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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request of the Division of Public Utilities for Enforcement Action under the Natural Gas Pipeline Safety Act Against Questar Gas Company	Docket No. 07-057-04 RESPONSE OF QUESTAR GAS COMPANY
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Questar Gas Company (“Questar Gas” or the “Company”), pursuant to Utah Code Ann. § 63-46b-6 and Utah Admin. Code R746-100-3, R746-100-4 and R746-409-8.A, responds to the Division of Public Utilities’ (“Division”) request for agency action (“Request”) in this docket.

I. BACKGROUND AND PROCEDURAL HISTORY

1. A tragic accident occurred on February 6, 2007 in Saratoga Springs, Utah (“Accident”). In the early afternoon that day, Questar Gas received a call that one of its lines delivering gas to residences in the Sunrise Meadows Subdivision in Saratoga Springs had been punctured by an underground boring mole operated by a third-tier subcontractor of Qwest

Communications Corp. (“Qwest”) who was installing telephone lines to the residence of Greg and April Roper (“Roper residence”). During the course of Questar Gas’ response, two individuals, Mrs. Roper and Larry Radford, one member of the Questar Gas repair crew, were killed when the Roper residence exploded.

2. On May 15, 2007, Mr. Roper, individually and on behalf of the estate and heirs of Mrs. Roper, filed a complaint against Questar Gas; S&E Cable, Inc. (“S&E”); Angilau Communications & Construction, LLC; Niels Fugal Sons Company, LLC; and Qwest in the Third District Court of Salt Lake County, State of Utah, Civil No. 070907215, making claims arising out of the Accident (“Lawsuit”). The defendants in the Lawsuit have been served with summonses and the complaint and have filed answers to the complaint, cross-claims to apportion fault and motions. Certain parties have indicated that they may file claims against additional defendants.

3. The parties to the Lawsuit have stipulated to a discovery schedule and a case management order. Under the case management order, the parties made initial discovery disclosures on August 15, 2007. They have already deposed a neighbor, Kristina Ewert, who was present at the time of the explosion, members of the Roper family and the supervisor of the person operating the underground boring equipment, Sandy Parra. They have scheduled depositions of others, including the other members of the Questar Gas repair crew, the person operating the underground boring equipment,¹ another neighbor, the sheriff and fire department investigators, other parties, a Blue Stakes representative and other witnesses. The parties are developing protocols and schedules for destructive testing of the gas detection device used by

¹ The parties have been unable to ascertain the exact location of the operator of the boring equipment, Manuel Robles, since the Accident, so it is not clear that they will be able to depose him.

Mr. Radford when he entered the Roper residence. They have planned depositions of others, including the manufacturer of the gas detection device, the builder and excavator of the Roper residence and the municipal building inspector. These depositions and others will be arranged during the discovery phase of the Lawsuit as time and schedules permit. The parties have agreed that the plaintiffs will disclose their experts and provide their reports by February 29, 2008, and that the defendants will disclose their experts and provide their reports by April 30, 2008. The parties have agreed to disclose rebuttal experts and their reports within 45 days thereafter and to complete all discovery by July 15, 2008.

4. On August 8, 2007, the Division filed the Request. The Request asserts jurisdiction under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. §§ 60101, et seq. (“Federal Act”), and the Utah Natural Gas Pipeline Safety Act, Utah Code Ann. §§ 54-13-1, et seq. (“Utah Act”). Rather than alleging facts and making claims regarding the Accident, the Request states that the Division conducted an investigation of the Accident and refers to a Pipeline Failure Investigation Report (“Report”) prepared by the Division and a Notice of Probable Violations, Proposed Civil Penalties and Notice of Forthcoming Complaint (“Notice”), both of which were attached as exhibits.

5. The Report is a collection of appendices regarding the Accident together with a one-page narrative summary and a 19-page Form 11 Pipeline Failure Investigation Report. The Notice identifies four claimed violations, but does not explain specifically the factual basis for the claims.

6. On September 7, 2007, the Company filed a Motion for Enlargement of Time to Respond to the Request until September 28, 2007. The Motion stated that the Division did not oppose the Motion. On September 24, 2007, the Commission granted the Motion.

