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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint Application of
Questar Gas Company, the Division of
Public Utilities, and Utah Clean Energy for
the Approval of the Conservation Enabling
Tariff Adjustment Option and Accounting
Orders

Docket No. 05-057-T01

**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 on February 2, 2006. For the reasons set forth below, the Request should be denied.

ARGUMENT

Intervention in formal Commission proceedings is appropriate only if: (a) a petitioner’s legal interests may be “substantially affected” by the proceeding; (b) intervention would not

materially impair the interests of justice; and (c) intervention would not materially impair the orderly and prompt conduct of the proceeding.¹ If any one of these prongs is missing, intervention should be denied. In this case, all three prongs are missing.

The Company's customers as a whole certainly have a substantial legal interest in this matter. However, Mr. Ball, as an individual residential customer does not—his legal interests will not be substantially affected regardless of the outcome of this proceeding. Moreover, if an individual residential customer such as Mr. Ball were allowed to intervene as a party to this proceeding, there would be no distinguishing basis for the Commission to deny intervention to any other of the Company's nearly 800,000 Utah General Service customers. This would impair the interests of justice. Further, as demonstrated by past conduct, Mr. Ball's participation is also highly likely to be harmful to the orderly and prompt conduct of this proceeding. Mr. Ball's participation should be limited to attending public hearings and meetings, making any statements he desires at an appropriate time when the Commission allows for public witnesses, and otherwise making any concerns of his known to the Committee of Consumer Services ("Committee"), which is statutorily charged with representing the interests of residential customers such as Mr. Ball.

A. MR. BALL DOES NOT HAVE A UNIQUE LEGAL INTEREST THAT WOULD BE SUBSTANTIALLY AFFECTED BY THIS PROCEEDING.

Intervention is improper unless a petitioner's legal interests may be "substantially affected" by the proceeding. Mr. Ball has no apparent interest that would be so affected by this proceeding. He has no apparent interest beyond his interest as an individual residential Questar Gas customer, and in that capacity there is neither any prospect of this proceeding causing a

¹ See Utah Code Ann. § 63-46b-9(2); Utah Admin. Code R746-100-7.

substantial impact on Mr. Ball nor any prospect of Mr. Ball being uniquely affected.² In this regard, individual residential customers are different than large industrial customers, that may be both uniquely and more substantially affected by Commission proceedings of this type. The only way Mr. Ball is likely to be affected by this proceeding is in a favorable way, as new conservation measures may be approved and, if the Joint Application is accepted, Mr. Ball should see a decrease in his gas bill. But even if that were not the case, Mr. Ball's interest as an individual residential customer—with no apparent unique circumstance or prospect of being affected by this proceeding in any manner or degree beyond the level that other similarly situated customers would be affected, prevents a finding that he has a legal interest that would be substantially affected sufficient to warrant intervention.

B. MR. BALL'S INTERVENTION WOULD IMPAIR THE INTERESTS OF JUSTICE.

Appropriate intervention also requires that the “interests of justice . . . will not be materially impaired by allowing the intervention.”³ The interests of justice would be impaired by intervention in this case; therefore, intervention is not proper.

The Commission would not be able to properly control its dockets if every interested customer among the Company's nearly 800,000 customers were allowed to fully participate in Commission proceedings. Even a handful of customers if allowed to act as full parties, demand full participation in discovery, and pursue their own notions of how a proceeding ought to be adjudicated, as Mr. Ball seeks to do, would complicate proceedings excessively. Mr. Ball's

² See, e.g., *In re Public Service Co. of Colorado*, 239 P.U.R.4th 177, 2005 WL 389203 (Colo. P.U.C. Jan. 21, 2005) (“We denied Ms. Glustrom's petition to intervene since it did not meet the ‘substantial interest’ required by our rules for intervenor status. We noted that the [Office of Consumer Counsel] is statutorily charged to represent residential customer interests from a rate perspective, therefore Ms. Glustrom's interests were adequately protected by OCC's intervention.”).

³ See Utah Code Ann. § 63-46b-9(2)(b).

participation would be unfair, therefore, to the extent other similarly situated customers were not allowed to participate.

Indeed, even if no other customer sought intervention, Mr. Ball's Request openly acknowledges that his "interests may or may not coincide with those of 'a majority of residential consumers as determined by the [C]ommittee.'"⁴ If Mr. Ball, as an individual customer representing his own interests, were to successfully advocate a position favorable to himself but unfavorable to other residential customers he would have an unfair advantage over other residential customers. Moreover, that advantage would exist merely by Mr. Ball being allowed to participate while others cannot, even if Mr. Ball were ultimately unsuccessful in his advocacy—he would be given additional process in the consideration of his interests beyond what other customers would receive. Except in a case where a customer has a unique, substantial interest different from other residential customers, it would be improper for a single customer to have such an advantage.

