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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Questar Gas Company for Approval of the Wexpro II Agreement	Docket No. 12-057-13 **UTAH OFFICE OF CONSUMER SERVICES' POST-HEARING BRIEF**

The Office of Consumer Services submits this brief pursuant to the Public Service Commission's grant of the Office's request to submit a post-hearing brief following the hearing of January 30, 2013.

INTRODUCTION

The Office is not opposed to the concept of expanding the availability of cost-of-service gas supplied by Wexpro as contemplated under the Wexpro II Agreement

(agreement or proposed agreement), providing that these new gas properties can be shown to be beneficial to Questar Gas' customers. What the Office finds objectionable under the proposed agreement, however, is that it removes from the jurisdiction of the Commission the ability to regulate natural gas rates for gas Questar purchases from Wexpro in perpetuity.

According to the proposed agreement, Questar may apply to the Commission for approval to include certain gas properties owned by Wexpro. Once those properties are approved, the gas produced from those properties is no longer subject to the jurisdiction of the Commission. By approving the proposed agreement the Commission gives up any authority to regulate the rates charged to Questar's customers for the gas Questar purchases from Wexpro. The Office believes that just and reasonable natural gas rates may be obtained from a cost-of-service arrangement, however proper oversight is key to implementation of cost of service . In this case the problems are exacerbated because the agreement has no termination point. It goes on in perpetuity – though admittedly the Commission can decline to approve properties.

A. The Loss of Oversight by the Commission.

For the last four years (2009 - 2012) the cost-of-service price of natural gas being purchased by the Company from Wexpro has exceeded the cost of market purchase prices. The Company counters that fact by saying that over the last 30 years, however, the cost-of-service has been lower than market rates, and therefore ratepayers have benefitted from the cost-of-services agreement contained in Wexpro I. The Office does not dispute that. But what if the reverse of that situation occurs over the next 30 years? Should the Commission be locked into a cost-of-services rate agreement that may exceed market rates just because of an agreement entered into between a regulated utility and the regulators in 2012?

While it can be argued that the proposed agreement violates the rule against perpetuities, the plain fact of the matter is the Office does not believe that it is good public policy for a utility agreement to be put in place that has no termination point and is not capable of being rescinded by the regulators without the concurrence of the utility company. When the Wexpro I agreement was approved by the Utah Supreme Court in

1983 at least everybody knew there was a limited life to the agreement. That end may have been extended beyond what was originally contemplated, but the parties anticipated that at some point the Wexpro I properties would be depleted. That condition does not exist in the proposed agreement and the Office believes, as a result, that the absence of such a provision reduces the oversight capabilities of the Commission.

B. Representing the Public Interest.

Secondly, the Office believes the Division of Public Utilities has abrogated its statutory responsibility by entering into an agreement with a public utility that removes from the jurisdiction of the Public Service Commission its ability to oversee and regulate Wexpro II gas supplies. The Division is charged with "represent[ing] the public interest in matters and proceedings involving regulation of a public utility pending before" the Commission. Utah Code § 54-4a-1(1)(i). But rather than represent the public interest in this matter before the Commission, it has contractually agreed with a public utility that the gas properties acquired under the agreement have no ongoing oversight by the Public Service Commission. That is not a statutory function of the Division.

Additionally, the Division has never said why this proposed agreement is in the public interest, why it may benefit ratepayers, or what its statutory authority for doing this is.

The Office recognizes that the Division has authority to enter into agreements. Utah Code § 54-4a-1(3). The Division enters into agreements to settle matters all the time. But it does not have authority to enter into an agreement with a public utility to remove jurisdiction from the Commission, nor does it have the authority to enter into an agreement with a utility company to allow the Division (rather than the Commission) to determine what the just and reasonable rate is to be that the utility charges ratepayers.

C. The Dispute Resolution Provision in the Agreement Removes Jurisdiction From the Commission to Administer Its Statutory Function.

Thirdly, the Office objects to the dispute resolution provision of the proposed agreement. The Office is statutorily charged with representing the interests of residential

and small commercial consumers of an applicable public utility. Utah Code § 54-10a-201(3). The Office may bring an original action before the Commission or court having appellate jurisdiction over the Commission. Utah Code § 54-10a-301(2).

But because the Office is not a signatory to the proposed agreement, the proposed agreement cuts the Office out of any such representation or authority to bring any action relating to Questar or Wexpro under the agreement. The proposed agreement limits such actions to a Party to the agreement. Wexpro II Agreement, § V-13, Dispute Resolution.

