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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of its Proposed Power Cost Adjustment Mechanism	Docket No. 05-035-102 **OPPOSITION OF QUESTAR GAS COMPANY TO UIEC MOTION TO DISMISS**

Questar Gas Company ("Questar Gas" or "Company"), pursuant to Utah Admin. Code R746-100-4.D and the Commission's "Order Setting Intervention Deadline and Granting Extension to Respond to Motion to Dismiss" ("Extension Order") issued June 8, 2006 in this docket, hereby responds in opposition to the "Utah Industrial Energy Consumers' Motion to Dismiss PacifiCorp's Application for Approval of Its Proposed Power Cost Adjustment Mechanism" ("Motion to Dismiss") filed by Utah Industrial Energy Consumers ("UIEC") in this docket on May 9, 2006. For the reasons set forth below, the arguments in the Motion to Dismiss regarding the Commission's authority to approve a pass-through or tracker rate mechanism are incorrect and should be rejected.

I. INTRODUCTION

PacifiCorp dba Utah Power & Light Company ("PacifiCorp") initiated this docket by filing its "Application of PacifiCorp" ("Application") on November 21, 2005. The Application

sought approval of a Power Cost Adjustment Mechanism ("PCAM"). The Application stated that the PCAM would provide PacifiCorp with a reasonable opportunity to recover its actual and prudently incurred net power costs for providing electric service in Utah. The Application stated that net power costs are highly volatile and are not within the control of PacifiCorp.[1] The Application was supported by the testimony of three witnesses: D. Douglas Larson, Mark T. Widmer and David L. Taylor.[2]

On May 9, 2006, UIEC filed the Motion to Dismiss requesting that the Commission dismiss the Application on the ground that the Legislature has not delegated to the Commission the authority to approve the proposed PCAM. On May 19, the Commission granted an extension to parties in the PCAM docket wishing to respond to UIEC's Motion to Dismiss until June 9. On May 30, UIEC filed a motion seeking a further extension and the setting of a deadline for parties to intervene in the docket. The Commission granted that motion in the Extension Order, extending the deadline to respond to the Motion to Dismiss to July 7.

In the Motion to Dismiss, UIEC discusses the Company's 191 Account, which is a pass-through Gas Cost Balancing Account with characteristics that appear to have some similarities to the proposed PCAM. Although UIEC does not claim in the Motion to Dismiss that approval of the 191 Account, which was approved in 1979 in Case No. 78-057-13, was beyond the authority of the Commission, it argues that the Commission would not have authority to approve such an account today.[3]

[1] *See* Application at 1.

[2] PacifiCorp filed a replacement page to one of Mr. Widmer's exhibits on March 24, 2006.

[3] *See* Motion to Dismiss at 10-11.

Questar Gas filed Questar Gas Company's Petition to Intervene on June 21, 2006. The Commission has not yet acted on the Company's Petition to Intervene. Nonetheless, in anticipation of a Commission order granting the petition and to avoid any delay to the proceeding, Questar Gas is filing this Opposition by the date specified in the Extension Order.

The Commission has broad authority in ratemaking to adopt mechanisms that track and pass through to utility customers certain types of costs or revenues so long as the Commission finds based on substantial evidence that the resulting rates are just and reasonable.[4] The Company's 191 Account was adopted and approved pursuant to that authority. It has functioned effectively for nearly three decades, assuring that Questar Gas customers pay no more and no less than the costs prudently incurred by Questar Gas. It has ensured that adequate gas supplies have been provided to customers during periods of extreme price volatility with both increasing and decreasing prices. It also tracks revenues received by the Company under the Wexpro Stipulation and Settlement Agreement and includes them as credits in the account. The argument in the Motion to Dismiss that the Commission does not have authority to adopt tracker or pass-through mechanisms is incorrect. Therefore, Questar Gas files this opposition to the Motion to Dismiss to assist the Commission in its analysis of this important issue.

