BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah	)	DOCKET NO. 04-057-04
Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah	)	DOCKET NO. 04-057-11
Application of Questar Gas Company for a Continuation of Previously Authorized Rates and Charges Pursuant to its Purchased Gas Adjustment Clause	)	DOCKET NO. 04-057-13
In the Matter of the Investigation of Questar Gas Company's Gas Quality	)	DOCKET NO. 04-057-09
Application of Questar Gas Company for Recovery of Gas Management Costs in its 191 Gas Cost Balancing Account	)	DOCKET NO. 05-057-01
	)	ORDER ON REQUEST TO INTERVENE

SYNOPSIS

The Commission denies the Request to Intervene submitted by Roger Ball and Claire Geddes on November 17, 2005, finding that the intervention cannot be granted at this late date without ignoring the requirements for intervention set forth in Utah Code § 63-46b-9(2).

ISSUED: January 6, 2006

By the Commission:

By written Request to Intervene, submitted November 17, 2005, Roger Ball and Claire Geddes seek to intervene in these dockets. Questar Gas Company ("Questar"), the Division of Public Utilities ("Division") and the Committee of Consumer Services ("Committee") have filed memoranda in opposition to the requested intervention. Mr. Ball and Ms. Geddes have submitted their reply to the opposing parties.

Intervention is governed by Utah Code§63-46b-9.[1] As determined by the Utah Supreme Court, §63-46b-9(2) grants a conditional right to intervene, as long as both of its prongs are met.[2] *Millard County vs. Utah Tax Commission*, 823 P.2d 459, 462 (Utah 1991). The opposition to the intervention focuses on the second prong. An understanding of the parties' arguments and our resolution is aided by reviewing these dockets.

HISTORY

This matter has a long and storied procedural history. Suffice it to say that the prior dockets leading up to the present matter were resolved by order of this Commission on September 16, 2004, ("2004 Order") wherein the Commission ordered a refund to Questar customers of approximately $29 million in gas processing costs and interest previously collected by Questar in rates between 1997 and 2003. *See,* September 16, 2004, Order issued in Docket No. 04-057-09.

Docket Nos. 04-057-04, 04-057-11 and 04-057-13 are 191 Account proceedings pursuant to the 191 Account tariff and process. In each, Questar includes in its 191 Account expense accounting costs incurred or projected for CO2 plant operations. Although these CO2 plant expenses are accounted for in the 191 Account, Questar's opportunity to seek recovery of them had been deferred until a later date, pending Questar's specific request to recover them and Commission resolution of any disputes regarding their recovery.

Docket 04-057-09 is a Commission initiated docket to investigate or "discuss the long-term solution to Questar Gas Company's gas quality." Notice of Scheduling Conference, September 8, 2004. By Scheduling Order issued October 7, 2004, the Commission provided

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[1]The Commission's own procedural rule, Utah Admin. Code R746-100-7, uses Utah Code §63-46b-9 as its intervention standard.

[2]The two prongs are: " . . . (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention." Utah Code §63-46b-9(2).

notice of a series of public technical conferences for the 04-047-09 docket, including the issues to be discussed. Prior to any technical conference being held, Questar filed with the Commission, an informational list of the alternative options it had considered (relative to "the need for the CO2 plant in the future and alternatives to processing") and that it would be prepared to discuss at the technical conferences. Letter of Colleen Bell (Questar Attorney) to Julie Orchard (Commission Secretary), dated October 27, 2004. The options Questar identified were "1. FERC Option. 2. No Action Option. 3. Shut In City Gates Option. 4. Appliance Adjustment Option. 5. Producer Option. 6. Gross Blending Option. 7. Precision Blending Option. 8. Propane Injection Option. 9. CO2 Removal Option. 10. Kern River Options - Riverton to Lehi - Utah Lake Route - Goshen to Payson. 11. Other?" *Id.*

After completion of the technical conferences contemplated in Docket No. 04-057-09, Docket 05-057-01 was commenced with the January 31, 2005, filing of Questar's Application ("January 2005 Application") to recover specific gas treatment or processing costs incurred to deliver natural gas to its customers that can be safely utilized until customers' appliances can be inspected, and adjusted if necessary, to burn the natural gas that is available and which is anticipated to be available from the natural gas markets from which Questar may obtain natural gas supplies.