II. STATEMENT OF FACTS

7. On February 6, 2007, Mr. Robles, an employee of S&E, an indirect subcontractor of Qwest, was using an underground boring device called a “hammerhead mole” (“mole”) for the purpose of installing a permanent Qwest phone line (“Work”) at 682 North Badger Lane in Saratoga Springs, Utah, the Roper residence. The underground natural gas lines in the vicinity of the Roper residence had been properly marked by ELM (Questar Gas’ Blue Stakes contractor). Mr. Robles did not follow the proper procedures or Utah law in preparing for the Work, in performing the Work or while operating the mole. Specifically, Mr. Robles failed to “determine the exact location of the underground facilities [gas line] by excavating with hand tools,” as required by Utah Code Ann. § 54-8a-5.5; failed to have a second employee on site during the operation of the mole; failed to dig an exit hole for the mole;² and failed to have an adequately large entry hole for the mole. S&E’s use of the mole on the Roper property was inconsistent with the law and with the manufacturer’s guidelines for the operation of the mole. At some time before 12:30 p.m., the mole struck and tore a hole in the Questar Gas 2-inch line crossing the Roper property.

8. Mr. Robles apparently recognized that he hit a gas line, but did not have a company required cell phone and had to drive to an area gas station to attempt to contact his supervisor and boss, Ms. Parra, to report the accident.³ Mr. Robles was unable to reach Ms. Parra, and left at least six voicemail messages, one from the gas station and several others from another phone that he borrowed, excitedly reporting that he had hit a gas line and asking that

² An exit hole would have operated as a vent for the gas released from the line after it was punctured.

³ Mr. Robles had previously hit a Questar Gas main and caused a gas leak on January 26, 2007.

Ms. Parra contact Questar Gas.⁴ He also failed to call 911 or Questar Gas to report the damage. Ms. Parra's cell phone was turned off at the time Mr. Robles left his voicemail messages. She turned her cell phone back on and retrieved the messages just before 1:00 p.m. After listening to her messages, Ms. Parra then called 411 to get the number for Questar Gas. Once she was given the number, she called Questar Gas to report the leak and provided an incorrect address for the Roper residence.

9. At approximately 1:32 p.m., Brian Southwick, Questar Gas foreman, received the assignment to inspect and repair the broken line and proceeded with his crew to the scene. The Questar Gas crew, including Mr. Radford, Jack Bryant and Ryan Whittikiend, arrived at the scene at approximately 2:10 p.m. As soon as they arrived on site, Mr. Southwick immediately had Mr. Radford, an employee with 27 years of experience, start "bar testing"⁵ the ground for gas. Mr. Radford reported that he was getting positive readings for natural gas within 20 feet of the Roper residence. Under Questar Gas' Operation and Maintenance Standard Practice, this finding called for evacuation of the two residences closest to the leak. Within three to five minutes, the gas supply to the nearby residences was shut off at the meters and the two residences were in the process of being evacuated. Questar Gas employees Mr. Radford and Mr. Whittikiend went to the front door of the Roper residence, knocked on the door, and asked Mrs. Roper to evacuate the residence. She and her eighteen-month-old child, Olivia Roper, evacuated the residence. No one was present at the other residence. The Questar Gas crew quickly ascertained the likely intersection of the mole and the gas line and with the assistance of the Blue

⁴ Mr. Robles has difficulty speaking English.

⁵ Bar testing entails driving a metal bar into the ground and then inserting a gas measurement device into the hole to measure levels of gas in the ground.

Stakes marks, located the leak, dug two remote “squeeze holes” and had the two-way feed of natural gas shut down by 2:40 p.m.

10. The Questar Gas crew then dug a “repair hole” and completed the repair of the damaged section of pipe by replacing it with a new section of pipe using electrofusion equipment. The electrofusion in the repair hole was completed by 3:45 p.m. During the 30-minute electrofusion cooling period, Mr. Southwick had Mr. Radford re-check the ground for gas by doing additional bar-testing, both next to the Roper residence as well as across the street. When Mr. Southwick asked about the readings that were being obtained, Mr. Radford reported that the ground was clear.

11. At approximately 4:00 p.m., Mrs. Roper and a neighbor, Mrs. Ewert, walked from the Ewert residence towards the Questar Gas crew so that Mrs. Roper could ask if she could get back into her residence. Mrs. Roper walked west on Prairie Dog Way toward Badger Lane with Olivia, who was in her stroller. Mrs. Ewert testified that she trailed behind Mrs. Roper and Olivia so that her son, Ashton, could look at a truck and trailer parked on Prairie Dog Way. Eventually Mrs. Ewert put Ashton in his stroller and also headed west up Prairie Dog Way towards the Questar Gas crew.

12. Mrs. Ewert watched as Mrs. Roper reached a Questar Gas employee and observed the two of them having a conversation. She testified that she did not hear most of whatever conversation they had, but claimed she heard the end of the conversation. Mrs. Ewert testified that she heard the Questar Gas employee say to Mrs. Roper that it was safe to go in the residence. Mr. Southwick, the Questar Gas employee who spoke to Mrs. Roper, asserts that he did not say that it was safe to go in, but instead affirmatively told Mrs. Roper that the residence

would have to be checked out by one of his crew members before Mrs. Roper could go into the residence.

