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Date Submitted:

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	)	<u>DOCKET NO. 08-057-11</u>
	)	
In the Matter of the Investigation and the	)	
Consolidation of Dockets of the Formal	)	REPLY COMMENTS OF QUESTAR GAS
Complaints Against Questar Gas Company	)	COMPANY REGARDING THE DIVISION
Relating To Back-Billing	)	REPORT ON TRANSPONDER PRE-
	)	DIVIDE EXCEPTIONS AND BACK-
	)	BILLING ISSUES
	)	

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Pursuant to the Fourth Scheduling Order issued August 26, 2008, by the Public Service Commission of Utah (Commission) in this docket, Questar Gas Company (Questar Gas or the Company) respectfully submits its reply comments in response to the report of the Division of Public Utilities (Division) regarding transponder pre-divide and back-billing issues, filed July 18, 2008 (Report).

**INTRODUCTION**

Questar Gas generally agrees with the investigatory findings of the Division and believes that the review and investigation were thorough. Questar Gas agrees with the Division's determination that Questar Gas acted not only prudently, but commendably, in its handling of the introduction of and installation of the transponders. However, Questar Gas respectfully disagrees that the existence of errors in fewer than one-tenth of one percent of all transponders constitutes imprudence. While the Company understands that to an affected customer even one

error appears to be too many, requiring absolute perfection in billing practices is unrealistic and unfair to the Company. No other public utility is held to such a standard. To the contrary, the mere existence of pre-divide-setting errors in fewer than one-tenth of one percent in this docket clearly demonstrates Questar Gas's care and prudence in the installation of transponders. The Company's diligent efforts in detecting and correcting these relatively few errors should be commended, not penalized. Self-audit and continuous improvement is a cornerstone of good business practices that benefit the Company and its customers.

Questar Gas also disagrees with the Division's recommendation that the Company's billing system be modified. Through its self-imposed diligence the Company has already developed and refined processes to prevent and identify errors in the future, making further changes to its billing system unnecessary.

The Division found that Questar Gas has not violated any statute, rule, regulation or Tariff provision. Nevertheless, the Division recommends, without any legal support, that "some" penalty must be imposed. It is entirely inappropriate to impose a penalty upon the Company when it has followed applicable Tariff provisions, complied with all applicable statutes, rules and regulations, and acted prudently in making system improvements to the significant savings of its customers.

Questar Gas is amenable to the Division's recommendation that back-billing be limited to a term of six months prior to discovery of the error.

Finally, Questar Gas disagrees with the Division's recommendation that the Commission initiate a generic rulemaking. Instead, Questar Gas recommends that to the extent the Tariff needs to be clarified regarding back-billing limitations and the treatment of transponder-related

issues that the Company be given an opportunity to change its Tariff through an appropriate Tariff filing.

## DISCUSSION

### **I. QUESTAR GAS WAS PRUDENT AND REASONABLE IN UTILIZING, INSTALLING AND TESTING ITS TRANSPONDERS.**

#### **A. The Division Correctly Concluded that Questar Gas was Reasonable and Prudent in Choosing to Utilize Transponders, the Selection of Transponder Models, the Installation of the Transponders, and in Its Corrective Actions to Solve the Pre-Divide Issue.**

After thoroughly investigating the facts and circumstances surrounding the issues raised in this docket, the Division unequivocally found that “Questar Gas was reasonable and prudent in its decision to install transponders, in its installation practices, in its decision to change to VRT model transponders, and in its actions to solve transponder problems once it realized the nature and scope of the problems.” *Report* at 82. Questar Gas agrees.

When Questar Gas began evaluating the possible use of transponders, transponders were relatively new to the industry. Questar Gas carefully analyzed the potential value of the technology to the customer, and was at the forefront of the industry movement to utilize it. Since that time, transponders have become standard devices for reading meters in the utility industry. As a result of the transponder installation program, Questar Gas’s customers have enjoyed substantial benefits. The Division found that Questar Gas’s customers received the benefit of an annual cost reduction of “just under \$5.3 million or about \$6 per meter per year,” an 88 percent drop in the number of monthly bills estimated (“from 5.40% in 1999 to just 0.65% in 2007”), and a decrease of more than 60 percent in the number of bills requiring adjustments due to billing errors from all sources (“from 1.45% in 1999 to 0.55% in 2007”). *Id.* at 50. The savings to Questar Gas’s customers have been substantial and far outweigh the back-billing adjustments that have resulted due to errors related to a small fraction of transponders.

