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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF THE )  
APPLICATION OF DOMINION )  
ENERGY UTAH TO INCREASE )  
DISTRIBUTION RATES AND )  
CHARGES AND MAKE TARIFF )  
MODIFICATIONS )

) Docket No. 22-057-03

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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

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1 P R O C E E D I N G S

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3  
4 CHAIRMAN LEVAR: Okay. Good morning, everyone.  
5 We'll go ahead and start and go on the record.

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

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

13 Okay. Ms. Clark?

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

16 CHAIRMAN LEVAR: Good morning, Mr. Mendenhall.

17 THE WITNESS: Good morning.

18 CHAIRMAN LEVAR: Do you swear to tell the truth?

19 THE WITNESS: I do.

20 CHAIRMAN LEVAR: Thank you.

21  
22 KELLY B. MENDENHALL,  
23 was called as a witness, and having been first duly  
24 sworn to tell the truth, the whole truth, and nothing  
25 but the truth, testified as follows:

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1 DIRECT EXAMINATION

2 BY MS. CLARK:

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

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

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

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

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

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

16 A. Yes, they were.

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

19 A. I do.

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

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

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



1 MS. CLARK: Thank you.

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

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

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

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

21 In 2020, we found there were some additional  
22 guidance from PHMSA in a Q and A that indicated that that  
23 thermal exclusion zone needed to be secured for the life  
24 of the property. So at that point, we approached the  
25 adjacent landowners and were able to acquire restrictive

1 covenants that would secure, that would comply with the  
2 PHMSA requirements, and that would keep that area secure  
3 for the life of the facility.

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

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

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

23 The third item I talk about in my direct  
24 testimony is the infrastructure replacement tracker. And  
25 I proposed that that tracker continue to operate as

1 currently defined. Mr. Higgins proposes that the  
2 inflation adjustment rates, that be eliminated. And in  
3 my rebuttal testimony, I discuss that doing that would  
4 only prolong the replacement program and ultimately cause  
5 the program to be more expensive for customers over time.  
6 And I also point out the fact that this issue was  
7 recently litigated in the last rate case in Docket  
8 19-057-02. And this is what the Commission said on that  
9 issue.

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

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

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

25 I also discuss that it's Commission precedent in

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

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

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

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

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

24 CHAIRMAN LEVAR: Thank you.

25 Ms. Schmid?

1 MS. SCHMID: No questions. Thank you.

2 CHAIRMAN LEVAR: Thank you.

3 Mr. Moore?

4 MR. MOORE: Just a couple questions.

5

6 CROSS-EXAMINATION

7 BY MR. MOORE:

8 Q. Mr. Mendenhall, I would first like to address  
9 your testimony concerning DEU's request for a capital  
10 structure containing an equity percentage of  
11 53.21 percent.

12 May I direct your attention to page 12 and 13 of  
13 your rebuttal testimony, Line 302, starting with the  
14 word, "Since."

15 A. Okay. I'm there.

16 Q. Starting with the word "Since," and ending with  
17 the word "range," I'll have you read those sentences into  
18 the record, please.

19 A. Sure. "Since its last general rate case in  
20 2019, the Company has been working to reduce the equity  
21 portion of its capital structure. In that case, the  
22 actual capital structure was 60.04%. In the last three  
23 years, the Company has been able to reduce that level to  
24 53.21%. The Company must balance its capital  
25 requirements, debt and equity issuances and dividend

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1 payments to ensure that its credit metrics stay within a  
2 reasonable range."

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

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

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

16 A. Yes.

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

23 Does that fairly characterize your testimony?

24 A. Yeah, I think that's fair.

25 Q. One of the factors impacting your decision to

1 work hard to reduce the equity portion --

2 (Court reporter interruption.)

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

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

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

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

12 Q. Right.

13 A. Yep.

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

19 A. That's correct.

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

24 A. I think -- like I mentioned before, I think it's  
25 a combination of the tax act, but I think that's probably

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1 behind us at this point.

2 So at the end of 2020 -- or actually the end of  
3 last year -- so we're in 2022 now. Well, at the end of  
4 2021, we were still at 60 percent. So what we're  
5 basically proposing is that by the 2023 test period, we  
6 will have our capital structure down to 53 percent. And  
7 we have a large amount of capital expenditures. I think  
8 there was a fair amount of discussion yesterday about our  
9 tracker mechanism and our capital budget and the fact  
10 that there was still a, rather a large gap that needed to  
11 be covered by capital. And so I think you've got to  
12 consider how much debt does the Company need? How much  
13 equity or retained earnings can a company use? How much  
14 short-term debt is necessary to manage our gas cost  
15 procurement.

16 And so it's a balance of all of those items is  
17 what causes our Treasury group to determine that  
18 53 percent is kind of the sweet spot.

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

25 A. Yeah, I can't speak to Ms. Nelson's testimony,



1 so you'd have to ask her about the details of that. But  
2 I'll -- subject to check, I'll agree with what you just  
3 said.

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

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

13 A. That's correct.

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

15 A. My direct?

16 Q. Your rebuttal testimony, I'm sorry.

17 A. Okay. I'm there.

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

21 A. That's correct.

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

24 A. Okay.

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

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

3 A. That's correct.

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

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

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

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

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

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

11                    "Exclusion zone" means an area surrounding an  
12 LNG facility in which an operator or a government agency  
13 legally controls all activities in accordance with  
14 193.2057 and 193.0295 for as long as a facility is in  
15 operation.

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

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

25                    Section 193.2057 is titled, "Thermal Radiation

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

5 (Court reporter interruption.)

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

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

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

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

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

24 Then down at paragraph 3, "at the nearest point  
25 of the building or structure outside the owner's property

1 line that is in existence at the time of plant siting."

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

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

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

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

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

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

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

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

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

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

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

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

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

25           I would remind the room that counsel for the

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

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

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

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

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

24 A. Could you repeat the question?

25 Q. Yes. I believe you make a distinction, your

1 interpretation, that the code protects against an  
2 exclusion that causes a fire that reaches outside of  
3 DEU's property line at the time of citing, correct?

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

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

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

18 Q. Right. No, that answered my question.

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

23 A. After the time of citing?

24 Q. Yes.

25 A. Yes. That was the original interpretation of



1 the expert, yes.

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

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

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

22 Then once the facility is up and running and  
23 everybody knows, okay, all the processes are in place, we  
24 have no issues in the facility. So you're asking my  
25 opinion as an accountant who knows nothing about

1 engineering LNG facilities. But I'm guessing that has  
2 something to do with it, is the uncertainty of getting a  
3 plant up and running.

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

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

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

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

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

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

6 A. Fair enough. Fair enough.

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

9 A. Yes.

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

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

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

15 MR. MOORE: Page 2.

16 MS. CLARK: Thank you.

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

1 Mr. Ware cites.

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

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

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

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

25 Q. Getting back to Mr. Ware's definition section,

1 could I have you turn to page 5 of your rebuttal  
2 testimony?

3 A. Yep.

4 Q. Lines 111 to 114.

5 A. Yes.

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

12 A. Right.

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

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

22 As I mentioned before, I mean, to get a legal  
23 opinion on 68 different reports, I just think is  
24 unreasonable. There is so much information related to  
25 this LNG facility that to get a legal opinion on every

1 piece of it, would just -- it just makes no sense.

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

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

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

8 A. I guess -- I guess so.

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

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

14 A. 201?

15 Q. Line 201, page 8, rebuttal testimony.

16 A. Yep.

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

24 A. Right.

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

1 about wetlands protected by Federal law?

2 A. Yes, I believe they are.

3 Q. Before making that determination that you were  
4 required to build on the southwest portion of the site,  
5 did you contact the Army Corps of Engineers, which,  
6 incidentally, has jurisdiction to issue permits for  
7 construction that may damage protected wetlands?

8 A. Yes.

9 Q. You did?

10 A. Yes. We had to receive a permit from the Army  
11 Corps of Engineers to build on that site because of those  
12 wetlands.

13 Q. Did you investigate as to the availability and  
14 cost of mitigation matters and compensation payments for  
15 unavoidable damages to wetlands cause by proposed  
16 construction of the site, possibly on another area of the  
17 site, as allowed by the Federal regulations? I'll just  
18 cite it here, but 33 CFR 332.3?

19 A. I have no idea. I can't speak to whether  
20 that -- so repeat your question one more time.

21 Q. Did you investigate the availability and costs  
22 of mitigation matters and compensation payments caused --  
23 to compensate for any unavoidable damage to wetlands  
24 caused by proposed construction on the site?

25 A. Yeah, I'm not aware of any. I do -- I do not

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

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

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

16 A. I have not seen an analysis like that.

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

18 CHAIRMAN LEVAR: Thank you, Mr. Moore.

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

21 MAJOR BUCHANAN: No questions, thank you.

22 CHAIRMAN LEVAR: Thank you.

23 Mr. Russell?  
24  
25



1 CROSS-EXAMINATION

2 BY MR. RUSSELL:

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

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

9 A. Correct.

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

12 A. Sure.

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

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

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

21 A. Right.

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

25 A. That's correct. In fact, this year I was

1 meeting with our infrastructure replacement team, and  
2 they're going to probably be \$10 million over budget on  
3 the tracker, over the cap. And so yeah, we're going to  
4 have to absorb that until the next general rate case.

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

8 A. Correct.

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

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

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

25 So I think what we're trying to do is balance

1 the two items so that we're -- we're replacing what we  
2 can replace within the bounds of the program, and  
3 sticking with the three-year time table of rate-case  
4 filings.

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

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

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

13 A. It's a balance, exactly.

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

18 A. Right.

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

22 A. That's right. And I accepted that decision, and  
23 that's why I didn't propose it again in this case,  
24 because I try to just accept what the Commission  
25 determines. I don't know why Mr. Higgins decided he

1 wanted to relitigate an issue that had already been  
2 determined by the Commission in the last case, but I  
3 guess that's his choice.

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

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

8 Q. He must still think they're true.

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

11 Q. The cap that was set in that 2019 rate case was  
12 \$72.2 million, right?

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

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

17 A. Fair enough.

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

21 A. That sounds right, yeah.

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

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

1 Q. Fair. But we're creeping up pretty close to the  
2 \$80 million that was not allowed to be the cap in the  
3 last rate case, right?

4 A. Yeah, three years ago, yes, we'll be close to  
5 80.

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

8 THE WITNESS: Okay. Thank you.

9 CHAIRMAN LEVAR: Thank you.

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

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

13 THE WITNESS: Maybe at lunch.

14 MS. CLARK: Maybe at lunch.

15

16 REDIRECT EXAMINATION

17 BY MS. CLARK:

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

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

25 A. Correct.

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1 Q. And you also indicated that there were  
2 60-some-odd studies within the feed study that the  
3 Company's consultant prepared, correct?

4 A. Yeah, I believe 68, yes.

5 Q. And that consultant may or may not have retained  
6 engineers, may or may not have retained attorneys to  
7 opine, may or may not have had conversations with other  
8 experts.

9 You don't really know what steps that consultant  
10 took to come to an understanding on this point; is that  
11 correct?

12 A. That's correct.

13 Q. Isn't that the reason the Company hired a  
14 consultant to begin with?

15 A. That's exactly right.

16 Q. And you believe it was prudent of the Company to  
17 rely on the consultant's advice?

18 A. Yes, they had a lot of experience building  
19 facilities all over the country.

20 Q. Would you also agree -- Mr. Moore spoke about  
21 perhaps providing briefs defining what these regulations  
22 mean.

23 Would you clarify for me whether or not the  
24 Company believes that procuring this additional property  
25 for a thermal exclusion zone is legally required?