13. Mrs. Ewert testified that she believes she was three to six feet behind Mrs. Roper by the end of the conversation. However, she also testified that she was far enough behind that she could not hear the whole conversation and that Mrs. Roper had to raise her voice and call back to Mrs. Ewert over her shoulder. Mr. Roper, who was working up the street, testified that he saw Mrs. Ewert trailing behind Mrs. Roper by a good ten feet.

14. Mr. Southwick followed Mrs. Roper towards the front of the residence and asked Mr. Radford to put on clean shoes and clear the residence before re-lighting the gas appliances. Mr. Radford asked Mr. Bryant to “spot the meter”⁶ and proceeded to change his shoes at his truck. Mr. Bryant spot tested the meter and reported to Mr. Radford that the meter held a spot, indicating that gas was not leaking into the residence through the fuel lines.

15. Mrs. Ewert never caught up with Mrs. Roper until Mrs. Ewert had opened the garage door and entered the garage of the Roper residence. Mrs. Ewert testified that she heard Mr. Radford request twice that they wait for him so that he could stop and change his muddy shoes.

16. Mrs. Ewert testified that while waiting for Mr. Radford to change his shoes, Mrs. Roper went through the garage and opened the door from the interior of the garage to the interior of the residence. Mrs. Ewert testified that she then saw Mrs. Roper open the door from the first floor landing to the basement. This was the last time Mrs. Ewert saw Mrs. Roper. Mrs. Ewert stooped down to talk with the children and soon thereafter felt what she characterized as “the presence” of someone walking past her, whom she assumed was Mr. Radford. Mrs. Ewert did

⁶ Spotting the meter entails turning the meter on, marking the location of the dial and watching the dial for three to five minutes for any movement.

not see whether Mrs. Roper entered the basement before Mr. Radford. A short time after she felt Mr. Radford walk behind her, the explosion occurred.

17. The other three Questar Gas employees were in various locations on the north side of the Roper residence at the time of the explosion. None of them saw Mrs. Roper or Mr. Radford enter the residence.

18. Mrs. Ewert, Ashton Ewert and Olivia Roper were near the entrance to the garage of the Roper residence at the time of the explosion. Other than a small cut to Olivia's mouth that healed quickly, they were not injured.

19. The bodies of Mrs. Roper and Mr. Radford were found in the basement of the Roper residence. Mr. Radford was found with his TIF, a combustible gas detector, in the "on" position. This has been established by recent x-rays of the fire damaged detector. There are some differences in the cause of death for Mrs. Roper and Mr. Radford reported by the Medical Examiner. These differences are being investigated.

20. The Utah County Fire Marshal's office has completed its investigation and concluded that the source of ignition could not be determined. This issue is still under investigation by the parties to the Lawsuit, but the ignition source for the explosion remains unknown at this time.

III. RESPONSE TO ALLEGATIONS OF REQUEST

21. The Request alleges jurisdiction under the Federal Act and the Utah Act. Questar Gas does not contest those jurisdictional allegations.

22. As noted above, the Request itself does not make claims or allege facts regarding the Accident. Rather, the Request refers to the Report and Notice attached. The Report is a collection of appendices regarding the Accident together with a one-page narrative summary and a 19-page Form 11 Pipeline Failure Investigation Report. The one-page narrative states that the

“Division of Public Utilities is petitioning the Public Service Commission to take enforcement action against: . . . Questar Gas Company for violation of the Emergency Leak Repair QGC Manual of Standard Practice Volume 3, Section 5.0.8.7.” The report form makes a similar statement in identifying the “operator error” as failure to clear the residence properly in violation of the same standard. Questar Gas denies these allegations as more particularly explained in the following paragraphs.

23. With respect to the first probable violation, the Notice refers to 49 C.F.R. § 192.13(c), requiring an operator, such as Questar Gas, to “maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under” the regulations. The Notice then refers to Questar Gas’ Operations and Maintenance Standard Practice, 5-0-8, Underground Gas Leak Procedure, which provides that the Company will “ensure maximum precautions are taken for the safety of the general public and [C]ompany personnel when a gas leak is detected.” The Notice further references the requirement in Questar Gas’ emergency plan that if gas is located within the vicinity of buildings, the buildings will be evacuated and the leaks will be immediately repaired. The Notice concludes:

