR: Ms. Clark?

MS. CLARK: None from me. Thank you.

CHAIRMAN LEVAR: Commissioner Clark?

COMMISSIONER CLARK: No questions. Thank you.

CHAIRMAN LEVAR: Commissioner Allen?

COMMISSIONER ALLEN: No questions.

CHAIRMAN LEVAR: None from me, either.

Thank you for your testimony this morning.

THE WITNESS: Thank you.

MS. SCHMID: As its next witness, the Division would like to call Mr. Jeff Einfeldt.

CHAIRMAN LEVAR: Good morning, Mr. Einfeldt.

THE WITNESS: Good morning.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: Yes.

CHAIRMAN LEVAR: Thank you.

JEFFREY S. EINFELDT,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. SCHMID:

Q. Good morning. Would you please state and spell your full name for the record.

A. My name is Jeffrey S. Einfeldt. It is spelled Jeffrey, J-E-F-F-R-E-Y, middle initial S, last name Einfeldt, E-I-N-F-E-L-D-T.

I am a technical consultant for the Division of Public Utilities, and my address is -- my business address is 160 East 300 South, Salt Lake City, Utah.

Q. In conjunction with your employment by the Division, have you participated on behalf of the Division in this docket?

A. Yes.

Q. Did you participate in the preparation and filing of what has been premarked as DPU Exhibit No. 5.0SR? It is your surrebuttal testimony.

A. Yes.

Q. Do you have any changes or corrections to that exhibit?

A. No.

Q. Is it true that your testimony is premarked in the category of Exhibit No. 5 because the Division has another witness in Phase II, whose testimony has been premarked as DPU Exhibit 4?

A. Yes. That's my understanding.

Q. Do you adopt your prefiled surrebuttal testimony as your testimony today?

A. Yes.

Q. If I were to ask you the same questions that are in your testimony, would your answers be the same?

A. Yes.

MS. SCHMID: With that, the Division would like to move for the admission of DPU Exhibit No. 5.0SR, the surrebuttal testimony of Mr. Einfeldt.

CHAIRMAN LEVAR: Thank you. If anyone objects to that, please indicate.

Not seeing any objections, so the motion is granted.

Q. (BY MS. SCHMID:) Do you have a summary to present today?

A. I do.

Q. Please proceed.

A. Thank you, Commission.

The Division reviewed testimony and supporting exhibits filed in this case, related documents in the prior rate case, and the prior order. The Division's review also included generally accepted accounting principles, FAS pronouncements, FERC publications, utility regulatory guides, and other accounting guides, publications, and evidence in preparation of its surrebuttal testimony.

Consistent with its statutory mandate to provide the Public Service Commission with objective and comprehensive information, the Division filed surrebuttal to fill an incomplete record on the pension issues before the Commission.

DEU proposes treating the subject pension items in this general rate case the same as they were treated in the prior general rate case. The characteristics of the subject pension items are the same in this case as they were in the last rate case, although the amounts differ.

The negative pension expense in the prior case was approximately 5 million. The negative pension expense in this case is approximately 10 million. The net prepaid pension asset in the prior case was approximately 84 million, and in this case is approximately 93 million.

The pension items reported in this period represent noncash transactions, and their exclusion from the general rate case is reasonable. Accounting and regulatory authority exists supporting DEU's accounting treatment of the pension items, specifically the capitalization of certain costs.

DEU's proposed treatment and removal of certain pension items in this case is just and reasonable and will promote the establishment of just and reasonable rates.

MS. SCHMID: Mr. Einfeldt is available for cross-examination questions and questions from the Commission.

CHAIRMAN LEVAR: Thank you. Let me just ask: Is there any desire by any party to do cross-examination in a different order than Mr. Moore, Major Buchanan, Mr. Russell, and then Dominion, based on the position he's taking? Does that still work for everyone?

Okay. Mr. Moore, do you have any questions?

MR. MOORE: No questions. Thank you.

CHAIRMAN LEVAR: Okay. Thank you.

Major Buchanan?

MAJOR BUCHANAN: No questions.

CHAIRMAN LEVAR: Mr. Russell?

MR. RUSSELL: I do have some questions.

CROSS-EXAMINATION

BY MR. RUSSELL:

Q. Good morning, Mr. Einfeldt. It is still morning. Good.

A. Good morning.

Q. You mentioned that -- in your summary and in your surrebuttal testimony that these pension items that you're referring to -- that's a capitalized and defined term in your testimony -- are noncash items.

Can you explain what you mean by that?

A. It's not creating a cash payment or a cash recovery by the Company in this period.

Q. And one of the pension items that you include in part of that definition that is a noncash item is the pension -- the net periodic pension costs of the pension expense that we're talking about, right?

A. Correct.

Q. Okay. And you say that's a noncash item because it isn't something that comes out of the Company's pocket necessarily?

A. In this case, it's a credit. And the Company is not anticipating making a contribution to its pension plan, I believe, this year, or in the test period.

Q. Okay. And I asked Mr. Stephenson this question, and I'll ask you.

Typically, when utilities make contributions to their pension plan, the pension cost, if there is one, isn't necessarily the same as the amount of the pension contribution; isn't that correct?

A. That's correct.

Q. Okay. And so the pension expense, whether it's negative or positive, is a noncash item insofar as that's not representative of a payment or a revenue that the Company sees, right?

A. When it is a typical traditional expense amount, so it's not a credit like it is in this period, there may be a cash contribution associated with it, although that cash contribution will likely not equal the cash or the expense amount.

Q. You say there may be a cash contribution, but that doesn't necessarily have to be the case, right?

A. That's correct.

Q. I want to -- I want to have you turn to your surrebuttal testimony, starting at Line 143.

A. Okay.

Q. Here, you're talking about the assessment of the plan's position. And you state, "In any event, the assessment will change from year to year based on investment performance, actuarial assumptions, and the like. If it swings, as it may, to needing more payments, those expenses will likely be prudent. Recognizing a negative expense in this GRC would likely give a benefit to today's ratepayers at the expense of future ratepayers, who would later need to make up new deficits as they occur."

And I've got to tell you, I'm not sure I totally follow that one. It's obvious that recognizing the negative expense in this rate case would give a benefit to today's ratepayers through the form of lower rates. But I don't see how that comes at the expense of future ratepayers.

Is it your contention that recognizing negative pension costs in this rate case revenue requirement would somehow be funded by the pension plan itself?

A. No.

Q. Okay. Maybe you can tell me what you mean when you say that it would come at the cost or the expense of future ratepayers.

A. It could have an effect on future ratepayers, depending on how the balances work out with regard to the pension, the assets that are available to meet the needs of the pensioners as they retire and start collecting their pensions.

Q. Recognizing a negative pension cost in rates reduces the Company's revenue requirement in this case, right?

A. That's correct. That's what would happen.

Q. Right. And customer rates would be lower. Dominion would receive less money, but customers would not be drawing down funds from the pension plan, right?

A. That's correct.

Q. When you say "new deficits as they occur," what new deficits are you talking about?

A. What came to my mind as we developed this is probably primarily market returns. Some of the other deficits could be a change in actuarial assumptions. Some extraneous events, like the pandemic, for instance.

Our pensioners living longer or shorter than was anticipated. Those are some of the things that come to mind that could cause that.

Q. How are any of those things tied to the question of a ratemaking treatment of the pension cost?

A. We would have to consider or -- during a rate case whether those costs are prudent and whether it is appropriate for ratepayers to bear those costs.

Q. Well, I'm -- you referenced a couple of things here. One of them was market returns.

How does the ratemaking treatment of negative pension costs affect market returns?

A. I don't know that they affect market returns. I think they respond to market returns and market conditions.

Q. What response to market returns?

A. The ratemaking process.

Q. Some future ratemaking process may respond to market conditions between this rate case and the next rate case?

A. Correct.

Q. Okay. I'm not going to dispute that. I just don't understand how you get from excluding or including pension costs in this rate case affecting future ratepayers in any way.

A. All we're saying is, there could be an effect.
Q. And mathematically, how would that work?
A. We would probably reword that a little differently.
Q. And maybe you can just expand on it a little bit. I'm still trying to understand what point you're trying to make here. And candidly, my reaction to this is I'm trying to decide whether the basis of your testimony is that you assume that the ratemaking treatment somehow affects the accounting treatment of the pension plan.
A. With this comment, I think what we're trying to do also is preserve the right and -- well, preserve the ability to analyze pension expenses in future rate cases rather than precluding anything because circumstances could just change. And I think it would be -- I believe, or our opinion is that it is prudent to be able to review those in the future.
Q. I had a question for Mr. Stephenson, and he indicated he might not know the answer. I'm going to ask you.
If a pension plan is overfunded at the time that it is terminated, isn't it true that those excess funds can be retained by shareholders, subject to the payment of taxes owed?

A. They can be retained by the Company. That is my understanding that any excess after the pension fund is liquidated, during the liquidation, the final liquidation of the pension fund, any excess assets that exists, the Company has claim to those.

MR. RUSSELL: Okay. I think that's all I have. Thank you.

CHAIRMAN LEVAR: Okay. Thank you.

Ms. Clark, any questions for Mr. Einfeldt?

MS. CLARK: I don't have any questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Any redirect?

MS. SCHMID: Just one.

REDIRECT EXAMINATION

BY MS. SCHMID:

Q. To make sure it is clear on the record, what treatment is DEU proposing and DPU supporting of the pension credit, the negative expense, as an O&M item in this rate case?

I can restate that if it would be helpful.

A. I can attempt to answer your question the way I understand it.

Q. It might be better if I rephrase it.

A. Okay.
Q. Is the Company proposing to set the pension credit, the negative expense, to zero in this case?
A. Yes, the O&M portion, yes.
Q. And the Division supports that; is that correct?
A. That's correct.
Q. Thank you. Thanks for allowing me to restate it. That's all the redirect I had.
THE WITNESS: Easier for me.
CHAIRMAN LEVAR: Thank you.
Mr. Russell, any recross?
MR. RUSSELL: No.
CHAIRMAN LEVAR: Commissioner Allen, any questions for Mr. Einfeldt?
COMMISSIONER ALLEN: No questions, thank you.
CHAIRMAN LEVAR: Commissioner Clark?
COMMISSIONER CLARK: Yes, a couple questions.

