REED T. WARNICK (#3391)
Assistant Attorney General
Committee of Consumer Services
MARK L. SHURTLEFF (#4666)
Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, Utah 84114-0857
Telephone (801) 366-0353

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of
QUESTAR GAS COMPANY for Approval of a Natural Gas Processing Agreement

In the Matter of the Application of
QUESTAR GAS COMPANY for a General Increase in Rates and Charges

In the Matter of the Application of
QUESTAR GAS COMPANY to Adjust
Rates for Natural Gas Services in Utah

In the Matter of the Application of
QUESTAR GAS COMPANY to Adjust
Rates for Natural Gas Services in Utah

Docket No. 98-057-12

Docket No. 99-057-20

Docket No. 01-057-14

Docket No. 03-057-05

RESPONSE OF THE UTAH COMMITTEE OF CONSUMER SERVICES TO QUESTAR GAS COMPANY'S PETITION FOR RECONSIDERATION OR CLARIFICATION

Pursuant to Utah Code §63-46b-12(2), the Utah Committee of Consumer Services (Committee) here responds to the Petition for Reconsideration or Clarification (Petition) filed on September 29, 2004, by Questar Gas Company (Questar Gas or utility) in consequence of the Utah Public Service Commission's (Commission) August 30, 2004 final order (Order) in these proceedings. The Committee responds in the order that matters were raised in the Petition.

INTRODUCTION

The Petition presents no new evidence or legal arguments, and identifies no errors in the Commission's August 30, 2004 Order. Accordingly, no further action by the Commission is appropriate or necessary.

RESPONSE

A. It Is not Necessary That The Commission Clarify That It Has Made No Finding On The Quality Of Coal-Seam Gas.

The Committee concurs with Questar Gas that the issue with coal seam gas in these proceedings was not that it was of inherently "inferior" quality, but rather that unless further processed its heat value was incompatible with Questar Gas' set point range. The Committee has not has sufficient time to be able to determine the accuracy of the statement in the Petition that some press accounts have imprecisely described coal-seam gas as "inferior." However, the Committee can say with full assurance that the Petition is highly incorrect in stating that "[t]hroughout these proceedings" the Committee "has sought to portray coal-seam gas a poor-quality gas." The Committee has sought to accurately describe the gas as having a "lower BTU value" or as "incompatible."

However, it is not difficult to see how such descriptive terms might be used to describe a gas stream that is not merchantable for Questar Gas' distribution system without further processing, or that is otherwise incompatible for a specified application. Questar Gas' own documentation uses the term "inferior" in that very way. In fact, the Petition's critical note of the Commission's use of the term "inferior"on page 28 of the Order, is *not* an instance of the Commission mis-characterizing coal seam gas, but rather of it explicitly quoting the term that is used in §13.5 of Questar Pipeline's FERC tariff to describe the quality of an incompatible or unacceptable gas stream. As quoted in the Order, §13.5 states, in part: "Questar shall not be required to accept gas at any point of receipt that is of a quality inferior to that required by shipper or a third party . . ."

The Petition concerns regarding how coal-seam gas has been characterized in these proceedings appear to be based upon either its own mis-characterization of past Committee statements or its mis-characterization of the Order's very accurate quote from Questar Gas' own documentation. The Committee, therefore, objects to, as needless, the Petition's request that the Commission clarify that it has made no finding regarding the inherent quality of coal seam gas.

B. It Is Neither Necessary Nor Appropriate to Clarify that Questar Gas Has not Sought to Delay Customer Inspections or that the Ten-Year Transition Period Was Appropriate.

The Petition contends it was inappropriate for the Commission to comment about conflicting affiliate motives that might exist with regard to customer appliance inspections and the continued operation of the CO2 plant. The particular comments the Petition finds fault with speak to the affiliate interest circumstances evident from the record as those circumstances bear upon the issues of prudence and burden of proof. They are carefully worded expressions of concern that use such words as "may be" and "perhaps,"or are phrased as questions (such as the question the Petition cites: "was [Questar Gas] prudent in not causing the completion of appliance retrofitting within a limited period so the plant would not have to run longer, incurring continuing operation costs. . . ?") in order to make clear to the reader they are not Commission conclusions.

