UTAH RATEPAYERS ASSOCIATION

EDUCATION AND LOBBYING FOR RATEPAYERS OF UTILITY-TYPE SERVICES WITH LIMITED OR NO ALTERNATIVES

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11 August 2008

Dear *Julie*

08-057-11 – PROPOSED FOURTH SCHEDULING ORDER

The Utah Ratepayers Association (hereinafter sometimes Association or URA) has a number of substantive concerns regarding Questar Gas Company's (Questar, QGC, Company or utility) proposed form of a Fourth Scheduling Order (proposal or draft) in this matter.

A red-lined version of the draft is attached, incorporating changes requested and suggested by the URA.

First, in its 28 March 2008 Memorandum to the Commission, *Questar Transponder Issue*, the Utah Committee of Consumer Services (Committee or CCS) identified several concerns, including that "(t)he fundamental question underlying this transponder issue is whether Questar's actions have been prudent."

Then, in its 1 April 2008 *Order Consolidating Dockets* (*Consolidating Order*), the Commission determined " to initiate an investigation … to examine the issues raised by the Committee in its memorandum of March 28, 2008, as well as any other issues deemed appropriate." In that memorandum, according to the *Consolidating Order*, the CCS had recommended that the Commission "determine the full scope of consumers impacted by this issue and ensure that impacted consumers are given an opportunity to participate in the process". The *Consolidating Order* listed 7 of the Committee's recommendations that should be included in an investigation, but to which it should not be limited:

a. the number of consumers impacted;

b. the length of time of operation of the faulty transponders;

c. the volume and costs of gas unbilled due to faulty transponders;

d. the precise accounting and regulatory treatment of unbilled gas associated with faulty transponders;

e. a determination of existing utility processes related to testing of new equipment, checks within the billing system, and risk controls;

f. identification of potential adjustments to the conservation enabling tariff and/or general rate case to ensure appropriate treatment of costs associated with unbilled gas due to the faulty transponders; and

g. determination of appropriate regulatory oversight regarding potential customer obligations under the circumstances.

And next, in its 2 April *Request to Intervene*, the Association pointed out that about 73% of the rates paid by QGC's more than 800,000 ratepayers consist of supplier non-gas and commodity costs. In consequence, the amount under-billed as a result of incorrectly installed transponders might well have resulted in increased rates for all those ratepayers. There might also have been over-billing resulting from incorrect transponder installation. The URA raised other issues, including the effect of the Conservation Enabling Tariff, whether the remote meter-reading project had been prudently or efficiently managed, and the possibility of perverse incentives for utility managers and owners. The Commission granted the Association's *Request to Intervene* on 18 April without limiting its ability to explore any of the issues it had raised

In the third paragraph, at the foot of page 2 and top of page 3, of its draft, QGC repeats language used by Judge Goodwill in his original 21 April 2008 Scheduling Order potentially restricting the scope of this proceeding to the "issues investigated by the Division as they relate to the individual customer complaints", and to "resolve (only) such complaints, as well as resolving any questions concerning the accounts of similarly situated Questar customers who have not filed a complaint."

This language is at odds with, and much narrower than, the scope of the investigation recommended by the CCS, described in the Commission's *Consolidating Order*, and sought in the URA's *Request to Intervene.* There was no motion or explicit proposal at the 17 April Procedural Conference to form a basis for the Judge to deliberately narrow the focus of the proceeding. The Association therefore concludes that it was not his intent to over-rule the previous decisions of the Commission, objects to the inclusion of the language in any further scheduling order, and respectfully requests the Commission to restore the proceeding to its full scope by adopting instead the language suggested in the attached red-lined version of the draft Fourth Scheduling Order.

Second, the Company suggests, in the fourth paragraph, on page 3, of its proposal that "(d)iscovery shall close and no further discovery shall occur after September 30, 2008". According to the recollection and the notes of the URA's representative at the 31 July 2008 Status and Scheduling Conference (Scheduling Conference), neither this specific language nor anything like it was discussed for inclusion in a scheduling order during.

This language is also objectionable because: it presumes that no additional facts can usefully be discovered or offered into evidence after sur-rebuttal testimony or comments are filed, and it would bar the possibility of further enquiry thereafter; it presumes that the hearings tentatively set for 22 and 23 October will be dispositive, when it remains to be seen whether the Commission will be satisfied with the testimony and comments before it at that stage; and it presumes that there will be no need for discovery in preparation for hearings that might be scheduled in accordance with its third paragraph to deal with individual complaints.

