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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint Application of Questar Gas Company, the Division of Public Utilities, and Utah Clean Energy for the Approval of the Conservation Enabling Tariff Adjustment Option and Accounting Orders	Docket No. 05-057-T01 **OBJECTION OF QUESTAR GAS TO ADMISSION OF PORTIONS OF SURREBUTTAL TESTIMONY OF DAVID E. DISMUKES**

Questar Gas Company ("Questar Gas" or the "Company"), pursuant to Utah Administrative Code R746-100-3.H and R746-100-10.F.2.c, objects to admission of portions of the Surrebuttal Testimony of David E. Dismukes, Ph.D. ("Dr. Dismukes"), filed on behalf of the Utah Committee of Consumer Services ("Committee") on August 31, 2007 in this docket. The portions of the testimony to which this objection pertains are lines 51 to 61, 111 to 118, 198 to 372, 627 to 657 and accompanying Exhibits SR CCS

1.2 and SR CCS 1.3. The grounds for the objection are that the foregoing testimony is not proper surrebuttal, that its admission will prejudice the Company and the Division of Public Utilities ("Division") and that the exhibits are not properly footnoted and accompanied by workpapers as required by rule.

PROCEDURAL BACKGROUND

This docket commenced on December 16, 2005 when Questar Gas, the Division and Utah Clean Energy filed a Joint Application seeking approval of a Conservation Enabling Tariff ("CET") and Demand-Side Management ("DSM") Pilot Program. Following technical conferences, discovery, the filing of motions, testimony, and memoranda, hearings and adoption and implementation of a rate reduction stipulation, almost all of the parties to the case entered into a Settlement Stipulation providing that the Pilot Program, with some modifications, would go into effect, but that there would be a one-year review of the CET. The Commission approved the Settlement Stipulation following hearing in an Order Approving Settlement Stipulation ("Order") issued October 5, 2006.

Following entry of the Order, the CET was implemented on November 1, 2006, effective as of January 1, 2006. In addition, the Company, with significant input from the DSM Advisory Group, filed an application on December 5, 2006, requesting approval of six energy-efficiency programs in support of a comprehensive market-transformation initiative. The Commission approved the implementation of the DSM programs, and they have been successfully implemented.

Pursuant to the Order, discovery concerning the CET continued and a technical conference to initiate the one-year review was held on April 19, 2007. The Committee sent sets of discovery requests to the Company that were answered in May 2006 and

February 2007, providing data and material necessary to run a model attempting to determine the relationship between commodity prices of natural gas and usage per customer. At the technical conference, the Company and the Division stated that they intended to support continuation of the CET and the Committee stated that it intended to oppose continuation of the CET. These parties filed direct testimony and position statements on June 1, 2007. Thereafter, a scheduling conference was held and parties filed rebuttal and surrebuttal testimony on August 8 and August 31, 2007, as scheduled, in preparation for a hearing to commence on September 18, 2007.

The Company, Division and Utah Clean Energy filed testimony in support of continuation of the CET for the balance of the Pilot Program. The Committee and UAE filed testimony recommending discontinuance of the CET.

Questar Gas is objecting to admission of certain portions of the filed testimony of Dr. Dismukes at this time rather than waiting for the testimony to be offered during the hearing to provide notice to the Commission and the Committee of this objection prior to the commencement of the hearing.

FACTS

In testimony filed June 1, 2007, Dr. Hansen presented a report on various aspects of the CET ("Hansen Report"). Section 5.2 of the Hansen Report provided a statistical analysis of whether the CET shifted economic and commodity price risks from Questar Gas to its customers as claimed by witnesses, including Dr. Dismukes, in the earlier phase of this proceeding and as argued by Dr. Dismukes at the April technical conference. Based on the analysis, Dr. Hansen concluded that the CET did not shift economic and commodity price risks from Questar Gas to its customers.

In rebuttal testimony filed August 8, 2007, Dr. Dismukes challenged this conclusion on the ground that it was, in Dr. Dismukes' opinion, "inconsistent with decades of academic literature and common utility and regulatory practice." Dismukes Rebuttal at lines 46 to 48. Dr. Dismukes explained the basis for his opinion, citing price elasticity studies and common sense, and stated that Dr. Hansen's statistical analysis "is more than likely fraught with a variety of data, measurement, and estimation problems that make any of the empirical conclusions reached in the study unusable in this proceeding." *Id.* at lines 247 to 249. However, Dr. Dismukes did not identify any data, measurement or estimation problems in the analysis or offer his own analysis of the issue.

