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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN THE MATTER OF THE  
APPLICATION OF QUESTAR GAS  
COMPANY TO INCREASE  
DISTRIBUTION NON-GAS RATES  
AND CHARGES AND MAKE TARIFF  
MODIFICATIONS

Docket No. 07-057-13

**MOTION OF QUESTAR GAS AND  
UAE INTERVENTION GROUP TO  
STRIKE PORTIONS OF PRE-FILED  
SURREBUTTAL TESTIMONY OF  
DAVID E. DISMUKES, PH.D.**

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Questar Gas Company (“Questar Gas” or the “Company”) and the UAE Intervention Group (“UAE”), pursuant to Utah Administrative Code R746-100-3.H and R746-100-10.F.2.c, moves the Commission to strike portions of the Pre-filed Surrebuttal Testimony of David E. Dismukes, Ph.D. (“Dr. Dismukes”), filed on behalf of the Utah Committee of Consumer Services (“Committee”) on October 7, 2008 in this docket. The portions of the testimony to which this objection pertains are lines 38 to 46, 107 to 111, 132 to 179, 194 to 202 and 392-400 and Exhibit

SR CCS-5.<sup>1</sup> The grounds for this motion are that the foregoing testimony is not proper surrebuttal, that its admission will prejudice the Company and other parties and that the exhibit is not accompanied by backup information as required by Commission rule.

## **I. BACKGROUND**

This docket commenced on December 19, 2007 when Questar Gas filed an Application seeking an increase in its distribution non-gas (“DNG”) rates. On the same day, the Company filed the Direct Testimony of Gary Robinson and Steven R. Bateson, providing the Company’s class cost of service study (“COS”) and detailed information regarding allocation factors used in the COS. On December 20, 2007, the Company filed responses to Master Data Request A, including a response to Master Data Request A.6 providing detailed class cost of service data that provided all information used in deriving the factors used in allocating costs among customer classes. Pursuant to the Commission’s Order on Test Period issued February 14, 2008, the Company filed updated testimony on March 31, 2008. The basic data underlying the COS and allocation factors did not change in any significant way as a result of the update.

On August 18, 2008, eight months after the Company had filed its direct testimony and provided detailed information on its COS and four and one-half months after it filed updated testimony that made no significant changes to the COS, the Committee filed the Pre-filed Direct Testimony of David E. Dismukes, Ph.D. on cost of service issues. Dr. Dismukes’ direct testimony disagreed with some aspects of the Company’s COS, including disagreeing with use of the Company’s Distribution Plant Factor (“DPF”) to allocate costs of regulators, meters, service lines and small diameter mains to customer classes. He recommended that rather than using the DPF to allocate these items, the Commission should allocate these facilities among customer

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<sup>1</sup> Dr. Dismukes also included new arguments in his surrebuttal testimony on rate design issues that did not directly respond to any rebuttal testimony.

classes 75 percent on the basis of the DPF and 25 percent on throughput. He stated that although he had some concerns about the accuracy of the study because the process used to develop the DPF was very manual and involved significant amounts of paper, he was not disputing the Company's development of its DPF and the study it conducted. (Dismukes Direct 457-463.) He said that his recommendation to include 25 percent throughput in allocating these facilities "recognizes the fact that the cost of mains, services, meters and regulators are incurred for the purpose of distributing gas to customers and can have some volumetric considerations." (*Id.* 472-476.)

On September 22, 2008, Mr. Bateson filed rebuttal testimony. He opposed Dr. Dismukes' recommendation on allocation of a distribution plant because regulators, meters and service lines are installed to serve specific customers, large diameter mains are already allocated on the basis of throughput and peak usage factors and the small diameter main plant study includes only the mains required to reach each individual customer. (Bateson Rebuttal 71-89.)

On September 22, 2008, UAE filed the Rebuttal Testimony of Kevin C. Higgins. Mr. Higgins also opposed Dr. Dismukes recommended allocation factor for small diameter mains, meters, service lines and regulators. Mr. Higgins noted that plant such as meters, service lines and regulators are indisputably customer related. (Higgins Rebuttal 212-213.) With respect to small diameter mains, Mr. Higgins referenced the Company's study and stated:

Adding a throughput allocator would provide no improvement to the analysis – it would simply and unfairly shift cost responsibility to larger volume customers.

(Higgins Rebuttal 216-220.)

On October 7, 2008, at approximately 5:30 p.m., less than one week prior to start of hearings in this matter, Dr. Dismukes filed his surrebuttal testimony. For the first time in this proceeding, Dr. Dismukes attempted to justify his allocation recommendation on the basis that it

[b]alanced the potential biases and estimation errors that may arise in the Company's original allocation factor estimation process [and] help[ed] to [m]itigate for the high degree of cost variability in the Company's estimates [and] potential bias issues in the Company's estimates.

