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13 February 2007

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application to
Remove GSS and EAC Rates from
Questar Gas Company's Tariff

Docket No 06-057-T04

REQUEST FOR RECONSIDERATION OF
NOTICE OF ADDITIONAL HEARING AND
RESPONSES TO UTAH COMMITTEE OF
CONSUMER SERVICES' REQUEST FOR
CLARIFICATION AND MEMORANDUM

Roger J Ball respectfully requests that the Public Service Commission of Utah reconsiders its 7 February 2007 Notice of Additional Hearing and its 8 February Erratum Notice of Additional Hearing, responds to the 9 February Request of the Utah Committee of Consumer Services with alternative proposals for the further schedule in this Docket, and responds to the 9 February Memorandum of the Committee.

1 BACKGROUND

1.1 On 6 February 2007, counsel for the Utah Division of Public Utilities wrote to the Commission to inform it that the Division, Questar and the Utah Committee of Consumer Services "have reached a settlement in principle" in this Docket. The following day, the Commission issued a Notice of Additional Hearing and, on 8 February, an Erratum Notice of Additional Hearing which set "an additional hearing to

Removal of Questar's GSS and EAC Rates

Docket No 06-057-T04

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REQUEST FOR RECONSIDERATION &c

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consider any settlement proposal which may be submitted, to receive testimony in support or opposition to any such settlement proposal” for 9:30am on Wednesday, 28 February 2007, with a time certain to receive “public comments on any such settlement proposal” at 11:30am on the same day.

1.2 On 9 February, the Committee filed a Request for Clarification containing a “commitment that if all or some of the parties reach a settlement, the stipulation shall be filed on or before the close of business February 14, 2007.” It stated that “The parties, with the exception of Mr. Ball, agree that testimony or position statements responding to the settlement that is currently under consideration, shall be filed on or before February 21, 2007.” The Committee has posted an agenda on its website for a meeting on 13 February 2007 including the public discussion item “7 GSS-EAC Tariffs Docket #06-057-T04”, followed by “8 Closed Meeting: Strategy Sessions to Discuss Pending or Reasonably Imminent Litigation 8.1 GSS-EAC Tariffs Docket #06-057-T04”.

2 REQUEST FOR RECONSIDERATION OF NOTICE OF ADDITIONAL HEARING

2.1 Since the Committee has heretofore taken a position at least somewhat at odds with the Application in this Docket, there has been a range of testimony before the Commission. In the event that the Committee becomes a party to a settlement, and if I do not, the possibility must be considered that I may be the only party to this Docket that might oppose a stipulation. It is in the public interest, especially in a case where approval of the Application or a stipulation would likely result in the transfer of some

\$1.7M of rates from about 8,600 customers to perhaps 825,000 customers annually, that the Commission hear as fully as possible from at least one party who is a member of the larger group so that it is able to consider the widest and most comprehensive range of objective information, evidence, and recommendations in determining this matter.

2.2 The precise situation of all the parties and the exact details of such a prospective stipulation are not yet known and are unlikely to be made certain until perhaps close of business on 14 February. The Committee's apparent request, in paragraph 1 of its 9 February Request for Clarification, "that testimony or position statements responding to the settlement that is currently under consideration, shall be filed on or before February 21, 2007" is burdensome and unreasonable. It would allow me no more than 4 business days (19 February, Presidents' Day, is a public holiday in Utah) to absorb the details of the filed stipulation and prepare and file my response.

2.3 The Commission has not specifically designated proceedings in this Docket as informal¹. A petition from any group of parties for approval of a stipulation varying from Questar's 6 October 2006 Application would appear to constitute an original request for agency action with a new statement of the relief now being sought.² The Utah Administrative Procedures Act at UCA 63-46b-6(1) establishes 30 days as the default period for response. I therefore respectfully request that, in the event I do not join such a stipulation, I be afforded 30 days to file and serve any written response that I may

¹ UCA 63-46b-4(2).

² UCA 63-46b-6(1).

wish to make, and that the Commission reschedule the date(s) of the additional hearings accordingly.

