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4 November 2005

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah	Docket No. 04-057-04
In the Matter of the Investigation of Questar Gas Company's Gas Quality	Docket No. 04-057-09
In the Matter of the Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah	Docket No. 04-057-11
In the Matter of the Application of Questar Gas Company for a Continuation of Previously Authorized Rates and Charges Pursuant to its Purchased Gas Adjustment Clause	Docket No. 04-057-13
and	
In the Matter of the Application of Questar Gas Company for Recovery of Gas Management Costs in its 191 Gas Cost Balancing Account	Docket No. 05-057-01
	AFFIDAVIT AND PUBLIC TESTIMONY OF ROGER J BALL

AFFIDAVIT

STATE OF UTAH)
: ss
COUNTY OF SALT LAKE)

On the 4th day of November, 2005, ROGER J BALL appeared before me, a Notary Public, and, being duly sworn, affirmed that he is the Affiant herein and the author of the testimony which follows, that it is true and correct, and that it is his intent, by submitting this Affidavit to the Public Service Commission of Utah, for this testimony to be deemed sworn testimony as though it had been offered in person before the Commission and under oath, and that by his signature, affixed hereto at the end of his testimony, he so swears.

_____
Notary Public

WHAT IS YOUR NAME AND ADDRESS, ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING, AND HOW ARE YOU QUALIFIED TO TESTIFY?

My name is Roger J Ball.

My address is 1375 Vintry Lane, Salt Lake City, Utah 84121.

I am testifying on behalf of my wife and myself, and of Questar Gas Company's Tariff Schedule GS-1 customers in Utah.

Having resided in Utah, and having been a customer of Questar Gas Company under its Tariff Schedule GS-1, since January 1993, I have a proportionate interest in this matter, which I respectfully ask the Public Service Commission of Utah to consider. In addition, having served as Director (formerly titled Administrative Secretary) of the Utah Committee of Consumer Services from May 1997 until March 2005, my knowledge of these issues is somewhat greater than average.

Of course, it is the statutory duty of the Committee, on its own behalf and in its own name, to represent the interests, as determined by the Committee, of residential and small business, including farming and ranching, utility customers, and the Commission has ruled that the Committee shall be given full participation rights in any case.[1]

After I had responded to the advertisement for the position of Administrative Secretary, been short-listed by a selection panel appointed jointly by the Committee and the Governor, and interviewed by his Chief of Staff, I wrote a letter to the latter, which included the following:

> It is important, I do believe, for public servants to take a broad and balanced view, but the Socratic method and adversarial advocacy rather demand partisanship. It is

[1] Utah Code Annotated: 54-10-4(3) and Utah Administrative Code: R746-100-5.

> for the Committee to ensure that consumers' interests are vigorously and effectively represented, and for the Secretary to ensure that this is done with professional competence.[2]

Over the succeeding eight years, although it fell to me to remind it of its duty occasionally, the Committee did vigorously and effectively represent consumers' interests in this matter. It also fell to me to supervise the Committee's attorneys, and staff and consultant analysts, and ensure that they performed their parts with professional competence.

It is against that experience that I have concluded that the Committee has not vigorously and effectively represented consumers' interests in joining and supporting this Stipulation, and that its staff has not performed its role with professional competence. Consequently I, as a consumer, do not believe that I am adequately represented by the Committee in this Docket, so I wish to be heard on my own behalf. It is also my opinion, therefore, that Questar Gas Company's other Tariff Schedule GS-1 customers in Utah are not adequately represented by the Committee in this Docket, and so I offer my testimony on their behalf also.

WHY SHOULD THE COMMISSION ADMIT YOUR TESTIMONY, AND WHY SHOULD IT BE GIVEN EQUAL WEIGHT TO THAT WHICH WAS HEARD ON 20 OCTOBER?

First, I want to thank the Commission for extending to me the opportunity to testify. Undoubtedly, the decision to do so will attract criticism from among the stipulants, yet it is entirely appropriate.

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[2] Roger J Ball to Charlie Johnson, the Governor's Office, 28 March 1997.

This matter – which has been before the Commission in many discussions, dockets and hearings over the past eight years or so – has been extremely controversial, and the Commission's determination of Docket 05-057-01 is unlikely to be less so.

After Questar filed its Application in this Docket, the Commission convened a Scheduling Conference, and issued an Order on 28 March 2005, setting up hearings for 6, 7, 11 and 12 October, including public witness testimony on 6 October. On 24 August, the hearings were postponed to November, and on 6 September, set for 1, 2, 3 and 4 November, with public witness testimony on 2 November, in amended scheduling orders.