CROSS-EXAMINATION

BY COMMISSIONER CLARK:
Q. Good morning.
A. Good morning.
Q. Looking at your surrebuttal, you say the excess funding position is -- and I'm speaking about the pension -- the excess funding position is primarily due

to Dominion Energy's $75 million contribution to the pension plan that was made in connection with the acquisition of -- that this led to Dominion Energy Utah being the new entity serving customers in Utah.

And my question is, is there -- at what point in the future will that no longer be the case? Or can we tell, today, at what point in the future an excess funded position of the pension plan would no longer be primarily attributable to the $75 million contribution?

A. I don't know that we can tell when that doesn't happen. It will depend on whether the market continues to deteriorate at a rate that has the last few months, requiring additional funding. But that 75 million is a -- to be clear, that 75 million is a portion of what the balance is.

The pension fund was likely in an underfunded position prior to that $75 million contribution. That $75 million contribution then placed the pension fund in a net asset position. That net asset position that is measured in the general rate case represents a snapshot at one point in time of an accumulation from the beginning of when the pension fund began and all of the activity until that date and time, where there is, I think, roughly a $93 million excess balance as of that date, if that is helpful.

So that 75 million is a primary cause of why the pension plan is in a net asset position, or a prepaid asset position. But there were a whole host of transactions that took place over the years that also led to that $93 million net -- or prepaid asset position that was recorded.

Q. A lot of those would be the expenses, the pension expenses, recovered in rates over that long period of time, correct?

A. Correct.

Q. Any sense of what the dollar figure of that is?

A. No. No. I know in one of the exhibits that was included, they give a list of contributions from, like, 1998 until, like, 2016. I think 2016 may have been the last contribution the Company made or had to make on its pension plan. But I don't know what took place prior to 1998.

From 1998, I do have -- I just ran some numbers on that. It's UAE Data Request 5.05, Attachment 1. I believe that's in one of, perhaps Mr. Higgins' or Mr. Defever's surrebuttal testimony. And those contributions from 1998 through 2016 total approximately $252 million. Total expenses for that same period of time was about -- net of about $157 million. So you know, close to $100 million difference.

Q. Is that a present-value number, or just summing up the --
A. No, those are just summing up transactions that were made.
Q. Those are all my questions. Thank you.
CHAIRMAN LEVAR: I don't have any additional questions, so thank you for your testimony this morning.
THE WITNESS: Thank you.
CHAIRMAN LEVAR: Ms. Schmid.
MS. SCHMID: Thank you. The Division has one more witness, and would like to call Mr. Douglas Wheelwright to the stand.
(Pause in the proceedings.)
CHAIRMAN LEVAR: Good morning, Mr. Wheelwright. Do you swear to tell the truth?
THE WITNESS: Yes, I do.
CHAIRMAN LEVAR: Thank you.

DOUGLAS D. WHEELWRIGHT,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. SCHMID:

Q. Good morning. Would you please state and spell your full name for the record.
A. My name is Douglas D. Wheelwright. My last name is spelled W-H-E-E-L-W-R-I-G-H-T.
Q. By whom are you employed, and what is your title?
A. The Division of Public Utilities. I am a utility technical consultant supervisor.
Q. And your business address, please?
A. 160 East 300 South, Salt Lake City.
Q. In conjunction with your employment at the Division, have you participated in this docket?
A. Yes, I have.
Q. Did you participate in the preparation and the causing to be filed of DPU Exhibit No. 1.1DIR, with its accompanying exhibit, 1.01DIR?
A. Yes, I did.
Q. Do you have any changes or corrections?
A. I do have two corrections.
Q. Please walk us through those.
A. On page 3, Line 61, it says "2.7 million." It should be "2.8 million."
And on -- the same correction, but on Line 102 on page 4, it should be corrected to "2.8 million." And those are the only corrections.

Q. With that, with those corrections, if asked the same questions that are in your prefiled testimony, would your answers today be the same?
A. Yes, they would.
Q. Do you adopt your prefiled testimony and its exhibit as your testimony here today?
A. Yes, I do.
MS. SCHMID: The Division would like to move for the admission of DPU Exhibit No. 1.0DIR and its accompanying exhibit.
CHAIRMAN LEVAR: Thank you. If anyone objects to that, please indicate your objection.
Not seeing any, so the motion is granted.
Q. (BY MS. SCHMID:) Do you have a summary to present today?
A. I do.
Q. Please proceed.
A. Thank you.
Good morning, Commissioners. In the original application, the Company identified a revenue deficiency of $70.5 million. The calculated deficiency assumes an increase in the authorized rate of return, as well as recovery of significant capital spending.
The Division has reviewed the proposed changes and does not agree with or support some of the

assumptions used by the Company to calculate the test year revenue requirement deficiency. The Division identified $20.9 million in adjustments, leaving a deficiency of $49.6 million in the revenue requirement. The individual components of the Division's adjustments include an $18.2 million reduction, based on a 9.3 percent return on equity and a $2.8 million reduction to the LNG operating expense.

Some of the proposed adjustments and reductions to the revenue requirement are undisputed and were identified by the Company. The details of the specific adjustments have been explained by other Division witnesses. In addition to the adjustments proposed by the Division, the Company has provided a summary of undisputed adjustments that should be deducted from the revenue requirement.

The recommended adjustments would reduce the total revenue requirement and will result in just and reasonable rates for Utah ratepayers.

And that concludes my summary.

MS. SCHMID: Thank you. Mr. Wheelwright is now available for cross-examination questions and questions from the Commission.

CHAIRMAN LEVAR: Thank you.

Mr. Moore?

MR. MOORE: No questions. Thank you.
CHAIRMAN LEVAR: Thank you.
Major Buchanan?
MAJOR BUCHANAN: No questions. Thank you.
CHAIRMAN LEVAR: Mr. Russell?
MR. RUSSELL: No questions. Thank you.
CHAIRMAN LEVAR: Ms. Clark?
MS. CLARK: I also have no questions.
CHAIRMAN LEVAR: Thank you.
Commissioner Allen?
COMMISSIONER ALLEN: No questions.
CHAIRMAN LEVAR: Commissioner Clark?
COMMISSIONER CLARK: No questions. Thank you.
CHAIRMAN LEVAR: I don't either. Thank you for your testimony this morning.
Anything else from the Division?
MS. SCHMID: The Division has nothing more. Thank you.
CHAIRMAN LEVAR: Okay. Why don't we break now and go on recess until -- does 1:15 work for everyone?
Okay. We'll return at 1:15.
(A break was taken from 11:53 a.m. to 1:15 p.m.)
CHAIRMAN LEVAR: Good afternoon, everyone. We will be back on the record.
I think we're ready to go to Mr. Moore for the

Office of Consumer Services.

MR. MOORE: Thank you, Chairman. The Office calls Alex Ware to the stand and asks that he be sworn.

CHAIRMAN LEVAR: Good afternoon, Mr. Ware.

THE WITNESS: Hello.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: I do.

CHAIRMAN LEVAR: Thank you.

ALEX WARE,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. Mr. Ware, could you please state your full name, give your business address, and state how you are employed.

A. My name is Alex Ware, that's A-L-E-X, W-A-R-E. I am a utility analyst with the Office of Consumer Services. My business address is 160 East 300 South, Salt Lake City, Utah.

Q. In your capacity as a utility analyst for the Office, did you prepare and cause to be filed direct testimony, together with OCS Exhibit 1.1D, and filed this with the Commission on August 26, 2022?

A. Yes.

Q. Did you also prepare surrebuttal testimony, both highly confidential, confidential, and redacted, on October 13th, 2022?

A. Yes, correct.

Q. Do you have any changes to this testimony you would like to make at this time?

A. Well, thankful to Mr. Mendenhall, I do have one that I am aware of to fix. And that actually existed both in my direct testimony and surrebuttal testimony.

It was the reference to 49 CFR 193.2059. I had it transposed as 95. That is on page 7 of my direct testimony and page 3 of my surrebuttal.

Q. Other than that change, if I asked you the same questions as appear in your written testimony, would your answers be the same?

A. Yes.

MR. MOORE: The Office moves to admit the testimony of Alex Ware, with accompanying exhibits.

CHAIRMAN LEVAR: If anyone objects to that motion, please indicate your objection.

Not seeing any, the motion is granted.

Q. (BY MR. MOORE:) Have you prepared a summary of the position you would like to give at this time?

A. Yes, I did.

Q. Please proceed.

A. Thank you, Commissioners, for having us today.

The direct testimony of DEU witness Mr. Mendenhall, in part, informs parties to this proceeding that the Company is seeking recovery from ratepayers for the new costs associated with securing a thermal exclusion zone around the new LNG facility.

These costs are above those that were preapproved in Docket 19-057-13. While the exclusion zone was established in 2017 and identified at that time that it would extend into some areas of the neighboring properties, DEU indicates it misunderstood the requirement to legally secure the exclusion zone for the life of the LNG plant.

DEU claims it acted prudently with information it understood at the time, and that the new costs to secure the thermal exclusion zone were unanticipated. However, DEU bears the burden of proof to justify these costs. And my research into the issue during this case shows that DEU's claim and request for recovery from ratepayers lacks merit for following four reasons.

One, DEU's original interpretation of the thermal exclusion zone that it didn't need to be legally enforceable for the life of the facility is an unreasonable conclusion.

Clarity on -- No. 2, clarity on the issue was readily available, but DEU apparently did not prudently conduct timely research into all the relevant and statutory safety requirements for its new facility.

Number 3, the initial establishment of the exclusion zone in 2017 was not provided the parties in the LNG preapproval dockets in 2018 and 2019, even though the OCS articulated relevant concerns about NIMBY and land use issues.

And, 4, DEU itself provides an example in this docket, where new costs to ratepayers are disallowed when they are as the -- they are the result of the mistake of one of its contractors.

The relevant questions surrounding the exclusion zone issue is not whether DEU acted prudently with the information it knew at the time, but rather, whether DEU acted prudently with the information it should have known at the time and should have provided to parties in the preapproval docket.

It is clear from the evidence I present in my testimony that DEU did not conduct a full review -- a full timely review of the thermal exclusion zone requirements and costs during the preapproval dockets.

While it's now unknowable how this information may have impacted the development of the LNG facility, potential costs associated from the enforcement of the exclusion zone could have and should have been known and assessed long before this rate case.

DEU's ignorance of its LNG facility obligations is certainly not reasonable and prudent and is not compelling justification to assign new costs to ratepayers now.

I recommend that the Public Service Commission deny DEU's request in this docket for recovery of exclusion zone treatment costs from ratepayers. Thank you.

