C. Scott Brown (4802)
Colleen Larkin Bell (5253)
Questar Regulated Services
180 East First South
P.O. Box 45360
Salt Lake City, Utah 84145
(801) 324-5172
(801) 324-3131 (fax)
scott.brown@questar.com
colleen.bell@questar.com

Gregory B. Monson (2294)
David L. Elmont (9640)
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
(801) 328-3131
(801) 578-6999 (fax)
gbmonson@stoel.com
dlelmont@stoel.com

Attorneys for Questar Gas Company

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of QUESTAR GAS COMPANY for Approval of a Natural Gas Processing Agreement	:	Docket No. 98-057-12
In the Matter of the Application of QUESTAR GAS COMPANY for a General Increase in Rates and Charges	:	Docket No. 99-057-20
In the Matter of the Application of QUESTAR GAS COMPANY to Adjust Rates for Natural Gas Service in Utah	:	Docket No. 01-057-14
In the Matter of the Application of QUESTAR GAS COMPANY to Adjust Rates for Natural Gas Service in Utah	:	Docket No 03-057-05

QUESTAR GAS COMPANY'S PETITION FOR RECONSIDERATION OR CLARIFICATION

Questar Gas Company ("Questar Gas" or "Company"), pursuant to Utah Code Annotated §§ 54-7-15 and 63-46b-12, and Utah Administrative Code R746-100-11.F, hereby respectfully petitions for reconsideration or clarification of certain aspects of the Commission's order issued in these dockets on August 30, 2004 ("Order").

Several of the matters raised in this petition likely require only clarification by the Commission of certain statements in the Order. However, to the extent the Commission intended these statements to be findings or conclusions contrary to the clarification Questar Gas seeks, Questar Gas seeks reconsideration of the findings or conclusions.

A. The Commission Should Clarify That It Has Made No Finding On The Quality Of Coal-Seam Gas.

Throughout these proceedings the Committee of Consumer Services ("Committee") has sought to portray coal-seam gas as poor-quality gas. Some press accounts of the Order have likewise adopted the view that coal-seam gas is somehow inferior.[1] This view is without merit. The record is clear that coal-seam gas is high-quality, very desirable gas.[2] The safety problem associated with coal-seam gas on the Company's southern system was not due to poor gas quality but rather to incompatibility between the appliance set points specified in the Company's tariff prior to 1998 and the heat-content of the nearly pure methane, coal-seam gas.[3] However, at

[1] *See, e.g.*, Steven Oberbeck, *Questar Must Repay Customers $25M*, Salt Lake Tribune, Aug. 31, 2004, at A1 ("Since 1989, Questar has been working with coal-seam gas. In 1998, the company built a plant to remove carbon dioxide from it to provide *higher-quality* gas to Utahns.") (Emphasis added.).

[2] *See, e.g.*, Tr. 06/22/99 at 42-43 (Allred) (Coal-seam gas meets pipeline standards; it's merchantable. The gas is not inferior or dirty; it meets pipeline specifications and it is only the uniquely high QGC set point that causes CO_2 removal to be necessary; other customers do not require further processing.); Tr. 06/23/99 at 468 (Allred) ("The coal-seam gas at a 3% inert level can be safely used in virtually every other location in the country. There is nothing inferior, wrong, undesirable or unmerchantable with this gas."); Snider 99 Rebuttal Testimony at 5 (virtually all pipelines can accept coal-seam gas; any characterization that coal-seam gas requires "cleaning up" is misleading).

[3] *See, e.g.*, Order at 15.

one point in the Order the Commission refers to coal-seam gas as "inferior."[4] While the Order uses quotation marks in making this reference to "inferior" gas, the Company respectfully suggests that it is critical that no Commission imprimatur be perceived to be attached to an erroneous view of the quality of coal-seam gas. As the Commission considers heat-content issues in the new docket (Docket No. 04-057-09), it is important that there be no pre-judging of the desirability of coal-seam gas. It is also important that the Commission not contribute to any mistaken public perception about the quality of coal-seam gas. Questar Gas now purchases large quantities of this high-quality gas to meet the needs of its customers. Clarification that the Commission did not intend the Order to constitute any finding on the quality of coal-seam gas will prevent the Order from contributing to erroneous perceptions of that gas's quality.

The Company therefore respectfully requests that the Commission clarify that the Order was not intended to reflect any finding on the quality of coal-seam gas.