Questar Gas does not take a position on the specific aspects of the proposed PCAM. It assumes that the Commission will approve or reject the proposed PCAM or direct changes to it as a condition to its approval based on whether the rate mechanism will result in just and reasonable rates. Rather, Questar Gas simply wishes to make the point that tracker or pass-

[4] In this memorandum, the Company's use of the terms "pass through" and "pass-through" does not refer to the proceeding contemplated under Utah Code Ann. § 54-7-12(3)(d) to adjust rates based on "increased cost to the utility for fuel or energy purchased or obtained from independent contractors, other independent suppliers, or any supplier whose prices are regulated by a governmental agency . . . ,"

through mechanisms such as the PCAM and the 191 Account are well within the broad ratemaking authority delegated to the Commission and are consistent with sound ratemaking policy.

II. ARGUMENT

A. THE AUTHORITY OF THE COMMISSION TO APPROVE PASS-THROUGH OR TRACKER RATE MECHANISMS UNDER ITS BROAD AND AMPLE RATE-MAKING AUTHORITY IS WELL-ESTABLISHED.

1. The Commission Has Broad and Ample Authority in Ratemaking.

The Motion to Dismiss focuses on only two statutes in describing the Commission's authority to set rates, Utah Code Ann. §§ 54-4-4.1 and 54-7-12. In fact, the Commission's authority to set rates derives from numerous sections of the Public Utility Code, including, in addition to sections 54-4-4.1[5] and 54-7-12, sections 54-3-1, 54-3-2, 54-3-3, 54-3-7, 54-3-8, 54-3-8.5, 54-3-9, 54-3-19, 54-3-23, 54-4-1, 54-4-2, 54-4-4, 54-4-8, 54-4-12, 54-4-13, 54-4-18, 54-4-21, 54-4-22, 54-4-23, 54-4-24, 54-4-26, 54-4-27, 54-4-31, 54-7-7, 54-7-8, 54-7-12.1, 54-7-12.8, 54-7-19, 54-7-20, 54-8b-2.2, 54-8b-2.3, 54-8b-3.3, 54-8b-4.5, 54-8b-6, 54-8b-10, 54-8b-11, 54-12-2, 54-17-303 and 54-17-403. Most of UIEC's argument improperly focuses on section 54-7-12, a statute that prescribes the processes for ratemaking proceedings more than serving as a source of delegation for the Commission's authority to set rates.[6]

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sometimes referred to as the pass-through statute. Rather, Questar Gas uses the terms to refer to rate mechanisms such as its 191 Account.

[5] Section 54-4-4.1 is a statute that expressly recognizes the broad authority of the Commission in ratemaking ("[t]he commission may, by rule or order, adopt any method of rate regulation consistent with this title") and provides for equitable sharing of revenues or earnings above a prescribed level between a public utility and its customers.

[6] *See, e.g., Utah Dept. of Business Regulation v. Public Service Comm'n*, 614 P.2d 1242, 1248 (Utah 1980) ("*Wage Case*") ("[Subsection 54-7-12(3)(d)] is currently devoted exclusively to the procedure for procuring a tentative order for a rate increase . . . .").

Based on the broad delegation of authority evidenced by the numerous statutes referenced above, the Court has consistently held that the Commission has broad authority in ratemaking. For example, in *Utah Power & Light Co. v. Public Service Comm'n*, 152 P.2d 542, 555 (Utah 1944), the Court characterized the Commission's ratemaking authority as "broad and sweeping in scope" limited by two principles: "first, that the Commission proceed by notice and hearing; and second, that the rates established conform to the standard of 'just and reasonable.'" In *Mtn. States Tel. and Tel. Co. v. Public Service Comm'n*, 754 P.2d 928, 931-32 (Utah 1988), the Court stated that "Utah Code Ann. § 54-4-4 (1986) gives the Commission broad discretion in establishing rates for public utilities. Any activities that are related to rate making are therefore subject to the Commission's broad powers in this area." (Citation omitted.) Similarly, in *Kearns-Tribune Corp. v. Public Service Comm'n*, 682 P.2d 858, 860 (Utah 1984), the Court noted the Commission's "considerable latitude in performing its rate-regulation function" and its "broad supervisory powers in relation to rates."[7]

