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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In re QUESTAR GAS COMPANY	Docket Nos. 04-057-04, 04-057-09, 04-057-11, 04-057-13, and 05-057-01 REPLY OF THE UTAH DIVISION OF PUBLIC UTILITIES TO THE REQUEST OF PETITIONERS AND THE REQUEST OF PETITIONERS ROGER BALL AND CLAIRE GEDDES FOR RECONSIDERATION OF THE REPORT AND ORDER OF THE UTAH PUBLIC SERVICE COMMISSION, ISSUED JANUARY 6, 2006, APPROVING A GAS MANAGEMENT COST STIPULATION

The Division of Public Utilities ("Division") hereby files its reply to (1) the Request of Petitioners for Reconsideration of the Report and Order of the Utah Public Service Commission ("Commission"), issued January 6, 2006, Approving a Gas Management Cost Stipulation ("Order") and (2) the Request of Petitioners Roger Ball and Claire Geddes ("Ball/Geddes Request") for Reconsideration of the Report and Order of the Commission, issued January 6, 2006, Approving the Order, (jointly "Request").[1] For the reasons set forth below, the Public Service

[1] The Ball/Geddes Request "adopt[s] and incorporates[s] by reference all of the text, arguments and reasoning found in that certain 'Request of Petitioners for Reconsideration of the Report and

Commission ("Commission") should deny the relief sought in the Request and in the Ball/Geddes Request.

The Order granting limited recovery of certain costs, beginning February 1, 2005, was entered into after a lengthy exploration of alternatives and decision-making in Docket No. 04-057-09 and consideration of Questar Gas' Application for Cost Recovery filed January 31, 2005 in Docket No 05-057-01 ("Application"). No cost recovery was granted for costs incurred prior to February 1, 2005.

The Stipulation and Order focus upon the cost recover incurred from February 1, 2005 forward, on a limited basis. The Order and Stipulation focus on whether or not it is prudent for Questar Gas to contract with an affiliate in order to pay for a service that benefits Questar Gas' ratepayers. Nowhere in either the Supreme Court decision or in prior Commission decisions was the recovery of future prudently incurred costs prohibited if Questar Gas met its burden of demonstrating that cost recovery was reasonable. Petitioners fail to recognize this fundamental distinction between past recovery of costs and future recovery of costs. This fundamental failure to recognize the distinction between past cost recovery and future cost recovery makes their request essentially irrelevant and therefore it should be denied.

I. INTRODUCTION

To assist in Docket No. 04-057-09 and in considering of the Application, the Division and the Committee of Consumer Services ("Committee") each

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Order of the Utah Public Service Commission, Issued January 6, 2006'" also filed with the Commission February 6, 2006. Ball/Geddes Request at p. 2. The Ball/Geddes Request also makes a few additional limited independent arguments not addressed in the other pleading. The Division is responding to the two pleadings when it references "Request" and is responding to the additional arguments in the Ball/Geddes request when that pleading is specifically referenced.

retained experts to assist them in analyzing issues related to cost recovery. Settlement discussions were held, and ultimately Questar Gas, the Committee, and the Division reached an agreement memorialized in a Stipulation filed with the Commission. After appropriate notice, a hearing was held on October 20, 2005 at which two public witnesses spoke. On November 4, 2005, Mr. Roger Ball and Ms. Claire Geddes filed affidavits with the Commission. On November 17, 2005, Mr. Ball and Ms. Geddes filed a Request to Intervene. Parties filed responsive pleadings.

In a detailed and thorough Order, the Commission approved the Stipulation. In a companion order, the Commission denied the Request to Intervene, while accepting the filing by Mr. Ball and Ms. Geddes as unsworn public witness testimony.

On January 6, 2006, the Request, the Ball/Geddes Request, and the Request of Petitioners Roger Ball and Claire Geddes for Reconsideration of the Report and Order of the Utah Public Service Commission, Issued January 6, 2006, Denying them Intervention as Parties in These Dockets were filed.[2]

II. ARGUMENT - THE REQUEST AND THE BALL/GEDDES REQUEST SHOULD BE DENIED

The Request and the Ball/Geddes Request offer no new, legally sound, or otherwise compelling argument that reconsideration or rehearing should be granted or that the Order should otherwise be modified.

