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20 March 2006

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application for Approval of a Conservation Enabling Tariff Adjustment Option and Accounting Orders	Docket No 05-057-T01 REPLY TO QUESTAR'S OPPOSITION TO REQUEST FOR A STAY, &c

On 8 March 2006, Questar Gas Company filed a *Response in Opposition* to the *Request for a Stay of Proceedings, an Interim Rate Decrease, Conversion to a General Rate Case, and a Disclosure Order* (*Request*) that I submitted to the Commission on 2 February. This is my Reply to the Company's Opposition.

Questar begins by asserting that:

> *Most aspects* of the Request are moot in light of the parties' agreement to convert the hearing scheduled for February 3, 2006 to a scheduling conference. Questar Gas is not required to respond at this time to *other aspects* of the Request based on the Second Amended Scheduling Order ("Order") issued in this docket on March 2, 2006. However, *other aspects* of the Request may arguably be regarded as a motion, which, under the Order might require a response within 15 days after Ball was granted intervention. Questar Gas opposes *those aspects* of the Request.[1]

[I have added the italicized emphases throughout.]

[1] Response of Questar Gas Company in Opposition to February 2, 2006 Request of Roger J. Ball (Opposition), Page 1, 2nd paragraph.

Of course, there was not quite an "*agreement* to convert the hearing scheduled for February 3, 2006 to a scheduling conference." The Committee and I requested it, and the Joint Applicants informed the Commission they would "have no objection".

Questar does not specify in its preamble what it means by "most aspects", "other aspects" used for the first time, "other aspects" used for the second time, or "those aspects". It later appears, however, that Questar thinks my *Request* is now moot with regard to a stay of proceedings and the conversion of the 3 February hearing to a scheduling conference for a general rate case ("most aspects" = 2 of 4); that it doesn't yet need to respond on an interim rate increase ("other aspects" = 1); but that it should perhaps oppose a disclosure order ("other aspects" and "those aspects" = 1).

(WARNING: This inflationary language, adopted in only the second paragraph of Questar's Opposition, is a fair indicator of what to expect throughout that document.)

Questar attempts to diminish my *Request* by saying:

> *The first and third aspects of relief sought by the Request with respect to the February 3 hearing are moot* in light of the fact that the February 3 hearing has already taken place.[2]

and

> The *only purpose for which* the Committee or *Ball sought a stay of proceedings was to allow more time to study the issues and to prepare*

[2] Id, Page 6, 2nd paragraph.

> *testimony on them*. *That purpose was accomplished by the scheduling conference*. Therefore, *that aspect of the Request is also moot*.[3]

What on Earth did Questar mean by: "that aspect of the Request is also moot", when it had already said "The first (stay) and third (conversion to a rate case) aspects of relief sought by the Request with respect to the February 3 hearing are moot"? How many times can the same thing be rendered moot?

In any event, I object to Questar characterizing my purposes in seeking a stay of proceedings. My *Request* said what it said, and the Company's attempts to spin that for its own purposes are unacceptable. While one purpose of my *Request* was for a stay to allow more time to study the Joint Application and prepare testimony on it, equally important was that the Commission should have time to consider each of my other three requests. These purposes were certainly not "accomplished by the scheduling conference."

I would like to take this opportunity to thank the Commission for staying its 1st Amended Scheduling Order on 3 February, and for subsequently further amending the schedule in this Docket, facilitating those further purposes by enabling it to consider testimony and argument on how this matter should proceed, while noting that of course the Commission was not responding only to my *Request*. As I understand that Order, while it establishes a process to address the "Joint Application and the question of interim rate

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[3] Id.

relief",[4] it does not dispose of any of my other three requests, which therefore remain before the Commission.

Questar further notes that "Ball, *although not yet a party*, was present throughout" the 3 February scheduling conference, as though I had been some kind of interloper at this open-to-the-public event, avoiding mention of several others in attendance who had not yet even requested intervention, including some who still have not. Questar needs to grow up and get past its obsession with wanting its regulatory affairs as a *public* utility conducted in the shadows.

