REED T. WARNICK (#3391)
Assistant Attorney General
Utah Committee of Consumer Services
MARK L. SHURTLEFF (#4666)
Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, Utah 84114-0857
Telephone (801) 366-0353

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Questar Gas Company to Adjust Rates For Natural Gas Service in Utah

In the Matter of the Investigation of
Questar Gas Company's Gas Quality

In the Matter of the Application of
Questar Gas Company to Adjust Rates
For Natural Gas Service in Utah

In the Matter of the Application of
Questar Gas Company for a Continuation
of Previously Authorized Rates and Charges Pursuant to its Purchased Gas Adjustment
Clause

In the Matter of the Application of
Questar Gas Company for Recovery
of Gas Management Costs in its
191 Gas Cost Balancing Account

Docket No 04-057-04.

Docket No. 04-057-09

Docket No. 04-057-11

Docket No. 04-057-13

Docket No. 05-057-01

UTAH COMMITTEE OF CONSUMER SERVICES'
RESPONSE TO PETITIONS FOR RECONSIDERATION

Pursuant to Utah Administrative Code R746-100-11F, the Utah Committee of Consumer Services ("Committee") here responds to pending petitions asking the Public Service Commission of Utah ("Commission") to reconsider: (1) its January 6, 2006 Order denying Mr. Roger Ball's and Ms. Claire Geddes' intervention request; and (2) its January 6, 2006 Order approving a negotiated settlement in this proceeding. This latter request for reconsideration is actually two petitions: one filed by non-party persons claiming to be ratepayers or shareholders, and a further brief petition filed by Mr. Ball and Ms. Geddes that incorporates, by reference, the arguments and substance of the other petition. (These petitions are sometimes hereafter col-lectively referred to as "the Pending Petitions." and the persons so requesting "the Petitioners.")

INTRODUCTION

The Pending Petitions seek to undo a negotiated settlement which parties to this proceeding reached, and which the Commission subsequently found to be in the public interest and approved. The settlement ends an eight-year controversy over efforts of the Utah public utility, Questar Gas Company ("Questar Gas" or "Utility") to recover coal seam gas processing expenses in rates. The controversy spawned numerous extensive and time-consuming proceedings before the Commission, two appeals to the Utah Supreme Court, and even a Rule19 Petition for Extraordinary Writ to the Utah Supreme Court.

Earlier proceedings culminated in an August 30, 2004 Commission determination that the Utility must refund to ratepayers monies previously collected in rates for coal seam gas processing because the Utility failed to demonstrate it had acted prudently in incurring those expenses.

After a series of technical conferences sponsored by the Commission:

> to address. . . 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,

the Utility filed a new application on February 1, 2005 for rate recovery of coal seam gas processing expenses it

continued to incur under what it contended were changed circumstances from those reflected in the record of earlier rate proceedings. Parties to this latest proceeding (the Utility, the Committee, and the Division of Public Utilities ("Division")) eventually negotiated a settlement regarding which the Commission, in subsequently approving, specifically found as follows:

> [t]he Parties to the Stipulation represent the interests of Questar Gas, the public interest generally, and the specific interests of residential, small commercial, and agricultural customers. The Division and Committee were assisted in their analyses not only by their staffs, but by separate, retained consultants. The Parties were initially deeply divided in their views, as demonstrated by the prior proceedings on this issue. Nonetheless, they were able to reach agreement on the Stipulation following extensive discovery, technical conferences, and arms-length negotiations. Large customers were represented at public hearings and indicated support for the Stipulation except for the very limited cost allocation concern addressed *supra*. We therefore find the interests of all Questar Gas customers were adequately represented in these proceedings and conclude the Stipulation fosters the policy of
>
> encouraging settlement of issues before the Commission.

Further noting that the negotiated settlement requires the Utility to forgo any rate recovery of gas management expenses incurred prior to February 1, 2005, and accept less than full recovery after that date, the Commission's January 6, 2006 Order concluded that:

> the rates resulting from the Stipulation are just and reasonable and approval of the Stipulation is in the public interest.

It is this settlement and this Commission approval that the Pending Petitions seek to undo.