[2] The Division is not filing a response to the Intervention Reconsideration Request, but notes that it believes Mr. Ball's prior participation in this docket was not in his individual capacity, but rather in his capacity as Director of the Committee. Upon Mr. Ball's termination, Ms. Leslie Reberg became Director of the Committee.

A. THE REQUEST MISSTATES THE LAW AND MISCHARACTERIZES THE ORDERS

The Request repeatedly fails to distinguish prior requests for recovery of CO_2 removal costs from the limited relief agreed to in the Stipulation approved in the Order. Significantly, the Request fails even to take note of this obvious, and important, distinction. This fundamental error and misunderstanding of either the Supreme Court decision or prior Commission order permeates the entire Request and renders it irrelevant.

The Request erroneously asserts that the 2004 order[3] forever denies Questar an opportunity to recover future costs associated with running the CO_2 plant. Petitioners' claims of res judicata and collateral estoppel are meritless because the relief sought, and the associated prudence review, covers only a prospective time period dating from their 2005 Application for Relief. Neither the Supreme Court decision nor the August 2004 order prohibits an opportunity in the future to demonstrate prudence. The Order approving the Stipulation affirms that is what in fact happened.

B. THE REQUEST INACCURATELY FRAMES THE APPLICABLE PRUDENCE REVIEW PERIOD

Not only does the Request fail to recognize that cost recovery was granted by the Order only from February 1, 2005 forward on a limited basis. Indeed, the Stipulation explicitly states that Questar Gas foregoes cost recovery from January 1, 2003 through January 31, 2005 a prior period for which Questar

[3] See Utah Public Service Commission order dated August 30, 2004 in Docket Nos. 03-057-05, 01-057-14, 99-057-20, and 99-057-12 ("2004 Order).

sought cost recovery.[4] Thus, the applicable time period for the prudence review is not focused upon the initial decision for Questar Transportation to build the plant and for Questar Gas to contract with that affiliate for gas processing. Petitioners' refusal to accept that prior orders did not bar recovery on a going forward basis shows that they do not understand either the past orders or the current order.

C. COST RECOVERY ASSOCIATED WITH AFFILIATED RELATIONSHIP BETWEEN QUESTAR GAS AND QUESTAR TRANSPORTATION WAS PROPERLY ALLOWED IN THIS INSTANCE

The Request claims that "affiliate influence and conflict of interest"[5] prevent a finding of prudence. The Request ignores case law where no presumption of reasonableness exists for an affiliated expense and therefore calling for stricter scrutiny of affiliate transaction. Cost recovery is permitted when the Commission finds that the utility has met its burden to establish the reasonableness of affiliated transactions. In this case technical conferences were held in conjunction with Docket No. 04-057-09 which explored at great length alternatives to continuing to use the plant. Questar filed written testimony of experts evaluating the need for the plant and alternatives to the plant. The Division's and the Committee's experts examined the appropriateness of using the plant. Costs were examined. After this extensive investigation, the Division and the Committee entered into the Stipulation allowing limited cost recovery. Sufficient evidence was before the Commission to overcome any stricter scrutiny standard and to establish that the reasonableness of the CO_2 plant expenses.

[4] Order at p. 48
[5] Request at p. 3.

All parties, and the Commission, were satisfied that the alternative selected was prudent, in the best interests of customers, and selected only after exhaustive inquiry. Thus even though the CO_2 plant is an affiliate, when sufficient evidence is presented to the Commission, recovery can be allowed and a stipulation agreeing to that recovery can be found to be reasonable and to meet all applicable legal standards.

D. SUFFICIENT NOTICE WAS PROVIDED

Petitioners' assertion that improper notice was provided is in error. Notice complied with the requirements of the Utah law. Notice, given nine days prior to the hearing, complied with R746-100-10A. The provided notice also complied with the Utah Rules of Civil Procedure. No specific notice period is prescribed by the APA. Notice was provided in the docket through which cost recovery was sought, plus four other dockets listed on the caption of this case. Petitioners' cannot blame others for their oversight.