It claims that I "made no objection to the schedule and procedures agreed upon", conveniently neglecting to mention that, after Questar attorney Scott Brown distributed a draft scheduling order on 3 February, which contained a good deal of language that was certainly neither developed nor agreed between the participants during the scheduling conference, I replied to him, Colleen Bell and Gregory Monson on 5 February saying that I had concerns with the draft scheduling order. Disregarding that message entirely, Mr Monson sent the draft, revised to take account of Committee concerns, to the Commission on 6 February. This haste despite the fact that there was no urgency: the first event for which a date was specified in the draft was almost eight weeks off; and, in the event, the Order was issued more than three weeks later. Have Questar's attorneys

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4 Docket No 05-057-T01, Second Amended Scheduling Order, Page 2, 2nd paragraph.

chosen, or been directed, to abandon the usual legal courtesy of extending every accommodation to those who are not called of the bar?

Questar then claims that:

> The Application was the culmination of three years of work on these issues by task forces established in Docket No. 02-057-02 involving Joint Applicants, the Utah Committee of Consumer Services ("Committee"), industrial customers and other interested persons. The primary purposes of the Application were to align the interests of the Company, its customers, regulators and other interested persons in promoting effective energy efficiency programs to save energy and reduce customer costs and to allow customers to realize a modest rate decrease made possible as a result of this alignment at a time of unprecedented high gas prices.[5]

Questar is, of course, entitled to hold and to express its opinions, but we do not all share them. Whether it entertained the task force exploration of a demand-side management program because it saw an opportunity, or whether the opportunity merely emerged in Questar's view while that exploration was proceeding may now be immaterial. It appears to me that Questar's primary purposes in filing the Application were to transfer risk in the long term, as has been the Corporation's consistent strategy over decades, in order to increase stockholders' profits at the expense of customers. In order to achieve those objectives, Questar was willing to offer up a small rate decrease now, which it understood was inevitable at some point when it would be called to account for exceeding its overly generous allowed rate of return.

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[5] Opposition, Page 2, 2nd paragraph.

Questar describes the "$10.2 million rate reduction" as "associated"[6] with the other elements of the Joint Application and claims that:

> Beginning with the Application and continuing through the workshop, the technical conferences and the testimony filed, Joint Applicants have made it clear that the rate reduction proposed in the Application is contingent on approval of the tariff changes and accounting orders requested in the Application.[7]

However, on 15 December 2005, the day immediately preceding the filing of the Application, Questar witness, Barrie McKay, repeatedly, publicly and on the record, asserted to the Committee of Consumer Services that no strings would be attached to the rate reduction. And, although the Commission needs no reminder of its powers, it may be well to jog Questar's memory that applications are routinely approved in part. Moreover, it is a matter of record that the Commission has consistently approved utility requests for interim rate increases pending more extensive proceedings, so it would hardly be unjust or unreasonable for it to approve an interim decrease pending the more extensive enquiries and hearings now scheduled in this docket, especially since customers will ultimately reimburse the Company should the decrease prove excessive.

Questar asserts that:

> The Request commented on various aspects of the Application and technical conferences (*often inaccurately*) and supported *what it characterized as* the Committee's request that the Commission stay further proceedings, implement a $10.2 million rate reduction on an interim

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6 Id.

7 Opposition, Page 3, 2nd paragraph.

> basis and convert the February 3 hearing to a scheduling conference for a general rate case.[8]

Questar later claims that:

> The Request appears to seek four things: (1) a stay of proceedings, (2) a $10.2 million interim rate reduction, (3) conversion of the hearing on February 3, 2006 to a scheduling conference on a general rate case and (4) a Commission order requiring Questar Gas to provide all parties with all of the *financial* information that would be *at issue in a general rate case*. The Request *incorrectly* claims that the first three requests are also requests made by the Committee. Although Ball's *confusion* is partially understandable in light of the Committee's January 31 memorandum, it is now clear that the Committee does not request a $10.2 million interim rate reduction. Rather, the Committee is requesting an interim rate reduction based on the adoption of the new depreciation methodology proposed in the Application. There was *never any basis* to claim that the Committee sought conversion of the February 3 hearing to a scheduling conference for a general rate case. Rather the Committee sought a stay of proceedings only to allow the February 3 hearing to be converted to a scheduling conference to schedule proceedings that would allow thorough review of the relief sought in the Application.[9]