B. The Commission Should Clarify That The Company Has Not Sought To Delay Customers From Inspecting And Adjusting Their Appliances And That The Ten-Year Transition Period Was Not Inappropriate.

In two places, the Order makes unfortunate, speculative references to the Company's motives regarding customer transition to the lower appliance set point specified in the 1998 tariff revision. On page 20, the Order states that "customer modification of appliances may be at odds with Questar interests. Customer appliance changes or modifications obviate[] a need for CO_2 processing, perhaps eliminating any need for the CO_2 plant before the end of its asset life." Then, on page 24, in setting forth certain questions the Commission found relevant regarding the Company's prudence, the Order asks "was [Questar Gas] prudent in not causing the completion

[4] *See id* at 28.

of appliance retrofitting within a limited period so the plant would not have to run longer, incurring continuing operation costs . . . ?"

There is no basis in the record or otherwise for this speculation about the motives or actions of the Company or its affiliates with regard to their attempts, via the Green Sticker program, to get customers to have their appliances checked (and adjusted as necessary). The Company has spent significant time and resources to make customers aware of the need to have their appliances promptly checked. It has never sought in any way to delay customer action in this regard, and any speculation that the Company would seek to delay customer action because it knew that it would receive rate recovery for CO_2 removal is undermined by the fact that such rate recovery has been in question since 1998. The only party that has sought to undermine the effectiveness of the Green Sticker program—and thereby delay customer action to have appliances checked—is the Committee. This has been done frequently and in public forums.

There is also no basis in the record to find that the ten-year transition period for customers to adjust their appliances to the heat content approved in the 1998 tariff change was somehow inappropriate. Other parties agreed that a transition period was necessary for appliances to be brought into compliance with the new set point,[5] and no party argued that ten years was too long. The ten-year period was simply based on a reasonable assessment of the amount of time it would take for a substantial portion of appliances to be replaced and for other customers to have their appliances inspected and, if necessary, adjusted to accommodate the new set point.[6] The interests of customers were paramount in providing for a ten-year transition period. No evidence suggests otherwise.[7]

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[5] *See, e.g.*, McFadden 98 Direct Testimony at 7.

[6] *See, e.g.*, Opening Brief of Questar Gas Company on Prudence ("Questar Brief") at 22; Tr. 06/23/00 at 17 (Allred) (noting the steps then being taken to accomplish the transition to the new set

The Commission should clarify or withdraw its statements to the effect that "customer modification of appliances may be at odds with Questar interests." The record is replete with concern for customer safety, the underlying "motive" for processing coal-seam gas. The Commission should find that the Company's actions in providing a transition period were in the interests of customers, that they do not reflect unfavorably on the motives of the Company or its affiliates and that there is nothing in the record indicating that a ten-year transition period was inappropriate.

Given that the Commission approved the change in heat content of gas in the Company's tariff in 1998, with the support of the Division and without objection of any party, it is appropriate that customers' appliance set points be adjusted to accommodate gas within the entire range of the current heat content specified in the tariff.[8] The Order's statements about the Company's interests are counterproductive to this goal and should be clarified or withdrawn.

C. The Commission Should Reconsider The Timeframe To Which The Order Applies.

In the final statement of its Conclusions of Law, the Order provides: "We therefore reject the CO_2 Stipulation and deny recovery of the processing costs during the period from June, 1999, to May, 2004."[9] In so doing, the Commission appears to erroneously equate the time-frame in which Questar Gas should be precluded from obtaining rate recovery for CO_2 removal

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point: "It's difficult to say whether that will be accomplished in 10 years. We would certainly like to see it accomplished in a shorter period if possible. But the requirement to manage the heat content of gas within an acceptable range for both the old set point and the new set point is going to be with us for several years more, and we'll just have to assess that as we go forward.") .

[7] *See US WEST Communications, Inc. v. Public Service Comm'n of Utah*, 901 P.2d 270, 275 (Utah 1995) ("The law does not invest the Commission with any such arbitrary power to disbelieve or disregard uncontradicted, competent, credible evidence . . . .") (quoting *Jones v. California Packing Corp*., 244 P.2d 640, 644 (Utah 1952).

[8] Currently, through CO_2 removal, the Company manages heat-content within the much narrower range of overlap between the pre-1998 set point and the current set point.

[9] Order at 38.

with the time-frame in which rate recovery was provided in the CO_2 Stipulation. The Commission should reconsider this position.

