

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Approval of the Conservation Enabling Tariff Adjustment Option and Accounting Orders)
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DOCKET NO. 05-057-T01

ORDER APPROVING
SETTLEMENT STIPULATION

ISSUED: October 5, 2006

By the Commission:

On September 25, 2006, pursuant to the Fourth Amended Scheduling Order issued September 13, 2006, the Commission held a hearing and a public witness hearing in this docket. Colleen Larkin Bell, of Questar Gas Company (Questar Gas or the Company), and Gregory Monson, of the law firm Stoel Rives LLP, appeared on behalf of Questar Gas, Assistant Attorney General Patricia Schmid appeared on behalf of the Division of Public Utilities (Division), Assistant Attorney General Reed Warnick appeared on behalf of the Committee of Consumer Services (Committee), Elizabeth Wolf appeared on behalf of the Salt Lake Community Action Program and Crossroads Urban Center, collectively Utah Ratepayers Alliance (URA), Sarah Wright appeared on behalf of Utah Clean Energy (UCE), Gary Dodge, of the law firm Hatch, James & Dodge, appeared on behalf of the Utah Association of Energy Users (UAE), William Evans, of the law firm Parsons Behle & Latimer, appeared on behalf of the Utah Industrial Gas Users (IGU) and Roger Ball appeared on behalf of himself.

Pursuant to the Fourth Amended Scheduling Order, the purpose of the hearings was to hear evidence and argument regarding adoption and approval of a Settlement Stipulation filed by Questar Gas, the Division, UCE and the Committee on September 13, 2006.

Procedural Background

On December 16, 2005, Questar Gas, the Division, and UCE (collectively, Joint Applicants) filed an Application seeking approval of a three-year Conservation Enabling Tariff (CET) and Demand-Side Management (DSM) Pilot Program (Pilot Program) and a proposed \$10.2 million rate reduction. The Joint Applicants represented that the Application was the culmination of a three-year process following the Company's last general rate case, Docket No. 02-057-02, in which Questar Gas, the Division, the Committee and other interested stakeholders addressed issues that arose in the case involving declining usage of natural gas per customer and DSM, among other issues, through task forces established by the Commission in that docket. Following workshops and technical conferences held on January 12, 13 and 20, 2006, Joint Applicants filed the following testimony in support of the Application on January 23, 2006: Barrie McKay, Manager of State Regulatory Affairs for Questar Gas; Dr. William (Artie) Powell, Manager of Energy Section, Mary Cleveland, Technical Consultant, David Thomson, Utility Analyst II, and Dr. George Compton, Technical Consultant, for the Division; and Dr. Howard Geller, Executive Director of the Southwest Energy Efficiency Project (SWEET) for UCE.

Several parties filed petitions to intervene, which were granted, and various parties filed pleadings and legal argument related to the Joint Application. Pursuant to the Second Amended Scheduling Order issued March 2, 2006, the Committee filed the testimony of Jacob Pous of Diversified Utility Consultants, Inc. on March 31, 2006, and the Division filed the testimony of Charles W. King of Snively King Majoros O'Connor & Lee, Inc. on April 25,

2006. The testimony of both of these witnesses addressed a depreciation study filed by Questar Gas which accounted for a portion of the proposed rate reduction.

On May 10, 2006, Questar Gas, the Division, the Committee, UAE, IGU, US Magnesium LLC, and URA filed a Rate Reduction Stipulation, proposing to resolve issues related to the rate reduction aspect of the Joint Application and agreeing that the Pilot Program should be heard on its merits. At a hearing noticed for May 17, 2006, the portions of the filed testimony of Questar Gas, Division and Committee witnesses regarding the rate reduction issues were offered and admitted. In addition, the Commission heard further testimony from witnesses Marlin Barrow, Utility Analyst for the Division, and John Wiedmayer, of Gannett Fleming, Inc., the firm that authored the depreciation study filed by Questar Gas. All of these witnesses testified in support of the Rate Reduction Stipulation. The Commission issued its Order Approving Rate Reduction Stipulation on May 26, 2006. Pursuant to that order, Questar Gas implemented a \$9.7 million rate reduction effective June 1, 2006.