This view of public utility commissions' broad authority in the area of ratemaking is widely recognized in other states as well.[8]

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[7] *See also, e.g., Questar Gas Company v. Public Service Comm'n*, 2001 UT 93 at ¶¶ 11-12, 34 P.3d 218, 222-23, quoting *Utah Dept. of Business Regulation v. Public Service Comm'n*, 720 P.2d 420 (Utah 1986) ("*EBA Case*") regarding the Commission's "ample general power to fix rates and establish accounting procedures."

[8] *See, e.g., In re Pacific Power & Light*, UE 170, 2006 WL 1675377, *15 (Or. PUC Apr. 12, 2006) ("This Commission has broad ratemaking authority to ensure that rates charged to customers are fair, just, and reasonable."); *In re Florida Power & Light Co.*, Docket No. 041291-EI, 2005 WL 491359, *8 (Fla. PSC Feb. 17, 2005) (accepting the argument that the "Commission has very broad authority in determining just and reasonable rates and the means through which costs are recovered and rates established."); *In re Gas Technology Institute*, Case No. U-14561, 2005 WL 2661556, *4 (Mich. PSC Oct. 18, 2005) (referencing a general jurisdictional provision such as Utah Code Ann. § 54-4-1 as support for the "Commission's broad ratemaking powers"); *In re Kent Count Water Authority*, Docket No. 3660, 2005 WL 2841649, *12 (R.I. PUC Aug. 4, 2005) ("Under Title 39 of Rhode Island General Laws, the Commission has broad authority and discretion in establishing just and reasonable rates.").

2. The Utah Supreme Court Has Consistently Concluded that the Commission Has the Authority to Approve Pass-through or Tracker Rate Mechanisms.

In the *EBA Case*, a case dealing with a pass-through rate mechanism, the Court assumed that the Commission had adopted the rate mechanism under its "ample general power to fix rates and establish accounting procedures."[9] This statement was confirmed (and quoted) 15 years later in *Questar Gas*. In that case, the Commission had ordered that certain expenses could not be recovered in the 191 Account because they did not comply with section 54-7-12(3)(d). The Court stated:

> Thus we hold that the gas balancing account 191 and its attendant procedures need not be used only in conjunction with section 54-7-12(3)(d). Instead it is a separate rate-changing mechanism through which the Commission can set rates that are just, reasonable, and sufficient.
>
> We presume, as we did in [the *EBA Case*], a case involving a similar type of account used by Utah Power and Light, that the Commission implemented this rate-changing mechanism under its "ample general power to fix rates and establish accounting procedures." *Id.* at 424 n 4.; *see also* Utah Code Ann. § 54-4-1 (2000). We recognize that this power is not unlimited, and as we stated in the *EBA* case, the Commission has authority to set rates "only in general rate proceedings . . . [and has] limited authority to permit interim rate changes which are necessary because of unexpected increases in certain specific types of costs." 720 P.2d 420 at 423. We have held that this limited authority can be used pursuant to the fuel cost pass-through legislation, *see id.*, and in an abbreviated rate case, *see* [*Wage Case*]. We add the 191 balancing account mechanism to the list today, noting that any rate established by the Commission in any one of these proceedings must be just, reasonable, and sufficient. Utah Code Ann. § 54-4-4 (2000).[10]

Although the Court's language regarding the authority under which the 191 Account was adopted is stated in terms of a presumption, this statement is not to suggest that the Commission's delegated broad ratemaking authority does not include tracker or pass-through

[9] *EBA Case*, 720 P.2d 424, n. 4.

[10] *Questar Gas*, 2001 UT 93 at ¶¶ 11-12, 34 P.3d at 222-23.

mechanisms as the Motion to Dismiss seems to imply. In any event, the final sentence quoted makes clear that the Court acknowledges that the Commission has authority to establish or approve pass-through or tracker rate mechanisms. Thus, this is the law in Utah.