This despite having previously stated:

> The Committee memorandum also suggested that the $10.2 million rate reduction proposed as part of the Application be implemented on an interim basis without approval of the other aspects of the Application.[10]

In its Memorandum, the Committee wrote:

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8 Id, Page 4, 2nd paragraph.

9 Id, Page 5, 2nd paragraph.

10 Id, Page 3, 3rd paragraph.

> The Utah Committee of Consumer Services requests that the Utah Public Service Commission stay further proceedings in Docket No. 05-057-T01, except for subject implementation of an interim rate reduction of $10.2 million as described in the Joint Application by Questar Gas Company, the Utah Division of Public Utilities, and Utah Clean Energy, which initiated this proceeding.[11]

and

> The Committee requests that on February 3, 2006, the Commission hold a scheduling conference for the purpose of entering an Order that allows for investigation, discovery, intervention and testimony and that establishes a timetable that recognizes *the true scope and impact* of the Joint Application.
>
> The Committee also requests the opportunity to fully investigate and address whether the Joint Application, and in particular as it is conditioned by paragraph 40, is *a proper and appropriate form* for determining whether just and reasonable rates will result from the Joint Application and each of its components.[12]

What was that if not a "request that the Commission (1) stay (the) further proceedings" then contemplated in the Commission's 1st Amended Scheduling Order, and "implement (2) a $10.2 million rate reduction on an interim basis and (3) convert the February 3 hearing to a scheduling conference for a general rate case"?

There was no "*confusion*" in my mind. My *Request* was informed by the Committee's 31 January 2006 Memorandum to the Commission, together with my notes and very clear recollections of the Committee's 15 December 2005 and 31 January 2006 meetings. I e-mailed my Request to Intervene and my *Request* to the Commission at

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11 Docket No 05-057-T01, Committee of Consumer Services 31 January 2006 Memorandum to the Commission, 1st paragraph.

12 Id, 3rd and 4th paragraphs.

4:37pm and to the parties at 4:58pm on 2 February. After he received that message, Committee Attorney Paul Proctor was kind enough to e-mail me the Committee's Response to Joint Application at 5:31pm, the first indication I had that the Committee even intended to file something further than its Memorandum.

What I heard in those Committee meetings left me in no doubt that its staff and attorneys were skeptical of the applicants' pleadings that an abbreviated tariff proceeding could adequately address the changes sought, and were recommending that the Committee should advocate a general rate case. What I have read in the Committee's Response and heard during its 22 February and 7 March meetings gives me no reason to suppose it thinks otherwise today.

I therefore disagree with Questar that "There was *never any basis* to claim that the Committee sought conversion of the February 3 hearing to a scheduling conference for a general rate case." The "first three requests" were, in fact, *accurately* "*characterized*" as "also requests made by the Committee" and my *Request* was not *incorrect* in claiming that they were, however much Questar might wish to believe, and seek to persuade others to believe, otherwise.

No-one should delude themselves that my *Request* was "based on a misunderstanding of the Committee's position." There can be little question that the Committee seeks an interim decrease, whether of $10.2M or $4.8M. I am happy to confirm to Questar, and to anyone else who may be unclear after reading my *Request*, that I seek an interim

decrease of $10.2M. The Commission, in its 2nd Amended Scheduling Order, has adopted a timetable for determining the Committee's and my requests for an interim rate reduction. While it is entirely appropriate that adequate time and attention be devoted to them, and Questar is entitled under that Order to respond at any time up to 21 April, no-one should forget that both requests were filed on 2 February 2006 and in the meantime customers are being deprived of a rate reduction Questar freely offered as long ago as 16 December 2005.

