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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Notice of Questar Gas Company and Dominion Resources, Inc. of Proposed Merger of Questar Corporation and Dominion Resources, Inc. and Application for Approval If Necessary

Docket No. 16-057-01

**STATEMENT OF JOINT APPLICANTS  
ON JURISDICTION AND STANDARD  
FOR APPROVAL**

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Questar Gas Company (“Questar Gas”) and Dominion Resources, Inc. (“Dominion”) (collectively “Joint Applicants”), in response to the Commission’s Notice of Filing and Scheduling Conference issued March 3, 2016 in this docket (“Notice”), hereby provide this statement on jurisdiction and standard for approval (“Statement”).

In the Notice, the Commission set a scheduling conference for March 17, 2016 and directed that the parties “come prepared to discuss a schedule for the docket, including a schedule for legal briefing on the issue raised by Questar on page two of the application, i.e., whether ‘approval of the Merger is required under Utah law,’ and, if so, what legal standard should apply.” Joint Applicants provide this Statement prior to the scheduling conference to clarify their position and to avoid any unnecessary delay in scheduling further proceedings in this matter.

#### **I. JOINT APPLICANTS’ POSITION**

Joint Applicants filed the Joint Notice and Application (“Joint Application”) to provide notice to the Commission of the proposed transaction under which Questar Gas’ parent, Questar Corporation, would become a subsidiary of Dominion (the “Merger”) and to request approval of the Merger if the Commission believes approval is required under Utah law. The Joint Application provides detailed information regarding the Merger and is supported by the testimony of five witnesses and numerous exhibits. It is substantially the same as a joint application filed in Wyoming seeking approval of the Merger. The request of Joint Applicants that the Commission approve the Merger if the Commission believes approval is required under Utah law reflects the fact that the applicable Utah statutes on the subject are not as clear as the Wyoming statutes.

Joint Applicants do not intend to argue that the Commission does not have jurisdiction or to contest any decision of the Commission that it has jurisdiction. Joint Applicants are hopeful that the Commission will be fully satisfied that the Merger is in the public interest whether

approval is required or not. Joint Applicants, however, did not wish to presume that the Commission would determine that its approval is required.

On the other hand, Joint Applicants do not wish to lengthen these proceedings by taking time for briefing that may not be necessary. As noted in paragraph 68 of the Joint Application:

Dominion's proposed acquisition of Questar Corporation is an important transaction for Questar Gas' customers, employees and communities. In order to mitigate the ill-effects of uncertainty associated with the pendency of the Merger and expedite the delivery of the benefits of the Merger, Questar Gas and Dominion respectfully request, consistent with giving the Commission an opportunity to thoroughly review the Merger and satisfy itself that it is in the public interest, completion of the Commission's review and approval of the Merger as soon as reasonably possible.

Accordingly, Joint Applicants are providing this Statement in advance of the scheduling conference so that other parties are aware of Joint Applicants' position and the Commission may determine if further briefing is necessary.

## **II. FACTUAL BACKGROUND**

Questar Gas is a public utility regulated by the Commission. Questar Corporation and Dominion are public utility holding companies. Questar Gas is currently a wholly-owned subsidiary of Questar Corporation. In the Merger, Questar Corporation will merge with Diamond Beehive Corp., a wholly-owned subsidiary of Dominion created solely to facilitate the Merger. Questar Corporation will be the surviving entity and will be known as Dominion Questar. Dominion Questar will become a wholly-owned subsidiary of Dominion as a result of the Merger.

Questar Gas will remain a separate legal entity following the Merger and will remain a wholly-owned subsidiary of Dominion Questar. Questar Gas will be known as Dominion Questar Gas, but will not change its corporate structure or its manner of doing business as a result of the Merger. It will continue to provide service to its customers in Utah pursuant to the

same tariff under which it provides service currently, subject to any changes made in the tariff in the ordinary course of business, and it will be subject to regulation of the Commission following the Merger, just as it is today.

### **III. JURISDICTION**

The Utah statutes that may apply in determining whether approval of the Merger is required under Utah law are Utah Code Ann. §§ 54-4-1, 54-4-25, 54-4-28, 54-4-29 and 54-4-30.

Section 54-4-1 grants the Commission power and jurisdiction to supervise and regulate every public utility in Utah and to supervise all of the business of every public utility in Utah and to do all things whether designated in the Public Utility Code or not which are necessary or convenient to the exercise of its power and jurisdiction. Joint Applicants do not believe the Merger will or could affect the jurisdiction of the Commission over Questar Gas in any way.