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

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

5           A.    Correct.

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

9           A.    Correct.

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

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

21          A.    Sure.  So as I mentioned in my testimony, we  
22 went out and tried to find a parcel where this facility  
23 could be built.  And so there are a few requirements.  
24 You need a big enough piece of land.  You need it to be  
25 in an area where it's not -- you don't have NIMBY issues,

1 "not in my backyard" issues. And then it also needed to  
2 be located in an area where it's close to our system.

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

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

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

15 The Legacy Highway property was too small.

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

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



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

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

7           CHAIRMAN LEVAR: Okay. Thank you.

8           Mr. Moore, any recross?

9           MR. MOORE: No recross. Thank you.

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

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

14          COMMISSIONER CLARK: Just a couple of questions.

15

16                                   CROSS-EXAMINATION

17 BY COMMISSIONER CLARK:

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

21          A. Restrictive covenant? Thermal exclusion zone?

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

23                 Including the cost of the thermal exclusion zone  
24 and the restrictive covenants that you've since obtained  
25 or are in the process of obtaining with the other costs

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1 of the project, and examining those costs in relation to  
2 the costs of the other alternatives that were examined in  
3 the docket in which we approved the construction of the  
4 LNG plant --

5 A. Correct.

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

8 A. That's right.

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

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

15 Q. Do we have it in the record?

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

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

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

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

1 testimony.

2 THE WITNESS: Thank you for that.

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

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

8 A. Yeah.

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

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

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

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

23 THE WITNESS: Thank you.

24 CHAIRMAN LEVAR: Commissioner Allen?

25 COMMISSIONER ALLEN: Yes, I have one question.

1 CROSS-EXAMINATION

2 BY COMMISSIONER ALLEN:

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

9 A. Right.

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

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

15 COMMISSIONER ALLEN: Thank you.

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

18  
19 CROSS-EXAMINATION

20 BY CHAIRMAN LEVAR:

21 Q. In your opinion, if you had known, if your  
22 engineering consultant had come out with the  
23 recommendation that you obtain the exclusion zone for the  
24 life of the plant, considering the volatility in real  
25 estate prices, do you believe you could have obtained the

1 restrictive covenants at a lower cost at that time than  
2 you obtained them when you did?

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

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

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

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

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

23 A. Thanks.

24 CHAIRMAN LEVAR: Thank you for your testimony  
25 this morning.

1 Ms. Clark?

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

4 CHAIRMAN LEVAR: Good morning, Mr. Stephenson.

5 THE WITNESS: Good morning.

6 CHAIRMAN LEVAR: Do you swear to tell the truth?

7 THE WITNESS: Yes.

8 CHAIRMAN LEVAR: Thank you.

9

10 JORDAN K. STEPHENSON,  
11 was called as a witness, and having been first duly  
12 sworn to tell the truth, the whole truth, and nothing  
13 but the truth, testified as follows:

14

15 DIRECT EXAMINATION

16 BY MS. CLARK:

17 Q. Good morning, Mr. Stephenson.

18 A. Good morning.

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

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

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

24 A. The manager of regulation.

25 Q. Mr. Stephenson, you've submitted direct

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1 testimony with accompanying exhibits. The testimony is  
2 labeled "DEU Exhibit 3.0," and it has accompanying  
3 Exhibits 3.01 through 3.34, as well as rebuttal testimony  
4 labeled as "DEU Exhibit 3.0R," with accompanying Exhibits  
5 3.35R through 3.39R.

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

8 A. Yes.

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

10 A. Yes.

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

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

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

17 MS. CLARK: Thank you.

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

20 A. Yes, I can.

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

24 Nearly three years ago, I sat in the same seat  
25 as the Company's revenue requirement witness in its last

1 general rate case. The rates in that docket took effect  
2 on March 1, 2020.

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

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

14 Before summarizing this projected deficiency, I  
15 would like to point out that the Company has agreed to  
16 reduce its requested revenue requirement in this case by  
17 \$4.5 million, as presented in the statement of contested  
18 and uncontested issues presented yesterday to the  
19 Commission.

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



1           Regarding capital expenditures, the Company's  
2 average 2023 gross plant balance is projected to be  
3 \$924 million higher than the balance in the 2020 test  
4 period. This rate-base increase reflects substantial  
5 capital investments made by the Company to meet customer  
6 growth, replace aging infrastructure, and to expand the  
7 distribution system. It also includes the completion of  
8 the new LNG facility, as addressed by Mr. Mendenhall.

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

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

24           In my rebuttal testimony, I addressed the  
25 ratemaking treatment of certain capitalized labor

1 overhead costs. Total labor overhead costs include the  
2 incentive compensation and the pension credit. Total  
3 labor overhead is booked as either operating and  
4 maintenance expense or capital cost, depending on how  
5 employees code their time.

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

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

22 Turning to operating and maintenance expense,  
23 the Company's total operating and maintenance expense has  
24 increased by \$18 million in the 2023 test period, when  
25 compared with a 2020 test period amount that was used to

1 set current rates.

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

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

14 As the Commission is aware, the Company offered  
15 an early retirement incentive program beginning in June  
16 of 2019. These retirements took effect in January of  
17 2020. The Company's intention had always been to  
18 backfill those positions. However, hiring efforts were  
19 greatly hampered by the pandemic in 2020 and 2021, as I  
20 described in my direct testimony.

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

24 As I shared in DEU Exhibit 3.39R of my rebuttal  
25 testimony, the Company's total head count reached 897

1 total employees through August of this year, and the  
2 Company has posted 26 additional positions, bringing the  
3 total to 923 employees, which is within one employee of  
4 the assumed 2023 test period average of 924.

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

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

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

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

1 environment in which we operate today.

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

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

17           Parties in this docket have suggested various  
18 other adjustments that are addressed in my rebuttal  
19 testimony. These include various employee benefits. The  
20 benefits at question -- in question are moderate and  
21 reasonable, especially in today's labor environment. The  
22 Company's experiencing a historic and uniquely  
23 challenging labor market that makes employee retention  
24 efforts critically important. The value of offering the  
25 benefits discussed by Mr. Defever far outweighs the minor

1 cost of those benefits, in that it helps create a  
2 competitive culture that attracts and retains employees.  
3 Removing these programs would complicate hiring and  
4 retention efforts the Company is undertaking.

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

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

11 CHAIRMAN LEVAR: Thank you.

12 Ms. Schmid?

13 MS. SCHMID: No questions. Thank you.

14 CHAIRMAN LEVAR: Okay. Thank you.

15 Mr. Moore?

16 MR. MOORE: Just one very brief question.

17

18 CROSS-EXAMINATION

19 BY MR. MOORE:

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

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

23 Q. Yes. On 292 beginning with the word "No" to  
24 294, ending with the word "board," could you please read  
25 that sentence into the record, please?

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

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

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

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

14          A.    Okay.

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

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

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

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

25          A.    Yes, I agree.

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

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

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

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

15 CHAIRMAN LEVAR: Thank you, Mr. Moore.

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

18 MAJOR BUCHANAN: No questions. Thank you.

19 CHAIRMAN LEVAR: Thank you.

20 Mr. Russell?

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

22

23 CROSS-EXAMINATION

24 BY MR. RUSSELL:

25 Q. Let's start with labor expense in the testimony,



1 in the conversation you've been having with Mr. Defever  
2 and Mr. Higgins about employee count.

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

7 A. Correct.

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

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

16 A. Right.

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

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

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

1 than that.

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

5 A. Right.

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

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

15 A. Yeah.

16 Q. Or FTE?

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

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

24 A. Right.

25 Q. Yeah. Okay. Got it. And I only raise that

1 because some of the witnesses reference the actual number  
2 of employees and some reference the FTE, and I just want  
3 to make sure we're keeping things straight here.

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

7 A. Correct.

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

10 A. Okay. Okay.

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

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

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

24 Did I get that right?

25 A. You did.

1 Q. Okay. And as an initial matter, Mr. Defever's  
2 adjustment that you're referencing here is from, I  
3 assume, his direct testimony, right?

4 A. Correct.

5 Q. And in his rebuttal testimony, he updated his  
6 adjustment to September of 2022; is that right?

7 A. Correct. He adjusted it for the amount that I  
8 included in my rebuttal testimony.

9 Q. Whatever the actual number was as of  
10 September 1, 2022, which I think is 897 actual employees,  
11 right?

12 A. Correct.

13 Q. Okay. Does your critique in the last sentence  
14 here of -- given that update, does your critique of  
15 Mr. Defever stand?

16 A. I believe it does, yes. When I'm talking about  
17 employee growth, one of the objectives that I set out to  
18 meet in providing the Commission with a forecasted test  
19 period to consider is what will be the conditions that  
20 the Company experiences in 2023?

21 And if you look at the Company's internal plans  
22 for where employment will be as well as the current pace  
23 of growth, we are on track to get to 924 employees. I  
24 think drawing a line in the sand, whether it be in  
25 September or whether it be in May of 2022, drawing a line

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

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

7 A. I do, yes.

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

12 A. You said UAE Exhibit RR1.6?

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

14 A. I got it. Which --

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

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

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

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

1 charts which show the actual employee count and employee  
2 FTE, and the budgeted employee count and FTE for the  
3 years 2020, 2021, and partial year 2022. It does show  
4 the remaining budget employee count and budgeted FTE for  
5 the rest of 2022 and all of 2023; do you see that?

6 A. Yes.

7 Q. Okay. And to your point about the adjustments  
8 proposed by Mr. Defever and Mr. Higgins not taking into  
9 account growth, they do, of course, take into account  
10 growth since the base year, right?

11 A. Yeah. They've been updated for actuals into  
12 2022, that's correct.

13 Q. And then I'd like you to focus on the budgeted  
14 numbers that you've used for 2022. Just looking there at  
15 the actual account in June of 2022, the budget number  
16 there shows 922 actual employees, right?

17 A. It does.

18 Q. Okay. So the budget doesn't actually expect  
19 much growth between June of 2022 and the end of the year,  
20 where you expect 924 actual employees, right?

21 A. Yeah, you're right. And I think the process to  
22 come up with that monthly -- that monthly pattern is just  
23 based on historical trends we've had. So when the budget  
24 department comes up with that, they look at, Okay, how  
25 has this happened in the past? And I think -- I don't

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

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

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

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

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

17 A. September 1, okay.

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

20 A. Correct.

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

24 A. Right. And it was the same process used. I  
25 think that 924 was just based on what the Company

1 typically sees in a typical year, looking historically.  
2 This year has been abnormal, so it's taking us longer  
3 than expected to get to that amount.

4 Q. I want to look back at the data in 2020 and  
5 2021. Off to the right, the rightmost column, excuse me,  
6 on this chart shows the average number of employees  
7 throughout the year. I gather that's a 12-month average,  
8 just based on the numbers to the left of it, right?

9 A. Right.

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

13 A. Correct.

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

18 A. On average, yes.

19 Q. Yes.

20 A. That's correct.

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

24 A. That's correct.

25 Q. And in looking into 2022, we're seeing some of



1 that same trend, where the budget is higher than the  
2 actuals, just based on the data that we have here through  
3 June, where the budget average is 919 actuals versus an  
4 average of 880 employees actually retained, right?

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

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

11 A. It has, yep.

12 Q. Okay. Bear with me for a moment.

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

20 A. That's right.

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

23 A. Yes.

24 Q. Presumably, that would have gotten you to the  
25 budgeted amount, or you had jobs posted that would have

1       been targeted to get you to the budgeted amount in each  
2       of those months, right?

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

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

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

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

15          A.     Correct.

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

18          A.     Are you referring to the budget numbers?

19          Q.     Yep.

20          A.     The monthly budget numbers?

21          Q.     Yep.

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

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

24          A.     Correct.

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

1 the discussion about the capitalized incentive  
2 compensation in rate base.

