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DEPARTMENT OF COMMERCE
Office of Consumer Services

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To: Public Service Commission
From: Office of Consumer Services
Date: August 1, 2013
Copies To: Participating Parties
Subject: Reply Comments, Docket No. 13-057-02
In the Matter of the Investigation Required by S.B. 275, Energy Amendments
Addressing Cleaner Air through the Enhanced use of Alternative Fuel Vehicles.

Background

In response to the Utah legislature's passage of S.B. 275, the Utah Public Service Commission (Commission) initiated Docket No. 13-057-02. According to the schedule set forth in that docket, the Utah Office of Consumer Services (Office) submitted initial comments on July 3, 2013. Fourteen other parties also submitted comments on or about that date and two additional comments have been submitted since that date. In addition, two interested individuals submitted email comments to the Commission.

The Commission's schedule also provided for the opportunity to file reply comments. The Office has reviewed all of the comments submitted to date. Representatives from the Office have also attended the meetings held by the newly formed Alternative Energy Interlocal Entity (Interlocal).

The Office organizes its response as follows:

- Misunderstandings regarding the statutory language and rate regulation;
- Responses to certain issues raised by the Division of Public Utilities (Division);
- Responses to certain issues raised by Questar Gas Company (Questar); and
- Short responses to miscellaneous additional issues.

Misunderstandings Regarding Statutory Language and Rate Regulation

In our initial comments, the Office raised concerns that the policy objectives underlying S.B. 275 were unclear. Comments filed in this docket indicate ongoing confusion about the intent and meaning of the new statutes as well as the underlying policy objectives.

New Statutes Reference Alternative Fuel Vehicles, not NGV or CNG

Much of the discussion relative to S.B. 275 and within the newly created Interlocal has been limited to NGV (natural gas vehicles) or CNG (compressed natural gas) vehicles. However, S.B. 275 relates more generally to alternative fuel vehicles. The General Description of the legislation is “This bill enacts provisions relating to facilitating the conversion to alternative fuel vehicles and the provision of facilities for *alternative fuel vehicles*.” (emphasis added)

Utah Code Ann. § 11-13-224, enacted by S.B. 275, is entitled “Utah Interlocal entity for alternative fuel vehicles and facilities.” There is no reference to NGV or CNG within this new section of the Utah statutes; all of the references are to *alternative fuel vehicles*.

Similarly Utah Code Ann. § 54-1-13, also enacted by S.B. 275, mandates this current Commission proceeding and references *alternative fuel vehicles*. Utah Code Ann. § 54-1-13 (1) reads as follows:

The commission shall immediately initiate and conduct proceedings to explore and develop options and opportunities for advancing and promoting measures designed to result in cleaner air in the state through the enhanced use of *alternative fuel vehicles*, (emphasis added)

The statutes also specifically ask about the role that gas corporations should play, but in no way limits the consideration of different types of alternative fuel vehicles. Thus, the Commission is directed to consider the many excellent points raised by parties about alternative fuel vehicles that include but are not limited to NGV. The Office is hopeful that the new Interlocal will have an

equally broad vision to consider the potential of all alternative fuel vehicles to help achieve in cleaner air in Utah.

Finally, only Section 3 of S.B. 275 relates specifically to natural gas. This section of the legislation is discussed below.

Calculation and Implementation of the \$5 Million Cap

Even Questar misunderstands the plain language of the legislation. Its initial comments reference the elimination of the cap effective July 1, 2018¹. In fact, the legislation imposes a \$5 million annual cap for only the first year and in a later section allows the Commission to waive and exceed the cap (if it is in the public interest) after the first year. The repeal language in Utah Code Ann. § 63I-1-254 clearly reverts the conditions back to the annual \$5 million cap after July 1, 2018. It indicates that the language *after* “do not exceed \$5,000,000 in any calendar year” is repealed. This is the language granting the Commission the ability to exceed the cap. Thus, the cap can only be exceeded during the period after the first year and prior to July 1, 2018.

The Division also raises concerns about the details of implementing the cap. The Office concurs with the Division’s assessment that this section of the statute does not provide as clear direction as could be desired. However, the statute clearly indicates that a condition for being found just and reasonable is that “the gas corporation’s expenditures for the fueling stations and appurtenant facilities do not exceed \$5,000,000 in any calendar year²” subject to the exception conditions discussed above. The \$5,000,000 is clearly a total annual amount for Questar’s expenditures and must include the investment and expenditures already undertaken by the Company.

Clarifications Can Only Be Accomplished Through Legislation or Litigation

The Division recommends that either the legislature or the *Interlocal* provide clarity on the components of the \$5 million annual expenditure limit. The Office strongly opposes part of this recommendation. While the legislature can always pass subsequent legislation that either clarifies or changes the terms of this statute, neither the Interlocal nor its governing body has any authority to clarify any components of the statute.