MR. MOORE: Mr. Ware is now available for cross and questions from the Commission.

CHAIRMAN LEVAR: Thank you, Mr. Moore.

Ms. Schmid, do you have any questions for Mr. Ware?

MS. SCHMID: No questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Major Buchanan?

MAJOR BUCHANAN: No questions. Thank you.

CHAIRMAN LEVAR: Mr. Russell?

MR. RUSSELL: No questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Ms. Clark?

MS. CLARK: I also have no questions. Thanks.

CHAIRMAN LEVAR: Thank you.

Commissioner Allen?

COMMISSIONER ALLEN: No questions.

CHAIRMAN LEVAR: Commissioner Clark?

COMMISSIONER CLARK: I have no questions. Thank you.

THE WITNESS: Thank you.

CHAIRMAN LEVAR: I don't have any questions either.

Thank you for your testimony this afternoon.

THE WITNESS: Thank you.

Mr. Moore?

MR. MOORE: The Office's second witness is Mr. John Defever. We'd like to call him to the stand and ask that he be sworn.

CHAIRMAN LEVAR: Good afternoon, Mr. Defever.

THE WITNESS: Hello.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: I do.

CHAIRMAN LEVAR: Thank you.

JOHN DEFEVER,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. Mr. Defever, could you please state your full name for the record, spell your name, and give your business address.

A. It's John Defever, J-O-H-N, D-E-F-E-V-E-R. My business address is 15728 Farmington, Livonia, Michigan.

Q. On whose behalf are you testifying today?

A. The OCS.

Q. What is the purpose of your testimony? I'm sorry. I asked you what the purpose of your testimony is today.

A. I made a number of adjustments. I'm going to explain them.

Q. Did you prepare direct testimony, together with exhibits -- OCS Exhibits 2.1 and 2.2D, and cause them to be filed on August 26, 2022?

A. Yes.

Q. Did you also prepare rebuttal testimony, together with Exhibit 2.1R, and filed it on September 22nd, 2022?

A. Yes.

Q. And did you also file surrebuttal testimony on October 13th, 2022?
A. I did.
Q. And you had confidential and redacted Exhibit 2.1S with the surrebuttal testimony?
A. Yes.
Q. Do you have any changes to this testimony you'd like to make at this time?
A. Nope.
Q. If I asked you the same questions as are in your written testimony, would your answers be the same?
A. As updated in my surrebuttal, yes.
MR. MOORE: The Office moves to admit the testimony of John Defever, together with accompanying exhibits.
CHAIRMAN LEVAR: Thank you. Please indicate if anyone objects to the motion.
I'm not seeing any, so the motion is granted.
Q. (BY MR. MOORE:) Have you prepared a summary of your testimony which you would like to give at this time?
A. Yes.
Q. Please proceed.
A. As stated in my surrebuttal testimony, the Company should receive an increase in revenue of no more

than $36,276,841. My surrebuttal testimony discusses 11 issues that remain in dispute in this proceeding. I will briefly summarize my recommended adjustment for each issue.

Plant in-service contingencies. The Company included 29.8 million of contingencies. Costs requested for recovery from consumers must be known and measurable or based on well-supported forecasted changes. By labeling these "contingencies," the Company is stating that they do not know if the costs will occur, and the Company did not provide supporting evidence justifying these costs.

By definition, contingencies do not meet the known and measurable standard. As such, I recommend the removal of all contingencies from rate base.

Capitalized incentive compensation. The Company has included 1.5 million of capitalized incentive compensation related to financial goals and rate base.

(Court reporter interruption.)

THE WITNESS: The Company has included 1.5 million of capitalized incentive compensation related to financial goals and rate base. As the financial goals primarily benefit shareholders, it is inappropriate for ratepayers to pay for these costs. I removed the entire amount from rate base.

A decision in Docket No. 93-057-01 removed the costs related to financial goals from expense, stating, "We find that incentive compensation expense associated with the attainment of purely financial goals should not be recovered in rates."

In this case, the Company has removed the expense portion but not the amount capitalized in rate base.

Cash working capital. DEU used a three-year average of the years 2019, 2020, and 2021 in computing collection lag in its lead lag study. The Company acknowledged in response to OCS 2.66 that, due to COVID-19 impacts, 2020 would not be indicative of normal operating conditions, but still used that year in its calculation.

I agree that 2020 is not indicative and, instead, recommend using only 2019 for the collection lag in the lead lag study. As a result, there is a reduction of 3,907,852.

Directors' and officers' liability insurance. The Company is requesting recovery of $273,234 for directors' and officers' liability insurance. This insurance benefits primarily the Company and its directors. As consumers receive a smaller share of the benefit, they should be responsible for less of the cost.

For that reason, I recommend a 75/25 sharing of the cost between shareholders and consumers, respectively.

Insurance expense. For Workers' Compensation insurance and other insurance, the Company has forecasted the cost based on 2021 amounts with added inflation. As these costs fluctuated from year to year and assumed inflation as unwarranted and a five-year average is more appropriate, I have recalculated the costs using a five-year average of the years 2017 through 2021, which results in a reduction of $77,008.

Economic development. The Company is requesting recovery of $57,817 for an economic development expense. The cost is for donations to the Economic Development Corporation of Utah. These costs relate to capital investment in the state and job growth. It is not the responsibility of the DEU consumers to attract investment in jobs to the state. As this cost is unnecessary for providing utility service and consumers are not the primary beneficiaries, I removed the entire amount.

Payroll expense. The Company has budgeted 924 employees, of which 916 are full time. As of August, employee head count was 897. Although the Company plans to hire the remaining 27 employees, I have disallowed costs for the remaining 27 employees, as 897 is the number of employees that are actually hired and providing utility service as the most known and measurable amount.

Additionally, the Company has averaged over 20 vacancies over the prior five years. As such, it cannot be assumed that they will hire and retain the requested amount. My adjustment is a reduction of $2,253,214.

SERP. The Company is requesting recovery of $445,917 for SERP. SERP is an additional retirement benefit provided to a select few highly compensated employees. The amount provided exceeds the limits that the IRS has placed on qualified plans. As this overly generous benefit should not be recoverable from consumers, I've removed the entire amount.

Employee cafeteria. The Company is requesting recovery of $196,891 for the employee cafeteria. The cost is for subsidizing the meals of company employees. This cost is not necessary for the provision of utility service and does not benefit ratepayers. As such, I removed the entire amount.

Caregiver program. The Company is requesting recovery of $12,783 for the caregiver program. This program provides backup care for children, adults, and the elderly. As these costs are not necessary for the provision of utility service, nor the norm, I remove the entire amount.

Fitness center. The Company is requesting recovery of $16,605 for fitness center expense. This includes $1,024 for the Utah Center, and 15,581 allocated for the fitness center at the corporate headquarters in Virginia. As these costs are not necessary for the provision of utility service, I remove the full amount.

That concludes my summary.

MR. MOORE: Mr. Defever is now available for cross and questions from the Commission.

CHAIRMAN LEVAR: Thank you, Mr. Moore.

Ms. Schmid, do you have any questions for Mr. Defever?

MS. SCHMID: I do not. Thank you.

THE WITNESS: Can I pause for one second and drink my water?

CHAIRMAN LEVAR: Yes.

THE WITNESS: Thank you. Sorry about the raspy voice.

CHAIRMAN LEVAR: No problem.

Major Buchanan, do you have any questions for Defever?

MAJOR BUCHANAN: No questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Mr. Russell?

MR. RUSSELL: No questions.

CHAIRMAN LEVAR: Mr. Sabin?

MR. SABIN: Yes, I have some questions. Thank you.

CROSS-EXAMINATION

BY MR. SABIN:

Q. Good afternoon, Mr. Defever.

A. Hello.

Q. I'm just going to cover a few of the topics you covered in your opening statement. Could I --

Do you have access to your exhibits in your testimony?

A. I do.

Q. Would you please open up your Exhibit 2.2D, which was filed with your direct testimony.

A. 2.2D?

Q. 2.2D.

A. What is that?

Q. It is a compilation that you guys prepared of -- looks like data request responses, I believe.

A. Okay. I don't think I have that. I do have all the data request responses, though.

Q. Well, I can tell you the data request, it was -- it was with 11.06 -- OCS11.06.

A. Okay.

MR. SABIN: For those who are in 2.2D, we're going to go to the very last page of that exhibit.

CHAIRMAN LEVAR: Which issue is this?

Q.   (BY MR. SABIN:) This has to do with your plan and service contingencies.

A.   Okay. Okay.

Q.   So I guess my first question is this: I believe this is true, but is this the list of the contingency -- of the projects for which you've removed contingency amounts from the revenue requirement?

A.   If that totals that amount, yes.

Q.   Well, I didn't add it up. I'm wondering if you can tell me, is that -- I believe those are the projects you identify in your testimony, but I would like to confirm that.

A.   Let me check the question.

Okay, yes.

Q.   Okay. I'm going to have Mr. Mendenhall bring around a packet of documents that I'm going to ask you about that relate to this topic. So we'll let him bring that to you, and then I'll just walk through that.

All right. You should have a stack of, I think it's five or six documents, Mr. Defever. And on the top, you should see a printout of a Utah State Statute. It should be Title 54, Chapter 17 Part 4.

Do you have that there?

A. Yes.
Q. That's going to be DEU Cross Exhibit 10.
And I guess I should ask you, Mr. Defever: Are you familiar with the Voluntary Request and Resource Decision Review section of the Utah Public Utilities?
A. I am not.
Q. I assumed as much. And so I'm not -- and these questions I'm going to ask you, I'm not asking you for any legal determination. What I want to do is bring the issue to a head and then ask you about the remaining documents in the pile.
So I'm going to read just 54-17-403(1), which is the very top paragraph of that document. It says, "Except as otherwise provided in this section, if the commission approves any portion of an energy utility's resource decision under Section 54-17-402, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
"(i) relevant to that proceeding;
"(ii) incurred by the energy utility in implementing the approved resource decision; and.
"(iii) up to the projected costs specified in the commission's order issued under Section 54-17-402."
Now, without asking you for an interpretation,

let me just tell you it's my understanding under Utah law that when a utility -- in this case DEU -- comes to the commission with a project for which it seeks preapproval, and it obtains that preapproval from the commission, it is entitled under the statute to recover the costs, including the projected costs specified in the order.

And before I move on, I just want to give you the opportunity, if you have any different view, of what I've just read.

MR. MOORE: Objection. That asks for interpretation of a statute. Legal question.

