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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Come now Roger J. Ball and Claire Geddes, by and through their attorneys, Jenson & Stavros, and file this Request to Intervene in the above-captioned Dockets of the Public Service Commission.

JURISDICTION

This action is brought under the authority of *Utah Code Ann.* §§ 54-3-1, 54-3-23, 54-4-1; 54-4-2; 54-4-18; and the provisions for intervention pursuant to the Utah Administrative Procedures Act, *Utah Code Ann.* §§ 63-46b-0.5 *et seq.* generally, and *Utah Code Ann.* § 63-46b-9 specifically. The jurisdiction of the Utah Public Service Commission is proper under all these provisions. Mr. Ball and Ms. Geddes have legal interests which may be affected by the Commission's findings and decisions in all these above-captioned dockets. Their participation in the proceedings will not unduly delay the Commission's current investigation, and they are knowledgeable and have considerable expertise about matters important to the Commission's consideration of these dockets, and they are both prepared and able to provide testimony which would assist the Commission in reaching an appropriate decision.

THE INTERVENORS

Ms. Geddes and Mr. Ball are residential customers of Questar Gas Company. They are extremely experienced and knowledgeable about utility and regulatory issues generally. Ms. Geddes has followed utility issues actively for more than 10 years at both the Legislature and the Public Service Commission, and Mr. Ball until recently served for 8 years as the Director of the Committee on Consumer Services. Moreover, they are both very knowledgeable about the specific dockets captioned above from a time even before Docket 98-057-T02. Ms. Geddes has provided a consistent voice for consumers throughout these entire proceedings. Mr. Ball has followed the proceedings from Questar's first briefing of Commission, Division and Committee staff in 1997 through the Technical Conference held on January 19th of this year and Questar's January application filing. As advocates for consumers and the public, many of whom have expressed their desire for Mr. Ball and Ms. Geddes to be allowed to intervene in this matter in

signed statements, attached, Petitioners' intervention from this point would promote the interests of justice.

FACTUAL BACKGROUND

On November 25, 1998, in Docket 98-057-12, Questar Gas Company (hereafter "QGC") requested a Commission finding that its contract with Questar Transportation Services Company for carbon dioxide extraction (hereafter "CO₂") had been prudent, and authorization to include costs estimated at \$7.5 to \$8.5 million annually be passed through its 191 Account into consumer rates. On December 3, 1999, the Commission denied recovery through the 191 Account (hereafter "the 1999 Order").

Only days later, on December 17, 1999 in Docket 99-057-20, QGC requested a general rate increase, including \$7.3 million a year for CO₂ extraction. On June 2, 2000, QGC and the Utah Division of Public Utilities (hereafter "the Division") filed a Stipulation agreeing that \$5 million (approximately 68% of the \$7.3 million QGC had requested) should be added to rates each year for 5 years for CO₂ extraction. On August 11, 2000, the Commission approved the Stipulation and ordered the rate increase to take effect immediately ("the 2000 Order").

QGC appealed the Commission's 1999 Order to the Utah Supreme Court which reversed it on October 23, 2001. On August 14, 2002 in Docket 01-057-14, the Commission backdated recovery under the Stipulation to June 1, 1999 and ordered the additional rates collected through the 191 Account (the 2002 Order).

The Utah Committee of Consumer Services (hereafter "the Committee") appealed the Commission's 2000 and 2002 orders and rate increases to the Utah Supreme Court. On August 1, 2003, the Supreme Court reversed the Commission's orders and rejected the rate increases, noting the Commission's acknowledgment in its 2000 Order that:

The record is insufficient to permit us to determine whether the Company's analysis of options prior to early 1998 was sufficiently objective and thorough, that is, to reach a conclusion whether options were ruled in or out as a result of the influence of affiliate interests. Nor can a sufficient record be developed.¹

On August 6, 2003, QGC requested additional proceedings. At the same time, on August 8th in Docket 03-057-05, the Committee asked that consumer rates be immediately reduced by \$5 million and the entire amount so far collected be refunded to customers. QGC subsequently argued that it should be allowed to marshal the evidence it had previously introduced in Docket 99-057-20 to complete the record development that had been cut short when the Stipulation was introduced and approved.

The Commission consolidated Dockets 98-057-12, 99-057-20, 01-057-14 and 03-057-05 (the Consolidated Dockets), and, in a Order dated December 17, 2003, concluded that:

The Supreme Court's reversal of a portion of the August 2000 [Order] places the case in the same position it was before the Commission's approval of the CO₂ Stipulation. . . . Wherefore, we conclude that the parties should now have the opportunity to marshal the evidence from the existing records . . . We will determine whether Questar [Gas] has met its burden to show that its actions were prudent.