When the parties entered into the CO_2 Stipulation they agreed to rate recovery of CO_2 removal costs for a period of five years (ending May 31, 2004), but potentially subject to regulatory revision or elimination before that time, and with any future recovery subject to regulatory approval.[10] The parties did not stipulate that if the Commission rejected the stipulation, rate recovery would be barred until after May 31, 2004.

Had the Commission, in the August 2000 order concluding the 1999 general rate case, rejected the CO_2 Stipulation and found that Questar Gas was not entitled to rate recovery for CO_2 removal costs, the order so finding would have been effective until the Company filed a new application for rate recovery, at which time the Commission would make a new assessment of prudence based on the facts then appearing. If the Commission found prudence based on the new facts presented in the later case, the 2000 order would have ceased to be effective and recovery would have been permitted. Now, although four years passed before the Commission issued the Order rejecting the CO_2 Stipulation, the analysis of the timeframe covered by the Order should be no different.

The Company recognizes that some rates (such as those set in Docket No. 99-057-20, the 1999 general rate case, based on the CO_2 Stipulation) may no longer be subject to adjustment because of the rule against retroactive ratemaking. However, the Company has sought recovery of CO_2 removal costs in later pass-through dockets that are still open, and that may appropriately cover periods beginning prior to June 1, 2004. Yet by its language precluding rate recovery of CO_2 removal costs through May 2004, the Order would apparently preclude pre-June 2004

[10] Questar Brief at 2.

recovery sought in these later dockets, where new evidence not addressed in this case would be relevant as to the prudence of the costs. For example, evidence about the need for coal-seam gas to meet customer demand in recent years and the large volumes of coal-seam gas purchased by the Company to meet that demand, as well as evidence of the significantly higher costs of alternative gas supplies in the event that coal-seam gas is not purchased to meet customer demand, warrant Commission consideration.[11]

The Commission should grant reconsideration as to the timeframe covered by the Order. In so doing it need not identify a date prior to which rate recovery for CO_2 removal costs is precluded. Rather, normal ratemaking rules should apply to any subsequent docket where the Company has sought or will seek recovery for CO_2 removal costs. If the Company cannot demonstrate prudence in these dockets it will not be entitled to rate recovery and the elimination of CO_2 removal costs from rates, as provided in the Order, will remain in effect. If any party wishes to argue that recovery for any period prior to June 1, 2004 is precluded by ratemaking principles, that party can make its argument in the relevant docket where the Company seeks recovery.

D. The Commission Should Clarify That The Tariff Revisions Required By The Order Do Not Preclude Rate Recovery For The Period Going Forward From June 1, 2004.

In the Order's first ordering clause the Commission directs "Questar Gas Company to file appropriate tariff revisions to reflect our determination that there be no cost recovery authorized for CO_2 processing operations."[12] In the statement immediately preceding this ordering clause,

[11] Even Mr. McFadden, on behalf of the Committee, admitted in this case that under relevant FERC precedent LDC customers have been required to pay for gas processing when they had unique heat-content requirements similar to the Company's and were purchasing the gas supplies that required processing to accommodate those unique requirements. *See, e.g.*, Tr. 6/6/00 at 253 (McFadden); Tr. 6/23/00 at 48 (McFadden).

[12] *See* Order at 38.

the Order denies recovery of CO_2 removal costs "during the period from June, 1999, to May, 2004."[13]

By its own terms, and even if the clarification sought in section C of this petition is not made, the Order limits its application to the period ending May 2004. In the new docket, the Company will be seeking a Commission order finding the Company's actions to manage the heat content of its gas, including CO_2 removal costs, to have been prudently incurred on a going-forward basis. However, it is possible that a party may argue that the ordering paragraph's requirement of a tariff change eliminating CO_2 removal costs from rates equates to a determination that recovery, even after May 31, 2004, is barred until after the tariff is revised again. Thus, Questar Gas seeks clarification that by ordering changes to the Company's tariff the Commission was not in any way precluding the Company from seeking recovery of CO_2 removal costs incurred after May 31, 2004.

E. The Commission Should Reconsider Its Decision To Deny All Recovery For CO_2 Removal Costs; Under The Appropriate Prudence Standard Some Level Of Recovery Was Warranted.

