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Application of Dominion Energy Utah for Approval of a Special Contract with Snowbird Resort, LLC	<u>DOCKET NO. 23-057-12</u>
	<u>ORDER</u>

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ISSUED: August 28, 2023

### **BACKGROUND**

On July 28, 2023, Dominion Energy Utah (DEU) filed with the Public Service Commission (PSC) an application for approval of a special contract (“Agreement”) with Snowbird Resort, LLC (“Snowbird”).<sup>1</sup> The Application seeks “approval of the Transportation Service Agreement between [DEU] and [Snowbird]” because “the Agreement diverges from certain provisions in [DEU’s] Utah Natural Gas Tariff No. 600 (Tariff).”<sup>2</sup> DEU requests that the PSC “act upon this Application by September 1, 2023[,]” and that the Agreement’s retroactive effective date of October 2022, be approved.<sup>3</sup>

On July 31, 2023, the PSC issued an Action Request to the Division of Public Utilities (DPU). On that same date, the PSC issued a Notice of Filing and Comment Period, providing any interested person the opportunity to submit comments on the Application on or before August 11, 2023. On August 10, 2023, DPU provided comments on the Application (“DPU Comments”). No other comments were submitted.

### **THE APPLICATION**

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<sup>1</sup> The Agreement was submitted as Exhibit 1 to the Application.

<sup>2</sup> Application at 1.

<sup>3</sup> *Id.* at 5.

Snowbird is an existing transportation customer of DEU. In October 1986, DEU installed a high-pressure regulator station near Snowbird, which was housed in a reinforced concrete building (“Building 1”). Building 1 also housed the gas meter providing service to Snowbird. At some unspecified date, DEU “determined that, in order to continue to provide safe and reliable service to Snowbird and the surrounding area, it would upgrade the regulator station[,]” and “the aging meter set serving Snowbird and install additional over-pressure protection.”<sup>4</sup> However, according to DEU, Building 1 “was too small to house an upgraded meter and regulator station.”<sup>5</sup> Therefore, based on various considerations, including spacing constraints and environmental conditions, DEU “determined that it would retain [Building 1] to house [one] meter set” and “it would build a new structure at a nearby location to house [a second] meter set . . . and the new . . . regulator station.”<sup>6</sup> (“Building 2”)

At a date unspecified in the Application, DEU “commenced the design of the new [meters and regulator station] and began communicating details of the project with Snowbird.”<sup>7</sup> At another date unspecified in the Application, “Snowbird provided the property for [Building 2,] the new regulator station and meter location[,]” and DEU

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

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

<sup>7</sup> *Id.*

“decided to remodel the existing . . . meter set in [Building 1].”<sup>8</sup> The Application asserts it was DEU’s “requirements, not Snowbird’s, [that] drove the design of these facilities, and the decision to provide Snowbird with natural gas service through two meters instead of one.”<sup>9</sup>

According to the Application, DEU’s decision “resulted in unintended consequences to Snowbird[,]”<sup>10</sup> including Snowbird possibly paying significantly more for its natural gas service. DEU seeks a deviation from the Tariff that would mitigate these unintended consequences. The Application also states that because “service through this configuration commenced in October of 2022,” DEU requests that the Agreement be retroactively applied, “becom[ing] effective October 1, 2022.”<sup>11</sup> Finally, DEU asserts that approval of its requests “will cause no additional costs to [DEU’s] other customers.”<sup>12</sup>

### **DPU’S COMMENTS**

DPU recounts and explains Building 1’s size limitations, the age of the then-existing meter and regulators, and the geographic location limitations for Building 2. DPU’s comments also provide important additional background information not provided in the Application.

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*; *see also id.* at 4.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 5.

DPU discloses dates relating to the timeline of DEU's work at Snowbird, indicating the process began sometime in 2019.<sup>13</sup> According to DPU, a long planning process, weather, and other issues delayed construction until December 2021.<sup>14</sup> DPU confirms that the "new meter located in [Building 2] went into service on October 6, 2022," and further explains that "the reconfigured . . . line in [Building 1] is expected to be ready sometime in September 2023."<sup>15</sup>

DPU also discloses that DEU "leased the land for [Building 2]" from Snowbird "for a nominal fee."<sup>16</sup> DPU further discloses that DEU "admitted that the team working on upgrading Snowbird's Equipment was not aware of the billing implications of adding the additional meter and didn't inform Snowbird of the increased expenses until well after the project was completed."<sup>17</sup>

DPU represents that it made a site visit to Snowbird on August 3, 2023, but "[d]ue to the short timeline associated with this docket, no one from DEU was able to meet [DPU] at the site."<sup>18</sup> However, DPU states it was able to substantiate various assertions in the Application relating to the space limitations and other items.<sup>19</sup> DPU also represents that it had a meeting with DEU on August 8, 2023, where "DEU

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<sup>13</sup> See DPU Comments at 2.