I don't know where this is going, but it seems to me, the question is based on his understanding of the statute. A question based even on Mr. Sabin's understanding of the statute would be legal in nature, and therefore objectionable.

CHAIRMAN LEVAR: I think I'm going to agree with you with respect to the question of, Do you have any different understanding of the statute?

I think a question like, Are you aware of this statute? is probably permissible.

MR. SABIN: That's fine. I'll move on.

Q. (BY MR. SABIN:) Let me just read into the record, then, the second portion of the statute that we'll talk about in a second. It's Subsection 1(c), which is at the bottom of the same -- of that first page. "If the commission approves a request for approval of rural gas infrastructure development under Section 54-17-402, the commission may approve the inclusion of rural gas infrastructure development costs within the gas corporation's base rates if" the three requirements set forth below that have been met. Okay. So just keep that in mind, Mr. Defever.

And what I'd like to do now is, in your stack, there are a number of orders. And the first order I'd like to bring to your attention is an order issued October 25, 2019. And the way you'll identify it is the docket number is 19-057-13. Tell me if you've got that there.

A. Yep.

Q. That's going to be DEU Exhibit No. 11, okay. And let me represent to you, for sake of saving time, that this is the order in which the Commission approved the Company's cost recovery for the LNG facility, okay, which on your Exhibit 2.2D is the very first contingency item on that list that we just reviewed.

A. Okay.

Q. Okay. So what I want to do is have you look, if you can, at -- we're going to go to page 15 of that document, and you'll see there's a section on project

costs under Sub (d). Do you see that?
A. Yes.
Q. Would you mind -- I'm sorry, would you mind reading that paragraph into the record.
A. "Based on the results of the competitive RFP process, DEU's quantitative and qualitative evaluation of the RFP bids, and DEU's and DPU's testimony and documentary evidence discussed in this order and otherwise contained in the record, we find that the amount presented in DEU Highly Confidential Exhibit 1.0 page 10, line 244 is the approved projected cost for DEU's self-owned LNG facility. Any increase to this approved cost must be brought before the PSC in compliance with Utah Code 54-17-404."
Q. Now, sir, subject to check, would you agree with me that if I were to go and pull out the highly confidential exhibit that was filed in that proceeding for the project costs, that the contingency amount you are raising is included within that project cost summary?
MR. MOORE: I would object. That is, again, a legal question. He's asking about whether the order includes the contingency. He's identified the order and the contingency -- and the contingency, but I think asking whether it's covered in the order is a legal question.

CHAIRMAN LEVAR: Mr. Sabin, would you respond to that motion -- objection?

MR. SABIN: Yeah, I don't think I'm asking -- oh, go ahead. Sorry.

CHAIRMAN LEVAR: I said "motion," I meant to say "objection." Sorry.

MR. SABIN: I don't think I'm asking him for what's included in the order. What I'm saying is that if I were to pull -- we can go -- all of these are very highly confidential documents, and it's going to require us to close the proceeding and move people out. If we want to go pull those open, and we can.

I'm just trying to understand: Does he know that the contingency costs that he's talking about were in the approved costs we provided to the Commission before you issued this order? That's the issue.

CHAIRMAN LEVAR: Yeah, I think I'm not going to sustain this objection. It seems to me he's asking about two dollar amounts and whether, in your view, one is included in the other. I don't see that necessarily as a legal interpretation, if the witness has an opinion on the --

THE WITNESS: Yeah, I don't know. I don't know what's on that document.

Q. (BY MR. SABIN:) Okay. Do you have any reason to believe that those project costs did not include the contingency amount you were talking about in your Exhibit 2.2D?

A. I do not.

Q. Okay. Now, the next document you have in front of you should be an order from Docket 21-057-06.

A. Yes.

Q. It should be -- this one relates to the Goshen and Elberta project, which on your 2.2D is referred to as the "Goshen EXT contingency amount." And let me represent to you that this is an order from the Commission that approved the extension of gas service to Goshen and Elberta, Utah, okay?

If you'll turn to page 6, very bottom of the paragraph, if you'd read the bottom of that paragraph all the way over onto the other page until you get to the end of that sentence. It's a long sentence. But if you can just read from the bottom paragraph, where it says, "In specific consideration," over to the other side of the page, okay?

A. Okay. "In specific consideration of the requirements of the Voluntary Resource Decision Act, the PSC finds DEU filed all of the information required therein, as confirmed by DEU witness Mr. Summers' direct testimony and his testimony at hearing. In addition, the

PSC finds that the proposed costs referenced in the confidential direct testimony and attached to exhibits of DEU witness Mr. Gill, are within the statutory cap set forth in 54-17-403(1)(c) of the Act and therefore qualify for inclusion in DEU's base rates, as confirmed by DPU witness Mr. Orton's direct written testimony and his testimony at hearing, and as further confirmed by all the signatories in the Settlement."

Q. Okay. So same questions on this.

Do you, as you sit here, know whether or not the contingency amounts you're objecting to in this general rate case proceeding were included in the cost estimates that were approved by the Commission in this order?

A. I do not.

Q. Do you have any reason to believe that they were not?

A. No.

Q. Okay. All right. Let's go on to the next one.

MS. SCHMID: If I may, would the Elberta and Goshen order be DEU Cross-Examination Exhibit 12?

MR. SABIN: Twelve, yes. Thank you. Appreciate that, Trisha.

We'd like to get these all admitted into evidence in a second.

Q. (BY MR. SABIN:) The next order is dated

January 19, 2022; do you see that one?

A. Yes.

Q. Docket 21-057-12?

A. Right.

Q. Let me represent to you this is a Commission order issued on January 19, 2022, that approved the extension of gas service to Green River, Utah.

And I'm going to ask you, if you would, this is DEU Exhibit 13 -- Cross Exhibit 13, thank you. And we're going to look, if you will, at page 9 of that document. And there's a -- this is in an obvious place, but if you go down about six lines you'll see that there's a sentence that starts, "In addition" and goes on from there.

Do you see that sentence?

A. Yes.

Q. Would you read that until you get to the word "settlement."

A. "In addition, the PSC finds that the proposed costs referenced in the confidential direct testimony and attached exhibits of DEU witness Mr. Messersmith, are within the statutory cap set forth in 54-17-403(1)(c) of the Act and therefore, qualify for inclusion in DEU's base rates, as confirmed by DPU witness Mr. Cazier's direct written testimony and his testimony at hearing and as further confirmed by signatories in the settlement."

Q. Okay. Same questions: Do you know whether or not the cost estimates that were approved by this Commission to be included in base rates included the contingency amounts that you object to in this case?

A. I do not.

Q. Do you have any reason to believe that they are not?

A. No.

Q. Okay. All right. Last one. This will be DEU Cross Exhibit No. 14. You should have in front of you an order issued February 25th, 2020, in Docket No. 19-057-02.

A. Got it.

Q. For your benefit, just so you know, this is the order from the Commission's -- the Commission's order from the last rate case proceeding for DEU, okay?

A. Okay.

Q. If you'd turn to page 20 -- or not 20, excuse me. It is page -- page 11, excuse me. All right. We're going to just read that paragraph, and this has to do with the tracker mechanism and what the Commission ruled on in regards to that. And we'll -- we're going to go over and talk about some other stuff in a minute.

But would you mind just reading the bottom paragraph of that order.

A. "DEU has tracked all costs related to replacement infrastructure through the ITP since DEU's last general rate case (GRC) and includes them as part of the revenue requirement it seeks in this case. Therefore, DEU proposes that upon new base rates taking effect, the ITP surcharge will be reset to $0.00. DPU testifies 'the costs accounted for in the [ITP] were appropriate and reasonable' and recommends 'they be included in general rates for the pending general rate case.' We therefore find and conclude that DEU's proposed rate base treatment of past ITP investment amounts is just unreasonable. We also conclude setting the ITP balance to zero as appropriate."

Q. Okay. Thank you very much.

Now, I want you to assume for the next group of questions, that in every one of these cases that we've just reviewed, that the Company did include contingency costs -- projected contingency costs relative to each of these projects; do you have that in mind?

A. Okay, yes.

Q. Given that, wouldn't you agree with me that the Commission has the ability and has the authority to approve the inclusion in base rates of the projected costs, so long as it determines that those projected costs are reasonably based?

A. It does.

Q. And if the Commission has, in fact --

CHAIRMAN LEVAR: I think Mr. Moore is trying to make an objection.

MR. MOORE: Yes. Again, I think he's asking for a legal conclusion. He's posing a legal conclusion, and asking a nonlawyer if he agrees with that.

CHAIRMAN LEVAR: I think I agree that that last question, even though it's already answered, asked for an interpretation of 54-17-403.

Q. (BY MR. SABIN:) Okay. You then take the position in this case, Mr. Defever, that contingency costs cannot be included because they are unknowable and cannot be demonstrated with any degree of certainty.

Do I understand your testimony correctly?

A. Not exactly. I say they are not known and measurable, not that they're unknowable.

Q. Okay. And if the Commission has previously approved projected costs, which those are in every case, the ones that I have just read to you, don't you agree that the Company can -- and has in the past -- demonstrate to the Commission sufficiently that to satisfy the Commission, that projected costs can be included in base rates?

A. I do not.
Q. You do not agree with that?
A. Correct.
Q. And why don't you agree with that?
A. Could you restate it?
Q. Sure. If the Commission has previously approved for the inclusion of base rates projected costs that include contingency amounts of the very same contingency costs you are talking about in your testimony, doesn't that demonstrate, Mr. Defever that, in this jurisdiction, the Company can demonstrate, using projected costs, including contingency, to a sufficient certainty, that the Commission approves them for inclusion in base rates?
MR. MOORE: I still think that's a legal question. He's asking about the Commission's authority.
His questions make his argument for him, and that's fine. But I think questions about how -- how the Commission's authority to include rates, based on the last rate case and this statute, is asking about the Commission's power in this jurisdiction. It's not a -- so I still think that's a legal question.
CHAIRMAN LEVAR: Would you like to respond Mr. Sabin? Because I think I agree with Mr. Moore, unless you can convince me otherwise.
MR. SABIN: I don't think I asked about your

authority. I asked whether the Company has the ability, including in instances where there's a contingency included, to demonstrate to this Commission with sufficient certainty that it has been approved as a legitimate, recoverable cost. That has nothing to do with your authority or a legal interpretation. That just simply has to do with a dispute about -- with Mr. Defever. He claims any contingency amount cannot be approved by this Commission because it's not known and measurable. And I'm demonstrating to him that we have done that very thing in occasion after occasion after occasion before this Commission and had it approved.