Neither the Division nor the Company have any authority to preclude the Office from exercising its statutory authority.

Further, not only is the Office deprived of its statutory authority to monitor activities of public utilities under the proposed agreement, but so is the Commission. Assume there was an issue with the prudence of the costs being expended on a development well. The cost is initially being fronted by Wexpro, but in fact it is a cost being passed through to Questar and ultimately borne by ratepayers. Costs borne by ratepayers are subject to the jurisdiction of the Commission. But under the proposed agreement the remedy to the cost

issue of the development well is not to seek a hearing before the Commission, but to take it to binding arbitration.

The problem with arbitration on an issue like this is that the arbitration panel has no obligation, as does the Commission, to find in the public interest. It is another example of the proposed agreement removing the Commission from adjudicating an issue it is statutorily charged with administering.

ARGUMENT

I. THE PARAMETERS OF WEXPRO I.

The Utah Supreme Court first reviewed Mountain Fuel Supply's[1] transfer of oil and gas properties to its wholly owned subsidiary Wexpro, and a joint exploration agreement between them, in *Committee of Consumer Services v. Utah Public Service Commission*, 595 P.2d 871 (Utah 1979). The Court reversed the Commission's conclusion that the transfer and the exploration agreement placed the properties beyond its jurisdiction and

[1] This case was brought before Mountain Fuel Supply changed its name to Questar Gas. Questar has been substituted herein for all references to Mountain Fuel Supply or MFS.

remanded the case back to the Commission. In its direction to the Commission, the Court declared that any transfer of utility assets, which the transferred properties were as they had been explored and developed as normal utility operating expenses paid by ratepayers, must be for fair market value with an appropriate credit to ratepayers.

In 1983, the Court reviewed the Commission's approval of a settlement agreement negotiated following the remand. *Utah Dept. Of Administrative Services v. Public Service Commission,* 658 P.2d 601 (Utah 1983). The Court noted, litigation expenses, which already totaled "more than $4 million," and "could cost additional millions if these multifaceted controversies continued," which "posed serious threats to customers and shareholders as well as to the immediate parties." *Id.* at 606. In light of these circumstances, the Court said, "a negotiated settlement could resolve not only the immediate questions involved in the remand from the Court but also other related issues that threatened further controversy and delay." *Id.*

A. The Wexpro I Settlement.

The settlement consisted of a stipulation to settle the administrative and judicial proceedings before the Commission (including a general rate case), the original 1976 property transfer, the investigation of Wexpro's transfer of property to another Questar company, a federal court case, and an agreement between the parties (which we are now referring to in this case as "Wexpro I"). The Court summarized the settlement by saying:

> In essence, the foregoing settlement resolves the pending disputes, including uncertainties over the extent of the MFS ratepayers' interest in the oil properties explored at their risk, by releasing the ratepayers' proprietary interest to MFS or its affiliates in exchange for their assuring the ratepayers an overriding royalty or a net profits interest in the oil and gas produced from these and other properties, and in consideration of the other agreements on case payments and price and supply of natural gas.

Id. at 607.

The question the Court considered on appeal was whether the Commission had "regularly pursued its authority" and whether it had violated any constitutional or statutory rights. The Court reviewed the Commission's approval of the settlement as an

administrative agency's action in a judicial capacity in an adversary proceeding to resolve a controversy over legal rights and to apply a remedy. *Id.* at 621. Accordingly, the Court affirmed the Commission's conclusion of law that the "findings and conclusions with regard to the transfer of properties and the allocation of benefits contemplated by the Settlement, including the findings and conclusions that the transfer of properties and the allocation of benefits are reasonable and for market value and are in the public interest, *are intended by the Commission to be final and not subject to future change* (except through an appropriate and timely petition for rehearing or judicial review)." *Id.* at 620 (emphasis in the original).

Consistent with the finality of the proceedings intended by the Commission, the Court noted that "the overall fairness of a negotiated settlement agreement containing many provisions should not be open to after-the-fact selective sniping at the fairness of individual provisions considered in isolation." *Id.* at 616-17.

The settlement terms, the Commission's approval, and the Court's opinion all point to a plain intent that the controversy over the Wexpro properties and ratepayers' interest in

them was fully and finally settled and the Commission would not again administratively adjudicate, and the parties would not again judicially litigate, any controversy, dispute or claim arising out of the transfer, exploration, development, operation of the Properties, or of any other Wexpro venture or business.

