

Roger J Ball
Chancellor and Moderator
Utah Ratepayers Association
1375 Vintry Lane
Salt Lake City, Utah 84121
(801) 998-8511

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

COMMENTS IN REPLY TO THE 9 SEPTEMBER 2008
RESPONSE COMMENTS OF QUESTAR GAS COMPANY,
THE UTAH COMMITTEE OF CONSUMER SERVICES,
AND SALT LAKE COMMUNITY ACTION PROGRAM

In accordance with the Commission's 26 August *Fourth Scheduling Order*, response comments were filed by QGC, SLCAP and URA on 9 September. According to the Docket Index on the Commission's website, CCS filed its comments on 10 September, but they were not served on the URA. These are the reply comments of the URA to those response comments, and are filed on 9 October, in accordance with the Commission's 25 September *Order Granting a Continuance*.

EXPLANATORY NOTE

For simplicity, throughout this *Reply*, the Utah Ratepayers Association will refer to: the Public Service Commission of Utah as "Commission" or "PSC"; the Utah Division of Public Utilities as "Division" or "DPU"; the Utah Committee of Consumer Services as "Committee" or "CCS"; Questar Gas Company as "Questar", "Company", or "QGC"; and itself as "Association" or "URA". Dates that appear without the year are 2008.

Also for simplicity, the Association will refer to data requests to, and responses from, QGC using the formats *DPU1DR*, *CCS1DR01*, and *Jt1DR02R*, where: the first set of alpha characters identifies to the requesting entity (Jt refers to a DPU and CCS Joint Data Request); the first numeral refers to the set of requests; *DR* means *Data Request*; the second group of numerals refers to a specific numbered request; and a final letter *R* means *Response*. So, in the examples given: *DPU1DR* means *DPU's First Set of Data Requests to QGC*, dated 20 February; *CCS1DR01* means Request 1.01 of CCS's First Set of Data Requests to QGC; and *Jt1DR02R* means QGC's response to Request 1.02 of the *CCS's and DPU's 1st Joint (set of) Data Request(s) to QGC*, dated 24 April 8; all *In the Matter of the Consolidated Docket of Formal Complaints Against Questar Gas Company Relating to Back-billing*, Docket 08-057-11. (The Committee has repeatedly declined to provide the URA with copies of its data requests to QGC in any form, so we are unable to properly cite the captions or dates of those requests; we have taken the numbers of each CCS request from QGC's responses, available only on its data response website.)

QGC Back-billing Complaints
Utah Ratepayers Association

REPLY COMMENTS

Docket No 08-057-11
9 October 2008

INTRODUCTION

The URA disagrees with QGC's characterization of the DPU's investigation as "thorough" and with its claim that the "transponder program has provided its customers with overwhelming benefits".

THOROUGHNESS OF THE UTAH DIVISION OF PUBLIC UTILITIES' INVESTIGATION

In Part I of its Discussion, sections A and B, QGC asserts that the DPU "thoroughly (investigated) the facts and circumstances surrounding the issues raised in this docket." QGC uses terms such as: "the Division unequivocally found"; "the Division found"; and "the Division noted"; and commented that "Questar Gas agrees". The Commission should be aware that the Division's "thorough investigation" consisted of making numerous data requests of QGC, and reporting the responses, sometimes verbatim, and often without attribution. The DPU's Report contained no reference to any audit of QGC's books or records to independently verify that it had uncovered everything that could possibly be found regarding this matter. No wonder QGC agreed: it had provided only as much data, and admitted only as much, as it felt it must; it had hand-fed the DPU its desired conclusions; and in most respects the DPU had swallowed it whole.

