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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 QUESTAR GAS COMPANY TO REQUEST TO INTERVENE**

Questar Gas Company ("Questar Gas" or the "Company") hereby responds in opposition to the Request to Intervene ("Request") submitted by Roger J. Ball and Claire Geddes on November 17, 2005. For the reasons set forth below, the Request should be denied.

INTRODUCTION

This matter has been in active adjudication for approximately 18 months. Questar Gas filed its Application to Adjust Rates for Natural Gas Service in Utah on May 5, 2004 in Docket

No. 04-057-04. That application sought recovery of the costs incurred by Questar Gas under its contract with Questar Transportation Services Company ("Questar Transportation") for operation of a plant located in Castle Valley, Utah ("CO_2 Removal Plant") that removes carbon dioxide ("CO_2") from natural gas produced from coal seams ("coal bed methane") in the Ferron area located in Emery County, Utah. On August 30, 2004, the Commission issued its order in the prior matter dealing with this issue, stating:

> We will also address, in a separate docket, how to craft a long-term solution to the compatibility of customer appliances with natural gas containing coal-seam gas consistent with the utility's obligation to provide safe commodity and service to its customers.[1]

Promptly following the 2004 Order, on September 8, 2004, the Commission issued a notice of scheduling conference in Docket No. 04-057-09 "to set dates for technical conferences to discuss the long-term solution to Questar Gas Company's gas quality."[2] The parties, including the Committee of Consumer Services ("Committee") with Mr. Ball as its staff director, reached agreement on dates and subjects for a series of technical conferences to explore various aspects of the issue. These technical conferences commenced on October 13, 2004 and continued, with some adjustments in schedule agreed upon by the parties, through January 19, 2005.

During this period of October through January, six technical conferences were held, each lasting many hours, and each with vigorous discussion among the participants. The Committee, the Division of Public Utilities ("Division"), and the Commission staff, all questioned the Company about its proposals and provided input and direction on issues where they felt further

[1] Order, *In the Matter of the Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah*, Docket Nos. 03-057-05, 01-057-14, 99-057-20, 98-057-12 (Utah PSC Aug. 30, 2004) ("2004 Order") at 38-39.

[2] Notice of Scheduling Conference, *In the Matter of the Investigation of Questar Gas Company's Gas Quality*, Docket No. 04-057-09 (Utah PSC Sep. 8, 2004).

attention was warranted. Questar Gas expressly framed its discussion points in the technical conferences and its internal analysis to address the requirements of the Commission's 2004 Order and ensure that each step outlined by the Commission in that order was fulfilled. Indeed, the Company's decision-making process was transparent and open for review by the Committee and its staff (under Mr. Ball's direction) each step of the way throughout the technical conferences. Questar Gas actively and repeatedly solicited input by the other parties on how to best address the long-term solution to these issues. Mr. Ball or his staff was present for every one of the technical conferences and actively participated in the discussion. He also participated in other meetings directly between Questar Gas and Committee staff on these issues during this time period. Presumably, he also fulfilled his role as director behind the scenes in ensuring that the Committee staff vigorously pursued its responsibilities.

Following the conclusion of the technical conferences, Questar Gas filed an application on January 31, 2005, in Docket No. 05-057-01, seeking recovery of its CO_2 removal costs from the earliest date allowed by law and going forward. This public filing included as an exhibit essentially every hand-out that had been introduced in the six technical conferences. Even before this time settlement discussions had commenced between the parties, including the Committee with the personal knowledge of Mr. Ball.

The Commission gave notice on February 22, 2005 of a scheduling conference to schedule further proceedings in this matter. At that conference held on March 1, 2005, the parties agreed upon a schedule under which Questar Gas would file testimony on April 15 and the Division, Committee and any intervenors would file responsive testimony on August 15. Hearings were scheduled to commence on October 6, 2005. Mr. Ball was intimately familiar

with all of this contemplated procedure, and from the language of the Request it appears that Ms. Geddes was also.