All parties agreed neither Questar nor its customers would claim any legal, equitable or beneficial right, interest or estate in any property owned by Wexpro except as provided in the Questar/Wexpro Agreement. Stipulation 11.1. In particular, neither Questar nor its customers have any right, estate or interest in "any and all properties acquired by Wexpro from any source in any location after July 31, 1981." Stipulation 12.3.

The "Properties" were defined to refer solely to the properties transferred to Wexpro pursuant to the settlement and are fixed as a matter of property and contract law and are expressly excluded from public utility regulation. *Id.* at 617. Indeed, Wexpro is expressly "not subject to state public utility regulation" and independently owns and operates the Properties subject to the Questar/Wexpro Agreement. Stipulation 2.4.

The Stipulation included a provision that provided that: "The parties [which included the Committee of Consumer Services and the Division of Public Utilities] agree not to challenge any action taken by the Company or Wexpro in accordance with the terms of the agreement other than through arbitration procedures provided in Section 9 of this Stipulation." Stipulation 5.2. Under Section 9, in proceedings before the Commission or a court, "the decision of the arbitrators will be binding upon the parties" except with respect to matters covered by Utah Code §§ 78-31-16 and 17.[2]

B. The Monitoring Provision for the Division.

[2] These statutes were repealed with the repeal of Title 78, Chapter 3 effective April 28, 1986, and are replaced with Utah Code §§ 78B-11-124, 125.

The approved settlement provided for the Division of Public Utilities to "monitor the performance" of Questar and Wexpro under their agreement. Stipulation, § 8. The Division had authority to examine Wexpro books and accounts and is to receive quarterly production and financial results from the Properties, but was to have no other rights under the Stipulation.[3] Stipulation § 8.1. The Division may only act upon the information it is given if it is a "default" of obligations under the terms or intent of the settlement, and then only by binding arbitration outside of the Commission. There was no provision for Wexpro to provide information to any regulatory authority, nor was there any provision for the Division to act upon the information or the results of its "monitoring" other than binding arbitration.

Any right or obligation with respect to monitoring and participation in arbitration comes from the Stipulation that settled the litigation. It does not arise from any statutory grant of authority to the Division or the Office. It is also a limited right. The Commission

[3] The meaning of "monitor" is not defined in the settlement. Standard definitions include observe, examine, or scrutinize. We find no statutory authorization for the Division to act in such a capacity before a governmental authority let alone a private one.

characterized the Stipulation as merely "an agreement between the parties" that does not limit the Commission's "future regulation" of Questar. *Id.* at 617. With respect to Wexpro, however, the terms of its relationship with Questar and the Properties was "fixed as a matter of property and contract law." *Id.* at 617. As to the Division's stipulation "not to challenge any action taken by [Questar] or Wexpro in accordance with the terms of the [Questar/Wexpro] Agreement other than through the arbitration procedures" provided in the Stipulation, the Court stated: "Since that restriction on the powers of the Division of Public Utilities only applies to the enforcement of the agreement and to the 'Properties' transferred under it, we think it is not illegal."[4] *Id.* at 617.

The Court also describes the Division's monitoring of performance as a "limited function" which the parties may agree is enforced by arbitration. *Id.* Most important, the Court made it plain that the settlement, the Commission's approval of it, and the Court's opinion is applicable only to the allocation of benefits and the parties' rights such as royalties, net profits and gas sales, "in the properties transferred" under the Commission's

[4] The implication is that in any other context, such a "divestiture of the Division of Public Utilities' statutory powers

order in its judicial capacity. *Id.* at 621. As to future resolution of questions, controversy or disputes over properties other than those defined in the settlement, the Court stated:

> The exact limits of Commission authority on such questions as whether or the extent to which a wholly owned subsidiary engaged exclusively in exploration and development *could lawfully be subject to Commission regulatory authority as to properties other than those embodied in this settlement remain for resolution in future proceedings*. While it is appropriate to confirm the finality of the financial benefits and property rights provisions in this settlement, an attempt to resolve all questions of Commission jurisdiction to regulate Wexpro or Celsius operations that significantly impact the regulated activities of their parent corporation in this state would be an impermissible advisory opinion.

Id. at 621, fn. 33 (emphasis supplied).