CHAIRMAN LEVAR: I may have misunderstood your question. I thought you were asking if the Commission has authority following -- so why don't you restate the question, and I'll listen super close.

MR. SABIN: Well --

CHAIRMAN LEVAR: Especially with Mr. Moore's objection and mine.

Q. (BY MR. SABIN:) I'll try and break this down maybe in a simpler fashion.

I think we covered this, but I want to make sure we're clear. Your position is that contingency amounts are never appropriate on these projects because they are not known in measurable amounts?

A. Correct.

Q. Okay. So I'm asking you to assume, for the sake of the remainder of my questions that, in fact, in every one of these five cases we've just covered, the very contingencies you're objecting to were included in cost projections and were approved.

Do you have that in mind?

A. Yes.

Q. My question to you is: Given that, isn't it true that the Company has, in the past and can in the future, presumably, demonstrate to the standard applicable in Utah that contingency amounts can be recovered in base rates?

CHAIRMAN LEVAR: I'm not sure I see the distinction between asking whether the utility can, under the statute, or whether the Commission can approve under the statute. I think we have Mr. Defever's position on contingencies on the record. And I think we have your position on the statutes relative to those on the record. But I tend to think that that's still asking for a legal interpretation. It's a close call, I recognize, but --

MR. SABIN: I'll just note for the preservation of the record that he's taking the position that the standard in the state of Utah is a known and measurable standard, where we cannot establish as a matter of law

these costs because they are not known and measurable.
THE WITNESS: That is not --
MR. MOORE: Objection. That's outside --
CHAIRMAN LEVAR: Actually, let's clarify this, because I'm not sure I see a difference between what Mr. Sabin just said and the previous answer by Mr. Defever. It seemed to me like he was giving an accurate summary of Mr. Defever's previous answer.
THE WITNESS: I can clarify it.
CHAIRMAN LEVAR: I'm not going to sustain an objection to that. If you have a further question --
MR. SABIN: I can move on at this point.
CHAIRMAN LEVAR: So my understanding is, we have an objection to that summary by Mr. Sabin. And I'm not going to sustain that one.
MR. MOORE: Oh, well ....
MR. SABIN: I'm ready to move on. I think the Commissioners get the issue, and I'm content that, if this witness does not want to go there, I understand. And if Mr. Moore doesn't want to go there, that's fine. I think we made our point.
THE WITNESS: I was willing to go there. I didn't state the objection.
Q. (BY MR. SABIN:) I don't mean you, personally. "You" -- the royal "you" in the sense of the Office of

Consumer Services.

So I want to go back to your Exhibit 2.2D, the list of projects there. I just want to make sure we're clear that, on that list of projects, both the Magna LNG facility is on there; the Goshen extension; the -- the FLIHP replacement program, which is part of the tracker; and the Green River extension there at the bottom.

I want to just note that those are all projects that are covered by this -- these orders. Do you have any reason to disagree with that?

A.   No.

Q.   Okay. And with respect to the other items on 2.2D, do you know, as you sit here, whether or not the Company has come and obtained Commission approval on each of those other projects?

A.   I do not know.

Q.   Okay. And do you know, as you sit here, whether the Company has submitted to the Commission proposed costs that contain contingency amounts on each one of those projects?

A.   Isn't that what this response is saying?

Q.   That's what I'm asking you, is if that's your understanding. But if that's your understanding --

A.   That each of these projects contain contingencies, and they are asking -- they are requesting recovery of these costs.

Q. Right.

A. That's my understanding.

Q. Okay. Thank you.

CHAIRMAN LEVAR: Mr. Sabin, I'm sorry to interrupt. As I've been thinking about what I handled about two minutes ago -- I'm sorry for interrupting your continuity. But when I overruled Mr. Moore's objection to your restatement of his answer, procedurally, overruling that should have given Mr. Defever a chance to respond in terms of whether he -- I think you were asking him -- I mean, you were clarifying for the record, but I think it's also the form of a question of whether he agrees with that. So I should have given him, after -- after a ruling to the objection, a chance to respond to your summary.

The most technically accurate way to correct that would be to have the court reporter reread the questions. But do you -- do you want me to do that, or do you remember the summary?

THE WITNESS: Yeah. My understanding is he was saying that I was saying that these contingencies, that the Commission cannot allow these contingencies. That's not my position.

My position is that they should not. I know they have, in the past, allowed contingencies. So I can't say they can't, I'm saying they should not because, again, they're not known and measurable.

CHAIRMAN LEVAR: Thank you. I apologize for the continuity problem I just caused. But on reflection, I thought I should go back there.

MR. SABIN: That's fine. No problem.

Q. (BY MR. SABIN:) I think you agree, Mr. Defever, in your testimony, if I understand it right, that you agree with Mr. Stephenson, at least in one respect, that the Company's estimates for both its costs and the actuals on these projects have been very close -- have been very close, indeed, within less than 1 percent on every -- collectively.

Do I understand you correctly, that you agree with that?

A. I do not.

Q. You do not. All right. Let's go to DEU Exhibit 3.37R. Tell me when you have that open.

A. What's it, 3. --

Q. 37R. It's the tracker, budget and spend.

A. Is that something you can give to me?

Q. I don't have a hard copy of it.

A. It's 3 -- what is it?

Q. 3.37R.

A. Okay.
Q. It was attached to -- we may have right here, actually.
A. Great.
MR. SABIN: Is it okay if Mr. Stephenson walks up that document?
CHAIRMAN LEVAR: Yes.
THE WITNESS: Oh, yes.
Q. (BY MR. SABIN:) Do you remember reviewing this exhibit as part of Mr. Stephenson's rebuttal testimony?
A. If not this exact exhibit, one similar.
Q. Yeah. There were a number of exhibits. It's true, isn't it, that in the materials that the Company has provided, that it has demonstrated over a period of years that it is within less than 1 percent of the difference between projected and actual costs on these projects?
A. Well, what I would say is, at the end of the -- is it eight years? At the end of the eight years, the totals are similar. But I don't -- I think -- that's similar if -- for example, if my wife sent me to the grocery store with $100 and a list of groceries, and I come back with $100 worth of chocolate, that's what I feel like could be going on here, because it doesn't break down what projects occurred, which were completed.

Because if every project is brought under budget, that's great. But we don't know, it could just be one of the projects that's eating up the entire cost. So I feel like this chart is insufficient to make any point like that.
Q. And you had the opportunity during this rate case, Mr. Defever, to send data requests to the Company, right?
A. Yes, I did.
Q. Did you, in any of your data requests, ask for or obtain evidence demonstrating that the Company was misspending money or was in some way improperly inflating its charges on any of its projects?
A. Well, that is my position, that these contingencies are improperly inflating it.
Q. Well -- and I'd like to -- I don't think you're answering my question.
Do you have any evidence that the Company has actually inflated any costs or overcharged ratepayers for a project or, you know, inflated expenses that -- to make a project more expensive than it otherwise should be?
A. I still feel like contingencies may fall under that description, because it does make the projects -- it can make the projects more costly than they should be.
Q. And I guess the Office of Consumer Services and

the Division of Public Utilities have the ability to look into the Company's performance on any project; isn't that true?

A. I'm not sure.

Q. Do you have any awareness of what the consumer advocates and consumer representatives -- what authority they have, at all, to look into these things?

A. Yeah, I have some understanding, I just don't want to say for sure, but that sounds reasonable.

Q. Okay. And are you aware of any instance where the Division or the Office has come through and audited these projects or looked into them and discovered that there was any type of impropriety in the cost or the expenses the Company charged for the projects?

A. No, I'm not aware of that.

Q. Okay. We are also going through, the last few years, a pretty unique experience in our economy, are we not, where costs or inflation is going up very steeply at this point? Wouldn't you agree with that?

A. Yeah. Yeah.

Q. So you --

A. Inflation has gone up, yes.

Q. You might estimate a cost, say, in 2020. And by the time you get to 2022, your steel costs have gone up by 30 percent. That's a situation, similar to what we

are going through right now; isn't that true?
A. It is, but I want to clarify my position. I'm not saying they shouldn't be allowed the amounts that they spend, I'm saying they should only be allowed the amounts they spend. Like, I'm not taking the amounts out for good, they can request them in a future case.
Q. Okay. Well, then, let me ask this follow-up:
Are you aware of any instances where they haven't spent the amount for these particular projects or very close when you take all the projects into account?
A. You're asking me the same thing this chart shows, that the total over the years is similar.
Q. Yeah. Right.
A. But, again, that's not -- that doesn't provide any useful information.
Q. Well, I guess I'm trying to understand how if the Company is coming forward with projected costs and it estimates that there's going to be inflation or supply chain delays or other things, and it can't determine in advance exactly which one of those buckets is going to go up, but it knows from its own experience that it almost always does, if not always --
A. I don't see how it could know that. How can you know that some costs may go up and some may not, but they're going to equal out? That doesn't make sense to

me.

Q. No, that's not -- let me make sure you understand where I'm coming from.

You're assuming that a contingency means that it's something that may not happen.

A. This is the definition of a contingency.

Q. And I'm suggesting that a contingency also might be that you know something else is going to be expensive, you just don't know which category it's going to fall into. So you still call it a "contingency," you just don't know exactly where the money is going to have to go. Isn't that also true in the industry that that happens?

A. I would not call it a contingency. If you know the amount is going to be spent, then that's not a contingency.

Q. Do you have any reason to believe that these increases in cost or that these contingency amounts, whether they're the result of third-party increases in cost or the Company increases in cost? Did you do any research into that?

A. Could you restate the question.

Q. Sure. These cost contingencies, or the increases over what -- you know, over specific amounts, do you know whether those relate to third-party costs or the Company's own costs?

A. Are you asking about contingencies that already happened, or the ones that they're requesting?

Q. Well, these have all already happened. These projects are either done or in the process of being done.

A. Right. But again, this is a critical point of what's missing from this chart. It doesn't even show where the contingencies occurred. Like, for instance, like we're debating whether these contingencies occurred or not. But if the Company wants to show that these contingencies did occur or will or likely occur, that they know they will occur, why didn't they provide a chart that says, Here's the contingencies we said were going to happen, and they happened? That seems like that would be more useful and to the point.