The DPU failed to conduct the "forensic examination of the effects of inaccurate metering, remote meter reading, and billing on the accounts of Questar Gas Company, Questar Corporation and its subsidiaries and affiliates, and on ratepayers' bills since the first transponder was installed" that the URA requested. Consequently we have only QGC's estimates of those impacts and, in regard to the balancing and CET accounts, no interest has been imputed. Nor did the DPU investigate the "(c)ommercial relationships and arrangements between Questar Gas Company, its suppliers and contractors, direct and indirect, relating to metering, the remote meter reading programme, and billing", so we have no idea whether QGC has recovered or will be able to recover any of its costs from the transponder vendor(s) or installation contractor(s). The DPU simply accepted that QGC has no records of its process when making the decision to adopt remote meter-reading, and did not further enquire into them as the URA had requested. So we don't know anything about alternative technologies, or whether there were any. And the DPU failed to address "(f)inancial responsibility for the costs of the investigation", another URA request.

BENEFITS OF THE TRANSPONDER PROJECT

QGC claims that the “transponder program has provided its customers with overwhelming benefits”.

When the Commission issued its 11 August 2000 and 30 December 2002 orders in dockets 99-057-20 and 02-057-02, the rates it put into effect were considered just and reasonable going forward. It gave ratepayers whatever benefits accrued from meter-reading labour savings, etc, between the installation of the first transponder in 1996 and the end of 1999 (99-057-20 used an adjusted 1999 Test Year), but only with effect from 11 August 2000, when they also became responsible for the depreciation, debt service, return on equity and other costs associated with those installed before 2000. Additionally, the same benefits and cost responsibility regarding transponders installed from 1 January 2000 until 31 December 2002 (02-057-02 used a Test Year based primarily on calendar 2002) with effect from 30 December 2002.

Only with effect from 15 August 2008 have ratepayers begun to receive the full benefits, and pay all the costs, of the project (07-057-13 used a calendar 2008 test period; the increase in revenue requirement ordered by the Commission was made effective 15 August, applied to DNG revenue as an equal percentage increase for all customer classes; rates will be adjusted when the Commission issues its order on cost of service and rate design).

But it also left QGC with the benefits and costs that accrued between the installation of the first transponder in 1996 and the end of 1999, between the beginning of 2000 and the end of 2002, and between the beginning of 2003 and August 2008.

The DPU hasn’t enquired into the balance of benefits and cost between QGC and ratepayers, and QGC is happy to inaccurately attribute all the benefits to ratepayers without mentioning the costs.

COSTS OF POOR QUALITY ARISING FROM TRANSPONDER SETTING ERRORS

In Part I, section B, QGC claims that it acted prudently throughout its transponder project, including its quality precautions from the beginning of the project, and those adopted during the project. QGC writes: “The Company’s initial inspection following the installation of each transponder was reasonably designed to catch and correct reasonably anticipated installation errors.” It concedes that it did not anticipate incorrect settings, yet transponders have 6 possible settings, and if something can go wrong, it will.

QGC admits, in Part I section A, to being “at the forefront of the industry movement to utilize” transponder technology, and that, when it began evaluating them, “transponders were relatively new to the industry”. Early adopters take risks. QGC took risks in choosing to be at the forefront of adopting remote meter-reading technology that was relatively new to the industry. It took risks when it transitioned from Model 3.4 to VRT transponders at the turn of 2003. Is it appropriate for ratepayers to bear the costs when such risks turn bad, or the company that chooses to take them? Customers compensate share-holders for the risks they take when invested in a utility by paying them a rate of return on their equity in excess of the cost of debt service. Equity demands that owners hold ratepayers harmless when management risk-taking goes sour.

In its Introduction, QGC congratulates itself on its “diligent efforts” to detect and correct the errors. The reality is that it stumbled along from August 2005, when QGC reports discovering the first under-billing case to which it admits, until June 2007, when it finally figured out what was causing the increasingly-apparent problem.

QGC also writes: “Even those pre-divide errors that were discovered early did not signal a systemic problem.” Yes, they did: there would be at least 665 similar errors and, by its own admission, they occurred all over QGC’s service territory, among large and small, residential and commercial customers.¹ That seems to be the very definition of systemic. The fact that QGC didn’t grasp the significance of the signal until June 2007 doesn’t mean that it wasn’t being sent as early as May 2003, and perhaps sooner, any more than an astronomer detecting a new celestial object today means that it has only just flashed into being.