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

5 MR. RUSSELL: Great.

6 CHAIRMAN LEVAR: Why don't we come back at  
7 10:40.

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

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

11 Mr. Russell, you can continue.

12 MR. RUSSELL: Thank you.

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

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

1           So I think we're good.

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

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

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

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

20           A. Correct.

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

23           A. 4.5 million.

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

1 A. That's correct.

2 Q. Okay. I just wanted to make that clear in case  
3 it wasn't.

4 So with that, let's move on to the capitalized  
5 incentive compensation in rate base.

6 A. Yep.

7 Q. You mentioned in your summary that UAE and the  
8 Office have recommended that the amount of financial  
9 incentive compensation included in rate base should be  
10 excluded because it was excluded as an expense, I think  
11 is what you said. If I got that wrong, let me know.

12 A. Yeah, I think that's probably the way I said it.  
13 And I guess you could -- I could probably clarify: For,  
14 I guess, the same reasons that the O&M has been removed,  
15 and they would like to remove the capitalized portion.  
16 That's how I understand it.

17 Q. Yeah. Okay. All right. I mean, those  
18 witnesses can speak for themselves. But I understand  
19 their positions to be that it does not belong in rates  
20 and, therefore, it should be excluded both from the  
21 expense and from the capitalized portion, right? Is that  
22 your understanding?

23 A. That's my understanding.

24 Q. Okay. As you indicate in your prefilled  
25 testimony, the Company's incentive-based program is a

1 component of the total labor cost, right?

2 A. Correct.

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

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

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

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

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

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

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

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

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

17          A.    Right.

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

20          A.    Okay, I'm at 449.

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

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

4           A.    Right.

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

8           A.    Right.  Yep.

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

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

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

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

21          A.    No, you're good.

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

25          A.    No, because I haven't recommended departing from



1 the established precedent from that '90s case. I'm  
2 consistent with all orders since that time, including the  
3 capitalized portion of the financial incentive. But I'm  
4 just -- because I am consistent with those orders, I  
5 didn't try to make a case to depart from them. I think  
6 that has now been recommended by Mr. Defever and  
7 Mr. Higgins, as well, to include capital in that  
8 adjustment, which is a departure. But, yeah, I don't  
9 know that I would agree with the '90s rationale of how  
10 these goals impact customers.

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

12 A. I do.

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

15 A. Okay. 179. I'm there.

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

21 A. Right.

22 Q. I want to actually read from line -- starting on  
23 Line 191, and it says, "To summarize, our policy has been  
24 to allow recovery of expenses if ratepayer benefit is  
25 demonstrated and is not merely conjectural. We reaffirm

1 this policy here and disallow expenses for financial  
2 goals and the net income trigger."

3 Did I read that right?

4 A. Yes.

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

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

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

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

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

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

23 A. I guess it may not. But I do think these are  
24 very common terms. I think any time you say "expenses,"  
25 at least in my mind, usually everyone is on the same page

1 about what an "expense" is from an accounting standpoint.  
2 But I can't speak for the Commission on that.

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

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

21 I don't know that any party has pointed at our  
22 asset costs on our book to say that they are overvalued  
23 in some way. And so, yeah, I do think there could be  
24 reasons why you would want to, I guess, reflect the  
25 actual cost of the asset in rate base that is distinct

1 from an O&M or an expense conversation.

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

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

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

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

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

25 The incentive program works the same, whether

1 it's capitalized or O&M, and I think that's what you're  
2 getting at.

3 I think what has changed if you look from the  
4 '90s to today is the circumstances of how the Company  
5 makes money. There was no CET adjustment. There was no  
6 weather normalization when these first occurred. So  
7 financially, the Company could have large swings in  
8 income. So I think today, some of these concerns that  
9 existed at the time have changed. But like I said, we  
10 have not proposed departing from previous rate case  
11 orders in this case.

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

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

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

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

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

1 we're including zero cost to customers in that item.

2 Q. Well, there is a cost that is booked for an  
3 accounting purpose. But for ratemaking purposes, you're  
4 asking to zero out that cost, right?

5 A. Correct.

6 Q. And you're asking to zero out that cost because  
7 it's a negative cost, right?

8 A. Right, because you've had a return on plan  
9 assets that are much larger than the service cost  
10 component of that expense, correct.

11 Q. From an accounting perspective, employer  
12 contributions to a pension plan in any given year often  
13 differ from the net periodic pension costs recognized in  
14 that year, right?

15 A. Right.

16 Q. And rather than have me do this, can you just  
17 give a general explanation about how net periodic pension  
18 cost is determined?

19 A. Yeah. So there's a lot of moving parts to it.  
20 But simply summarized, you have a service-cost component  
21 which represents the anticipated obligation to employees  
22 that will be fulfilled now and into the future. As that  
23 changes, there is an expense that the Company recognizes.  
24 There's another part of the total cost, which is a return  
25 on plan assets. And it's not considered a service cost

1 but rather a return.

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

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

18           After that significant contribution of  
19 75 million, we now generate a substantial return on plan  
20 assets that completely wipes out any services costs. So  
21 today, the customers bear no cost to the pension. And  
22 the return on those plan assets we propose to be removed  
23 as well.

24           The reason for that being that the cost -- that  
25 return cannot legally be culled out by the Company. So

1 there is no -- there is no benefit, cash benefit to the  
2 Company of that return. And the Commission did agree  
3 with us in the 2019 docket on that.

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

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

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

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

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



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

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

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

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

1 Has that effort been done for this case?

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

11 Q. I think I understood the point.

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

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

21 Q. Right. And the reason I asked that question is  
22 you just indicated that the growth of the asset, you  
23 indicated, would be mainly attributable to 75 million.  
24 I'm just wondering, from any point where the stock market  
25 is going down, the reduction in the value would also be

1 mostly attributable to that \$75 million contribution,  
2 wouldn't it?

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

4 Q. Okay. Let's assume that in the next rate case,  
5 pension costs are positive. Does that necessarily mean  
6 that the ratepayers are no longer benefiting from that  
7 \$75 million contribution?

8 A. No, it doesn't. It doesn't. Because that  
9 \$75 million contribution will always generate some return  
10 on plan assets. So -- well, to the extent that there's  
11 any return on plan assets, that benefits the Company and  
12 its customers. So that 75 million will exist into  
13 perpetuity and, theoretically, always generates some  
14 level of return. Maybe some years not. I can't  
15 guarantee every year it will. But that 75 million  
16 doesn't go anywhere. It stays there, and it continues to  
17 generate returns into perpetuity.

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

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

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

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

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

14 A. Correct.

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

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

24 Q. Do you know what happens if the Company  
25 terminates its pension plan when it has a positive

1 pension asset or overfunded pension asset?

2 A. I'm not sure.

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

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

6 THE WITNESS: Thank you.

7 CHAIRMAN LEVAR: Thank you, Mr. Russell.

8 Ms. Clark, any redirect?

9 MS. CLARK: Just a little, thanks.

10

11

REDIRECT EXAMINATION

12 BY MS. CLARK:

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

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

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

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

25 A. Yes, absolutely. And I think you don't have to

1 look too far to find very costly scenarios where board of  
2 directors may not have fulfilled that obligation. So I  
3 think having a highly credible board of directors is  
4 essential, and it serves all stakeholders, including  
5 customers.

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

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

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

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

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

25 Q. And on average, how many employees has the

1 Company been adding per month for the last several  
2 months?

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

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

8 A. So that puts you ten per month. You would add  
9 30 over three months, and you would be there.

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

12 A. Yes.

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

15 Do you remember that conversation?

16 A. Yes.

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

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

23 A. Yeah. And to expound a little bit on that, I  
24 think the way that the Company establishes its total  
25 labor -- its total labor cost or the offers to employees,

1 including their salary, including incentive, including  
2 various benefits, the Company is looking at the market.  
3 It's looking at peers. It's doing surveys to determine  
4 what is the total labor package that will allow us to  
5 attract the employees we need to successfully operate as  
6 a company, and to safely operate, reliably operate. And  
7 the incentive is one of those things.

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

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

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

23 But if you imagine total labor costs as a stream  
24 running down the mountain, that total labor cost includes  
25 all kind of things. It includes pension credit, it



1 includes incentive payments, benefits, and all those  
2 overheads. And we try to redirect some of that stream  
3 toward capital, based on a load factor or a percentage,  
4 based on how employees code their time.

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

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

17 CHAIRMAN LEVAR: Thank you.

18 Any recross from Ms. Schmid?

19 MS. SCHMID: None. Thank you.

20 CHAIRMAN LEVAR: Thank you.

21 Mr. Moore?

22 MR. MOORE: No, thank you.

23 CHAIRMAN LEVAR: Major Buchanan?

24 MAJOR BUCHANAN: No, thank you.

25 CHAIRMAN LEVAR: Mr. Russell?

1 MR. RUSSELL: Just a few.

2

3

RECROSS-EXAMINATION

4

BY MR. RUSSELL:

5

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

8

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

10

11

A. Correct.

12

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

15

A. Right.

16

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

19

A. I'd say they're committed expenditures. To give  
20 you a little bit of, I guess, context into what goes into  
21 a posted position, internally, as a culture, I could say  
22 it almost -- we joke around that it would take an act of  
23 divine intervention to get a posting approved from our  
24 management. So it's not a small task to get to the point  
25 where a job has now become a posted position. That has

1     been approved up all the way through management to add  
2     that position, and then yes, it gets posted. But once  
3     it's been approved, the Company then plans for that  
4     expense, and the funding is made available. And I don't  
5     think there is any manager that will relinquish that  
6     approval, and that posting will be filled.

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

11          A.     That's correct.

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

15          A.     Right, and I'm doing that for a 2023 test  
16    period. And as I made clear, my objective, and  
17    consistent with the code in 54-4-4, is to reflect the  
18    test rate conditions that the Company will encounter in  
19    2023, which is when rates will take effect.

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

23          Q.     Let's talk a little bit about capitalized  
24    incentive costs. You kind of walked through with  
25    Ms. Clark your views about whether these types of

1 incentives are required to compete for employees.

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

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

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

15 A. Right.

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

17 CHAIRMAN LEVAR: Thank you, Mr. Russell.

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

20 COMMISSIONER ALLEN: No questions. Thank you.

21 CHAIRMAN LEVAR: Commissioner Clark?

22 COMMISSIONER CLARK: Couple of questions.

23

24 CROSS-EXAMINATION

25 BY COMMISSIONER CLARK:

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

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

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

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

25 A. Right.

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

4 A. Not to my knowledge.

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

7 THE WITNESS: Thank you.

8 CHAIRMAN LEVAR: Thank you.

9

10 CROSS-EXAMINATION

11 BY CHAIRMAN LEVAR:

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

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

21 Q. Can you describe -- switching topics.

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

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

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

10                    Another act that the Company engages in, the  
11     benefits department specifically, is they have a list of  
12     17 peer groups that are similar to Dominion Energy Utah,  
13     and they are comparing with that annually to see what are  
14     the benefits being offered to those employees in those  
15     companies?  And are we keeping pace, or are we reasonable  
16     and competitive with those?  And that happens annually as  
17     well.

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

21                    THE WITNESS:  Thank you.

22                    CHAIRMAN LEVAR:  Anything else from DEU?

23                    MS. CLARK:  Nothing more at this time.

24                    CHAIRMAN LEVAR:  Ms. Schmid.

25                    MS. SCHMID:  Thank you.  The Division has three

1 witnesses and would like to call its first witness,  
2 Mr. Eric Orton.

3 CHAIRMAN LEVAR: Good morning, Mr. Orton.

4 THE WITNESS: Good morning.

5 CHAIRMAN LEVAR: Do you swear to tell the truth?

6 THE WITNESS: I do.

7 CHAIRMAN LEVAR: Thank you.

8

9 ERIC ORTON,

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

13

14 DIRECT EXAMINATION

15 BY MS. SCHMID:

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

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

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

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

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

23 A. 160 East 300 South, Salt Lake City.

24 Q. In conjunction with your employment by the  
25 Division, have you participated on behalf of the Division

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1 in this docket?