Arguing that circumstances had changed materially since the resolution of the earlier cases by the 2004 Order, the January 2005 Application outlined Questar's position that it was entitled to recovery of certain costs incurred to manage the heat-content of its natural gas supplies delivered to Utah customers. Questar maintained that its customers were better off, from the perspective of the company's overall expenditures for the acquisition and delivery of natural gas and from the company's operational and gas delivery perspective, with the presence of coal bed methane in its natural gas supplies.

The January 2005 Application claimed that the best means of dealing with the changing heat-content of natural gas was for the company to engage in what it called precision blending of gas (which would also entail the operation of the CO2 plant for seven months out of the year) or to continue to use the CO2 plant throughout the twelve months of the year. Questar claimed that the changing heat-content of natural gas results not solely from decisions made by Questar and its affiliates, but also from decisions and actions of third parties, over which Questar has no control. These include natural gas developers and producers operating in the Rocky Mountain region, natural gas purchasers and transporters of natural gas in the Rocky Mountain region, operators of the multiple interstate natural gas pipelines located not only in the Rocky Mountain region but beyond, and federal policy makers' efforts to encourage and enhance the interconnection of pipelines and the increased fungibility of natural gas transported through the interstate natural gas pipeline system. Questar claimed that because of these third parties' actions, Questar and its affiliates are not able to avoid the inclusion of coal bed methane gas in supplies to Questar's customers, nor reverse the decline and continuing decline in the heat-content of natural gas delivered to Questar customers.

Questar claimed that the changing heat-content posed a safety risk for customers whose appliances were not properly adjusted to the heat range approved by the Commission; it claimed that efforts to have the FERC address the gas quality issues faced by Questar and its customers would result in the imposition of additional, greater costs upon Questar and its customers and that Questar's own natural gas production could be adversely affected[3]; and it claimed that it had presented and thoroughly analyzed more than 11 different alternatives that were either requested by other parties or proposed by Questar during the 04-057-09 technical conferences.

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[3]Questar claimed that no one advocated or supported the initiation by Questar (or any other person) of an action at FERC to address Questar's natural gas interchangeability issues.

Although no formal consolidation of the five dockets was requested of the Commission, because Questar sought recovery of the costs it had incurred and would incur to deliver natural gas supplies to its customers by utilizing the CO2 plant, these enumerated dockets were treated on a joint basis by the Commission after the filing of the January 2005 Application. Through three Scheduling Orders, parties were to begin filing their pre-filed written testimony beginning in April, 2005, and the Commission planned to hold evidentiary hearings in October or November; hearing dates were ultimately set for November 1, 2, 3 and 4, 2005. *See*, Scheduling Orders, dated October 6, 2004, August 24, 2005, and September 6, 2005.

On October 11, 2005, attorneys for Questar, the Division and the Committee filed those parties' Gas Management Cost Stipulation ("Stipulation") with the Commission. The Commission issued an October 11, 2005, Notice Of Hearing On Gas Management Cost Stipulation, setting October 20, 2005, as the hearing date to consider the Stipulation. The Notice stated that "[t]he purpose of the hearing is to hear evidence and argument on approval of the Gas Management Cost Stipulation between Questar Gas Company, the Division of Public Utilities, and the Committee of Consumer Services filed on October 11, 2005. The Stipulation settles issues regarding rate recovery of a portion of the costs incurred by Questar Gas Company in addressing a potential customer safety concern by managing the heat content of its gas supplies, including a portion of the costs associated with the plant removing CO_2 from coal-seam gas supplies from the Ferron Basin in Emery County, Utah, operated by Questar Transportation Services Company." *Id.*