We have repeatedly seen demonstrated Questar's proclivity for moving the procedural goalposts to locations, angles, heights and widths of its own choosing. That is the game it once again seeks to play with its avuncular Footnote 8.[13] For my part, I look to the Commission to set the bar at an appropriate height for determining whether an interim reduction will be just and reasonable. Questar might care to reflect upon the conclusions its customers, and even some of its shareholders, might draw if it now opposes a reduction it previously recommended, justified and proclaimed string-free.

Again, Questar attempts to muddy the plain language of my *Request*:

> To the extent the Request may be *deemed* to be a motion seeking conversion of this proceeding to a general rate case and seeking the Disclosure Order, the Request is wholly inadequate and must be denied.[14]

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[13] Opposition, Page 6, 3rd paragraph.

[14] Id, Page 7, 1st paragraph.

If the caption of my *Request*:

In the Matter of the Application for Approval of a Conservation Enabling Tariff Adjustment Option and Accounting Orders	Docket No 05-057-T01 REQUEST FOR A STAY OF PROCEEDINGS, AN INTERIM RATE DECREASE, *CONVERSION TO A GENERAL RATE CASE*, AND A DISCLOSURE ORDER

wasn't clear enough on its own, Paragraph 16 ought to have made matters unambiguous:

> I therefore respectfully support the request of the Committee that the Commission stay further proceedings in this Docket, implement the $10.2M reduction, which both Questar and the Division appear to otherwise consider reasonable, on an interim basis, and *convert the 3 February hearing to a scheduling conference for a general rate case in which every part of the Company's expenses, investments and revenues – along with this application – can be properly examined*.

According to Questar:

> The authority to investigate the Company's rates to determine whether they are unjust or unreasonable, or otherwise in violation of law, lies with the Commission. Individuals such as Ball have no right to *force* the Commission to apply its investigatory authority and *require* the Commission, the public utility, the Division, Committee and other interested parties to devote the substantial resources required for a general rate proceeding. *Even if Ball were in a position to request a general rate case*, in order to establish that current rates are not just and reasonable *there must have been at least some review* of all revenues, expenses and investments of the public utility, and in order to state a claim in a complaint upon which relief can be granted *Ball must at least set forth*

> *meaningful facts* about Questar Gas's revenues, expenses and investments that, if established after hearing, would warrant a general rate reduction. Ball has set forth no information that would support a general rate case, and, contrary to *the Request's erroneous assertion*, the Division, the only party that has conducted an audit of the Company's books and records, has concluded that there is no basis at this time to institute a general rate case.[15]

There go those goalposts again! Questar wants the Commission to read "respectfully request" and understand "force" and "require". Why isn't any utility customer "in a position to request a general rate case"? And why must the customer review "revenues, expenses and investments" and "set forth meaningful facts"? Aren't a 38% rate increase, a 42% profit increase, and a fairly plain concession by a utility that its depreciation and borrowing rates are too high facts enough for the Commission to initiate an investigation? Isn't that kind of investigation precisely what utility customers pay the Division to undertake? Of course, in this matter, the Division has regrettably sacrificed any claim it might have had to non-partisanship on the altar of the Joint Application.

And I am not alone in believing the scope of the Joint Application exceeds what may be appropriate under UCA 54-3-3 and 54-7-12(4)(a). As Questar itself points out:

> Among the procedural objections raised, the Committee argued that the Application was not proper because it was not made in the context of a general rate case.[16]

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15 Id, Page 7, 2nd paragraph.

16 Id, Page 4, 1st paragraph.

Questar quotes most of Paragraph 18 of my *Request*, with insertions and omissions of its own choosing:

> that the Commission order Questar [Gas] to provide all parties to [the docket] with all the actual and projected data they will require to conduct a comprehensive review of the [ ] Company's expenses, investments and revenues, and access to all of its books and records ("Disclosure Order").[17]

In the original, Paragraph 18 read:

> I further respectfully request that the Commission order Questar to provide all parties to this Docket with all the actual and projected data they will require to conduct a comprehensive review of the Gas Company's expenses, investments and revenues, and access to all its books and records.