ARGUMENT

SUMMARY OF COMMITTEE RESPONSE

The Pending Petitions raise underlying issues regarding the intent of Utah Code §54-7-1(1) in "encourag[ing]" "[i]nformal resolution, by agreement of the parties, of matters before the commission," short of incurring the costs and risks of contested litigation; as well as the Committee's statutory authority to represent residential and small commercial Utility ratepayers in such settlement efforts. However, it is not necessary that the Commission address those issues in order to properly dispose of the Pending Petitions since the Petitions are otherwise fatally defective.

First, and foremost, the arguments, indeed merit, of the Pending Petitions rest upon their repeated explicit and implicit assertion that the issue of Utility prudence in incurring gas processing expenses has been forever and finally

legally determined in earlier Commission proceedings. As will be made clear below, that assertion has no merit whatsoever.

Second, the Pending Petitions are based not only on an erroneous *res judicata* argument, but a patently illogical and incorrect interpretation of Utah Code §54-4-4(4), as well. That statutory provision mandates that any prudence determination of public utility expenses *"resulting from the action of the public utility*" be *"judged as of the time the action was taken"* [emphasis added]. Petitioners construe that statutory wording to mean just the opposite; that the prudence of the gas processing costs the Utility claims rate recovery for *in this proceeding* must be determined by re-hashing *actions the Utility took years ago* under different circumstances. Such strained dis-joinder of time and relevant circumstances is the very illogic that the wording of Utah Code §54-4-4(4) guards against.

Third, Petitioners' illogical interpretation of Utah Code §54-4-4(4) leads them into the further legal error of ignoring established legal precedent that a final order is neither final nor binding in a subsequent case where changed circumstances are shown to exist. The Commission's January 6, 2006 Order approving the negotiated settlement properly reviews the circumstances that must be considered in this case, and against which the prudence of resulting Utility actions must be judged.. The Petitioners' neglect of those critically relevant changed circumstances further undermines the merit of their arguments.

Ball's and Geddes' Petition that the Commission reconsider its approval of the negotiated settlement, as well as the identical petition by other non-party ratepayers, further fail for want of standing. Contrary to their claim, "ratepayer" Petitioners who were never parties to the proceeding do not have standing under Utah Code §54-7-15 to petition for reconsideration of a Commission order in this proceeding.

In summary, the Petitioners seek to undo, for legally erroneous reasons, a negotiated settlement which parties in this proceeding properly reached, in order that the Petitioners might pursue ill-founded views which the changing composition of gas available from a developing national supply grid is, in any case, making moot.

I. THE PENDING PETITIONS FOR RECONSIDERATION ARE BASED ON FATALLY DEFECTIVE LEGAL AND FACTUAL ARGUMENTS.

The pending petitions rely upon a 77- page repetition of arguments that mis-state applicable law and the relevant

factual circumstances in this proceeding. A.*Petitioners Erroneous Claim That Utility Rate Recovery In This Proceeding is Barred by an Earlier Legal Finding of Imprudence*.

The Petitioners repeatedly assert and argue that any Utility rate recovery of coal seam gas processing costs in this proceeding is forever barred by an earlier Commission determination of imprudence. However, the record of prior proceedings involving coal seam gas processing expenses shows no such Commission determination has ever been made. Hence, there is no legal issue of *res judicata* or collateral estoppel, or – to use the Petitioners' imagery – of a "well . . . polluted at inception; the flow of water [from which] has not been cleansed through the passage of time."

The relevant Commission legal findings in earlier proceedings are as follows. In Docket No. 99-057-20, the key finding stated:

> [t]he 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.

The Committee appealed the Commission order in Docket No. 99-057-20 to the Utah Supreme Court, which concluded:

> [w]e hold that the Commission's safety rationale is neither an adequate nor a fair and rational basis for departing from its prudence review standard. . .
>
> . . . By accepting the CO_2 Stipulation with no consideration of the prudence of the underlying source of the new costs (i.e., the contract between Questar Gas and its affiliate Questar Pipeline), the Commission abdicated its responsibility to find the necessary substantial evidence in support of the proposed rate increase in the record.