The October 20, 2005, hearing was held at which the parties to the Stipulation presented their witnesses who provided oral testimony in support of the Stipulation and at which Questar's April 15, 2005, pre-filed written direct testimony was also received. Later in the day, at the scheduled time for public witness testimony regarding the merits of the Stipulation, two public witnesses appeared and provided sworn testimony to the Commission. After the hearings

were adjourned, Mr. Ball and Ms. Geddes contacted the Commission Secretary and Chairman and inquired about how they could provide information to the Commission concerning the Stipulation. Members of the public from time to time desire to make comments on matters pending before the Commission. Beyond making provision for their appearance as public witnesses at its hearings, the Commission also accepts written comments from the public and places them in its dockets. Mr. Ball and Ms. Geddes were told they could submit written comments and they submitted what they styled as affidavits on November 4, 2005. On November 10, 2005, Questar filed a letter response to Mr. Ball's and Ms. Geddes' written comments. On November 17, 2005, Mr. Ball and Ms. Geddes ("Petitioners") filed their joint request to intervene in these dockets, seeking in essence, to reopen the case and begin anew.

DISCUSSION

Intervention in administrative proceedings is governed by Utah Code §63-46b-9, which provides, in relevant part, "the presiding officer shall grant a petition for intervention if the presiding officer determines that: (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing intervention." Questar, the Division and the Committee all argue that Petitioner's intervention would violate the second prong; i.e, their intervention would not be in the interests of justice and would materially impair the orderly and prompt conduct of adjudicative proceedings. Petitioners claim that they may intervene without affecting the second prong of the intervention standard. As we have been unable to identify any prior precedent similar to this case, we also recognize the precedential nature of our ruling.

Petitioners claim they were unaware of the October 20, 2005, hearing on the Stipulation. Petitioners assert their expertise and familiarity with utility matters, but provide no

explanation for not being aware of these proceedings until reading about the hearing in the newspaper. All requirements of the Open and Public Meetings Act were met and the Commission exceeded the requirements of that act by providing a publicly accessible website containing notices and orders and permits a person to request their inclusion on docket specific mailing lists. Petitioners apparently took advantage of none of these notification services. Furthermore, Mr. Ball either personally participated in these proceedings or directed the participation of Committee staff while he was employed for years prior to his termination in mid-March, 2005. Ms. Geddes has been a frequent participant in other Commission proceedings; appearing frequently in other dockets during scheduled times to receive Public Witness comments or testimony. Petitioners' lack of involvement in these proceedings is due to their inattention and indicates a lack of diligence to prepare to participate in the hearings scheduled for November, 2005. But for the Stipulation and the earlier hearing date set for it, which apparently precipitated their attention, Petitioners otherwise would have come to intervene and address Questar's request to seek recovery of CO2 plant costs only a few days prior to the hearing dates set for early November. Whatever logic or reliance Petitioners put in their actions to address or deal with Questar's claims, they are of their own doing. We will not give them reprieve from the consequences of their own choices.

The distillation of the Petitioners' criticism of the actions of the Committee and the Division at this late date is basically that the Committee and Division developed decisions on the merits of Questar's requests that are different than the decisions or positions Petitioners have already submitted to the Commission. Petitioners apparently now wish to expound, justify or present additional rationales to the Commission. Petitioners claim that customers' interests have not been adequately represented before the Commission by the Committee and the Division. Petitioners claim their ability to rectify the situation. Yet the same argument applies to Petitioners' opinions and positions. There would be nothing to distinguish allowing Petitioners to

now go forward and to then have another petitioning intervener or interveners, professing to represent and advocate for customers, claim that Petitioners are/were also insufficient or otherwise off-the-mark. Administrative agencies need take care to not open their adjudicative process for an endless intervention parade. More so where, as here, it sets precedent for seeking intervention after the normal conclusion of the administrative process. This is particularly so where each individual customer has the same claimed legal interest in the proceeding (each customer pays his rate for natural gas consumed) as the petitioning interveners.[4] Additional, self-proclaimed customer advocates would not be hard to come by, each critical of the current representation before the Commission. We reject as a basis to grant intervention at this time in the completed proceedings the Petitioners' disagreements with the positions taken by the Committee or the Division. By their own admission and inaction, Petitioners did not avail themselves of the information that was made available by Questar; information which was analyzed by the Division, the Committee, their respective experts, and other parties. It is, therefore, not surprising Petitioners would reach a different conclusion than those parties to the Stipulation, who were involved in the analysis.