2 A. I have.

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

6 A. That's right.

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

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

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

14 A. They would.

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

17 A. I do.

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

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

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

24 MS. SCHMID: Thank you.

25 Q. (BY MS. SCHMID:) Mr. Orton, do you have a

1 summary to present today?

2 A. I do.

3 Q. Please proceed.

4 A. Thank you.

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

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

15 The second recommendation came as a result of  
16 the Division supporting the Company's recommendation to  
17 move \$2,131,234 to the supplier non-gas portion of the  
18 191 pass-through account, which represent electrical  
19 cooling costs -- costs to cool and liquefy the natural  
20 gas in the LNG facility. These costs were ordered and  
21 included in that pass-through docket, and they were also  
22 included in the current general rate case. They should  
23 not be in both. Accordingly, I recommended removal of  
24 these costs from this case.

25 In his rebuttal testimony, Company witness

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

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

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

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

13 CHAIRMAN LEVAR: Thank you.

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

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

17 CHAIRMAN LEVAR: Thank you.

18 Major Buchanan?

19 MAJOR BUCHANAN: No questions. Thank you.

20 CHAIRMAN LEVAR: Mr. Russell?

21 MR. RUSSELL: No questions. Thank you.

22 CHAIRMAN LEVAR: Ms. Clark?

23 MS. CLARK: None from me. Thank you.

24 CHAIRMAN LEVAR: Commissioner Clark?

25 COMMISSIONER CLARK: No questions. Thank you.

1 CHAIRMAN LEVAR: Commissioner Allen?

2 COMMISSIONER ALLEN: No questions.

3 CHAIRMAN LEVAR: None from me, either.

4 Thank you for your testimony this morning.

5 THE WITNESS: Thank you.

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

8 CHAIRMAN LEVAR: Good morning, Mr. Einfeldt.

9 THE WITNESS: Good morning.

10 CHAIRMAN LEVAR: Do you swear to tell the truth?

11 THE WITNESS: Yes.

12 CHAIRMAN LEVAR: Thank you.

13

14 JEFFREY S. EINFELDT,

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

18

19 DIRECT EXAMINATION

20 BY MS. SCHMID:

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

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

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

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

7 A. Yes.

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

11 A. Yes.

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

14 A. No.

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

19 A. Yes. That's my understanding.

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

22 A. Yes.

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

25 A. Yes.

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

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

6 Not seeing any objections, so the motion is  
7 granted.

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

10 A. I do.

11 Q. Please proceed.

12 A. Thank you, Commission.

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

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

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

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

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

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

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

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

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

7 MR. MOORE: No questions. Thank you.

8 CHAIRMAN LEVAR: Okay. Thank you.  
9 Major Buchanan?

10 MAJOR BUCHANAN: No questions.

11 CHAIRMAN LEVAR: Mr. Russell?

12 MR. RUSSELL: I do have some questions.

13

14 CROSS-EXAMINATION

15 BY MR. RUSSELL:

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

18 A. Good morning.

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

23 Can you explain what you mean by that?

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



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

5 A. Correct.

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

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

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

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

18 A. That's correct.

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

23 A. When it is a typical traditional expense amount,  
24 so it's not a credit like it is in this period, there may  
25 be a cash contribution associated with it, although that

1 cash contribution will likely not equal the cash or the  
2 expense amount.

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

5 A. That's correct.

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

8 A. Okay.

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

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

25 Is it your contention that recognizing negative

1 pension costs in this rate case revenue requirement would  
2 somehow be funded by the pension plan itself?

3 A. No.

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

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

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

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

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

19 A. That's correct.

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

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

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

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

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

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

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

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

16 Q. What response to market returns?

17 A. The ratemaking process.

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

21 A. Correct.

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

1 A. All we're saying is, there could be an effect.

2 Q. And mathematically, how would that work?

3 A. We would probably reword that a little  
4 differently.

5 Q. And maybe you can just expand on it a little  
6 bit. I'm still trying to understand what point you're  
7 trying to make here. And candidly, my reaction to this  
8 is I'm trying to decide whether the basis of your  
9 testimony is that you assume that the ratemaking  
10 treatment somehow affects the accounting treatment of the  
11 pension plan.

12 A. With this comment, I think what we're trying to  
13 do also is preserve the right and -- well, preserve the  
14 ability to analyze pension expenses in future rate cases  
15 rather than precluding anything because circumstances  
16 could just change. And I think it would be -- I believe,  
17 or our opinion is that it is prudent to be able to review  
18 those in the future.

19 Q. I had a question for Mr. Stephenson, and he  
20 indicated he might not know the answer. I'm going to ask  
21 you.

22 If a pension plan is overfunded at the time that  
23 it is terminated, isn't it true that those excess funds  
24 can be retained by shareholders, subject to the payment  
25 of taxes owed?

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

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

8           CHAIRMAN LEVAR:  Okay.  Thank you.

9           Ms. Clark, any questions for Mr. Einfeldt?

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

12          CHAIRMAN LEVAR:  Thank you.

13          Any redirect?

14          MS. SCHMID:  Just one.

15

16                                 REDIRECT EXAMINATION

17     BY MS. SCHMID:

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

22           I can restate that if it would be helpful.

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

25           Q.     It might be better if I rephrase it.

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1 A. Okay.

2 Q. Is the Company proposing to set the pension  
3 credit, the negative expense, to zero in this case?

4 A. Yes, the O&M portion, yes.

5 Q. And the Division supports that; is that correct?

6 A. That's correct.

7 Q. Thank you. Thanks for allowing me to restate  
8 it. That's all the redirect I had.

9 THE WITNESS: Easier for me.

10 CHAIRMAN LEVAR: Thank you.

11 Mr. Russell, any recross?

12 MR. RUSSELL: No.

13 CHAIRMAN LEVAR: Commissioner Allen, any  
14 questions for Mr. Einfeldt?

15 COMMISSIONER ALLEN: No questions, thank you.

16 CHAIRMAN LEVAR: Commissioner Clark?

17 COMMISSIONER CLARK: Yes, a couple questions.

18

19 CROSS-EXAMINATION

20 BY COMMISSIONER CLARK:

21 Q. Good morning.

22 A. Good morning.

23 Q. Looking at your surrebuttal, you say the excess  
24 funding position is -- and I'm speaking about the  
25 pension -- the excess funding position is primarily due

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

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

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

16 The pension fund was likely in an underfunded  
17 position prior to that \$75 million contribution. That  
18 \$75 million contribution then placed the pension fund in  
19 a net asset position. That net asset position that is  
20 measured in the general rate case represents a snapshot  
21 at one point in time of an accumulation from the  
22 beginning of when the pension fund began and all of the  
23 activity until that date and time, where there is, I  
24 think, roughly a \$93 million excess balance as of that  
25 date, if that is helpful.



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

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

10          A. Correct.

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

12          A. No. No. I know in one of the exhibits that was  
13 included, they give a list of contributions from, like,  
14 1998 until, like, 2016. I think 2016 may have been the  
15 last contribution the Company made or had to make on its  
16 pension plan. But I don't know what took place prior to  
17 1998.

18                 From 1998, I do have -- I just ran some numbers  
19 on that. It's UAE Data Request 5.05, Attachment 1. I  
20 believe that's in one of, perhaps Mr. Higgins' or  
21 Mr. Defever's surrebuttal testimony. And those  
22 contributions from 1998 through 2016 total approximately  
23 \$252 million. Total expenses for that same period of  
24 time was about -- net of about \$157 million. So you  
25 know, close to \$100 million difference.

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1 Q. Is that a present-value number, or just summing  
2 up the --

3 A. No, those are just summing up transactions that  
4 were made.

5 Q. Those are all my questions. Thank you.

6 CHAIRMAN LEVAR: I don't have any additional  
7 questions, so thank you for your testimony this morning.

8 THE WITNESS: Thank you.

9 CHAIRMAN LEVAR: Ms. Schmid.

10 MS. SCHMID: Thank you. The Division has one  
11 more witness, and would like to call Mr. Douglas  
12 Wheelwright to the stand.

13 (Pause in the proceedings.)

14 CHAIRMAN LEVAR: Good morning, Mr. Wheelwright.  
15 Do you swear to tell the truth?

16 THE WITNESS: Yes, I do.

17 CHAIRMAN LEVAR: Thank you.

18

19 DOUGLAS D. WHEELWRIGHT,  
20 was called as a witness, and having been first duly  
21 sworn to tell the truth, the whole truth, and nothing  
22 but the truth, testified as follows:

23

24 DIRECT EXAMINATION

25 BY MS. SCHMID:

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

3 A. My name is Douglas D. Wheelwright. My last name  
4 is spelled W-H-E-E-L-W-R-I-G-H-T.

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

7 A. The Division of Public Utilities. I am a  
8 utility technical consultant supervisor.

9 Q. And your business address, please?

10 A. 160 East 300 South, Salt Lake City.

11 Q. In conjunction with your employment at the  
12 Division, have you participated in this docket?

13 A. Yes, I have.

14 Q. Did you participate in the preparation and the  
15 causing to be filed of DPU Exhibit No. 1.1DIR, with its  
16 accompanying exhibit, 1.01DIR?

17 A. Yes, I did.

18 Q. Do you have any changes or corrections?

19 A. I do have two corrections.

20 Q. Please walk us through those.

21 A. On page 3, Line 61, it says "2.7 million." It  
22 should be "2.8 million."

23 And on -- the same correction, but on Line 102  
24 on page 4, it should be corrected to "2.8 million." And  
25 those are the only corrections.

1 Q. With that, with those corrections, if asked the  
2 same questions that are in your prefiled testimony, would  
3 your answers today be the same?

4 A. Yes, they would.

5 Q. Do you adopt your prefiled testimony and its  
6 exhibit as your testimony here today?

7 A. Yes, I do.

8 MS. SCHMID: The Division would like to move for  
9 the admission of DPU Exhibit No. 1.0DIR and its  
10 accompanying exhibit.

11 CHAIRMAN LEVAR: Thank you. If anyone objects  
12 to that, please indicate your objection.

13 Not seeing any, so the motion is granted.

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

16 A. I do.

17 Q. Please proceed.

18 A. Thank you.

19 Good morning, Commissioners. In the original  
20 application, the Company identified a revenue deficiency  
21 of \$70.5 million. The calculated deficiency assumes an  
22 increase in the authorized rate of return, as well as  
23 recovery of significant capital spending.

24 The Division has reviewed the proposed changes  
25 and does not agree with or support some of the

1 assumptions used by the Company to calculate the test  
2 year revenue requirement deficiency. The Division  
3 identified \$20.9 million in adjustments, leaving a  
4 deficiency of \$49.6 million in the revenue requirement.  
5 The individual components of the Division's adjustments  
6 include an \$18.2 million reduction, based on a  
7 9.3 percent return on equity and a \$2.8 million reduction  
8 to the LNG operating expense.

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

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

20 And that concludes my summary.

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

24 CHAIRMAN LEVAR: Thank you.

25 Mr. Moore?

1 MR. MOORE: No questions. Thank you.

2 CHAIRMAN LEVAR: Thank you.

3 Major Buchanan?

4 MAJOR BUCHANAN: No questions. Thank you.

5 CHAIRMAN LEVAR: Mr. Russell?

6 MR. RUSSELL: No questions. Thank you.

7 CHAIRMAN LEVAR: Ms. Clark?

8 MS. CLARK: I also have no questions.

9 CHAIRMAN LEVAR: Thank you.

10 Commissioner Allen?

11 COMMISSIONER ALLEN: No questions.

12 CHAIRMAN LEVAR: Commissioner Clark?

13 COMMISSIONER CLARK: No questions. Thank you.

14 CHAIRMAN LEVAR: I don't either. Thank you for

15 your testimony this morning.