Questar Gas chose a transponder model that performed better and cost significantly less than other models in the market. *Id.* at 51. At installation, Questar Gas had “remarkably low” error rates. *Id.* at 54. The Division noted that only between 0.08 percent and 0.10 percent of the installed transponders experienced pre-divide errors. *Id.* at 3.

The Division also noted that Questar Gas was prompt and diligent in resolving the pre-divide issue once it became aware of the problem. Indeed, Questar Gas worked with the transponder manufacturer to develop a customized software program that could be used to quickly survey *all* VRT transponders and identify any with pre-divide problems.

Given the totality of the circumstances, Questar Gas’s analysis related to all aspects of the transponder issue was prudent. Questar Gas’s decision to utilize and install transponders has saved its customers millions. Questar Gas now has a more efficient and more accurate meter reading system. Though Questar Gas and a small population of its customers experienced some billing problems as a result of this major system change, these problems pale in comparison to the enormous benefits enjoyed by all of Questar Gas’s customers.

**B. Questar Gas Was Prudent in Testing the Transponders, and in Discovering the Pre-Divide Errors.**

Although the Division finds that Questar Gas was prudent in utilizing transponders, selecting the VRT-transponder, installing transponders, and taking corrective action to solve the issues related to transponders, nevertheless the Division argues that Questar Gas was imprudent in not discovering the pre-divide errors sooner. A review of the standard for prudence and the application of the facts here belie this argument. Questar Gas should be deemed prudent if a utility acting in the best interest of its customers could reasonably have reached the same decision, through a reasonable process, based on the *totality of the circumstances*, and given what the Company knew or reasonably should have known at the time a decision was made.

*Order*, In re Questar Gas Company, Docket Nos. 03-057-05, 01-057-14, 99-057-20, and 98-057-12 (*CO2 Order*), 235 P.U.R. 4th 309, 319-20 (Utah P.S.C. Aug 30, 2004). Under this test, Questar Gas's actions related to testing of the transponders were prudent.

It is critical to note that the prudence determination must be made in context, and considering the *totality of the circumstances*. While the Division is complimentary of Questar Gas's efforts as they relate to transponders, it finds fault with the fact that Questar Gas did experience some errors. The Division itself points out that Questar Gas's actions were well conceived and fully analyzed. Indeed, as Questar Gas expected, its actions have saved its customers as much as \$5 million each year, improved the accuracy of meter reading, and dramatically reduced the number of bills that had to be estimated. Although the Division acknowledges that Questar Gas experienced a near-zero error rate with respect to the pre-divide setting errors, it suggests that Questar Gas was imprudent based solely upon the fact that a small number of errors occurred. Questar Gas acknowledges and regrets that some errors occurred, but as the Division points out, "human error is likely to occur with such a large number of installations." *Report* at 54. Though Questar Gas did not achieve perfection, its actions were, under the applicable standard, clearly prudent and beneficial to its customers.

When VRT transponder installations began in 2002, neither the manufacturer nor the Company had any reason to suspect that, out of all the possible mechanical and programming problems that could occur with VRT transponders, pre-divide settings would become an issue. Indeed, when the Meter and Transponder Inspection Program (MTIP) was implemented the inspections showed that pre-divide errors occurred infrequently.<sup>1</sup>

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<sup>1</sup> Only 223 out of more than 325,000 meters and transponders inspected in the MTIP as of May, 2008, had any problem with a pre-divide setting, or about 0.068 percent. Questar Gas's Response to JDR 1.5.

The Company's initial inspection following the installation of each transponder was reasonably designed to catch and correct reasonably anticipated installation errors. Questar Gas spent considerable time training installers on proper procedures, including pre-divide settings, and updated those procedures as issues were uncovered. There was therefore no reason, even in hindsight, to believe the installation program, including the initial follow-up inspection, had failed to reveal installation errors to a reasonable level. "Overall error rates – at least with regard to pre-divide settings – were *remarkably low*." *Report* at 54 (emphasis added).

Even those pre-divide errors that were discovered early did not signal a systemic problem. The Division stated that prior to the start of the MTIP, the Company had discovered 18 pre-divide errors (*Report* at 58). The Company's response to JDR 1.27 shows that only *two* of those were specifically identified as pre-divide errors prior to July, 2006,<sup>2</sup> a period of more than 3.5 *years* since the start of VRT-transponder installation.<sup>3</sup> Complaints in other jurisdictions of which Questar Gas is now aware did not appear before 2006. *Report* at 58. There was little, if any, evidence to suggest the existence of a problem with pre-divide settings, in Utah or elsewhere, prior to the start of the MTIP in July of 2006.