According to the Commission's Index for Docket 05-057-01 – viewed on its website – on Tuesday 11 October, the Commission noticed hearings, including a Public Witness Hearing, on Thursday 20 October "to hear evidence and argument on approval of the Gas Management Cost Stipulation between Questar Gas Company, the Utah Division of Public Utilities, and the Utah Committee of Consumer Services", and vacated all previously scheduled hearing dates in this matter. According to the same Index, it was not until Thursday 13 October that the Stipulation itself was filed with the Commission or available to view over the Internet. Although it has done so in other cases, the Commission did not require the utility to widely publicize this Public Witness Hearing.

Consequently, the likelihood that even an unusually interested customer or member of the public might become aware of the Stipulation's existence or contents, or that the hearings had been re-scheduled, in time to attend or appear was very small. Only articles that appeared in the Salt Lake Tribune and Deseret Morning News after the hearings made me

and others aware of them. Yet the interests of its customers in the matter are collectively equal to that of Questar Gas Company.

Of course, although customers bear all the expenses of the Commission, Division, Committee, and utilities in proceedings such as this, we lack the resources to ourselves examine a utility's proposals and data, or to focus expert analysis on them. We must therefore rely upon those State agencies to protect our interests and to ensure that the utility fulfills all its obligations, including those to be forthright, to disclose all relevant information, and to protect the interests of its customers, not just those of its stockholders.

The Commission has long recognized the importance of hearing from customers directly regarding their interests, and from members of the public generally regarding their perceptions of the public interest, and has frequently convened public witness hearings in conjunction with cases likely to have significant impact. Where it is not clear that the interests of customers, or the public interest, are being adequately considered, protected, or represented by a utility, the Division, or the Committee, it is vital that customers and members of the public be enabled to express their views so that they can be taken into account by the Commission in determining its conclusions.

Questar Corporation, whose decisions regarding the transportation of coal-seam gas by its Pipeline Company triggered the painful process in this matter, has throughout been single-mindedly determined that its Gas Company's customers should pay to remedy problems those decisions caused.

The Division has a statutory mandate to take account of all facets of the matter. In joining the stipulation, and testifying only briefly in support thereof, consistent with its actions

throughout this matter it has not fully illuminated all those facets, whether for the Commission, customers, or the general public, none of whom can therefore know what they have not been told.

The Committee, which notably obtained Utah Supreme Court reversal of the original stipulation and its consequent rate increase, now asserts that the "safety exception" justifies this new stipulation and its consequent rate increase. Customers have no more than Mr Gimble's testimony during the 20 October hearing upon which to judge whether, in joining this new Stipulation, the Committee continues to vigorously represent their interests or is acting from some other motivation.

Consequently, the Commission, at its hastily-convened hearings, heard no testimony adversarial to, or even questioning the foundations of, that of the stipulants. It is simply not clear at this point in the proceedings that customers' interests, or the public interest, are being effectively represented or served.

Particularly where approval of a stipulated settlement will result in a rate increase, the Commission bears a high burden to establish that the utility's decisions have been prudent, that the agreement is truly in the public interest, and that the resultant rates will be just and reasonable. It should not rely upon bald assurances that they have been, that it is, and that they will be, particularly when two of the parties to this agreement gave similar assurances regarding the original stipulation, approval of which was reversed by the Supreme Court and then eventually rejected by the Commission because Questar had not proved it had acted prudently.

This is clearly a controversial matter, yet the private settlement negotiations between Questar, the Division and the Committee, the absence of discovery from the public record coupled with the claimed commercial confidentiality of some of it, the absence of sworn testimony and adversarial cross-examination from that record, and the brevity of the proceedings on 20 October, means that it can hardly be claimed to have had the kind of Commission review that can assure Utahns that their interests are being adequately protected by this Commission.

It is also well to recall that the Commission's determination of this Docket will occur against a background in which Questar Gas Company has been authorized to charge its customers higher prices than ever before, and Questar Corporation's stock is trading at higher prices than ever before. These realities are not unconnected, however much Questar and the adherents of certain economic and public policy ideologies would have us believe they are.

It is, therefore, altogether appropriate that the Commission should admit and take into consideration different perspectives, however constrained those may be by the circumstances brought about by the limited time and resources available to parties such as myself.

In submitting this Affidavit to the Commission, I respectfully request that this Testimony be deemed sworn testimony as though it had been offered in person, and under oath, before the Commission. I ask that the Commission afford it equal weight with the testimony heard on 20 October in considering the request to approve the Stipulation. While some may argue that I was not available for cross-examination, it is also the case that no other witness was cross-examined during those hearings.