3. The Analysis of *Questar Gas* in the Motion to Dismiss Is Incorrect.

Given the Court's acknowledgement that the Commission has pass-through ratemaking authority, the Motion to Dismiss attempts to distinguish *Questar Gas* by claiming that the "[191 Account] and the underlying tariff are unique to Questar"[11] and that, even if the PCAM mechanism were the same as the 191 Account, "it appears that such a cost recovery mechanism could not be authorized today under any existing statute, nor would it withstand scrutiny by the Utah Supreme Court."[12] UIEC's bases for distinguishing *Questar Gas* are incorrect.

First, contrary to UIEC's argument, the Court did not find anything "unique to Questar" that justified its decision. Rather, the Court noted the similarity between the 191 Account mechanism and PacifiCorp's Energy Balancing Account ("EBA") that, as noted above, the Court likewise presumed the Commission had established under its "ample general power to fix rates and establish accounting procedures."[13]

Second, even if UIEC's argument that the question presented in *Questar Gas* was not "whether the 191 procedure was authorized in the first place"[14] is accepted as correct, it would not follow, as argued by UIEC, that the Court was bound to allow continued use of the

[11] Motion to Dismiss at 10.

[12] *Id.* at 11. UIEC's use of the words "it appears" is noteworthy. Obviously, UIEC is presuming an intention which is not manifest.

[13] *Questar Gas*, 2001 UT 2001 UT 93 at ¶ 12, 34 P.3d at 222-23, citing *EBA Case*, 720 P.2d at 424 n.4. *See also Re Utah Power and Light Co*., Docket No. 88-035-08, 106 P.U.R.4th 168, 1989 WL 418714 (Utah PSC Sep. 20, 1989) ("*Simonelli Case*") (accepting the appropriateness of the EBA).

[14] Motion to Dismiss at 13.

191 Account because it was an established practice.[15] The logical conclusion of this argument is that the Commission can overrule statutes or confer jurisdiction on itself by establishing a practice that is contrary to statute or unauthorized and observing that practice for some extended period of time. Obviously, that cannot be the law. The fact that the Court may reverse an order of the Commission if it is "contrary to the agency's prior practice, unless the agency justifies the inconsistency"[16] does not mean that the Commission can confer jurisdiction on itself by adopting an unauthorized practice. To the contrary, if the Court determines that the Commission "has acted beyond the jurisdiction conferred by any statute" or that it "has erroneously interpreted or applied the law,"[17] it is required to reverse the Commission's decision.

More fundamentally, the fact that UIEC even argues that the Court justified the 191 Account on the basis of established practice is an implicit recognition by UIEC that the validity of the 191 Account was a predicate for the Court's decision. The Court could not have reversed the Commission's decision on the ground that the 191 Account does not have to comply with section 54-7-12(3)(d) without holding, as noted above, that the 191 Account is a legitimate basis for ratemaking.

Questar Gas strongly affirms the Commission's authority to adopt or approve pass-through or tracker mechanisms such as the 191 Account or PacifiCorp's PCAM, and the attempts in the Motion to Dismiss to confuse this point are in error.

[15] *See id.*

[16] Utah Code Ann. § 63-46b-16(4)(h)(iii).

[17] Utah Code Ann. § 63-46b-16(4)(b), (d).