Petitioners claim that customer interests are not represented here by the Committee and Division, who somehow have abdicated their responsibilities. Distinguishable from the situation in *Millard County*, customer interests are represented in these proceedings. The State of Utah has recognized the potential morass that multiple intervention poses in utility regulation and in proceedings before the Commission. The State has also recognized that customers, individually or grouped, may not have the means nor the expertise to be involved in proceedings before the Commission. Therefore, it has created entities to participate in

[4]There are approximately 775,000 Questar customers.

Commission proceedings and utility regulation to accommodate the consumers' views.[5] Both the Division and the Committee are statutorily charged with including customers' interest in their deliberations and advocacy. Utah Code §54-4a-6 and §54-10-4.

The Committee is specifically charged with representing solely the utility's customers' interests; that of residential, small commercial and agricultural customers. The State of Utah has carefully crafted the organization and operation of the Committee to represent customers' interests. By statute, the multiple members of the Committee are designed to be a representative cross-section of the utility's residential, small commercial and agricultural customers. Committee members are required to represent different geographical areas of the state and different demographics such as low-income residents, retired persons, etc. Utah Code §54-10-2(3). The members of the Committee, not Mr. Ball or his successor, are charged to assess the impact upon consumers of utility or regulatory actions. Utah Code §54-10-4(1). The person holding Mr. Ball's former position is required to "carry out the policies and directives of the Committee…" Utah Code §54-10-5. The members of the Committee determine how the Committee's staff and retained experts are to represent customers' interests and direct the Committee's advocacy on customers' behalf. Utah Code §54-10-4(3). These directed individuals are responsible to carry out the policies and directives of the members of the Committee. Utah Code §54-10-5. Petitioners do not allege that the Committee staff is not carrying out the Committee's directives and policies. The composition of the Committee has remained identical after Mr. Ball's termination. The only noteworthy change after Mr. Ball's termination was the retention of an additional expert to assist the Committee and its staff in carrying out the Committee's statutory duty to look out for Questar customers. As noted in the Committee's Response, "Mr. Ball never allowed himself the benefit of that outside professional expertise

[5]Similar to the Supreme Court's suggestion, in *Millard County,* of means by which interests could be represented in proceedings without the intervention quagmire. *Millard County, supra,* 823 P2d at 463.

while he was Committee Director. The Committee's application to solicit and retain technical expertise did not move off his desk for months, despite urgings of staff, counsel and the Committee Chairman that the Committee avail itself of technical expertise in order to credibly present and defend its position." Response of the Utah Committee of Consumer Services to Request to Intervene, page 6.

If Petitioners' claims and arguments are a collateral attack on the operations and workings of the Committee, they are of no avail to us. We are not in a position to change, at Petitioners' behest, the internal mechanisms through which the Committee[6] resolved what the Committee concluded would be in the best interests of customers, how or what the Committee determined to be the means by which it advocated on customers' behalf and why, from the Committee's view, it supported the resolution of the case through the Stipulation. We have no authority over the Committee; its decisions and conduct are independently made and taken by the Committee members (as we suspect the Petitioners would argue they should be). Petitioners do not claim that the current staff (or its retained experts) have failed to perform or carry out the directives of the Committee's members. Any change in the Committee's composition or internal deliberation process is not in our purview. We give no weight to Petitioners' unsupported claims that the Division's and the Committee's independent decision making have succumbed to the utility industry; in this case to Questar's interests.

The Dr. Jeckle-Mr.Hyde like transfiguration Petitioners make for these state agencies is unsubstantiated. We give no weight to Petitioners characterization that the Division and Committee are hamstrung because they have agreed to support the Stipulation. Petitioners point to this as further indication that these agencies have failed to represent customer interests; that they "transmogrify from watchdog[s] to lapdog[s]." Petition to Intervene, page 16. Petitioners use the wrong referential mark for their argument and draw the wrong conclusion.

[6]Similarly for the Division.