E. CONTRARY TO PETITIONERS' ASSERTIONS, THE STIPULATION WAS ADEQUATELY SUPPORTED AND THE ORDER IS ROBUST, REQUIRING NO RECONSIDERATION

With the testimony presented by Questar Gas' witnesses and the testimony filed in support of the stipulation sufficient record evidence exists to support approval of the Stipulation. No contravening evidence was filed or admitted. In U.S. West Communications v. Public Service Commission, the Utah Supreme Court essentially held that the Commission cannot ignore uncontradicted testimony presented to it in a proceeding.[6]

[6] U.S. West Communications v. Public Service Commission, 901 P.2d 270 (Utah 1995).

The standard of "substantial evidence" was satisfied by the application and testimony. Despite unsupported allegations in the Request, witnesses at the hearing concerning the Stipulation were qualified and competent to give testimony supporting the Stipulation. Petitioners incorrectly alleged that the January 2006 order was flawed. The Order is supported by record evidence, and complies with other technical requirements pertaining to approval of settlements. Utah Code Ann. § 54-7-1 encourages settlements. A settlement of a case such as this with an extended history of litigation is a prime example of where settlements can be valuable. In approving this settlement, the Commission met the requirements of Utah Code Ann. § 54-7-1 that the stipulation is "just and reasonable in result" and that "evidence in the record supports a finding that the settlement proposal is just and reasonable in result."[7] The evidence in the record and the findings made by the Commission satisfy this and other statutory tests.

The Utah Supreme Court, in a case commonly referred to as Wexpro II, commented at length on settlement before the Commission.[8] In Wexpro II, the Commission noted, "The settlement brings an end to a complex, divisive, and expensive public controversy. Its fairness is confirmed by the unquestioned adversary nature of the negotiations, by the skill of the parties and their counsel, and by the Commission's finding of market value, which we have already sustained."[9] Similar circumstances, substituting the prudence determination for

[7] Utah Code Ann. § 54-7-1(3)(d)(i)(A) & (B).
[8] See Utah Department of Administrative Services v. Public Service Commission, 658 P.2d 601 (Utah 1983).
[9] Id. at p. 616

the finding of market value, exist here to support approval of the Stipulation in this case.

F. CONTRARY TO PETITIONERS' ASSERTIONS, PARTY POSITIONS ARE PERMITTED TO CHANGE AND SETTLEMENT DISCUSSIONS AMONG PARTIES ARE COMMON AND ACCEPTED.

Petitioners' discontent that the Committee changed its position and thus Petitioners were taken by surprise, and their related assertion that the public should be involved in settlement discussions, are without merit and contrary to law and practice. Petitioners' contention that the Committee, once it has taken a position, is forever foreclosed from changing that position is unrealistic. Utah Code Ann. § 54-7-1 reserving the right of privacy and confidentially in settlements, and recognizing that those negotiations be limited to parties, reflects well established and recognized concepts. Regardless this is not an issue relevant to whether rehearing should be granted.

G. PROVISIONS OF UTAH CODE ANN. § 54-7-1 WERE SATISFIED

Petitioners' claims that the Commission failed to comply with requirements set out in Utah Code Ann. § 54-7-1 are unsupportable. The Commission is charged with acting to promote results in the public interest, which includes evaluating the propriety of utilizing the settlement process. Petitioners' complaints regarding notice of the hearing are particularly unpersuasive in light of Utah Code Ann. § 54-7-1 which mandates that the Commission "conduct a hearing before adopting a settlement proposal if requested by:

(A) any party initiating the adjudicative proceeding;

(B) any party against whom the adjudicative proceeding is initiated; or

(C) an intervening party to the adjudicate proceeding."

H. THE REQUEST INCORRECTLY STATES THAT COMMISSION APPROVAL OF THE CONTRACT WITH QUESTAR TRANSPORTATION WAS REQUIRED

No Commission approval of the contract was required before Questar Gas contracted with Questar Transportation for CO_2 removal, and thus the statutory requirements were fulfilled. Moreover, no Commission order mandates preapproval of contracts of this nature. The effect of the affiliate relationship between the companies has been scrutinized thoroughly. Equally unpersuasive are Petitioners' assertions regarding the 1994 Planning Standards. In sum, this contract has been the subject of much study. The parties have satisfied their concerns and reached agreement memorialized in a Stipulation allowing, subject to Commission approval, recovery of certain costs under this contract. The Commission has approved the Stipulation and permitted this limited recovery.