Given the affiliate interest factual circumstances in the record, the Commission comments are well within the ambit of legitimate expressions of regulatory concern. The Petition would turn those expressions into the very legal findings they were carefully phrased to avoid. Such a distortion is not only unnecessary, it would contradict and undermine other legal findings the Commission has made in the Order, such as:

- there was "no evidence, written or oral, to indicate that the best interests of distribution customers were the paramount concern of Questar management;" and
- there was "no evidence that Questar Gas acted as a reasonable, unaffiliated utility would have acted prior to 1997; to question, study, object to, or attempt to mitigate the gathering threat posed by the increasing presence of coal-seam gas in its distribution system."

The only support the Petition can muster for its request are unsupported assertions. Questar Gas management may believe it "spent significant time and resources to make customers aware of the need to have their appliances promptly checked," but the Green Sticker program it implemented is vastly different from the one it described as

necessary at the time it sought cost recovery of the CO2 processing costs, and is now so poorly monitored it will be impossible to ever determine if or when the problem it stressed was a serious safety hazard has been corrected. Questar Gas management may also believe that "the record is replete with concern for customer safety," but the record shows that concern to be little more than after-the-fact expressions unsupported by any timely actions taken to address the "safety" problem.

The Committee, therefore, strongly opposes the Petition's request that the Commission convert the carefully worded and non-conclusive expressions of concern in question into findings.

The Committee feels compelled here to also correct a statement in the Petition which is irrelevant but for its improper and incorrect content. Apparently in an attempt to shore up Questar Gas' claimed *bona fides* with regard to the issue of customer safety, the Petition trots out the canard that the Committee has "frequently" "sought to undermine the effectiveness of the Green Sticker Program – and thereby delay customer action to have [their] appliances checked."

That statement is categorically false. The few public statements the Committee has made have pointedly emphasized the need for customers to regularly and properly inspect their gas appliances to make sure the appliances are operating safely and efficiently. Those public statements have also called attention to manifest shortcomings in the Green Sticker Program, and numerous complaints from utility customers confused by conflicting statements between Questar Gas and heating contractors who inspect the customers' appliances regarding the need and purpose for the Green Sticker. Questar Gas management's attempts to twist what the Committee has publicly said into some anti-customer, anti-safety effort to delay customer appliance inspections is nothing more than a heavy-handed effort to silence responsible criticism of a possibly ill-conceived, but definitely ill-administered, program that could end up costing ratepayers in excess of $100 million with no clearly measured or monitored benefits to show for the expense.

C. It Would Be Premature for the Commission to Reconsider or Modify at this Time its Order Regarding the Time Frame to Which the Order Applies.

The Order denies Questar Gas rate recovery for CO2 processing costs for the time period from June 1999 to May 2004. Questar Gas claims the Commission erred in equating the time frame in which the utility should be precluded

from obtaining rate recovery with the time period in which rate recovery was provided in the CO2 Stipulation. Yet, since the CO2 Stipulation is the only vehicle allowing any rate recovery, its rejection necessarily has the effect of denying cost recovery of CO2 processing costs for the period covered by the stipulation.

The Petition argues that, had the Commission initially rejected the CO2 Stipulation, Questar Gas could have quickly re-filed a new rate case and "[i]f the Commission found prudence based on the new facts presented in the later case, the 2000 order would have ceased to be effective and recovery would have been permitted" under that prompt later filing.

Many differing outcomes can be hypothesized for a case prior to there having been a final adjudication on the merits. Once a final adjudication has occurred, however, unless appealed, that final adjudication becomes a final and binding disposition of the facts and claims in controversy. There is no due process right for a litigant to re-try a decided controversy until he or she finally succeeds.

The Petition asserts that Questar Gas could still obtain rate recovery of its CO2 processing costs going forward in a subsequent case "if the Commission found prudence based on the new facts presented in the later case." Whether that could happen would depend upon the "new facts" presented in the later case.

Many jurisdictions, including Utah, empower an administrative agency to rescind or amend a prior decision, however such authority is circumscribed in various ways. For example, even Utah's statutory grant of authority does not empower the Commission to arbitrarily and capriciously overturn its prior decision.

It is difficult at this time to imagine what might be a new set of facts that would make CO2 processing prudent given the Commission's final decision that Questar Gas failed to demonstrate it responded to the coal seam gas problem in a timely manner, or that the construction and operation of the CO2 plant was prudent. In any case, there is clearly no compelling new evidence in the Petition that would warrant the Commission *at this time* modifying its decision with respect to the time frame for which rate recovery is denied by the Order.