C. The Limited Nature of the Wexpro I Agreement.

As stated in the Wexpro/Questar Agreement, the Agreement is limited to "the matters directly addressed" and not to "any future activity, function, acquisition, transaction or other business endeavor initiated by, joined by or otherwise entered into by the

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to act as a party litigant before the Commission" is illegal.

Company, Wexpro, or any other subsidiary or affiliate of the Company unless specifically set forth in this Agreement." Agreement VIII-3. The Court's opinion affirming the Commission's order approving the settlement is also limited to the unique provisions of a settlement that was necessary to resolve serious threats to customers and shareholders and related issues that threatened further controversy and delay, and even then only as to carefully defined Properties but no others.

The Settlement, the Commission's order and the Court's opinion clearly do not create or endorse a model regulatory agreement that may be adapted to future proposals for utility regulation and policy. To the contrary, they specifically state that they are not setting forth a future model for utility regulation and that the Wexpro I model is a one time settlement of very contentious litigation which was best resolved by a negotiated settlement.

II. THE NATURE AND SCOPE OF UTILITY REGULATION IN UTAH.

Utah Code § 54-4-1 vests with the Commission exclusive general jurisdiction to supervise and regulate all of the business of every public utility in this state.[5] The Division has no regulatory authority independent of the Commission whose functions are ancillary to and in support of the Commission's jurisdiction. Utah Code § 54-4a-1. State law charges the Commission and the Division "with seeing that utility rates provide a fair but not exorbitant rate of return . . . ." *MCI Telecommunications Corp. v. Public Service Com'n of Utah*, 840 P.2d 765, 777 (Utah 1992), (Zimmerman, J. concurring). As noted by Justice Zimmerman, the Commission and the Division must "do the public's business in the open" and must "explain in detail the rationale for its actions," because the responsibility for "vigorous and effective regulation of monopolistic utilities" rests with the Commission. *Id.*

A. Statutory Duties of the Commission.

[5] To the extent that Wexpro may be classified as a public utility as a consequence of the Wexpro II agreement terms, particularly the Division's participation as a party and the ratepayer impact of the agreement, Wexpro is subject to Commission regulation that may not be impeded by private agreement.

The Commission's authority over the business of the public utility is not only comprehensive, but must be exercised in precise ways considering enumerated facts and information.[6] The meaning of these statutory duties to specific issues, such as the issues presented by the Wexpro II agreement, has been defined in Utah Supreme Court opinions. In *Utah Dept. of Business Regulation v. Public Service Commission*, 614 P.2d 1242, 1245 (Utah 1980), the Court agreed that a dissenting Commissioner correctly stated that "[t]he Public Utilities Act does not permit this Commission to abdicate its day to day regulatory responsibilities simply because the Division of Public Utilities or interested parties intervening in rate proceedings do not challenge or question that which is improper, illegal, unfair, unjust, discriminatory or which is in any other fashion contrary to the rules and regulations or orders of this Commission or is contrary to the statutes of the State of Utah."

In the *MCI Telecommunications* case cited above, the Utah Supreme Court said:

[6] For example, even a modest selection of the information that must accompany a request for a change in rates, Utah Admin. Code R. 746-700, or to comply with the Energy Resource Procurement Act, Utah Admin. Code R. 746-420, is omitted from the Wexpro II agreement in favor of Wexpro's discretion in an accelerated timeframe.

> Moreover, the fixing of utility rates by private negotiation with no findings of fact raises serious questions about the legality and integrity of the procedures the Commission employed. The Commission serves a crucial role in protecting ratepayers from overreaching by entities with monopoly power that provide essential services. We have on many occasions emphasized that the Commission must make appropriate findings of fact to justify rate orders.

840 P.2d at 773.

Permitting a public utility, or a non-regulated entity, particularly an affiliate of a public utility, any right to preclude or impede the full scope of the Commission's jurisdiction, in particular to veto preemptively the exercise of that jurisdiction, is illegal and unconstitutional. *See Stewart v. Utah Public Service Com'n*, 885 P.2d 759, 775-776 (Utah 1994). The proposed Wexpro II agreement violates this principle by limiting the Commission's authority to audit, oversee, and regulate the inherently risky acquisition and operation of development wells paid for by ratepayers. *See* Wexpro II Agreement, § III Wexpro II Gas Properties, (Wexpro will fund and drill development wells; the cost will then be capitalized and billed to Questar), and § V-13 Dispute Resolution (disputes regarding

