

I. QUESTAR GAS WAS SUFFICIENTLY PRUDENT IN ITS DECISION TO BUILD THE CO2 PROCESSING PLANT

A. Standard of Prudence

1. Prudence review is required here as a result of the Utah Supreme Court's decision, Committee of Consumer Services v. Public Service Commission, 75 P.2d 481 (Utah 2003) ("Utah Supreme Court 2003 Decision").
2. Prudence review takes into account what the utility management knew at the time, and does not rely on hindsight. In the Matter of the Application of Mountain Fuel Supply to Adjust Rates for Natural Gas Service in Utah, Docket Nos. 91-057-11 and 91-057-17 (September 10, 1993) ("Mountain Fuel Supply").
3. Commission should not substitute its judgment for that of utility management. Logan City v. Public Utilities Commission, 296 P.2d 1006 (Utah 1931).
4. Prudence is not an all or nothing concept. In re US West Communications, Docket No. 95-049-05 (November 17, 1995, reconsideration granted in part, In re US West Communications, Docket No. 95-049-05 (December 18, 1995).
5. Best statement of prudence standard is found in Division witness Darrell Hanson's testimony: "... the key question is whether a reasonable person (1) looking out for the interests of Questar Gas Company and its customers, and (2) with the information available at the time, would have made the decision to contract for CO2 processing as the solution to the alleged heat content problem." Rebuttal Testimony of Division witness Darrell Hanson, Docket No. 98-057-12 at p. 2 (emphasis in original).

B. Burden of Proof

1. Effect of affiliate involvement

Questar Gas bears the burden to prove prudence because of its affiliates' involvement, and the transaction also receives stricter scrutiny because of that involvement. Utah Supreme Court 2003 Decision and 84-0578-10 Order issued October 1, 1984.

C. Questar Gas Met Its Burden of Proof to Show that It Was Sufficiently Prudent – However Questar Gas Was Not Entirely Prudent

1. Factual Support for Sufficiently Prudent Finding

- a. Division criticizes the process, not the result.
- b. No one disputed some action had to be taken due to reduced Btu content.
- c. No one disputed action had to be taken in a timely manner.
- d. No persuasive evidence shows that plant could have been built for less if constructed by affiliate; indeed, there was substantial evidence to support a finding that the plant was built economically.
- e. Questar Gas did generally consider alternatives.
- f. See generally testimony of Division witnesses Hanson and Alt.

2. Factual Support for Not Entirely Prudent Finding

- a. Questar Gas' failed to act until the only reasonable alternative was to build the CO₂ plant. See generally testimony of Division witnesses Hanson and Alt.
- b. Questar Gas could have gone to FERC to challenge the Questar Pipeline Gas Quality standard. Questar Gas did not challenge Questar Pipeline's interpretation of Section 13.5 of the pipeline tariff.
- c. "Questar Gas' actions, or inactions, appear to be influenced by its affiliated relationships more than by the financial interests of its customers." DPU Exhibit 8.0 p. 3.

3. Facts Cited by the Committee Do Not Overcome Above Facts

- a. Substantial evidence was presented by Questar Gas to defeat the Committee's arguments that sufficient evidence was present prior to 1998 that would have enabled Questar Gas to begin addressing the CO₂ problem sooner.

- b. Committee's core arguments regarding familial relationship go to process, not prudence, and affect recovery, but do not preclude a finding of sufficient prudence.
- c. Committee's arguments asserting language "nor can a sufficient record be developed" precludes a prudence review now, ignores Commission's December 2003 order declaring the language dicta. The Stipulation Should Be Reapproved

D. Standards for Approving a Stipulation

- 1. Commission is encouraged by statute to approve settlements. Utah Code Ann. 54-7-1.**
- 2. In approving settlements, the Commission is charged with protecting the public interest, and Commission must ensure settlement is just and reasonable. In re Mountain Fuel Supply Company, Docket No. 945-057-02 (October 17, 1995).**
- 3. Approving settlements can bring an end to divisive, complex and expensive controversy. Wexpro II, 658 P.2d 601, 613-14 (Utah 1983).**
- 4. Settlement should be result of adversarial relationship, and be achieved through arms length negotiations. Id.**

E. Facts Supporting Approval

- 1. Safety benefit conferred upon Questar Gas customers.**
- 2. Lengthy and contentious proceedings prior to settlement demonstrate adversarial nature of all parties, not just parties to settlement.**
- 3. Division's testimony supported recovery in the range of 50%, and with the additional benefits from the stipulation, recovery of approximately 68% was reasonable.**
- 4. Complete recovery inappropriate because of the effect the affiliate relationship seemed to have on Questar Gas' decision making process.**