<sup>14</sup> See *id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 3. DPU notes, however, that DEU stated it is "adding systems to its internal design build process to ensure that this doesn't happen in the future." *Id.*

<sup>18</sup> *Id.* at 2.

<sup>19</sup> See *id.*

clarified and expounded on the information in the Application and responded to questions.”<sup>20</sup> According to DPU, “DEU asserted that it considered alternative designs for upgrading the Equipment and determined that these alternative designs would have a significantly higher capital cost than the chosen remedy.”<sup>21</sup> But DPU also states it “was unable to quantify or confirm [these assertions about alternative designs and capital costs] due to time constraints.”<sup>22</sup>

DPU also addresses the specific dollar values associated with the Application. DPU identifies that, based on DEU’s calculations, if the Application is granted and the Agreement is approved, Snowbird will save \$17,236.78 per year<sup>23</sup> from charges currently required under the Tariff. According to DPU, “this lost revenue would have to be made up by other DEU customers.”<sup>24</sup>

DPU recommends PSC approval of the Application, stating that the Agreement is in the public interest. DPU identifies several factors it believes supports this conclusion. For example, DPU notes that the decisions relating to this project were “made by DEU and Snowbird was unaware of the billing implications until long after the fact[;]” the “Equipment needed to be upgraded” for a number of reasons; “[t]he second meter was required because of the unique space and environmental

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<sup>20</sup> *Id.*

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

<sup>22</sup> *Id.*

<sup>23</sup> *See id.* at 4. According to DPU, this total includes an estimate based on Snowbird’s volumetric gas usage between August 2022 and July 2023. *See id.*

<sup>24</sup> *Id.* DPU also notes that DEU has not collected the additional charges from Snowbird, even though the second meter has been in place since October 2022. *See id.* at 5.

constraints[;]" "[a]lternative designs would have been significantly more expensive[;]" and "the unique circumstances of this situation are unlikely to incentivize DEU or its customers to seek these types of deviations from the tariff in the future."<sup>25</sup>

DPU concludes by cautioning that notwithstanding its recommended approval in this docket, "special contracts should generally not be retroactive and more time for regulatory review of them will almost always be needed[;]" and that "[i]f similar situations arise, it would also be helpful if DEU apprised [DPU] of the matter as it proceeded, instead of at filing."<sup>26</sup>

### **DISCUSSION, FINDINGS, AND CONCLUSIONS**

DEU's Application seeks approval of the Agreement, which would allow deviation from Tariff Sections 8.03,<sup>27</sup> 5.01,<sup>28</sup> and 5.05.<sup>29</sup> Without PSC approval, the Tariff requires Snowbird to pay two basic service fees, two administrative fees, and pay for its natural gas volumes separately through two meters instead of one.<sup>30</sup> However, approval of the Agreement would allow Snowbird to only pay one basic service fee, one administrative fee, and its natural gas volumes would "be charged at block rates as though they were all moving through a single meter."<sup>31</sup>

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<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> This provision, coupled with Tariff Section 5.06, requires transportation customers, like Snowbird, to pay a basic service fee for each installed meter.

<sup>28</sup> This provision addresses administrative charges assessed based on the number of meters on a contiguous property covered by a single gas purchase contract.

<sup>29</sup> This provision addresses block gas usage and billing rates associated with transportation customers.

<sup>30</sup> See Application at 3.

<sup>31</sup> *Id.* at 4.

As applicable here, Utah law provides in relevant part:

[N]o public utility shall charge, demand, collect[,] or receive . . . less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals[,] and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; . . . nor extend to any person any form of contract or agreement, . . . or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; . . .<sup>32</sup>

This statute allows the PSC to “by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.”<sup>33</sup> DEU’s Application seeks such an exception.