The Division and the Committee signed the Stipulation only after months and months (indeed years) of investigation and examination of Questar's claims. "Both entities throughly studied the issues in this matter, carefully scrutinized the Company's proposals and analysis, and fulfilled their statutory responsibilities. Both the Committee and the Division conducted extensive discovery. In all, over 400 data requests were made of the Company and answered with almost 1000 pages of data and studies, many of them performed by the Company at the request of the Division and the Committee. Both the Committee and the Division retained independent experts, with extensive relevant experience, who participated in the review of Questar Gas's direct testimony and scrutinized the Company's proposals for addressing coal bed methane. And as Mr. Ball knows full well, both the Division and Committee used the extensive technical conferences to aggressively protect the public interest and the interests of the Company's customers." Opposition of Questar Gas Company to Request to Intervene, page 13. They agreed to the Stipulation terms only after such work and, not withstanding Petitioners' unsubstantiated postulates to the contrary, prolonged arms-length negotiations with Questar.

Whatever the ultimate merits of the Stipulation, Petitioners fail to recognize that, on its face, the Stipulation's terms show that the Division and Committee obtained significant concessions and compromises from Questar. Rather than recovery of all CO2 plant costs, for the past, present and future, which Questar had consistently maintained up to the negotiated Stipulation, Questar will bear all costs incurred for the CO2 plant up to February 1, 2005. The Division and Committee claim the financial benefits of the Stipulation exceed $40 million. After February 1, 2005, rather than full recovery, Questar will obtain only partial recovery of the costs incurred in the CO2 plant's operation and will receive no recovery of any additional capital costs expended for the plant. Rather than an open-ended time period for recovery of CO2 plant costs, Questar's partial recovery will end in 2008. Any extension beyond that date requires explicit Commission authorization. Questar (and its customers) are to share in the third party

processing revenues received from the CO2 plant's operations, rather than Questar's affiliates having full retention.[7] Questar agrees to provide targeted free inspection and adjustment services (which otherwise are customer responsibilities for which they themselves would pay) to customers most likely not able to afford such work and, thus, likely to forgo such important safety actions. The parties believe that the presence of the coal bed methane gas has and will continue to depress the overall price of natural gas in the Utah system. And, the processed gas will burn safely in Utah appliances until necessary adjustments to the appliances have been completed. Contrary to Petitioners' hamstrung, obsequious lapdog characterization, the Division and Committee have obtained, for customers' benefit, Questar's abandonment of claims running in the tens of millions of dollars.

Public policy in Utah favors informal, non-adjudicative resolution of the controversy through settlement stipulation. "Informal resolution, by agreement of the parties, of matters before the commission is encouraged as a means to: (a) resolve disputes while minimizing the time and expense that is expended by: (i) public utilities; (ii) the state; and (iii) consumers; (b) enhance administrative efficiency; or (c) enhance the regulatory process by allowing the commission to concentrate on those issues that adverse parties cannot otherwise resolve." Utah Code §54-7-1(1). The legislature is not alone in recognizing the benefits from and encouraging settlement. "The law has no interest in compelling all disputes to be resolved by litigation. One reason public policy favors the settlement of disputes by compromise is that this avoids the delay and the public and private expense of litigation. The policy in favor of settlements applies to controversies before regulatory agencies, so long as the settlement is not contrary to law and the public interest is safeguarded by review and approval by the appropriate

[7]We are puzzled by concerns expressed by such utility cognoscenti as Petitioners relative to the lack of acknowledgment or signature of Questar affiliates. *See, US West Communications vs. Public Service Commission*, 998 P.2d 247 (Utah 2000) (Commission may impute revenues to a utility regardless of the contractual terms between the utility and its affiliate).

public authority." *Utah Department of Administrative Services vs. Public Service Commission,* 658 P.2d 601, 613 and 614 (Utah 1983). "A principal objective of the participating parties in settling their dispute was to avoid the additional time, effort and expense, and the *uncertainty of outcome,* that would necessarily attend a 'full evidentiary hearing' which the Petitioners would now seek to impose on everyone." Response of the Committee of Consumer Services to Request to Intervene, page 3 (emphasis in original). We conclude that it is not appropriate for Petitioners to be granted such a tardy intervention and eviscerate the work already done and subject all parties, the regulatory process, the State's and customers' interests, to the vagaries of the odyssey foreshadowed in Petitioners' intervention.