In rebuttal testimony, two witnesses for Questar Gas, Barrie L. McKay and Russell A. Feingold, cited the conclusion of Dr. Hansen's analysis in support of their testimony that the CET did not shift risks from Questar Gas to its customers, but did not evaluate the underlying, data, measurements or estimations in the study.

Purporting to rebut Messrs. McKay and Feingold and Division witnesses that did not rely on Dr. Hansen's analysis, Dr. Dismukes' surrebuttal testimony provided a detailed explanation of the supposed flaws in Dr. Hansen's analysis, cited an American Gas Association ("AGA") price elasticity study and provided the conclusions of Dr. Dismukes' own analysis that he claims demonstrate that the CET does shift economic and commodity price risk from the Company to its customers. Dismukes Surrebuttal at lines 111 to 118, 198 to 372 and Exhibits SR CCS 1.2 and SR CCS 1.3. Although he discussed the analysis, all that he provided regarding the analysis is two tables of results of one page each. Exhibits SR CCS 1.2 and SR CCS 1.3. This testimony does not respond to anything said in the rebuttal testimony of the Company and Division witnesses

and, in fact, responds to the direct testimony of Dr. Hansen and not to anything in the rebuttal testimony of Dr. Hansen. As Dr. Hansen stated in his surrebuttal testimony, "Dr. Dismukes testified that the statistical model presented in Section 5.2 of the Hansen Report 'is more than likely fraught with a variety of data, measurement, and estimation problems' (Dismukes, August 8, 2007, p. 12), but he failed to specifically identify even one of these problems." Hansen Surrebuttal at lines 33 to 36. *See also* Hansen Surrebuttal at 290 to 293, 509 to 511, and 602 to 605. Furthermore, the Exhibits do not provide the backup information and sourcing required by rule R746-100-10.F.2.c.

The AGA study relied on by Dr. Dismukes was available in March 2007. Dr. Dismukes' statistical analysis relies on Department of Energy, Energy Information Administration that is always available and updated regularly and data provided by Questar Gas in May 2006 and February 2007.

The Division sent data requests to the Committee regarding Dr. Dismukes' analysis. The Committee responded to those data requests at 2:24 pm on Friday, September 14, 2007, barely more than one working day prior to the commencement of the hearing in this matter. Although Questar Gas has not had opportunity to thoroughly review the Committee's response, it appears that Dr. Dismukes' analysis relies on data that has been available to him for many months.

Likewise, in his surrebuttal testimony, Dr. Dismukes volunteers a comparison of the consideration of revenue decoupling to the consideration of electric retail competition and proposes for the first time a specific lost revenue adjustment ("LRA") mechanism to be employed by the Commission in lieu of the CET. Dismukes Surrebuttal at lines 51 to 61 and 627 to 657. The former testimony does not respond to any testimony offered by

any witness in rebuttal. The latter testimony responds to a criticism by Division witnesses, Arite Powell, Ph.D, of Dr. Dismukes' recommendation in his direct testimony that the Commission implement an LRA in lieu of the CET on the ground that he had failed to provide any specific recommendation of how the LRA would work. Dr. Dismukes offers no excuse for not bringing up what he characterizes as a "hauntingly familiar" debate and an "uncanny similarity" between the discussion of revenue decoupling and electric retail competition or the "simple" LRA mechanism he now proposes in earlier rounds of testimony.

ARGUMENT

The Commission has inherent authority to manage the conduct of its proceedings, including the right and responsibility to exclude evidence offered that is inappropriate and that does not comply with the Commission's rules. The purpose of rebuttal testimony is to respond to issues raised in direct testimony. The purpose of surrebuttal testimony is to respond to issues raised in rebuttal testimony. If the Commission allows parties to abuse the process by withholding evidence that should have been offered in an earlier round of testimony for a later round without reasonable excuse, it is likely that the conduct of proceedings will be impaired to the prejudice of parties playing by the rules.

