BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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 REQUEST FOR RECONSIDERATION

I respectfully request that the Commission reconsider its 22 December 2008 *Report and Order on Cost of Service and Rate Design* (*Order*) in regard to the elimination of General Service South rates (GSS rates) and changes to Extension Area Charges (EACs) because those decisions are arbitrary and capricious, *ultra vires*, and not based upon substantial evidence.

In its 24 April 2007 *Order on Stipulation* in Docket 06-057-T04, the *Application to Remove GSS and EAC Rates from Questar Gas Company's Tariff* (*Order on Stipulation*), the Commission included the highly questionable statement that: "We recognise the right of the Company to recover the additional costs of providing services to distant communities."

More appropriately, in its 9 May 1997 *Order Denying Application for Rural Connection Charge Tariff*, the Commission had written:

> A business decides what services or products to provide customers, and the areas in which it will compete, based upon its assessment of the costs of doing so and the revenues it will receive from customers as it competes with other market participants.

The GSS rates and EACs were established based entirely upon Questar's assessment of the revenues they would produce and the costs of providing services to the distant communities concerned. It is not the Commission's business to shield Questar against the harsh financial consequences of the Company's mistaken assessments, particularly not at the expense of its ratepayers-at-large. The Commission most recently recognised this in writing of the under-collected

commodity and SNG costs regarding transponders in Docket 08-057-11: “we do not understand why any portion would be borne by other customers.”

Utah is apparently 13th in the nation in mortgage foreclosures. How many evictions could have been avoided if the Commission were the regulator here, ordering mortgage owners to reduce rates to this or that arbitrary percentage? Would that homeowners could ask the Commission to recalculate the periods over which they must continue monthly payments by the adoption of more favourable rates.

In its 27 June 2008 *Report and Order on Revenue Requirement*, the Commission declined to overreach its jurisdiction by imputing the difference in return between that reported by Wexpro and that authorised for QGC to the benefit of the latter’s ratepayers. Now it determines to reach into ratepayers’ pocket once again to ensure that the Company can recover the costs it chose to incur in order to take the business of propane and solid fuel dealers in rural communities.

In its *Order on Stipulation*, the Commission determined it could not approve the elimination of GSS rates and EACs “Absent a cost based demonstration showing why or by how much the(ir) continued imposition … fail in the intent to recover costs”. Non-quantifiable arguments were insufficient, and “the present rates and charges (were) a preferred result”.

On 27 June 2008, the Commission granted Questar a revenue increase of $12M applied as an equal percentage to all customer classes with effect from 15 August. On 18 August, Mr Barrow testified for the Utah Division of Public Utilities that elimination of GSS rates would cost GS1 ratepayers $1.8M. It would increase GS1 rates by 1.02%, in addition to the 4.66% equal percentage increase then contemplated in consequence of the *Revenue Requirement Stipulation*.

The Division not only recommended the original adoption of GSS rates, but subsequently testified in case after case that they would be just and reasonable after proposed adjustments were adopted. And the Commission recorded in its *Order on Stipulation* that "Questar's witness acknowledges the prevailing GSS rate and EACs are just and reasonable."

Mr Barrow provided no evidence in the instant proceeding regarding either Questar's original estimates or its actual costs of extending natural gas infrastructure to the communities in question. Nor was he able to provide any evidence at all of the amounts actually paid by the customers in those communities.

Mr Barrow did provide several exhibits containing various assumed interest rates and outcomes, but the 22 December 2008 decision to eliminate GSS rates and change EACs was not based upon cost-based evidence. When Questar, in its 22 September 2008 *Rebuttal Testimony*, joined the Division's recommendations, it offered no facts or analysis to support them. There is no substantial evidence in the record of this proceeding that the GS1 rates resulting from the elimination of GSS rates would be just and reasonable for GS1 ratepayers such as myself.

Instead, the Commission relied upon the recommendations, assumptions, intentions, opinions, beliefs, thoughts and estimates of the Division – non-quantifiable arguments such as those the Commission 19 months earlier declared "insufficient".

It ought not to be difficult for a well-managed utility to provide the original actual construction costs, to show that the revenue from GSS rates and EACs in excess of GS1 rates has discharged the additional expenses, and that the capital costs of the extensions have been written off rate-base.

In its *Order on Stipulation*, the Commission wrote of ""re-financing" the unpaid balances of the estimated extension costs on a community by community basis. By amortizing those balances over

a longer period of time, rates could be reduced". Now it has determined to compel GS1 ratepayers to bear the cost of perhaps $1.8M to "re-finance" them by reducing the rate rather than extending the term, conveniently eliminating the GSS rates altogether.

In the 22 December 2008 *Order*, the Commission writes that "the Division shows us the GSS obligation was met … in 2007 assuming an 8 percent target rate of return. This is very close to the Company's currently authorized rate of return on rate base of 8.41 percent."

But it also recognises that Questar's "after-tax authorized rate of return on rate base" has been 9.64% since its previous general rate case, Docket 02-057-02. Logic suggests that would be the appropriate rate to apply over the period 30 December 2002 to 15 August 2008 in calculating when the "obligation was met", as would the authorised rates of return for each earlier period between general rate cases. Where are those calculations?

