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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 UTAH COMMITTEE OF CONSUMER SERVICES REQUEST TO AMEND RESPONSE AND MEMORANDUM IN SUPPORT OF RATE DECREASE

The Utah Committee of Consumer Services (Committee) submits the following Request to Amend, and pursuant to the March 2, 2006 Second Amended Scheduling Order, submits its legal argument in support of the rate decrease the Committee requested in its February 2, 2006 Response to Joint Application filed by Questar Gas Company (Questar), the Division of Public Utilities (Division), and Utah Clean Energy.

REQUEST TO AMEND PLEADING

As provided by Utah Administrative Code R746-100-3(D), and for the reasons set forth below, the Committee requests that the Utah Public Service Commission (Commission) grant the Committee leave to amend its February 2, 2006 Response to the Joint Application. This amendment better defines the nature and scope of the rate relief the Committee seeks. Granting this request will not alter the schedule for this proceeding, nor will it impede or prejudice any party. The Committee contends that the amendment may narrow issues, resulting in a more efficient use of the Commission's and the parties' resources.

Except as described herein, the Committee reaffirms its February 2, 2006 Response. By requesting to amend its response to the Joint Application, the Committee expressly reserves the right to conduct additional discovery and submit testimony and argument pertaining to the Joint Application according to the Commission's scheduling order now in effect.

I. Justification of request for leave to amend.

The applicants' chosen timing and character of the filing, and the fact that supporting testimony was filed only seven days before the hearing, limited the Committee's initial review and response to the Joint Application. The Divison acknowledges that prior to signing and filing its Joint Application, the Division conducted "no in-depth analysis or review" of the rate reductions requested in the

application. *Prefiled Direct Testimony of David T. Thomson, page 3, line 4 to page 4, line 8.* Mr. Thomson also states that his testimony upon the depreciation study and resulting rate decrease was filed even though the Division "has not performed a detailed review or analysis of the study or its results prior to the issuance of this testimony." *Thomson, page 4, line 6 to 8.* The Division, like the Committee, was doing its best with the limited information Questar provided.

The proposed rate decrease resulting from the adoption of a new depreciation method is minimally supported. On the other hand, the applicants provide no evidence addressing a rate change due to a changed capital structure and a reduced rate of return. Questar and the Division propose a $3.2 million rate reduction arising from a December 15, 2005 financing transaction affecting Questar's debt and equity ratio, and a $3.6 million rate decrease described by Questar as voluntary, and by the Division as due to "a reduction in the rate of return used to calculate rates". *Direct Testimony of Barrie L. McKay, page 20, line 476 to 485; Direct Testimony of Dr. William A. Powell, page 9, line 149 to 151.* The Joint Application and the direct testimony do not address Questar's capital costs and rate of return, presenting only unscrutinized assertions.

Due to the absence of detailed information from which one could develop a more precise response, the Committee initially requested that the Commission only order the rate reduction resulting from the depreciation adjustment and on an interim basis pending a general rate case. Having been allowed the time to conduct a more deliberate

evaluation of the Joint Application, including an expert's review of the depreciation study, the Committee has determined that it can now respond in a more thorough manner to the proposed rate decrease due to Questar's proposed new depreciation method. In addition, the Committee can provide a more precise and comprehensive response to the other proposed rate changes and accounting adjustments..

II. Amended response to proposed rate changes and accounting adjustments.

a. The rate decrease due to the adoption of a new depreciation method.

The Commission may deem the Joint Application to be a proposal for a rate decrease that the Commission may grant unconditionally. The Commission has the inherent authority to implement the proposed rate decrease. *Utah Code §§54-4-1, 54-4-2, 54-4-4.* Utah Code Section 54-7-12(2)(b) authorizes the Commission to accept the proposal to adopt the new depreciation methodology and decrease rates by the amount the Commission determines, after hearing, is just and reasonable:

> The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable. If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it seeks to suspend, alter, or modify the rate decrease.

