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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Consolidated Docket |
of Formal Complaints Against Questar |
Gas Company Relating to Back-billing |

Docket No 08-057-11

RESPONSE MOTION TO
MOTION FOR PROTECTIVE ORDER

The Public Service Commission of Utah (PSC or Commission) created this Docket on 1 April 2008, directing the Utah Division of Public Utilities (DPU or Division) to conduct an investigation into issues surrounding Questar Gas Company's (QGC, Questar, or Company) incorrectly reporting remote meter reading transponders, in response to numerous formal and informal complaints filed with the Commission and Division by ratepayers who had been back-billed for previously under-reported consumption and a 28 March recommendation from the Utah Committee of Consumer Services (CCS or Committee).

The Utah Ratepayers Association (URA or Association) requested intervention on 2 April, and the Commission granted the request by Order on 18 April. George & Nancy Mitchell and Arthur &

QGC Back-billing Complaints

Docket No 08-057-11

URA *Et Al*

RESPONSE MOTION TO MOTION FOR PROTECTIVE ORDER

19 May 2008

Shirley Wasek are formal complainants. During a 17 April Procedural Conference, Administrative Law Judge Steven F Goodwill said that formal complainants are parties to this Docket.

We respectfully move the Commission to deny Questar's 2 May 2008 *Motion for Protective Order* in this Docket.

BACKGROUND

On 21 April, the Commission issued a *Protective Order*, stating:

On April 2, 2008, The Utah Ratepayers Association submitted a Motion for Protective Order in this docket. The Utah Ratepayer Association stated that entry of a protective order would expedite the production of documents and other information and would afford necessary protection to trade secret and confidential commercial, financial and competitive information. The Commission finds that sufficient grounds exist for entry of the following Protective Order in this docket.

The Utah Ratepayers Association (URA or Association) denies that it submitted such a motion on 2 April or at any other time. Its 2 April *Request to Intervene* made no reference to a protective order. On 25 April, the Commission "retracted and vacated" that *Protective Order*, saying it "was issued ... in error", but without further explanation.

On 2 May, Questar Gas Company moved the Commission to issue another protective order in the form of a draft that it attached to its *Motion*. The language of the Company's draft order is indistinguishable from that in the *Protective Order* previously issued and vacated by the Commission referred to above.

QGC asserts that much of the information it will be sharing with the Commission, the Division, and the Committee is confidential; such an order will protect *valuable confidential, trade secret, and proprietary information*; and it will protect the Commission and other parties who might be asked to reveal the information by setting forth clear parameters for using confidential information. Questar declares that the proposed order "is fair and equitable to all parties." The purpose of the purported

protective order, according to its paragraph 1(A), is to shield “*trade secret, confidential commercial, financial, competitive or otherwise protected information*”. (Emphases added.)

It is conceivable that all the Company’s customers have been financially affected by its transponder problems, and that management errors underlie them, and this proceeding should be as transparent as possible to ratepayers. A protective order should not be issued to shield Questar either from public scrutiny or possible embarrassment. Of course, QGC’s *Motion* does not request one for that stated purpose but, if granted, a protective order could be deployed to that effect. Moreover, it would lay a heavy, perhaps impossibly heavy, burden on the poorly resourced Association and particularly individual ratepayers trying to protect their interests. A burden more appropriately borne by ratepayer-financed Questar.

ARGUMENT

During a Technical Conference on 16 May, the Company provided data showing that it has so far inspected 325,826 transponders/meters and found problems with 0.64% – or about 2,085 – of them. Responding to DPU Data Request 1.09 on 25 March, Questar detailed 388 customers who had been back-billed amounts ranging from \$33.73 to \$8,763.22, a total of \$472,708.49, for period up to 24 months into the past. (It isn’t yet clear to the Association whether the Company’s response included all back-billed customers, or only ones identified in 2008. KUTV Channel 2 News reported on 6 August 2007 that some customers had already been back-billed in connection with transponder under-reporting.)

Questar has not denied that a similar number of unidentified customers may have been over-billed to a like extent over the same period, but admits that it has made refunds to several it has identified. Nor has it denied that under- and over-billing may have occurred due to the same cause throughout

the past 12 years, or that there may have been effects on the bills of all its customers over that period arising from the gas balancing account and pass-through rate adjustments.

This issue is therefore one of concern to all of Questar's ratepayers, and it is in the public interest that the investigation be conducted in, and that all relevant information be brought into, the full light of day, so that everyone can see for themselves the extent to which the facts are in evidence and the outcomes are just and reasonable.

Contrary to Questar's *Motion* and draft protective order, the Association, Mr & Mrs Mitchell, and Mr & Mrs Wasek, believe that it is highly unlikely that any information relevant to this investigation will prove to be "trade secret and confidential commercial, financial and competitive information", and consider that the burden to prove that it is should fall upon Questar, on a case by case basis. The existence of a protective order will create an excuse for QGC to delay providing information properly requested by the URA, individual formal or informal complainants, or other ratepayers, and shift the burden of proof to those least able to show that the information, sought but not yet revealed, should be disclosed.