It has been determined that Questar Gas committed a probable violation by failing to ensure maximum precautions for the safety of the general public and company personnel and by not following its plans and procedures. Although Mrs. Roper and her daughter, Olivia Roper, were evacuated from the house, Questar Gas permitted Mrs. Roper to accompany Questar Gas employee Mr. Larry Radford into the house when the house was not safe for the public to enter. This conclusion is based upon the investigation conducted by the DPU, the actions taken by Questar Gas and Mrs. Roper, statements by witnesses, and the fact that the house exploded shortly after Mrs. Roper and Mr. Radford entered it

Notice at 2-3. Questar Gas denies these allegations. In response, Questar Gas affirmatively states as follows: Questar Gas took the maximum precautions for the safety of the general public and followed its plans and procedures. Questar Gas did evacuate the Roper residence and

immediately repaired the leak in compliance with its policies and procedures. There is no evidence that Questar Gas “permitted” Mrs. Roper to accompany Mr. Radford into the residence before the residence had been cleared. The only witness who has knowledge about the order in which Mr. Radford and Mrs. Roper entered the residence is Mrs. Ewert. Mrs. Ewert testified that while waiting for Mr. Radford to change his shoes, Mrs. Roper went through the garage and opened the door from the interior of the garage to the interior of the residence and then opened the door from the first floor landing to the basement. Mrs. Ewert did not see Mrs. Roper again and did not see whether Mrs. Roper entered the basement before Mr. Radford. In addition, Mr. Southwick denies that he told Mrs. Roper that it was safe to enter the residence. Instead, he told her to wait until Mr. Radford had a chance to clear the residence before she went in.

24. With respect to the second violation alleged in the Notice, the Notice refers to 49 C.F.R. § 192.605(b)(1), which requires that the manual of Questar Gas must include procedures to provide safety in operating, maintaining and repairing its pipelines. The Notice concludes:

Questar Gas committed a probable violation by failing to ensure that the house was clear of natural gas before Mrs. Roper was allowed to enter the house. This conclusion is based upon the investigation by the DPU, actions taken by Questar Gas and Mrs. Roper, statements by witnesses, [and] the fact that the house exploded shortly after Mrs. Roper and Mr. Radford entered it

Notice at 3. Questar Gas denies these allegations. In response, Questar Gas affirmatively states as follows: Questar Gas does maintain a manual of procedures to be followed in safely operating, maintaining and repairing its pipelines. Questar Gas’ policies and procedures are periodically reviewed by the Division and have not been found lacking in any way. The conclusion appears to be unrelated to this requirement. Nonetheless, with respect to the conclusion, Questar Gas never had a chance to ensure that the residence was clear of natural gas.

There is no evidence that Questar Gas “allowed” Mrs. Roper to enter the residence before it was cleared. The only witness who has knowledge about the order in which Mr. Radford and Mrs. Roper entered the residence is Mrs. Ewert. Mrs. Ewert testified that while waiting for Mr. Radford to change his shoes, Mrs. Roper went through the garage and opened the door from the interior of the garage to the interior of the residence and then opened the door from the first floor landing to the basement. Mrs. Ewert did not see Mrs. Roper again and did not see whether Mrs. Roper entered the basement before Mr. Radford. In addition, Mr. Southwick denies that he told Mrs. Roper that it was safe to enter the residence. Instead, he told her to wait until Mr. Radford had a chance to clear the residence before she went in.

25. With respect to the third violation alleged in the Notice, the Notice refers to 49 C.F.R. § 192.615(a)(3)(i), requiring a prompt and effective response to notice of an emergency including gas detected inside or near a building. The Notice concludes:

Questar Gas’ response was not effective as evidenced by the explosion and deaths of Mrs. Roper and Mr. Radford. An effective response would have determined the presence of gas in the house prior to the explosion. An effective response would have not permitted Mrs. Roper to enter the house until there had been a definitive, documented finding that the house was safe for the public to enter. An effective response to gas located inside or near a building would have likely prevented the explosion, deaths, and injury. This conclusion is based upon the investigation by the DPU, actions taken by Questar Gas and Mrs. Roper, statements by witnesses, and the fact that the house exploded shortly after Mrs. Roper and Mr. Radford entered it

Notice at 3. Questar Gas denies these allegations. In response, Questar Gas affirmatively states as follows: The residence exploded before Questar Gas had a chance to obtain a definitive, documented finding that the residence was safe for the public to enter. The Questar Gas crew, Mr. Radford specifically, tested the ground outside of the Roper residence following the repair of the damaged pipe and found no gas present. Therefore, the crew followed the Questar Gas

procedures by beginning the process of clearing the residence. There is no evidence that Questar Gas “permitted” Mrs. Roper to accompany Mr. Radford into the residence before the residence had been cleared. The only witness who has knowledge about the order in which Mr. Radford and Mrs. Roper entered the residence is Mrs. Ewert. Mrs. Ewert testified that while waiting for Mr. Radford to change his shoes, Mrs. Roper went through the garage and opened the door from the interior of the garage to the interior of the residence and then opened the door from the first floor landing to the basement. Mrs. Ewert did not see Mrs. Roper again and did not see whether Mrs. Roper entered the basement before Mr. Radford. In addition, Mr. Southwick denies that he told Mrs. Roper that it was safe to enter the residence. Instead, he told her to wait until Mr. Radford had a chance to clear the residence before she went in.