Questar Gas filed extensive testimony on April 15, 2005, but the Division and Committee requested extensions of their testimony filing date, in part, because the parties were involved in settlement discussions. Extensions were granted pursuant to public notice. On October 11, 2005, after extensive and difficult settlement discussions, at which not only the parties but others who expressed an interest in the matter (including industrial customer representatives) participated, the parties filed their Gas Management Cost Stipulation ("Stipulation"). On the same day, even though no public hearing is required for the approval of a settlement,[3] the Commission gave notice of a public hearing on approval of the Stipulation. The hearing was set for October 20, 2005, giving more than adequate notice even if such notice were required.

The hearings were held on October 20 as scheduled. Each of the parties provided a witness in support of approval of the Stipulation. In addition, as provided in the Stipulation, the parties moved the Commission to take notice of information provided in the technical conferences and the Company's January 31 application and to admit the sworn testimony of Questar Gas filed on April 15 in support of the approval of the Stipulation. No one other than the parties appeared at the hearing to question the witnesses, to present testimony or to object to the motion regarding the record. The Commission asked questions regarding the motion and the Stipulation, which were answered by the witnesses.

Two persons appeared and offered sworn testimony at the public witness hearing scheduled at 4:30 p.m. on the same day, demonstrating that the Commission's notice was effective. Although one of these persons represented an industrial customer that regularly

[3] *See* Utah Code Ann. § 54-7-1(3)(c) and (3)(e)(ii)(C).

participates in Commission proceedings involving Questar Gas, the other was an individual who does not regularly participate in such proceedings. Although his testimony did not address the issue in this case, his presence showed that the Commission's notice was available for interested members of the public. At the conclusion of the public witness hearing, the Commission took the matter under advisement.

Following conclusion of the hearings, Mr. Ball and Ms. Geddes contacted the Commission, complaining that they were not aware of the hearings and requesting the opportunity to file statements. Although the hearings were properly noticed, the Commission informed them that they could still file statements. They filed affidavits on November 4, 2005, containing information very similar to that contained in the Request. The Commission notified the parties that they could respond to the affidavits if they wished to do so. Questar Gas filed a response on November 11, stating that it did not object to the Commission considering the affidavits as unsworn public witness testimony and further stating that the affidavits provided no basis for the Commission to reject the Stipulation.

SUMMARY OF ARGUMENT

The Request seeks Commission leave to essentially erase the entire course of proceedings in this matter, turning back the clock to give Mr. Ball and Ms. Geddes the opportunity to participate in discovery, file testimony, cross-examine witnesses, and even re-define the appropriate scope of issues to be considered. The purported justifications for this extraordinary request appear to be that: (1) there was inadequate opportunity for participation in the technical conferences and other proceedings prior to the public hearing on the Stipulation; (2) there was inadequate notice of the public hearing; (3) the Division and Committee have failed to ensure that the public interest and the interest of customers is protected (and Mr. Ball and Ms. Geddes

now need to do that job, since the Division and Committee haven't); and (4) this matter hasn't yet considered the "root causes" of the issues such as Questar Pipeline's business dealings surrounding coal bed methane going back at least to 1989. None of these justifications has any merit.

Further, when considering the burdensome implications of the Request on the Commission and the parties, one is led to ask a simple but ultimately dispositive question—where have Mr. Ball and Ms. Geddes over the past many months? They knew of these proceedings. They had thorough experience with this matter and with broader Commission practice. They knew the stakes and Mr. Ball certainly knew (and Ms. Geddes should have known) of the possibility of settlement. Yet they sat back and did nothing while the Commission and the parties went through the work of adjudicating this matter. And now that significant discovery has been completed; testimony had been filed and analyzed; hours and hours of technical conferences and settlement negotiations have been conducted; the public hearing has been held; the record has otherwise been closed; and all that remains is for the Commission to issue a final order determining whether to accept the Stipulation, Mr. Ball and Ms. Geddes seek a do-over. Such a request is improper and should be denied. Intervention at this time would neither serve the interests of justice nor the orderly and prompt adjudication of this matter. The Committee and Division have already represented the interests of the Company's customers and Mr. Ball and Ms. Geddes bring nothing new to the table that would assist the Commission in determining whether the Stipulation is in the public interest. The untimely request by Mr. Ball and Ms. Geddes to intervene should be rejected.

ARGUMENT

Intervention in formal Commission proceedings is appropriate if: (a) a petitioner's legal interests may be "substantially affected" by the proceeding; and (b), intervention would not materially impair either the interests of (i) justice or (ii) the orderly and prompt conduct of the proceeding.[4] Thus, if any of these three prongs is missing intervention should be denied.