4. Other States Have Consistently Recognized this Authority.

Pass-through or tracker rate mechanisms have been in use around the country as long as the Public Utility Code has been in effect in Utah.[18] They are an accepted ratemaking mechanism in numerous states.[19] Although some states have specific statutory provisions allowing for certain costs to be carved out from general ratemaking, "in most jurisdictions the commission implements such clauses pursuant to its plenary rate making authority."[20] Thus, for example, in a state where the legislature has "never expressly addressed the use of [purchased gas adjustment] clauses in a statute" and where the regulatory commission, like this Commission, "is a creature of the legislature with no inherent authority of its own" and "may exercise only those powers that the legislature confers upon it in clear and express language," nevertheless, fuel cost adjustment clauses with potential retroactive implications are approved in order to ensure that appropriate costs are passed-through to customers.[21] Numerous courts in other states have approved varying pass-through rate mechanisms.[22]

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[18] *See, e.g., Consumers Org. for Fair Energy Equality, Inc. v. Dep't of Pub. Utils*., 335 N.E.2d 341, 343 (Mass. 1975) ("Fuel adjustment clauses have appeared in electric utility rate schedules in this country for many years. A need for them was felt during the first World War and they have been with us ever since . . . ."). The Public Utility Code was first enacted in Utah in 1917. *See* L. Utah 1917, ch. 47.

[19] *See, e.g., Daily Advertiser v. Trans-La*, 612 So.2d 7, 22 (La. 1993) (citing Dennis Schiffel, *Electric Utility Regulation: An Overview of Fuel Adjustment Clauses*, 95 Pub. Util. Fort. 23, 24 (1975)).

[20] *Daily Advertiser*, 612 So.2d at 23 (citations omitted).

[21] *See Centerpoint Energy Entex v. Railroad Comm'n*, No. 03-04-00731-CV, 2006 WL 1865439 (Tex. App. July 7, 2006).

[22] *See, e.g., Daily Advertiser*, 612 So.2d at 23 (citing cases); Stefan H. Krieger, *The Ghost of Regulation Past: Current Applications of the Rule against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. Ill. L.Rev. 983, 1017-18 ("Most courts, however, have found no retroactivity problem with [energy cost adjustment clauses].").

This Commission has broad discretion when determining matters of public policy and implementing its legislative ratemaking function.[23] In approving a pass-through mechanism such as the PCAM, the Commission would be acting consistently with its broad ratemaking authority and consistently with the approach taken by other states.

B. THE ARGUMENT THAT THE PCAM IS AN INTERIM RATE MECHANISM IS MISLEADING AND IRRELEVANT.

UIEC's Motion to Dismiss characterizes the PCAM as an interim rate mechanism and argues that the Commission does not have authority to set rates on an interim basis except in accordance with certain "approved methods"[24] which apply to general or abbreviated rate proceedings. This argument is misleading. As discussed above, the PCAM and the 191 Account are pass-through or tracker rate mechanisms, not general or abbreviated rate case mechanisms. In addition, UIEC's argument is irrelevant. Rates set under any recognized rate-setting mechanism may be interim, so limitations on the authority of the Commission to set interim rates apply to all of them, but do not affect their underlying validity.

Interim rates are rates put into effect on a temporary basis during the course of a rate case subject to change at the conclusion of the case and that will be adjusted retroactively by refund or surcharge if the rates set at the conclusion of the case are different than the interim rates.[25] In order to set interim rates, the Commission must have evidence before it that establishes an

[23] *See, e.g., PBI Freight Service v. Pub. Serv. Comm'n*, 598 P.2d 1352, 1354-55 (Utah 1979) ("Considerations of policy are primarily the responsibility of the Commission. It is well settled that this Court cannot substitute its judgment for that of the Commission and its findings will not be disturbed when they are supported by competent evidence.").

[24] *Id*. at 2.

[25] *See* Utah Code Ann. § 54-7-12(3) and (5).

adequate prima facie showing that the interim rate change is justified, but it need not consider all issues that may be considered in a full rate case hearing.[26]

The foregoing principles apply to pass-through rate proceedings. For example, when Questar Gas files an application for a rate adjustment under the 191 Account, if any party wishes to do further investigation the rate change is approved on an interim basis. After all parties have a reasonable opportunity to fully review and, if necessary, audit the records that are the basis for the pass-through change and raise any pertinent questions about the prudence of any costs incurred or revenues received, the rate change is approved on a final basis.[27]

In any recognized type of rate making, after further proceedings the Commission may enter a final order approving a rate change different than the change initially approved on an interim basis. In the case of a 191 Account application, differences between interim and final rates have been refunded or adjustments have been made to the 191 Account balance with interest to ensure that the rates charged customers are consistent with costs or revenues approved in the final order of the Commission.