The Utah Supreme Court's reversal resulted in further Commission proceedings where it ultimately concluded, in an August 30, 2004 Order, as regards those particular proceedings:

> [f]or the reasons set forth above, *we conclude that Questar Gas has not met the burden of proving its actions constituted a prudent response to the introduction of lower Btu coal-seam gas into the Questar Gas distribution system.* We conclude that, given the circumstances presented in the record, a reasonable unaffiliated utility would timely address growing risks to customers and perform an independent and documented evaluation of alternatives with the interests of those customers paramount and avoid being forced into crisis management to protect the safety of its customers with an ever diminishing choice of options. We therefore reject the CO_2 Stipulation and deny recovery of the processing costs during the period from June 1999, to May 2004. [Emphasis added].

Not only do these prior Commission determinations make no *res judicata* determination of imprudence, they clearly indicate an understanding that the issues of prudence and rate recovery of the Utility coal seam gas processing

costs may well have to be considered again in future proceedings:

> [w]e 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.

Further indicative that the Commission had made no final determination regarding Utility imprudence with regard to coal seam gas processing costs that could be considered *res judicata* in future proceedings, it stated in its order issued upon reconsideration of its August 30, 2004 Order:

> In regards to Questar's requests for clarification and reconsideration, we state that our [August 30, 2004] 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.

In light of the clear meaning of these prior Commission determinations, it is surprising to read Petitioners' repeated claims about prior binding legal determinations of Utility imprudence. It is even more surprising that the Petitioners would ground the merit of their requests for reconsideration on such an erroneous argument.

B. *Petitioners' Erroneous Avoidance of the Changed Circumstances that Govern the Judgment of Prudence and Entitlement to Rate Recovery in this Proceeding*.

The Commission's January 6, 2006 Report and Order makes clear that the issues governing any rate recovery of coal seam gas processing costs in this proceeding must be considered in light of the factual circumstances evidenced in the record of this proceeding:

> In considering the prudence of Questar Gas's decision to use the CO_2 Removal Plant to manage the heat content of its gas supplies since February 1, 2005, we must consider the facts and conditions as they existed at that time. Our prior finding that the Company failed to demonstrate prudence in its decision to contract for construction and operation of the CO_2 Removal Plant during the 1997 and 1998 time frame is relevant only to the extent the same conditions present in 1997 and 1998 continue to be present. Based on the evidence presented in these dockets, it is apparent these conditions have changed.

The Commission goes on to identify several critically *changed circumstances* relevant to the present proceeding:

> "We were critical in our 2004 Order of the lack of documentation in the Company's decision-making process in 1997 and 1998. determined that the introduction of coal bed methane into the Company's system could have been the result of Questar Pipeline taking advantage of a business opportunity to transport the gas and that the Company's analysis of possible solutions appeared to be influenced by affiliate considerations. We were troubled by the fact that the contract for operation of the CO_2 Removal Plant was given to

> an unregulated affiliate of Questar Gas. Finally, we concluded that the Company should have anticipated the safety issue earlier than it did. . .
>
> The record in these dockets, on the other hand, indicates that the Company's customers have benefitted from the shipment of coal bed methane by Questar Pipeline and that coal bed methane has become an important component of Questar Gas's gas supplies. Since 2002, coal bed methane has accounted for a significant portion (up to 40%) of the Company's annual gas supply purchases, compared to less than 5 percent only a few years earlier.
> The increasing presence of coal bed methane on the Questar Pipeline system results from the expansion of the interstate natural gas pipeline grid to transport new coal bed methane from wells throughout the Rocky Mountain region. As this expansion continues, it is very likely that additional coal bed methane will enter Questar Pipeline's system, and thus Questar Gas's system. Therefore, while we previously questioned the initial presence of coal bed methane on the Questar Pipeline system, such questioning is no longer relevant to today's circumstances. The amount of coal bed methane on the interstate pipeline system is increasing and represents an increasingly important source of gas to meet growing customer demand as traditional gas supplies decline.