¹ Comments of Questar Gas Company, page 8.

² Utah Code Ann. § 54-1-13.4(a) and Utah Code Ann. § 54-1-13.4 (a)(ii).

Absent additional legislation, these clarifications can only be achieved through litigation. Presumably, the process would start with a petition from Questar for recovery of expenditures. The Commission would subsequently issue a ruling approving or denying the petition. The Commission would need to determine whether the petition did or did not meet the conditions for recovery established in law based upon the evidence and argument presented by participating parties. If any party felt that the Commission erred in its interpretation of the law, it could challenge the outcome through an appeal. The Interlocal would have no role in such a process, unless it participated as an intervenor before the Commission.

Commission Does Not Have Authority to Initiate Additional Rate Collection in This Proceeding

Although Section 3 of S.B. 275 (which enacts Utah Code Ann. § 54-4-13.4) includes several “shall” provisions mandating certain actions of the Commission, it does not authorize an immediate change in rates. This section does two specific things:

- (1) It specifies conditions under which the Commission “shall” find that a gas corporation’s expenditures related to natural gas fueling stations are “in the public interest and are just and reasonable,” and
- (2) It allows a gas corporation to seek recovery of such expenditures through a tracker mechanism in between rate cases and specifies conditions under which the Commission “shall” allow such recovery.

Thus, in order for rates to be collected under this statute, the gas company must first seek recovery for such expenditures either in a general rate case or in a request for a tracker mechanism.

Statute Does Not Authorize a Fund

Some of the other comments confirmed additional confusion regarding this legislation. For example in his email dated July 3, 2013, Kim Hugie (owner of CNG America) recommends that the Commission (or appropriate entity) should “distribute the \$5 Million that Questar Gas Company collects too [sic] all business that qualify.” This reflects a common misunderstanding regarding the types of expenditures authorized by S.B. 275.

As indicated above, the legislation only authorizes the gas corporation to seek recovery of certain expenditures. The specific requirement that the “annual incremental increase in revenue related to the stations and facilities exceeds 50% of the annual revenue requirement of the stations and facilities” (Utah Code Ann. § 54-4-13.4 (1)(b)) is a reference to standard ratemaking terms and principles. The \$5 million references an annual expenditure amount, not the annual amount collected from customers.

The annual revenue requirement is the amount collected from customers. The revenue requirement is determined by calculating a utility’s revenue, operating expense, depreciation expense, taxes and rate of return on capital investment. Such a construct does not make sense if another entity owns the assets. As argued by Questar, “Questar Gas does not believe that the legislation is intended to provide a way for private entities to obtain CNG fueling stations at the expense of Questar Gas’ customers.”³ We agree.

Response to the Division of Public Utilities

The Office agrees with many of the conclusions of the Division. However, the Division makes a few smaller points to which the Office would like to respond. For example, the Division indicated a presumption of a high degree of cooperation between the Interlocal and the utility. The Office takes no position on whether and how these two entities will or should interact. Since Questar has a representative on the governing board it is reasonable to assume a certain level of cooperation. However, the Office would like to offer a different perspective on this issue. First, the Office notes that any Questar resources or capital investment expended in this effort is subject to Utah Code Ann. § 54-1-13, as well as the standard regulatory review. Second, the Office is optimistic that private sector competitive entities will be recognized as potential partners and play an important role in advancing the goals of S.B. 275.

The Division also references discussions that took place during the legislative debate regarding S.B. 275. The Division presumes that references to an existing fund that could be used for NGV

³ Comments of Questar Gas, Page 7.

purposes relates to the current Demand Side Management (DSM) program. They also assert that “the purposes of S.B. 275 are not consistent with the intent of the DSM programs.” The Office agrees with the Division on this principle. Further, the Office would like to clarify that Questar’s DSM programs are paid for by ratepayers after the funds have been spent by the utility to implement specific measures and programs. Thus, the expenditures incurred by Questar for DSM programs represent a current liability for ratepayers and do not represent an existing fund available for any purpose.

Response to Questar Gas Company

The Office is concerned about Questar’s selective presentation of certain data and urges the Commission to give it little or no consideration. First, Questar uses a source that is two decades out of date and references “typical urban areas” as evidence for its statement that “much of Utah’s air-quality problem can be attributed to vehicles.”⁴ The EPA’s recommendation cited by Questar cannot be considered to be representative of current best practice for improving air quality. In contrast, the Office cited a letter of support dated earlier this year from the National Association of Clean Air Agencies stating that improved emissions standards are the most cost-effective way to achieve “substantial, immediate, and cost-effective reductions in air pollution⁵.” Second, Questar provides the misleading comparison of the benefits of a new CNG bus to an old diesel bus⁶. As the Office and other parties have pointed out, while it is true that new CNG buses are better performing than old diesel buses, new buses using diesel are even better performers. In fact, as mentioned in the comments submitted by HEAL Utah, the very source cited by Questar to support their assertion indicates the superior performance of new diesel.⁷ Third, Questar cites an American Gas Association publication on the benefits of converting a refuse truck to natural gas⁸. Once again, the comparison is limited to an old diesel truck compared to a new CNG truck, which is not

⁴ See Page 3, Comments of Questar Gas Company, reference to the January 1993 EPA Fact Sheet.