Section 54-4-25 requires a public utility in Utah to obtain a certificate of public convenience and necessity (“CPCN”) before establishing or beginning construction or operation of utility plant. Questar Gas currently has any and all CPCNs needed to operate its utility plant in Utah. It is not seeking any further CPCN in connection with the Merger.

Section 54-4-28 requires prior Commission approval of a merger, combination or consolidation of a public utility with another public utility engaged in the same general line of business in Utah. Questar Gas is not merging, combining or consolidating with any other public utility.

Section 54-4-29 requires prior Commission approval of the purchase or acquisition of the voting securities of a public utility by another public utility engaged in the same general line of business. Questar Corporation owns the voting securities of Questar Gas and will continue to own them following the Merger. Dominion will own the voting securities of Questar

Corporation. Neither Questar Corporation nor Dominion is a public utility engaged in the same general line of business as Questar Gas.

Section 54-4-30 requires prior Commission approval of the acquisition by lease, purchase or otherwise of the plants, facilities, equipment or properties of a public utility by another public utility engaged in the same general line of business in Utah. No public utility is acquiring the plants, facilities, equipment or properties of Questar Gas through the Merger.

The Commission previously concluded in connection with the merger of U S WEST, Inc. into Qwest Communications International, Inc. that Commission approval of that merger was authorized either under Sections 54-4-28, 54-4-29 or 54-4-30 or under the Commission's authority under Section 54-4-25. Neither U S WEST, Inc. or Qwest Communications International, Inc. was a public utility in Utah; both were parent companies of public utilities in Utah. The Commission stated:

Either the Commission can approve or disapprove the merger, or it can evaluate the ongoing validity of the subsidiaries' separate certificates post merger. In one case or the other, the Commission has the authority to examine the effect of the resulting corporate structure on utility operations under the certificates held by the subsidiaries of the merging parent corporations.

*Re Qwest Communications Corporation*, 202 PUR4th 390, 397 (Utah PSC, Dkt. No. 99-049-41, June 9, 2000).

Joint Applicants thus acknowledge that the Commission has previously exercised jurisdiction in a transaction similar to the Merger. In the *Qwest* case, the Division of Public Utilities ("Division") and the Committee of Consumer Services (now known as the Office of Consumer Services) ("Office") argued that the Commission had jurisdiction to approve the merger. Joint Applicants understand that the Division and Office continue to believe the Commission has jurisdiction to approve the Merger.

#### IV. LEGAL STANDARD

If the Commission believes approval of the Merger is required, the standard for approval is a finding that the Merger is in the public interest. *See* Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30. The standard for issuance of a CPCN is a finding that granting the CPCN is in the public interest or for the public welfare or benefit. *See, e.g., Mulcahy v. Public Service Comm'n*, 117 P.2d 298, 300-301, 305-306 (Utah 1941). Typically, a CPCN is granted only if the Commission finds that the applicant has the financial, managerial and technical qualifications to operate the plant or provide the service. *See, e.g.,* Utah Code Ann. § 54-8b-2.1(2)(a) (standard for issuance of CPCN in competitive telecommunications context). In addition, the Commission has previously concluded that a merger transaction must provide a net positive benefit to the public to satisfy the public interest standard. *See, e.g., Qwest*, 202 PUR4th at 397; *Re Utah Power and Light Company*, 97 PUR4th 79, 80 (Utah PSC, Dkt. No. 87-035-27, Sept. 28, 1988).

The Commission described this standard as follows:

Our task is to consider them all [positive benefits and negative impacts], giving each its proper weight, and to determine whether on balance the merger is beneficial or detrimental to the public.

*Qwest*, 202 PUR4th at 397.

#### V. CONCLUSION

The Merger fully satisfies the net positive benefit standard. Joint Applicants have made commitments that they will keep if the Merger proceeds to closing regardless of whether the Commission believes approval of the Merger is required. These commitments assure that the Merger is in the public interest and provides a net positive benefit to Questar Gas' customers and to the public.

Joint Applicants do not intend to argue that the Commission does not have jurisdiction or to contest any decision of the Commission that it has jurisdiction. Therefore, Joint Applicants

believe that further briefing may not be necessary. Joint Applicants are prepared to proceed as if the Commission has jurisdiction.

DATED: March \_\_, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on March \_\_, 2016, a true and correct copy of the foregoing

**STATEMENT OF JOINT APPLICANTS ON JURISDICTION AND STANDARD FOR APPROVAL** was served upon the following by electronic mail:

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