In its final Order dated August 30, 2004 (hereafter 2004 Order), in the Consolidated Dockets, the Commission, noting that QGC had the burden of proof, reviewed the record and:

conclude(d) that Questar Gas has not met the burden of proving its actions constituted a prudent response . . . (and) therefore reject(ed) the CO₂ Stipulation and den(ied) recovery of the processing costs during the period from June, 1999, to May, 2004./2

The Commission based its conclusion and rejection upon its findings that:

We are satisfied that a reasonable, unaffiliated utility, recognizing the potential danger posed by increasing quantities of this gas, would have analyzed all options,

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1. Committee of Consumer Services v. Pub. Service Comm'n, 2003 UT 29 at p. 5, 75 P.3rd 481, 483 (2003), quoting PSC Order August 11, 2000, Section E, page 32.
 2. The Consolidated Dockets: Order, August 30, 2004 (2004 Order): Conclusions of Law, pp. 39-40.

including invocation of §13.5 or petitioning FERC, in an attempt to permanently avoid or mitigate this danger.

Early in these proceedings, the Division indicated, and Questar Gas admitted, that one option not pursued by Questar Gas was going to FERC While we cannot divine what the FERC would have decided . . . either invoking §13.5 or . . . adjust(ing) the pipeline tariff might have solved the problem . . . There is no evidence Questar management ever considered these.

Even when some options did finally come before Questar management, the minutes . . . indicate a concern to protect Questar Corporation's financial interests rather than to . . . protect Questar Gas customers.

There is no evidence to indicate that Questar management conducted anything but the most cursory analysis in ruling out potential long-term solutions in favor of its preferred shorter-term fix.

Building and operating the processing plant merely postponed the date by which customer's appliances will have to be adjusted, retrofitted or replaced at the customer's expense, presumably at a cost of over \$100 million dollars adjusted for inflation, based on the testimony of Questar witnesses. In the interim, customers have also been paying the majority of gas processing costs.

In Docket 98-057-12, the Division concluded that a well-documented record demonstrating a reasoned, arms-length process by which Questar Gas decided to contract with Questar Transportation does not exist.

This burden rests heavily on Questar Gas, yet Mr. Allred admitted that Questar management conducted no in-depth financial analysis because management assumed Questar Gas would recover any costs from its ratepayers.

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.

The Division notes that . . . "if there is some benefit, even with affiliate influence, complete disallowance could be inappropriate." The Supreme Court's opinion in the 2003 Decision, however, 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 CO₂ processing was prudent and unaffected by affiliate interests. . . . On this record, we find that affiliate influence is clear. . . . we are unpersuaded that any unique economic benefit has accrued to Utah rate payers to justify rate recovery.

Despite years of analysis encompassing several dockets, and despite its continuing support for the CO₂ Stipulation, the Division has never concluded that Questar Gas's decision to pursue CO₂ processing was prudent. Neither can we.

The Commission could find no evidence:

- written or oral, to indicate that the best interests of distribution customers were the paramount concern of Questar management.

- that Questar Gas acted as a reasonable, unaffiliated utility would have acted prior to 1997
- of the thorough financial and cost-benefit analysis that we would expect Questar Gas to have undertaken prior to acting upon a gas treatment option
- of thorough analysis of other approaches

Instead, five years into the CO₂ removal effort, Utah ratepayers are left with an imperfect, costly, and temporary solution to a long term problem. Meanwhile, Questar Pipeline has been able to pursue its interest in expanding its pipeline business opportunities with most of the costs of gas processing picked up by Questar Gas's distribution customers.

We find that a reasonable, unaffiliated utility possessed of the knowledge Questar Gas had or should have had and acting prudently in the best interest of its customers would have acted much earlier to protect those interests and would have more thoroughly identified, evaluated and pursued alternative approaches to the problem. To the degree affiliate interests were present, these interests should have been explicitly recognized, efforts made to avoid and counter conflicted interests, and have been reflected in the decision making process.

Despite the volume of documentation provided by Questar management in this case, it has been unable to pull from this mountain of paper the type of detailed, reasonable, and complete contemporaneous analysis we would expect of a utility to prove the prudence of its actions leading up to this requested rate increase. We find that a reasonable, unaffiliated utility properly focused on the best interests of its customers would have produced such documentation in the normal course of its analysis and deliberations.

See Consolidated Dockets, Order: 2004 Order: Discussion and Findings, pp. 26-39, passim.

It should be noted that the management of QGC and Questar Transportation are the same people, and it is therefore reasonable to conclude that none of the decisions at issue were made on an arms' length basis, which would reflect the considerations and dynamics of a competitive market.