The Joint Application proposes a $4.8 million rate decrease that Questar and the Division testify results from the adoption of a new depreciation methodology. *Thomson, page 4, line 9 to 15; McKay, page 18, line 433 to page 19, line 474.* The Committee contends that this proposed rate decrease should be as the Commission determines to be

just and reasonable as supported by the evidence admitted at the May 17, 2006 hearing. Direct testimony filed by the Committee indicates that based upon the analysis so far, the depreciation related rate decrease should be between $7.8 million and $9.7 million. *Direct Testimony of Jacob Pous, page 6, line 13 to 20.*

The Commission's traditional practice is that changes in ongoing, normal operating expenses can only be properly determined and rates fixed accordingly, in a general rate case. This practice is consistent with Utah Supreme Court opinions upon the issue. *Utah Department of Business Regulation v. Public Service Commission of Utah, 720 P.2d 420, 421 (Utah 1986), "The legislature was careful to limit such accelerated pass-through procedures to use in connection with increased fuel or energy costs. All other utility costs were to be considered only in general rate-making proceedings."* Indeed, the depreciation study upon which Questar and the Division base the requested rate decrease in this docket, was the result of a general rate case and was to be completed within one year of December 30, 2002. [1] *In the Matter of the Application of Questar Gas Company for a General Increase in Rates and Charges, Docket No. 02-057-02, Report and Order, December 20, 2002.*

[1] The study's author Gannett Fleming first presented a draft on December 9, 2005, some two years late. *McKay, page 19, line 454.* The study was not finalized until January 12, 2006, and was not filed with the Commission until January 23, 2006.

However, the proposed depreciation related rate decrease is distinctly calculable and independent of any other contention or relief requested by the Joint Application. No other item of relief or rate change is necessary, nor needs to be considered, in order for the Commission to properly exercise its authority over Questar by adopting the new depreciation method and adjusting rates accordingly. The Commission may, with respect to the depreciation related rate decrease only, find that an abbreviated proceeding to adjust Questar's rates is appropriate and is supported by substantial evidence. *Utah Department of Business Regulation v. Public Service Commission of Utah, 614 P.2d 1242, 1249-1250 (Utah 1980).*

Should the Commission find that Questar's and the Division's jointly proposed rate decrease should not be granted outside of a general rate case, the Commission may require Questar to carry "a proper and adequate depreciation account" as the Commission "from time to time" determines. *Utah Code §54-4-24.* By using the deferred account provided for in Section 54-4-24, ratepayers' interests in the reduced depreciation expenses, will be determined in the next general rate case.

b. The rate decrease due to the December 15, 2005 financing transaction.

The Joint Application proposes a $3.2 million rate reduction that results from the December 15, 2005 financing transaction described by Mr. McKay. *McKay, page 20, line 476 to 485.*[2] To order a rate change resulting from a utility's changed capital structure

[2] This rate decrease proposal was born on December 15, 2005, one day before the Joint Application was filed, when Questar refinanced long term debt.

without examining all expense, revenue and rate base items, represents an abandonment of utility ratemaking principles.

There is no analysis or statistical evidence to sustain the applicants' assertions that the Joint Application considers all factors relevant to debt/equity ratios for a regulated utility and that $3.2 million represents the full amount of the adjustment necessary for a just and reasonable rate. The Joint Application and supporting testimony provide no basis upon which the Commission can determine whether this proposed rate decrease is just and reasonable. *Utah Department of Business Regulation v. Public Service Commission, 614 P.2d at 1250, "this finding [that a rate is just and reasonable] must be supported by substantial evidence concerning every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment."*

c. The rate decrease due to a reduced rate of return.

The Joint Application proposes to reduce rates by $3.6 million "in conjunction with the implementation of the Pilot Program." *McKay, page 20, line 484 to 485.* The Division says only that this is the amount of "a reduction in the rate of return used to calculate rates." *Powell, page 9, line 150 to 151.* The applicants do no present detailed testimony or evidence pertaining to the facts that require an adjusted rate of return or the rate of return that is just and reasonable.