2.4 In its 19 January 2007 Notice, the Commission scheduled a public witness hearing in Beaver on Thursday, 15 February. This hearing is due to commence at 6:30pm. The public witness hearing held in Salt Lake City on 8 February commenced at 4:30pm and, in its 8 February Erratum Order, the Commission set an additional such hearing in Salt Lake City for 11:30am on Wednesday, 28 February. Different people have commitments at various times of day, and those who may be able to attend during their lunch breaks may have those at different times. It appears that the Commission has considered the hour at which a hearing in Beaver and an additional public witness hearing in Salt Lake City will confer maximum accessibility. It seems likely that some who wish to offer public testimony in Salt Lake City may be unable to attend either an 11:30am or a 4:30pm hearing. In order to maximise the opportunity for public comment, I respectfully request that, in rescheduling the date(s) of the additional hearings, the Commission maintain a weekday 11:30am public witness hearing, provide that anyone arriving between 11:30am and 1:30pm shall be heard as soon after their arrival as the number of people waiting to be heard may permit, and additionally provide for a weekday 6:30pm public witness hearing. So that as many ratepayers as possible are made aware of these proceedings and their opportunities to provide testimony, I respectfully request that the Commission make arrangements to publicise the thrust of the Application or stipulation and the public witness hearings.

2.5 To that end, I further respectfully request that the Commission require Questar:

to prepare a notice of both additional public witness hearings which, as well as the dates, times and locations of the hearings, describes the impact of the increase in Questar Tariff paragraph 2.02 GS-1 rates that the applicants or stipulants are seeking;

to obtain my approval of the text, layout and publication schedule of the notice;
and then

at its own expense, to publish the notice twice in the Main News Section of both the Deseret Morning News and the Salt Lake Tribune, at least 2 columns wide and 8 inches high within a bold border, first approximately two weeks before the hearings, and again about one week before but on a different day of the week and on a different page.

3 RESPONSE TO UTAH COMMITTEE OF CONSUMER SERVICES' REQUEST FOR CLARIFICATION

3.1 Ironically, as in Docket 05-057-01, my Request to Intervene in this case was prompted by the postures adopted by the Utah Division of Public Utilities and the Utah Committee of Consumer Services. These agencies and their attorneys are funded by ratepayer money to the tune of some \$4M and \$1.5M annually respectively. While certainly inadequate compared with the \$10.5M of ratepayer money spent by the utilities each year representing management's and stockholders' interests in the Utah regulatory arena, these resources vastly outmatch those that can be brought to bear by any individual customer, especially a residential or small commercial customer. If the

Division and Committee would do the jobs we pay them for, there would likely be no need for someone like me to intervene. After all, I have a life to live, a living to earn, no staff, no attorney, and no budget for this costly and time-consuming endeavour.

3.2 Starting on 3 February 2006, Questar generated a succession of draft scheduling orders in Docket 05-057-T01. On 6 February, its counsel emailed the most recent to the Commission, disregarding my request that the Company hold off for a week. On 13 February I wrote to the Commission recording several aspects of harassment that I was being subjected to by Questar. The draft orders sought to impose several conditions on intervenors regarding the filing of testimony and legal argument which were unlike anything I recall having seen before. The Commission largely adopted those conditions in its Second Amended Scheduling Order of 2 March 2006 in that Docket. Similar unusual and onerous conditions regarding the filing of testimony or position statements appear in the 27 October 2006 Scheduling Order in this Docket, conditions apparently still so novel to the Commission that it had to issue an Amended Scheduling Order on 28 November to clarify them.

3.3 Now, in both the alternative paragraphs 2 of its 9 February Request for Clarification, the Committee urges the Commission to impose yet more such conditions preparatory to and during the additional hearings. I want to emphasise that these conditions have been devised by parties who have done all in their power to prevent my intervention at all; their anger at my temerity in questioning their objectives and testimony is evident; their furious objections to my cross-examination of one another's witnesses demonstrates high anxiety to prevent those facts and perspectives which they do not wish the Commission to consider

from even being discussed in hearing. These conditions have been designed and are intended to be barriers to my effective participation in this Docket and I respectfully request that the Commission not adopt them.