In setting forth the standard under which the Commission would determine prudence, the Order quotes widely-recognized principles with which all parties to this case essentially agree. The Order states that in assessing the Company's prudence:

> we simply ask whether an unaffiliated utility acting in the best interests of its customers, in light of the circumstances and possessing the same knowledge which Questar Gas had or should have had at the time, *could* reasonably have responded the way Questar Gas did to the increasing volumes of coal-seam gas entering its distribution system as a result of Questar Pipeline contracts to transport gas from coal seam producers or shippers in Emery County, Utah.[14]

[13] *Id.*

[14] *Id.* at 22 (emphasis added).

This standard is one of forward-looking, objective reasonableness.[15] It does not probe the subjective intent of the utility taking action, but rather asks whether an unaffiliated utility could have taken the same action in the same circumstances.[16] It is largely focused on the end result of the utility's action and the reasonableness of that result to customers.[17] It does not focus on the quality of, or intent behind, every decision and sub-decision the utility makes in reaching the end result, for at least two reasons. First, the end result is a cost that the utility is asking to pass-through to customers—it is the ultimate reasonableness of that cost that should be of paramount concern to regulators. And second, if regulators chose in hindsight to pick apart utility actions with a fine-tooth comb there would essentially always be a way to find imperfection (or a lack of proof of perfection) in some aspect of utility decision-making. Such scrutiny would unnecessarily increase the costs of utility action when action is taken—as utilities practice excessively defensive decision-making rather than simply exercising their best judgment; and it would discourage investment by increasing the risk that costs will be completely disallowed.

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[15] *See, e.g., Re Mountain Fuel Supply Co.*, 1994 WL 570655, Nos. 91-057-11 & 91-057-17, at *5 (Utah Pub. Serv. Comm'n Sept. 10, 1993); *Re Portland Gen. Elec. Co.*, 1999 WL 719758, UP 158, Order No. 99-498, at *3 (Or. Pub. Utils. Comm'n Aug. 17, 1999); *Re San Diego Gas & Elec. Co.*, 31 C.P.U.C.2d 236 (Feb. 24, 1989); *Re W. Mass. Elec. Co.*, 80 PUR 4th 479, at 501 (Mass. Dept. of Pub. Utils. June 30, 1986).

[16] *See, e.g., Re Portland Gen. Elec. Co.*, 1999 WL 719758, at *3 (prudence review "examines whether a 'reasonable utility manager, under the same circumstances and acting in good faith, would not have made the same decision.'") (quoting *Indiana Municipal Power Agency v. Federal Energy Regulatory Comm'n*, 56 F3d 247, 253 (D.C. Cir. 1995)).

[17] *See, e.g., Midland Cogeneration Venture Ltd. P'ship v. Pub. Serv. Comm'n*, 501 N.W.2d 573, 585-90 (Mich. Ct. App. 1993) (disallowing only unreasonable portion of affiliate costs); *Re N.Y. Tel. Co.*, 121 PUR. 4th 117, 160-165 (N.Y. Pub. Serv. Comm'n 1991) (same); *Re Block Island Power Co.*, 59 PUR 4th 430 (RI Pub. Utils. Comm'n 1984) (scope of inquiry calls "only for the disallowance of profits and costs paid to affiliates and subsidiaries which are unreasonable"), *aff'd*, 505 A.2d 652 (R.I. 1986); *Re Narragansett Elec. Co.*, 17 PUR 4th 164 (RI Pub. Utils. Comm'n 1976) (duty of commission to examine utility payment to affiliate and reject "those portions" found to represent unreasonable expenses); *Northwestern Bell Tel. Co. v. State*, 216 N.W.2d 841, 853-54 (Minn. 1974) (in reviewing affiliate transactions commission should disallow only excessive portion of cost paid).

Notwithstanding its quotation of the well-accepted prudence standard, the Order does not reflect a results-oriented, "reasonableness" approach to prudence. Instead of focusing on whether a reasonable, unaffiliated utility acting in the best interests of its customers could have ended up incurring the costs (or some portion thereof) Questar Gas incurred with the CO_2 plant, the Order engages in "a thorough review of . . . the *process* by which the utility chose to act."[18] It goes through a quite extraordinary litany of utility decisions and sub-decisions that must have themselves been prudent before any costs can be recovered,[19] and in the end requires "substantial evidence that the utility's *decision-making process*, under the totality of the circumstances, was not the product of a conscious or unconscious favoring of affiliate over ratepayer interests."[20]

The seemingly inescapable conclusion to be drawn from the prudence review adopted in the Order is that regardless of the fact that an unaffiliated utility could have taken precisely the same action in building a processing plant and could have incurred precisely the same costs, reaching precisely the same result of ensuring customer safety, Questar Gas is entitled to *no* recovery if it cannot prove the subjective good intent and prudence of each and every decision taken along the way toward incurring that cost. Respectfully, this is neither the prudence standard cited at the outset of the Order nor is it the standard previously used by this Commission and by the regulators in other states. If it were the same standard, the many cases granting total or partial recovery notwithstanding some flaw in the decision-making process, some potentially mixed motive for action, or some failure to entirely meet a burden of proof could not stand.[21] Far from being consistent with prior practice, the prudence standard adopted

[18] Order at 22 (emphasis added).