SHOULD THE COMMISSION ADMIT INTO THE RECORD, TAKE ADMINISTRATIVE NOTICE OF, OTHERWISE CONSIDER, OR RELY UPON FOR THE PURPOSED OF DETERMINING THE STIPULANTS' REQUEST FOR APPROVAL, DOCUMENTS PRODUCED IN DOCKET 04-057-09, OR QUESTAR'S DIRECT TESTIMONY, DISCOVERY QUESTIONS AND ANSWERS, AND THE OPINIONS OF THE DIVISION'S AND COMMITTEE'S ANALYSTS IN DOCKET 05-057-01?

No. The stipulants requested such during the 20 October hearing on approval, and the Commission granted all those requests. I respectfully ask the Commission to reverse those decisions.

> COMMISSIONER BOYER: At the bottom of page 4 [of the Stipulation], footnote 4, *you've requested that the Commission take administrative notice of the information presented in the technical conference* [sic] *and also the prefiled testimony in the application*, which we have now made a part of the record.
>
> But with respect to the administrative notice, I'm assuming that the request is for all of the information that was accumulated during the technical conferences or only those enumerated witnesses in paragraph 5 [sic]?
>
> MR. BROWN: Yes. I think that there were [sic] *a substantial amount of additional material that was submitted with the application that refer to other witnesses besides ones that were actually filing prefiled testimony*. So *we would like you to take administrative notice of those, of the materials that were submitted by those individuals and the discussions attendant to that* that were appended to the application.[3]

Between September 2005 and January 2005, the Commission convened a series of technical conferences in Docket 04-057-09. A great many documents were produced in connection with them, but they are not filed under the Commission's Index for the Docket, or otherwise readily available to the public.

There were extensive presentations by Questar people, and some discussion amongst attendees, but none of the presentations or comments were made under oath, or recorded

[3] Transcript of Hearing on Gas Management Cost Stipulation, held at 1:00pm on 20 October 2005 (hereafter, Transcript): page 58, lines 6 – 25. Emphasis added.

by a court reporter or in any other contemporaneous way, it is not certain that all versions of all documents have been filed with the Commission, and no arrangements were in place for parties to respond in writing to documents, with the contents of which they may have disagreed.

A year has passed since the technical conferences began, and six months since the application and additional information were filed. Things have changed, as Mr McKay testified:

> MR. MCKAY: Sure. *The original testimony essentially narrowed all these various alternatives*, 14 plus, 15 or 16, however many there were, *down to* what we identified as *two* that effectively provided safe, reliable, and the cost was essentially the same. These two were running the C02 [sic] plant year-round.
>
> The second was precision blending with the C02 [sic] plant not being run year-round, but just there as a backup, particularly in the winter months. *At the time of our filing we leaned towards the second one* because we thought that that had the better ability for us to avoid potential fuel costs of needing to run the plant year-round.
>
> *We discovered through further discussions* with the Division and the Committee and exploration on our part, that in order for us to attract a third party in need of processing out there, they wanted the services of the plant year-round. *And so we gravitated back, really, to the first alternative*, which was running the plant year-round, but we added to that the opportunity to have third-party revenue as well as third-party fuel.[4]

There is, therefore, considerable scope for misunderstanding and error in considering these far from complete records of the technical conference proceedings, and the record does not so far reveal what else may have changed, or what has remained the same, so I respectfully suggest that the Commission ought not to rely on this material.

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[4] Transcript: page 54, line 15 – page 55 line 12. Emphasis added.

> [MR MCKAY: T]he Division and the Committee … asked over 23 different sets of data requests, which totaled to a sum of over 400 questions and nearly a thousand pages of studies, analysis and information …[5]

None of the discovery questions and answers exchanged between the stipulants are to be found through the Index for this Docket on the Commission's website. If they have been made available to the Commission, that is not clear from the record, and expert analysis of their content has certainly not been presented to, or debated before, the Commission. Since a Protective Order was requested by Questar and granted by the Commission, it is reasonable to suppose that some answers were provided under the cloak of commercial confidentiality. For all practical purposes, however, all the discovery is entirely opaque to Questar's customers and members of the public. I therefore respectfully recommend that it should be excluded from the record, and that the Commission should not rely upon it.

Although Mr McKay was sworn, he neither offered corrections nor testified that his pre-filed written testimony would be the same if offered under oath during the hearing on 20 October, and he was neither subjected to cross-examination nor questioned about that testimony by any commissioner, during the hearing. None of the other witnesses who filed testimony on behalf of Questar on 15 April 2005 were sworn or subjected to cross-examination. The record does not reflect whether they were even present.