Q. Well, I understand your point, but I don't think it's getting -- I guess we're not -- we're talking past each other. Because if the amounts they're estimating are their attempt to account for project costs they believe will occur, and they provide evidence of why they believe they will occur in these dockets --

A. Yeah, that's what I'm saying. I'm saying it doesn't provide evidence. Because let's say there's -- how many projects over these years? Let's say they requested 30 projects, and they budgeted 550 million.

Well, they come back, and they say, Well, we're close, it's 553,000,000. We don't know if all 30 projects were done. It could have been 15 projects. It could have been one. So again, based on this chart, we just don't have that information.

Q. That's why I started where I started, Mr. Defever, because in these dockets, there has been an evidentiary showing to prove up the costs and the reasonableness of the costs in advance of collecting them; do you understand that?

A. Say that again.

Q. In each of these --

MR. MOORE: Objection. I think that misstates the record. That's what we're arguing about.

CHAIRMAN LEVAR: I think it's a fair question to ask, if Mr. Defever agrees with the statement.

Q. (BY MR. SABIN:) Mr. Defever, would you be satisfied, if in each of these dockets, when the Company came in to request approval of these projects, the Company put witnesses and documents and evidence in the record to demonstrate to the Commission's satisfaction that the costs, including contingencies, were reasonable estimates, reasonable projections of what the costs for the project would be?

A. Absolutely not. I don't always agree with the

Commission's decisions. They may think they've received enough evidence, often the case, I don't think they have.

Q. So in this case, if that occurred, if the Commission has received evidence, and they made a decision, you just might disagree that they -- you don't believe that they have -- that it was a good decision to approve cost contingency?

A. Right. That could happen.

Q. Okay. All right. That's fine.

It's true, is it not, we sent you a DR, the Office, in particular you a DR, asking in other jurisdictions if Commissions have approved contingencies -- because you take the position, you cite to one decision from one Commission that is disapproving contingencies, but we sent you a DR asking about other jurisdictions. And it's true, is it not, that you responded, or the Office responded that jurisdictions, just like Utah, have approved contingency amounts for recovering base rates?

A. Right. I've seen it both ways, some have been approved, some have been disapproved.

Q. Thank you. All right. We're going to switch topics now. I'd like to talk about insurance for a moment. You referenced during your -- before I do that, I'm sorry, let me just do this.

MR. SABIN: Mr. Chair, I'd like to move for admission of exhibits, DEU Cross Exhibits 10, 11, 12, 13, 14, yeah -- and 14.

CHAIRMAN LEVAR: Please indicate if anyone objects to that motion.

I'm not seeing or hearing any, so the motion is granted.

MR. SABIN: Thank you very much.

(Exhibit DEU Cross 10, 11, 12, 13, 14 were admitted into the record.)

Q. (BY MR. SABIN:) Do you recall, sir, that you just talked about in your statement that you've used a five-year average to estimate insurance costs, and Mr. Stephenson has used a shorter period of time. And your position is you should use an average for those particular costs, and you disagree with Mr. Stephenson by not -- in that he has not used an average; is that right?

A. I'm not familiar with Mr. Stephenson's adjustment.

Q. I'm not talking about adjustment.

A. Or his average, I'm not -- I wasn't aware that he used any average. Oh, Mr. Stephenson, I'm sorry. Could you start over?

Q. Let me start again. Sorry about that.

Mr. Stephenson, over here, who testified earlier, he's your opposite in revenue requirement issues. So whenever I refer to "him," I'm referring to Mr. Stephenson there.

As it relates to insurance, other insurance, workers' compensation and other insurance, my understanding is you take issue with Mr. Stephenson's position because you believe a five-year average should be used for those costs, and he disagrees with that; is that right?

A. For those -- for those two particular costs?

Q. Yes.

A. Yeah, I did find a five-year average to be more appropriate than -- I think he just inflated, assumed it would be -- assumed it, the 2020 year and just assumed inflation. Even if the cost goes up and down every year, you can't assume it's going to go up. It doesn't make sense.

Q. So he's used a shorter period of time to calculate his figure, and you've used a five-year average. That's how I understand the difference.

A. I don't think he used any average, I think he just used the most recent amount.

Q. He used a historical figure and then grossed it up through the test period, is my understanding; is that right?

A. Yes.

Q. Okay. So I'm going to hand you two documents, or Mr. Mendenhall is, on some other issues, where you sent us --

A. I think I may have those, if they're in your exhibits. Yes.

Q. Do you have those?

A. Yes.

Q. All right. I'm showing you -- the first one is -- I'm going to have you mark is OCS2.61. That one will be marked as 15. And the other one will be marked as 16, okay? You follow?

A. Yes.

Q. Let's look at 15 for a second. This was a question --

A. Fifteen is 2.61?

Q. Yes, 2.61.

A. Okay.

Q. Now, the Office sent a data request, asking about training expenses over the five-year period prior to the test period; do you see that?

A. Yes.

Q. And the Company reported the numbers. And if you use the five-year average, the amount would be more

than what the Company is seeking here; isn't that right?
A. Correct.
Q. The Company could have included in revenue requirement an additional amount by using the average. And I note that you didn't take the position that on this particular kind of expense, that a five-year average should be used, right?
A. I didn't take any position on this one.
Q. The numbers have varied over each year, right?
A. Correct.
Q. In some cases as much as by $100,000 or more?
A. Yes.
Q. But I don't see you making a recommendation in this case that the Company should have used a five-year average and increase the revenue requirement.
A. Right. Because if I had made an adjustment to this, it would probably be to lower it.
Q. And why would that be, sir?
A. Training expense. For one thing -- again, I don't know. I say probably to lower it. For one thing, the Company has a differing level of employees. You know, they're expecting to have 924 employees, but they only have 897, I think, so that would -- assuming there's training for new employees, that would lower the cost.
Q. Okay. But I guess the point is, you didn't

make -- you didn't propose an adjustment here to increase and use a five-year average like you did for the others?

A. Right. Every adjustment is different. Training expense, we look at different things, again, like to budget employees, what kind of training. One of these years it could be a training that they no longer do, so wouldn't it be appropriate -- like some of these costs, I would need more information. They may not belong in there at all.

Q. Well, help me understand. You made an adjustment to workers' compensation, and you didn't adjust for the employee count differential, you just used a five-year average. So help me understand why you would have done something different for training expenses.

A. I'm not saying that I would have necessarily built that in there, I'm saying that's a reason why I wouldn't accept that amount.

Q. Well, you accepted the workers' compensation amount, which is based on the number of employees in the Company?

A. Right. Well, that could be considered a conservative adjustment or an adjustment that's in the favor of the Company.

Q. Okay. Let's go to Exhibit 16. This is 2.29. Same thing, injuries and damages vary wildly, wouldn't you agree, over the five years?

A. Oh, certainly, yeah.

Q. And had the Company used a five-year average, it could have included an additional $110,000 in revenue requirement, and it elected not to do so; that's right, isn't it?

A. They didn't do it. I don't know that they made that decision.

Q. Well, they didn't use a five-year average, correct?

A. That's right, I agree with that.

Q. And you didn't recommend that a five-year average should be used on this, even though the costs and expenses each year varied wildly?

A. Right. But again, this is a different issue. Injuries and damages very well may include costs that I would throw out. Without more information, I would never make an adjustment like that. I feel like there's just not enough information to make that adjustment on that one.

Q. All right. It's true, is it not, that in the five-year period you're using for an average, the Company went through -- was coming out of a merger, where there was a large severance reduction -- or employees were given an opportunity to take an early retirement. There was a combination of two different entities, a reshuffling of personnel and processes and systems.

Don't you think that it would be -- it would skew the numbers of what we're really trying to accomplish to use data from one of those years when you have a -- maybe a one-time -- a once-in-a-company-lifetime event, like a merger?

A. I think during any five-year period, there's reasons to say -- like, this isn't a good example, and I'm not saying that's the best example, it's just the best one I've seen. I still prefer it over saying, Well, we'll just use the last year.

I didn't read enough -- any information -- well, like I said in my testimony -- or surrebuttal, they made the claims, but they didn't really -- they said, for instance, the -- the number or amounts were allocated during certain periods, but they didn't tell me what periods. So how can I look at those numbers and know what it means?

So in the end I was still -- the best I had to work with was what they originally gave me.

Q. So Mr. Stephenson has used the insurance costs over the last two years, and his testimony is that post-merger insurance costs have stabilized. That's his words, not mine.

Do you have any reason to disagree with him that, based on the Company's experience during the last two years and post-merger, that it is now at a place where those insurance costs are fairly predictable?

A. Yes, absolutely. No, absolutely, I do have reason to believe that that's not true.

Q. You have a reason to believe that that's not true?

A. Yes.

Q. Okay. What is your evidence that that's not true?

A. Again, that's in my -- I believe that's in my surrebuttal. He says the last couple of years are relatively stable, but for one of the costs in the last two years, it drops 20,000. So I wouldn't call that stable.

Q. You think a difference from year to year of $20,000 is an indication of a material difference?

A. It depends on what that the original cost we're looking at is.

Q. Okay. All right. I want to move to a different issue.

You object to the inclusion of Economic Development Corporation of Utah costs?

A. Yes, I do.

Q. Are you familiar with the Economic Development Corporation of Utah?
A. Just what I read on the exhibits that we sent.
Q. Do you know what it does for the State of Utah or businesses in the state of Utah?
A. From the response provided by the Company, it attracts investment and attracts new customers.
Q. Do you believe that it's prudent for Dominion Energy Utah to be aware as early as possible of areas where the State of Utah is developing, both industrially, commercially, and residentially?
A. I mean, they're better off knowing it than not knowing it, but I don't think they should be requesting a lot of money from customers for it. It's putting customers -- like the basically the agreement is the utilities provides for utility service to the customers, they pay for it. But now, they're, like, trying to get the customers into -- let's get into attracting economic development. That's not -- to me, not part of the original agreement.
Q. I don't think I said that. I said don't you think that it would be prudent for the Company to know in advance where the State of Utah is developing so that it can build its infrastructure to serve both current and future customers?

So the example I would give for you, sir, is, let's say that in a western part of Salt Lake City, there is an industrial development going on. Don't you think that those customers out there would like to receive gas service as soon as possible and have the Company thinking ahead so that they're able to serve as soon as possible? Doesn't that serve a customer purpose?

A. You're talking about customers that haven't come yet?

Q. Sure.

A. Yeah. It's not serving a customer because that customer doesn't exist. That's not serving an existing customer.

Q. But it's true, isn't it, that the Company needs to serve -- when customers move into the state and build a home, we don't want them to wait a year for them to get gas service, do we?