[19] *See id*. at 23-24.

[20] *Id*. at 24 (emphasis added).

[21] *See, e.g., Re U S West Communications, Inc.*, 1995 WL 798880, *12 (Utah P.S.C. Nov. 27, 1995) ("Although we conclude the Company did not meet its burden, we do not agree with the

in the Order is in essence the "all or nothing" approach the Commission has previously rejected.[22]

The only basis cited in the Order for the Commission's departure from its prior prudence practice is the language of the Utah Supreme Court in its 2003 decision.[23] In dismissing the Division's suggestion that "if there is some [customer] benefit, even with affiliate influence, complete disallowance could be inappropriate,"[24]—a suggestion that was entirely consistent with the Commission's established prudence practice—the Order states that "The Supreme Court's opinion in the 2003 Decision . . . effectively requires us to deny recovery if Questar Gas fails to meet its burden of proving that its decision making process and decision to contract for the CO_2 processing was prudent and unaffected by affiliate interests."[25] The Supreme Court language that the Commission felt bound to follow appears to be the following statement quoted on page 20 of the Order

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Committee that every dollar of affiliate transactions should be disallowed from rate recovery. Lacking any evidence to the contrary, we conclude that ratepayers received some value for the goods and services obtained through USWC's affiliate relationships. We are not convinced, however, that these services were obtained at lowest cost. The Company has failed to meet its burden and we adopt the Division's recommendation to disallow ten percent of [the affiliate] charges."); *see also Re U S West Communications, Inc.*, 1993 WL 214610 (Utah P.S.C. April 15, 1993) (finding various partial disallowances for affiliate expenses appropriate where "[U S WEST] had not justified these charges as necessary and reasonable"); *Re Foothills Water Company*, 1992 WL 501201, *7 (notwithstanding utility's intent to benefit closely-related entities and individuals, Commission looked to the reasonableness of the costs incurred and disallowed only unreasonable expenses); *see also generally supra* note 17.

[22] *See* Order at 35 ("While we have previously recognized that under some circumstances our prudence review need not produce an all or nothing outcome, that reasoning does not apply here.") (citing *Re US WEST Communications*, Docket No. 95-049-05). The Commission's partial-recovery reasoning from prior cases *should* apply here. The Commission's decisions granting partial recovery for affiliate transactions did not focus on the quality of the decision-making that led to the expense, but rather on the reasonableness of the result to customers.

[23] *Committee of Consumer Services v. Public Service Comm'n of Utah*, 2003 UT 29, 75 P.3d 481 ("*Decision*").

[24] Order at 36 (citing Division Brief at 8).

[25] *Id.*

> We are far from certain, moreover, that the Commission could conceivably determine whether a rate increase is just and reasonable without examining whether the underlying cost-incurring activity was reasonable, which in turn seems to require some attention to the utility's decision making process, most particularly where negotiations with an affiliate are involved.[26]

Questar respectfully suggests that such a statement about what a prudence review "seems to require" is not the stuff upon which the Commission should base a reversal of its established prudence practice. The Court did not have before it any meaningful briefing about the appropriate standard for determining prudence. There was no need for such briefing because the prudence standard was not before the Court on appeal. The question on appeal was whether the Commission could grant rate recovery without making any determination on prudence at all.

It would be highly incongruous for the Commission, on the one hand, to find (as it properly did in this case) that a post-appeal prudence review should be conducted in this matter notwithstanding Court dicta that apparently did not anticipate such a review; yet, on the other hand, for the Commission to consider itself obligated in the Order to adopt a new prudence standard because of passing reference in the *Decision* to what a prudence review "seems to require."[27]

The Commission should reconsider the prudence standard applied in its Order and re-focus on the question of whether Questar Gas has met its burden of demonstrating that an unaffiliated utility could have reasonably taken action that led to costs being incurred at some

[26] *Decision* at ¶ 15.