4 RESPONSE TO THE UTAH COMMITTEE OF CONSUMER SERVICES' MEMORANDUM

4.1 I disagree with most of the representations in the 4th, 5th, 6th and 7th paragraphs of the Memorandum.

4.2 In the 4th paragraph, the Committee asserts that its "request is in part, due to Roger Ball's protests during the February 8 hearing, that he was not being treated fairly because he was not a lawyer and that the public nature of the hearing was not respected." During the hearing, the frequency and intensity of objections from counsel for Questar and the Committee surprised me, the latter in particular since the only question I addressed to its witness was in panel with Questar's and the Division's. I certainly protested the cumulative effect of all those objections because I believed then and consider now that they were intended for no other purpose than to obstruct my reasonable efforts to clarify the meaning of pre-filed testimony and bring factual information into the public record.

4.3 The other part of that assertion in the Committee's 4th paragraph entirely mischaracterises what actually took place. I certainly did not protest that I "was not being treated fairly because I am not a lawyer". Following yet another objection to one

of my questions, I offered an apology if I had offended some guideline of which I was not aware, and requested that the Commission give me some latitude because I have neither attended law school, nor have I ever been admitted to the Bar.

4.4 With regard to the remainder of the 4th paragraph of the Committee's Memorandum, paragraphs 1 through 8 of my 24 January 2007 Request to Intervene in this Docket sought to explain why I should be granted intervention. It is not disputed that none of Questar, the Division or the Committee fulfilled their obligations with regard to serving me with documents pertaining to the GSS and EAC aspects of Docket 05-057-T01 after 24 August 2006. I was not "late" to intervene in this Docket as the Committee asserts; I was, quite possibly deliberately, kept out of the loop.

4.5 It is not disputed that:

I was a party in Docket 05-057-T01;

neither the Division nor any other party served any notice, agenda or record of the GSS-EAC Task Force upon me, including its 24 August 2006 Report;

the Committee did not serve its 24 August Memorandum on me;

nor did Questar serve its 15 September Reply Comments on me;

although all these documents were filed with the Commission under Docket 05-057-T01.

4.6 It is not disputed that Questar did not serve its 6 October Application or 11 October Amended Application in Docket 06-057-T04 on me. It is noteworthy that the Application was filed complete with "Docket No. 06-057-T04" as part of the typescript, indicating that there had been discussion between Questar and the Commission prior to

the filing and agreement that this matter should be entered under a different docket number than that in which previous GSS-EAC proceedings had been recorded. Yet it is not disputed that no notice of the opening of this new docket was served on me.

4.7 Whether or not the Committee's attorney sent me an email, or I received it, on 16 October 2006 is beside the point. What I stated in my Request to Intervene is not disputed: the 13 October Notice of Scheduling Conference, the 27 October Scheduling Order and the 28 November Amended Scheduling Order were not served on me.

4.8 Whether or not I "responded to this e-mail, or at any time prior to January 9, 2007", and whether I "took any action to monitor this Docket", is also beside the point. The fact is that the Commission saw merit in my Request to Intervene sufficient to grant me leave, and no party has sought reconsideration of that Order. The Committee's remarks in the 5th paragraph of its Memorandum amounts to nothing more than Monday-morning-quarterbacking that decision.

4.9 It has been my observation that those who seek to intervene often do so without having determined the specific positions they will take, or the relief they will seek; language such as paragraph 9 merely serves as a placeholder in their requests, as it did in mine. The implication of the 4th paragraph, 3rd sentence, of the Memorandum in conjunction with paragraph 2 (Alternative 2) b of the Committee's Request for Clarification is that my Request to Intervene was defective and the Commission should require it to be made whole. My entire Request was clearly linked to its precursor in Docket 05-057-T01, in which paragraphs 2 through 8 clearly demonstrate that my legal rights or interests are substantially affected by this proceeding. Provided that I am

given a reasonable opportunity to do so (see 2.3 above) I fully expect to make clear to the Commission in due course whatever relief I may seek from it.

4.10 The 6th paragraph of the Committee's Memorandum characterises events at its 9 January 2007 meeting inaccurately and/or imprecisely. According to the Memorandum:

"Mr. Ball and, by phone, his colleague Clair (sic) Geddes, appeared at the regularly scheduled January 9, 2007 meeting of the Committee. Docket 06-057-T04 was an agenda item publicly discussed by the Committee. Mr. Ball and Ms. Geddes described their reasons for opposing the Application, and explained that in their opinion, the Application violated legal principles of utility ratemaking. It was understood that this opinion had been formulated with an attorney's assistance. It was apparent that Mr. Ball was very familiar with the application and had formulated a specific position based upon his assessment of the origin of GSS and EAC rates, and the impact if the Application were granted. Mr. Ball then delayed filing his petition to intervene for 15 days."