The Company's customers as a whole certainly have a substantial interest in this matter. However, Questar Gas questions the substance of Mr. Ball's and Ms. Geddes's individual interests and the need for their individual participation even if it were not at such a late date, particularly since the Division (which is charged with serving the public interest) and the Committee (which is charged with protecting the specific interests of residential and small business customers) are already deeply involved parties who have given great care, as has Questar Gas, to protecting the interests of the Company's customers. In any event, whether or not Mr. Ball and Ms. Geddes have legal interests that may be substantially affected by this matter, their participation would certainly not be in the interests of justice or the orderly and prompt conduct of the proceedings.

A. INTERVENTION WOULD IMPAIR THE INTERESTS OF JUSTICE.

For intervention to be proper, Utah Code Ann. § 63-46b-9 requires that the "interests of justice . . . will not be materially impaired by allowing the intervention."[5] The interests of justice would be materially impaired by intervention in these circumstances; therefore, the Request should be denied.

It would be an unfair burden to Questar Gas, the other parties, and the Commission, were Mr. Ball and Ms. Geddes, on the theory that customers' interests have not adequately been

[4] *See* Utah Code Ann. § 63-46b-9(2).

[5] *See id*. at § 63-46b-9(2)(b).

represented, allowed to unwind the work that has gone into this matter and require the parties to start from scratch—both enormously broadening the scope of the proceeding and revisiting areas already resolved, going back to re-open discovery, rejecting all of the work that went into the many hours of technical conferences, requiring additional testimony, and having further hearings. The unfairness of such an approach lies in the fact that, contrary to the purported justifications for intervention identified in the Request: (1) there was more than adequate opportunity for participation by Mr. Ball and Ms. Geddes in the technical conferences and other proceedings prior to the public hearing on the Stipulation; (2) there was more than sufficient notice of the public hearing; (3) the Division and Committee, as fully informed parties, have ensured that the public interest and the interest of customers is protected; and (4) the scope of this matter has already appropriately been addressed. On all of these points, Mr. Ball and Ms. Geddes had ample opportunity to seek intervention long before now if they wanted to address the issues they now seek to raise.

1. There was more than adequate opportunity for any member of the public, including Mr. Ball and Ms. Geddes, to participate in the technical conferences.

Of all the Request's stated justifications for intervention, perhaps none has less basis than the fault found with the technical conferences held in this matter. The Commission has a long-standing, efficient and appropriate practice of using technical conferences to identify and explain complex issues and to probe whether a matter may have prospects of settlement or will require a full hearing on the merits. The technical conferences in this matter were the model of what technical conferences should be. Questar Gas used its time in the conferences to transparently walk through the available options for dealing with coal bed methane on its southern system, and to request input from the regulators on how to best move forward. The other parties and the Commission used their time to carefully review Questar Gas's proposals, to hold Questar Gas's

feet to the fire on meeting its obligations to address coal bed methane appropriately, and to offer their own input on how to best move forward. There was nothing at all inappropriate about the use of technical conferences in this matter, and perhaps even more to the point, if there was something wrong with the technical conferences, Mr. Ball as director of the Committee should not have agreed to use such conferences to explore the issues in the case, should not have participated, and should instead have demanded that all issues being discussed during the technical conferences instead be addressed some other way. He did none of these things.

Mr. Ball participated in almost every technical conference and expressed his views on numerous occasions, including expressing reservations about positions. All of the parties, and others who attended the technical conferences, were presented ample opportunity to ask questions, debate the issues presented by Questar Gas, and to suggest new ideas. It is therefore untrue for the Request to speak in terms of Questar Gas dominating the technical conferences and other parties being prevented from presenting different views.[6] If Mr. Ball, as the head of the Committee's staff, had sought further opportunity to explore the positions presented by Questar Gas or to explore the issues now belatedly raised in the Request, that opportunity would have been provided by the Commission as it is in every other case where a party seeks further opportunity to explore the issues of a case. Indeed, at the November 12, 2004 technical conference where Questar presented the 13 identified alternatives for addressing the ongoing heat content issue (several of which had been proposed by the Division and the Committee), one of the alternatives addressed was keeping the coal bed methane off Questar Gas's southern system (exactly what Mr. Ball and Ms. Geddes appear to now be suggesting); and the final alternative was entitled "other," which was an express invitation to other parties to suggest even

