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**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  UTAH COMMITTEE OF CONSUMER SERVICES' RESPONSE TO QUESTAR GAS COMPANY'S PETITION FOR RECONSIDERATION
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The Utah Committee of Consumer Services responds to Questar Gas Company's January 20, 2009 Petition for Reconsideration as allowed by the Commission's administrative rule R746-100-11 F. The Committee requests that the Commission grant the Petition pertaining to its Second<sup>1</sup> request for relief, but deny Questar's Petition pertaining to its Third<sup>2</sup> request for relief. The Committee does not intend to address Questar's Petition, Argument Part I, page 5, or Argument Part V, page 14.

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<sup>1</sup> Petition, Argument Part II, page 10.

<sup>2</sup> Petition, Argument Part III, page 12.

I. THE FINDINGS AND CONCLUSIONS PERTAINING TO WEXPRO  
GAS RESOURCES ARE UNSUPPORTED.

In one sentence based upon a cursory remark, the Report and Order concludes that a segment of retail natural gas consumers were not intended beneficiaries of a highly complex and necessary lengthy agreement that has since December 1981 governed commodity prices that are passed on to consumers through a mechanism that is separate from a general rate case. The cursory remark<sup>3</sup> is unaccompanied by any discussion of why and how Wexpro resources differ from market resources, nor a discussion of the factual and legal basis for the Commission's approval of the Wexpro agreement and the Utah Supreme Court's opinion that it is an agreement serving the public interest and establishing just and reasonable rates. *Utah Department of Administrative Services v. Public Service Commission*, 658 P.2d 601 (Utah 1983) "Wexpro II".

The Report and Order states: "...we do not find it appropriate to include the benefits of Questar's Wexpro gas resource in the pricing of this non-traditional utility service, especially since CNG is available to the general public and is not limited to Questar Gas Company customers." Whether a regulated utility service is or is not a "non-traditional utility service" is not a factor in the determination of just and reasonable rates for the commodity. The Report and Order determines

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<sup>3</sup> "Every molecule of NGV gas should come at market, not Wexpro, prices, and the rate should be set accordingly." RJB Exhibit 7.0 at 14.

rates based upon the purpose for which a customer consumes the commodity rather than the pass-through cost of the commodity plus the full cost of service to distribute it.<sup>4</sup>

The Commission established Docket No. 08-057-21 presumably for the purpose of examining the complex regulatory and public policies surrounding the distribution network and investment necessary to supply vehicle fuel.<sup>5</sup> The Committee and perhaps other parties addressed only limited issues in the general rate case, anticipating a broader inquiry in 08-057-21. Docket No. 08-057-21, not a general rate case, is the appropriate forum in which to determine whether NGV distribution investment requires different regulatory treatment.<sup>6</sup>

II. THE REPORT AND ORDER CORRECTLY REQUIRES THE NGV SCHEDULE TO INCLUDE ITS FULL COST OF SERVICE BY A DATE CERTAIN.

One approach to deciding the merits of Questar's third request for relief is to ask whether setting the timetable to end the subsidization of one group of utility customers violates the Utah Administrative Procedures Act. The Act provides in Section 63-46b-16(4) that an appellate court may grant relief from an agency's decision only if the decision substantially prejudices the appealing party by

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<sup>4</sup> The Report and Order establishes a distinction that is impractical if not impossible to apply as the factor that determines different pass-through costs of natural gas from the same resource. The Commission's order that the NGV schedule move to full cost of service eliminates any rationally based difference between customers who use natural gas as a vehicle fuel or burn it in a furnace.

<sup>5</sup> The Commission has not yet issued an order that defines the subject matter, procedure and purpose for this docket.

<sup>6</sup> E. Orton testimony, October 15, 2008, Transcript Page 355, Line 15 to Line 21.

erroneously interpreting or applying the law, comes from an unlawful procedure or decision-making process, is not supported by substantial evidence when viewed in light of the whole record, is an abuse of the delegated discretion, is contrary to the agency's prior practice, or is otherwise arbitrary or capricious.

The Commission has stated in reference to the NGV issue that it does not have the authority to permit one group of utility customers to subsidize the rates of another group of utility customers, because utility rates in Utah are based on the cost of providing service.<sup>7</sup> Questar agrees that the NGV rate “was likely significantly below cost of service” and along with all other parties “recommended an increase in the rate to eliminate 50 percent of the shortfall.”<sup>8</sup> Questar Petition for Reconsideration, Page 12. Questar agrees that the NGV schedule should recover its full cost of service, but disagrees with the Commission's setting July 1, 2009 as the date when the full cost will be included in rates. Questar contends that because only one party requested that the rates should move immediately to full cost of service there is no substantial evidence that supports the Commission's timing decision.

Questar misunderstands both the Commission's decision and the standard against which its decision is tested. That the NGV schedule must recover its full cost of service is not contested and is supported by substantial evidence, indeed by

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<sup>7</sup> See January 8, 2009, Public Service Commission to NGV comments.

<sup>8</sup> Questar is only partially correct in its description of other parties' positions. Mr. Orton testified that the NGV schedule should be set at the full cost of service within a couple of rate cases and that the impact of including the full cost of service should be immediately recognized and disclosed. E. Orton, October 15, 2008, Transcript Page 355, Line 5 to Line 14.

all of the evidence presented by the parties. When the schedule begins to recover the full cost of service is a matter plainly within the Commission's discretion, the exercise of which is entitled to deference.<sup>9</sup>

The Report and Order at pages 40 to 42, makes the following findings and entered the following conclusions:

Based upon the testimony provided in this case, the NGV schedule is substantially below cost of service and the rate must be increased to recover its required revenue. All parties generally agree, the price of CNG vehicle fuel should not be subsidized by other utility customers.

We are compelled by the broader public interest, however, to completely eliminate the subsidy discovered in this rate case, which has kept the price of CNG artificially low at the expense of other ratepayers, sooner rather than later and direct the Company to increase the rates associated with CNG to full cost of service on July 1, 2009.

Finally, we find it important for the public to understand the costs and benefits of CNG when making a vehicle choice decision. We agree with the Committee's recommendation that the Company work with interested parties to develop a fact sheet regarding the partial removal of the subsidy and the intent to move the NGV schedule to full cost of service by July 1, 2009, to ensure that NGV customers are fully informed regarding the rate change. We direct the Company to generate and circulate such fact sheet by February 28, 2009. We also agree that the discussion of NGV issues should continue and will convene a technical conference in Docket 08-057-21 during the first quarter of 2009 to facilitate such discussion.

Questar's Petition for Reconsideration does not establish that these findings and conclusions are incorrect under any standard of review or that recovering the

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<sup>9</sup> Questar emphasizes the testimony from one Executive Branch policy witness appearing at the same time as the general public, to argue not that the Commission may not set the time table, but that it should not for reasons yet to be explored. Such testimony is not entitled to any greater weight than any other testimony from the general public. Perhaps, it is to be afforded less weight than evidence that relies upon the witness's participation in technical conferences, discovery and the preparation of written direct, rebuttal and sur-rebuttal testimony that is examined and tested by evidence from other parties. Furthermore, the Commission should circumspectly consider this type of position statement in a formal administrative proceeding and then only if the statement is substantially corroborated by the factual, technical and expert opinion evidence found in the record.

full cost of service from the NGV schedule and ending the improper and unfair subsidy substantially prejudices Questar.

DATED this 4<sup>th</sup> day of February 2009.

/s/ Paul H. Proctor

Paul H. Proctor

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Utah Committee of Consumer Services

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served upon the following by electronic mail sent February 4, 2009:

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