16 Anything else from the Division?

17 MS. SCHMID: The Division has nothing more.

18 Thank you.

19 CHAIRMAN LEVAR: Okay. Why don't we break now

20 and go on recess until -- does 1:15 work for everyone?

21 Okay. We'll return at 1:15.

22 (A break was taken from 11:53 a.m. to 1:15 p.m.)

23 CHAIRMAN LEVAR: Good afternoon, everyone. We

24 will be back on the record.

25 I think we're ready to go to Mr. Moore for the

1 Office of Consumer Services.

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

4 CHAIRMAN LEVAR: Good afternoon, Mr. Ware.

5 THE WITNESS: Hello.

6 CHAIRMAN LEVAR: Do you swear to tell the truth?

7 THE WITNESS: I do.

8 CHAIRMAN LEVAR: Thank you.

9

10 ALEX WARE,  
11 was called as a witness, and having been first duly  
12 sworn to tell the truth, the whole truth, and nothing  
13 but the truth, testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. MOORE:

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

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

24 Q. In your capacity as a utility analyst for the  
25 Office, did you prepare and cause to be filed direct

1 testimony, together with OCS Exhibit 1.1D, and filed this  
2 with the Commission on August 26, 2022?

3 A. Yes.

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

7 A. Yes, correct.

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

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

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

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

19 A. Yes.

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

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

24 Not seeing any, the motion is granted.

25 Q. (BY MR. MOORE:) Have you prepared a summary of



1 the position you would like to give at this time?

2 A. Yes, I did.

3 Q. Please proceed.

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

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

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

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

24 One, DEU's original interpretation of the  
25 thermal exclusion zone that it didn't need to be legally

1 enforceable for the life of the facility is an  
2 unreasonable conclusion.

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

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

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

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

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

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

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

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

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

16 CHAIRMAN LEVAR: Thank you, Mr. Moore.

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

19 MS. SCHMID: No questions. Thank you.

20 CHAIRMAN LEVAR: Thank you.

21 Major Buchanan?

22 MAJOR BUCHANAN: No questions. Thank you.

23 CHAIRMAN LEVAR: Mr. Russell?

24 MR. RUSSELL: No questions. Thank you.

25 CHAIRMAN LEVAR: Thank you.

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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

1 sworn to tell the truth, the whole truth, and nothing  
2 but the truth, testified as follows:

3

4

DIRECT EXAMINATION

5

BY MR. MOORE:

6

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

9

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

11

Q. On whose behalf are you testifying today?

12

A. The OCS.

13

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

16

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

18

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

21

A. Yes.

22

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

25

A. Yes.

1 Q. And did you also file surrebuttal testimony on  
2 October 13th, 2022?

3 A. I did.

4 Q. And you had confidential and redacted Exhibit  
5 2.1S with the surrebuttal testimony?

6 A. Yes.

7 Q. Do you have any changes to this testimony you'd  
8 like to make at this time?

9 A. Nope.

10 Q. If I asked you the same questions as are in your  
11 written testimony, would your answers be the same?

12 A. As updated in my surrebuttal, yes.

13 MR. MOORE: The Office moves to admit the  
14 testimony of John Defever, together with accompanying  
15 exhibits.

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

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

19 Q. (BY MR. MOORE:) Have you prepared a summary of  
20 your testimony which you would like to give at this  
21 time?

22 A. Yes.

23 Q. Please proceed.

24 A. As stated in my surrebuttal testimony, the  
25 Company should receive an increase in revenue of no more

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

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

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

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

19 (Court reporter interruption.)

20 THE WITNESS: The Company has included  
21 1.5 million of capitalized incentive compensation related  
22 to financial goals and rate base. As the financial goals  
23 primarily benefit shareholders, it is inappropriate for  
24 ratepayers to pay for these costs. I removed the entire  
25 amount from rate base.

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

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

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

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

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



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

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

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

20 Payroll expense. The Company has budgeted 924  
21 employees, of which 916 are full time. As of August,  
22 employee head count was 897. Although the Company plans  
23 to hire the remaining 27 employees, I have disallowed  
24 costs for the remaining 27 employees, as 897 is the  
25 number of employees that are actually hired and providing

1 utility service as the most known and measurable amount.

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

6 SERP. The Company is requesting recovery of  
7 \$445,917 for SERP. SERP is an additional retirement  
8 benefit provided to a select few highly compensated  
9 employees. The amount provided exceeds the limits that  
10 the IRS has placed on qualified plans. As this overly  
11 generous benefit should not be recoverable from  
12 consumers, I've removed the entire amount.

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

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

25 Fitness center. The Company is requesting

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

6 That concludes my summary.

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

9 CHAIRMAN LEVAR: Thank you, Mr. Moore.

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

12 MS. SCHMID: I do not. Thank you.

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

15 CHAIRMAN LEVAR: Yes.

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

18 CHAIRMAN LEVAR: No problem.

19 Major Buchanan, do you have any questions for  
20 Defever?

21 MAJOR BUCHANAN: No questions. Thank you.

22 CHAIRMAN LEVAR: Thank you.

23 Mr. Russell?

24 MR. RUSSELL: No questions.

25 CHAIRMAN LEVAR: Mr. Sabin?

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

3

4 CROSS-EXAMINATION

5 BY MR. SABIN:

6 Q. Good afternoon, Mr. Defever.

7 A. Hello.

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

10 Do you have access to your exhibits in your  
11 testimony?

12 A. I do.

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

15 A. 2.2D?

16 Q. 2.2D.

17 A. What is that?

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

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

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

24 A. Okay.

25 MR. SABIN: For those who are in 2.2D, we're

1 going to go to the very last page of that exhibit.

2 CHAIRMAN LEVAR: Which issue is this?

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

5 A. Okay. Okay.

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

10 A. If that totals that amount, yes.

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

15 A. Let me check the question.

16 Okay, yes.

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

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

25 Do you have that there?

1 A. Yes.

2 Q. That's going to be DEU Cross Exhibit 10.

3 And I guess I should ask you, Mr. Defever: Are  
4 you familiar with the Voluntary Request and Resource  
5 Decision Review section of the Utah Public Utilities?

6 A. I am not.

7 Q. I assumed as much. And so I'm not -- and these  
8 questions I'm going to ask you, I'm not asking you for  
9 any legal determination. What I want to do is bring the  
10 issue to a head and then ask you about the remaining  
11 documents in the pile.

12 So I'm going to read just 54-17-403(1), which is  
13 the very top paragraph of that document. It says,  
14 "Except as otherwise provided in this section, if the  
15 commission approves any portion of an energy utility's  
16 resource decision under Section 54-17-402, the commission  
17 shall, in a general rate case or other appropriate  
18 commission proceeding, include in the energy utility's  
19 retail rates the state's share of costs:

20 "(i) relevant to that proceeding;

21 "(ii) incurred by the energy utility in  
22 implementing the approved resource decision; and.

23 "(iii) up to the projected costs specified in  
24 the commission's order issued under Section 54-17-402."

25 Now, without asking you for an interpretation,

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

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

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

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

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

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

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

23 Q. (BY MR. SABIN:) Let me just read into the  
24 record, then, the second portion of the statute that  
25 we'll talk about in a second. It's Subsection 1(c),

1 which is at the bottom of the same -- of that first page.

2 "If the commission approves a request for  
3 approval of rural gas infrastructure development under  
4 Section 54-17-402, the commission may approve the  
5 inclusion of rural gas infrastructure development costs  
6 within the gas corporation's base rates if" the three  
7 requirements set forth below that have been met. Okay.  
8 So just keep that in mind, Mr. Defever.

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

15 A. Yep.

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

22 A. Okay.

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



1 costs under Sub (d). Do you see that?

2 A. Yes.

3 Q. Would you mind -- I'm sorry, would you mind  
4 reading that paragraph into the record.

5 A. "Based on the results of the competitive RFP  
6 process, DEU's quantitative and qualitative evaluation of  
7 the RFP bids, and DEU's and DPU's testimony and  
8 documentary evidence discussed in this order and  
9 otherwise contained in the record, we find that the  
10 amount presented in DEU Highly Confidential Exhibit 1.0  
11 page 10, line 244 is the approved projected cost for  
12 DEU's self-owned LNG facility. Any increase to this  
13 approved cost must be brought before the PSC in  
14 compliance with Utah Code 54-17-404."

15 Q. Now, sir, subject to check, would you agree with  
16 me that if I were to go and pull out the highly  
17 confidential exhibit that was filed in that proceeding  
18 for the project costs, that the contingency amount you  
19 are raising is included within that project cost summary?

20 MR. MOORE: I would object. That is, again, a  
21 legal question. He's asking about whether the order  
22 includes the contingency. He's identified the order and  
23 the contingency -- and the contingency, but I think  
24 asking whether it's covered in the order is a legal  
25 question.

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

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

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

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

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

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

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

25           Q. (BY MR. SABIN:) Okay. Do you have any reason

1 to believe that those project costs did not include the  
2 contingency amount you were talking about in your  
3 Exhibit 2.2D?

4 A. I do not.

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

7 A. Yes.

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

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

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

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

9 Q. Okay. So same questions on this.

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

14 A. I do not.

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

17 A. No.

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

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

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

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

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

1 January 19, 2022; do you see that one?

2 A. Yes.

3 Q. Docket 21-057-12?

4 A. Right.

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

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

15 Do you see that sentence?

16 A. Yes.

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

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

1 as further confirmed by signatories in the settlement."

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

6 A. I do not.

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

9 A. No.

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

14 A. Got it.

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

18 A. Okay.

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

25 But would you mind just reading the bottom

1 paragraph of that order.

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

15 Q. Okay. Thank you very much.

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

21 A. Okay, yes.

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

1 costs are reasonably based?

2 A. It does.

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

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

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

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

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

16 Do I understand your testimony correctly?

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

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



1 A. I do not.

2 Q. You do not agree with that?

3 A. Correct.

4 Q. And why don't you agree with that?

5 A. Could you restate it?

6 Q. Sure. If the Commission has previously approved  
7 for the inclusion of base rates projected costs that  
8 include contingency amounts of the very same contingency  
9 costs you are talking about in your testimony, doesn't  
10 that demonstrate, Mr. Defever that, in this jurisdiction,  
11 the Company can demonstrate, using projected costs,  
12 including contingency, to a sufficient certainty, that  
13 the Commission approves them for inclusion in base rates?

14 MR. MOORE: I still think that's a legal  
15 question. He's asking about the Commission's authority.

16 His questions make his argument for him, and  
17 that's fine. But I think questions about how -- how the  
18 Commission's authority to include rates, based on the  
19 last rate case and this statute, is asking about the  
20 Commission's power in this jurisdiction. It's not a --  
21 so I still think that's a legal question.

22 CHAIRMAN LEVAR: Would you like to respond  
23 Mr. Sabin? Because I think I agree with Mr. Moore,  
24 unless you can convince me otherwise.

25 MR. SABIN: I don't think I asked about your

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

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

17 MR. SABIN: Well --

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

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

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

1 A. Correct.

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

7 Do you have that in mind?

8 A. Yes.

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

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

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

1 these costs because they are not known and measurable.

2 THE WITNESS: That is not --

3 MR. MOORE: Objection. That's outside --

4 CHAIRMAN LEVAR: Actually, let's clarify this,  
5 because I'm not sure I see a difference between what  
6 Mr. Sabin just said and the previous answer by  
7 Mr. Defever. It seemed to me like he was giving an  
8 accurate summary of Mr. Defever's previous answer.

9 THE WITNESS: I can clarify it.

10 CHAIRMAN LEVAR: I'm not going to sustain an  
11 objection to that. If you have a further question --

12 MR. SABIN: I can move on at this point.

13 CHAIRMAN LEVAR: So my understanding is, we have  
14 an objection to that summary by Mr. Sabin. And I'm not  
15 going to sustain that one.

