

December 1, 2010

To the Public Service Commission:

UTAH PUBLIC
SERVICE COMMISSION

- Docket 10-057-15-

We are arguing against Questar Gas's proposal to require only authorized Thermwise Provider Contractors to perform work in order to obtain the Thermwise attic insulation rebate for the following reasons. Please note, we have had no legal help, so please forgive us if the argument is repetitive in parts. Also, we are only referencing the attic/wall insulation part of the rebates, although some of these arguments may cross over to the other rebates:

1. The Utah Division of Occupational and Professional Licensing "DOPL" is the statutorily assigned body that regulates contractor licensing and requirements—not Questar. The Utah statute governing contractors (See UCA Section 58-55) allows a properly licensed contractor and/or an exempted party to install attic/wall insulation (nonmechanical). Exemptions include the "Handyman Registration" (administered by DOPL) or a homeowner, who, by law, can build and/or improve their own home from top to bottom--without licensure--for noncommercial use [see UCA Section 58-55-305(h)(i)(H)—the Affirmation for Exemption from Contractor Licensure]. None of the installs which we perform exceed \$3,000 in labor and/or material, nor do we do new construction. And yes, we are registered for the exemption.
2. The list of approved licenses in order to become a Thermwise Provider does not include the "Handyman Registration" exemption as administered by DOPL for which retrofit insulation installation is allowed [See UCA Section 58-55-305(h)(i)(H)]. It also seems to totally exclude the homeowner from doing his/her own legally acceptable installation. Therefore, the "Handyman Registration" Exemption must be included in Questar's list of approved licenses/registrations for attic/wall insulation.
3. If the correct licensure and/or exemption is legally met in statute and the correct qualifying install is performed per Questar's rebate, then the rebate needs to be paid in full—regardless if the installer is on Questar's "list" or not.
4. Questar has exceeded its authority by requiring insurance from an "A.M. Best's Key Rating of a A VIII or better." DOPL already requires insurance and worker's compensation fund insurance as a requirement of contractor licenses and/or the "Handyman Registration Exemption" [See UCA Section 58-55-305(h)(i)(I) and (II)]. If insurance is obtained and meets statutory requirements, Questar should not dictate the specifics of that insurance.
5. The agreement Questar is proposing is in fact a contract, and as such, this contract puts Questar Gas into a general contractor position. Although Questar does not want a subcontractor relationship with any of its Thermwise Provider contractors,

Questar is acting as a general contractor by requiring that they be listed as a certificate holder on the insurance policy and by dictating the amounts of insurance required. As an owner of a previous contracting company, what Questar is requiring was ONLY REQUIRED BY THE GENERAL CONTRACTOR, not by a “party”(language used in the agreement) that wants us to NOT say we are affiliated, partnered with, subcontracted with, etc., their company [Questar]. Further, they will withhold funds (ie, the rebate) if the installer is not on their approved list—a similar function to what a general would do. In summary, Questar really wants to be the “general” on the project by dictating the terms but doesn’t want the general contractor title or responsibility.

6. Questar attempts to say the Thermwise Provider contractor is not in a subcontractor position, yet Questar’s lengthy requirements to be on the list (again, requiring X amount of insurance, Questar to be listed on the insurance, etc) IN FACT makes the relationship more than just a “party” to an agreement. And this business owner argues that, on its face, this “agreement” looks more like a legally, binding “contracting” contract: the scope and range of the project is described as a contractor project; the contractor requirements, insurance requirements, indemnification policies, etc., are listed; the terms of payment (ie, the rebate) are outlined, etc.---all parts of a contract.
7. It cannot be ignored that the insulation installer enters into a contract with the homeowner—NOT with Questar Gas. Further, it is up to the homeowner to do due diligence in ensuring their installer is properly licensed and/or exempted from licensure—which can easily be done by calling DOPL or looking online. Again, it is DOPL’s job to track licensure and/or exemptions.
8. The agreement/contract Questar proposes seems to concentrate on protecting Questar Gas—not the customer, not the installer. Further, the final paragraph of the agreement includes an all encompassing clause of “Irreparable Harm”. The only consolation for the installer is two small paragraphs (see 7 A. and 7 B.) of the agreement. And even with those, the installer is again not allowed to say they are in anyway associated with, partnered with, subcontracted with, etc., Questar Gas.
9. If an installation is performed by a duly licensed and/or exempted installer or even by the homeowner —as allowed by law— then the rebate should be honored.
10. Clearly, Questar is trying to protect itself from any possible “fallout” from a “bad” contractor—this is understandable. However, in “asking for the world”, Questar seems to be overstepping their bounds. Further, inclusion on Rocky Mountain Power’s “approved” contractor list is voluntary. This business owner believes that the same should apply to Questar’s list. And Questar doesn’t need to track licensure/exemption—DOPL already has that ability on its interactive website or through a simple phone call to the agency.