Wexpro are to be adjudicated). Addressing a similar circumstance as the one presented here, the Court in *Stewart* held:

> Clearly, the Commission's task of protecting the public interest is significantly more difficult when a utility is a wholly owned subsidiary of an unregulated industrial giant. Those facts, however, *emphasize the need for closer scrutiny* of the extent to which such a utility complies with its legal obligations to provide appropriate plant, equipment, and service at rates no higher than required by the cost of operations and the market cost of capital. It is a clear abuse of sound economic principles, to say nothing of fairness to ratepayers, to seek to charge the higher rates that would be necessary for more risky, unregulated enterprises or that would be required to meet rates in other jurisdictions where efficiency factors and other cost-of-service considerations are different.

At 773[7] (emphasis supplied).

In *Heber Light & Power Co. v. Utah Public Service Commission*, 2010 UT 27, the Utah Supreme Court said:

> "'It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly

[7] The *Stewart* opinion also points out that certain factors are not includable in the rate base for rate of return determinations, such as profits to affiliates. *Stewart*, 885 P.2d at 770.

> implied by statute.'" *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (quoting *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 754 P.2d 928, 930 (Utah 1988)). "When a 'specific power is conferred by statute upon a . . . commission with limited powers, the powers are limited to such as are specifically mentioned.'" Id. (quoting *Union Pac. R.R. v. Pub. Serv. Comm'n*, 134 P.2d 469, 474 (Utah 1943)). "Accordingly, to ensure that the administrative powers of the [Commission] are not overextended, any reasonable doubt of the existence of any power must be resolved against the exercise thereof." *Id.* (internal quotation marks omitted).

2010 UT 27 at ¶ 17.

B. Statutory Duties of the Division.

This holding applies equally to the Division and Office, whose functions powers and duties are expressly defined in the authorizing statute. For the Division, its functions are to "represent the public interest in matters and proceedings involving regulation of a public utility pending before" the Public Service Commission, boards or courts, etc. Utah Code § 54-4a-1(1)(b). The Office's authority is more limited (its powers and functions are to assess the impact of utility rate changes and other regulatory actions related to an

applicable public utility for residential and small commercial consumers). Utah Code § 54-10a-301.

It is particularly telling that the Division may only require information, reports or data, or inspect records or data, of persons or entities "subject to the jurisdiction of the Public Service Commission" upon "relevant matters within the jurisdiction of the commission." Utah Code § 54-4a-1(1)(e). The Division's monitoring of the Questar/Wexpro Agreement falls outside of this express statutory power. This further supports a conclusion that the arbitration clause from the Wexpro settlement in any other context is an illegal divestiture of the Division's statutory powers.

For the Division, all of its functions are in relation to matters within the jurisdiction of the Public Service Commission, representing the public interest by investigation, study, audits, inspections, enforcement proceedings, and making recommendations to the Commission. The Division's objectives are, in all respects, to act in the public interest in order to provide the Commission with objective and comprehensive information, evidence and recommendations. Utah Code § 54-4a-6. Nothing within its enabling statute

resembles closely or at a distance the action taken by the Division to contract with Wexpro on the terms of the Wexpro II agreement.

C. Statutory Duties of the Office.

The proposed agreement has similar violating effects on the Office of Consumer Services. The Office has the duty of advocating in utility disputes positions "most advantageous to residential consumers and small commercial consumers." Utah Code § 54-10a-301(1)(c); *see also Mountain Fuel Supply Co. v. Pub. Serv. Comm'n of Utah*, 861 P.2d 414, 418 n. 3 (Utah 1993). Given that the Office is not a Party to the proposed agreement, the Office cannot be expected to be able to fulfill its duties in advocating on behalf of consumers for a position that is "most advantageous" in monitoring the proposed agreement. Because the proposed agreement clearly prevents the Office from being able to perform its statutory duties, the agreement should be modified.

III. THE DISPUTE RESOLUTION PROVISION IN THE PROPOSED AGREEMENT DIVESTS THE COMMISSION OF ITS POWER TO PERFORM ITS STATUTORY RESPONSIBILITY OF SUPERVISING AND REGULATING THE FUNCTIONING OF A PUBLIC UTILITY.

