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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

**RESPONSE OF QUESTAR GAS
COMPANY IN OPPOSITION TO
FEBRUARY 2, 2006 REQUEST OF
ROGER J. BALL**

Questar Gas Company (“Questar Gas” or the “Company”) hereby responds to the “Request for Stay of Proceedings, an Interim Rate Decrease, Conversion to a General Rate Case, and a Disclosure Order” (“Request”) filed by Roger J. Ball (“Ball”) on February 2, 2006.

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.

I. INTRODUCTION

The Company, the Utah Division of Public Utilities (“Division”) and Utah Clean Energy (collectively “Joint Applicants”) filed their Application in this docket on December 16, 2005, seeking approval of the Conservation Enabling Tariff and Demand-Side-Management during a three-year pilot program, an associated \$10.2 million rate reduction and related accounting orders. 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.

On January 3, 2006 pursuant to notice, a scheduling conference was held at which a technical conference and testimony filing were scheduled for January 13 and a hearing was scheduled for January 18.

On January 12, 2006, in response to questions from the Committee and other interested persons, a workshop was held. Based on that workshop, the Joint Applicants determined that an additional technical conference would be of assistance in increasing the understanding of the parties and interested persons. Accordingly, on January 13, 2006, the Joint Applicants requested and the Commission ordered a change in the schedule to permit an additional technical

conference on January 20 and to set testimony filing dates for January 23 and January 31 and a hearing for February 3.

Technical conferences were held on January 13 on demand-side management and on January 20 on the Conservation Enabling Tariff, the proposed rate reduction and other aspects of the Application. Joint Applicants filed testimony on January 23. 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.

No party filed responsive testimony on January 31. However, on January 31, the Committee filed a memorandum requesting that further proceedings in the matter be stayed and that the hearing on February 3 be changed from an evidentiary hearing on the Application to a scheduling conference to provide additional time for the Committee to study the issues presented by the Application. 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. On the same day, the Utah Association of Energy Users (“UAE”) petitioned to intervene in the docket.

On February 2, 2006, Joint Applicants filed a response to the January 31 memorandum of the Committee and the petition of UAE to intervene. Joint Applicants did not oppose the request of the Committee that the hearing on February 3 be changed from an evidentiary hearing to a scheduling conference, but opposed the suggestion of the Committee that an interim rate reduction be imposed. Joint Applicants did not oppose the intervention of UAE.

Also on February 2, 2006, the Committee filed a response to the Application (“Committee Response”), the Utah Industrial Gas Users (“IGU”) filed comments and Ball filed a

Request to Intervene and the Request. The Committee Response (1) reasserted the Committee's request for an interim rate reduction, but noted that it was limited to the rate change that would result from adoption of the new depreciation methodology proposed in the Application,¹ (2) requested that the Commission order that the parties design and implement a three-year pilot program adopting utility-sponsored demand-side management and conservation programs² and (3) requested that the Commission order further examination of mechanisms for removing the link between the Company's retail sales and its non-gas distribution expenses and revenues.³ In addition, the Committee Response raised procedural objections to the Application to preserve objections based on the Committee's understanding that the February 3 hearing would still be an evidentiary hearing on the Application.⁴ 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.⁵

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 basis and convert the February 3 hearing to a scheduling conference for a general rate case.⁶ The Request also requested "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

¹ Committee Response at 4, 6.

² *Id.* at 8.

³ *Id.* at 10.

⁴ *Id.* at 11.

⁵ *Id.* at 17.

⁶ Request at 5 ¶ 16.

review of the [] Company's expenses, investments and revenues, and access to all of its books and records" ("Disclosure Order").⁷

At the scheduling conference on February 3, 2006, the parties agreed on a schedule and procedures to govern proceedings in this matter. The schedule and procedures were memorialized in the Order. Among other things, the Order provides that parties advocating an interim rate reduction would file testimony and argument in support of their request by March 31, 2006, that rebuttal testimony and argument would be filed by April 21, that surrebuttal testimony and argument would be filed by May 5 and that a hearing on the requests for interim rate relief would be held on May 17. The Order specifically provides that "parties shall not be required to respond to the Committee's February 2 filing prior to th[e] filing" on April 21, 2006. With respect to relief other than the type of relief sought in the Committee Response, the Order provides that

If a person requests intervention and files a motion or other request for agency action prior to a grant of intervention, the time for responding to the motion or other request for agency action shall start to run on the date the Commission issues an order granting intervention. This applies to the requests filed by Mr. Ball on February 2, 2006.

The Commission entered its Order Granting Invention to Ball on February 21, 2006.

II. ARGUMENT

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.

⁷ *Id.* at ¶ 18.

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.

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. The hearing was converted to a scheduling conference for further proceedings on the Application and at that conference the parties agreed upon a schedule and procedures for further proceedings on the Application. Ball, although not yet a party, was present throughout that conference, participated at various points in the discussion and made no objection to the schedule and procedures agreed upon. 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 testimony on them. That purpose was accomplished by the scheduling conference. Therefore, that aspect of the Request is also moot.

The request for interim rate relief, while based on a misunderstanding of the Committee's position, is specifically addressed in the Order, and Questar Gas is not required to respond to that portion of the Request at this time. Rather, if Ball intends to pursue interim rate relief, he is required by the Order to file testimony and argument in support of his request by March 31.⁸

⁸ In that regard, Ball should be on notice that casual references to the Application or to the Committee's position will not suffice to justify interim rate relief. Joint Applicants made it abundantly

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.