Other than Dr Powell and Mr Gimble, neither of whom filed written testimony prior to the 20 October hearing, none of the Division's or Committee's staff or consultant analysts were sworn or subjected to cross-examination. Again, with the exception of Mr Barrow, the

[5] Transcript: page 13, lines 11 – 23.

record does not reflect whether they were even present, and we have only the hearsay testimony of Dr Powell and Mr Gimble as to the conclusions, opinions and recommendations of those analysts.

For these reasons, I respectfully ask the Commission to decline to take any notice of:

the documents, presentations and discussions during Docket 04-057-09 technical conferences; or

Questar's pre-filed direct testimony;

the discovery questions and answers; and

the conclusions, opinions and recommendations of Questar's, or the Division's and Committee's analysts, other than Mr McKay, Dr Powell and Mr Gimble, in this Docket.

I respectfully ask the Commission to exclude all of them from the record in this Docket, and not to take them into consideration in determining whether to approve the Stipulation. Some among the stipulants will likely object to this, saying that no objections were raised during the 20 October hearing, but the Commission will recall that only the stipulants appeared on that occasion.

WHAT WAS THE ROOT CAUSE OF TODAY'S SAFETY CONCERNS?

The stipulants have carefully chosen the words with which they describe the delivery of reduced Btu content gas to Questar Gas Company's customers and the potential consequent safety implications.

> [MR MCKAY: I]n the early 1990s … coal-bed methane was discovered in the Ferron area … south of Price, Utah. *This coal-bed methane*, along with other gases' composition *that was coming onto Questar's pipeline and eventually onto Questar Gas's system* created a change in the composition of the gas. Questar Gas Company determined in late 1997 that there was a significant safety issue with this.[6]
>
> [MR GIMBLE]: Dr. Pfenning concluded that *the presence of coal-seam gas on Questar Gas's distribution system* resulted in increased safety risk for customers using gas furnaces and water heaters.[7]
>
> [MR GIMBLE]: The Committee believes that *the entry of coal-seam gas on Questar Gas's distribution system* does pose a potential safety hazard …[8]

Nowhere in the record in this Docket has it so far been acknowledged, but it is vital that the Commission not forget, that the root cause of the "safety issue" (or "risk", or "hazard") was not some sudden discovery that the Btu content of the gas entering Questar Gas Company's distribution system was falling. Coal-bed methane was not mysteriously "coming onto" the system, rather it's "entry" and "presence" were the result of conscious business decisions taken by Questar managers, and we all know that.

In approving the restructuring of Questar Corporation, the Commission emphasized the importance of Questar Gas operating at arm's length from its affiliates. But today's Questar Gas and Questar Pipeline are more than corporate cousins.

While ScottishPower owns vertically-integrated electric utilities in the US and Scotland, they have separate boards and few affiliate transactions. ScottishPower's main Board may be the grandparent, but each utility has its own, separate parents.

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6 Transcript: page 9, line 19 – page 10, line 3. Emphasis added.

7 Transcript: page 33, line 25 – page 34, line 3. Emphasis added.

8 Transcript: page 34, lines 13 – 16. Emphasis added.

Questar's Gas and Pipeline companies, on the other hand, share not only a complex web of affiliate transactions but also a single top management team, which has also been the top management team of their holding company, Questar Regulated Services. Questar Corporation is the parent of all those three of its subsidiaries, not the grandparent of the Gas and Pipeline companies.

The image that comes to mind is of identical twins, each of whom has insights into the thoughts and feelings of the other, however far away they may be or for how long. There is no real independence for either of these companies from the other.

The shared top management team chose to enter into agreements to transport coal-seam gas from the Ferron area. It chose to invest substantially in facilities to enable Questar to do so. And it beat out two other companies, unaffiliated with Questar, which also wanted the business. Questar, the Division, the Committee, and the Commission all know that.

The Commission spelled out Questar Gas Company's burden in its 30 August 2004 Order in Dockets 03-057-05, 01-057-14, 99-057-20, and 98-057-12:

> We long ago put Mountain Fuel Supply Company, Questar Gas's predecessor in interest, on notice that, while we do not presume affiliate transactions to be biased, *we view customers' interests as paramount and will require in all instances that those interests not be subordinated to the interests of corporate affiliates*.[9]
>
> in 1994 we counseled Questar Gas that "*all planning options that potentially benefit [Questar Gas's] ratepayers shall be investigated, whether or not they benefit subsidiaries of the Questar Corporation*." [10]

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[9] Public Service Commission of Utah's 30 August 2004 Order in Dockets 03-057-05, 01-057-14, 99-057-20, and 98-057-12 (hereafter, 30 August Order): page 22. Emphasis added.