Since the term "colleague" is not defined, I will simply say that Ms Geddes and I, while often seeing eye-to-eye, are not conjoined twins; while we occasionally discuss utility issues of common concern, frequently to the benefit of each of us in terms of grasp of facts and analysis, I cannot recall an instance when we have scripted our remarks. On 9 January, in the presence of Questar and press representatives as I recall, we separately explained why, in our own individual opinions, the Committee should not support this Application; we had no single shared opinion. I very much doubt that I said anything about violation of legal principles of utility ratemaking; the Committee must take full accountability for any understanding it may have formed; I have no recollection of saying anything about any attorney. As of 9 January, I can't recall having studied any of the documents in this Docket; the Committee must own all the responsibility for whatever it thought was apparent to it.

4.11 It appears that the verb in the last sentence of the 6th paragraph of the Committee's Memorandum was carefully chosen to attribute to me improper motives. As in Docket 05-057-01, while recognizing that the Division again had no intention of doing its job, I hoped the Committee would fulfill its statutory mandate to advocate in the interests of the majority of residential and small commercial ratepayers in this Docket and that I would be able to continue my quiet life as a private citizen. Those hopes were seriously challenged when – after its attorneys, staff and new director briefed it privately in closed session on 9 January 2007 – the Committee adopted a resolution including: "The GSS and EAC rates do not now appear to be just and reasonable." Committee Chairman Dee Jay Hammon a few minutes later rather contradicted that resolution by telling Salt Lake Tribune reporter Steve Oberbeck: "But we don't know. Questar hasn't provided us with all the data we need to make any kind of determination."³

4.12 It was immediately evident that the resolution was based upon a faulty grasp of the history of the GSS and EAC rates. As Questar witness Gary Robinson says in his 2 February Rebuttal Testimony:

"the Company has tariff provisions, in place and approved by the Commission, that allow it to collect the GSS and EAC rates. These rates have been ordered by the Commission and found to be just and reasonable in the original dockets and in every general rate case since they were implemented. These rates have not been questioned by the Committee or any other party in any of these rate cases or even as recently as the Task Force proceedings."⁴

³ Salt Lake Tribune, Wednesday, 10 January 2007, pages D1 and 5.

⁴ QGC Exhibit R 1.0, page 18, lines 462 to 467, in Docket Number 06-057-T04

Either that, or as Beaver County Economic Development Corporation (BCEDC) witness Robert Adams told Deseret Morning News reporter Dave Anderton: “The statement that they made today was nothing more than to placate me.”⁵ Perhaps both. In any event, from the perspective of this ratepayer, the resolution was weak-kneed; it undermined whatever confidence I had that the Committee would stand up for the 825,000 Questar Gas customers who pay unembellished GS-1 Schedule rates; it prompted me to begin reading and thinking about the contents of the Docket Index on the Commission’s website.

4.13 In fact, over the period 10–22 January, I had many commitments which allowed me but little time to read the contents of the Docket Index on the Commission’s website. I quickly saw that an intervention deadline had been set and had passed. I also saw the unusual and onerous conditions regarding the filing of testimony or position statements in the 27 October 2006 Scheduling Order. These factors were all tending to incline me not to intervene, although when, on 23 January, I learned that the City of Joseph had petitioned for intervention, I had neither yet decided whether to seek intervention nor begun to draft a request. However, it seemed to me that if yet another proponent of the Application could seek intervention at this stage of the process, it would hardly be outrageous for one of some 825,000 customers paying unembellished GS-1 rates to ask, and I decided on that day to do so. My intervention request was filed on 24 January.

⁵ Deseret Morning News, Wednesday, 10 January 2007, pages E1 and 4.