I. PETITIONERS' CALL THAT CHAIRMAN CAMPBELL SHOULD HAVE RECUSED HIMSELF IS MERITLESS

Petitioners' statement that "The January 2006 Order Was Not the Product of Impartial Decision-Making"[10] is inaccurate. Chairman Campbell was not required to recuse himself, nor did Petitioners at any stage of the process, until now, even raise the question. Under Petitioners' theory, Chairman Campbell would have been forever barred from addressing the reasonableness of CO_2 cost recovery just because he reused himself in the 2004 Commission decision for which he had been involved as a party. Petitioners' fail to accept the differing time frame at issue in this case as contrasted with the case giving rise to the

[10] See Request at pp. 72-74.

2004 order. Cases cited by Petitioners' are distinguishable from the facts at hand. Roger Ball as the Committee director was well aware of Chairman Campbell's participation in this docket and did not raise any objections to his participation. To do so now is disingenuous.

J. THE REQUEST MUST BE DENIED WITH REGARD TO ALL BUT THE STOCKHOLDER–PETITIONERS, AND THE BALL/GEDDIS REQUEST MUST BE DENIED.

Utah Code Ann. § 54-7-15 states "any party to the proceeding, any stockholder, bondholder, or other party pecuniarily interested in the public utility may apply for rehearing . . . ."[11] The Request must be denied with respect to all but the individual petitioners owning stock in Questar Corporation.[12] Mr. Roger Ball and Ms. Claire Geddes were denied intervention by the Commission in an order dated January 6, 2006. Although in a companion pleading to the Request, Mr. Ball and Ms. Geddes have requested reconsideration of that denial, they do not now have the requisite intervenor status to support a request for rehearing. It is significant that the Legislature did not chose to use the term ratepayer, but instead chose the more narrow term "pecuniary interest." Arguments raised in the Ball/Geddes Request are without merit and offer no new, compelling reasons to change the Order.

The other parties, as ratepayers, do not have the pecuniary interest required to give them standing to request rehearing. To conclude otherwise would also require each Commissioner, a Questar customer, to recuse

[11] Utah Code Ann. $ 54-7-15-(2) (a).
[12] See Appendix I to the Request, listing Larry Norman, Gwendolyn D. Schamel, Tolford and Mary Young as Questar stockholders. Of note, it appears that Appendix I was not filed on February 6th, with the Request, but filed on February 7th. Whether or not this discrepancy constitutes separate rounds for denying rehearing is noted for the record.

themselves. Black's Law Dictionary, 5th edition, 1979, defines pecuniary interest as: "A direct interest related to money in an action or case as would, for example, require a judge to disqualify himself from sitting on a case if he owned stock in corporate party." To conclude that a ratepayer has the pecuniary interest sought by the statute would allow any ratepayer, not a party to the proceeding, to second guess a Commission order and thus unpredictably and unfairly delay implementation of Commission orders.

III. CONCLUSION

The Request and the Ball/Geddes Request offer no persuasive reason for the Order to be changed or modified. The Request suffers from a fatal error in that it mischaracterizes the time frame at issue and applicable prior orders. The Request ignores the fact that the Stipulation and Order focus on prudence and reasonableness associated with the continued service provided by of the CO_2 plant to benefit Questar Gas customers, not the decision to use the plant in the first instance. The Petitioners also erroneously construe prior orders are precluding forever a finding that use of the plant is prudent. There was no Commission order mandating prior approval of the contract between Questar Gas and Questar Transportation. Sufficient notice was given in compliance with Commission rules. Chairman Campbell was not required to recuse himself. Petitioners' arguments, although presented in a lengthy pleading, are without merit.

RESPECTFULLY submitted this ___ day of February 2006.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY OF THE UTAH DIVISION OF PUBLIC UTILITIES TO THE REQUEST OF PETITIONERS AND THE REQUEST OF PETITIONERS ROGER BALL AND CLAIRE GEDDES FOR RECONSIDERATION OF THE REPORT AND ORDER OF THE UTAH PUBLIC SERVICE COMMISSION, ISSUED JANUARY 6, 2006, APPROVING A GAS MANAGEMENT COST STIPULATION was served upon the following by electronic mail and by either first-class mail or hand delivery, on February ___ 2006:

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