[10] 30 August Order: page 23. Emphasis added.

> *we simply require substantial evidence that the utility's decision-making process, under the totality of the circumstances, was not the product of a conscious or unconscious favoring of affiliate over ratepayer interests.*[11]

and on pages 25 and 26:

> *where affiliate transactions are involved, a utility seeking recovery of costs from its Utah customers must show that it placed the interests of itself and its customers first, as it explored its options and that it was not influenced by the impact of a resolution upon an affiliate.*[12]

Even while the shared top management team was contemplating the benefits to Questar Pipeline of transporting coal-seam gas, it should have had at least half an eye on the implications for Questar Gas and its customers. If it did not, it was negligent. If it did give thought to those customers' interests, but failed to timely recognize the potential safety implications, it was incompetent.

If the shared top management team had prior knowledge of the safety implications, but attached paramount importance to the revenues it could earn from transporting coal-seam gas, and consciously chose to subordinate Gas Company customers' interests to those of its stockholders, then it acted with malice aforethought towards those customers.

What people may not be quite sure about is whether Questar managers made those choices knowing their implications for their Gas Company customers, or whether they only grasped those implications when they had become inevitable. Questar has been less than forthcoming about that.[13]

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[11] 30 August Order: page 24. Emphasis added.

[12] 30 August Order: pages 25 and 26. Emphasis added.

[13] Contextually, these choices were being made in a decade that culminated in the California energy calamity and the Enron scandal. Undoubtedly, and properly, Questar's managers were focused on the stockholder benefits from the transportation revenues. But were they equally properly focused on protecting their Gas Company customers?

It is not reasonable to expect that Questar would incriminate itself, and neither the Division nor the Committee has a track record of successfully proving utility management misconduct. However, despite approving the original stipulation, the Commission simultaneously found that Questar had not proven that its decisions had been prudent. Moreover, the Commission remarked that it did not appear possible that Questar could have so proved.

Questar was certainly motivated to pull out all the stops to prove its case, but it failed, and it failed repeatedly: through the original Docket, through the Supreme Court, and then through its "marshalling of the evidence". In its 30 August 2004 Order, the Commission first outlined the prudence standard it would use, including:

> in assessing the prudence of Questar Gas's actions, we simply ask whether an unaffiliated utility acting in the best interests of its customers, in light of the circumstances and possessing the same knowledge which Questar Gas had or should have had at the time, could reasonably have responded the way Questar Gas did.[14]

and concluded that:

> Questar Gas has not met its burden of proving the prudence of its actions.[15]

AS A RESULT OF THE PROCESS THAT HAS TAKEN PLACE SINCE SEPTEMBER 2004, CULMINATING IN THIS STIPULATION, HAS QUESTAR MET ITS BURDEN TO PROVE THAT ITS ACTIONS HAVE BEEN PRUDENT?

No.

In pursuit of its single-minded determination that its Gas Company's customers should pay to remedy problems its 1990s decisions caused, Questar now wants a fresh start, a clean

[14] 30 August Order: pages 22 and 23.

[15] 30 August Order: page 26.

slate. Never mind its earlier inability to prove that the decisions it made prior to 1999 had been prudent, it would now like the Commission to focus on what it has done since August 2004 and it has somehow persuaded both the Division and Committee to join a Stipulation that refers only to the latter period.

Paragraph 1 of the Stipulation refers to the following in the Commission's 20 October 2004 Order on Request for Reconsideration or Clarification in Dockets 98-057-12, 99-057-20, 01-057-14, and03-057-05:

> In regards to Questar's requests for clarification and reconsideration, we state that *our Order does not preclude Questar from seeking recovery of CO_2 processing costs in other dockets. … We will need to wait for Questar to make whatever arguments and present whatever evidence it deems appropriate in seeking recovery of these costs, whether incurred pre- or post-May 2004*, in whatever dockets Questar may raise the issue.[16]

Mr McKay described the implementation of Questar's strategy since August 2004 when he testified:

> In the Commission Order on August 30th in 2004, on page 23 … the Commission observed that when faced with an issue like this, and I quote, "One would expect a prudent gas distribution company faced with the risks [sic] of safety issue [sic] of the magnitude faced by Questar's distribution customers to clearly identify its objective." And so we set out and our objective became to manage the heat content of gas within a safe range for our customers and to do it on a reliable basis at the least cost method.[17]
>
> We were to also, and I quote again, "to identify alternatives to meet this [sic] objective." Through the process of these technical conferences over 14 different alternatives were explored, brought up by the different parties, and then with these alternatives out there, and I quote again from the Order, "to define the method and

[16] Gas Management Cost Stipulation (hereafter, Stipulation): page 1, paragraph 1. Emphasis added.