The argument in the Motion to Dismiss that the Commission has no authority to approve the proposed PCAM because it is an interim rate mechanism that does not comply with section 54-7-12 is irrelevant and should be rejected. The PCAM is no more an interim rate mechanism than a general rate case is an interim rate mechanism. Presumably, if interim rates are adopted under the PCAM, the process utilized in adopting those rates would comply with section 54-7-12.

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[26] *Id.* at § 54-7-12(3)(a).

[27] *See e.g.* Interim Order, Docket No. 01-057-07 (Utah PSC Jul. 1, 2001); Final Order, Docket No. 01-057-07 (Utah PSC Apr. 1, 2003).

C. UIEC DRAWS IMPROPER CONCLUSIONS FROM THE CASES BECAUSE IT FAILS TO DISTINGUISH BETWEEN DIFFERENT TYPES OF RATE MAKING.

UIEC's Motion to Dismiss draws concepts and language from several Utah Supreme Court decisions in support of its argument that the Commission does not have authority to approve the proposed PCAM. In doing so, the Motion to Dismiss fails to distinguish between cases addressing general or abbreviated rate cases and those addressing pass-through or tracker cases. In fact, the rules may apply differently to different rate mechanisms; and some of the concepts UIEC cites regarding the Commission's authority apply in the context of a general or abbreviated rate case, but do not apply in the context of a tracker or pass-through case.

For example, it has long been recognized that the rule against retroactive ratemaking does not apply to pass-through cases in the same way it applies to general rate cases.[28] Yet, one of UIEC's major arguments against the authority of the Commission to approve the PCAM is that the PCAM involves retroactive ratemaking because it allows rates to be trued up based on actual costs incurred.[29] That is exactly the point of pass-through or tracker rates, and the rule against retroactive ratemaking does not bar the true ups pass-through or tracker rates are designed to permit. Of course, once the Commission issues a final order in a pass-through rate case, the rule against retroactive ratemaking does have some application.

UIEC also errs in attempting to apply the rationale for the rule against retroactive ratemaking in the *EBA Case* to pass-through cases. A pass-through or tracker case involves an effort to predict the future costs or revenues to set a current rate as closely as possible to the ultimate rate resulting from the actual costs or revenues being tracked and passed through in the

[28] *See, e.g.*, Krieger, *supra*, at 1020 ("Most courts, however, have held that [fuel adjustment] reconciliation proceedings do not violate the retroactivity rule . . .).

[29] *See* Motion to Dismiss at 19.

interests of rate stability. However, it is clearly understood in pass-through or tracker cases that rates will be adjusted in the future either up or down based on actual costs or revenues incurred whether the prediction was accurate or not. Thus, the *EBA Case* rule that missteps in forecasting future expenses or revenues in a general rate case are addressed only prospectively has no application to pass-through rates by definition. The retroactivity problem the Court found in the *EBA Case* was not with the pass-through mechanism, it was with taking money out of the pass-through mechanism and applying it to general rates.

Likewise the Motion to Dismiss' reference to the consideration of earnings or rate of return in the *Wage Case* has no application to a pass-through mechanism.[30] To the extent the Court's analysis in the *Wage Case* focused on the irrelevance of the impact of a change in costs on earnings to whether a matter such as a change in wages could be considered in an abbreviated proceeding, the Court's analysis must be considered in the context of an abbreviated case, not a pass-through case. One of the factors considered by commissions in determining whether a cost or revenue may be eligible for pass-through treatment is that the impact of changes in the cost or revenue under consideration may have more than a minimal effect on earnings.[31] Thus, the impact of changing fuel or energy costs on PacifiCorp's earnings is clearly an appropriate factor for consideration in determining whether such costs should become part of a pass-through or tracker mechanism.