In Questar's last general rate case, the Commission's order devoted 10 of 40 pages to Questar's rate of return. It discusses such complex issues as business and regulatory risk, comparable or proxy companies, financial model analysis employing the DCF and capital asset pricing models, rate of return ranges, capital structures and alternative capital structures. The Joint Application and supporting testimony provide no basis upon which the Commission can determine whether this proposed rate decrease is just and reasonable. Accordingly, the Joint Application departs from the legal and public policy standards for utility rate-making. *See Stewart v. Utah Public Service Commission, 885 P.2d 759, 780-781 (Utah 1994).*

d. All other relief requested by the Joint Application must be considered in a general rate case.

With the one exception of the new depreciation method, the relief requested requires a general rate case. With respect to the other two rate decreases, the necessity of a general rate case is described above in b. and c. There are other factors described in the Joint Application and in the parties' direct testimony, that demand treatment in a general rate case.

Dr. Powell explains the origins of the $10.2 million rate decrease as follows:

> The rate decrease is the result of several adjustments including, a change in the depreciation methodology, refinancing and a reduction in the rate of return used to calculate rates. These adjustments, which lower Questar's revenue requirement, were netted against several other adjustments which increase Questar's revenue requirement. These latter adjustments include amortization of pipeline integrity costs and rolling in the GSS extension area charges. In all, I believe there are a

> dozen or so adjustments that netted together add to the $10.2 million. *Powell, page 9, line 149 to page 10, line 156.*

The Joint Application asks the Commission to adjust rates based upon "a dozen or so adjustments", scarcely identified, some of which increase Questar's revenue requirement that netted together equal $10.2 million. This conclusion is not drawn from analysis, audit, or evidence, and is not the product of the Division's or any other parties' usual scrutiny.

In Dr. Powell's direct testimony, *page 10, line 170 to page 11, line 180*, the Division anticipates the argument that the Joint Application calls for a general rate case. Dr. Powell contends that there is not sufficient evidence that Questar is earning in excess of the allowed rate of return to support a demand for a general rate case. Therefore, the Joint Application is the only manner to grant rate relief to already overburdened customers. However, the Division currently is awaiting Questar's semi-annual results of operations that could indicate that a general rate case is necessary.

MEMORANDUM OF LAW IN SUPPORT OF RATE RELIEF

The Division has determined that the rate changes proposed in the Joint Application, netted together, result in a just and reasonable rate, one that is in the public interest. Though Questar's and the Division's rate decrease recommendation to the Commission may be well-intentioned, there is not the substantial evidence as required by Utah law to support any but the depreciation related decrease. Furthermore, the Joint

Application, demands that the Commission grant Questar relief as requested and without modification, or the applicants may withdraw from the Joint Application and thereby extinguish the Commission's jurisdiction. *Joint Application, paragraph 40.*

The applicants contend that the Commission may not order any rate change in this proceeding other than the relief requested in the Joint Application, precisely as requested without modification. *Joint Application, paragraph 40; Response of Questar Gas Company In Opposition to February 2, 2006 Request of Roger J. Ball, footnote 8, page 7.* The greatest concern for and indeed the greatest flaw in this assertion, is that having invoked the jurisdiction of the Commission, the applicants insist that they can withdraw from and not be bound by the Commission determination, after the Commission enters a final order. *Joint Application, paragraph 40.* In a very similar set of circumstances, the Utah Supreme Court understood U.S. West Communications, now Qwest, to assert that a utility "can refuse to make necessary and appropriate investments for the public convenience and necessity unless the utility is paid more than a reasonable rate of return." *Stewart v. Utah Public Service Commission, 885 P.2d 759, 770-771 (Utah 1994).* The Utah Supreme Court held: "That position is flatly irreconcilable with a utility's legal duties under the laws of the state of Utah and with the Commission's duties to require a utility to do all that is necessary to serve the public convenience and necessity in return for a fair and just rate of return. *See* Utah Code Ann. §§54-4-1, -4, -7, -8." *Id. at 771.*