The Division's only complaint about how Questar Gas implemented the transponder Program is that the MTIP did not begin until well after many of the transponders had been installed. However, the Division overlooks the fact that the MTIP inspection was not driven by a particular need to inspect transponders. The transponders had already been inspected twice. Questar Gas developed the MTIP to inspect *meters*, and chose to include a transponder check during the same inspection.

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<sup>2</sup> See Company's response to JDR 1.27.

<sup>3</sup> *Report* at 19–20 (stating VRT transponder installations began in 2002); *id.* at 21 (stating MTIP began in July, 2006). Three more pre-divide errors were discovered by the billing edit process or meter changes prior to the summer of 2007. See Company's response to JDR 1.27.

The Commission has ordered that Questar Gas inspect its meters using a statistical sampling method starting 15 years after the installation of a meter batch. The Commission determined that this schedule was in the public interest because it would result in “increased accuracy, confidence, and reliability while reducing meter testing costs in its implementation.” *Initial Order*, In re Application of Questar Gas Company for Modification of its Natural Gas Meter Testing Procedures, Docket No. 00-057-06 (Utah P.S.C. May 31, 2001). The Company’s decision to inspect all meters and transponders more frequently under the MTIP program increased the likelihood of finding mechanical and programming errors with transponders, including pre-divide errors, more quickly than would have been the case under the general meter-testing program. However, it was only after the MTIP began that Questar Gas discovered the scope of the pre-divide errors (less than 0.10 percent). Questar Gas could not have known that the MTIP would reveal a larger issue than Questar Gas had anticipated. Questar Gas could not have anticipated that further inspections for pre-divide errors would be necessary until the MTIP began.

When the MTIP began, the inspection results revealed that some of the pre-divides were incorrectly set. Though these errors were not significant in number as compared to other errors, they caused concern because pre-divide errors were likely to result in significant billing errors for individual customers. Given the potential for significant over- or under-billing, Questar Gas made the inspection for pre-divide errors a priority.

Once the pre-divide error was identified, Questar Gas took prompt action to develop software to identify these errors. The Division supported these efforts and stated in its report, “We believe that Questar [Gas’s] decision to work with Elster to develop software to verify pre-divide settings was not only prudent but commendable.” *Report* at 63. The Division further

commended Questar Gas for the manner in which it conducted the software inspections saying, “We also believe that the decision to focus on the verification of pre-divide setting of American 2-foot meters to also have been appropriate, given the pattern that was emerging.” *Id.*

“[H]ad the Company relied solely upon the MTIP program to discover pre-divide errors, it would have been impossible to have found them all until sometime in 2009. This would have increased the volumes of under-billed gas for which other ratepayers would have been forced to absorb the costs.” *Id.* The Company’s prompt and diligent investigation of the pre-divide issue, once it became known, allowed it to more quickly bill customers for their correct usage. Any other utility acting in the best interest of its customers could reasonably have reached the same decision that Questar Gas reached, given the information that Questar Gas had in its possession at the time.

Ironically, the Division is recommending that Questar Gas should be penalized because of its diligence. If Questar Gas had been less diligent, and neglected to do further inspections or testing, it would have discovered these pre-divide setting errors slowly, or not at all.

Based on the totality of the circumstances and given what the Company knew at the time, the Company acted prudently. The mere fact that Questar Gas could have handled the pre-divide issue differently (such as starting the MTIP earlier, as suggested by the Division) is irrelevant. The Commission “do[es] not substitute [its] judgment in hindsight for the reasonable decisions made by management, nor do[es it] determine that a reasonable decision is imprudent merely because [it] conclude[s] that a better, reasonable alternative was available for consideration or action.” *CO2 Order*, 235 P.U.R.4th at 319. Here, Questar Gas’s actions were completely prudent, given the circumstances and information available to the Company at the time. The fact



that the Division, having the benefit of hindsight, may have made a different decision, does not render Questar Gas's actions imprudent.

Questar Gas understands that to an affected customer, a billing correction can be a significant hardship. Questar Gas has offered to work with all of its customers impacted by the back-billing adjustment required to be made to their accounts by allowing them the necessary time to pay the adjustment. Questar Gas agrees with the Division's recommendation that the time period for repayment of the back-billed amounts be extended in order to minimize the hardship upon the affected customers.