Pursuant to the Second Amended Scheduling Order, the Committee filed testimony of Dr. David Dismukes of Acadian Consulting Group, UAE filed testimony of Kevin Higgins of Energy Strategies, LLC, and URA filed testimony of Elizabeth Wolf, Utility Ratepayer Advocate, Salt Lake Community Action Program, on May 15, 2006. Each of these witnesses opposed the Pilot Program. A technical conference was held on June 7, 2006, at which Commission staff posed questions to the parties regarding the Pilot Program. Pursuant to a Third Amended Scheduling Order issued June 22, 2006, the Committee filed supplemental testimony of Dr. Dismukes on June 30, 2006, and Questar Gas filed surrebuttal testimony of Mr. McKay and of Ralph Cavanagh, Energy Program Director of the Natural Resources Defense

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Council (NRDC), the Division filed surrebuttal testimony of Drs. Powell and Compton and UCE filed surrebuttal testimony of Dr. Geller on August 14, 2006. Throughout the course of the docket, discovery took place among the parties.

On September 5, 2006, at the time scheduled for the hearing on the Pilot Program, the parties informed the Commission that some, if not all, of them had reached agreement in principle on a resolution of the issues related to the Pilot Program. They requested a continuance of the hearing to September 25, 2006 to finalize and file the Settlement Stipulation, except that all parties agreed that the public witness hearing previously scheduled for the afternoon of September 5, 2006, should proceed. No party opposed continuance of the hearing. The public witness hearing was held. Four witnesses, Taz Biesinger, Executive Vice President of the Utah Home Builders Association, Dr. Philip Powlick, Manager of Utah State Energy Program with the Utah Department of Natural Resources, Curtis Clark, State Energy Manager for Facilities Construction and Management, and Clark Ivory, Chief Executive Officer of Ivory Homes, provided sworn testimony in support of the Pilot Program.

On September 13, 2006, Questar Gas, the Division, UCE and the Committee filed the Settlement Stipulation. On the same day, the Commission issued the Fourth Amended Scheduling Order noticing a hearing and public witness hearing on the Settlement Stipulation for September 25, 2006, and requiring parties wishing to do so to file testimony or position statements on the Stipulation in advance of the hearing. Questar Gas filed the testimony of Mr. McKay and the Committee filed the testimony of Eric Orton on September 21, 2006. The Division filed the testimony of Dr. Powell and UAE filed a position statement on September 22,

2006. Mr. Ball filed a position statement on September 25, 2006. No party opposed adoption and approval of the Settlement Stipulation.

The testimony of all witnesses previously filed, except the testimony previously admitted on May 17, 2006, was offered and admitted without objection during the September 25, 2006, hearing. In addition, Mr. McKay, Dr. Powell and Mr. Orton presented further testimony in support of the Settlement Stipulation. No public witness appeared at the public witness hearing on September 25, 2006.

Standard for Approval of Stipulations

Utah Code Ann. § 54-7-1(1) provides that “[i]nformal resolution, by agreement of the parties, of matters before the commission is encouraged as a means to: (a) resolve disputes while minimizing the time and expense that is expended by: (i) public utilities; (ii) the state; and (iii) consumers; (b) enhance administrative efficiency; or (c) enhance the regulatory process by allowing the commission to concentrate on those issues that adverse parties cannot otherwise resolve.”¹ The statute further provides that the Commission “may adopt any settlement proposal entered into by two or more of the parties”² “at any stage of the adjudicative procedure.”³ The Commission “may adopt a settlement proposal if: (A) the commission finds the settlement proposal is just and reasonable in result; and (B) the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result.”⁴ Finally, the Commission

¹ Utah Code Ann. § 54-7-1(1).

² *Id.* at § 54-7-1(3)(b).

³ *Id.* at § 54-7-1(3)(e)(i). *See also Utah Dept. of Admin. Services v. Public Service Comm’n*, 658 P.2d 601, 613-14 (Utah 1983).

⁴ *Id.* at § 54-7-1(3)(d)(i).

“shall conduct a hearing before adopting a settlement proposal if requested by: . . . (C) an intervening party to the adjudicative proceeding.”⁵

Accordingly, we must determine whether the Settlement Stipulation in this case is just and reasonable and in the public interest. In making this determination, we refer to the definition of just and reasonable in section 54-3-1: “The scope of definition ‘just and reasonable’ may include, but shall not be limited to, the cost of providing service to each category of customers, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.”⁶ In reviewing a stipulation, the Commission may also consider whether it was the result of good-faith, arms-length negotiations.⁷

Description of the Settlement Stipulation

Without in any way amending or altering the terms of the Settlement Stipulation, the following description of the Settlement Stipulation is provided: The Settlement Stipulation provides for implementation of a three-year Pilot Program with CET and DSM components. An initial credit will be made to the CET balancing account in the amount of \$1.1 million. This amount was calculated as though the CET had been in effect from January 1, 2006, through June 30, 2006. This credit is proposed to be amortized through a reduction in rates in conjunction with the Company’s fall 2006 Account 191 pass-through filing. The Stipulation also provides that Questar Gas will transfer \$1.3 million from unexpended funds included in rates for research

⁵ *Id.* at § 54-7-1(3)(e)(ii).