D. It Is Unnecessary for the Commission to Clarify that the Tariff Revisions Required by the Order Do not Preclude Rate Recovery for the Period Going Forward from June 1, 2004.

In asking the Commission to clarify that the tariff revisions required by the Order do not preclude further tariff changes, the Petition is asking the Commission to clarify what is already made sufficiently clear by Commission Rule R746-405 which, among other things, empowers the Commission to "at any time. . . direct utilities to make revisions or filings of their tariffs or a part thereof to bring them into compliance. Commission Rule R746-405 further provides that a utility can at any time petition the Commission to modify its tariff upon a "showing" and a "finding . . . by the Commission that the increases or changes are justified."

E. The Commission Carefully Evaluated Whether Partial Rate Recovery Was Appropriate in Its Reasoning and Discussion Supporting the Order. It Therefore Should not Reconsider that Issue.

In asking the Commission to consider partial rate recovery by ignoring Questar Gas management's decision-making process and focusing instead "on the end result of the utility's action and the reasonableness of that result to customers," the Petition is asking the Commission to return to a method of analysis that was specifically rejected by the Utah Supreme Court on appeal. In its Report and Order in Docket No. 99-057-20, the Commission reasoned:

> whether the contested CO2 Stipulation resolves [this dispute]. . . in a way that is reasonable and in the public interest. . . turns . . .on whether we must rule on the decision to enter the contract (whether prudent) or instead can examine the outcome of that decision (whether reasonable.)

It then concluded its analysis by electing to do what the Petition urges: consider the "end result:"

> [c]learly, QGC has the burden to demonstrate the decision to enter the contract is a prudent one. Parties differ as to whether it did so successfully. But whether or not QGC met this burden, we can and do conclude that its decision to procure gas processing has yielded th required result, that is, it has effectively protected the safety of its customers. This means the costs of gas processing can be legitimately recovered in rates.

In rejecting the Commission's "reasonableness of outcome" reasoning, the Utah Supreme Court emphasized the central place which management's decision-making process has in a prudence inquiry. Further, it specifically mentioned Questar Gas' "burden of establishing that its decision to enter into the contract and the costs it agreed to were prudent

and not unduly influenced by its affiliate relationship with Questar Pipeline.” Later in its decision it stated:

> By accepting the CO2 Stipulation with no consideration of the prudence of the underlying source of the new costs (i.e., the contract between Questar Gas and its affiliate Questar Pipeline), the Commission abdicated its responsibility to find the necessary substantial evidence in support of the proposed rate increase in the record. We are far from certain, moreover, that the Commission could conceivably determine whether a rate increase is just and reasonable without examining whether the underlying cost-incurring activity was reasonable, which in turn seems to require some attention to the utility’s decisionmaking process, most particularly where negotiations with an affiliate are involved.

Not only would the Petition have the Commission consider partial rate recovery by resorting to a method of analysis rejected by the Court, it would also have the Commission overlook significant evidentiary gaps in the utility’s case for cost recovery. Where the Commission stated its expectation that:

> [t]o the degree affiliate interests were present, these interests should have been explicitly recognized, efforts made to avoid and counter conflicted interests, and have been reflected in the decision making process;”

the Petition sees a case of “regulators [choosing] in hindsight to pick apart utility actions with a fine-tooth comb” that will “unnecessarily increase the cost of utility action when action is taken – as utilities practice excessively defensive decision-making rather than simply exercising their best judgment.” Finally, the Petition asserts the Commission’s “pick[ing] apart utility actions with a fine-toothed comb” was ultimately the reason for its “all or nothing cost recovery” decision, which the Petition characterizes as an approach the Commission has previously rejected.”

Putting these broadsides aside, the Petition fails to ever specify what aspects of the Commission’s review of the decision-making process were nit-picking and excessive, or what discovered “imperfections” distorted the regulatory oversight process to such a degree that the Commission was unable to see that the costs “the utility is asking to pass-through to customers [were] ultimate[ly] [reasonable].”

Should the Commission have ignored the factual record showing no utility management action to address the growing coal seam gas threat in the years from 1992 to the latter half of 1997? Should the Commission not have concluded that “probably by 1994 and certainly by 1996, Questar Gas knew or should have known about the impact coal-seam gas would have on its distribution system and immediately started planning how to cost-effectively manage the risk of this impact and ensure the safety of its customers”? Was it an inconsequential imperfection for the Commission to have found “there is no evidence that Questar Gas conducted an independent, thorough, long-term cost-

benefit analysis of these options prior to Questar management deciding upon its preferred CO2 removal solution"?