However, Questar Gas's transponder program has provided its customers with overwhelming benefits in terms of savings, accuracy, and efficiency. Considering the overall scope and success of utilizing transponder technology, the issues that arose were relatively minor and, once they were discovered, were dealt with promptly and appropriately. A determination that the Company was mostly or partially prudent is not only illogical and contrary to the standard for determining prudence, but strongly suggests the Company should be less than diligent on matters related to meter reading adjustments in the future.

**C. Questar Gas's Billing System Could Not Have Revealed a Systemic Pre-Divide Problem, and Need Not Be Altered in an Attempt to Do So.**

The Division suggests that Questar Gas's billing system should have identified the pre-divide errors long before the MTIP began. *See Report* at 58. However, several events converged about the time the transponders were installed and created a circumstance where Questar Gas's billing system could not have identified the pre-divide billing errors.

Questar Gas began installing the VRT transponders in 2002. Because the pre-divide errors are unique to the VRT transponders, no pre-divide errors occurred prior to that time. In 2004, Questar Gas installed new Customer Information System (CIS) software. Although

Questar Gas retained one year of historical information, that information was incompatible with the new software and could not be analyzed by the new CIS software. The information was retained for employees to be able to manually research account information. The new CIS software could not effectively analyze historical information until it began accumulating historical data after July of 2004. Questar Gas's response to JDR 1.27 shows that 152 transponders<sup>4</sup> with pre-divide setting errors were installed prior to July, 2004, so the CIS software could not flag those 152 accounts as having unusual gas usage because there was no historical basis for doing so. Of those transponders found to have incorrect pre-divide settings that were installed after July 1, 2004, 179 were attached to meters for new construction—also having no history. That leaves only 246 out of 577 accounts (about 42.6 percent) for which the CIS software might have identified a gas usage change, and none before August, 2004.

In addition to the lack of historical information available to the CIS, the timing of the installation of the transponders also played a role in whether or not the CIS could identify dramatic changes in usage. Transponders installed in summer months were less likely to raise alarm in the CIS software because gas usage is typically low in the summer, and fluctuations of more than 50 percent are not uncommon. Of the 246 transponders installed after August of 2004, 82 were installed between May and August, which are low-usage months. The CIS software was less likely to notice dramatic changes in usage for those 82 accounts. The absence of historical data, and the fact that many of the transponders were installed during warm months, coalesced into a circumstance where the CIS software did not identify the under-billing problem.

The CIS software may have identified some of the under-billed accounts, but it could not have recognized the pre-divide issue. Between July, 2004, and July, 2006 (the start of the

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<sup>4</sup> The numbers that follow are based on the final update to the Company's response to JDR 1.27 and do not include those customers who were over-billed because they have already been made whole and are not subject to this docket.

MTIP), the CIS software would have identified approximately 46,000 accounts for review by a billing analyst (estimating conservatively about 2,000 per month). Assuming again that the billing analyst sent out a meter technician for every account flagged, that the meter technician had properly recognized and faithfully recorded a finding of a pre-divide issue, and that the billing analyst read all of the technician's notes, the incorrect pre-divide setting would still not have been seen any more often than once in every 200 accounts flagged by the CIS software. With more than one billing analyst and more than one technician, the probability that any single person (either billing analyst or meter technician) would have identified pre-divide settings as a larger problem is extremely low, and cannot reasonably support a finding of imprudence based on the billing-edit process or the CIS software's parameters.

Questar Gas is committed to continued improvement with respect to all of its processes, including its billing system. The existing CIS software is a dramatic improvement over past systems. However, revising the software package, as the Division suggests, would not have made a material difference with respect to those pre-divide errors at issue in this docket. Many would still have gone undiscovered because of the lack of historical data and seasonal impact. As continuous improvement of the CIS software and the billing-edit process are already part of Questar Gas's business operations, the "narrower parameters" suggested by the Division are unnecessary, would result in unnecessary costs that would be passed on to the customer, and would have no significant effect on improving the accuracy of the bills.