The Commission also points out in its Order approving the negotiated settlement that, while it was previously critical of the contract award for CO_2 Plant processing to an unregulated affiliate:

> "[t]he record [in this proceeding] also establishes that having the CO_2 Removal Plant owned and operated by Questar Transportation does not result in any prejudice to Questar Gas or its customers.

The Commission further notes the undisputed expert testimony in the record that the development of large quantities of coal bed methane geographically near Questar Gas's system has reduced the market price of all gas supplies purchased by the Utility, saving customers approximately $30 million in purchased gas costs from October 1998 through December 2004, and $12 million from January 2003 through December 2004.

Finally, the Commission's January 6, 2006 Order approving the negotiated settlement carefully reviews the process and purpose of six technical conferences that occurred prior to the present proceeding under its sponsorship, and which it further notes were "detailed in the Company's testimony, as well as in its application filed January 31, 2005, and admitted into evidence without objection at hearing." The Pending Petitions mistakenly attempt to discredit these "so-called 'technical conferences' involving the parties, the Commission, and others," which are regularly resorted to in Commission proceedings to flesh out the issues, make the parties' discovery efforts more efficient, and, at times, facilitate settlement discussions. Such technical conferences are purposely structured to foster a relatively free flow and

exchange of information among, and by, technical experts as well as educating interested but less well-informed parties on the factual and legal issues.

That Petitioners claiming a lack of opportunity to become informed about these proceedings would disparage such technical conferences says more about the merit of their views than about the appropriateness of the negotiated settlement. The value of the technical conference process has been well established in utility regulation not only in Utah but in other states and at the federal level, as well. Even if, as the Petitioners pointlessly argue, no formal record was made of the technical conferences, the factual and legal issues and arguments vetted and not discredited in such technical conferences not surprisingly end up in witness testimony and exhibits which, in this case, were formally introduced and accepted into the record of these proceedings in accordance with the rules of evidence.. In fact, as the Commission's Order approving the negotiated settlement further correctly points out:

> In its testimony, Questar Gas provided information regarding the process throughout the1990s resulting in increasing volumes of coal bed methane on the Questar Gas system. The Company noted its intent throughout the process leading to the Stipulation was to follow a decision-making framework that it believed the Commission had promulgated in previous Orders relating to coal bed methane.
>
> The Company stated its objective was to reliably manage the heat content of the gas on its system within a customer-safe range at the least cost. *Questar Gas noted that the Commission's prior concern that Questar Gas may not have explored various alternatives and therefore set about through the technical conference process, in cooperation with the other participants to identify and evaluate fourteen different alternatives. Mindful of the Commission's prior concerns about affiliate interests, the Company engaged in a process intended to show that it recognized potential affiliate conflicts, minimized them, and placed the customers first in its decision making. In working through this process, the Company responded to over 23 sets of data requests from the Division and Committee totaling over 400 questions and producing nearly 1,000 pages of studies, analysis and information comparing the various alternatives.* {Emphasis added.]

The Commission's review of this evidence in its approval Order can only be briefly summarized here. That evidence, however, contains the relevant factual circumstances that were properly taken into account by the Parties in negotiating a settlement in this proceeding, and properly considered by the Commission in deciding to approve that settlement and resulting rates.

C. *Petitioners' Erroneous Interpretation of the Statutory Standard for Determining the Prudence and Reasonableness of the Utility's Actions.*

It is little wonder that the Petitioners ignore the critical changed factual circumstances evident from the record in this proceeding, given their mistaken interpretation of Utah Code §54–4-4(4)(a), which provides:

> If, in the commission's determination of just, reasonable, or sufficient rates, the commission considers the prudence of an action taken by a public utility or an expense incurred by a public utility, the commission shall apply the following standards in making its prudence determination:
>
> > (i). . .
> > (ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken; . . .

Despite correctly citing the statutory requirement," Petitioners nevertheless argue such wording actually means the antithesis of what it plainly says. They repeatedly and erroneously assert that: (1) although the costs the Utility seeks rate recovery for in this proceeding are all incurred after February 1, 2005; and (2) although the Utility action and decisions that give rise to those costs result from a remedy the Utility selected in 2005; *because the 2005 remedy involves a CO_2 Processing Plant constructed back in1998, the reasonableness* of the post-February 2005 expenses must nevertheless be judged by focusing on, and judging, the actions of the public utility back in1998.