26. With respect to the fourth violation alleged in the Request, the Notice refers to 49 C.F.R. § 192.615(a)(7), requiring an operator, such as Questar Gas, to establish written procedures to minimize the hazards resulting from a gas pipeline emergency that at a minimum make safe any actual or potential hazard to life or property. The Notice then concludes:

It has been determined that Questar Gas committed a probable violation by failing to make safe the house prior to the entry by Mrs. Roper, exposing Mrs. Roper and Mr. Radford to danger. Mrs. Roper was permitted to accompany Mr. Radford into the house prior to a definitive accurate documented finding that the house did not contain any hazardous level of natural gas. This conclusion is based upon the investigation by the DPU, actions taken by Questar Gas and Mrs. Roper, statements by witnesses, and the fact that the house exploded shortly after Mrs. Roper and Mr. Radford entered it

Notice at 4. Questar Gas denies these allegations. In response, Questar Gas affirmatively states as follows: Questar Gas has established written procedures to minimize hazards resulting from a gas pipeline emergency. Questar Gas’ policies and procedures are periodically reviewed by the Division and have not been found lacking in any way. The conclusion appears unrelated to this

requirement. Nonetheless, with respect to the conclusion, Questar Gas never had a chance to “make safe the house prior to the entry by Mrs. Roper.” There is no evidence that Mrs. Roper was “permitted to accompany Mr. Radford into the house prior to a definitive accurate documented finding that the house did not contain any hazardous level of natural gas.” The only witness who has knowledge about the order in which Mr. Radford and Mrs. Roper entered the residence is Mrs. Ewert. Mrs. Ewert testified that while waiting for Mr. Radford to change his shoes, Mrs. Roper went through the garage and opened the door from the interior of the garage to the interior of the residence and then opened the door from the first floor landing to the basement. [Either take out here or insert in prior ones.] Mrs. Ewert did not see Mrs. Roper again and did not see whether Mrs. Roper entered the basement before Mr. Radford. In addition, Mr. Southwick denies that he told Mrs. Roper that it was safe to enter the residence. Instead, he told her to wait until Mr. Radford had a chance to clear the residence before she went in.

IV. AFFIRMATIVE DEFENSES

27. The Request fails to state a claim upon which relief may be granted.

28. The Request is vague in its allegations making it difficult for Questar Gas to effectively respond to it and to defend itself against the allegations in the Request.

29. The Division has waived or is estopped to make claims regarding Questar Gas’ compliance with requirements of the Federal Act and regulations relating to its published practices and procedures. The Division has reviewed Questar Gas’ policies and procedures and has failed to provide notice to Questar Gas of any deficiencies in those policies and procedures.

30. All of the Division’s claims arise out of the same facts and circumstances.

Therefore, even if the Division’s conclusory allegations were correct, which Questar Gas denies they are, they only indicate one, not four violations.

31. The Division has based its claimed violations on a res ipsa loquitur theory that because the explosion occurred while Mrs. Roper and Mr. Radford were in the Roper residence there must have been some violation of the Federal Act, the State Act, the regulations adopted under the Acts or Questar Gas' policies and procedures. Res ipsa loquitur does not apply in actions for civil penalties. Rather, the Division has the burden to prove a violation by clear and convincing evidence. *See Wycoff Co. v. Public Service Comm'n*, 369 P.2d 283 (Utah 1962), cert. denied, 371 U.S. 819 (1962).

32. The Accident occurred as a result of factors beyond the control of Questar Gas and as the result of the willful misconduct and negligence of others.

33. Questar Gas reserves the right to amend its Response and raise other defenses as may arise during the course of this proceeding.

V. RELIEF REQUESTED

34. Based on the foregoing, Questar Gas requests that the Commission dismiss the Request with prejudice based on the evidence presented at the conclusion of this proceeding.

RESPECTFULLY SUBMITTED: September 28, 2007.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **RESPONSE OF QUESTAR GAS COMPANY** was served upon the following persons by electronic mail on September 28, 2007:

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