## **II. QUESTAR GAS SHOULD NOT BE FURTHER PENALIZED.**

Questar Gas has not violated any statute, rule, regulation, or Tariff provision.<sup>5</sup> The Division recommends that, despite this fact, Questar Gas should be made to bear some portion

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<sup>5</sup> *Report* at 4 ("[T]he Division cannot say that rules were broken with regard to follow-up inspection and testing of transponders"); *id.* at 7 ("[T]he Company complied with Commission rules in notifying individual customers of the

for the unbilled amounts. *Report* at 78–80. The Division claims that a penalty would “serve as a signal to this and other utilities to be more vigilant in testing equipment and validating its effectiveness in the field and to more closely monitor unusual activity in customer accounts.” *Id.* at 80. To the contrary, penalizing the Company’s prudent behavior in this docket, where the Company’s own initiative led to the discovery of the issue, would actually create a disincentive for any utility to be more vigilant, to identify issues like the pre-divide issue, or to try to improve business processes. It would also discourage innovation and implementation of new technology.

**A. Questar Gas Should Not Be Penalized When It Acted Reasonably and Prudently and Did Not Violate Any Statute, Rule, Regulation, or Tariff Provision.**

The Commission has no authority under Utah law to impose penalties on a public utility absent finding that the utility has violated a statute, rule, regulation, or Tariff provision. Utah’s “Reparations Statute,” Section 54-7-20, allows the Commission to order a public utility to “make due reparation to the complainant” with interest, if it finds, “after investigation, that the public utility has charged an amount in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust, unreasonable or discriminatory amount against the complainant.” Utah Code Ann. § 54-7-20(1) (2008). Failure to comply with Utah statute, Commission rule, or Commission order gives the Commission authority to assess fines. *Id.* § 54-7-25(1). A finding of imprudence may also result in exclusion of a past expense in the rate base

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problem and the need to back-bill.”); *id.* at 47 (“[W]e do not conclude that Questar [Gas] knowingly or willfully violated these rules”); *id.* at 62 (“[W]e do not think that QGC acted unreasonably in reaching its conclusion”); *id.* at 70 (“[T]he Division believes that this portion of the Commission’s rules has been met . . . . While these instances caused distress to some customers, R746-320-8 (B) does not require that an explanation arrive before the bill and thus these cases do not violate rules or the tariff.”); *id.* at 71 (“[T]he Company appears to have complied with the rule.”); *id.* (“Once individual transponder errors were identified, the Company complied with Commission rules in notifying individual customers of the problem and the need to back-bill.”). Additionally, once the magnitude of the errors were understood, the Company sent letters out to each customer affected apologizing for the error and informing them of this proceeding.

when establishing rates to be “*thereafter* observed and in force.” *Id.* § 54-4-4(1)(b), (4) (emphasis added).

Even a finding of imprudence, however, is insufficient to support a reparations order, absent a violation of statute, rule, or tariff.

That statute [Section 54-7-20] entitles a customer to reparations only upon a showing of charges beyond Respondent’s [Questar Gas’s] published tariff, or a discriminatory application of the tariff. The facts alleged by Complainant do not indicate such overcharge or discrimination.

Respondent [Questar Gas] is, under the law, not only allowed but required to charge in accordance with its tariff in order to prevent invidious discrimination among customers.

*Report and Order*, In re Covey Apartments, Inc. v. Questar Corporation (*Covey Apartments*), Docket No. 01-057-09, at 6 (Utah P.S.C. Jan. 9, 2002) available at <http://www.psc.state.ut.us/utilities/gas/02orders/Jan/0105709ro.htm>.

Here, the Division has expressly indicated that Questar Gas has not violated any statute, rule, regulation, or Tariff provision, and has even conceded that Questar Gas’s reading and application of the Tariff provision applicable in this case is a reasonable one. The Division stated, “While we do not find the 24-month back-billing decision to have been imprudent, we do believe that it might have been wise to seek an exception to, or modify, the back-billing tariff to allow for payback periods of greater than 24 months, as is permitted in Commission rules.” *Report* at p. 62-63.

The Division accurately observed that, under Commission precedent, “some back-billing must occur in this case.” *Report* at 65–68 (discussing *Covey Apartments* (01-057-09), *Rod Mitchell v. Utah Power* (03-035-06), and *Lynden Shop v. Questar Gas* (02-057-03)). The Division correctly noted that “even in circumstances of utility neglect and a showing that neglect caused damages to the customers, a remedy before the Commission does not exist,” *Report* at 66,

and that the Commission is “constrained to limit its review to a determination of whether the Company complied with the tariff and the Commission rules and [cannot] take fault into account.” *Id.* at 68. Given the Division’s determination that Questar Gas did not violate any statute, rule, regulation, or Tariff provision, and that the Reparations Statute is not applicable to this case, the Commission should not impose a penalty upon Questar Gas. The fact that, given the totality of the circumstances, Questar Gas acted reasonably and prudently in implementing its transponder program is further reason to refrain from imposing any penalty.

