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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application  
of Questar Gas Company to  
Increase Distribution Non-gas  
Rates and Charges  
and Make Tariff Modifications

Docket No 07-057-13

REPLY TO RESPONSE OF QUESTAR GAS TO  
REQUEST OF ROGER J BALL FOR PUBLICATION  
OF NOTICE OF APPLICATION TO INCREASE RATES  
AND OF HEARINGS; TO SUBDIVIDE INTERVENTION;  
TO EXPEDITE TEST PERIOD INTERVENTION  
AND THE EXCHANGE OF DATA; AND TO INTERVENE

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I respectfully request that the Public Service Commission of Utah (1) immediately approve my intervention in this matter and (2) dismiss Questar Gas Company's *Response* because it is out of time or, in the alternative, deny the *Response* because its entire content is either moot or lacking in merit.

1 THE DEADLINE ESTABLISHED BY THE COMMISSION FOR OBJECTIONS TO IT HAVING PASSED WITH NO OBJECTIONS FILED, MY REQUEST TO INTERVENE IN THIS MATTER SHOULD BE APPROVED IMMEDIATELY

1.1 On 24 December 2007, I filed my *Request for Publication of Notice of Application to Increase Rates and of Hearings; to Subdivide Intervention; to Expedite Test Period Intervention and the Exchange of Data; and to Intervene (Request)*. In pertinent parts I wrote:

during the 20 December Scheduling Conference the notion was advanced that any motion requesting a *test period* hearing should be filed by 4 January 2008, but potential intervenors requested that the cut-off date for such a motion should be 11 January with a 7 calendar day

turnaround for *test period* discovery prior to the filing of direct testimony on the date proposed by the Commission, 25 January;<sup>1</sup>

it appeared that the 11 January intervention deadline, and requirement to file any objections by 17 January (just three business days later), in the Proposed Schedule was intended to facilitate participation in any *test period* segment of this proceeding;<sup>2</sup>

using the timescales provided in UAC §746-100-4(D) the Commission might not be able to approve a request to intervene filed concurrently with this one before 21 January at the earliest, prior to which parties could decline to answer any discovery, and object to any motion, regarding *test period* on the grounds that the requester had not yet been granted intervention, thus depriving the requester of the legitimate opportunity to request a *test period* hearing, and of reasonable time to prepare and file testimony by 25 January if such a hearing is convened for any reason;<sup>3</sup>

there appears to be no insurmountable reason why the Commission could not subdivide intervention as it has the proceeding, providing an expedited process with an early deadline for early requesters who might want to move for or participate in a *test period* hearing, and a more usual timescale allowing time for Rocky Mountain Power to publish notice so that a larger number of those who stand to be affected by the proposed rate increase may become aware of it and to give due opportunity for a better-informed public to decide whether to seek intervention in the later stages;<sup>4</sup>

I request that the Commission subdivide intervention in this proceeding, providing first an expedited process that will allow a requester who files on 11 January to be granted intervention no later than 21 January and to conduct two rounds of discovery before filing direct testimony on 25 January.<sup>5</sup>

Emphases added.

1.2 On 27 December, the Commission issued its *Scheduling Order* in this Docket stating that:

Objections to an intervention request of a person raising test year issues are to be made within 5 calendar days after service of the intervention request and replies to any objections shall be made within 5 calendar days after service of an objection.<sup>6</sup>

While this did not exactly accord with my *Request*, I am not aware of any discussion during the Scheduling Conference, or of any other information provided to the Commission from any other

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<sup>1</sup> *Request*, paragraph 6.

<sup>2</sup> *Request*, paragraph 7.

<sup>3</sup> *Request*, paragraph 10.

<sup>4</sup> *Request*, paragraph 11.

<sup>5</sup> *Request*, page 6 of 8, first complete paragraph, first sentence.

<sup>6</sup> *Scheduling Order*, under 2 *Intervention*, B *Test year issues*, second sentence.

interested person, that might have caused it to include this provision. Nowhere did the Commission specify *how* a person requesting intervention should make known that he is contemplating raising test year issues in order to qualify for the expedited objection and reply schedule. However, my *Request* had been filed three days prior to the *Scheduling Order* being issued; the extracts from the *Request* quoted above ought to have sufficiently announced to the Commission and parties my interest in any Test Year component of this proceeding; the Commission should apply the expedited schedule for “a person raising test year issues” to my *Request*; the deadline for objections to my *Request* expired 5 calendar days after it was filed, or on 31 December 2007; no objections were filed by that date; and the Commission should forthwith approve my intervention.

1.3 However, on 8 January, Questar Gas Company (QGC) filed and served upon me its *Response of Questar Gas to Request of Roger J Ball (Response)*.