The applicants claim that they may confine the Commission to only one result is a problematic and perplexing position. The Commission is statutorily authorized to investigate and fix one or more rates, rules or practices of any utility within its juridiction. *Utah Code §54-4-4*. When a utility proposes a change in rates, the Commission may determine whether the proposed rate change, "or some other rate increase or decrease, is just and reasonable." *Utah Code §54-7-12(2)(b)*. The Joint Application cites this very statute as granting the Commission "general jurisdiction" to decide this matter. *Joint Application, paragraph 6.*

The fact that the Joint Applicant's make it "abundantly clear in the Application, at the technical conferences and in their testimony that the $10.2 million rate reduction proposed in the Application was contingent on adoption of the other aspects of the Application", does not change the law that says the Joint Applicants must obey the Commission's orders. *Utah Code §54-3-23*. The Division must enforce Commission orders.[3] *Utah Code §54-4a-1(d)*. If either disagree with the order, they may request reconsideration and may appeal to the courts, but Questar and the Division may not disobey the order. *Utah Code §54-7-15; North Salt Lake v. St. Joseph Water & Irr. Co. 223 P.2d 577, 583 (Utah 1950).*

[3]Justice Willkins' dissent in *Utah Department of Business Regulation v. Public Service Commission of Utah, 614 P.2d at 1254 to 1257*, is instructive on this point. Amendments to the statutes governing the Division's role and authority in the regulatory process cured many of Justice Wilkins' concerns. However, those concerns, and his frank criticism of the nature of the Division's participation in that case, are revived here by the Division's insistence that it may invoke the Commission's jurisdiction, but extinguish it if the outcome is not to the Division's liking. Justice Wilkins' warned of the harm to a quasi-judicial or rule-making body if an agency such as the Division, with specific responsibilities to participate the Commission's regulatory process, can "wage hostile assaults" upon it. He

The applicants contention that by a simple notice, either can nullify a Commission determination and exclude themselves from compliance with the order, or in the case of the Division, enforcing the order, is without merit. *See Stewart v. Utah Public Service Commission, 885 P.2d at 776-777; Utah Department of Business Regulation v. Public Service Commission, 614 P.2d at 1250.*

As long as the applicants insist that they may evade any Commission order with which they disagree, then the Joint Application as a whole is procedurally and substantively illegal and should be summarily dismissed. However, the Committee contends that the better approach and the one that serves the public interest, is to strike paragraph 40 and enter a order for the rate decrease determined to be just and reasonable based upon the evidence. The Commission can then hear and determine the balance of the relief requested in the Joint Application, and the relief requested by other parties.

CONCLUSION

In Questar's response to the Committee's initial memorandum filed January 31, 2006, the company stated that the rate decreases proposed by Questar and the Division cannot be implemented without a full sales and revenue decoupling mechanism. However, as the Committee has established, there is no regulatory barrier to separately determining and implementing the depreciation rate decrease. Numerous sections of Utah Code Title 54, the Public Utilities Statutes, authorize the Commission to order a rate

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said, "It is the imperative duty of a ministerial officer to obey the act of a tribunal invested with authority in the premises directing his action; not to question or decide upon its validity."

decrease due to the approved adoption of a new depreciation method, based upon the evidence admitted at the May 17, 2006 hearing. *Utah Code §§54-3-3; 54-3-2; 54-3-23; 54-4-1; 54-4-2; 54-4-4; 54-4-24; 54-7-12(2)(b); 54-7-12(3)*. Under these statutes, the Commission may make such orders as the Commission determines necessary or convenient. *Utah Code §54-4-1*.

On the other hand, there is ample evidence, law, and utility regulatory principles that prohibit a regulated monopoly from attempting to restrict the Commission's proper exercise of its authority. No Utah statute, nor any Utah appellate court application of those statutes, binds the Commission to only total acceptance or total rejection of a utility's application for rate changes, new tariffs or any other relief. In any case, substantial evidence must support the finding that a utility rate is just and reasonable. Only in the instance of the new depreciation method that results in a rate decrease, is there such evidence. For all other rate changes, a general rate case will be required.

Dated this 31st day of March 2006.

/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following by e-mail March 31, 2006:

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