**B. Imposing a Penalty would Eliminate Incentives for Utilities to Openly Deal with Errors, and to Utilize Technological Advancements.**

Penalizing a utility when it acted prudently would not, as the Division argues, encourage the utility to be more vigilant in testing and monitoring its equipment. Penalizing Questar Gas under the circumstances in this docket does not send a message that the Company should be more vigilant in testing; instead, it sends the message to Questar Gas and other utilities that they should avoid new technology or innovations, be less diligent in monitoring internal processes, or significantly increase costs in an attempt to attain a modicum of improvement. Penalizing a utility for errors that impact such a small fraction of one percent of its customers, particularly when such errors are (according to the Division) to be expected, would discourage a utility from aggressively testing, and from openly dealing with problems that arise. Instead, utilities would learn that no amount of error is acceptable, that they should not look for errors, and that if errors are found they should not be remedied.

Additionally, to penalize a utility for this type of error discourages utilities from pursuing or implementing technological advances or innovative solutions to problems. The Division noted that a certain level of error is to be expected when implementing new technology. If every error is subject to penalty, a reasonable utility will likely opt to maintain existing systems in

order to avoid penalties, even when the new technology will better serve customers, or reduce costs.

By the Division's own estimation, Questar Gas's efforts were not only prudent but, in some cases, commendable. The Commission should not penalize Questar Gas because it experienced some errors, especially given that the error rate was very, very low.

### **III. CHANGES TO THE BACK-BILLING RULES SHOULD BE PROSPECTIVE.**

The Company does not oppose the imposition of a six-month back-bill limitation in cases of pre-divide errors on a prospective basis.

Under the applicable statutes, regulations, and Tariff provisions, Questar Gas is *required* to correct customers' bills when billing errors occur. Utah statutes, Commission rules, and Questar Gas's Tariff require Questar Gas to back bill customers who were not accurately billed for the actual volume of natural gas used, *regardless* of whether the utility was at fault for the error. Tariff at 8-6; *see also* Utah Code Ann. § 54-3-8 (1). The Commission has determined that the preference statute prohibits Questar Gas from permitting customers to pay less for natural gas (whether due to billing errors or other causes) than other customers are paying. The Commission determined that “[U.C.A. § 54-3-8 has] long been construed *not merely to authorize* back billing for undercollections . . . *but indeed to mandate such backbilling.*” *Covey Apartments* at 3 (emphasis in original). The Utah Supreme Court quoted the Commission approvingly, stating “[t]he tariff rates must be charged and collected unless prior specific authorization from [the] Commission is obtained.” *American Salt Company v. W.S. Hatch Co.*, 748 P.2d 1060, 1064 (Utah 1987) (quoting Commission order).

The Tariff provides that if a billing error occurs due to “[a]ll other errors (e.g., . . . incorrect meter reading or recording),” Questar Gas should back-bill customers no more than 24 months immediately prior to the discovery of the error. Tariff at 8-6. It also provides that slow-

registering meters will be back-billed for “[o]ne-half the period since the last meter test, or six months, whichever is less.” *Id.* The Division concedes that Questar Gas’s reading of the Tariff is reasonable, but believes that the customers who experienced pre-divide errors and resultant back-bills should only be back-billed for six months. The Division believes that the back-billing period should be limited to alleviate the hardship upon the customer. *Report* at 74. The Company does not oppose this approach on a going-forward basis, and is willing to make a tariff filing to modify its tariff to address back-billing limitations related to transponder errors.

The current rule has evolved over time and the Commission and the Supreme Court of Utah have determined that the 24-month limitation adequately ameliorates the burden placed upon customers when they receive back-bills. Prior to 1995, the Company’s Tariff did not include a limitation on the period for back-billing. This was typical in the industry at that time.

In 1983, the Company’s Tariff provided:

- (f) Other--The Company will make every effort to insure [sic] that account numbers and meter numbers are accurately matched at the time new meter sets are completed. However, when incorrect billings result from crossed accounts/meters *or other errors*, the Company will have the right to make billing corrections on affected accounts *back to the date when the error occurred, regardless of the cause of the error.*

*Mountain Fuel Supply Utah Natural Gas Tariff*, PSCU 200, § 3.90, at 341 (eff. May 19, 1983) (emphasis added). The rationale behind this rule is simple: customers should pay for the gas used because they benefitted by the use of that gas, despite the utility’s billing or measurement error.