## 2 QUESTAR GAS COMPANY'S RESPONSE SHOULD BE DISMISSED BECAUSE IT IS OUT OF TIME, AND THE PARTS RELATED TO THE SCHEDULE WERE MOOT WHEN IT WAS FILED

2.1 Commission Rule UAC §746-100-4(E) states:

The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

If the Commission intended that part of its *Scheduling Order* quoted in paragraph 1.2 above to me modified by the terms of §746-100-4(E), this *Reply* is timely filed. If not, I request that the Commission permit me to file this *Reply to Response of Questar Gas to Request of Roger J Ball (Reply)* out of time because I was unable to file it on Saturday 12 or Sunday 13 January since the Commission's offices were closed to the public on those days.

2.2 In its preamble, QGC says:

The Request is procedurally irregular in that it raises issues previously raised by Mr. Ball in a Scheduling Conference before the Commission issued its Scheduling Order on December 27, 2007. Many aspects of the Request have been rendered moot by the Scheduling Order.

This argument was moot before the Company filed its *Response* on 8 January 2008 in light of the Commission's *Scheduling Order* issued on 27 December 2007 which, in pertinent part, states: "Based on the information presented by interested persons *and* the discussion at the ... Scheduling Conference".<sup>7</sup> That appears to mean that the Commission took account of the scheduling aspects of my *Request* in formulating its *Scheduling Order*.

2.2.1 Unfortunately, there is no recording or transcription of the 20 December 2007 Scheduling Conference conducted by the Commission's Secretary against which to incontrovertibly check QGC's first assertion. It was a conference, not a hearing; no commissioner was in attendance; some of the issues were complex, particularly those around intervention and a possible test year hearing; it was not unreasonable for me to put my arguments in writing to avoid misunderstanding; and I made haste to do so over the weekend following the Conference in order not to cause delay. The *Scheduling Order* which sprang, it appears, in part from my *Request* was issued three days after the *Request* that QGC now represents as "procedurally irregular" was filed, rendering QGC's first assertion moot, and 12 days before QGC filed its *Response*, making the Company's second assertion both out of time and moot.

2.2.2 The Commission issued its *Notice of Scheduling Conference* on 13 December 2007, six days before QGC filed its *Application* on 19 December. I did not receive a copy, and first became aware of it when I searched the Commission's website after the Utah Division of Public Utilities

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<sup>7</sup> *Scheduling Order*: preamble, first sentence.

emailed me its scheduling proposal on the afternoon of 19 December. At that point in time, the latest entry in the Commission's website log was dated 27 November 2007.

2.2.3 I don't know when QGC received the Division's scheduling proposal, but I first saw it barely in time to print and bring a copy to the Conference. I didn't receive copies of QGC's or the Commission's proposals until they were handed around during the Conference. This extremely compressed timeframe hardly allowed me to fully absorb the Division's proposal, much less research all the arguments that I might wish to advance during the Scheduling Conference itself.

2.2.4 Although my recollection is that I raised the possibility of bifurcating intervention during the Conference, I did not explore it in the detail set out in paragraphs 9, 10, 11 and the first, second and third complete paragraphs on page 6 of my *Request*. Although I made a general request during the Conference for notice to be published of the Application, I was not yet in a position to support it with the arguments set out in paragraphs 9, 12, 13, the last paragraph beginning on page 5, the third complete paragraph on page 6, and the first complete paragraph on page 7 of my *Request*, including the citations to Commission Rule §746-100-4(C) and to UCA §17B-1-643(2)(b), neither of which were mentioned during the Conference.

2.2.5 To the extent that the Commission considered my *Request* in preparing its *Scheduling Order*, it did so quite properly.

2.3 Questar Gas Company failed to respond to my *Request* either by Saturday, 29 December, the 5 calendar days specified in the Commission's *Scheduling Order* or by Monday, 31 December, as more leniently calculated under §746-100-4(E). In fact, the date on which the utility filed its *Response*, 8 January 2008, was 15 calendar days after service of my *Request*. Even if counted from the issue of the *Scheduling Order*, the *Response* was filed 12 calendar days later. QGC's *Response* was out of time, and should be dismissed.

3 THE PARTS OF QUESTAR GAS COMPANY'S RESPONSE NOT RELATED TO THE SCHEDULE LACK MERIT

3.1 QGC "takes no position on whether the Commission should grant intervention to Mr Ball in his role as an individual residential customer"; points out that "the (Utah) Committee (of Consumer Services) is charged with representing the interests of residential and small commercial customers; and notes that the Commission, in previously granting intervention to an individual residential customer in a general rate case, Docket 95-049-05, conditioned it "in ways designed to minimize possible disruption to the prompt and orderly conduct of the proceeding and to assure that participation was not duplicative of the Committee's efforts."

3.2 QGC's "no position" claim rapidly evaporates in the face of the remainder of Part III of its *Response*. Clearly the Company takes a number of positions, all intended to constrain my ability to act freely in pursuit of my legal interests if granted intervention in this matter.

3.3 In fact, the Committee is statutorily mandated "on its own behalf and in its own name ... as determined by the committee" to "advocate ... positions most advantageous to a majority of residential consumers".<sup>8</sup> There have been several instances where I have not only disagreed that positions advocated by the Committee were most advantageous to me, but also that they were most advantageous to a majority of ratepayers.