[6] *See, e.g.*, Request at 6-8.

more of their own alternatives. This was a perfect opportunity for Mr. Ball to suggest everything allegedly wrong with Questar Gas's proposals and to put forward different alternatives. Mr. Ball provides no factual evidence in support of the alleged flaws in the technical conferences and misrepresents what happened there. Further, he provides no reason, if he believed the process was wrong and flawed, why he chose to hibernate for nine months and then suddenly reappear after all the work had been done, to Monday-morning-quarterback the process. Nor did Ms. Geddes attempt to involve herself in the process at any time, even though there was opportunity for public involvement in the technical conferences and essentially every document introduced in those conferences was thereafter publicly available in the Company's January 31, 2005 application for cost recovery.

2. The Public Hearing received sufficient notice.

The Request's argument on the insufficiency of the notice of public hearing is also without merit. Whether or not Mr. Ball and Ms. Geddes had notice of the public hearing, they certainly had every opportunity **before** that time to participate in this case; and by the time the public hearing was held it was already too late to participate in discovery, to submit testimony and rebuttal testimony, and to re-chart the entire course of the proceeding as they now wish to do. In short, by the time the public hearing was held, it was too late to intervene as parties without materially impairing the interests of the other parties who had already gone to significant effort and expense to conclude the pre-hearing functions.[7] The excuse about not receiving notice

[7] *Cf., e.g.*, 7C Charles Alan Wright, et al., *Federal Practice and Procedure*, § 1916 (2d. ed. 1986) ("The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case. Thus an application before the existing parties have joined issue in the pleadings has been regarded as clearly timely, whereas an application made after the trial has begun or just as it is about to begin may be denied on that ground.").

of the hearing (even if factually accurate) cannot bear the weight of explaining Mr. Ball's and Ms. Geddes's earlier failure to seek intervention.

No public hearing is required for the approval of a settlement, rather only the parties to a proceeding are required to receive notice.[8] In this case, all of the parties were already participants in the settlement. Nonetheless, the Commission gave notice on October 11 of the October 20 public hearing, giving more than adequate notice even if such notice were required. The appearance of two public witnesses (one of whom had no apparent background with these Commission proceedings) demonstrated the efficacy of the Commission's notice, and Mr. Ball's and Ms. Geddes's extensive familiarity with Commission proceedings afforded them every opportunity to either check the Commission's Web site or call one of their contacts at the Commission, Division or Committee to receive current information on the schedule in this matter. Indeed, for two individuals who have so carefully followed this matter and who are so familiar with Commission practice, it is strange that neither Mr. Ball nor Ms. Geddes have apparently bothered to register with the Commission to receive e-mail notification of Commission orders and notices. But of course, the simplest way for Mr. Ball and Ms. Geddes to receive notice of the happenings in this case would have been for them to seek to intervene at a time when they could have meaningfully participated, and it is inexplicable that they failed to do so in a timely manner given the enormous breadth of what they belatedly now seek to accomplish.

Again, the Commission's notice of the public hearing was more than adequate, and the excuse that Mr. Ball and Ms. Geddes did not receive actual notice of the hearing offers no justification for their failure to seek intervention long before that time if they were interested in

[8] *See* Utah Code Ann. § 54-7-1(3)(c) and (e)(ii)(C).

directing the course of this proceeding. Even under the original procedural schedule cited in Mr. Ball's and Ms. Geddes's public statements and the Request, intervention at this point would have been too late. The time for discovery and testimony would have been past.

3. The Division and Committee have fulfilled their statutory roles appropriately.

The Request asserts that "the Commission has not heard from any party in this matter who has competently, effectively, thoroughly, professionally or vigorously represented the potential impact of QGC's Application on its customers."[9] The clear import of this statement, and others in the Request, is that had only the Committee or Division done their jobs, Mr. Ball and Ms. Geddes would not have to now come to the rescue of customers.[10] Yet the Request fails to identify any factual basis for its condemnation of the Division and Committee. And contrary to the Request's unsupported allegations, the Committee and Division have thoroughly fulfilled their statutory obligations in this matter. Indeed, much of the Committee's participation in this case (including, again, early settlement discussions) was handled on Mr. Ball's watch, with no effort to pursue the issues in this matter the way that the Request now attempts.