16 MR. MOORE: Oh, well ....

17 MR. SABIN: I'm ready to move on. I think the  
18 Commissioners get the issue, and I'm content that, if  
19 this witness does not want to go there, I understand.  
20 And if Mr. Moore doesn't want to go there, that's fine.  
21 I think we made our point.

22 THE WITNESS: I was willing to go there. I  
23 didn't state the objection.

24 Q. (BY MR. SABIN:) I don't mean you, personally.  
25 "You" -- the royal "you" in the sense of the Office of

1 Consumer Services.

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

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

11 A. No.

12 Q. Okay. And with respect to the other items on  
13 2.2D, do you know, as you sit here, whether or not the  
14 Company has come and obtained Commission approval on each  
15 of those other projects?

16 A. I do not know.

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

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

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

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

1 recovery of these costs.

2 Q. Right.

3 A. That's my understanding.

4 Q. Okay. Thank you.

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

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

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

25 My position is that they should not. I know

1 they have, in the past, allowed contingencies. So I  
2 can't say they can't, I'm saying they should not because,  
3 again, they're not known and measurable.

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

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

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

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

17 A. I do not.

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

20 A. What's it, 3. --

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

22 A. Is that something you can give to me?

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

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

25 Q. 3.37R.

1 A. Okay.

2 Q. It was attached to -- we may have right here,  
3 actually.

4 A. Great.

5 MR. SABIN: Is it okay if Mr. Stephenson walks  
6 up that document?

7 CHAIRMAN LEVAR: Yes.

8 THE WITNESS: Oh, yes.

9 Q. (BY MR. SABIN:) Do you remember reviewing this  
10 exhibit as part of Mr. Stephenson's rebuttal testimony?

11 A. If not this exact exhibit, one similar.

12 Q. Yeah. There were a number of exhibits. It's  
13 true, isn't it, that in the materials that the Company  
14 has provided, that it has demonstrated over a period of  
15 years that it is within less than 1 percent of the  
16 difference between projected and actual costs on these  
17 projects?

18 A. Well, what I would say is, at the end of the --  
19 is it eight years? At the end of the eight years, the  
20 totals are similar. But I don't -- I think -- that's  
21 similar if -- for example, if my wife sent me to the  
22 grocery store with \$100 and a list of groceries, and I  
23 come back with \$100 worth of chocolate, that's what I  
24 feel like could be going on here, because it doesn't  
25 break down what projects occurred, which were completed.

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1           Because if every project is brought under  
2 budget, that's great. But we don't know, it could just  
3 be one of the projects that's eating up the entire cost.  
4 So I feel like this chart is insufficient to make any  
5 point like that.

6           Q. And you had the opportunity during this rate  
7 case, Mr. Defever, to send data requests to the Company,  
8 right?

9           A. Yes, I did.

10          Q. Did you, in any of your data requests, ask for  
11 or obtain evidence demonstrating that the Company was  
12 misspending money or was in some way improperly inflating  
13 its charges on any of its projects?

14          A. Well, that is my position, that these  
15 contingencies are improperly inflating it.

16          Q. Well -- and I'd like to -- I don't think you're  
17 answering my question.

18                 Do you have any evidence that the Company has  
19 actually inflated any costs or overcharged ratepayers for  
20 a project or, you know, inflated expenses that -- to make  
21 a project more expensive than it otherwise should be?

22          A. I still feel like contingencies may fall under  
23 that description, because it does make the projects -- it  
24 can make the projects more costly than they should be.

25          Q. And I guess the Office of Consumer Services and

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

4 A. I'm not sure.

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

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

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

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

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

20 A. Yeah. Yeah.

21 Q. So you --

22 A. Inflation has gone up, yes.

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

1 are going through right now; isn't that true?

2 A. It is, but I want to clarify my position. I'm  
3 not saying they shouldn't be allowed the amounts that  
4 they spend, I'm saying they should only be allowed the  
5 amounts they spend. Like, I'm not taking the amounts out  
6 for good, they can request them in a future case.

7 Q. Okay. Well, then, let me ask this follow-up:

8 Are you aware of any instances where they  
9 haven't spent the amount for these particular projects or  
10 very close when you take all the projects into account?

11 A. You're asking me the same thing this chart  
12 shows, that the total over the years is similar.

13 Q. Yeah. Right.

14 A. But, again, that's not -- that doesn't provide  
15 any useful information.

16 Q. Well, I guess I'm trying to understand how if  
17 the Company is coming forward with projected costs and it  
18 estimates that there's going to be inflation or supply  
19 chain delays or other things, and it can't determine in  
20 advance exactly which one of those buckets is going to go  
21 up, but it knows from its own experience that it almost  
22 always does, if not always --

23 A. I don't see how it could know that. How can you  
24 know that some costs may go up and some may not, but  
25 they're going to equal out? That doesn't make sense to

1 me.

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

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

6 A. This is the definition of a contingency.

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

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

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

22 A. Could you restate the question.

23 Q. Sure. These cost contingencies, or the  
24 increases over what -- you know, over specific amounts,  
25 do you know whether those relate to third-party costs or

1 the Company's own costs?

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

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

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

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

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

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

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

11 A. Say that again.

12 Q. In each of these --

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

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

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

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

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

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

8 A. Right. That could happen.

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

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

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

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

1 MR. SABIN: Mr. Chair, I'd like to move for  
2 admission of exhibits, DEU Cross Exhibits 10, 11, 12, 13,  
3 14, yeah -- and 14.

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

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

8 MR. SABIN: Thank you very much.

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

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

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

21 Q. I'm not talking about adjustment.

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

25 Q. Let me start again. Sorry about that.



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

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

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

12          Q. Yes.

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

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

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

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

1 right?

2 A. Yes.

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

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

8 Q. Do you have those?

9 A. Yes.

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

14 A. Yes.

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

17 A. Fifteen is 2.61?

18 Q. Yes, 2.61.

19 A. Okay.

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

23 A. Yes.

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

1 than what the Company is seeking here; isn't that right?

2 A. Correct.

3 Q. The Company could have included in revenue  
4 requirement an additional amount by using the average.

5 And I note that you didn't take the position that on this  
6 particular kind of expense, that a five-year average  
7 should be used, right?

8 A. I didn't take any position on this one.

9 Q. The numbers have varied over each year, right?

10 A. Correct.

11 Q. In some cases as much as by \$100,000 or more?

12 A. Yes.

13 Q. But I don't see you making a recommendation in  
14 this case that the Company should have used a five-year  
15 average and increase the revenue requirement.

16 A. Right. Because if I had made an adjustment to  
17 this, it would probably be to lower it.

18 Q. And why would that be, sir?

19 A. Training expense. For one thing -- again, I  
20 don't know. I say probably to lower it. For one thing,  
21 the Company has a differing level of employees. You  
22 know, they're expecting to have 924 employees, but they  
23 only have 897, I think, so that would -- assuming there's  
24 training for new employees, that would lower the cost.

25 Q. Okay. But I guess the point is, you didn't

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

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

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

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

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

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

24 Q. Okay. Let's go to Exhibit 16. This is 2.29.  
25 Same thing, injuries and damages vary wildly, wouldn't

1 you agree, over the five years?

2 A. Oh, certainly, yeah.

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

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

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

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

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

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

21 Q. All right. It's true, is it not, that in the  
22 five-year period you're using for an average, the Company  
23 went through -- was coming out of a merger, where there  
24 was a large severance reduction -- or employees were  
25 given an opportunity to take an early retirement. There

1 was a combination of two different entities, a  
2 reshuffling of personnel and processes and systems.

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

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

13 I didn't read enough -- any information -- well,  
14 like I said in my testimony -- or surrebuttal, they made  
15 the claims, but they didn't really -- they said, for  
16 instance, the -- the number or amounts were allocated  
17 during certain periods, but they didn't tell me what  
18 periods. So how can I look at those numbers and know  
19 what it means?

20 So in the end I was still -- the best I had to  
21 work with was what they originally gave me.

22 Q. So Mr. Stephenson has used the insurance costs  
23 over the last two years, and his testimony is that  
24 post-merger insurance costs have stabilized. That's his  
25 words, not mine.

1 Do you have any reason to disagree with him  
2 that, based on the Company's experience during the last  
3 two years and post-merger, that it is now at a place  
4 where those insurance costs are fairly predictable?

5 A. Yes, absolutely. No, absolutely, I do have  
6 reason to believe that that's not true.

7 Q. You have a reason to believe that that's not  
8 true?

9 A. Yes.

10 Q. Okay. What is your evidence that that's not  
11 true?

12 A. Again, that's in my -- I believe that's in my  
13 surrebuttal. He says the last couple of years are  
14 relatively stable, but for one of the costs in the last  
15 two years, it drops 20,000. So I wouldn't call that  
16 stable.

17 Q. You think a difference from year to year of  
18 \$20,000 is an indication of a material difference?

19 A. It depends on what that the original cost we're  
20 looking at is.

21 Q. Okay. All right. I want to move to a different  
22 issue.

23 You object to the inclusion of Economic  
24 Development Corporation of Utah costs?

25 A. Yes, I do.

1 Q. Are you familiar with the Economic Development  
2 Corporation of Utah?

3 A. Just what I read on the exhibits that we sent.

4 Q. Do you know what it does for the State of Utah  
5 or businesses in the state of Utah?

6 A. From the response provided by the Company, it  
7 attracts investment and attracts new customers.

8 Q. Do you believe that it's prudent for Dominion  
9 Energy Utah to be aware as early as possible of areas  
10 where the State of Utah is developing, both industrially,  
11 commercially, and residentially?

12 A. I mean, they're better off knowing it than not  
13 knowing it, but I don't think they should be requesting a  
14 lot of money from customers for it. It's putting  
15 customers -- like the basically the agreement is the  
16 utilities provides for utility service to the customers,  
17 they pay for it. But now, they're, like, trying to get  
18 the customers into -- let's get into attracting economic  
19 development. That's not -- to me, not part of the  
20 original agreement.

21 Q. I don't think I said that. I said don't you  
22 think that it would be prudent for the Company to know in  
23 advance where the State of Utah is developing so that it  
24 can build its infrastructure to serve both current and  
25 future customers?



1           So the example I would give for you, sir, is,  
2       let's say that in a western part of Salt Lake City, there  
3       is an industrial development going on. Don't you think  
4       that those customers out there would like to receive gas  
5       service as soon as possible and have the Company thinking  
6       ahead so that they're able to serve as soon as possible?  
7       Doesn't that serve a customer purpose?

8           A.    You're talking about customers that haven't come  
9       yet?

10          Q.    Sure.

11          A.    Yeah. It's not serving a customer because that  
12       customer doesn't exist. That's not serving an existing  
13       customer.

14          Q.    But it's true, isn't it, that the Company needs  
15       to serve -- when customers move into the state and build  
16       a home, we don't want them to wait a year for them to get  
17       gas service, do we?

18          A.    I wouldn't want them to wait a year, but I also  
19       don't want to ask the ratepayers to fund the attempt to  
20       get those -- that information and those employees. I  
21       mean, it seems speculative.

22          Q.    Do you have any evidence that that's the reason  
23       that DEU participates in the Economic Development  
24       Corporation of Utah?

25          A.    When we asked what the -- what it does or what

1 the benefits were, they said it attracts investment, and  
2 it attracts new consumers. So that's my evidence.

3 Q. And they also said that it helps them plan;  
4 isn't that right?

5 A. Yes, planning for the new customers that don't  
6 exist yet. So again, speculative.

7 Q. Okay. But don't you agree that -- I was a new  
8 customer in 2003, but somebody else -- I paid for  
9 somebody else to come in, and somebody else paid for me.  
10 Isn't that the way that we work here in a growing  
11 economy?

12 A. Yeah. But again, you're talking about customers  
13 that may never even exist. You know, it's one thing to  
14 ask for you to pay it forward to a customer that actually  
15 exists; but again, you're asking the ratepayers to pay to  
16 try to get new customers.