[17] Transcript: page 11, lines 12-22.

> criteria by which it would evaluate these alternatives." And that was discussed in these technical conferences.[18]

and

> the Commission stated in their … 20th of October … Order on Request for Reconsideration or Clarification … on page 3 that "We anticipate that where such conflicts related to affiliate interest can arise, a utility seeking recovery of costs affected with such potential conflicts, the utility understands its burden of proof and persuasion and takes the steps," which we feel was the process in [sic] which we went through for the last several months.[19]

Questar's shared management team chose as its objective in September 2004 the solution of safety concerns which were by that time pre-existing, ignoring its responsibility or culpability for the decisions that had given rise to them. The alternatives, methods and criteria for evaluating them, and process that Questar has gone through subsequently have all been focused on that objective, and the Commission, Division, and Committee appear to have bought into that.

However, the Commission had previously said that:

> Our review of the time line of events and decisions preceding utility action is critical, particularly in the context of affiliate transactions, because prudence cannot be determined without first determining *when* a reasonable, unaffiliated utility would have been expected to undertake action for the protection of its customers.[20]

And had listed some of the areas in which Questar must meet its burden of proof:

> For example, *was Questar Gas prudent in timely recognizing the safety issue*; was it prudent in framing the problem (ie. "What is the lowest cost solution long term

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[18] Transcript: page 11, line 23 – page 12, line 6.

[19] Transcript: page 12, line 17 – page 13, line 2.

[20] 30 August Order: page 23. Emphasis added.

> management of the safety problem?"); was it prudent in identifying possible solutions; was it prudent in thoroughly analyzing potential solutions; was it prudent in taking (or not taking) appropriate actions once possible solutions were identified; *did it prudently place the interest of the safety of its distribution customers before the economic interests of affiliate entities*; was it prudent in developing and implementing means of postponing delivery of the increasing volumes of low heat-content gas to provide sufficient time to retrofit customers appliances, thereby achieving a truly long term solution to the safety problem; was it prudent in selecting the processing plant; was it prudent in selecting an affiliate to build, own and operate the plant; was it 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; and, *was it prudent in seeking cost recovery of all of the costs of gas processing from distribution customers*?[21]

Up to 30 August 2004, Questar had been unable to prove to the Commission's satisfaction that it had been prudent in timely recognizing the safety issue, that it had prudently placed the interest of the safety of its distribution customers before the economic interests of affiliate entities, or that it had been prudent in seeking cost recovery of all of the costs of gas processing from distribution customers. Its subsequent efforts have been focused on the situation at that time and demonstrating that its efforts since then have been prudent. But the time for Questar appropriately "to undertake action for the protection of its [Gas Company] customers", the "when" that the Commission deemed "critical" in its 30 August 2004 Order, was in the period during which it was considering transporting coal-seam gas and before it actually allowed that gas onto its pipeline.

No amount of prudent decision-making in remedying the consequences can overcome initial negligence or incompetence that brought those consequences about. Since the initial decision was imprudent, the foundation is flawed and everything built on it will be compromised:

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[21] 30 August Order: page 24. Emphasis added.

> [A] wise man, which built his house upon a rock: and the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell not: for it was founded upon a rock.
>
> [A] foolish man, which built his house upon the sand: and the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell: and great was the fall of it.[22]

No matter how carefully the framers, plumbers, electricians, roofers, and finish carpenters do their work, if the concrete pourers messed up, the building may fall.

Whether the shared top management team failed, through negligence or incompetence, to protect its Gas Company's customers, or was aware of the consequences and went ahead nevertheless, the costs of gas processing and appliance adjustment should properly fall upon the Questar stockholders, who have the power to hold that management accountable for its blunder or misconduct.

Twin A shoots and injures twin B, rushes B to the hospital, and carefully makes prudent choices about treatment and aftercare. A then asks B's spouse (C) to pay the bills for the treatment and aftercare. The police and district attorney investigate whether the shooting was intentional. A can't prove it wasn't, but B won't say, so there is insufficient evidence to charge A with deliberately shooting B. C won't pay the bills because:

> if the shooting was entirely accidental, B shouldn't have to pay to remedy A's negligence; and
>
> if the shooting was deliberate, A ought to be prosecuted, should be grateful that B won't testify, and B certainly shouldn't have to pay.