Despite these references to authorised rate of return, the *Order* approves the 6% interest rate proposed by the Division, for which Mr Barrow could offer no merit other than that it:

> is the rate Questar Gas is authorized to charge as a carrying charge in their Account 191 balance accrual. It also is the interest rate Questar pays to customers if those customers are required to provide a cash deposit in order to receive service. It is a rate readily used by Questar in their daily operations dealing with customers.

It was reasonable to suppose that these issues had been disposed of in the 24 April 2007 *Order on Stipulation* in Docket 06-057-T04, the *Application to Remove GSS and EAC Rates from Questar Gas Company's Tariff*, wherein the Commission wrote:

> In consideration of the reasons for the incurrence of the underlying capital costs, cost causation principles and their application in utility regulation, rate making principles with respect to recovery of identifiable costs which can be attributed to groups of customers, and

> consistent treatment of customers, we find the present rates and charges a preferred result than that which would arise from implementing the Stipulation.
>
> In addition to contravening such tried and proven rate-making principles such as cost causation and the avoidance of disparate rate impacts, approval of the Stipulation would result in unfairness at many levels. For example, existing expansion area customers would be treated differently than future expansion area customers, GSS and EAC customers in the various cities would receive different levels of debt forgiveness, all ratepayers would see an increase in rates (albeit a small increase) resulting from the cost of services not enjoyed by most of them and some communities that have already received benefits under rates set pursuant to Utah Code 54-3-8.1 would receive additional benefits under the Stipulation.
>
> Notwithstanding the foregoing, we recognize the challenges faced by rural communities to reduce utility charges and to attract new business which could provide benefits to the communities and to the state in general. We also recognize the right of the Company to recover the additional costs of providing services to distant communities. In appreciation of these difficulties, we provide the following possible alternative solutions to those challenges which would neither violate the preferences statute nor offend rate-making principles. This is certainly not a complete list of possible alternatives. One possibility might be essentially "re-financing" the unpaid balances of the estimated extension costs on a community by community basis. By amortizing those balances over a longer period of time, rates could be reduced, thereby mitigating the negative impacts of their rates being higher than in other areas of the state. This approach would also permit the Company to recover it's prudently incurred costs. Another possibility would be to accomplish the same end by looking to third party financing or the creation of special improvement districts. A third possibility would be to approach the Utah Legislature as was done in a similar circumstance when Utah Code 54-3-8.1 was enacted. Economic development in the state is an important issue for both the legislative and executive branches of government. We encourage the parties in this case to pursue these suggestions and/or develop additional alternatives.

The Commission finds that "we have no evidence in this record to identify what the rate going forward would be if a correction was made for the prior practice of more than doubling the GSS rate. We agree with the Division, this prior practice, if uncorrected, renders rates that are no longer just and reasonable."

Yet apparently the Commission thought that rates would be just and reasonable for GS1 ratepayers-at-large, including me, if we bore a rate increase perhaps 18% higher than required to meet I the increase in Questar's revenue requirement. Every penny not collected from customers in GSS and EAC communities will instead be taken from us. Yet, not only have we not benefitted from the extension of service to those customers, we are paying higher commodity costs because they are enjoying the same proportion of Wexpro gas as we are. The result of the Order is neither

just nor reasonable for ratepayers-at-large, and it does nothing to address the Commission's earlier concerns about unfairness at other levels.

The proposals to eliminate GSS rates and change EACs came as surprises late in the proceeding.

Questar made no proposal to eliminate or change either GSS rates or EACs either in its 19 December 2007 *Application* or in its 28 February or 1 April 2008 *Updated Direct Testimony* in this proceeding. The first such proposal emanated from the Utah Division of Public Utilities in the Direct Testimony of Marlin J Barrow filed on 18 August 2008.

The first introduction of an issue, previously apparently resolved by Commission order, eight months into the proceeding contravened my due process rights since the effect of the elimination and changes bore directly upon the rates I would have to pay as a result of the determination of this matter, in defence of which I had sought and was granted intervention.

The Florida 1st District Court of Appeals, the US 10th Circuit Court of Appeals, and the US Supreme Court all have recorded opinions on point:

> Due process concerns preclude a ruling on matters which have not been placed at issue, since the parties are entitled to notice so that they may fairly present their case;[1]
>
> (A party) was entitled, as a matter of right, to know in advance all of the factual and legal issues that would be presented at the hearing;[2] and
>
> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present.[3]

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1 *Southeast Recycling v Cottongim* 639 So2d 157 (1994).

2 *Shaw v Valdez* 819 F2d 970 (1987).

So, in sum, the Commission's decisions in this *Order* are arbitrary and capricious, being inconsistent with its concerns expressed previously and subsequently, and not founded on substantial evidence.

Moreover, in attempting to correct some perceived injustice and unreasonableness in the GSS rates and EACs paid by perhaps 0.1% of Questar's customers, and to ensure that, in pursuit of some unfounded assumption that it has a right to do so, the Company recovers all its costs, the Commission has overreached its jurisdiction by imposing an unreasonable and unjust rate burden upon Questar's GS1 ratepayers-at-large

Respectfully submitted on 21 January 2009,

/S/_____

Roger J Ball

[3] *Mullane v Central Hanover Bank* 339 US 314 (1950).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for reconsideration of Roger J Ball in Docket 07-057-13 was served upon the following by electronic mail on 21 January 2009:

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