In its 1995 general rate case, however, Questar Gas agreed to limit the duration of back-billing to a maximum of 24 months, absent evidence of fraud by the customer. *Mountain Fuel Supply Utah Natural Gas Tariff*, PSCU 200, § 4.44, at 411 (eff. Oct. 17, 1995) (“When incorrect billings result from crossed accounts or meters, improper pressure regulators, *or other errors*, the



Company will have the right to make billing corrections regardless of the cause of error. Corrections will be limited to 24 months immediately preceding the date of discovery of the error.”) (Emphasis added). The Company agreed that an unlimited back-billing time frame could pose an unreasonable hardship upon a customer. The time limitation was imposed to ameliorate that hardship.

Today, the applicable rule, like the 1995 rule, limits back-billing to 24 months for “all other errors (e.g., incorrect billing factors, incorrect service or rate class classification, incorrect meter reading or recording),” Tariff at 8-6, even when the errors go back for longer periods of time. *See also* Utah Admin. Code § R746-320-8.D (2007).<sup>6</sup> When a customer is overbilled, however, the Company is required to return all amounts overcharged, plus interest, regardless of the length of time involved, absent evidence of customer fault. Tariff at 8-6; Utah Admin. Code § R746-320-9 (2007). The current rules benefit the customer in cases where errors go undiscovered for substantial periods of time.

The Commission has recognized the balance the current rule achieves and, though the results may be harsh, has required customers to pay back-billed amounts for the two-year period. In *Covey Apartments*, Questar Gas had billed the customer for only one-tenth of the gas used for nearly 10 years due to repetitive meter reading errors, *Covey Apartments* at 2–3, resulting in a back-bill for more than \$180,000. The Commission found that although the customer suffered a burden under those circumstances, the rule was just, fair, and reasonable. *Id.* at 5.

Even where the utility has acted in a way the Commission found to be unacceptable, the customers have not received the relief that the Division suggests is appropriate here. In *Mitchell*

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<sup>6</sup> This limitation did not become a part of the Commission rules for natural gas utilities until 1999. Prior to that time, the limitation applied only to electric utilities. UTAH ADMIN. CODE § R746-320-8 (2007) (historical notes); *see also* 99 Utah Bull. 56–57 (Feb. 15, 1999) (showing current back-billing limitations in proposed final rule).

*v. Utah Power & Light*, (discussed by the Division in the Report at pages 67–68), the Commission found Utah Power & Light to have acted in a manner that left “much to be desired.”

Were [the Commission] a court with broad equitable powers, a ruling in favor of [the customer] may be appropriate. However, we are constrained to make a determination of whether [the utility] acted in accordance with its tariff, and applicable Commission rules. We find that it did so, and therefore cannot afford [the customer] relief from the back bill amount in this case.

*Report and Order*, In re Formal Complaint of Mitchell v. Utah Power (*Mitchell*), Docket No. 03-035-06 (Utah P.S.C. Jan. 8, 2004), *available at* <http://www.psc.state.ut.us/utilities/electric/04orders/Jan/0303506ro.htm>.

In this matter, the Division has not found any violation of any statute, Commission rule, or Tariff provision, and specifically found that Questar Gas’s reading of its Tariff was reasonable. *Report* at 62. Requiring the Company to refund amounts already collected in order to alleviate the burden on affected customers violates not only the express language of the Commission rules and the Tariff, but also the applicable statutory provisions and Commission precedent.

The Division correctly points out that the Commission has authority “by rule or order, [to] establish such exceptions from the operation of this prohibition [of differential rates, privilege, or refunds] as it may consider just and reasonable.” Utah Code Ann. § 54-3-7 (2008); *Report* at 65. However, the cases cited by the Division show that the Commission has refused to exercise such authority, even in cases where the utilities committed much more serious errors than those at issue in this docket. In *Mitchell* the Commission did not require the electric utility to refund or reduce any portion of the amounts due despite the utility’s clear fault and customer hardship. *Mitchell, supra*; *Report* at 67–68. In *Covey Apartments* the Commission granted no relief from the 24-month back-billing, despite the high bill and a decade of incorrect meter

reading. *Covey Apartments* at 5–6; *Report* at 66. This may be considered an established Commission practice.