[22] Matthew 7:24-27

Whether the shared top management team was conscious of the consequences and went ahead nevertheless, or whether it blundered into them, Questar has no business asking its Gas Company customers to pay for them. And I respectfully suggest that the Commission has no business requiring ratepayers to carry the burden of either utility management misconduct or utility management incompetence.

DOES THE STIPULATION ADEQUATELY DISPOSE OF THE CONTENTION THAT QUESTAR GAS COMPANY SHOULD HAVE LITIGATED AGAINST QUESTAR PIPELINE COMPANY AT FERC?

No.

The stipulants assert that:

> The testimony filed by the Company to support its request for cost recovery included testimony from: (4) Mr. Conti and Mr. McKay, who explained that going to the FERC to prevent coal-bed methane from coming on Questar Gas' system is an action that all parties agree is not viable;[23]

But they were focused upon what could be done after August 2004. For the same reasons given previously, such a process and resulting Stipulation cannot absolve the shared management team from its failure to properly look out for the interests of Gas Company customers.

Questar Pipeline has argued that it had no alternative under federal regulation than to transport the coal-seam gas, but that does not excuse Questar Gas's failure to protect its customers by suing its twin before the FERC.

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[23] Stipulation: page 4, paragraph 5.

The shared management team has yet to provide a convincing defense of that failure, which does nothing to help meet its burden of proof, and leaves a niggling suspicion about its motives.

DO YOU HAVE ANY OTHER CONCERNS ARISING FROM QUESTAR'S DECISION TO TRANSPORT COAL-SEAM GAS?

Yes. There are three.

First, the Wexpro and Yellow Pages decisions of the Utah Supreme Court are precedents regarding the limits on the ability of a vertically-integrated utility to restructure and move assets out of rate-base into unregulated subsidiaries.

While Questar's predecessor in interest was a unified, vertically-integrated utility, the costs of the pipeline that delivers natural gas to the Payson Gate were in the rates paid by consumers. Until the shared management team accepted coal-seam gas for transportation, the pipeline's sole purpose was to bring what Questar likes to call "Company-owned gas" and other high-Btu content gas from the Uintah Basin to Gas Company customers. Those customers continued to pay all the costs of that pipeline in their rates, albeit in the guise of transportation charges that Questar Gas paid Questar Pipeline to bring gas from wells now in the paper ownership of Questar's unregulated Wexpro subsidiary.

Since the late 1990s, the Pipeline Company has been earning increasing revenues from the transportation of coal-seam gas on that pipeline. It continues to charge the Gas Company for delivering the latter's fuel to its distribution system.

Consistent with the Wexpro and Yellow Pages, Questar Pipeline should be transferring money to Questar Gas to compensate the latter's customers for the interest they have built up over its lifetime in the pipeline. Those customers' rates should be somewhat offset by transportation revenues for the coal-seam gas, at least that portion that is not purchased by the Gas Company for its customers.

As far as I have been able to determine, none of the stipulants have addressed this issue in their financial analyses. To the extent that it has not been taken into account in either the open or private process, or in the Stipulation, approval of the latter cannot result in just and reasonable rates. I respectfully conclude that the Commission must reject it.

Second, the Commission, Division, Committee and Questar all know, of course, that people buy and sell heat value, not actual gas molecules. Another aspect is that, although Questar Gas may purchase decatherms of heat value from coal-seam gas providers, the actual low-Btu molecules don't need to come to the Company's distribution system.

Again, until the shared management team accepted coal-seam gas for transportation, the pipeline's sole purpose was to bring what Questar likes to call "Company-owned gas" and other high-Btu content gas from the Uintah Basin to Gas Company customers. Those customers continued to pay all the costs of that pipeline in their rates, albeit in the guise of transportation charges that Questar Gas paid Questar Pipeline to bring gas from wells now in the paper ownership of Questar's unregulated Wexpro subsidiary.

Significant amounts of high-Btu gas are still being produced in the Uintah Basin, not only by Wexpro, but by Questar's unregulated Exploration & Production subsidiary and perhaps others. It is the coal-seam gas that the Pipeline Company accepted onto the pipeline that

has prevented an increasing proportion of the high-Btu gas from reaching the Gas Company's distribution system. That is the only immediate reason for the safety concerns that the stipulants are so exercised about.

Colorado Interstate Gas and Kern River were both, at one time, interested in building new pipelines roughly parallel to Questar's original one that had the potential to transport the Ferron coal-seam gas without it being delivered to the Gas Company's distribution system. Indeed, the possibility of Questar building such a pipeline was one of the options the shared management team could have considered to avoid creating the safety concerns.