The Committee is charged with advocating "positions most advantageous to a majority of

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[9] Request at 10.

[10] Indeed, although the Request does not expressly claim "surprise" at the party settlement of this matter, there is at least a clear undertone that the reason Mr. Ball and Ms. Geddes failed to get involved before now is that they assumed the Division and Committee would adequately represent Mr. Ball's and Ms. Geddes's interests even without Mr. Ball there to "remind [them] of [their] duty" (*see* Ball Affid. at 4), and that Mr. Ball and Ms. Geddes are now shocked that the Division and Committee failed to do their jobs. In truth, as discussed below, the Division and Committee have seriously and competently pursued their responsibilities in this case; and even if Mr. Ball and Ms. Geddes had a basis to claim surprise that the Committee and Division determined to enter into the Stipulation (which they do not given Mr. Ball's prior participation in settlement discussions that were ongoing at the time he was dismissed), it would offer no excuse for their failure to participate earlier to represent their own alleged interests. *See, e.g., Republic Ins. Group v. Doman*, 774 P.2d 1130, 1131 (Utah 1989) (Denial of intervention appropriate where movant had prior notice and opportunity to intervene, even though movant claimed that the reason intervention was not sought earlier was that he had "previously been under the impression that defendants were adequately represented by counsel and their interests were adequately protected and represented.").

residential consumers as determined by the committee and those engaged in small commercial enterprises."[11] The statute recognizes that residential and small commercial customers are not a homogenous group with unanimously held views of what will be advantageous to them in regulatory proceedings. The statute creates a Committee composed of six individuals appointed by the Governor, representing the interests of various aspects of this large group of customers.[12] The Committee then studies issues and determines the positions most advantageous to a majority of its constituency.

The Division, in turn, is charged with promoting the public interest, and specifically safe, efficient, and reliable services from public utilities, at just, reasonable, and adequate rates.[13] It is authorized to investigate, inspect, and require information from, public utilities in the course of fulfilling its statutory function.[14]

Both entities thoroughly 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

[11] *See* Utah Code Ann. § 54-10-4(3).

[12] *See id*. at § 54-10-2.

[13] *See id*. at § 54-4a-6.

[14] *See id*. at § 54-4a-1.

interest and the interests of the Company's customers. The ultimate result of their efforts was that the parties stipulated to only a partial recovery of the Company's CO_2 removal costs, with no recovery for costs incurred between January 1, 2003 through January 31, 2005 (approximately $15 million in costs), while preserving access to an important gas supply and the possibility of revenues to customers from third-party gas processing at the CO_2 Removal Plant. These were hard bargains for Questar Gas to make, and the Committee and Division do not deserve denigration for their efforts at driving those bargains. Further, the decision to settle this matter was made by the six-member Committee itself, the same individuals who were serving on the Committee when Mr. Ball was its employee. Even if Mr. Ball had still been in his position on the Committee staff the decision to settle this matter would not have been his to make, but rather the six citizen Committee members would have made that call.

The crux of the Request's assertion that the Division and Committee have not adequately represented their interests appears to simply be the fact that Mr. Ball and Ms. Geddes do not agree with the conclusions reached by the Committee.[15] But the Legislature already anticipated that not all residential and small commercial customers would agree—stating that the Committee was to determine positions most advantageous to a "majority of customers."[16] It would obviously be unworkable for potentially thousands of the Company's approximately 775,000 Utah customers to participate in Commission proceedings, just as those proceedings are concluding, simply because they did not agree with the Committee's determination of what would be most advantageous to a "majority of customers." And this case demonstrates the

[15] And the notion expressed in the Request and in Mr. Ball's and Ms. Geddes's public witness testimony—that coal bed methane is a burden imposed on Questar Gas's customers for the benefit of Questar Pipeline—demonstrates their lack of familiarity or understanding of the evidence in this case. The evidence demonstrates the value of coal bed methane to the Company's customers and the growing importance of this source of supply throughout the region and the country.