A. I wouldn't want them to wait a year, but I also don't want to ask the ratepayers to fund the attempt to get those -- that information and those employees. I mean, it seems speculative.

Q. Do you have any evidence that that's the reason that DEU participates in the Economic Development Corporation of Utah?

A. When we asked what the -- what it does or what the benefits were, they said it attracts investment, and it attracts new consumers. So that's my evidence.

Q.   And they also said that it helps them plan; isn't that right?

A.   Yes, planning for the new customers that don't exist yet. So again, speculative.

Q.   Okay. But don't you agree that -- I was a new customer in 2003, but somebody else -- I paid for somebody else to come in, and somebody else paid for me. Isn't that the way that we work here in a growing economy?

A.   Yeah. But again, you're talking about customers that may never even exist. You know, it's one thing to ask for you to pay it forward to a customer that actually exists; but again, you're asking the ratepayers to pay to try to get new customers.

Q.   That may be one purpose, and I'm not even acknowledging that it is, but you just admitted --

A.   It says it in the response.

Q.   I'm just saying you just agreed with me a moment ago that's not the only purpose. There are lots of other purposes that serve customer interests, right? Growing --

A.   A lot more? I don't know about that.

Q.   Well, have you done any effort to allocate how much of the cost goes towards business development versus planning for community strategies, planning for development, planning for providing customer service, upgrading infrastructure, making sure the gas provision is appropriate for specific areas, any of that stuff?

A. No, I have not.

Q. Okay.

MR. SABIN: Mr. Chair, if you can give me just one moment, I'm just going to --

CHAIRMAN LEVAR: Why don't we take ten minutes.

MR. SABIN: Okay, that would be great. It's a good stopping point.

CHAIRMAN LEVAR: Let's come back, let's just say 2:40.

(A break was taken from 2:25 p.m. to 2:40 p.m.)

CHAIRMAN LEVAR: Okay. Good afternoon. We will go back on the record.

Mr. Sabin?

MR. MOORE: Excuse me, could we have a couple minutes? I apologize. We're looking for his summary. Does he have it yet?

THE WITNESS: Yeah.

MR. MOORE: All right. Thank you.

CHAIRMAN LEVAR: So we're good?

MR. MOORE: Yeah.

CHAIRMAN LEVAR: Okay. Mr. Sabin.

MR. SABIN: I need to move to have Exhibits DEU Cross Exhibits 15 and 16 admitted into the record.

CHAIRMAN LEVAR: Please indicate if anyone objects to that motion.

Not seeing any objections, so the motion is granted.

(Exhibit DEU Cross 15 and 16 were admitted into the record.)

MR. SABIN: With that, I have no further questions at this time.

CHAIRMAN LEVAR: Thank you.

Mr. Moore, any redirect?

MR. MOORE: Some.

REDIRECT EXAMINATION

BY MR. MOORE:

Q. Mr. Defever, I'm going to direct you to your direct testimony and your summary and ask you to read -- well, actually let me frame this.

Mr. Sabin has stated that your position and the OCS's position is that for capital costs to be recoverable, they must be either -- they must be known and measurable, and that's it. Could you -- could you please read from your direct testimony page 6, Line 108 to 111, and then, also, from your summary where you address this same issue?

A. Okay. "If DEU is unsure whether the costs will occur, they cannot be considered to meet the known and measurable standard nor is it a reasonable forecast method on which to set just and reasonable rates.

"Costs requested for recovery from consumers must be known and measurable or based on well-supported forecasted changes."

Q. Then it's the OCS's position, is it not, that for -- for capital costs to be recoverable, they must either be known or measurable or well supported by forecasted amounts?

A. For me, that's the same thing. But yes. If it's well supported, then that would be known and measurable.

Q. Thank you.

CHAIRMAN LEVAR: Thank you, Mr. Moore.

Mr. Sabin, any recross?

MR. SABIN: Just -- I want to follow up on that question.

RECROSS-EXAMINATION

BY MR. SABIN:

Q. You were not -- you did not participate in the proceedings where the Commission approved these infrastructure projects or extension projects, right?

A. Correct.

Q. Do you have any basis to believe that the Company has not well supported the forecasted costs that were --

MR. MOORE: That's outside of direct. I just was clarifying the OCS's position.

CHAIRMAN LEVAR: Give me a moment to think about that.

I agree that you did not ask about those specific projects, you were just asking about the standard generally. So I don't think the redirect opened the door to questions about the specific projects.

MR. SABIN: No further questions.

CHAIRMAN LEVAR: Commissioner Clark, do you have any questions for Mr. Defever?

COMMISSIONER CLARK: No questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Commissioner Allen?

COMMISSIONER ALLEN: No questions.

CHAIRMAN LEVAR: I don't either. Thank you for your testimony this afternoon.

THE WITNESS: Thank you.

CHAIRMAN LEVAR: Mr. Moore, anything else?

MR. MOORE: That's all the Office has. Thank you very much.

CHAIRMAN LEVAR: Mr. Russell?

MR. RUSSELL: UAE calls Mr. Kevin Higgins to the stand.

CHAIRMAN LEVAR: Good afternoon, Mr. Higgins.

THE WITNESS: Good afternoon, Chairman.

CHAIRMAN LEVAR: Do you swear to tell the truth?

THE WITNESS: I do.

CHAIRMAN LEVAR: Thank you.

KEVIN C. HIGGINS,

was called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. RUSSELL:

Q. Can you please state your full name for the record and tell us who you work for.

A. My name is Kevin C. Higgins. I am a consultant with the firm Energy Strategies.

Q. And on whose behalf do you offer testimony in this proceeding?

A. The Utah Association of Energy Users.

Q. And have you filed or caused to be prepared and

filed some prefiled testimony in this docket?
A. Yes, I have.
Q. And specifically, the prefiled testimony that you're referring to is the direct testimony labeled, "UAE Exhibit RR1.0," as well as UAE Exhibits RR1.1 through 1.6 and the associated revenue requirement model. That was one of them, right?
A. Yes.
Q. And in addition, rebuttal testimony, labeled as, "UAE Exhibit RR3.0," associated Exhibits RR3.1 through 3.5, and your rebuttal revenue requirement model, right?
A. Yes.
Q. And you also submitted surrebuttal testimony, which was labeled as, "UAE Exhibit COS5.0," although I think the exhibit labeling was incorrect; is that right?
A. Yes.
Q. Okay. And what should that exhibit label have been?
A. It should have referred to "RR" instead of "COS."
Q. One of the things that happens when you have cost of service and revenue requirement testimony due on the same day.
And with respect to the testimony that we just referenced, do you have any corrections to make?

A. I don't have any literal corrections that are edits, but at Line 353, if I were asked the same question --

Q. 353 of your --

A. Of my direct testimony. Thank you, Mr. Russell.

Line 353 of my direct testimony, if asked the same question today, I would answer a little differently, in that at the time I filed this direct testimony, I was not aware that the Commission had never approved a prepaid pension asset in rate base.

But after reviewing Mr. Stephenson's rebuttal testimony, I was able to go back and confirm that in the 1999 rate case, there was a stipulation that included a prepaid pension asset in rate base for Questar Gas. It's my understanding that that prepaid pension asset was no longer included in rate base, starting with the 2002 case. So I do need to clarify that response.

Q. Thank you. And other than that clarification, if you were asked the same questions today that were posed in your prefiled testimony, would you provide the same answers?

A. Yes.

Q. Okay.

MR. RUSSELL: At this point, I'll move for the admission of Mr. Higgins' prefiled testimony.

CHAIRMAN LEVAR: Please indicate if anyone objects to the motion.

I'm not seeing any objection. The motion is granted.

Q. (BY MR. RUSSELL:) Have you prepared a summary of your testimony for us today?

A. Yes, I have.

Q. Please proceed.

A. Good afternoon, Mr. Chairman and Commissioners.

My recommended adjustments to DEU's revenue requirement are presented in Table KCH1R at Line 45 of my rebuttal testimony. These adjustments reduce DEU's revenue requirement by a total of $28.7 million relative to the Company's initially filed revenue requirement increase of $70.5 million. This reduction includes an illustrative reduction to the Company's requested return on equity from 10.3 percent to 9.5 percent, which is the median return on equity approved by state regulators in the United States for natural gas distribution utilities, as reported by S&P Global Market Intelligence for the 12-month period ending July 31, 2022.

My recommended adjustments are as follows.

Number 1: DEU proposes to increase labor O&M expense by 13.8 percent relative to the 2021 base period. I believe this increase is excessive. My adjustment trims 3.7 percent off this cost increase by basing test-year labor expense on the average actual full-time equivalent employee count during the 13 months ending June 2022.

The structure of this adjustment is nearly identical to one that I proposed in Rocky Mountain Power's last general rate case, which was accepted by Rocky Mountain Power and then ultimately approved by the Commission. This adjustment reduces the Utah revenue requirement by about $1.6 million.

Number 2: In conjunction with this adjustment, I also recognize a $1 million error that Dominion made in its labor cost calculation that was revealed in a discovery response to UAE as part of my investigation into the Company's employee count. Correcting this error increases the revenue requirement by $1 million, thereby reducing the net impact of my employee count adjustment to $638,000.

Although the Company does not accept my employee count adjustment, the Company does accept the $1 million error correction. Although my employee count adjustment stands on its own merit, if the Commission is inclined to accept the $1 million error correction that favors the Company, I believe it would be all the more reasonable to accept my employee count adjustment in tandem with it.

Number 3: DEU proposes to set pension expense to zero for ratemaking purposes. Even though pension costs calculated pursuant to financial accounting standards, or FAS, which I will refer to as F-A-S, is actually projected to be a $21 million negative value or credit in 2023. The Company indicates that it is capitalizing 52 percent of this negative value.

I recommend that the balance, which is $9.7 million on a Utah-allocated basis be recognized as a reduction to O&M expense in the revenue requirement.

In the alternative, customers should be released from the obligation to pay for positive FAS pension costs in the future. By definition, over the life of a pension plan, the cumulative sum of FAS pension cost, including negative pension cost, will equal the cumulative sum of the Company's funding contributions. This means that setting customer pension cost responsibility in rates equal to FAS pension cost ensures that, by and large, customer rates will fully fund the pension plan costs over the life of the plan.