⁵ The complete letter can be found at:

http://www.4cleanair.org/Documents/NACAA-Tier_3_Comments_to_EPA-06%2028.pdf

⁶ Comments of Questar Gas Company, page 4.

⁷ HEAL Utah Comments, page 2.

⁸ Comments of Questar Gas Company, page 4.

surprising since AGA is an industry association representing the interests of natural gas distribution companies.

Perhaps most concerning is Questar's presentation of the rate impacts from S.B. 275. By showing only the one-year impact of one year's worth of investment, Questar understates the full impacts on customers. In fact, customers will be paying for one year's worth of investments in fueling infrastructure over the entire book life of the asset, which according to Questar has a depreciable life of ten years. Since interest expense and a profit (rate of return) are built into the rates collected from customers, a one-time investment of \$5 M ends up to be almost double that amount in rates (not including operation and maintenance costs.) Further, this amount is compounded if an additional level of investment is made the subsequent year. Thus, S.B. 275 could end up costing ratepayers much more than the small impact indicated by Questar.

The Office is also notes that Questar appears to be advocating two conflicting positions. While Questar expresses concerns about undue burdens upon on its customers, such statements are made under the heading of "Questar Gas is Best Suited to Construct and Operate More CNG Fueling Stations." ⁹ It is telling that Questar only supports the use of ratepayer funds for stations that they will own. The Commission and other policymakers must remember that an expansion of Questar-owned stations results in an expansion of Questar's profits. This is not a one-time benefit to Questar, but rather an ongoing expansion of their rate base on which they are allowed to earn a return. While Questar states concern for its customers' rates, its fiduciary duty is to its shareholders which benefit from the potential investment in infrastructure and expansion of rate base. Thus, Questar may not be best positioned to provide input on what level of investment is in the public interest and specifically in the interest of its customers. The bottom line is that customers are harmed by any level of natural gas fueling infrastructure that is not covered within the NGV rates and must be subsidized by customers not directly using or benefiting from the facilities.

Other Issues

⁹ Comments of Questar Gas Company, page 6.

The Office offers the following additional observations in response to the comments filed to date in this proceeding:

- Comments have included near consensus that in the long-term, competition in the provision of natural gas fueling service will promote the sustainability of the industry.
- Comments have shown a significant interest in the advancement of electric vehicle (EV) infrastructure. As indicated in our initial comments, the Office agrees that EV infrastructure should be considered and urges the Commission to approach the topic in a careful and methodical manner. Some of the specific recommendations on this topic need more comprehensive evaluation.
- Comments have shown strong agreement that different alternative fuel vehicles should be afforded similar incentives as have been in place and discussed for NGV. Further, different alternative fuels should not be disadvantaged by actions taken with respect to NGV.
- Commenters made good recommendations for specific actions that the legislature could take to even the playing field among different alternative fuel vehicles. The Office urges a careful examination of the potential benefits of such recommendations, including the recommendation that used CNG vehicles do not have a good enough emissions profile to warrant certain tax benefits currently offered.
- The Office reiterates its position that technologies with a short payback period of investment do not need incentives from public or ratepayer funds. We previously cited the full cost of service rate for natural gas vehicles as being less than half the rate of regular gasoline at the pump. Questar's comments that UTA could expect to recoup the extra cost of a new CNG bus in less than 2 ½ years¹⁰ is further evidence supporting this point.

Conclusion and Recommendations

The Office reiterates the following recommendations from its initial comments. The Office recommends that the Commission:

¹⁰ Comments of Questar Gas Company, page 5.

- Maintain cost of service regulation for the provision of natural gas, rather than burdening natural gas with the costs unrelated to the provision of its service, to ensure the benefits from this fuel continue for customers.
- Establish and maintain cost of service rates for utility provision of NGV service to allow a more robust market to develop.
- Establish a proper framework for the development of EV.

The Office recommends that policymakers consider the following:

- Allow public utilities to focus on the provision of utility service to its customers.
- Collect the best air quality data possible and pursue the most cost effective solutions to our air quality challenges.
- Consider alternative fuel vehicle – and other – solutions beyond options just related to natural gas.
- Pursue funding mechanisms that provide transparency and attempt to match those who pay for solutions either with those causing the problems or those benefitting from the solutions.