QGC commenced its Meter & Transponder Inspection Programme (MTIP) in July 2006, before it got the signal. It writes: “the MTIP inspection was not driven by a particular need to inspect transponders”; and “Questar Gas developed the MTIP to inspect *meters*, and chose to include a transponder check during the same inspection”. In other words, it was mere happenstance that the MTIP began turning up incorrectly set transponders, 20 from July to December of 2006 and another 42 through early June 2007, not a precautionary measure thoughtfully undertaken.

¹ Spreadsheet Attachment to *DPU3DR01R*, dated 23 September.

QGC originally claimed: “Questar Gas has procedures in place to prevent meter reading errors, if possible, and to find the errors that inevitably occur”² and “Questar Gas’ billing system includes processes designed to identify and correct incorrect meter reads.”³ Now it admits, in great detail, that: “Questar Gas’s Billing System Could Not Have Revealed a Systemic Pre-Divide Problem”. It should be remembered that QGC touted its Customer Information System (CIS) software – introduced in 2004, after 8 years of transponder installation and more than a year after the introduction of the Model VRT – and gained approval to charge ratepayers its entire cost.

QGC takes comfort in “the existence of errors in fewer than one-tenth of one percent of all transponders”, claiming that this proportion “demonstrates Questar Gas’s care and prudence in the installation of transponders.” The Association disagrees. QGC has provided the data regarding the number of transponders installed, and the proportion incorrectly set, and the URA is not persuaded that by any means all of the errors have been brought to light. Second, the Association notes that transponders were incorrectly installed as long ago as 2003, and it took QGC five years in some cases to realise that mis-billing was occurring.

In quality management terms, the incorrect setting of transponders, the length of time it took QGC to realise what had happened (at least four years⁴), the numbers of over- and under-billed customers (103 and 562⁵), the amounts of over- and under-billing (\$1,034,317.58 and \$221,466.99⁶), the over-charging of ratepayers-at-large through the balancing account and through the CET accounts (the latter over the past two years), the interest attributable to that over-charging, and the cost of all remedial work, including re-setting transponders and billing and customer service activities, are all costs of failure. And that failure is QGC’s alone; as QGC itself says in its Response Comments, “Questar Gas did not achieve perfection”.

The URA believes there is excellent reason to suppose those dollar numbers should be multiplied by a factor of between 2 and 5 times to arrive at a more realistic estimate of the actual hidden surcharge ratepayers-at-large have been paying in pass-through rates. The only way the

² *Answer of Questar Gas Company*, 15 April 2008, *In the Matter of the Consolidated Docket of Formal Complaints Against Questar Gas Company Relating to Back-billing*, Docket 08-057-11, (hereinafter, *Answer*): page 2, second sentence.

³ *Answer*: page 6, first paragraph, first sentence.

⁴ Spreadsheet Attachment to *DPU3DR01R*, dated 23 September.

⁵ *Id.*

⁶ *Id.*

Commission can avoid penalizing them is to ensure that all these mis-billed sums are paid by QGC, whose “care”, “prudence”, and “diligent efforts” were insufficient to prevent them arising.

But QGC cannot reasonably claim that ratepayers bargained for the failure costs. Indeed it is evident that QGC itself did not bargain for them; nobody *wants* to incur failure costs, they arise because their possibility is not anticipated, or because of a deficient quality management system, etc. QGC finds “quality management” a “vague and ambiguous” term,⁷ indicating its level of sophistication in this regard lags years behind most large corporations, and it is also evident that it simply failed to anticipate the possibility that transponders might be allowed to continue in service more than a few days after installation with an incorrect setting.

Of course, ratepayers don’t bargain for utility service and rates at all; the regulatory agencies are charged with that duty in accordance with statute. And QGC didn’t even ask for prior approval to launch the transponder project. Nor did it inform, much less ask permission of, individual customers to enter onto their property to add transponders to their meters.