17 Q. That may be one purpose, and I'm not even  
18 acknowledging that it is, but you just admitted --

19 A. It says it in the response.

20 Q. I'm just saying you just agreed with me a moment  
21 ago that's not the only purpose. There are lots of other  
22 purposes that serve customer interests, right?

23 Growing --

24 A. A lot more? I don't know about that.

25 Q. Well, have you done any effort to allocate how

1 much of the cost goes towards business development versus  
2 planning for community strategies, planning for  
3 development, planning for providing customer service,  
4 upgrading infrastructure, making sure the gas provision  
5 is appropriate for specific areas, any of that stuff?

6 A. No, I have not.

7 Q. Okay.

8 MR. SABIN: Mr. Chair, if you can give me just  
9 one moment, I'm just going to --

10 CHAIRMAN LEVAR: Why don't we take ten minutes.

11 MR. SABIN: Okay, that would be great. It's a  
12 good stopping point.

13 CHAIRMAN LEVAR: Let's come back, let's just say  
14 2:40.

15 (A break was taken from 2:25 p.m. to 2:40 p.m.)

16 CHAIRMAN LEVAR: Okay. Good afternoon. We will  
17 go back on the record.

18 Mr. Sabin?

19 MR. MOORE: Excuse me, could we have a couple  
20 minutes? I apologize. We're looking for his summary.  
21 Does he have it yet?

22 THE WITNESS: Yeah.

23 MR. MOORE: All right. Thank you.

24 CHAIRMAN LEVAR: So we're good?

25 MR. MOORE: Yeah.

1 CHAIRMAN LEVAR: Okay. Mr. Sabin.

2 MR. SABIN: I need to move to have Exhibits DEU  
3 Cross Exhibits 15 and 16 admitted into the record.

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

6 Not seeing any objections, so the motion is  
7 granted.

8 (Exhibit DEU Cross 15 and 16 were  
9 admitted into the record.)

10 MR. SABIN: With that, I have no further  
11 questions at this time.

12 CHAIRMAN LEVAR: Thank you.

13 Mr. Moore, any redirect?

14 MR. MOORE: Some.

15

16 REDIRECT EXAMINATION

17 BY MR. MOORE:

18 Q. Mr. Defever, I'm going to direct you to your  
19 direct testimony and your summary and ask you to read --  
20 well, actually let me frame this.

21 Mr. Sabin has stated that your position and the  
22 OCS's position is that for capital costs to be  
23 recoverable, they must be either -- they must be known  
24 and measurable, and that's it. Could you -- could you  
25 please read from your direct testimony page 6, Line 108

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1 to 111, and then, also, from your summary where you  
2 address this same issue?

3 A. Okay. "If DEU is unsure whether the costs will  
4 occur, they cannot be considered to meet the known and  
5 measurable standard nor is it a reasonable forecast  
6 method on which to set just and reasonable rates.

7 "Costs requested for recovery from consumers  
8 must be known and measurable or based on well-supported  
9 forecasted changes."

10 Q. Then it's the OCS's position, is it not, that  
11 for -- for capital costs to be recoverable, they must  
12 either be known or measurable or well supported by  
13 forecasted amounts?

14 A. For me, that's the same thing. But yes. If  
15 it's well supported, then that would be known and  
16 measurable.

17 Q. Thank you.

18 CHAIRMAN LEVAR: Thank you, Mr. Moore.

19 Mr. Sabin, any recross?

20 MR. SABIN: Just -- I want to follow up on that  
21 question.

22 RE CROSS-EXAMINATION

23 BY MR. SABIN:

24 Q. You were not -- you did not participate in the  
25 proceedings where the Commission approved these

1 infrastructure projects or extension projects, right?

2 A. Correct.

3 Q. Do you have any basis to believe that the  
4 Company has not well supported the forecasted costs that  
5 were --

6 MR. MOORE: That's outside of direct. I just  
7 was clarifying the OCS's position.

8 CHAIRMAN LEVAR: Give me a moment to think about  
9 that.

10 I agree that you did not ask about those  
11 specific projects, you were just asking about the  
12 standard generally. So I don't think the redirect opened  
13 the door to questions about the specific projects.

14 MR. SABIN: No further questions.

15 CHAIRMAN LEVAR: Commissioner Clark, do you have  
16 any questions for Mr. Defever?

17 COMMISSIONER CLARK: No questions. Thank you.

18 CHAIRMAN LEVAR: Thank you.

19 Commissioner Allen?

20 COMMISSIONER ALLEN: No questions.

21 CHAIRMAN LEVAR: I don't either. Thank you for  
22 your testimony this afternoon.

23 THE WITNESS: Thank you.

24 CHAIRMAN LEVAR: Mr. Moore, anything else?

25 MR. MOORE: That's all the Office has. Thank

1 you very much.

2 CHAIRMAN LEVAR: Mr. Russell?

3 MR. RUSSELL: UAE calls Mr. Kevin Higgins to the  
4 stand.

5 CHAIRMAN LEVAR: Good afternoon, Mr. Higgins.

6 THE WITNESS: Good afternoon, Chairman.

7 CHAIRMAN LEVAR: Do you swear to tell the truth?

8 THE WITNESS: I do.

9 CHAIRMAN LEVAR: Thank you.

10

11 KEVIN C. HIGGINS,

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

15

16 DIRECT EXAMINATION

17 BY MR. RUSSELL:

18 Q. Can you please state your full name for the  
19 record and tell us who you work for.

20 A. My name is Kevin C. Higgins. I am a consultant  
21 with the firm Energy Strategies.

22 Q. And on whose behalf do you offer testimony in  
23 this proceeding?

24 A. The Utah Association of Energy Users.

25 Q. And have you filed or caused to be prepared and

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1 filed some prefiled testimony in this docket?

2 A. Yes, I have.

3 Q. And specifically, the prefiled testimony that  
4 you're referring to is the direct testimony labeled, "UAE  
5 Exhibit RR1.0," as well as UAE Exhibits RR1.1 through 1.6  
6 and the associated revenue requirement model. That was  
7 one of them, right?

8 A. Yes.

9 Q. And in addition, rebuttal testimony, labeled as,  
10 "UAE Exhibit RR3.0," associated Exhibits RR3.1 through  
11 3.5, and your rebuttal revenue requirement model, right?

12 A. Yes.

13 Q. And you also submitted surrebuttal testimony,  
14 which was labeled as, "UAE Exhibit COS5.0," although I  
15 think the exhibit labeling was incorrect; is that right?

16 A. Yes.

17 Q. Okay. And what should that exhibit label have  
18 been?

19 A. It should have referred to "RR" instead of  
20 "COS."

21 Q. One of the things that happens when you have  
22 cost of service and revenue requirement testimony due on  
23 the same day.

24 And with respect to the testimony that we just  
25 referenced, do you have any corrections to make?



1           A.    I don't have any literal corrections that are  
2           edits, but at Line 353, if I were asked the same  
3           question --

4           Q.    353 of your --

5           A.    Of my direct testimony. Thank you, Mr. Russell.

6                    Line 353 of my direct testimony, if asked the  
7           same question today, I would answer a little differently,  
8           in that at the time I filed this direct testimony, I was  
9           not aware that the Commission had never approved a  
10          prepaid pension asset in rate base.

11                   But after reviewing Mr. Stephenson's rebuttal  
12          testimony, I was able to go back and confirm that in the  
13          1999 rate case, there was a stipulation that included a  
14          prepaid pension asset in rate base for Questar Gas. It's  
15          my understanding that that prepaid pension asset was no  
16          longer included in rate base, starting with the 2002  
17          case. So I do need to clarify that response.

18          Q.    Thank you. And other than that clarification,  
19          if you were asked the same questions today that were  
20          posed in your prefiled testimony, would you provide the  
21          same answers?

22          A.    Yes.

23          Q.    Okay.

24                   MR. RUSSELL: At this point, I'll move for the  
25          admission of Mr. Higgins' prefiled testimony.

1 CHAIRMAN LEVAR: Please indicate if anyone  
2 objects to the motion.

3 I'm not seeing any objection. The motion is  
4 granted.

5 Q. (BY MR. RUSSELL:) Have you prepared a summary  
6 of your testimony for us today?

7 A. Yes, I have.

8 Q. Please proceed.

9 A. Good afternoon, Mr. Chairman and Commissioners.  
10 My recommended adjustments to DEU's revenue  
11 requirement are presented in Table KCH1R at Line 45 of my  
12 rebuttal testimony. These adjustments reduce DEU's  
13 revenue requirement by a total of \$28.7 million relative  
14 to the Company's initially filed revenue requirement  
15 increase of \$70.5 million. This reduction includes an  
16 illustrative reduction to the Company's requested return  
17 on equity from 10.3 percent to 9.5 percent, which is the  
18 median return on equity approved by state regulators in  
19 the United States for natural gas distribution utilities,  
20 as reported by S&P Global Market Intelligence for the  
21 12-month period ending July 31, 2022.

22 My recommended adjustments are as follows.

23 Number 1: DEU proposes to increase labor O&M  
24 expense by 13.8 percent relative to the 2021 base period.  
25 I believe this increase is excessive. My adjustment

1 trims 3.7 percent off this cost increase by basing  
2 test-year labor expense on the average actual full-time  
3 equivalent employee count during the 13 months ending  
4 June 2022.

5 The structure of this adjustment is nearly  
6 identical to one that I proposed in Rocky Mountain  
7 Power's last general rate case, which was accepted by  
8 Rocky Mountain Power and then ultimately approved by the  
9 Commission. This adjustment reduces the Utah revenue  
10 requirement by about \$1.6 million.

11 Number 2: In conjunction with this adjustment,  
12 I also recognize a \$1 million error that Dominion made in  
13 its labor cost calculation that was revealed in a  
14 discovery response to UAE as part of my investigation  
15 into the Company's employee count. Correcting this error  
16 increases the revenue requirement by \$1 million, thereby  
17 reducing the net impact of my employee count adjustment  
18 to \$638,000.

19 Although the Company does not accept my employee  
20 count adjustment, the Company does accept the \$1 million  
21 error correction. Although my employee count adjustment  
22 stands on its own merit, if the Commission is inclined to  
23 accept the \$1 million error correction that favors the  
24 Company, I believe it would be all the more reasonable to  
25 accept my employee count adjustment in tandem with it.

1           Number 3: DEU proposes to set pension expense  
2 to zero for ratemaking purposes. Even though pension  
3 costs calculated pursuant to financial accounting  
4 standards, or FAS, which I will refer to as F-A-S, is  
5 actually projected to be a \$21 million negative value or  
6 credit in 2023. The Company indicates that it is  
7 capitalizing 52 percent of this negative value.

8           I recommend that the balance, which is  
9 \$9.7 million on a Utah-allocated basis be recognized as a  
10 reduction to O&M expense in the revenue requirement.

11           In the alternative, customers should be released  
12 from the obligation to pay for positive FAS pension costs  
13 in the future. By definition, over the life of a pension  
14 plan, the cumulative sum of FAS pension cost, including  
15 negative pension cost, will equal the cumulative sum of  
16 the Company's funding contributions. This means that  
17 setting customer pension cost responsibility in rates  
18 equal to FAS pension cost ensures that, by and large,  
19 customer rates will fully fund the pension plan costs  
20 over the life of the plan.

21           Selectively zeroing out pension expense in rates  
22 when pension cost is negative but charging customers the  
23 full FAS cost when pension cost is positive, will cause  
24 customers to overpay for the pension cost over the life  
25 of the pension plan. Such a result would not be

1 reasonable.