[16] *See* supra note 11.

wisdom of the Commission's typical requirement that, if intervention for individual residential customers is granted at all in cases such as this (even where the intervention is timely), it is granted with the limitation that such participation be channeled through the Committee. If Mr. Ball and Ms. Geddes wished to ensure that the Committee was made aware of and took account of their views as Questar Gas customers, they should have been coordinating with the Committee ever since Mr. Ball left the Committee's staff. If they have failed to do so they ought not be heard to now complain about the job the Committee has done in this case. Further, given the fact that the assertions in the Request and public testimony filed by Mr. Ball and Ms. Geddes have already been addressed and run so directly contrary to the evidence presented and thoroughly analyzed in this case, their filings fail to identify any useful insight that they would have added for the Committee's consideration.

4. The Scope of this matter has already appropriately been defined.

The final contention made in the Request is that intervention is necessary in order ensure that the right questions are asked about the "root causes" of the issues surrounding coal bed methane, and that the 2004 Order is observed regarding affiliate interest and prudence.[17] Essentially, this contention boils down to an argument that since the Commission found that Questar Gas had not demonstrated prudence for its actions up until 1998, the Company can never demonstrate the prudence of incurring costs to manage the heat content issues surrounding coal bed methane. This argument is baseless, and ignores ratemaking principles, the Commission's prior statements, factual circumstances that have significantly changed since 1998, and Questar Gas's increased reliance on coal bed methane as an inexpensive and plentiful source of supply.

[17] *See* Request at 12.

The 2004 Order provided that the Commission would conduct further proceedings, in a separate docket, to address a long term solution to coal bed methane delivered to customers, and laid out the Commission's expectations of the manner in which Questar Gas should operate in order to demonstrate prudence.

The 2004 Order stated in this regard:

> One would expect a prudent gas distribution company faced with the risk of safety issue of the magnitude faced by Questar's distribution customers to clearly identify its objective; to identify alternatives to meet the objective, to define the method and criteria by which it would evaluate the alternatives and to record or document the process in support of the ultimate decision. . . .
>
> In making this determination, we believe that ratepayers are best served by reserving wide latitude to utilities' managerial experience and technical expertise. We therefore do not promulgate a checklist of actions which, if followed, might inoculate a utility's action against a finding of imprudence. Instead, we simply require 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. The utility's and its customers' interests must be paramount and affiliate interests subordinate.[18]

In its order clarifying the 2004 Order, the Commission further contemplated Questar Gas's ability to seek rate recovery if it were able to demonstrate the prudence of actions post-dating the evidence (dating from 1998 and before) covered in the 2004 Order. The Commission stated:

> The [2004 Order] addressed only Questar's failure to substantiate approval of the CO_2 Stipulation in these proceedings and our necessary rejection of the Stipulation, which would have permitted recovery of some processing costs through May of 2004. Our reference to the May 2004 end date was dictated by the Stipulation's terms and was not intended to have any other preclusive effect on recovery by Questar. **In regards to Questar's**

[18] 2004 Order at 23-24 (footnotes omitted).

> **requests for clarification and reconsideration, we state that our Order does not preclude Questar from seeking recovery of CO_2 processing costs in other dockets**. . . . We will need to wait for Questar to make whatever arguments and present whatever evidence it deems appropriate in seeking recovery of these costs, whether incurred pre- or post-May 2004, in whatever dockets Questar may raise the issue.[19]

The Company has done exactly what the Commission contemplated—provide a thorough analysis on gas management and evidence regarding new circumstances that were not present on the 1998-era record addressed by the 2004 Order. Moreover, from the outset of this proceeding, Questar Gas has been scrupulously focused on ensuring that the Commission's mandates from the 2004 Order regarding prudence and affiliate influence were followed.

The Company has transparently presented 13 alternatives that were proposed by the Division, Committee and Company, for dealing with the presence of coal bed methane, and just as transparently identified potential affiliate conflict issues associated with each potential option—beginning with the Company's Decision Making Matrix presented to the parties in the second technical conference on October 21, 2004. Mr. Ball was either aware of or participated in those discussions and other discussions where the scope of this proceeding was addressed, where the Company identified alternatives such as keeping coal bed methane off its system entirely or entertaining a FERC proceeding to shift the costs of CO_2 removal to some other party. As noted above, the last alternative presented by Questar Gas was "other," the express invitation for parties to suggest additional alternatives. If Mr. Ball's preferred alternative was to keep the gas off Questar Gas's system because it is supposedly bad gas that harms the Company's customers, is only present to benefit Questar Pipeline, and can never be entitled to rate recovery because the "root cause" for the presence of the gas dates back to actions from the