So much for the established legal precedent of 'changed circumstances'. So much for the clear meaning expressed in prior Commission decisions and statements that its decision to deny the Utility rate recovery in the past is in no way determinative of future Utility claims for rate recovery of subsequently-incurred coal seam gas processing expenses.

Despite the fact that the Commission has *never* determined in prior proceedings that the Utility was legally imprudent in incurring coal seam gas processing costs – and in fact concluded it was unable to make such a finding, the Petitioners nevertheless think the meaning of Utah Code §54-4-4(4)(a) requires that the Commission revisit the factual circumstances that *arguably* may have existed in the earlier proceedings, and make a belated, extra-legal finding of imprudence, so the Utility's application for rate recovery of costs the Utility is incurring as a result of actions taken in 2005 can be capriciously denied.

As the Commission's January 6, 2006 Order correctly makes clear, the actions the Utility may have taken in incurring CO_2 Plant operating costs in 1998, and the factual circumstances that existed at that time, are neither a proper

or adequate basis for determining the reasonableness or prudence of the coal seam gas processing costs it is now incurring. In fact, the Petitioners' arguments and references to earlier factual circumstances for purposes of judging the Utility's present actions is exactly the flawed judgment the statutory directive seeks to prevent.

D. ***Other Serious Factual and Legal Flaws in the Pending Petitions.***

Other serious factual and argumentative errors undermine the merit of the Pending Petitions, as well.

1. The Pending Petitions try to make Ball a "*de facto* party"in these proceedings, (whatever that could mean, legally), but would at the same time exempt him from the personal responsibility a person very familiar with this controversy and these proceedings should reasonably have – not only to stay abreast of the proceedings, but also to make his or her concerns timely known to the Committee that statutorily authorized to represent them. As the Commission's decision denying Ball and Geddes intervention aptly notes:

> [t]he Petitioners' ability or inability to participate in these dockets is of their own making. They give no credible 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 CO_2 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.

There is, thus, no credible basis for the Pending Petitions' claims that inadequate notice was given regarding the negotiated settlement or the Commission's hearing to consider approval of same. The notices given met all statutory requirements – which is actually more that what was sufficient for Ball and Geddes, persons who are "very knowledgeable about the specific dockets [involved in this proceeding]."

2. The Pending Petitions wrongly assert that "[t]he retrofitting program – eight years into the Plant's life, and 2 years shy of original projections for complete recovery of Plant costs – only recently has been launched." The record of this and prior proceedings clearly shows that the "retrofitting program" was launched at the same time CO_2 Plant processing began in1998, and that the projected necessary time such CO_2 Plant processing would have to operate was ten years, or until 2008.

3. The Pending Petitions request the Commission to "award them their attorney's fees. The claimed basis for

such an award is "the *Stewart* private attorney general doctrine" where "all the regulatory bodies abdicated their duties by stipulating to an agreement which was not in the public interest or the interests of the ratepayers." It is to be hoped that this Committee Response has demonstrated there is absolutely no evidence, or possible reasonable surmise, that the regulatory parties in this proceeding "abdicated their duties"or that the settlement they negotiated with the Utility was "not in the public interest or the interests of ratepayers." Again, in the words of the Commission:

> '[t]he 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 . . . have failed to represent customer interests; that they "transmogrify from watchdog[s] to lapdog[s]." Petition to Intervene, page 16. . .
>
> The Division and Committee signed the Stipulation only after months and months (indeed years) of investigation and examination of Questar's claims. . .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.

II. THE NON-PARTY PETITIONERS, WHO PETITION A S RATEPAYERS, LACK STANDING TO SEEK RECONSIDERATION OF THE COMMISSION'S JANUARY 6, 2006 REPORT AND ORDER.