11. The question has to be asked and answered: Why would any business owner sign this agreement/contract when Questar Gas clearly states we (the installer) are not "affiliated, partnered with, subcontracted with, [etc.,]" their company [Questar]? It is contradictive and makes no sense.
12. If Questar wants to simply have contractors and/or those who are exempted show they are thus licensed and/or exempted and provide their liability policies, etc., I have no problem with that. DOPL tracks this information and Questar Gas can direct any customer to their website and/or phone number. However, the long list of other requirements Questar is attempting to enforce is too much.
13. Just last week we received the agreement/contract from Questar Gas urging us to sign the form even though the Commission has not yet approved it. It seems presumptive on their part to send out the paperwork urging us to sign when it has not yet been approved.
14. Just an idea: Perhaps this agreement is better suited for the homeowner to sign, rather than the contractor.

Thank you for your time and consideration,

Polar Insulation, Inc.

Enclosures

- year period.
- (6) If an individual qualifying on behalf of a business entity issued a license under this chapter ceases association with that entity as required in Subsection (4), the licensee shall notify the division in writing within 10 days after cessation of association or employment. If notice is given, the license shall remain in force for 60 days after the date of cessation of association or employment. The licensee shall replace the original qualifier with another individual qualifier within the 60 day period or the license shall be automatically suspended.
 - (7) Failure to notify the division of cessation of association or employment of a qualifier as required in Subsection (6) may result in immediate suspension of the license upon a finding of good cause.

58-55-305. Exemptions from licensure.

- (1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades subject to the stated circumstances and limitations without being licensed under this chapter:
 - (a) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of the person's trust, office or employment;
 - (b) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction sites, and lumbering;
 - (c) public utilities operating under the rules of the Public Service Commission on work incidental to their own business;
 - (d) sole owners of property engaged in building:
 - (i) no more than one residential structure per year and no more than three residential structures per five years on their property for their own non-commercial non-public use; except, a person other than the property owner or individuals described in Subsection (1)(e) who engages in building the structure shall be licensed under this chapter if the person is otherwise required to be licensed under this chapter; or
 - (ii) structures on their property for their own noncommercial, nonpublic use which are incidental to a residential structure on the property, including sheds, carports, or detached garages;
 - (e) (i) a persons engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:
 - (A) works without compensation other than token compensation that is not considered salary or wages; and
 - (B) works under the direction of the property owner who engages in building the structure; and
 - (ii) as used in this Subsection (1)(e), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person exempted from licensure under this Subsection (1)(e), that is:
 - (A) minimal in value when compared with the fair market value of the services provided by the person;
 - (B) not related to the fair market value of the services provided by the person; and
 - (C) is incidental to the providing of services by the person including paying for or providing meals or refreshment

while services are being provided, or paying reasonable transportation costs incurred by the person in travel to the site of construction.

- (f) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;
- (g) a contractor submitting a bid on a federal aid highway project, if, before undertaking any construction under that bid, the contractor is licensed under this chapter;
- (h)
 - (i) a person engaged in the alteration, repair, remodeling, or addition to or improvement of a building with a contracted or agreed value of less than \$3,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; and
 - (ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this section:
 - (A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within any six month period of time:
 - (I) must be performed by a licensed electrical or plumbing contractor, if the project involves an electrical or plumbing system; and
 - (II) may be performed by a licensed journeyman electrician or plumber or an individual referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system such as a faucet, toilet, fixture, device, outlet, or electrical switch;
 - (B) installation, repair, or replacement of a residential or commercial gas appliance or a combustion system on a Subsection (1)(h)(i) project must be performed by a person who has received certification under Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or 58-55-308(3);
 - (C) installation, repair, or replacement of water-based fire protection systems on a Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;
 - (D) work as an alarm business or company or as an alarm company agent shall be performed by a licensed alarm business or company or a licensed alarm company agent, except as otherwise provided in this chapter;
 - (E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i) project must be performed by a licensed alarm business or company or a licensed alarm company agent;
 - (F) installation, repair, or replacement of a heating, ventilation, or air conditioning system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor licensed by the division;
 - (G) installation, repair, or replacement of a radon mitigation system or a soil depressurization system must be performed by a licensed contractor; and
 - (H) if the total value of the project is greater than \$1,000, the person shall file with the division a one-time affirmation, subject to periodic reaffirmation as established by division rule, that the person has:
 - (I) public liability insurance in coverage amounts and form established by division rule; and
 - (II) if applicable, workers compensation insurance which