Selectively zeroing out pension expense in rates when pension cost is negative but charging customers the full FAS cost when pension cost is positive, will cause customers to overpay for the pension cost over the life of the pension plan. Such a result would not be reasonable.

Number 4. Dominion appropriately removed the expense portion of the financially-related compensation from the revenue requirement but included the capitalized portion in rate base. Since this cost should not be recoverable from customers, the capitalized portion should also be removed from the revenue requirement. Specifically, I recommend that the capitalized incentive compensation related to financial goals be excluded from rate base in this case for 2021, 2022, and 2023 capital additions which occurred since the last general rate case. This adjustment reduces the Utah revenue requirement by approximately $333,000.

I also recommend that the gain on sale of the Company's Bluffdale field office be amortized over five years, beginning in August 2020. My adjustment reduces the Utah revenue requirement by around $520,000. The Office of Consumer Services makes a similar adjustment but with a later starting period and, consequently, a greater revenue requirement reduction. The Company accepted this adjustment in its rebuttal filing, and it is incorporated into the stipulated revenue requirement reduction the parties have provided to the Commission, and which I support.

Finally, if the Commission approves the

continuation of the infrastructure tracker program, I recommend that the annual expenditures be capped at no more than $77.4 million, without future adjustments for inflation in order to provide a reasonable cost containment for the tracker mechanism. The infrastructure tracker is a single-issue ratemaking mechanism that allows the Company to avoid regulatory lag, and the Company's capital expenditures are not limited by their eligibility for the infrastructure tracker program.

Dominion Energy Utah has a responsibility to provide safe and reliable service, irrespective of whether a tracker mechanism exists at all.

I believe it's reasonable to cap the annual amount that is eligible for inclusion in this program without a presumption that the Company is also entitled to an additional inflation adjustment.

That concludes my summary.

Q. Thank you, Mr. Higgins.

MR. RUSSELL: I do have a couple of questions before I turn the witness over to cross-examination.

Q. (BY MR. RUSSELL:) Mr. Higgins, have you been monitoring the hearing on the live stream?

A. Yes, I have.

Q. Were you monitoring the hearing when

Mr. Stephenson testified earlier today?

A. Yes.

Q. Okay. During his testimony, I asked him a question that was just referenced in your summary. I asked him if the cumulative sum of pension costs over the life of the plan will equal the cumulative sum of the utility's contributions to the plan. In response to that, he indicated that he had seen that in your testimony but did not agree with it.

Do you recall that exchange?

A. Yes.

Q. And how do you respond to his testimony on that point?

A. I believe Mr. Stephenson is mistaken.

As I understood his answer to Mr. Russell's question, Mr. Stephenson indicated that my characterization wasn't complete, in that it did not take into account earnings on the pension plan.

Mr. Stephenson is incorrect that any adjustment needs to be made to my statement that over the life of the pension plan, the sum of the FAS expenses -- the FAS costs will equal the sum of the Company's cumulative contributions. There does not have to be some sort of a modification to that calculation to account for earnings on the pension plan.

Earnings on the pension plan find their way into the pension cost itself. That is, if there are greater earnings -- if expected earnings on the assets go up, that lowers FAS pension costs. Similarly, if there are earnings that exceed what was expected, that is later brought in to FAS pension costs, reducing it through the amortization of unrecognized gains and losses.

So the statement I made that I repeated in my summary is true as stated. It does not require a further qualification.

Q. And was your statement on that point consistent with a statement made by the Company's witness on this point in the 2019 rate case?

A. Yes. How I characterize this situation is completely consistent with the rebuttal testimony of Dominion's witness Mr. Felsenthal in the last general rate case from Lines 393 to 424. While Mr. Felsenthal disagreed with me on a number of items, it is evident from that portion of his testimony there is no disagreement between us about what occurs over the lifetime of a pension plan.

Q. Thank you.

MR. RUSSELL: Mr. Higgins is now available for cross-examination and Commission questions.

CHAIRMAN LEVAR: Thank you.

Ms. Schmid, do you have any questions for Mr. Higgins?

MS. SCHMID: No. Thank you.

CHAIRMAN LEVAR: Thank you.

Mr. Moore?

MR. MOORE: No questions. Thank you.

CHAIRMAN LEVAR: Thank you.

Major Buchanan?

MAJOR BUCHANAN: No. Thank you.

CHAIRMAN LEVAR: Ms. Clark or Mr. Sabin?

MR. SABIN: No questions. Thank you.

CHAIRMAN LEVAR: Commissioner Clark?

CROSS-EXAMINATION

BY COMMISSIONER CLARK:

Q. Your last statements about the impact of your contributions in relation to the liabilities that accumulate over the lifetime of the plan -- that's the context of the question I'm going to ask you, which is, can you -- can you assess the $75 million extraordinary payment that we talked about a lot in the last case in relation to your statements?

A. Yes. The $75 million contribution by the Company is considered a Company contribution to the pension plan. And over the lifetime of that plan, the

FAS pension cost, which is what we use for ratemaking, generally speaking -- which the Commission confirmed, really, in your last order on the point as a general proposition, with an exception for the last case.

Over the life of the pension plan, that FAS pension cost, the sum of those FAS pension costs over the life of the plan will equal the sum of the Company's contributions, including the $75 million extraordinary contribution that the Company made.

Does that address your question, Commissioner?

Q. And so in your mind, then, the impact of failing to recognize the negative expense in the revenue requirement in this case is what?

A. The impact is that if, in the future, there are positive pension costs that the Company seeks to recover in rates, and if at that time the Commission reverts back to the practice of including the full FAS pension cost in rates, then over the lifetime of the plan, customers will overpay for the cost of the pension plan because the negative pension costs were not recognized. So then, unless there is a -- in the future there is a -- an adjustment that reduces customers' responsibility for positive pension costs, then not recognizing these negative pension costs today will result in a lifetime mismatch over the cost of the plan, where customers will have overcontributed through ratemaking -- through the standard ratemaking treatment of basing the revenue requirement on the FAS cost. They will have overpaid their -- you know, for the cost of the plan. That's the implication.

Q.   Thank you. I know some of that's repetitive to what you had in your surrebuttal, but it's helpful to hear it in connection with the questions of your counsels. Thank you very much.

A.   Thank you. I appreciate the opportunity to discuss it.

CHAIRMAN LEVAR: Commissioner Allen?

COMMISSIONER ALLEN: No questions. Thank you.

CROSS-EXAMINATION

BY CHAIRMAN LEVAR:

Q.   I think I'll be triply repetitive, because I think you just answered it as your testimony. But, you know, when you used the phrase "lifetime mismatch over the lifetime of the pension," could you explain again how we should view that $75 million contribution in context of -- if you're telling us the goal is to avoid a lifetime mismatch, how does that $75 million fit into avoiding mismatch?

A.   Well, the $75 million contribution made by the

Company clearly counts in the column of the Company contributions. So that is a Company contribution. And so that will play -- that plays a role. And that Company contribution does have an impact on forward-going pension costs because there are earnings on that contribution, and so that reduces pension costs in the future. Okay.

So -- but it will still remain the case that over the life of the plan, that FAS pension cost, the sum of all those FAS pension costs over each year will mathematically equal the sum of the Company's contributions, including the $75 million. That -- the FAS pension cost is designed such that that must be the case. That, you know, it's not intended to track year-to-year cash contributions, but is intended to match the lifetime contributions of any company to its pension plan.

And so -- which is the reason why in ratemaking, the typical convention around the country is to use FAS costs as the basis for setting customer responsibilities and rates for paying for a pension plan.

Q. Okay. If you'll excuse one more question from a nonaccountant/noneconomist.

If we were to go with your primary recommendation and make the adjustment for the negative pension expense, and say that happens for a few more rate cases, at some point does that counterbalance the 75 million? I mean, does it -- at some point will ratepayers have paid that off? And if there's a really big logical fallacy in that, just tell me so I understand it.

A. If -- if the -- if you went with my recommendation and recognized the negative pension costs in rates, then you would be ensuring that over the lifetime of the plan customers would pay for the -- would pay for the Company's contributions to the plan, including the $75 million. It wouldn't be a direct payoff of the 75 million -- of the $75 million, per se. But it would ensure that over the life of the plan the sum of the pension costs and, therefore, the customer payments in rates would equal the totality of the contributions that the Company made to the plan. That's how the FAS cost is structured, you know, by design.

Q. Okay. Thank you. And one more question -- and if your attorney wants to object to it on the basis of a legal interpretation, that's fine.

If we did not accept your primary recommendation on this issue and went with your secondary recommendation, how exactly would we do that in terms of saying if it's ever a positive in the future?

A. Well, that's a great question. I would suggest that the Commission offer a ruling that indicates that, in consideration of not recognizing negative pension cost in rates, that on a going-forward basis, the Commission would expect that customers would no longer be subject to positive pension costs in rates, with perhaps, you know, the opportunity for the utility to make a request for consideration under extraordinary circumstances in the future.

So I think it would be a matter of resetting the expectations that, you know, we have one set of expectations coming into this -- into the last case where rates incorporated the FAS costs. And I believe that if we're going to depart from those expectations when the costs are negative, it would be reasonable to reset those expectations going forward but also, perhaps, have the opportunity for a later review, if circumstances warrant.

Q. And I'm assuming inherent in that is relying on all parties in these proceedings to remind future Commission of those expectations?

A. I'm doing my best.

Q. That's all the questions I have. Thank you for your testimony this afternoon.

A. Thank you, Mr. Chairman.

CHAIRMAN LEVAR: Anything else from anyone?

MR. SABIN: No.

CHAIRMAN LEVAR: Okay. We will return for the public witness hearing on Friday at 5:00.

Just to remind everybody, the notice says that it starts at 5:00, and that anyone who is present by 5:30 will be given a reasonable opportunity to speak.

So we are -- the evidentiary hearing is adjourned. Thank you.

(The matter concluded at 3:10 p.m.)

CERTIFICATE

State of Utah)
ss.
County of Salt Lake)

I, Michelle Mallonee, a Registered Professional Reporter in and for the State of Utah, do hereby certify:

That the proceedings of said matter was reported by me in stenotype and thereafter transcribed into typewritten form;

That the same constitutes a true and correct transcription of said proceedings so taken and transcribed;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND at Salt Lake City, Utah, this 27th day of October 2022.

Michelle Mallonee

Michelle Mallonee, RPR, CCR
Utah CCR #267114-7801
Expires May 31, 2023

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(E) Submission to Witness; Changes; Signing. Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

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