[19] Order on Request for Reconsideration or Clarification, Docket Nos. 98-057-12, 99-057-20, 01-057-14 and 03-057-05 (Oct. 20, 2004) at 4-5 (emphasis added).

late 1980s that cannot be undone, he had every opportunity to raise these issues while he was director of the Committee and participating in the case. He should have convinced the Committee to pursue his preferred course, or in the absence of convincing the Committee should have intervened after his termination to make sure that his "no matter what happens, Questar Gas gets no recovery" option was pursued. Instead, again, Mr. Ball did nothing for months, only to now second-guess the Committee's actions when the case is essentially finished. If Ms. Geddes wanted to change the scope and course of these proceedings she too should have attempted to do so long before now.

The fact is that, as previously noted, the options of seeking to keep the gas off the Company's system or pursuing a FERC action to get others to pay for CO_2 removal **were** part of the scope of this proceeding. These options were not pursued or advocated by the Committee and Division after thorough review by their staffs and their experts of the Company's analysis on these points. The scope of this proceeding was appropriate. The choice of alternatives (as represented by the Stipulation) among those presented by Questar Gas and the other parties was likewise appropriate. What would be inappropriate, and harmful to the interests of justice, would be to allow Mr. Ball and Ms. Geddes to unwind all the effort and expense that has gone into this proceeding in order to go back and re-address rejected issues or even seek to revisit the tariff's heat content range. Mr. Ball and Ms. Geddes have already submitted their public testimony. Neither therein nor in the Request do they identify anything of substance they have to offer that would meaningfully assist the Commission in reaching a determination on whether approval of the Stipulation is in the public interest. The Request should be rejected.

B. INTERVENTION WOULD IMPAIR THE ORDERLY AND PROMPT CONDUCT OF THE PROCEEDINGS.

The final statutory requirement for intervention is that "the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention."[20] Intervention at this late date would violate this statutory requirement.

As noted above, Mr. Ball and Ms. Geddes have been aware of this matter throughout the proceedings. They knew of the technical conferences, of the submission of testimony, and of the opportunity for discovery. Mr. Ball, at least, participated throughout a substantial part of the proceedings. The Request states that "[a]ll 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," which would not be materially affected by intervention.[21] Yet Mr. Ball and Ms. Geddes—with their extensive experience with Commission proceedings (and this proceeding in particular), with their review of the Commission's Notice of Hearing on Gas Management Cost Stipulation, and with their apparent review of the transcript of the hearing—should know full well that all of the process contemplated for this matter is complete, with the exception of the entry of a final order, unless the Commission determines not to accept the Stipulation.

Thus, any further discovery, testimony, and hearings, would only be necessary to accommodate Mr. Ball's and Ms. Geddes's untimely intervention. And an accommodation is an understatement of what Mr. Ball and Ms. Geddes seek. Again, they wish to undo the value of the work done by the parties in technical conferences and require all of the issues to be

[20] *See* Utah Code Ann. § 63-46b-9(2)(b).

[21] Request at 12-13.

readdressed.[22] They wish 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 . . . ."[23] They seek to re-examine coal bed methane issues going back "beginning to no later than 1989. . . ."[24] They even seek to review the heat content range identified in the Company's tariff, which was approved without objection in 1998.[25]

There would be nothing prompt nor orderly about Mr. Ball's and Ms. Geddes's intervention at this time; and given the ample opportunity to participate before now it would be manifestly unfair for them to be allowed to unwind the parties' hard work in adjudicating and settling this manner.

CONCLUSION

For the reasons set forth above, the Request should be denied and the Commission should proceed with its consideration of the Stipulation.

RESPECTFULLY SUBMITTED: November 21, 2005.

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[22] *See id*. at 6-8.

[23] *Id*. at 11.

[24] *Id*. at 12.

[25] *See* Ball Affid. at 24-25.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSITION OF QUESTAR GAS COMPANY TO REQUEST TO INTERVENE** was served upon the following by electronic and first-class mail, on November 21, 2005:

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