[27] The Order is likewise incongruous with the Commission's direction given shortly before the Order was issued, that "If a settlement proposal can be reached and presented to resolve the issues associated with the CO_2 plant, past, present and future, the Commission encourages discussion of such a resolution." (Order Directing a Settlement Meeting, July 7, 2004). It is hard to imagine that any settlement the Commission could have envisioned would have completely disallowed recovery for past CO_2 removal; yet based on the Order, any rate recovery a settlement may have provided would have been inappropriate due to the Commission's view of the Company's imprudence (or lack of proof of prudence).

level to respond to the safety problem associated with coal-seam gas. If so, then customers have received a benefit, and a level of recovery commensurate with the level of costs an unaffiliated utility reasonably could have incurred is appropriate. When considered under the appropriate prudence standard applied by the Commission in past cases, total disallowance was not warranted in this case.

1. The Record Showed That an Unaffiliated LDC Would Likely Not Have Been Able to Avoid Incurring Costs to Address the Coal-seam Gas.

For Questar Gas to meet its burden, the Order would require the Company to "prove[] that the dangers posed by increasing amounts of coal-seam gas were inevitable . . . ."[28] In so doing, rather than asking whether an unaffiliated utility *could* have incurred costs to deal with coal-seam gas, the Order essentially requires Questar Gas to prove that an unaffiliated utility inevitably *would* have incurred such costs. This approach, again, departs from the Commission's prior practice. The appropriate prudence inquiry would assess whether Questar Gas demonstrated that an unaffiliated could, or might, reasonably have incurred costs to address coal-seam gas; or, put conversely, whether an unaffiliated utility *would* have been able to avoid incurring any costs to address the presence of coal-seam gas in the stream delivered from the interstate pipeline. This puts the focus on whether the unaffiliated utility would have been successful in keeping the coal seam gas off its system or forcing others to pay for any impacts caused by the gas being on the system, which calls into question the evidence in this case on whether action before the Federal Energy Regulatory Commission ("FERC") would have successfully prevented the coal-seam gas from coming on the system or caused some party other than Questar Gas to absorb all costs associated with bringing the gas on the system.

[28] *See* Order at 32, 36.

The Order focuses on the potential outcome had there been an earlier recognition of the ultimate magnitude of the coal-seam volumes and an action before the FERC, and notes that an unaffiliated utility would have recognized the impacts of the coal-seam volumes earlier and thoroughly analyzed any prospect of bringing a successful FERC action.[29] But under the prudence standard as normally applied, if such a FERC action could have failed to either prevent the gas from coming on the system or to cause the entire cost associated with the gas to be borne by someone else, then the unaffiliated utility *could* have incurred prudent expense to somehow address the presence of the gas. The evidence in this case not only showed that it was possible that a FERC action might not have been totally successful in stopping the gas or shifting the cost, it showed that such an outcome was likely.[30] Thus, the Division was absolutely correct in focusing on the likely outcomes of a FERC action and agreeing to a level of recovery somewhere in that range.[31] Since the evidence demonstrated that, although it was uncertain what the FERC would have done, it was likely that some costs would have been borne by customers to address coal-seam gas, the Commission should have approved recovery up to that amount.

In rejecting the sworn testimony of Questar Gas's management and its expert witnesses regarding Questar Gas's business judgment about the timing of the coal seam gas coming on to its system and the low probability of success of an action at the FERC within the limited time available, in light of no significant contravening evidence by other parties, the Commission

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[29] *See id*. at 32.

[30] *See, e.g*., Questar Brief at 37-44; Division Brief at 18-19.

[31] As Dr. Compton put it on behalf of the Division, "All the principals in this issue are basing their positions regarding the disposition of CO_2 processing costs upon their conjectures at to what FERC would permit. QGC would place the full burden on its ratepayers based upon its stated expectations regarding FERC rulings. Conversely, the Committee's expectations would yield a zero burden. The UDPU rejects both extremes. We justify our willingness to grant QGC some relief based on our expectation that FERC would also find a middle ground in this matter." (Compton 99 Surrebuttal Testimony at 13).

appears to have simply refused to believe the testimony of Questar Gas. In so doing, the Commission has misapplied the appropriate standard of review in a regulatory proceeding.[32] Questar Gas steadfastly believes that an unaffiliated LDC would have incurred at least the costs previously approved by the Commission in the CO_2 Stipulation and, perhaps, even greater costs. The Commission should grant reconsideration to correct this error.