Taking the Petition's comments seriously leads one to the conclusion Questar Gas management is simply unwilling to accept the burden of proof that established Utah legal precedent places on a utility asking for cost recovery from ratepayers. Apparently, Questar Corporation wants the benefits that result from operating and managing a Utah public utility monopoly as an integrated component in the energy holding company's vertically-integrated business operations; but does not want the record-keeping, and precautions, which such an operating and management structure necessarily create if proper regulatory oversight of the public utility is to continue.

The Petition incorrectly views the reasonable man standard that requires a showing that "an unaffiliated utility could have taken the same action in the same circumstances," as somehow obviating the regulatory need to carefully examine an affiliate transaction – including the decision-making process that led to the transaction. The reasonable man standard not only burdens the decision-maker with information he or she reasonably should have known, but also with information he or she actually does know. The Order very correctly concluded that an "unaffiliated utility" possessed of what Questar Gas management knew or should have known would not have acted as Questar Gas management did.

The Order makes clear it was the awkward absence of any reasonable supporting documentation, compounded by the sobering fact that utility management did nothing during the years prior to 1997 to pro-actively address the coal seam gas problem from the perspective of what was best for ratepayers that resulted in the decision to deny any cost recovery. As a practical matter the absence of evidence, and absence of timely action, effectively makes it impossible to determine whether a prudent utility would necessarily have incurred any costs to 'fix' the coal seam gas problem, let alone what those costs might have amounted to.

The Order has already adequately addressed these evidentiary shortcomings, and why partial rate recovery is not possible in this case.

E.1. The Record Does Not Show An Unaffiliated LDC Would Necessarily Have Incurred Costs to Address the Coal-Seam Gas Problem.

As further support for its position that partial cost recovery is appropriate, the Petition re-asserts the argument that the record shows an unaffiliated utility would have likely incurred some costs in remedying the coal seam gas

problem, and, therefore, Questar Gas is entitled to some cost recovery. It cites the Division's assessment that the outcome of a FERC action would have likely imposed some costs on the utility and, therefore:

> [s]ince the evidence demonstrated that, although it was uncertain what the FERC would have done, it was likely that some costs would have been borne by customers to address coal-seam gas, the Commission should have approved recovery up to that amount.

First, as already discussed above, the Court has rejected the "reasonable outcome" method of analysis being argued here as an adequate or acceptable basis for determining prudence or assigning costs to ratepayers. Second, the Petition misreads the record and the Commission's discussion in the Order regarding what a prudent unaffiliated utility might have done and what costs, if any, might have resulted. There is no Commission finding that a prudent unaffiliated utility would necessarily have gone to the FERC. Going to the FERC was only one of several possible remedy options discussed in the record, and the Commission makes quite clear that none of the various possible options underwent the kind of orderly and documented analysis and evaluation that would permit a best performance/least cost kind of selection process. It further makes clear a more timely response to the coal-seam gas problem could have critically affected the choices and the resulting costs, if any.

> Unfortunately, there is no evidence to indicate that Questar management conducted anything but the most cursory analysis in ruling out potential long-term solutions in favor of its preferred shorter-term fix.

Even had the Commission concluded that a FERC remedy should have been pursued, that single remedy course invites several possible outcomes, ranging from a FERC decision that would have kept coal seam gas off the southern system with no resulting cost to utility ratepayers to a decision that would have required the coal seam gas to be processed. And, even that latter possibility of gas processing would not necessarily have resulted in any costs to the utility or its ratepayers. The Commission reasoned that, conceivably, the FERC might have placed the processing cost burden entirely on the pipeline or the producers. Only in the event the FERC decided to place the cost on Questar Pipeline and allow the pipeline to include the cost in the rates it charges pipeline customers such as Questar Gas would the utility and ratepayers end up bearing some of the costs to solve the coal seam gas problem.

In summary, there is no evidence in the record that would permit the Commission to determine any reasonable

partial cost recovery amount, and the consequences of that failure of evidence must fall at the feet of the utility which has the responsibility to provide the proof necessary to support rate recovery – partial or otherwise.