On September 20, 2004 in Docket 04-057-09, the Commission ordered the refund of approximately \$29 million collected from May 1999 (sic) through August 2004, including interest through the 191 Account over twelve months beginning 1 October.

Then began a series of unrecorded technical conferences in which QGC made extensive

presentations seeking to persuade the Commission, the Division, the Committee and other participants to disregard all of the previous events set out above and grant it cost recovery based upon circumstances as they existed at that moment and into the future -- as if the clock had only then begun to run. The technical conferences were held October 13, 2004 through January 19, 2005 in Docket 04-057-09.

The technical conferences held in this matter were not on the record, and they were not recorded either by a court reporter or by a electronic recording or videotaping device. No one was given an opportunity to see or critique the information presented by QGC before the technical conferences began. There was no opportunity for participants to cross-examine QGC witnesses or to present any witnesses or evidence of their own in rebuttal, and there was also no ability for even the participants to rebut, refute or even seriously question the information presented by QGC.

The Commission's increasing reliance upon such technical conferences is adverse to the public interest. These are consistently dominated by the utilities, who establish the agendas, occupy nearly all of the allotted time, distribute informational presentations which are seen for the first time at these meetings, and control the discussion flow. None of the presenters are under oath, no record of the conferences is maintained, there is little if any, opportunity for non-utility attendees to question anything, and the Commissioners most frequently are present and are hearing but one side of the issue. The public is seldom aware of these conferences and is effectively denied any opportunity to participate in any meaningful way. In effect, these technical conferences offer the utilities a free and unhindered opportunity to persuade the Commissioners of the points the utilities desire to emphasize in an informal setting, free from

rebuttal or cross-examination. They therefore function, as a practical matter, to provide a free test-run for the utilities to influence Commission thought and reaction on various rate-related issues before a formal filing covering the same matters is made. As to the instant cases, Petitioners are concerned that the critical decisions affecting an ultimate Commission decision as to these respective dockets may have essentially been reached as a result of the technical conferences rather than a well-developed and thorough evidentiary record.

On January 31, 2005 in Docket 05-057-01, QGC applied to the Commission for a rate increase of \$5.7 million a year going forward, and “reserve(d) its right to seek cost recovery for its gas heat-content management costs back to the earliest date permitted by law”.³ In support of its position, QGC filed Direct Testimony on April 15, 2005.

On February 22nd, August 24th and September 6, 2005, the Commission issued scheduling and amended scheduling orders, each stating its intention to hold four days of hearings, including a Public Witness Hearing on 1-4 November 2005

Between April 15 and October 11, 2005, QGC, the Division, and the Committee held an undisclosed number of confidential settlement negotiation meetings that were not noticed to the public. No public input was received.

On October 11, 2005, these same 3 parties (QGC, the Division and the Committee) filed a new Stipulation with the Commission, apparently requesting its approval. (The request for the new Stipulation's approval cannot be found in the Commission's Docket Index on its website). Immediately upon the filing of the 3-party stipulation, the Commission canceled all the

³ Dockets 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01: Application, 31 January 2005 (Application): page 2.

previously scheduled hearings and, on the same day, issued a new Notice of Hearing for the afternoon of October 20th. Although the Commission has often directed utilities to publish notices of public witness hearings in newspapers and in customer bill inserts, it did not do so on this occasion.

On October 20, 2005, during a 135 minute hearing “to hear evidence and argument on approval of the . . . (new) Stipulation”,⁴ the only witnesses were those of the three parties: QGC, the Division, and the Committee. While Commissioners asked some questions to clarify the testimony offered, there was no cross-examination, and no party in attendance opposed or challenged the Stipulation. Neither testimony nor questions probed the prudence of QGC’s decisions prior to September 2004 or the crucial relationships between QGC and its Questar Pipeline Company sister subsidiary of Questar Regulated Services, with both of which it shares a common top management team.

The public hearing on the Stipulation lasted just 16 minutes. During this time, only two witnesses appeared, one seemingly accidentally. The first witness appeared for one of QGC’s largest industrial transportation customers, not an intervener in this Docket, on behalf of which he had apparently been professionally monitoring procedural and other developments. The second witness expressed concern that the prices for natural gas used to generate electricity were so low as to discourage the development of alternative forms of generation which, while strategically a significant issue, is not germane to this matter. As members of the public and customers of QGC, Ms. Geddes and Mr. Ball became aware of the Stipulation hearings only on October 21, 2005 when they saw reports of the hearing in the press.