For the exception to apply DEU must demonstrate that its proposed Tariff deviations are just and reasonable. DEU asserts the requested Tariff deviation pursuant to “the terms of the Agreement are just and reasonable, and approval of the Agreement is in the public interest.”<sup>34</sup> However, based on the Application, DPU’s Comments, and the findings below, we conclude that the record in this docket is insufficient to support DEU’s Application.

First, DEU’s assertions in the Application are unsupported by any witness testimony, sworn or otherwise.

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<sup>32</sup> Utah Code Ann. § 54-3-7 (2005).

<sup>33</sup> *Id.*

<sup>34</sup> Application at 1.

Second, the Application lacks evidence concerning important relevant information, much of which is found only in DPU's Comments.<sup>35</sup> For example, DEU did not explain that this project has been in process since 2019, or that construction began in December 2021. In addition, the Application did not disclose "that the team working on [this project] was not aware of the billing implications of adding the additional meter and didn't inform Snowbird of the increased expenses until well after" it was completed.<sup>36</sup> DPU disclosed this information, but that disclosure does not provide the evidentiary basis necessary to make the determination required by statute.

Moreover, DEU's Application is silent on its consideration of "alternative designs for upgrading the Equipment and [DEU's] determin[ation] that these alternative designs would have a significantly higher capital cost than the chosen remedy."<sup>37</sup> And critically, DPU "was unable to quantify or confirm [these alternative designs or capital costs] due to time constraints."<sup>38</sup>

DEU's Application also fails to provide evidence concerning the dollar values associated with this project. For example, DPU discloses that DEU leased land for Building 2 from Snowbird for a nominal fee, but the amount of that fee is not provided

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<sup>35</sup> While informative and appreciated, these comments are similarly unsupported by testimony.

<sup>36</sup> DPU Comments at 3. DEU has advised DPU that it will add systems to ensure this doesn't happen in the future (*see id.*), but while this is appreciated for future possible situations, it is not particularly relevant to this docket.

<sup>37</sup> *Id.* at 2.

<sup>38</sup> *Id.*



by DEU or DPU. Additionally, DPU identifies that, based on DEU's calculations, if the PSC does not approve the Agreement, Snowbird would pay an additional: (1) basic service fee of \$5,043.00 per year; (2) administrative charge of \$1,200 per year; and (3) volumetric charges of \$10,993.78 per year.<sup>39</sup> Totaled, this amount equals approximately \$17,236.78 per year, yet none of these dollar amounts were provided in the Application.

Third, there is conflict between representations of DEU and DPU. DEU represents in the Application that "approval of the Agreement will cause no additional costs to [DEU's] other customers."<sup>40</sup> In contrast, DPU represents that the lost revenue of approximately \$17,236.78 per year "would have to be made up by other DEU customers."<sup>41</sup> In addition, the financial implications to other DEU customers because of items like the unknown cost of the nominal lease with Snowbird for Building 2, and adding Building 2 and the other new equipment to rate base is not addressed by either DEU or DPU.

Finally, the short timeframe within which DEU requests this Application be addressed – approximately one month<sup>42</sup> – compounds many of the Application's shortcomings, especially given how long this project has been in process and online.

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<sup>39</sup> See *id.* at 3-4.

<sup>40</sup> Application at 5.

<sup>41</sup> DPU Comments at 4.

<sup>42</sup> DEU filed the Application on July 28, 2023, and seeks action on it by September 1, 2023, a period of approximately 25 business days or 35 calendar days.

For example, as previously discussed, DPU and DEU could not meet for a site visit nor could DPU quantify or confirm DEU's assertions about alternative designs and potentially significantly higher capital costs.<sup>43</sup>

The PSC notes and appreciates DEU's assertions that Snowbird is not responsible for the unintended consequences of DEU's decisions relating to this project. The PSC also notes that DPU's comments are helpful in providing additional relevant information. However, absent a showing by DEU that is supported by an appropriate factual record, the PSC is unable to conclude that deviation from the Tariff, with the costs associated with that deviation potentially being passed on to DEU's other customers, is just and reasonable.

**ORDER**

For the foregoing reasons, the Application is denied without prejudice.

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<sup>43</sup> See DPU Comments at 2.

DATED at Salt Lake City, Utah, August 28, 2023.

/s/ John E. Delaney  
Presiding Officer

Approved and confirmed August 28, 2023 as the Order of the Public Service  
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#329381

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on August 28, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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