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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In re QUESTAR GAS COMPANY	Docket Nos. 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01 OPPOSITION OF UTAH DIVISION OF PUBLIC UTILITIES TO REQUEST TO INTERVENE
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The Division of Public Utilities (“Division”) hereby files its Opposition to the Request to Intervene (“Request”) filed November 17, 2005 by Roger J. Ball and Claire Geddes (“Petitioners”). For the reasons set forth below, and also for the reasons set forth in Questar Gas Company’s Opposition filed November 21, 2005, the Public Service Commission (“Commission”) should deny the Request.

- I. The Request Fails to Comply with Statutory Requirements and Should Be Denied.

The rule addressing intervention in formal hearings before the Commission states: “Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section

63-46b-9.”¹ Section 63-46b-9(2) states that a petition for intervention shall be granted under certain circumstances. Petitioners fail to satisfy the specific requirements for intervention, and their Request should be denied.

- a. The Orderly and Prompt Conduct of the Adjudicative Hearing Will Be Materially Impaired by Allowing Petitioners’ Intervention.

The Request explicitly contradicts the requirement in Section 63-46b-7(2)(b) that, “the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.”² In essence, Petitioners seek to have the adjudicative proceeding begin all over again, and at an earlier starting point than suggested by the Commission’s August 30, 2004 order. Allowing Petitioners to intervene and to restart the proceedings would materially impair the orderly and prompt conduct of this hearing. Therefore, Petitioners’ Request should be denied.

Indeed, Petitioners had an ample opportunity to intervene earlier, when such intervention would not have materially impaired the orderly and prompt conduct of the proceedings. Once Mr. Ball had been relieved of his duties with the Committee, he could have intervened individually. Petitioner Geddes could have intervened at any point prior to or even perhaps at the hearing. Thus, Petitioners could have intervened during technical conferences, during discovery, during settlement negotiations, and perhaps even at the hearing. Given Petitioners’ own claims about their expertise and familiarity with Commission

¹ Utah Administrative Code, R746-100-7.

² Emphasis added.

processes,³ their claim that they were unaware of the developments in this proceeding is disingenuous and has little credibility.

Furthermore, allowing the Petitioners to intervene at this too late stage of the proceedings would unduly disrupt this and other future proceedings. Allowing intervention now would encourage other potential parties to lie in ambush, waiting to see if they like what happens at a hearing; if potential parties are not satisfied, they could rise up and reveal themselves, demanding that they be permitted to join the proceeding, and even to restart the proceeding to their liking.

Not only are Petitioners' arguments to permit their intervention unpersuasive, but also their arguments to restart the proceedings are unconvincing. Specifically Petitioners state that they:

Seek to be permitted to review all of the discovery and all of the proposed testimony and evidence to be offered in support of the Stipulation; they seek to be permitted to conduct discovery, to testify, to call witnesses of their own, to put on evidence in support of their positions, and to be allowed to cross-examine any and all witnesses, to put on rebuttal evidence and testimony and to be fully heard on the Stipulation and in any subsequent proceedings in any or all of the above-captioned dockets. Petitions request that the Commission hold a full evidentiary hearing, and that they be permitted to fully participate in every such hearing. In addition, and perhaps most importantly, they want a genuine and meaningful opportunity for the public to comment upon the Stipulation and its impact on ratepayers. The Petitioners further request that they be added to the service list, and that all notices, pleadings, correspondence, discovery, and other documents – past and future- in this proceeding or any of the dockets be sent to them.⁴

³ See Request at pp. 1, 2, and 11.

⁴ Request at pp. 11-12.

The Petitioners further claim that:

Because the three parties to the Stipulation have focused only on circumstances extant in September 2004, and have identified and ranked options only from that point forward, it seems unlikely that the Commission will be able to find that QGC has met 'the burden of proving its actions constituted a prudent response' to the root cause of the safety concernsthe parties will probably need to widen the scope of their consideration to a period beginning no later than 1989 . . . all parties are apt to need to conduct further discovery and prepare pre-filed testimony, and the Commission will likely want to again schedule several days for hearings.⁵

In essence, Petitioners seek a mulligan, an opportunity to redo a missed or poorly placed shot on the golf course. However, fortunately proceedings before the Commission go forth in an orderly fashion, and timelines and requirements are adhered to, ensuring an orderly and complete proceeding. The Request ignores the fact that the parties have spent extensive time and energy investigating the matters at hand and have reached a supportable, just resolution memorialized in the filed Stipulation. Petitioners' request to begin again is particularly offensive given that Petitioners repeatedly tout their experience and familiarity with the regulatory process, including this case in particular.⁶

Also without merit are Petitioners' claims that, "The interests of justice and the orderly and prompt conduct of this proceeding will not be materially impaired by allowing Petitioners to intervene."⁷ After stating that further discovery, prefiled testimony, and several days of hearing are needed, activities proposed only by Petitioners, incredibly Petitioners claim that,"[N]one of this will be materially

⁵ Request at p. 12.