2. Not Only the Level of Costs Incurred, but the Specific Actions Taken to Build and Operate the CO_2 Plant Were Prudent.

The Order questions both the prudence of the decision to build the CO_2 plant and the prudence of the Company contracting with Questar Transportation Services to own and operate the CO_2 plant.[33] In so doing, it again focuses on proof of the subjective quality of analysis that was performed prior to taking these actions and devalues the results-oriented evidence showing that no alternative was superior. The Commission should reconsider this approach.

Even if the Commission were correct in focusing on the utility's subjective decision-making rather than the objective reasonableness of the results, the Commission should reconsider its conclusions regarding that decision-making. First, it is not fair to characterize Mr. Allred as "admit[ing] that Questar management conducted no in-depth financial analysis because management assumed Questar Gas would recover any costs from its ratepayers."[34] Rather, Mr. Allred said that "the decision-making process for this expenditure was no different than our other expenditures" and that the Company would not typically prepare a hugely detailed return-on-investment analysis for any expense.[35] The Company did not skirt its analysis based on some casual assumption that it would be able to recover any costs. Rather, as Mr. Allred stated: "The

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[32] *See, e.g., US WEST Communications, Inc.*, 901 P.2d at 275 .

[33] *See, e.g.*, Order at 34.

[34] *Id*. (citing hearing statements of Alan K. Allred).

[35] Tr. 05/27/04 at 77-79 (Allred).

analysis we do . . . is: Weighing the constraints of reliable service, safe service to customers, and most reasonable cost, is this the best solution . . . ? We did do that sort of analysis on this [CO_2 removal] solution."[36] Second, it is not true that there was "no discussion or analysis of whether there were cost effective ways of avoiding the coal-seam gas problem altogether or, alternatively, of providing a cheaper long term solution instead of the expensive, temporary fix selected by Questar Gas."[37] Questar Gas did analyze various options for addressing coal-seam gas and submitted contemporaneous evidence of that fact (not just after-the-fact analysis).[38] What it did not do is submit one document showing that the Company had sat down in one big meeting and considered all options at one time.[39] Under the Order's approach, in the absence of such documentation apparently no costs are recoverable. Questar Gas respectfully requests that the Commission reconsider this position.

The appropriate prudence standard would address whether building the CO_2 plant was a reasonable response to the increasing presence of coal-seam gas (that the evidence, as discussed above, showed an unaffiliated utility would likely not have been able to prevent from entering the system). The evidence showed that the CO_2 plant was a reasonable response, and the Order does not conclude the contrary.[40] Rather, the Order again uses a prudence standard that focuses

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[36] *Id.*

[37] Order at 27.

[38] *See, e.g.,* Hanson 98 Rebuttal Testimony at 4 ("We requested all of the information that went into the decision. In responses to our data requests, we got memos, copies of slide presentations, and studies."); Tr. 06/05/00 at 142 (Allred) ("This is a situation that received as much or more analysis, study, investigation within our company as any issue I've ever been aware of. We produced massive amounts of information that . . . the Division went through and looked at.").

[39] *See, e.g.,* Hanson 98 Direct Testimony at 19 ("Various options had been considered over time with some of them eliminated. Apparently there is no document that compares all of the alternatives. I was surprised that there was no such document considering that the decision involves such a considerable dollar commitment. I always like to see a clear and complete record of the analysis used to made the decision when a transaction involves an affiliate.").

[40] *See* Order at 34.

on the evidence of the subjective quality of decision-making rather than the evidence showing the reasonableness of the result. When the focus is appropriately on the reasonableness of the result, the evidence was that no alternative had a lower cost with a better assurance of results than CO_2 removal.[41] And the evidence was not just that "in the view of [the Company's] witnesses" the arrangement with Questar Transportation "resulted in a lower cost to ratepayers,"[42] the evidence was that *all* parties, including counsel for the Committee in the hearing, admitted that the arrangement with Questar Transportation did not increase costs to ratepayers as compared to an unaffiliated entity owning and operating the plant.[43]

There was ample evidence on the record to support a finding that CO_2 removal, as accomplished through the contract with Questar Transportation, reflected a reasonable response to coal-seam gas that an unaffiliated utility could very well have taken.[44] If the Commission thought that there was insufficient evidence to demonstrate that an unaffiliated utility could have incurred 68% of the Company's CO_2 removal costs (the stipulated amount Questar Gas sought to recover), it could have deducted some further amount to ensure that Questar Gas did not recover

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[41] *See, e.g.*, Questar Brief at 21-33.