Because the Motion to Dismiss fails to consider the different type of ratemaking involved in each of the cases from which it attempts to draw principles and language, the Motion to Dismiss erroneously concludes that the Commission has no authority to approve a pass-through

[30] *See id.* at 8.

or tracker mechanism such as the proposed PCAM. Properly understood, the cases do not support that conclusion. Indeed, *Questar Gas* stands for precisely the opposite conclusion.

D. PASS-THROUGH RATE MECHANISMS ARE CONSISTENT WITH SOUND RATEMAKING POLICY.

Allowing the pass through of certain types of costs incurred or revenues received by public utilities is consistent with sound ratemaking policy. Commissions have long recognized that pass-through or tracking mechanisms are justified when:

> (1) the designated activity largely lies outside the control of a utility, (2) variations in the outcome of the activity have more than a minimal effect on a utility's earnings, and (3) the actual outcome is likely to deviate from baseline projections.[32]

The matters covered by the 191 Account and the proposed PCAM meet these requirements. For example, with respect to the 191 Account, the cost of gas supplies acquired by Questar Gas to serve its customers and revenues for hydrocarbon sales for which customers are entitled to a credit may fluctuate significantly based on world market conditions that are influenced by political actions of foreign powers and acts of God such as Hurricane Katrina. If the market price of gas supplies increases or decreases significantly, the price change can have a significant affect on the Company's earnings, either positively or negatively. Because the price of gas supplies and other hydrocarbons is beyond the control of the Company and is subject to such significant volatility, it is not reasonable to expect the Company or regulators to accurately forecast the costs or revenues on a going-forward basis. Given these types of variations in costs and revenues, the vast majority of commissions, including this Commission, have concluded that

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[31] Ken Costello, "Revenue Decoupling for Natural Gas Utilities," (National Regulatory Research Institute, Apr. 2006) at 9.

[32] *Id.*

pass-through or tracker mechanisms are a preferred rate mechanism to deal with uncertainties that are largely beyond the control of the utility.

Pass-through or tracker mechanisms when applied to appropriate costs or revenues balance the interests of utility shareholders and customers in the public interest as defined by the Legislature.[33] They assure that the financial integrity of a public utility will be maintained when costs increase or revenues decrease as a result of factors beyond its reasonable control.[34] They likewise assure that customers are protected and that rates will reflect the reasonable cost of providing service and will not be artificially high when costs decrease or artificially low when costs increase, thus avoiding wasteful use of services.[35]

III. CONCLUSION

The Motion to Dismiss incorrectly argues that the Commission does not have authority to approve a pass-through or tracker mechanism such as the PCAM and suggests that the only reason the 191 Account, which serves a similar purpose for Questar Gas, is valid is because it was adopted long ago and is an established practice of the Commission. These arguments are incorrect. The Utah Supreme Court has specifically recognized that the Commission has broad and ample authority in setting rates to adopt a pass-through or tracker mechanism such as the 191 Account so long as the resulting rates are just and reasonable. Once the Commission has appropriately adopted such a mechanism, rates ultimately set under it may be interim or final depending on the circumstances under which they are approved. The rule against retroactive ratemaking does not have the same application to pass-through rates as it does in the case of

[33] *See* Utah Code Ann. § 54-4a-6.

[34] *See id.* § 54-4a-6(4)(a).

[35] *See id.* § 54-4a-6(c) and (f).

general or abbreviated rates because it is contemplated that pass-through rates will be trued up based upon actual experience. Sound ratemaking policy favors the passing through of certain types of costs or revenues such as those included in the 191 Account. The arguments in the Motion to Dismiss to the contrary are based on muddling various types of ratemaking proceedings or mechanisms together and ignore the import of the Court's decision in *Questar Gas*. Accordingly, they should be rejected by the Commission.

RESPECTFULLY SUBMITTED: July 7, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSITION OF QUESTAR GAS COMPANY TO UIEC MOTION TO DISMISS** was served upon the following by electronic mail on July 7, 2006:

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