Moreover, the Association objects to the inclusion of the language because, in breach of the 7th of the *Utah Standards of Professionalism and Civility* (*Standards*), it does not accurately commit to writing the oral understandings reached, and it seeks to include substantive matters upon which there was no agreement, at the Scheduling Conference, doing so without QGC having explicitly advised the URA of such inclusion.

Furthermore, it raises the possibility that the Company is trying unilaterally to limit the scope of the proceeding by inserting the language to which the Association objects, hoping that no-one will notice, in order to limit the future embarrassment to which the revelation of its past actions and inactions may expose it. If that is indeed the case, it is not only improper, but is highly offensive to the URA and the ratepayers it represents, and the proposal therefore breaches the 2nd of the *Standards*, regarding the expectation of fair dealing and that clients have no right to demand that their lawyers engage in any offensive or improper conduct, as well as the portions of the Preamble that refer to "professional integrity in the fullest sense of those terms", "we must be mindful of our obligations to the administration of justice, which is a truth-seeking process", and "a rational … and efficient manner."

In its 18 April 2008 *Order Granting Intervention* to the Association, the Commission wrote: "Intervention is conditioned upon the intervenor's representatives participating in this matter adhering to the Utah Standards of Professionalism and Civility adopted by the Utah Supreme Court October 16, 2003". Although the Utah Division of Public Utilities (Division or DPU), Committee and Questar were not required to request intervention in this matter, the URA expects that, in equity, the Commission will hold those parties' counsel to the same *Standards*, which include:

> A lawyer's conduct should be characterized at all times by personal courtesy and *professional integrity in the fullest sense of those terms*. In fulfilling a duty to represent a client vigorously as lawyers, *we must be mindful of our obligations to the administration of justice, which is a truth-seeking process* designed to resolve human and societal problems in *a rational*, peaceful, *and efficient manner* (*Standards*, Preamble, paragraph 1)
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> *Lawyers shall advise their clients that* civility, courtesy, and *fair dealing are expected*. They are tools for effective advocacy and not signs of weakness. *Clients have no right to demand that lawyers* abuse anyone or *engage in any offensive or improper conduct* (*Standards*, Standard 2)

and

> *When committing oral understandings to writing*, lawyers shall do so *accurately and completely*. They shall provide other counsel a copy for review, and *never include substantive matters upon which there has been no agreement, without explicitly advising other counsel*.
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> (*Standards*, Standard 7)

For these reasons, the Association respectfully requests that, before issuing a further scheduling order in this Docket, the Commission takes care to omit any language that might be interpreted to limit the investigation, discovery, hearings or other parts of the proceedings in ways not determined by the Commission as a result of motions or pleadings, with ample opportunity for replies, followed by the opportunity for arguments to be heard in public hearings.

Third, during the Scheduling Conference the URA supported the CCS in requesting moderated conference calls for both proposed sessions of the Public Witness Hearing. The draft entirely fails to reflect that request, to which we recall no objections, instead containing rather standard language from previous proceedings regarding call-in arrangements, and therefore again contravening the 7th of the *Standards* with regard to completeness. It is important, particularly in view of the number of ratepayers affected by under- and over-billing, and the possibility that all QGC ratepayers have been affected, that the Commission make it clear in any further scheduling order how it intends to facilitate the widest possible ratepayer participation in the hearings. The Association offers language in the attached red-lined draft Fourth Scheduling Order which it suggests may satisfy that need.

Finally, the Association renews its request for adequate time to prepare its rebuttal testimony or comments. It needs time to properly study the Division's extensive 18 July *Report*, conduct necessary consequential discovery, and prepare its rebuttal testimony or reply comments. The URA's reading thus far of the *Report* makes it likely that we shall need to serve discovery requests on the DPU and others before we can adequately rebut it. Also, the utility has objected to, and declined to fully answer, numerous Association discovery requests. We need time to move the Commission to compel the utility to provide the answers, without which we cannot conduct a proper analysis. We pointed out to Judge Goodwill at the 17 April Procedural Conference that we would need and request additional time in the event our discovery requests were not answered fully and promptly.

As we wrote in our *Request to Intervene*: "the legal rights and interests of (URA) members and ratepayers-at-large alike may or may not coincide with 'the public interest', etc" in which the Division is statutorily charged with acting, or "with those of 'a majority of residential consumers *as determined by the committee* and those engaged in small commercial enterprises'" that the CCS is similarly charged with advocating. It is crucial to our ability to protect the interests for which we sought intervention that the Association be permitted effectively to rebut not only the DPU's *Report*, but also any position that may be put forward by any other party, and to have access to all of the information that it deems necessary for that purpose.