3.4 Previously, in *The Matter of the Application of Questar Gas Company for Recovery of Gas Management Costs in its 191 Gas Cost Balancing Account*, 05-057-01 and associated dockets, more than 1700 natural gas ratepayers were sufficiently dissatisfied that the Committee was advocating positions most advantageous to them that they signed Statements in Support of a Request to Intervene by Claire Geddes and me. Later, 55 ratepayers, including 3 who were

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<sup>8</sup> Utah Code Annotated §54-10-4(3).

Questar Corporation stockholders and 2 small business owners, joined in a Petition to the Utah Supreme Court for Judicial Review of the Commission's denial of that Request. In its 12 October 2007 opinion in cases 20060279 and 20060280, the Court affirmed "the Commission's Intervention Order denying Ball and Geddes intervention in the Commission proceedings" apparently because "both Ball and Geddes were familiar with the proceedings and, had they wanted to intervene, they should have done so in a more timely manner."

3.5 My *Request* in this matter was timely filed, and is similar to the one I filed on 2 February 2006 in QGC's *Application for Approval of a Conservation Enabling Tariff Adjustment Option and Accounting Orders*, Docket 05-057-T01.<sup>9</sup> On that occasion QGC did object to my intervention, *inter alia* because:

Appropriate intervention also requires that the "interests of justice . . . will not be materially impaired by allowing the intervention."<sup>10</sup> 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 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."<sup>11</sup> 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.

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<sup>9</sup> Paragraphs 16 and 17 of this present *Request* are substantially the same as paragraphs 6, 7 and 8 of that previous request.

<sup>10</sup> See Utah Code Ann. § 63-46b-9(2)(b).

<sup>11</sup> Request at 2.

3.6 Nevertheless, in its 21 February 2006 *Order Granting Intervention* in that proceeding, the Commission said:

We do not make as constrained an application of 63-46b-9(2)(a) as argued by Questar. We believe the legal interests upon which intervention may be based need not be as unique from existing parties or other customers as argued by Questar; particularly where numerous customers have not sought intervention. We appreciate what we believe is the gravamen of Questar's opposition to Mr Ball's intervention, the effect of multiple customer intervention on the orderly and prompt conduct of our proceedings. However, at this time, Questar has only identified speculative negative impact intervention could have in proceedings conducted by the Commission. We have confidence in our authority and ability to properly conduct our proceedings and limit obstreperous behavior.

3.7 Offering testimony and legal argument that the utility, regulatory agencies and others would prefer went unexpressed does not constitute obstreperous behaviour, rather it is the expression of free speech, the exercise of the right to petition government, and should not only be tolerated, but encouraged in administrative proceedings.

3.8 Questar asserts that:

Commission rules require representation of parties by a licensed attorney except that an individual party, not an attorney, may represent his or her own interests and officers or employees of a party may represent their principal's interests. Utah Admin. Code R746-100-6.B. Therefore, the Commission should make clear in any order granting intervention to Mr. Ball that his intervention is only to represent his own interests and must be consistent with Commission rules.

The Company misrepresents the Rule, which says only that "parties *may* be represented by an attorney", although it does provide that "individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding." Utah Supreme Court Rule of Professional Practice 13A-1.0(c)(8) excepts persons, inter alia, "(a)cting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice" from the general provision that "only persons who are active, licensed members of the Utah State Bar in good standing may engage in the practice of law in Utah."



3.9 When the Committee of Consumer Services chose to support an agreement between itself, the Division, the Company, and others in the *Application to Remove GSS and EAC Rates from Questar Gas Company's Tariff*, Docket 06-057-T04, the Commission granted my intervention request the day after it was filed. The only party left representing the interests of some 800,000 residential ratepayers was me, and the Commission substantially agreed with me. It probably wouldn't have done that if my interests didn't coincide with those of the great majority of other residential ratepayers.

3.10 I will be very happy if the Committee in this proceeding adopts only positions, and all of the positions, that I agree are most advantageous to me and to other similarly situated QGC customers. On the chance that it will not, I should be granted intervention to represent my interests as they appear. On the chance that my interests may coincide with those of others, I should be allowed to point that out.

3.10 QGC's arguments that are not out of time because its *Response* was filed after 31 December 2007, or moot because it was filed after the Commission issued its *Scheduling Order* on 27 December, are entirely lacking in merit. The Commission should grant my request to intervene forthwith.

4 REQUEST FOR RELIEF

I therefore request that the Commission (1) immediately approve my intervention in this matter and (2) dismiss Questar Gas Company's *Response* because it is out of time or, in the alternative, deny the *Response* because its entire content is either moot or lacking in merit.

Respectfully submitted on 14 January 2008,

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Roger J Ball

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Response of Questar Gas, etc, in Docket 07-057-13 of Roger J Ball was hand delivered, sent by United States mail, postage prepaid, or mailed electronically on 14 January 2008, to the following:

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