QGC is a large corporation (in its own right, never mind its parent Questar Corporation), with a professional staff compensated in line with industry norms, that ought reasonably to be presumed to be capable and competent to provide the service it offers in exchange for the rates it charges. Its customers, members of the general public, cannot reasonably be expected to understand the complexities of providing natural gas service, or setting rates. They ought to be able to rely upon QGC’s expertise, and should not be held accountable for the consequences when QGC makes a mistake. QGC’s stockholder is compensated by its ratepayers for the risks it undertakes investing in this business. As a matter of equity, when there are costs associated with a blunder, they should be borne by QGC. The Association is content to allow managers and owners to determine how those costs should be spread between them, but points out that most stockholders usually have very little say in the corporate decision making that results in the errors.

In the Association’s view, rates cannot be said to be just and reasonable unless or until ratepayers-at-large are made whole with respect to increase in pass-through rates that were inflated because of mis-billing. Ratepayers-at large neither caused mis-billing, nor have they benefited from it. It may be that some party will allege that they have benefited from the savings in labour costs arising from remote meter reading. That may be true, but so has QGC between general rate cases, but

⁷ URA3DR07R.

they have also paid higher depreciation, debt service and return on equity contributions as transponders have gone into ratebase. That is an altogether separate issue from the “failure costs” attributable to the incorrect installation of new technology.

THE BACK-BILLING OF INDIVIDUAL CUSTOMERS UNDER-BILLED IN CONSEQUENCE OF TRANSPONDER SETTING ERRORS

In Part III of its *Response*, QGC writes that:

Utah statutes, Commission rules, and Questar Gas’s own 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

quoting UCA 54-3-8(1) and QGC’s Tariff, at page 8-6. The Tariff, in pertinent part, actually says that:

When incorrect billings occur, the Company will *have the right* to make billing corrections regardless of the cause of error. (Emphasis added.)

Having the *right* is not the same as being *required* to back-bill.

UCA 54-3-8(1) says that:

- (1) Except as provided in Chapter 8b, Public Telecommunications Law, a public utility may not:
 - (a) as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage; and
 - (b) establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service

but sub-section (2) is also relevant:

The commission shall have power to determine any question of fact arising under this section

indicating that the Commission has power to determine whether individual complainants or ratepayers-at-large have been subjected to any prejudice or disadvantage based upon its findings of fact.

QGC has admitted that it back-billed more than 60 customers for only up to six months from August 2005 until early June 2007, before it started back-billing the others for up to 24. The URA submits that is uncontrovertible evidence that those back-billed from late June 2007 onwards were subjected to prejudice and disadvantage.

Indeed, QGC also writes that it “does not oppose the imposition of a six-month back-bill limitation in cases of pre-divide errors on a prospective basis.”

UAC R746-320-8C provides that:

A utility shall not provide a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling

The URA submits that QGC was aware of the transponder setting error problem by mid-June 2007, and that any back-bill sent to a customer later than mid-October 2007 was in contravention of the Rule. It may be argued that the 3 month limitation does not begin until “the correct calculation to be used in the backbill has been determined”, but the URA is of the opinion that individual ratepayers should not be penalised because it took QGC a long time to understand it had been under-billing many customers, because it has taken (and is taking) QGC a long time to identify the customers in question, or because it has taken time for QGC to calculate back-bills for up to 24 months.

The question is one of what is just and reasonable with regard to the back-billed customers and, as the DPU wrote in its *Report*, UCA 54-3-7, in pertinent part, provides that:

the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.

The proper resolution is for the Commission to find that the under-charged customers in no way contributed to any problem and to absolve them of the need to pay any back-bills whatsoever.

Past cases, such as Covey and Mitchell, have treated individual customers who clearly bore no blame for having been under-billed as little better than crooks:

Absent a hard and fast enforcement of the prohibition of preferences, it becomes too easy for utilities and customers to collude to discriminate against other customers. Indeed, one can foresee scenarios in which the collusion occurs between corrupt utility employees and customers to the detriment of both the utility and other customers. If such scenarios appear far-fetched, we can only answer that if human history teaches anything, it is that human cupidity and human ingenuity are both infinite.⁸

That is a very troubling allegation to level at either ratepayers or utility employees in such a blanket fashion.