⁶ *Id.* at § 54-3-1.

⁷ *Utah Dept. of Admin. Services*, 658 P.2d at 614, n.24.

and development to the DSM deferral account effective with the Commission order approving the Settlement Stipulation. Interest will accrue on the CET balancing account and the DSM deferral account at the rate approved for Account 191 balances.

Questar Gas will implement the CET effective on the first of the month following Commission approval of the Stipulation. After the CET is effective, accruals will be made to the balancing account as if the CET had been effective starting July 1, 2006. Accruals for July and subsequent months will not be amortized until the second semiannual amortization. Questar Gas will make amortization filings concurrently with future pass-through filings.

There are significant limitations on CET balancing account deferrals and amortizations in the Settlement Stipulation. Through August 2007, accruals to the CET balancing account are capped at a cumulative 12-month total equal to one percent (1%) of the Company's total GS revenue (GS-1 and GSS). In addition, during the first year of the CET, amortizations of the CET balancing account are capped at a cumulative 12-month total equal to one-half of one percent of the Company's total GS revenues. Any remaining balance in the account will carry forward for future amortization.

The Settlement Stipulation also provides for a review of the CET during the first year of the Pilot Program (1-year Review). The 1-year Review allows the CET to go into effect for approximately one year so that parties can review the effects of full decoupling and continue to study and develop proposals on possible alternatives. The parties agreed that DSM programs should be implemented as soon as possible to provide the opportunity for benefits to customers during the winter 2006-2007 heating season rather than waiting for an additional period of time while parties study and refine alternative proposals. During the 1-year Review, parties may

propose an alternative or alternatives or advocate continuance of the CET with or without limitations. Questar Gas will provide available data with respect to the CET as requested by any other party. The 1-year Review applies only to the CET component of the Pilot Program; the DSM component is intended to continue for the full three-year Pilot Program.

The Settlement Stipulation proposes that the Commission schedule a technical conference on or about April 18, 2007, so that the parties and the Commission may review the status of proposed alternatives or proposals to continue the CET. This will allow parties to learn whether other parties plan to file written testimony or position statements on alternatives to or continuation of the CET. The Settlement Stipulation provides that any party wishing to do so must file written testimony or position statements proposing alternatives to or continuation of the CET by June 1, 2007.

Assuming one or more parties files written testimony or position statements by June 1, 2007, the parties agree to cooperate in scheduling proceedings so that all evidence and argument is presented and the matter can be submitted to the Commission for decision not later than September 14, 2007. The parties anticipate that the hearings in this proceeding would take place near the beginning of September 2007, so that a decision from the Commission could be made by the end of September for how to proceed for years 2 and 3 of the Pilot Program. In response to questioning at the hearing, the parties to the Settlement Stipulation confirmed that all of its benefits with respect to rights of parties to process, notice and other procedures related to the 1-year Review and other aspects of the Pilot Program apply to parties as defined in paragraph 16 of Settlement Stipulation.

The Settlement Stipulation provides that the Natural Gas DSM Advisory Group (DSM Advisory Group) will collaborate with the Company in its filing an application no later than 60 days following the date the Settlement Stipulation is approved requesting expedited approval of DSM programs and energy-efficiency initiatives. The parties will work in good faith as members of the DSM Advisory Group to recommend DSM programs that will have an immediate benefit to customers in the winter 2006-2007 heating season. In anticipation of Commission approval of these DSM programs, Questar Gas will take all necessary and reasonable steps to be able to execute such DSM Programs upon receiving Commission approval. The DSM Advisory Group will continue to collaborate with Questar Gas in its filing for Commission approval of additional cost-effective DSM Programs as soon as reasonably possible after Commission approval of the first set of DSM Programs. Questar Gas agrees to propose DSM Programs during the first year with total anticipated costs of \$2 to \$5 million, of which at least \$250,000 will be allocated to the Low-Income Weatherization Program currently funded by Questar Gas or other low-income energy-efficiency programs. The Settlement Stipulation provides that the DSM aspect of the Pilot Program will run for the entire three-year period of the Pilot Program. Questar Gas, with input from the DSM Advisory Group, will seek Commission approval of DSM programs and expenditures.

The Settlement Stipulation requests that the Commission issue accounting orders establishing the CET balancing account and the DSM deferral account as requested in the Joint Application and as set forth in the proposed tariff sheets attached to the Settlement Stipulation.