Questar Gas readily acknowledges that the Commission is generally liberal in its admission of evidence. However, Dr. Dismukes' testimony reflects a pattern of withholding specifics regarding positions and recommendations until the last round of testimony after it is too late for other witnesses to directly rebut the testimony. Dr. Dismukes does not even attempt to excuse his delay in bringing forward information he regards as relevant until the last round of testimony. This type of gamesmanship

should be discouraged. The best way to do that is to refuse to admit the portions of Dr. Dismukes' surrebuttal testimony identified in this objection.[1]

Rule R746-100-10.F.2.c states:

> Exhibits shall … be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations.

Exhibits SR CCS 1.2 and SR CCS 1.3 are simply the results of runs of Dr. Dismukes' analysis that purportedly demonstrate problems with Dr. Hansen's analysis and provide what Dr. Dismukes believes is a more correct result. They do not provide explicit, detailed sources of information and the inputs for the model, the methods used in the statistical computations or the formulas or algorithms used in the model. The Committee's provision of this information barely more than one business day before the

[1] Earlier in this docket when scheduling proceedings, the Commission Secretary informed the parties that the Commission wanted the parties to file surrebuttal testimony as opposed to presenting it live in the hearing. Even if that rule is not enforced given Dr. Dismukes' abuse of the process, all who practice before the Commission are aware that anything but the briefest "live surrebuttal" tries the patience of the Commission and is, therefore, unlikely to effectively persuade the Commission. Certainly, live presentation of rebuttal to detailed criticisms and newly offered statistical analyses is difficult and puts Dr. Hansen in an unfair position. If Dr. Dismukes believed that he had adequately rebutted Dr. Hansen's analysis by citing price elasticity studies, common sense and unidentified, but "likely," flaws in the analysis, he should not object to the Commission making findings about the study giving appropriate consideration to the criticisms of it in his rebuttal testimony. On the other hand, allowing him to present this testimony in the surrebuttal round will prejudice Questar Gas and the Division. Dr. Dismukes had nine and one-half weeks following the filing of the Hansen Report to prepare his criticisms of it and to run the analysis for which he had data for six months. It is difficult to believe that he only came up with specific issues and his own analysis in the three and one-half weeks after Company and Division witnesses cited the results of the analysis.

hearing is to commence is simply too late for the parties to adequately prepare for hearing on them.

Dr. Dismukes' obvious attempted disparagement of revenue decoupling by attempting to link it to electric retail competition in California in the final round of testimony is prejudicial. Whether there are in fact any similarities between the two positions other than Dr. Dismukes' superficial claim that they are both "speculative" is a subject that might justify extensive analysis, none of which would be particularly relevant in the context of this proceeding. However, the Commission need not concern itself with those deep metaphysical issues because Dr. Dismukes "insight" is not offered in response to the rebuttal testimony of any other person.

Finally, while Dr. Dismukes' proposed that the Commission should adopt an LRA mechanism in lieu of the CET in his June 1, 2007 direct testimony, he failed to recommend any particular mechanism. In response to valid criticism of his recommendation on the ground that LRA mechanisms are complicated and contentious and he had not even proposed a specific mechanism, he responds in surrebuttal that the answer to that admittedly "substantive issue" is simple: the Commission should simply allow Questar Gas an LRA adjustment in the amount of the estimated savings from its DSM programs pending true-up. If this is indeed a simple and sensible recommendation, one can only speculate why the simple notion did not occur to him when preparing his direct testimony. By offering it in surrebuttal, he has denied the Commission and the parties any meaningful opportunity to examine it. Has it been used in any other jurisdiction? If so, what were the results? Is it just and reasonable? What would its

application mean in the context of this case? All of these questions will go unanswered because Dr. Dismukes left the issue too late.[2]

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the Commission should sustain this objection and not admit lines 51 to 61, 111 to 118, 198 to 372, 627 to 657 and Exhibits SR CCS 1.2 and SR CCS 1.3 to the Surrebuttal Testimony of Dr. Dismukes filed August 31, 2007.

RESPECTFULLY SUBMITTED: April 2, 2018.

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[2] The Commission will recall that a similar circumstance arose in the earlier phase of this case. Dr. Dismukes urged the Commission to consider incentive regulation proposals and statistical recoupling in the final round of his testimony without offering any particulars of how these complex recommendations might be implemented. In fact, one of the justifications for the Settlement Stipulation and the one-year review was that Dr. Dismukes needed additional time to put some meat on the bones of his late recommendations. Yet, here we are a year later with no meat on those bones and the late introduction of another new skeleton.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served upon the following by e-mail September 17, 2007:

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