In fact, Questar Pipeline has built a second pipeline, which could carry Ferron field coal seam gas directly to the existing Kern River Pipeline, leaving the pipeline that Questar Gas customers have been paying all the costs of for so long to bring high-Btu gas to the distribution system. However, the shared management team has been insisting throughout the process that has taken place over the past year that they cannot separate the gas streams into these different pipes.

Neither the Stipulation nor the testimony offered on 20 October make any mention of this difference of view, or attempt to show that it has been effectively resolved. I respectfully suggest that the Commission ought not to approve a Stipulation that leaves such a significant issue less than fully explored and unresolved.

And finally, I respectfully suggest an additional item for the Commission's list of areas in which Questar must meet its burden of proof:

> was Questar prudent – did it place its Gas Company's customers' interests first – in asking the Commission to amend its Tariff in Docket 98-057-T02?

Questar Gas is mandated by Commission Rule to:

> maintain the heating value established in [its] tariffs and … regulate the chemical composition and specific gravity of the gas so as to maintain satisfactory combustion in customers' appliances without repeated adjustment of the burners.[24]

On 23 April 1998, the Gas Company filed its Advice No 98-02, a Notice of Tariff Change to Utah Tariff Holders, stating that:

> Effective May 1, 1998, Questar Gas is changing the average heat content tariff provisions to match the heat content of gas that is being delivered to its system.

On 28 April, the Commission tasked the Division with conducting an investigation and a review of tariff compliance. On 1 May, the Division filed a one-page memorandum that described the issue in the following terms:

> The BTU [sic] content of the natural gas delivered to Questar Gas Company (QGC) has been decreasing which has changed the proper set point for appliances in QGC's service territory. The decline in BTU content is occurring because processing plants are now taking more of the high BTU products out of the natural gas stream and because of the recently developed technology that gets natural gas from coal seams (coal bed methane). The coal bed methane sources contain a lot of carbon dioxide that has the effect of reducing the overall BTU content. Originally QGC thought that it would be necessary to change the set points for all customers over a relatively short period of time. They estimate this would cost around $120 million. It now appears that putting a carbon dioxide extraction plant before the coal bed methane gas enters the pipeline can mitigate the problem enough so that the set point for appliances can be changed over time as new appliances come on or service personnel are at the customers [sic] locations for other activities. The first step is to get the set points and heat content limits changed.

The Division recommended "that the proposed tariff changes be approved."

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[24] Utah Administrative Code: R746-320-2.B.2 (2005).

On 11 May 1998, the Commission wrote a very brief letter to tell Questar that:

> The Commission has reviewed the proposed tariff revisions transmitted with your Advice Letter No. 98-02 filed April 23, 1998, and the Division has recommended that the Commission accept the revisions.
>
> The revisions have been approved by the Commission.

Some 7½ years later, we are still mired in the consequences of a tariff revision that was approved just 18 days after it was filed, when none of the Division or Commission personnel involved fully grasped its implications, and Questar had done little to illuminate them.

On 20 October, Mr McKay testified:

> In paragraph 8 [of the Stipulation] what we're acknowledging and agreeing is that the company is legally obligated to provide safe and reliable gas service to its customers. And what we cite here is actually what is in the statute as well as our tariff, which is that the company must regulate the chemical composition and specific gravity of the gas to maintain satisfactory combustion for the customers.[25]

So it appears that, seeking increased Pipeline Company revenue opportunities, the shared management team accepted coal-seam gas onto the pipeline, knowingly or unknowingly creating conditions that it concluded would make it impossible for the Gas Company to maintain its heating value. It sought to escape the Gas Company's legal responsibility by changing its Tariff, and has subsequently single-mindedly worked to transfer the cost of wholesale appliance adjustments to its distribution customers.

[25] Transcript: page 17, lines 2 – 10.

Approval of that Tariff revision may have been a terrible mistake. It has led to Questar wanting customers to pay the costs of its Pipeline revenue ambition at least twice: once to process the coal-seam gas, and again to adjust their appliances.

I respectfully suggest that the Commission should reject the Stipulation because this issue requires further development in analysis and testimony.

DOES THAT CONCLUDE YOUR TESTIMONY?

I would like to add that there are several issues about which I have not had time to develop my testimony if I am to file today. For example, I would like to cast further light and a different perspective on:

whether customers are being asked to pay twice;

managing the transition, which is far from fully explored in the Stipulation and testimony offered at the hearings;

the stipulants' assessments of costs and benefits to customers; and

Mr Gimble's interpretation of cost causation in this matter.

Thank you, that concludes my testimony at this time.

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Roger J Ball