Discussion, Findings and Conclusion on Settlement Stipulation

As noted above, testimony in support of adoption and approval of the Settlement Stipulation was provided by Mr. McKay for Questar Gas, Dr. Powell for the Division and Mr. Orton for the Committee. No party provided testimony in opposition to adoption and approval of the Settlement Stipulation and no party otherwise opposed its adoption.

Mr. McKay testified that the CET decouples the Company's recovery of its distribution non-gas costs from its sales volumes per customer, effectively removing any incentive Questar Gas may have to promote increased sales of natural gas and that it thus addresses both of the issues raised during the task force process. First, the CET addresses the impact on the Company's income of declining use per customer. Second, the CET removes a barrier to the Company's willing support of energy-efficiency programs. Questar Gas believes that it will have adequate incentives to promote energy-efficiency programs during the first year of the Pilot Program. Mr. McKay also testified that the Settlement Stipulation provides a workable structure for the formulation, review, approval, implementation and evaluation of the full decoupling mechanism and of energy-efficiency measures authorized by the Commission. The Settlement Stipulation calls for a collaborative process to identify and propose energy-efficiency programs for Commission approval on an expedited basis and, because of the CET, allows the Company to participate in this process. Mr. McKay testified that early implementation of cost-effective energy-efficiency programs is desirable. Mr. McKay also noted that the Settlement Stipulation provides for a \$1.1 million rate reduction through the initial amortization of the CET balancing account.

Mr. McKay provided testimony regarding state and national energy-policy groups that have made recommendations regarding implementing alternative rate designs or tariffs designed to promote energy efficiency and conservation. Among these groups are the American Gas Association, the NRDC and NARUC. Copies of their recommendations were attached as exhibits to the Application. On April 25, 2006, Governor Jon Huntsman announced the “Utah Policy to Advance Energy Efficiency in the State.” This policy sets a goal to reduce energy consumption in Utah by 20% by 2015. As part of the effort, the policy states: “State Government will work with stakeholders to identify and address regulatory barriers to increased deployment of energy efficiency.” In July 2006, the “National Action Plan for Energy Efficiency” was published. This report is a plan developed by more than 50 leading organizations in pursuit of energy savings and environmental benefits through electric and natural gas energy efficiency. The report’s five recommendations are:

1. Recognize energy efficiency as a high-priority energy resource.
2. Make a strong, long-term commitment to implement cost-effective energy efficiency as a resource.
3. Broadly communicate the benefits and opportunities for energy efficiency.
4. Promote sufficient, timely and stable program funding to deliver energy efficiency where cost-effective.
5. Modify policies to align utility incentives with the delivery of cost-effective energy efficiency and modify rate making practices to promote energy-efficiency investments.

Mr. McKay testified that approval of the Settlement Stipulation addresses the critical issues raised by these and other state, federal and industry “calls for action” on the subject of energy efficiency. Based on the foregoing, Mr. McKay provided his opinion that adoption and approval of the Settlement Stipulation is in the public interest.

Dr. Powell testified that the Division supports the Settlement Stipulation because it is consistent with the Pilot Program proposed in the Application and addresses concerns raised regarding it. It allows parties concerned with the CET additional time to develop alternatives without delaying implementation of DSM. It requires Questar Gas to file comprehensive DSM programs for approval within 60 days. It addresses the concern of some parties about a perceived shifting of risks by limiting the Company's CET accruals and amortization of the accruals during the first year. The Settlement Stipulation provides for a \$1.1 million rate reduction this fall, but provides that amortization of further accruals will not take place until the spring of 2007. Dr. Powell also testified that the three-year pilot program for DSM programs is necessary to allow sufficient time for DSM programs to develop and mature to a point that meaningful evaluations and recommendations can be presented to the Commission. Dr. Powell confirmed that the Division will monitor and review the results of the Pilot Program at the end of each quarter during the first year of the Program and annually thereafter. The Division will submit reports to the Commission that include an analysis of the results of the Pilot Program. Based upon these factors and others, Dr. Powell testified that adoption and approval of the Settlement Stipulation is in the public interest.

Mr. Orton testified that the Committee has always been supportive of cost-effective DSM programs, but was concerned about the CET mechanism. The Committee believes there are better ways than the CET to remove any barrier to willing participation by Questar Gas in implementing DSM programs. The Settlement Stipulation provides a window of time for the Committee and other parties to more fully develop alternatives to the CET. At the

same time, the Settlement Stipulation allows Questar Gas to initiate some DSM programs in the coming heating season.