C. MR. BALL'S INTERVENTION WOULD IMPAIR THE ORDERLY AND PROMPT CONDUCT OF THE PROCEEDINGS.

Mr. Ball's Request should also be denied on the basis that Utah Code Ann. § 63-46b-9 further requires that the "interests of . . . [an] orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention."⁵ These interests would be materially impaired by intervention in these circumstances.

Mr. Ball's attempt to belatedly participate in Docket Nos. 04-057-04, 04-057-09, 04-057-11, 04-057-13, and 05-057-01 demonstrates the disruptive influence he is likely to be in this matter if allowed to intervene. In that case, Mr. Ball sought to undo months of work by the

⁴ Request at 2.

⁵ See Utah Code Ann. § 63-46b-9(2)(b).

parties, a carefully balanced settlement, and millions of dollars of benefits to the Company's customers on the mere ground that he did not like the positions taken and settlement reached by the Committee and the Division of Public Utilities ("Division"). Further, his disruption is not yet complete as he has requested reconsideration of the Commission's order denying intervention and the final order approving the parties' settlement stipulation, and he appears to be attempting to situate himself for an appeal.

Likewise in this case, the first things Mr. Ball did upon requesting intervention were to (1) request a stay of proceedings (improperly requesting that a general rate case be instituted without providing any basis for issuance of an order to show cause);⁶ and (2) request a delay in the filing of a draft scheduling order that had been agreed upon by the parties without his objection at a scheduling conference where he was present. In further recent communication, Mr. Ball has now requested that the agreed schedule be modified "[i]n order that [he] might have the opportunity to serve discovery requests and receive responses on no less than two occasions" prior to filing testimony and/or argument.⁷

It is highly likely, therefore, that Mr. Ball's presence would impair the orderly and prompt conduct of this proceeding.

D. MR. BALL'S PARTICIPATION SHOULD BE CHANNELED THROUGH THE COMMITTEE.

Perhaps the most troubling aspect of Mr. Ball's attempted intervention is its demonstration of an emerging pattern. It is becoming apparent from Mr. Ball's attempted participation in the Company's various proceedings that he is improperly attempting to set himself up as a self-appointed alternative to the Committee. The Commission should reject Mr.

⁶ See Request for a Stay of Proceedings, an Interim Rate Decrease, Conversion to a General Rate Case, and a Disclosure Order, Docket No. 05-057-T01 (Feb. 2, 2006).

⁷ Letter from Roger J. Ball to Julie Orchard, Commission Secretary (Feb. 13, 2006).

Ball's attempts to do so. He does not and cannot represent any interest beyond his own,⁸ which interest is not substantial enough to warrant intervention in this case—particularly in light of the impairments to justice and an orderly proceeding that Mr. Ball's participation would likely bring.

Regardless of whatever view Mr. Ball may take about the Committee, the Committee is charged with advocating “positions most advantageous to a majority of residential consumers as determined by the committee,”⁹ and it is very obviously a zealous advocate on behalf of customer interests as it sees those interests. The Committee's organizing statute recognizes that residential 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 group of customers.¹⁰ The Committee studies issues and determines the positions most advantageous to a majority of its constituency.

Questar Gas has nearly 800,000 Utah customers with interests as substantial as Mr. Ball's. There has to be some organized, efficient way for the interests of those customers to be represented. The Commission has a long-standing practice in proceedings affecting residential customer interests generally of requiring those customers to channel their concerns through the Committee. There is no reason to depart from that prudent practice in this case. Indeed, Mr. Ball's likely disruptive influence warrants the enforcement of the Commission's past practice more than ever.

⁸ Pursuant to Utah Admin. Code R746-100-6.B, only attorneys, “individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.” There is no provision that would allow Mr. Ball to represent other customers.

⁹ See Utah Code Ann. § 54-10-4(3).

¹⁰ See *id.* at § 54-10-2.

CONCLUSION

For the reasons set forth above, the Request should be denied. Mr. Ball's participation in this case should be limited to attendance at public hearings, technical conferences, and other meetings, and participation in any public witness testimony the Commission chooses to hear. Otherwise, he should present his positions to the Committee for its consideration. If Mr. Ball can demonstrate a unique or substantial interest that may be prejudiced by this proceeding and would warrant special treatment, the Commission can revisit the issue of allowing his participation. However, the Commission should not encourage Mr. Ball to act as an alternative to the Committee in representing residential customers' concerns, when he in fact only represents himself.

RESPECTFULLY SUBMITTED: February 17, 2006.

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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 mail, on February 17, 2006:

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