I respectfully request that the Commission focus its consideration on the original language of my request, and not allow Questar's subtle changes to distract from that. My *Request* was not limited to the Gas Company providing data, or to access only to the Gas Company's books and records. At least Questar Pipeline's and Wexpro's data is likely to be relevant to a thorough investigation, as may those of the Corporation and others of its many interwoven subsidiaries.

The disclosure order requested in Paragraph 18 is needed for the reason stated in Paragraph 14:

> The Division is, in fact, of the opinion that the Company may now be over-earning, but is inhibited from initiating a case seeking reduced rates

[17] Id, Page 4, 2nd paragraph.

> (notwithstanding the Commission's power under UCA §54-4-4(3)(b)(ii) and (iii) to use some variant of an historical test year) because it might instead choose to use a future test year, and the Division apparently either doubts its ability, or lacks the will, to require Questar to provide projected numbers, either on it own authority (UCA §54-4a-1) or by requesting a Commission order (UCA §54-4-1),[1] so concludes it would be unable to support a request for a show-cause order.
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> [1] Division witness Dr Powell's pre-filed written testimony (DPU Exhibit 1.0, 23 January 2006, pages 10 and 11, lines 170 through 180), and remarks to commissioners and other participants in the 20 January Technical Conference.

Unfortunately, the Commission doesn't require scheduling and technical conferences to be on the record, or we could all read the transcripts or listen to the recordings and decide for ourselves what Division witness Dr Powell said about the Division's audit of Questar's books, its conclusions about its rate of return, and why it has decided not to initiate a rate case just yet. I heard what I heard, and reported it accurately in my *Request*. Dr Powell doesn't think that what I heard is what he said. Questar doesn't like what I heard. The Division and Questar are unhappy that I wrote what I heard in my *Request*. But whatever they choose to call it, "erroneous assertion"[18] or whatever, that's what I heard and that's what I wrote. Best way to avoid repeats? Record the meetings. If that means structuring them, with a chairperson who has no other role (ALJ, perhaps?), even better.

The Division has a statutory duty to audit Questar and assess its earnings against its authorized rate of return. Since the Division, reluctant to require Questar to provide the

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[18] Id, Page 8, 1st paragraph.

data it needs to fulfill that duty on the basis of its own statutory authority, wouldn't ask the Commission to do so either, I have.

In conclusion, I note that neither of the other two joint applicants, the Utah Division of Public Utilities or Utah Clean Energy, has opposed any part of my *Request.* Nor has the Utah Committee of Consumer Services, the Utah Association of Energy Users or the Utah Industrial Gas Users.

Despite a passing admiration for the brass nerve of learned counsel for Questar in constructing their tissue of nonsense, I am offended at the thought that the Company will inevitably expect me to contribute in my non-unique and small way to the cost of creating its Opposition. Also in passing, I am reassured by the thought that Questar and its counsel are not the determining authority with regard to my *Request*.

I respectfully renew my requests that the Commission:

> implements the $10.2 million rate reduction offered freely and without strings by Questar as one of the Joint Applicants, and apparently supported by the Division (after examination of the Company's books) as another, albeit on an interim basis pending full investigation of the Joint Application, at the earliest possible opportunity;
>
> chooses some appropriate means of initiating a general rate case in which Questar's expenses, revenues and rate of return that led the Company and Division to agree upon the rate reduction that is part of this Joint Application can be investigated together with its other premises; and

orders Questar to provide all parties to this Docket with all the actual and projected data they will require to conduct a comprehensive review of the Gas Company's expenses, investments and revenues, and access to all its books and records.

Respectfully submitted on 20 March 2006,

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Roger J Ball

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request to Intervene in Docket 05-057-T01 of Roger J Ball was hand delivered, sent by United States mail, postage prepaid, or mailed electronically on 20 March 2006, to the following:

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