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.⁹ 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.¹⁰ 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,¹¹ 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

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, including the Conservation Enabling Tariff and Demand-Side Management pilot program and the entry of several accounting orders. *See* Direct Testimony of Dr. William A. Powell, Docket No. 05-057-T01 (Jan. 23, 2006) ("Powell Direct") at lines 164-180; Direct Testimony of Barrie L. McKay, Docket No. 05-057-T01 (Jan. 23, 2006) at lines 200-201, 483-485, 556-558; Response of Joint Applicants to Memorandum of Committee and UAE Petition to Intervene and Position Statement, Docket No. 05-057-T01 (Feb. 2, 2006) at 2-3, 4, 5. Therefore, unless persuasive testimony and legal argument is provided, the Commission would have no basis to order an interim rate reduction.

⁹ *See, e.g.*, Utah Code Ann. § 54-4-2 (Whenever the commission believes that in order to secure a compliance with the provisions of this title or with the orders of the commission, or that it will be otherwise in the interest of the public, an investigation should be made of any . . . rate, price, charge, fare, [or] toll, . . . it shall investigate the same upon its own motion . . ."); *id.* at § 54-4-4(2) ("The commission may: (a) investigate: (i) one or more rates, fares, tolls, . . . [or] charges . . . of any public utility . . . and (b) establish, after hearing, new rates, fares, tolls, . . . [or] charges . . . in lieu of them.").

¹⁰ *See, e.g., Williams v. Public Service Comm'n*, 645 P.2d 600, 602 (Utah 1982) ("[Section 54-4-2] gives no right of investigation to a complainant; rather, it gives broad discretion to the PSC in the employment of the investigatory process."); *Cf.* Utah Code Ann. § 54-7-9(3)(b).

¹¹ *See Utah Dept. of Business Regulation v. Public Service Comm'n*, 614 P.2d 1242, 1250 (Utah 1980).

that, if established after hearing, would warrant a general rate reduction.¹² Ball has set forth no information that would support a general rate case, and, contrary to the Request's erroneous assertion,¹³ 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.¹⁴

With regard to Ball's request for complete disclosure of all actual and projected financial information that might be relevant to a general rate case and the opening of the books and records of Questar Gas to all parties, the statutes are specific. Questar Gas is required to provide access to its books and records to the Commission and the Division,¹⁵ but not to the public generally. While Questar Gas has an obligation to keep its tariffs open for public inspection,¹⁶ no similar obligation exists with respect to its financial records. The statute contemplates that even the Committee, a state agency with a prescribed role in regulatory proceedings, is to refer to the Division if it wishes to have audits conducted.¹⁷

¹² See, e.g., Utah Code Ann. § 63-46b-1(4)(b) (allowing summary disposition of administrative proceedings under civil rules 12(b) and 56); *Wittstock v. Mark A. Van Sile, Inc.*, 330 F.3d 899, 902 (6th Cir. 2003) ("To avoid dismissal under Rule 12(b)(6), a complaint must contain either direct or inferential allegations with respect to all the material elements of the claim.") (citation omitted); 5B Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure*, § 1357 (3d ed. 2004) ("[T]he pleader must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist."); see also Utah Admin. Code R746-100-3.E ("Pleadings shall be signed The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.").

¹³ Request at 4 ¶ 14 ("The Division is, in fact, of the opinion that the Company may now be overearning"). Ball was present during at least two technical conferences and had access to the Division's testimony in which the Division stated that it believed the Company was earning near, but still below, its authorized rate of return and that it had no basis to seek an order to show cause to institute a general rate case. See Powell Direct at 10-11 lines 170-172, 175-176, 187-188.

¹⁴ See, Powell Direct *supra* note 13.

¹⁵ See, e.g. Utah Code Ann. §§ 54-3-21, 54-3-22, 54-4a-1(1)(e), 54-7-7.

¹⁶ See *id.* §§ 54-3-2(1), 54-3-3.

¹⁷ See *id.* § 54-10-6 ("The Committee of Consumer Services, as it deems desirable, may request the Division of Public Utilities to review accounting procedures and expenditures of natural gas, electric or telephone utilities."). See also *id.* §§ 54-4-1.5 ("the Public Service Commission may, with respect to

For all of these reasons, the request for the Disclosure Order is contrary to the law and the public interest and should be denied.

III. CONCLUSION

For the reasons set forth above, most aspects of the Request are moot or are scheduled to be addressed subsequently in this proceeding. To the extent the Request seeks conversion of this proceeding to a general rate case, Ball has provided no basis for the Commission to grant this relief. The request for the Disclosure Order is contrary to statutes and the public interest. Accordingly, those aspects of the Request should be denied.

RESPECTFULLY SUBMITTED: March 8, 2006.

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any matter within its jurisdiction, order the director of the Division of Public Utilities to . . . conduct research, studies, and investigations; . . . conduct audits . . .”), 54-4a-1(c)-(d) (empowering the Division to conduct investigations and audits).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE OF QUESTAR GAS COMPANY IN OPPOSITION TO FEBRUARY 2, 2006 REQUEST OF ROGER J. BALL** was served upon the following by electronic mail, on March 8, 2006:

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