We note that the Division, afforded 77 days by the original, 21 April, *Scheduling Order* (*Scheduling Order*) to conduct its investigation and prepare a report, after 70 days, during which all its discovery requests were fully and promptly answered by the Company, requested and, without objection by any party (including the URA) was granted an additional 9 days. We also note that, during the Scheduling Conference, the Company asked to triple the interval between dates for filing rebuttal and sur-rebuttal, that no-one (including the Association) objected, and that the utility's request is reflected in its draft. The URA had and has no objections to the Commission extending those accommodations to the DPU and QGC, but respectfully requests that its concerns be similarly valued.

The Company, Division and Committee are able to deploy millions of dollars in ratepayer-funded resources, far in excess of anything available to the Association, which has a number of

volunteers working on their own time, with necessarily modest expenses met by member donations. For example, while the Questar had five representatives in attendance at the Scheduling Conference, including three attorneys, and the DPU and CCS three each, including on attorney apiece, all at ratepayer expense, the URA, which numbers several of the formal complainants among its members, had a single unremunerated representative there. It is not unreasonable that we should be granted adequate time to obtain the information we need, to analyse it, to prepare our rebuttal and sur-rebuttal, and for hearing.

The Committee represented that some consumers wonder what is taking so long with this case, but Association members recognise and are staggered by the amount of work being done voluntarily on their behalf by URA officers, governors and members. They are unlikely to be impressed if we are not permitted to do an adequate job.

During the Scheduling Conference, on behalf of the Commission, its Secretary offered 3 November for a hearing, but other parties pressed hard for a date in September or early October, resulting in the conclusion that that the earliest feasible dates were probably 22 and 23 October, just 12 calendar, or 6 Commission working, days earlier. Some other parties maintained that, to give the Commission time to read it before the hearings, sur-rebuttal testimony or comments needed to be filed by 30 September, 22 days prior to the hearings compared with the 7 provided in the original *Scheduling Order*. The utility then pressed for 21 days, in place of the 7 provided in the *Scheduling Order*, to prepare its sur-rebuttal. The consequence is the 9 September date for filing testimony or comments rebutting the Division's *Report*.

The Association's position is that it is simply not feasible for it to analyse the *Report*, serve the discovery requests that are likely to flow from it, for the Commission to compel Questar (and perhaps others who may object to those arising from the *Report*) to respond to the URA's discovery requests, and for the Association to analyse the responses and prepare its rebuttal, all by 9 September.

The URA provided a written *Proposed Further Schedule* during the Scheduling Conference, anticipating that it would be able to prepare its rebuttal testimony or reply comments by 3 November. That was based upon: needing until 19 August to study the *Report*, serve further discovery requests, and file motions to compel; that QGC would be entitled to respond until 1 September; and the Association to reply until 8 September. The URA suggested 10 September for a hearing on its motions, if necessary, estimated that the Commission might determine them by 18 September, and offered that directed discovery responses could reasonably be expected by 29 September.

The Association doesn't want to waste anybody's time with motions to compel discovery that may be unnecessary in light of the DPU's *Report*, and thinks it makes sense first to complete its initial study of that, including preparation of consequential discovery motions, and then to file motions in respect of the discovery it still believes it needs from the Company. The URA doesn't think it unreasonable, given the imbalance in resources, to request 32 days for its initial study of the *Report* and preparation of further discovery requests and motions, and 35 days to

study the directed discovery responses and prepare its rebuttal testimony or comments, a total of 67 days, compared with the 86 allowed the Division to prepare its *Report*. The balance of the time, 41 days from 19 August to 29 September, is attributable solely to the utility's refusal to respond to the Association's discovery requests.

Allowing the three weeks between rebuttal and sur-rebuttal requested by Questar, the latter should be filed on or by 24 November, and allowing the three weeks some other parties thought the Commission should have to read the sur-rebuttal, the hearings could take place on or after 15 and 16 December. Conceivably, however, the Commission's schedule may not be as congested around Thanksgiving as it appears to be in October, so that the hearings could instead take place during the first or second weeks of December

In its *Proposed Further Schedule*, however, the URA suggested a 2nd Status and Scheduling Conference one week after the filing of sur-rebuttal, anticipating that it may yet be necessary to schedule further discovery and the filing of additional testimony or comments to fully explore the causes and consequences of the problems with QGC's remote meter-reading programme prior to hearings.

The Association respectfully requests that the Commission adopt consecutive days in the first three weeks of December 2008 for hearings, and schedule the filing of rebuttal testimony or comments on 3 November and surrebuttal on 24 November.

Yours sincerely,

Roger

ROGER J BALL
Chancellor & Moderator, Utah Ratepayers Association