2           Number 4. Dominion appropriately removed the  
3 expense portion of the financially-related compensation  
4 from the revenue requirement but included the capitalized  
5 portion in rate base. Since this cost should not be  
6 recoverable from customers, the capitalized portion  
7 should also be removed from the revenue requirement.  
8 Specifically, I recommend that the capitalized incentive  
9 compensation related to financial goals be excluded from  
10 rate base in this case for 2021, 2022, and 2023 capital  
11 additions which occurred since the last general rate  
12 case. This adjustment reduces the Utah revenue  
13 requirement by approximately \$333,000.

14           I also recommend that the gain on sale of the  
15 Company's Bluffdale field office be amortized over five  
16 years, beginning in August 2020. My adjustment reduces  
17 the Utah revenue requirement by around \$520,000. The  
18 Office of Consumer Services makes a similar adjustment  
19 but with a later starting period and, consequently, a  
20 greater revenue requirement reduction. The Company  
21 accepted this adjustment in its rebuttal filing, and it  
22 is incorporated into the stipulated revenue requirement  
23 reduction the parties have provided to the Commission,  
24 and which I support.

25           Finally, if the Commission approves the

1 continuation of the infrastructure tracker program, I  
2 recommend that the annual expenditures be capped at no  
3 more than \$77.4 million, without future adjustments for  
4 inflation in order to provide a reasonable cost  
5 containment for the tracker mechanism. The  
6 infrastructure tracker is a single-issue ratemaking  
7 mechanism that allows the Company to avoid regulatory  
8 lag, and the Company's capital expenditures are not  
9 limited by their eligibility for the infrastructure  
10 tracker program.

11 Dominion Energy Utah has a responsibility to  
12 provide safe and reliable service, irrespective of  
13 whether a tracker mechanism exists at all.

14 I believe it's reasonable to cap the annual  
15 amount that is eligible for inclusion in this program  
16 without a presumption that the Company is also entitled  
17 to an additional inflation adjustment.

18 That concludes my summary.

19 Q. Thank you, Mr. Higgins.

20 MR. RUSSELL: I do have a couple of questions  
21 before I turn the witness over to cross-examination.

22 Q. (BY MR. RUSSELL:) Mr. Higgins, have you been  
23 monitoring the hearing on the live stream?

24 A. Yes, I have.

25 Q. Were you monitoring the hearing when

1 Mr. Stephenson testified earlier today?

2 A. Yes.

3 Q. Okay. During his testimony, I asked him a  
4 question that was just referenced in your summary. I  
5 asked him if the cumulative sum of pension costs over the  
6 life of the plan will equal the cumulative sum of the  
7 utility's contributions to the plan. In response to  
8 that, he indicated that he had seen that in your  
9 testimony but did not agree with it.

10 Do you recall that exchange?

11 A. Yes.

12 Q. And how do you respond to his testimony on that  
13 point?

14 A. I believe Mr. Stephenson is mistaken.

15 As I understood his answer to Mr. Russell's  
16 question, Mr. Stephenson indicated that my  
17 characterization wasn't complete, in that it did not take  
18 into account earnings on the pension plan.

19 Mr. Stephenson is incorrect that any adjustment  
20 needs to be made to my statement that over the life of  
21 the pension plan, the sum of the FAS expenses -- the FAS  
22 costs will equal the sum of the Company's cumulative  
23 contributions. There does not have to be some sort of a  
24 modification to that calculation to account for earnings  
25 on the pension plan.

1           Earnings on the pension plan find their way into  
2 the pension cost itself. That is, if there are greater  
3 earnings -- if expected earnings on the assets go up,  
4 that lowers FAS pension costs. Similarly, if there are  
5 earnings that exceed what was expected, that is later  
6 brought in to FAS pension costs, reducing it through the  
7 amortization of unrecognized gains and losses.

8           So the statement I made that I repeated in my  
9 summary is true as stated. It does not require a further  
10 qualification.

11           Q. And was your statement on that point consistent  
12 with a statement made by the Company's witness on this  
13 point in the 2019 rate case?

14           A. Yes. How I characterize this situation is  
15 completely consistent with the rebuttal testimony of  
16 Dominion's witness Mr. Felsenthal in the last general  
17 rate case from Lines 393 to 424. While Mr. Felsenthal  
18 disagreed with me on a number of items, it is evident  
19 from that portion of his testimony there is no  
20 disagreement between us about what occurs over the  
21 lifetime of a pension plan.

22           Q. Thank you.

23           MR. RUSSELL: Mr. Higgins is now available for  
24 cross-examination and Commission questions.

25           CHAIRMAN LEVAR: Thank you.



1           Ms. Schmid, do you have any questions for  
2 Mr. Higgins?

3           MS. SCHMID: No. Thank you.

4           CHAIRMAN LEVAR: Thank you.

5           Mr. Moore?

6           MR. MOORE: No questions. Thank you.

7           CHAIRMAN LEVAR: Thank you.

8           Major Buchanan?

9           MAJOR BUCHANAN: No. Thank you.

10          CHAIRMAN LEVAR: Ms. Clark or Mr. Sabin?

11          MR. SABIN: No questions. Thank you.

12          CHAIRMAN LEVAR: Commissioner Clark?

13

14                                   CROSS-EXAMINATION

15          BY COMMISSIONER CLARK:

16           Q. Your last statements about the impact of your  
17 contributions in relation to the liabilities that  
18 accumulate over the lifetime of the plan -- that's the  
19 context of the question I'm going to ask you, which is,  
20 can you -- can you assess the \$75 million extraordinary  
21 payment that we talked about a lot in the last case in  
22 relation to your statements?

23           A. Yes. The \$75 million contribution by the  
24 Company is considered a Company contribution to the  
25 pension plan. And over the lifetime of that plan, the

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1 FAS pension cost, which is what we use for ratemaking,  
2 generally speaking -- which the Commission confirmed,  
3 really, in your last order on the point as a general  
4 proposition, with an exception for the last case.

5 Over the life of the pension plan, that FAS  
6 pension cost, the sum of those FAS pension costs over the  
7 life of the plan will equal the sum of the Company's  
8 contributions, including the \$75 million extraordinary  
9 contribution that the Company made.

10 Does that address your question, Commissioner?

11 Q. And so in your mind, then, the impact of failing  
12 to recognize the negative expense in the revenue  
13 requirement in this case is what?

14 A. The impact is that if, in the future, there are  
15 positive pension costs that the Company seeks to recover  
16 in rates, and if at that time the Commission reverts back  
17 to the practice of including the full FAS pension cost in  
18 rates, then over the lifetime of the plan, customers will  
19 overpay for the cost of the pension plan because the  
20 negative pension costs were not recognized. So then,  
21 unless there is a -- in the future there is a -- an  
22 adjustment that reduces customers' responsibility for  
23 positive pension costs, then not recognizing these  
24 negative pension costs today will result in a lifetime  
25 mismatch over the cost of the plan, where customers will

1 have overcontributed through ratemaking -- through the  
2 standard ratemaking treatment of basing the revenue  
3 requirement on the FAS cost. They will have overpaid  
4 their -- you know, for the cost of the plan. That's the  
5 implication.

6 Q. Thank you. I know some of that's repetitive to  
7 what you had in your surrebuttal, but it's helpful to  
8 hear it in connection with the questions of your  
9 counsels. Thank you very much.

10 A. Thank you. I appreciate the opportunity to  
11 discuss it.

12 CHAIRMAN LEVAR: Commissioner Allen?

13 COMMISSIONER ALLEN: No questions. Thank you.

14

15 CROSS-EXAMINATION

16 BY CHAIRMAN LEVAR:

17 Q. I think I'll be triply repetitive, because I  
18 think you just answered it as your testimony. But, you  
19 know, when you used the phrase "lifetime mismatch over  
20 the lifetime of the pension," could you explain again how  
21 we should view that \$75 million contribution in context  
22 of -- if you're telling us the goal is to avoid a  
23 lifetime mismatch, how does that \$75 million fit into  
24 avoiding mismatch?

25 A. Well, the \$75 million contribution made by the

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1 Company clearly counts in the column of the Company  
2 contributions. So that is a Company contribution. And  
3 so that will play -- that plays a role. And that Company  
4 contribution does have an impact on forward-going pension  
5 costs because there are earnings on that contribution,  
6 and so that reduces pension costs in the future. Okay.

7 So -- but it will still remain the case that  
8 over the life of the plan, that FAS pension cost, the sum  
9 of all those FAS pension costs over each year will  
10 mathematically equal the sum of the Company's  
11 contributions, including the \$75 million. That -- the  
12 FAS pension cost is designed such that that must be the  
13 case. That, you know, it's not intended to track  
14 year-to-year cash contributions, but is intended to match  
15 the lifetime contributions of any company to its pension  
16 plan.

17 And so -- which is the reason why in ratemaking,  
18 the typical convention around the country is to use FAS  
19 costs as the basis for setting customer responsibilities  
20 and rates for paying for a pension plan.

21 Q. Okay. If you'll excuse one more question from a  
22 nonaccountant/noneconomist.

23 If we were to go with your primary  
24 recommendation and make the adjustment for the negative  
25 pension expense, and say that happens for a few more rate

1 cases, at some point does that counterbalance the 75  
2 million? I mean, does it -- at some point will  
3 ratepayers have paid that off? And if there's a really  
4 big logical fallacy in that, just tell me so I understand  
5 it.

6 A. If -- if the -- if you went with my  
7 recommendation and recognized the negative pension costs  
8 in rates, then you would be ensuring that over the  
9 lifetime of the plan customers would pay for the -- would  
10 pay for the Company's contributions to the plan,  
11 including the \$75 million. It wouldn't be a direct  
12 payoff of the 75 million -- of the \$75 million, per se.  
13 But it would ensure that over the life of the plan the  
14 sum of the pension costs and, therefore, the customer  
15 payments in rates would equal the totality of the  
16 contributions that the Company made to the plan. That's  
17 how the FAS cost is structured, you know, by design.

18 Q. Okay. Thank you. And one more question -- and  
19 if your attorney wants to object to it on the basis of a  
20 legal interpretation, that's fine.

21 If we did not accept your primary recommendation  
22 on this issue and went with your secondary  
23 recommendation, how exactly would we do that in terms of  
24 saying if it's ever a positive in the future?

25 A. Well, that's a great question. I would suggest

1 that the Commission offer a ruling that indicates that,  
2 in consideration of not recognizing negative pension cost  
3 in rates, that on a going-forward basis, the Commission  
4 would expect that customers would no longer be subject to  
5 positive pension costs in rates, with perhaps, you know,  
6 the opportunity for the utility to make a request for  
7 consideration under extraordinary circumstances in the  
8 future.

9 So I think it would be a matter of resetting the  
10 expectations that, you know, we have one set of  
11 expectations coming into this -- into the last case where  
12 rates incorporated the FAS costs. And I believe that if  
13 we're going to depart from those expectations when the  
14 costs are negative, it would be reasonable to reset those  
15 expectations going forward but also, perhaps, have the  
16 opportunity for a later review, if circumstances warrant.

17 Q. And I'm assuming inherent in that is relying on  
18 all parties in these proceedings to remind future  
19 Commission of those expectations?

20 A. I'm doing my best.

21 Q. That's all the questions I have. Thank you for  
22 your testimony this afternoon.

23 A. Thank you, Mr. Chairman.

24 CHAIRMAN LEVAR: Anything else from anyone?

25 MR. SABIN: No.

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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.)

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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, RPR, CCR

Utah CCR #267114-7801

Expires May 31, 2023



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[chairman - collectively]

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[company - conjunction]

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[connection - control]

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[effort - essential]

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[exhibits - facility]

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[informs - january]

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[meals - money]

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[money - neighboring]

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[neighbors - obvious]

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[obviously - opportunity]

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[participates - phmsa]

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[posted - program]

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[programs - purposes]

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[pursuant - ratemaking]

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[requirement - right]

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[testimony - think]

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[unoccupied - ware]

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[yeah - zone]

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Utah Rules of Civil Procedure  
Part V. Depositions and Discovery  
Rule 30

(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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VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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