4.14 The Committee's 7th paragraph claim that it "encourages participation in Commission proceedings" is simply untrue. The Committee formally opposed intervention by Ms Geddes and by me in Docket 05-057-01. Its Chairman has baldly declared that, by statute, the Committee is empowered to decide what is in the best interests of residential and small commercial ratepayers, that it need not consult, or even listen to, actual ratepayers in making such decisions, and that there is therefore no need for any actual ratepayers to participate in Commission proceedings. According to the Direct Testimony, lines 171 through 181, of BCEDC witness Adams:

"I called and left a voice mail to Paul Proctor, the attorney representing the Committee in December of 2006 as I was preparing thoughts for this testimony. In that voice mail message, I stated my purpose and made a case for how I felt this was a case the Committee should assist us in as it would provide relief for residents of lower and fixed income as well as smaller businesses in rural areas. I asked Mr. Proctor to get back with me with answer to whether or not we could count on Committee support. I received a call from Mr. Proctor on January 2, 2007. He told me that the Committee did not represent us in the case and further that they were charged with advocating for the majority."

It appears that only after that testimony was filed did the Committee agree to assist the local governments and agencies in appearing in this Docket. And here we have the Committee, in its Request for Clarification and Memorandum, doing its utmost to impede my participation in this Commission proceeding.

4.15 I agree wholeheartedly with the 2nd sentence of the 7th paragraph of the Committee's Memorandum, which reads:

"The time and effort that all parties expend in preparing for a hearing, even the party who comes to the docket after discovery and pre-hearing proceedings have refined the issues and informed the process, should materially enhance rather than impair the proceedings."

Unfortunately, I suspect that the meaning of these words to the Committee is quite different from their meaning to me. It is my view that the parties should aim to lay out objective and comprehensive information, evidence, and recommendations on a public record before the Commission so that it can determine a just and reasonable outcome. When parties conduct private negotiations and conclude agreements that they all undertake only to support, they seek to preempt the Commission's decision-making role, they work together to ensure that only favourable and partial information, evidence, and recommendations will be presented. If the Committee were to have chosen to affiliate itself with the Division, Questar, and rural lobby in this Docket for political reasons other than in order to represent the interests of the majority of residential and small commercial ratepayers, it would make very great sense for it to recommend to the Commission an unreasonably hasty schedule littered with obstacles to an individual ratepayer who might consider opposing that combination of interests.

4.16 Nor do I argue with objective of the 3rd sentence:

“The Commission should structure the February 28, 2007 hearing such that an intervening party's evidence and argument contributes to a formal record upon which the Commission may rely in its deliberations and in its findings, conclusions and orders.”

I intend to do my best to make just such a contribution, but I object most strenuously to being hedged about with the Committee's, or any other parties', strictures as to how I should go about it.

5 SUMMARY AND REQUEST FOR RELIEF

I respectfully request that the Commission:

5.1 reconsiders its 7 February 2007 Notice of Additional Hearing and its 8 February Erratum Notice of Additional Hearing;

5.2 afford me 30 days to file and serve any written response that I may wish to make in the event that other parties file a stipulation which I do not join;

5.3 reschedule the date(s) of the additional hearings accordingly;

5.4 maintain a weekday 11:30am additional public witness hearing;

5.5 provide that anyone arriving between 11:30am and 1:30pm shall be heard as soon after their arrival as the number of people waiting to be heard may permit;

5.6 additionally provide for a weekday 6:30pm additional public witness hearing;

5.7 require Questar:

5.7.1 to prepare a notice of both public witness hearings which, in addition to the dates, times and locations of the hearings, describes the impact of the increase in Questar Tariff paragraph 2.02 GS-1 rates that the applicants or stipulants are seeking;

5.7.2 to obtain my approval of the text, layout and publication schedule of the notice; and then

5.7.3 at its own expense, to publish the notice twice in the Main News Section of both the Deseret Morning News and the Salt Lake Tribune, at least

2 columns wide and 8 inches high within a bold border, first approximately two weeks before the hearings, and again about one week before but on a different day of the week and on a different page; and

5.8 not adopt the conditions recommended in either of the alternative paragraphs 2 in the Committee's Request for Clarification.

Respectfully submitted on 13 February 2007,

Roger J Ball

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Reconsideration of Notice of Additional Hearing and Responses to Utah Committee of Consumer Services' Request for Clarification and Memorandum in Docket 06-057-T04 was served upon the following by electronic mail on 24 January 2007:

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