[42] Order at 34-35.

[43] *See, e.g.*, Division 99 Brief at 27 ("Although the DPU has testified that QGC did not bid the CO_2 plant but instead went to a subsidiary to have CO_2 removal done for it[,] [n]o one, other than that, has seriously challenged the cost of the CO_2 plant. Both in 98-057-12 and in this docket [99-057-20] neither the DPU or the CCS challenged the cost to build the CO_2 plant or the expenses to operate it."); McFadden 98 Direct Testimony at 10 (Of all considered alternatives, CO_2 processing appeared to be the lowest cost and most economical.); Tr. 05/27/04 at 114-16 ("COMMISSIONER BOYER: . . . Is there any evidence in the record that the processing plant could have been built more cost effectively by an un affiliated company? MR. WARNICK: Not that I'm aware of. In other words, the Committee does not contest the argument that it demonstrated based on the record, based upon the comments from Mr. Snider and others that anyone else could have built this plant for less. What the company does object to, and what we would point out, is that there is no reason for Questar Pipeline or Questar Transportation Services to be in the middle."). There was also no evidence that Questar Transportation's being "in the middle" increased the costs to Questar Gas customers in any way. *See, e.g.*, Tr. 06/23/99 at 466 (Allred) (the QTS contract resulted in costs equivalent to the costs QGC would have incurred if it did the processing itself and costs less than what it would have cost from an unaffiliated processor.).

[44] *See, e.g.*, Snider 98 Direct Testimony at 8-11; Tr. 06/23/99 at 466 (Allred).

more costs than a reasonable, unaffiliated utility could have incurred. And while the Commission clearly had concerns with the ownership of the plant residing in Questar Transportation rather than Questar Gas, at most, affiliate ownership issues reflect on whether the plant would have any potential value to the Company's customers at the end of its asset life. Such concerns do not speak to the prudence of building and operating the plant, or of providing cost-of-service recovery (just as if Questar Gas did own the plant) as the contract with Questar Transportation did.

Instead of placing its focus on ensuring that Questar Gas did not recover more costs than a reasonable, unaffiliated utility could have incurred, the Order took the all-or-nothing, subjective approach of scrutinizing the proof of the Company's decision-making processes. In so doing, the Commission departed from the widely-accepted prudence standard it has used in the past, and failed to appropriately focus on the objective reasonableness to customers of the results of the Company's actions. The Commission should grant reconsideration to correct this error.

CONCLUSION

Questar Gas respectfully requests that the Commission grant reconsideration or clarification of the above-identified seven points. By so doing, the Commission will be fulfilling its role to appropriately balance the interests of customers and shareholders, will be re-focusing its prudence review in accordance with its widely-accepted past practice, and will be correcting misunderstandings about coal-seam gas and the reasonableness of the actions taken by the Company in response to the presence of that gas on the Company's southern system.

RESPECTFULLY SUBMITTED: September 29, 2004.

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C. Scott Brown
Colleen Larkin Bell
Questar Regulated Services

Gregory B. Monson
David L. Elmont
STOEL RIVES LLP

Attorneys for Questar Gas Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **QUESTAR GAS COMPANY'S PETITION FOR RECONSIDERATION OR CLARIFICATION** was served by electronic mail on the following on September 29, 2004:

Michael Ginsberg
Assistant Attorney General
Patricia E. Schmid
Assistant Attorney General
500 Heber Wells Building
160 East 300 South
Salt Lake City, Utah 84114
mginsberg@utah.gov
pschmid@utah.gov

Reed T. Warnick
Assistant Attorney General
500 Heber Wells Building
160 East 300 South
Salt Lake City, Utah 84114
rwarnick@utah.gov

Gary A. Dodge
Hatch, James & Dodge, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
gdodge@hjdlaw.com

William J. Evans
Parsons, Behle & Latimer
201 South Main Street, #1800
Salt Lake City, UT 84111-2218
wevans@pblutah.com

Jeff Fox
149 Windsor Street
Salt Lake City, Utah 84102
jeffvfox@attbi.com

Tony J. Rudman
1111 East Brickyard Road, Suite 106
Salt Lake City, UT 84106
tjrudman@utah-inter.net

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