ARGUMENT

The Division has failed in its statutory duty "to provide the . . . Commission with objective and comprehensive information, evidence and recommendations"⁵ that will "provide for just [and] reasonable . . . rates",⁶ and "protect the long-range interest of consumers".⁷ The Division failed to base its position on the Commission's August 2004 Order, or to vigorously and imaginatively challenge QGC's assertions, and explore outcomes that would give as much weight to customers' interests as to the utility's. Further, Division witness Dr. Powell testified in the October 20, 2005 hearing in Docket 05-057-01 that: "The Division believes that the Gas Management Cost Stipulation leads to just and reasonable rates and is in the public interest."⁸ However, the Division had given nearly identical testimony and identical assurances in support of the earlier Stipulation in Docket 99-057-20, Commission approval of which was subsequently reversed by the Supreme Court.

Similarly, the Committee has also failed to perform its statutory duty to "assess the impact of" the rate increase "on residential consumers and . . . small commercial enterprises",⁹ and to "be an advocate . . . of positions most advantageous to a majority of residential consumers . . . and those engaged in small commercial enterprises".¹⁰ Residential and business customers on QGC's Tariff Schedule GS-1 have a substantial interest in this proceeding; in combination it

4 Dockets 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01: Notice of Hearing on Gas Management Cost Stipulation, 11 October 2005 (Notice of Hearing): page 2.

5 Utah Code Ann. Section 54-4a-6.

6 UCA 54-4a-6(2).

7 UCC 54-4a-6(4)(c).

8 Dockets 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01: Transcript of Proceedings, 20 October 2005 at 1:00pm: page 31 line 25 to page 32 line 2.

9 UCA 54-10-4(1).

10 UCA 54-10-4(3).

is equal to QGC's interest. Yet 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.

Petitioners are extremely well qualified to thoroughly research and analyze the details of QGC request and the impact of the Stipulation entered by the parties and now before the Commission. Their intervention and participation will give the Commission a source of independent and knowledgeable analysis about the Stipulation's impact on the public, the customers and the ratepayers, which has not so far been represented by the Committee's limited testimony. Ms. Geddes and Mr. Ball are themselves residential customers of Questar Gas Company, and as such, they are stakeholders in the outcome of the Commission's consideration and ruling on the Stipulation now before it. Additionally, it is clear from the number of statements filed with this Petition in support of intervention by Mrs. Geddes and Mr. Ball by residential and small business natural gas customers that there is wide public backing for their participation.

The relief Petitioners request is that they be made parties to this proceeding and in all of the above-captioned dockets, together with all the rights that attend such status: In other words, Petitioners 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. Petitioners request that the Commission hold a full

evidentiary hearing, and that they be permitted to fully participate in every sense in such a hearing. In addition, and perhaps most importantly, they want a genuine and meaningful opportunity for the public to comment on 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.

The interests of justice and the orderly and prompt conduct of this proceeding will not be materially impaired by allowing Petitioners to intervene. No deadline for intervention has been set, and all hearing dates and proceedings previously scheduled in this matter were vacated in the Commission's October 11, 2005 "Notice of Hearing."

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"¹¹ to the root cause of the safety concerns. In that event, and should QGC wish to persist in its Application, the parties will probably need to widen the scope of their consideration to a period beginning no later than 1989, when "recognizing a business opportunity, Questar Pipeline began entering into future capacity transportation contracts with the producers of coal-seam gas in the Ferron Basin in Emery County, Utah."¹²

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. None of this

11 See Footnote 3, above.

12 The Consolidated Dockets: 2004 Order: Factual Background, page 15.

will be materially affected by the intervention of Mrs. Geddes and Mr. Ball. And, should QGC ultimately prevail, its ability to collect a rate increase, with interest, through its 191 Account will not be impaired by the Commission ensuring that customers' interests are properly considered. Several assertions, offered in pre-filed Direct Testimony by QGC and by the 3 stipulating parties during the October 20th Hearing, are questionable. The focus of the Division and Committee on settlement during the weeks preceding the Hearing, and the absence of any opposition or challenge during it, means that whatever flaws exist in QGC's theory in this Docket have not been properly examined for the Commission's consideration. It is the intent of the Petitioners to bring them to light. Wherefore, Petitioners request leave to intervene in this proceeding to protect Petitioners' and the public's interests.

Respectfully submitted this 17th day of November, 2005.

Janet I. Jenson
Attorney for Petitioners Ball and Geddes

Claire Geddes

Roger J. Ball

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition for Intervention in Dockets 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01 of Claire Geddes and Roger J Ball was sent by United States mail, postage prepaid, or mailed electronically this 17th day of November 2005, to the following:

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