⁶ See Request at pp. 1, 2, and 11.

⁷ Id. at p. 12 (emphasis added).

affected by the intervention of Mrs. Geddes and Mr. Ball.”⁸ The inherent contradiction between the status of the case and Petitioners’ written statements demanding the proceedings be restarted is patently disingenuous.

b. Allowing Petitioners to Intervene and Granting the Relief They Request Materially Impairs the Interests of Justice.

The interests of justice have been served in this case by the vigorous participation of the parties, resulting in a Stipulation only achieved after compromise on all sides. The Stipulation achieves justice and provides a fair apportionment of cost responsibility and benefit.

Petitioners in effect allege that their participation is required for the interests of justice to be satisfied. This is untrue. Petitioners claim that an “independent and knowledgeable analysis” has not yet occurred.⁹ Certainly Petitioner Ball in particular is not discrediting the efforts of the Committee while he was involved with it, or questioning the competence of the Division. Petitioners’ cynical dismissal of the efforts and competence of the Division and the Committee is unwarranted and unsupported.

Additionally, applicable law favors settlement of issues, and Petitioners’ Request contradicts this laudable goal. Permitting Petitioners to intervene and to mandate repeating the process would undermine the ability of parties to this docket, and parties in future dockets, to ever reach a well supported, just and reasonable settlement.

⁸ *Id.* at pp. 12-13.

⁹ Request at p. 11.

II. Mischaracterizations in the Request Must Be Corrected

The Request contains mischaracterizations that the Division cannot allow to remain uncorrected. These mischaracterizations are material, mischievous, and misleading. Petitioners' allegations are unsupported and unsupportable.

Contrary to Petitioners' allegations, the Division has fulfilled its statutory duty "to provide the . . . Commission with objective and comprehensive information, evidence and recommendations" to promote "just [and] reasonable rates" and "protect the long-range interest of consumers."¹⁰ The Division retained an outside consultant on this matter, and conducted extensive discovery. The Division's summary statement at the hearing was supported by its extensive investigation, and the Division's witness, and another potential Division witness, were available to answer any question from the parties or the Commission. The Division's witnesses were available to answer questions from interveners as well, but Petitioners had not availed themselves of this opportunity.

Incredibly, Petitioners also allege that the Committee has failed to fulfill its duty. Of note, is the fact that many extensive, and sufficient, discovery efforts and discussions involved Petitioner Ball himself or his then Committee of Consumer Services' staff. Also important is that these discussions continued vigorously after Petitioner Ball was relieved of his duties with the Committee.

In contrast to Petitioners' allegations, this docket and the Stipulation focused upon an appropriate time period. Petitioners seem to ignore the fact that this Stipulation results from the order dated August 30, 2004, which states that

¹⁰Utah Code Ann. Section 54-4a-6.

gas management issues could be addressed on a going forward basis.

Petitioners seek to torpedo this process because the technical conferences, discussions, and Stipulation focused on a going forward solution.¹¹ Petitioners concerns are misplaced because this proceeding is consistent with the Commission's order and Stipulation's focus on 2004 forward is proper.

Further, Petitioners mischaracterize the nature of technical conferences in general, and the technical conferences in Docket No. 04-057-09 in particular. Interestingly, it seems that Petitioner Ball participated in technical conferences during his stay with the Committee, and apparently did not characterize technical conference process as deficient or defective then. Technical conferences, and the ones on the above reference docket in particular, are venues for presentation of materials, and exchange of ideas. Questions are encouraged, and answers are provided. As it did in the referenced docket, the Division frequently submits questions to the utilities, in advance of the technical conference, and follows up such meetings with additional data requests. All such material is available for interveners to review. There is no "conspiracy" to hide the truth, as Petitioners seem to allege. In particular, the last technical conference in Docket No. 04-057-09 specifically invited input from participants regarding other gas management ideas.

III. Conclusion

Petitioners' Request should be denied. The Request fails to satisfy the statutory requirements for intervention. Granting the Request would materially impair the orderly and prompt conduct of the adjudicative hearing. Allowing the

¹¹ Request at p. 12.

intervention of Petitioners would materially impair the interests of justice.

Petitioners mischaracterize several facts in their arguments, and these mischaracterizations must be corrected.

For the reasons set forth above, the Request should be denied. The Stipulation should be considered now on its merits.

RESPECTFULLY submitted this ____ day of November 2005.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSITION OF UTAH DIVISION OF PUBLIC UTILITIES TO REQUEST TO INTERVENE was served upon the following by electronic mail and by either first-class mail or hand delivery, on November 22, 2005:

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