The Petitioners who are not parties to this proceeding and seek to petition the Commission to reconsider its order approving the negotiated settlement lack standing or other authority to so petition. They assert standing "pursuant to *Utah Code Ann.* §54-7-15;" but that statutory wording makes no reference to ratepayers at all, and a reasonable interpretation of the wording shows no such intent can be implied. The relevant portions of the statute state:

> (1) Before seeking judicial review of the commission's action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.
>
> (2) (a) After any order or decision has been made by the commission, any party to the action or proceeding, any stockholder, bondholder, or other party pecuniarily interested in the public utility affected may apply for rehearing of any matters determined in the action or proceeding.

Ball and Geddes, two of the Petitioners who claim standing as non-party ratepayers, were earlier denied intervention in this proceeding after waiting to seek intervention after the parties had concluded a negotiated settlement. In a sharply-worded Order, the Commission noted:

> "[t]he ability or inability to participate in these dockets is of [the Petitioners'] own making. They give no credible 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' request for recovery of CO_2 plant expenses.

The Commission denied Ball and Geddes intervention on the statutorily-required grounds that they could not demonstrate that "the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired" by their late intervention.

Contrary to demonstrating their requested intervention would *not* impair the interests of justice and the orderly and prompt conduct of the proceedings, Ball's and Geddes' petition for intervention asserts an intention to undermine the settlement and prolong the proceedings:

> [t]he 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.

The Commission's Order denying Ball's and Geddes' request responds:

> [p]olicy in Utah favors informal, non-adjudicative resolution of the controversy through settlement stipulation. . . "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 Petitioner's intervention.

These sound statutory and policy reasons for denying Ball and Geddes late intervention in this proceeding are equally applicable to the non-party ratepayer Petitioners' efforts to seek Commission reconsideration of its order approving the negotiated settlement. In the Commission's words:

> [a]dministrative 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. Additional, self-proclaimed customer advocates would not be hard to come by, each critical of the current representation before the Commission.

While it is not clearly stated in the Pending Petitions, the non-party ratepayer Petitioners apparently assume that, since they have to directly or indirectly pay periodic billings for Utility service, they are parties "having a pecuniary interest in the Utility affected." While Title 54 of the Utah Code does not explicitly define what is meant by the term "pecuniary interest," the term is used in other places in Title 54 than §54-7-15; and those further uses shed considerable light on the intended statutory meaning. For example, §54-1-11, in addressing conflicts of interest of Commissioners and employees of the Commission, states such persons must not:

> "[h]ave any pecuniary interest, whether as the holder of stock or other securities, or otherwise have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission."

§54-4(a)-5 uses identical language in addressing the qualifications of Division employees.

Since Commissioners and other employees of the Commission and employees of the Division are in most, if not all, instances of necessity ratepayers of the local utility monopolies, references in these statutory provisions to "any pecuniary interest" can not reasonably mean 'utility ratepayers'; for such a meaning would, as a practical matter, require them to live and work out-of state. Needless to say, those particular statutory provisions governing state utility regulatory employees have been interpreted to mean "ratepayers" do not nave a pecuniary interest in the public utility.

Finally, were it the intent of those drafting and enacting §54-7-15 into law to include the very large class of 'ratepayers,' one would expect they would have explicitly so provided.

In summary, contrary to the Ball's and Geddes' unsupported claim, Utah Code §54-7-15 does not give them standing, as ratepayers, to petition for reconsideration of a Commission order in proceedings they were never parties to. Not only do logic and the intent of other statutory provisions in Title 54, support that conclusion; so also does the evident purpose of Utah Code §64-46b -9 governing intervention in administrative proceedings.

CONCLUSION

The Petitioners seek to undermine the negotiated settlement reached by participating parties and re-open and prolong this proceeding in an attempt to foist upon the participating parties and the Commission the Petitioners' view that arguable imprudent Utility conduct and conflicting affiliate interests back in1998, and earlier, forever preclude the

Utility from any rate recovery of coal seam gas processing costs incurred in order to provide safe utility service to its customers.

While the arguments in the Pending Petitions to that end are long on assertion and creative interpretations of statutory intent, they are based on critical, and fatal, legal error.