The Commission has the responsibility to "supervise and regulate every public utility in this state." Utah Code § 54-4-1. This power includes the obligation to oversee "all of the business" relating to public utilities. *Id*. The Commission has the power "to do all things necessary" to fulfill their oversight and regulatory responsibilities. *Id*. Certainly this broad power includes supervising the performance of contracts that directly affect to the cost of utilities paid for by Utah ratepayers. The arbitration clause of the proposed agreement seeks to eliminate this power. *See* Wexpro II Agreement, section V-13.

The Utah Supreme Court has denied binding arbitration clauses in similar situations. In *Salt Lake City v. International Association of Firefighters*, a municipality challenged a statute mandating that disputes regarding the conditions of employment of firefighters, thereby involving the appropriation of public money, be submitted to arbitration. 563 P.2d 786, 788–789 (Utah 1977). The Court pointed out that the statute "authorizes the appointment of . . . private citizens with no responsibility to the public, to make binding determinations affecting . . . an essential public service." *Id*. at 789. It stated that "the

complexities of budgeting . . . are duties elected officials owe to the electorate." *Id.* at 790. The Court explained that "[t]he legislature may not surrender its legislative authority to a body wherein the public interest is subjected to the interest of a group which may be antagonistic to the public interest" and declared the statute unconstitutional. *Id.* at 789. In his concurrence, Justice Crockett stated that the practice of binding arbitration "is especially objectionable when the effect is to surrender the public interest to [an arbitration panel], which is impervious to accountability to the public." *Id.* at 791.

Similar to the statute in *International Association of Firefighters*, the proposed agreement improperly surrenders a public interest, the regulation of actions affecting utility rates, to a panel of arbitrators that are impervious to accountability to the public by requiring binding arbitration that may not be appealed to any court or the Commission. Similar to the elected members of the legislature who owed a duty to their electorate to oversee budgets, the Commission owes a duty to ratepayers to protect the ratepayers' interest in efficient and economical service.[8] The Commission is answerable to the public

[8] *See, e.g., Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 618 (explaining that "the

for their actions in regulating public utilities. By diverting the Commission's power to a panel of arbitrators, the proposed agreement eliminates the Commission's accountability to the public. The power to make decisions which affect the allocation of either taxpayers' or ratepayers' funds cannot be granted to private citizens. This is contrary to both the law and the public interest. *See also Stewart v. Utah Pub. Serv. Comm'n*, 885 P.2d 759, 775–776 (Utah 1994) (holding a statute granting public utilities power to veto Commission's rulings/orders unconstitutional).

It is true that a binding arbitration clause was upheld in Wexpro I. But, as has been noted, in upholding the arbitration clause in Wexpro I the Court explained that the arbitration clause dealt with "fixed matter[s] of property and contract law." *Utah Dept. Of Administrative Services,* 658 P.2d at 617. It did not deal with functions or powers within the statutory purview of the Division or Commission. The arbitration provision in the proposed agreement is very different. The scope of Wexpro II is not defined to specific properties. Its enforcement will necessarily rely on more than fixed matters of property and

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Commission is responsible to exercise its statutory powers over utilities to assure that the public receives the most

contract law because there is no property upon which to fix the terms of the proposed agreement. The proposed agreement seeks to give Wexpro the authorization, unlimited in scope and duration, to purchase properties which may subsequently be included in the proposed agreement. Costs for developing the wells on these properties are ultimately the responsibility of ratepayers. Disputes as to the prudence of those costs are not subject to the Commission's jurisdiction – but rather to an arbitrator. This, and other differences, is a significant departure from the arbitration provision in Wexpro I.

CONCLUSION

The Parties to the proposed Wexpro II agreement have presented not a proposal to the Commission, but a signed agreement. The idea behind an agreement was to force the Commission into the position of either accepting or rejecting the agreement. It is not presented as a proposal which the Commission may modify. The Office of Consumer Services rejects that approach. However, the Office does not reject the primary concept underlying the proposal. It accepts the fact that it may be a prudent move to buy natural

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efficient and economical service possible.") (internal quotations and citation omitted).

gas producing properties while the price of those properties are unusually low. And it accepts the idea that just and reasonable gas rates can be obtained from a cost-of-service agreement. What it does not accept is the loss of jurisdiction by the Commission to matters that the Commission is statutorily obligated to consider.

The Office's preference is to modify the proposed agreement to remove the offending provisions. In the event the Commission determines that is not possible given that it is being asked to either accept or reject the proposed agreement, the Office requests the Commission to reject the agreement and let the parties renegotiate the provisions of the agreement the Commission finds to be a relinquishment of its authority.

Dated this 8th day of February 2013.

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