Even assuming that the requirement of a prudence review was initially within the Commission's discretion rather than a mandatory legal obligation, it is now an established Commission practice to which the Commission must adhere unless it presents “facts and reasons that demonstrate a fair and rational basis for the inconsistency.”

*Committee of Consumer Services v. Utah Public Service Commission*, 2003 UT 29, ¶ 13, 75 P.3d 481 (citations removed). The Company is not aware of any instance in which the Commission has retroactively penalized a utility when it had not been found to have violated any statute, Commission rule, or Tariff provision. To deviate from this “established Commission practice” would require a “fair and rational basis” difficult to justify under these facts.

Furthermore, it is inappropriate to change the billing adjustment rule in a proceeding to adjudicate a customer complaint. Such matters are more properly addressed in prospective rulemaking proceedings, a general rate case, or a proceeding to amend the Tariff. Utah law defines an “order” as “an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but *not a class of persons*,” and a “rule” as “an agency’s written statement that (i) is explicitly or implicitly required by state or federal statute or applicable other law; (ii) implements or interprets a state or federal legal mandate; and (iii) *applies to a class of persons* or another agency.” Utah Code Ann. § 63G-3-102(11), (16)(a) (2008) (emphasis added). The Commission’s order that consolidated customer complaints in this docket defined the scope of the Division’s investigation to include “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 “determination of appropriate regulatory oversight regarding potential

customer obligations under the circumstances.” *Order Consolidating Dockets and Notice of Procedural Conference*, Docket No. 08-057-11, 2–3 (Utah P.S.C. April 1, 2008). Should the final order in this docket affect all persons with transponder-related issues, the order would affect a class of persons, and the result would be a rule made by adjudication. “[R]ules of law established by adjudication *apply to the future conduct* of all persons subject to the jurisdiction of an administrative agency, unless and until expressly altered by statute, rule, or agency decision.” *Salt Lake Citizens Congress v. Mountain States Telephone & Telegraph Company*, 846 P.2d 1245, 1253 (Utah 1992) (emphasis added).

#### **IV. DISCUSSIONS SHOULD OCCUR REGARDING THE PROPER REGULATORY TREATMENT OF TRANSPONDERS.**

The Division argues that the Commission should institute a rulemaking for the purpose of determining whether transponders should be considered part of the meter, or whether new or additional regulations should be promulgated to govern the treatment of transponders. Questar Gas views this issue as a complex and technical issue, unique to its Tariff, and believes that the issue should be addressed in a separate proceeding to amend the Company’s Tariff.

#### **CONCLUSION**

Questar Gas recognizes that the pre-divide errors have caused hardship to the customers impacted by back-bills related to transponder errors and Questar Gas deeply regrets any inconvenience, hardship, or failures in communication that these back-bills may have caused. Questar Gas would like the opportunity to continue working with its customers to afford them an extended time to pay the back-billed portion of their bills without interest. Additionally, Questar Gas is amenable to making a tariff filing to modify its Tariff regarding back-billing limitations related to transponder errors.

Questar Gas acted prudently and commendably in utilizing, installing and testing the transponders in its system. Though the pre-divide errors resulted in back-billing adjustments to approximately one-tenth of one percent of its customers having transponders, the utilization of transponder technology saves the Company's customers approximately \$5.3 million each and every year. These savings, coupled with the substantial improvement in meter-reading accuracy and the decline in bill estimation, vastly outweigh the costs of implementing this new technology. Taken as a whole, Questar Gas's transponder program has been successful and there is no basis to find that Questar Gas was imprudent. Questar Gas was prudent in undertaking extensive testing and, once it discovered the pre-divide errors, the Company acted promptly to resolve the errors. The Division commends Questar Gas for its prompt response. Questar Gas acted in full compliance with all rules, regulations, statutes, and Tariff provisions and, therefore, Questar Gas should not be penalized.

Questar Gas respectfully requests that the Commission find that Questar Gas was prudent "in its decision to install transponders, in its installation practices, in its decision to change to VRT model transponders, and in its actions to solve transponder problems once it realized the nature and scope of the problems," and in testing the transponders.

Respectfully submitted this 9<sup>th</sup> day of September, 2008.

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of REPLY COMMENTS OF QUESTAR GAS COMPANY REGARDING THE DIVISION REPORT ON TRANSPONDER PRE-DIVIDE EXCEPTIONS AND BACK-BILLING ISSUES was served upon the following persons by email when provided and by U.S. mail, postage prepaid, on September 9, 2008:

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