The Commission has routinely explained that it lacks broad equitable powers. But it has the powers the URA has pointed to, and should exercise them to protect individual customers and ratepayers-at-large from utility blunders. The effect of the past Commission orders has been to let utilities off

⁸ *Report and Order*, dated 9 January 2002, *In re Covey Apartments Inc v Questar Corporation*, Docket 01-057-09, (hereinafter, *Covey*), paragraph 5 under the heading *Discussion*, second, third and fourth sentences.

with a fraction of the cost of their mistakes and saddle the individual customers and ratepayers-at-large with the rest. That is neither just nor reasonable, and the URA urges the Commission to reconsider its policy.

To the extent the new policy that the URA recommends has the effect of making it clear to utilities that, in the interest of their bottom line, they need to be alert to the possibility of under-billing, and quick to correct it when it is found, that will be much better public policy than allowing them to think they have as many as 6, or even 24, months to correct what should have been done right the first time.

Just in case it needs to be said, the URA does not recommend this approach in cases where it can be shown that there has been fraud or other bad acts by individual customers, but there is no such allegation regarding any of the incorrectly-billed customers in this case.

FINANCIAL CONSEQUENCES OF TRANSPONDER SETTING ERRORS FOR RATEPAYERS-AT-LARGE

In Part I section B of its *Response*, QGC casts the allocation of costs consequent upon transponder setting errors in terms of prudence, and declares that prudence should be adjudged on the circumstances and information available at the time. In Part II it asserts that it “should not be *further* penalized” (emphasis added).

QGC reckons its net operating revenue suffered to the tune of about \$150,000 through foregone DNG revenues due to under-billing, while ratepayers-at-large have suffered increased pass-through rates to the tune of about \$884,000. If QGC has been “penalized”, ratepayers have suffered almost six times as grievously.

In Part II section B, QGC argues that: “Penalizing a utility when it acted prudently would not ... encourage the utility to be more vigilant”. The URA is not looking for QGC to be penalised, only that it should bear costs it caused to arise. It is wholly inappropriate for ratepayers to pay for QGC’s mistake. It represents a perverse incentive for the utility, shielding it from the financial consequences of its own decisions, which most certainly would not encourage it to be more vigilant.

QGC claims that: “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”, and that they would be discouraged from “openly dealing with problems that arise.” QGC evidently believes that its ratepayers should pay for everything it gets wrong. The URA has a very different perspective, and

finds the threat of further reduced openness extremely concerning. Ratepayers need more hands-on regulation instead of the 30,000 foot approach taken in this matter. The problems that this proceeding is intended to address did not come into the light as a result of QGC openness or regulatory oversight, but because an unusually large number of ratepayers complained to the DPU and to the Commission.

QGC decided to install transponders to save meter-reading costs, knowing that it would benefit from the savings until the next general rate case, that it could choose when to trigger such a rate case, and that ratepayers would receive both the costs and benefits thereafter. There was a financial incentive for QGC to make the transponder decision, and the correct incentive is to encourage it to make such decisions carefully in order to minimise its risks and consequent costs. That means QGC should be required to bear the costs when it does err.

Although this proceeding came from formal complaints by a number of individual back-billed customers, and although the URA has an interest in ensuring that their interests are adequately represented in it, one of its objectives in intervening is to advocate on behalf of ratepayers-at-large. UCA 54-7-20(1) says, *inter alia*, that:

“When complaint has been made ... and the commission has found, after investigation, that the public utility ... has charged an unjust (or) unreasonable ... amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection.”

The URA, on behalf of ratepayers-at-large – including its members, who include several of the formal complainants in this proceeding – claims due reparation, with interest from the date of collection, from QGC for amounts over-collected from those ratepayers into the balancing and CET accounts as a consequence of transponder setting errors.