However much Petitioners want to believe and argue that the Utility has been determined to have been imprudent in incurring coal seam gas processing costs in prior proceedings, no such prior legal finding exists. There is no prior final Commission decision that could in any way be interpreted as precluding its authority to allow rate recovery for such expenses in this proceeding under the markedly different factual circumstances shown to now exist. Even if there were a prior determination of imprudence, established legal precedent makes clear such a determination does not bar an administrative agency from reconsidering and changing that determination where changed circumstances are shown to exist.

Equally fatal to the merit of the Pending Petitions is their contorted logic and backward interpretation of Utah Code §54-4-4(4)(a) when that statutory wording clearly requires that a determination of the prudence and reasonableness of a Utility expense be judged as of the time the Utility action incurring the expense was taken. The Petitioners would have that statutory wording nullified in this case so that the Utility expense that is the subject of this proceeding could be denied based upon a non-existent earlier legal determination of Utility imprudence – the very kind of judgment the statutory wording clearly forbids.

The Petitioners' erroneous interpretation of Utah Code §54-4-4(4)(a) leads them into further fatal error. They ignore, and would have the Commission completely ignore, the changed circumstances and applicable decision-making process shown to exist from the record in this proceeding. Yet it is the present factual circumstances, and the Utility decision-making and evaluation process that resulting in the Utility expense at issue, that must be considered – not what existed and occurred years earlier. Whatever its provenance, further coal seam gas processing has been shown in this proceeding to be the least-costly efficacious remedy for an evident gas supply problem. Whatever the original cause of

that problem, as was shown in this proceeding, coal seam gas is now a needed and cost-efficient source of gas supply for Utility ratepayers, and is appearing in increasing quantities in the interstate pipeline grid to which the Utility's distribution system is increasingly bound. It is no longer just a problem existing as a result of Questar Pipeline transporting coal seam gas on its southern pipeline system.

The Petitioners would ignore these realities and deny the Utility any rate recovery of its coal seam gas processing expense based upon legally erroneous reasons and flawed logic. They would un-do a negotiated settlement which participating parties in this proceeding found to be reasonable and in their and their constituents best interests that puts an end to the uncertainty associated with a long-festering controversy, allows a clear and unified state regulatory message to be sent to Utility ratepayers that the composition of the gas that will be delivered to them in the future is, for necessary but beneficial reasons, changing and they need to get their gas appliances properly inspected and adjusted to safely and efficiently burn that changed gas.

A prolongation of the controversy over rate recovery has been reasonably resolved by a negotiated settlement whereunder the Utility obtains partial rate recovery of its gas processing expenses going forward in exchange for forgoing any rate recovery of such expenses incurred prior to February 1, 2005. Both the Utility and regulatory parties had to give some in order to reach a settlement that avoids the uncertainty that continued litigation could result in an outcome less beneficial that the settlement terms. The settlement is in the public interest, as the Commission has already determined. The Pending Petitions provide no meritorious reason to

undo the settlement and reopen the controversy to some uncharted further course. The Commission must, therefore, reject the Pending Petitions.

Respectfully submitted this 21st day of February, 2006.

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REED T. WARNICK
Assistant Attorney General
Counsel for Utah Committee of Consumer Services

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing UTAH COMMITTEE CONSUMER SERVICES' RESPONSE TO PETITIONS FOR RECONSIDERATION was served upon the following by electronic mail and by either first-class mail or hand delivery, on February _____ 2006:

Janet I. Jenson
Jenson & Stavros, PLLC
350 South 400 East, Suite 201
Salt Lake City, UT 84111
jensonstavros@hotmail.com

Micheal Ginsberg
Patricia Schmid
Assistant Attorneys General
160 East 300 South, Fifth Floor
Salt Lake City, UT 84114-0857
mginsberg@utah.gov
pschmid@utah.gov

C. Scott Brown
Colleen Larkin Bell
Questar Gas Company
180 East First South
P.O. Box 453609
Salt Lake City, UT 84145
scott.brown@questar.com
colleen.bell@questar.com

Gregory B. Monson
David L. Elmont
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
gbmonson@stoel.com
dlelmont@stoel.com

_____