The Petitioners' ability or inability to participate in these dockets is of their own making. They give no creditable explanation for why they delayed seeking intervention until after the end of our proceedings, especially when they were aware of, or should have been aware of, Questar's request for recovery of CO2 plant expenses. Questar's specific arguments and evidentiary basis upon which it sought recovery was available for months, without question beginning with the filing of the January 2005 Application and Questar's April 2005 testimony. Adequate time was available to them to consider the information upon which Questar sought recovery of CO2 plant expenses. Questar's alternatives and the analysis upon which it based its decision were known and available even before the January 2005 Application. Petitioners had adequate opportunity to address the specifics of the January 2005 Application's claims and rationales supported by the April 2005 testimony. The evidence provided at the October 20, 2005, hearing on the Stipulation did not vary from what was previously made available. The participating parties restated what had already been given and explained why they concurred in Questar's claims and agreed to permit recovery of processing costs; to ultimately support the terms of the Stipulation allowing recovery. Petitioners have not provided adequate and credible reasons to excuse them from the decisions and reliance they made in how to address Questar's

claims. We will not provide them with additional opportunity to present their views on the appropriateness of the recovery of CO2 plant expenses. They have had their opportunity to comment on the merits of the Stipulation, whether to accept or reject it. What Petitioners made of their capability has already been received by the Commission. If they are dissatisfied with their effort, they need only look to themselves. What Petitioners would now add is a cumulative reaffirmation that they continue to disagree. We conclude that we cannot grant intervention to Petitioners at this stage of the proceedings under the circumstances of these proceedings without violating Utah Code §63-46b-9.

In view of the substantial efforts and expenditures of time and money incurred by all of the parties in this case, reopening this case at this late date to provide additional time permitting Petitioners to go on an a fishing expedition to see if they might find some deficiency or uncover some new evidence, is contrary to public policy which encourages resolution by negotiated stipulation. In summary, while Petitioner's legal interests may be affected by these proceedings (as indeed may the interests of the other hundreds of thousands of Questar customers), those interests have been vigorously protected by those statutorily charged with the task; namely the Committee, the Division and their respective experts. There is no evidence the Committee "handcuffed" itself by signing the Stipulation. Indeed, the Stipulation was not signed by the parties until after the issues were fully investigated, probed and analyzed with the assistance of experts. There has been extensive investigation of why it may be or why it may not be appropriate and prudent to utilize the CO2 plant for circumstances as they now are or are expected to be for Questar and its customers. The investigation and these proceedings have explored numerous alternatives to addressing the changing heat-content of natural gas available to Questar's customers and the reasons for the changing heat-content. Appropriate notices for all of the Commission's technical conferences and docket proceedings have been given; the Commission has complied with the requirements of Utah law. The Commission has conducted

an evidentiary hearing to receive evidence to resolve the matter. Other public witnesses were aware of that hearing's scheduling and the time set for it; they appeared and provided their statements to the Commission. Petitioners have been provided the opportunity to submit written statements, they have submitted them and they have been considered by the Commission. Due process has been followed to provide interested persons the opportunity to participate in our proceedings and respond to Questar's claims. An adequate process and procedure have been followed to address the Stipulation. The matter has been submitted and is under consideration by the Commission. As we have noted, we have not been able to find any prior precedent in which persons petitioning for intervention have been granted intervention when proceedings have progressed to the stage these were at when Petitioners filed their request. We have found precedents where intervention was denied for requests made earlier in the process. We are unpersuaded by Petitioners' arguments that their intervention at this stage is necessary, can be done without violating Utah Code §63-46b-9's touchstones regarding impairment of the interests of justice and the orderly and prompt conduct of proceedings, nor without setting a debilitating intervention precedent.

Wherefore, it is hereby ORDERED that Roger Ball's and Clair Geddess' Petition to Intervene is denied.

DATED at Salt Lake City, Utah, this 6th day of January, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#47118 Docket No. 04-057-04
G#47123 Docket No. 04-057-11
G#47124 Docket No. 04-057-13
G#47125 Docket No. 04-057-09
G#47126 Docket No. 05-057-01