(Dismukes Surrebuttal 38-46.) Dr. Dismukes then proceeded to claim, contrary to his direct testimony, that the DPF study had a variety of problems because the study was based on a sample and that the estimates derived from it exhibit a very wide range of dispersion. (*Id.* 144-150.) In support of this position, Dr. Dismukes stated that he had prepared an example. The example is Exhibit SR CCS-5.1, a statistical analysis of data provided by the Company on December 20, 2007, on the average cost of small diameter mains for each meter size. The exhibit was filed in PowerPoint rather than Excel format, precluding access to formulas in the exhibit, and did not include any footnotes indicating the source of the data or workpapers supporting the exhibit.

On October 8, 2008, Questar Gas served a data request on the Committee requesting all backup documents, including workpapers and spreadsheets, used to develop the exhibit. Under the current scheduling order, even with the expedited discovery response times, the Committee's response to this data request is not due until October 13, 2008, the day before the hearing.

## **II. 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, the conduct of proceedings will be impaired to the prejudice of parties playing by the rules.

This is particularly the case in light of recent rulings by the Commission not allowing parties to present sur-surrebuttal testimony at or shortly prior to hearing. In an earlier phase of this case, the Commission sustained an objection, ironically made by the Committee, to the introduction of exhibits during a Company witness's summary responding to recently filed surrebuttal testimony of other parties. During the course of Rocky Mountain Power's currently pending general rate case, Docket No. 07-035-93, the Commission sustained an objection, ironically filed by the Committee, to evidence proffered by Rocky Mountain Power one week prior to commencement of the hearing in that case, on the ground that Rocky Mountain Power's presentation of sur-surrebuttal testimony and exhibits was improper and would unduly prejudice other parties because they did not have time to address it prior to hearing.

Dr. Dismukes has provided new information and analysis in his surrebuttal testimony that is not responsive to any rebuttal testimony and was available when he filed his direct testimony. Based on the foregoing, it is possible that Questar Gas and other parties may not be allowed to respond to Dr. Dismukes' new evidence in the hearing. Furthermore, even if they are allowed to do so, they do not have time to adequately address the new testimony and exhibit.

Unfortunately, Dr. Dismukes' testimony reflects a pattern on the part of this witness of withholding specifics regarding positions and recommendations until the last round of testimony after it is too late for other witnesses to rebut the testimony. Dr. Dismukes did the same thing in the Conservation Enabling Tariff case, Docket No. 05-057-T01. There, he filed a study and

provided other new information in his surrebuttal testimony that was not responsive to any new issue or argument in rebuttal testimony. The Company and Division of Public Utilities, after attempting unsuccessfully to obtain expedited discovery to address the study, filed an objection and motion to strike portions of the testimony. Based in part upon the fact that Dr. Dismukes' testimony was filed 18 days before the hearing and the objection and motion to strike were filed only the day before the hearing, the Commission admitted Dr. Dismukes' testimony, but allowed the parties additional time to respond to it if needed. Order, Docket No. 05-057-T01 (Utah PSC Nov. 5, 2007 at 3-4.

As in the CET case, Dr. Dismukes does not even attempt in his surrebuttal testimony in this case to excuse his delay in bringing forward information he regards as relevant until the last round of testimony. He could not reasonably do so given that the data used in his analysis was provided to the Committee eight months before he filed his direct testimony in this case.

Dr. Dismukes' surrebuttal testimony in this case and the CET case reflect a pattern of gamesmanship on his part. The best way to discourage this type of gamesmanship is to strike the portions of Dr. Dismukes' surrebuttal testimony identified in this motion.

In addition, 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.

Exhibit SR CCS-5.1 does 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 possible provision of this information less than one day before the hearing is to commence is simply too late for the parties to adequately prepare for hearing.

### **III. CONCLUSION**

Based upon the foregoing, it is respectfully submitted that the Commission should strike the following portions of Dr. Dismukes' surrebuttal testimony: lines 38 to 46, 107 to 111, 132 to 179, 194 to 202 and 392-400 and Exhibit SR CCS-5.1.

RESPECTFULLY SUBMITTED: October 9, 2008.

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **MOTION OF QUESTAR GAS AND UAE INTERVENTION GROUP TO STRIKE PORTIONS OF PRE-FILED SURREBUTTAL TESTIMONY OF DAVID E. DISMUKES, PH.D.** was served upon the following persons by email on October 9, 2008:

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