Mr. Orton testified that the Committee believes customers will benefit from implementation of cost-effective DSM programs for a period of three years. It believes that establishment of the Natural Gas DSM Advisory Group will assist in the development of cost-effective programs. Mr. Orton cites the fact that the Settlement Stipulation will create a “laboratory setting” to test the Company’s good faith in pursuing cost-effective DSM programs, to test the appropriateness of the CET and to allow time for parties to develop alternatives. The Committee believes the limits on CET accruals and amortization of accruals during the first year of the Pilot Program limits customers’ exposure resulting from implementation of the CET. Mr. Orton also cited the \$1.1 million rate reduction, the right to file a general rate case during the Pilot Program and the fact that the Committee has only agreed to limit its legal remedies for one year as additional reasons the Stipulation is in the public interest. He testified that the Settlement Stipulation is a fair and reasonable compromise of the issues in the docket and that its adoption and approval is clearly in the public interest.

Position statements were filed by UAE and Mr. Ball. While these statements were not filed as sworn testimony and were not admitted as evidence in the record, they establish that while disagreeing with the position of the parties of the stipulation, those parties also support the early implementation of cost-effective DSM measures and that they do not oppose adoption and approval of the Settlement Stipulation.

Based upon the foregoing uncontroverted evidence, the Commission finds and concludes that adoption and approval of the Settlement Stipulation is just and reasonable and in

the public interest. It provides a means to implement energy-efficiency programs and measures that all parties agree will be in the public interest. It provides an opportunity through the 1-year Review for parties to propose alternatives to or continuation of the CET with or without limitations. During the first year of the Pilot Program, the parties will gain experience with the Pilot Program and will have the opportunity to further study and refine proposals related to the CET or alternatives. In addition, the Settlement Stipulation provides a further rate reduction of \$1.1 million through amortization of the initial balance in the CET balancing account.

The parties to the Settlement Stipulation agree and we find and conclude that it provides a reasonable compromise of their positions in this docket and that it is just and reasonable and in the public interest. Although other parties in this docket do not necessarily agree with the positions advocated by the parties to the Settlement Stipulation, they have chosen not to oppose adoption and approval of the Settlement Stipulation. They have reserved their right to advocate whatever positions they wish subsequently during the course of the Pilot Program.

The Settlement Stipulation was the product of a process that began with study and analysis of the issues nearly four years ago, it was not entered into until the parties had fully developed their positions through the filing of testimony and argument and discovery in this docket, it was the result of vigorous arms-length negotiations and the parties were assisted in the development of their positions and in their negotiations not only by their staffs and employees, but by outside experts. As discussed previously, the evidence in the record supports our finding and conclusion that adoption and approval of the Settlement Stipulation is just and reasonable and in the public interest.

Based on the foregoing and good cause appearing, the Commission issues the following Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Settlement Stipulation is approved by the Commission.
2. Questar Gas is authorized to establish and utilize a CET balancing account (191.9) and a DSM deferral account (182.4) as provided in the Joint Application as modified by the Settlement Stipulation. The tariff sheets pages 2-18, 2-19 and 2-20 attached to the Settlement Stipulation are approved.
3. Questar Gas shall transfer \$1.3 million of unexpended research and development funds to Account 182.4.
4. Questar Gas shall credit \$1.1 million to Account 191.9.
5. A Natural Gas DSM Advisory Group is established consisting of the Division, the Committee, Questar Gas and any other interested party. Any party wishing to participate in the Natural Gas DSM Advisory Group may do so by providing notice to Questar Gas of its desire to participate and shall be entitled to receive notice of meetings of the Natural Gas DSM Advisory Group following the provision of such notice.
6. The Natural Gas DSM Advisory shall collaborate with Questar Gas in its filing an application no later than 60 days following the date of this Order requesting expedited approval of DSM programs.
7. A technical conference is scheduled on April 18, 2007 at 9:30 a.m. in Room 427, Heber M. Wells State Office Building, for the purpose of discussing the plans of the

parties with respect to proposals for alternatives to or continuation of the CET during the remaining two years of the Pilot Program as provided in the Settlement Stipulation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the technical conference should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah 84111, (801) 530-6713, at least three working days prior to the technical conference.

Subject to the terms of the Settlement Stipulation preserving the right of parties to raise issues regarding the jurisdiction of the Commission to approve the Settlement Stipulation or regarding whether the Commission may lawfully approve the CET or the Pilot Program, pursuant to Utah Code Ann. §§ 63-46b-12 and 54-7-15 agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63-46b-14 and 63-46b-16 and the Utah Rules of Appellate Procedure.

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DATED at Salt Lake City, Utah this 5th day of October, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#50842