This is not a penalty, it is reparation for unjust and unreasonable charges by QGC against its ratepayers-at-large. The charges were unjust and unreasonable because those customers paying them received no benefit for them. QGC asserts that they did, but the benefits it points to were being paid for in DNG rates, while the unjust and unreasonable charges were collected through the balancing and CET accounts.

The URA would apply the preceding logic to the whole of the amounts incorrectly billed. To the extent that the Commission chooses to limit back-bills to 6 months, or to none, ratepayers-at-large ought not to be liable to compensate QGC.

The Association agrees with SLCAP that QGC should bear all the costs of its billing errors. QGC undertook the transponder project without submitting it for regulatory approval, and installed them on customers' meters without notification, much less permission. We don't make this point because we fundamentally object to the project, but because we believe risk should follow control, and neither ratepayers nor regulators had any control. In particular, the Association heartily endorses the sentiment of SLCAP that:

with a regulated monopoly, especially one that has the ability to collect revenues from a 191 balancing account and to be made whole for customers' fixed costs through a decoupling mechanism such as the CET, it is imperative that it not be allowed to be financially indifferent when it will be compensated in any event.

The URA does not consider that requiring QGC to bear the all the costs of mis-billing is either a penalty or a punishment. It simply follows the principal of cost-causation. And we agree with SLCAP that funds should be credited back to the accounts they came from; ratepayers are not indifferent as to where they are applied.

COMMISSION RULES

The URA strongly recommends that the Commission put a review of UAC R746-320 in hand without delay. Recognising that rule changes take time, if amendments can be made more expeditiously to QGC's Tariff, the URA has no objections, subject to it having an opportunity to participate fully in considering the proposed changes.

CORRECTIONS TO 9 SEPTEMBER RESPONSE COMMENTS

Since submitting its Response Comments on 9 September, the URA has become aware of two errors. It regrets and wishes to apologise for any confusion they may have caused.

On Page 13, second paragraph, second line, there is a reference to "TABLE 1", when what was intended was "TABLE 2".

On the fourth line of the same paragraph, the number "540,186" is given, when the number that was intended to be shown was "472,676".

Again, if these errors caused anyone any confusion, the URA apologises unreservedly.

Respectfully submitted on 9 October 2008,

/s/

Roger J Ball

Chancellor and Moderator for the Utah Ratepayers Association

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of the Utah Ratepayers Association in Docket 08-057-11 was e-mailed on 9 October, or will be sent by USPS on 10 October, 2008 to the following:

QUESTAR GAS COMPANY

Barrie L McKay
barrie.mckay@questar.com
Evelyn Zimmerman
evelyn.zimmerman@questar.com
Colleen Larkin Bell (5253)
colleen.bell@questar.com
C Scott Brown (4802)
scott.brown@questar.com

UTAH DIVISION OF PUBLIC UTILITIES

Philip Powlick, Director
philippowlick@utah.gov
William Powell
wpowell@utah.gov
Dennis Miller
dennismiller@utah.gov
Michael Ginsberg (4516)
mginsberg@utah.gov
Patricia E Schmid (4908)
pschmid@utah.gov

UTAH COMMITTEE OF CONSUMER SERVICES

Michele Beck, Director
mbeck@utah.gov
Dan Gimble
dgimble@utah.gov
Cheryl Murray
cmurray@utah.gov
Paul Proctor (2657)
pproctor@utah.gov

SALT LAKE COMMUNITY ACTION PROGRAM

Betsy Wolf
bwolf@slcap.org

FORMAL COMPLAINANTS

Margaret McMain
by USPS

Arthur & Shirley Wasek
awasek@earthlink.net

Michael Garcia
mgarcia@skyviewmail.com
Lori Garcia
lgarcia@skyviewmail.com

Unlimited Designs
frank@unlimitedesign.com

Steven Robert Francis
by USPS

George & Nancy Mitchell
nem3747@aol.com

Paul Kardish
pkardish@inftech.com

Brian DeHaan
brianbonnie70@msn.com

Russell N Larsen
by USPS

Robert & Susan Slattery
by USPS

Lawrence Stella
by USPS

/s/

Roger J Ball