- would cover an employee of the person if that employee worked on the construction project;
- (i) a person practicing a specialty contractor classification or construction trade which the director does not classify by administrative rule as significantly impacting the public's health, safety, and welfare.
 - (j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, when doing work upon the property;
 - (k) (i) a person engaged in minor plumbing work that is incidental, as defined by the division by rule, to the replacement or repair of a fixture or an appliance in a residential or small commercial building, or structure used for agricultural use, as defined in Section 58-56-3, provided that no modification is made to:
 - (A) existing culinary water, soil, waste, or vent piping; or
 - (B) a gas appliance or combustion system; and
 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (1)(k)(i);
 - (l) a person who ordinarily would be subject to the plumber licensure requirements under this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:
 - (i) meets the appropriate state construction codes or local plumbing standards; and
 - (ii) is installed or repaired under the direction of a person authorized to do the work under an appropriate specialty contractor license;
 - (m) a person who ordinarily would be subject to the electrician licensure requirements under this chapter when employed by:
 - (i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or
 - (ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;
 - (n) a person involved in minor electrical work incidental to a mechanical or service installation;
 - (o) a student participating in construction trade education and training programs approved by the commission with the concurrence of the director under the condition that:
 - (i) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and
 - (ii) a licensed contractor obtains the necessary building permits;
 - (p) a delivery person when replacing any of the following existing equipment with a new gas appliance, provided there is an existing gas shutoff valve at the appliance:
 - (i) gas range;
 - (ii) gas dryer;
 - (iii) outdoor gas barbeque; or
 - (iv) outdoor gas patio heater;
 - (q) a person performing maintenance on an elevator as defined in Subsection 58-55-102(14), if the maintenance is not related to the operating integrity of the elevator; and
 - (r) an apprentice or helper of an elevator mechanic licensed under this chapter when working under the general direction of the licensed elevator mechanic.
- (2) A compliance agency as defined in Section 58-56-3 that issues a building



October 11, 2010

Dear Contractor:

Questar Gas requests all *INSULATION* and/or *DUCT SEAL / INSULATION* contractors participate in a **MANDATORY MEETING** to discuss the introduction of a new **Authorized Contractor** list. The Authorized Contractor list will become a critical piece to the success and efficiency of Questar's ThermWise® Program. It is the sole responsibility of the participating contractor to meet updated requirements in order to ensure eligibility in the ThermWise® weatherization Program. The following items will be discussed during the meeting:

- Requirements to be an Authorized Contractor
 - Licensing
 - Insurance
 - Signed Contract with Questar Gas - *confirms it is a contract they want us to sign.*
 - References*
- Application Process for Contractors
- Timeline of Implementation
- Disciplinary Action

DATE	October 27 th	November 3rd	November 4th		November 9th
TIME	8-10am	1-3pm	9-11am	1:30-3:30pm	1:30-3:30pm
LOCATION	1155 East 350 North Questar Bldg-St. George	1640 Mountain Springs Pkwy Questar Bldg-Springville	1140 West 200 South Questar Bldg-Salt Lake		2974 Washington Blvd Questar Bldg-Ogden
RSVP by	October 22nd	October 29th	October 29th		November 5th

Once again, this is **NOT** an *optional* meeting. Any *INSULATION* and/or *DUCT SEAL / INSULATION* contractor wishing to participate in the ThermWise® Program must be in attendance or have a representative present. Please RSVP by contacting a ThermWise® Representative @ 888-324-3221 or emailing Shelly.Bouvang@questar.com

We appreciate your continued interest in the ThermWise® Programs and look forward to your participation at this important meeting.

Regards,

Director, Energy Efficiency
Questar Gas Company