E.2 Neither the Level of Costs Incurred Nor the Actions Taken to Build and Operate the CO2 Plant Were Shown To Be Prudent.

The Petition's final argument in support of partial cost recovery contests virtually every finding and conclusion in the Order. The Petition argues, for example, that because "Questar Gas did analyze various options for addressing coal-seam gas and submitted contemporaneous evidence of that fact," it should be found to have acted prudently even though it admittedly was unable "to submit one document showing that the Company ever sat down in one big meeting and considered all options at one time."

Such arguments are an exercise in form over substance. No one has argued that "one big meeting" had to occur, or that presentation of a single document would sufficiently demonstrate prudence. The essence of the criticism leveled in Division witnesses' testimony and Commission comments is there has to be some sufficient and acceptable contemporaneous documentary evidence showing that the various remedy options were thoroughly evaluated, one against the other, and orderly dismissed or accepted. The criticism continues: even had such an evaluation occurred and been documented in1997-98, it would still have been fatally deficient because at that late date some options were discarded for no reason other than there was insufficient time to implement them. The Petition's selective arguments to the contrary notwithstanding, the Order very clearly and convincingly establishes that no timely, orderly, or adequately and contemporaneously documented decision-making process occurred.

Despite the Order's persuasive discussion that the prudence analysis in this case can not be limited to the decision to build the CO2 processing plant, the Petition arbitrarily, and without responding to that persuasive discussion, asserts that "[t]he appropriate prudence standard would address whether building the CO2 plant was a reasonable response to the increasing presence of coal-seam gas." It then concludes: "[t]he evidence showed that the CO2 plant was a reasonable response, and the Order does not conclude the contrary." The Petition's sole support for its assertion that the Order does not conclude the contrary is its footnote 37 stating: "See Order at 34." The only Commission statement on page 34 of the Order that speaks to the "reasonableness" of the CO2 plant appears at the top

of the page, where one reads:

> *When examined in isolation*, rapid construction and operation of the CO2 processing plant may have been within the range of reasonable responses to a "safety crisis" first recognized in late 1997. However, *even were we to ignore the many opportunities available to Questar Gas prior to 1997 to avoid or address the problems associated with coal-seam gas, and assuming that we would continue to view construction and operation of the CO2 processing plant to have been a reasonable course of action in 1989*, we would nonetheless have difficulty concluding that the decision to contract with Questar Transportation for construction and operation of the plant was prudent. [Emphasis added.]

Needless to say, this Commission statement is anything but resounding support for the idea that the CO2 plant was a reasonable response. The statement makes clear the CO2 plant response was too late, that its reasonableness could only be considered by ignoring the many other opportunities that would have been available sooner, and even if then still found reasonable, the Commission would nevertheless have difficulty concluding that the decision to have Questar Transportation own and operate the plant was prudent.

CONCLUSION

The Petition for reconsideration or clarification strains for hooks or weaknesses in the Order which simply aren't there. The Order is a very well-written and defended decision and there is therefore no justifiable reason to clarify any of its comments or findings.

Respectfully submitted this 14th day of October, 2004

Reed T. Warnick
Assistant Attorney General
Counsel to the Utah Committee
of Consumer Services

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE OF THE UTAH COMMITTEE OF CONSUMER SERVICES TO QUESTAR GAS COMPANY'S PETITION FOR RECONSIDERATION OR CLARIFICATION** was served by electronic mail on the following on October 14, 2004:

Michael Ginsberg
Assistant Attorney General
Patricia E. Schmid
Assistant Attorney General
500 Heber Wells Building
160 East 300 South
Salt Lake City, Utah 84114
mginsberg@utah.gov
pschmid@utah.gov

Jeff Fox
149 Windsor Street
Salt Lake City, Utah 84102
jeffvfox@attbi.com

Tony J. Rudman
1111 East Brickyard Road, Suite 106
Salt Lake City, Utah 84106
tjrudman@utah-inter.net

C.Scott Brown

Colleen Larkin Bell
Questar Regulated Services
180 East First South
P.O. Box 45360
Salt Lake City, Utah 84145
scott.brown@questar.com
colleen.bell@questar.com

Gregory B. Monson
David L. Elmont
STOEL RIVES LLP
201 South Main Street, S:uite 1100
Salt Lake City, Utah 84111
gbmonson@stoel.com
dlelmont@stoel.com

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Reed T. Warnick