On 20 February, the Division asked 9 questions that Questar answered on 25 March. The Company provided 9 answers to the Committee on 30 April but, for some reason, the Committee declines to provide the Association with a copy of the data request to which those answers purport to respond, so we don't know when CCS submitted it to QGC, how responsive those answers were, or whether the Committee asked other questions that Questar has not answered. On 24 April, the Division and Committee jointly asked QGC a further 30 questions, of which the Company answered 20 on 8 May. No claim has been made that any of the information provided in the 39 answers to date is "valuable confidential, trade secret, and proprietary", and no explanation has been publicly offered why the remaining 10 questions have not yet been answered, but it is not readily apparent

why the answers to those questions should contain “trade secret, confidential commercial, financial, competitive or otherwise protected information”.

The Company enjoys a monopoly for the retail supply of natural gas in its service territory, and neither it nor any of its affiliated Questar Corporation subsidiaries offers retail natural gas service anywhere else, so it is difficult to understand how information pertaining to its LDC operations and management can constitute “trade secret, confidential commercial, financial, competitive or otherwise protected information”. Questar purchases meters and transponders, and contracted for much of the transponder installation work, and it is possible that there may be confidentiality clauses in those contracts and purchase agreements. If so, the Commission should examine them and determine exactly what elements are proper to be kept private between QGC and its suppliers on a case by case basis as the Company asserts the secrecy, and admit everything else into the public record.

If Questar’s *Motion for Protective Order* is granted, the Company, at its sole discretion, may claim that any “documents, data, information, studies and other material” responsive to “any interrogatories, requests for information, subpoenas, depositions, or other modes of discovery” are “trade secret, confidential commercial, financial, competitive or otherwise protected”, requiring that everyone who wishes to see them must first read the protective order, sign a non-disclosure agreement, and deliver it to QGC’s counsel.

Material claimed to be confidential is supposed to be marked and provided in two versions, one printed on yellow paper with the confidential elements redacted. But it is far from unusual for the non-confidential version not to be provided, and frequently it is claimed that the entire document is confidential, including every “and”, “or”, and punctuation mark. Much foot-dragging occurs when

even experienced practitioners attempt to obtain satisfaction, and the only recourse may be by challenging the Company's classification to the Commission.

Anyone who wants to challenge a Company claim of confidentiality must file an "appropriate pleading" with the Commission. At least 10 days will then pass before the Commission conducts a hearing that is closed to the public, and even to the challenger if they haven't signed a non-disclosure agreement. Should the Commission then agree that part or all of the material was not properly classified as confidential, and issues an order to that effect, the challenger must wait another 10 days before it becomes part of the public record.

If the protective order is issued as drafted by Questar, after this proceeding is concluded, material that the Company claimed without successful challenge to be confidential must be returned to its counsel.

These are enormous burdens for the Association and particularly individual ratepayers with inadequate resources and limited acquaintance with Commission customs and practices, statute, rules and precedent. The Company, on the other hand, has regulatory affairs and legal staff, and retains outside counsel, with extensive experience in these matters, all of whom are paid for by ratepayers through their utility bills.

It is more appropriate for QGC to approach the Commission if it regards as confidential information responsive to a question it has been asked. The Company should be required to describe the information it wants protected in as detailed a way as possible without disclosing its actual secrets. The Commission should consider Questar's claim with a presumption that the information requested should be made public, and the Company should have the burden to prove otherwise. Anyone should be admitted to the hearing who is willing to sign a non-disclosure agreement regarding material discussed therein that is subsequently found to be confidential. It should be

possible to leave the non-disclosure agreement for the hearing in place and retain the confidential material for the duration of the proceeding, or to discharge it by returning any documents provided by QGC and related notes before leaving the hearing room.

Consequently, the Utah Ratepayers Association, George & Nancy Mitchell, and Arthur & Shirley Wasek, respectfully move the Commission to deny Questar's 2 May 2008 *Motion for Protective Order* in this Docket.

Since the Commission has declined to provide the Association with the full names, addresses and telephone numbers of formal complainants Francis, DeHaan, and Larsen, or of the name of the signatory to the formal complaint of Unlimited Designs, and since the Association has so far failed to otherwise obtain their contact information, it is unable to serve copies of this Request on them, and requests that the Commission does so and provides the Association with a certificate that they have been served, please.

Respectfully submitted on 19 May 2008,

/s/

Roger J Ball

Chancellor and Moderator for the Utah Ratepayers Association
and on behalf of George & Nancy Mitchell and Arthur & Shirley Wasek

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response Motion to Motion for Protective Order in Docket 08-057-11 of the Utah Ratepayers Association, George & Nancy Mitchell, and Arthur & Shirley Wasek, was mailed on 19 May 2008, to the following:

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