

Colleen Larkin Bell (5253)  
Questar Gas Company  
180 East First South  
P.O. Box 45360  
Salt Lake City, UT 84145-0360  
(801) 324-5556  
(801) 324-5935 (fax)  
[colleen.bell@questar.com](mailto:colleen.bell@questar.com)

Gregory B. Monson (2294)  
Stoel Rives LLP  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111  
(801) 578-6946  
(801) 578-6999 (fax)  
[gbmonson@stoel.com](mailto:gbmonson@stoel.com)

*Attorneys for Questar Gas Company*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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  <b>MOTION OF QUESTAR GAS TO STRIKE RATE OF RETURN DIRECT TESTIMONY OF ROGER J. BALL</b>
---	---

Questar Gas Company (“Questar Gas” or the “Company”) moves the Commission to strike the Rate of Return Direct Testimony of Roger J. Ball dated March 31, 2008 (“Testimony”) pursuant to Utah Administrative Code R746-100-3.H and R746-100-10.F.1. The Testimony is not probative or relevant and seeks relief that is barred by prior Commission orders. Therefore, it should be stricken.

**INTRODUCTION**

Questar Gas filed its Application in this docket on December 19, 2007, seeking an increase in its rates and charges. The Application was supported by the sworn testimony of nine

witnesses, including two witnesses, Robert B. Hevert and John J. Reed, providing qualified expert analysis and opinion on the rate of return on equity (“ROE”) that is just and reasonable.<sup>1</sup> Mr. Ball was granted intervention in this docket through an Order Granting Intervention issued January 28, 2008.

The Commission issued its Scheduling Order on December 27, 2007. The Scheduling Order divided the case into various phases and issues and set filing dates and hearings on those issues. On February 14, 2008, the Commission issued its Order on Test Period, ordering that a 2008 calendar year test period be used in the case and rejecting Mr. Ball’s contention that the Company could not seek rate relief because its 2007 earnings were near its authorized ROE. Order on Test Period at 4-5.

The Scheduling Order required parties other than the Company to file their testimony on rate of return by March 31, 2008. In response, Mr. Ball filed the Testimony. The Testimony does not provide probative or relevant evidence on ROE. Instead it complains about Questar Corporation’s holding company structure, raises a litany of perceived grievances similar to those raised by Mr. Ball in other Questar Gas cases and seeks imputations based on those issues. Conspicuously, the Testimony does not even mention, let alone attempt to rebut, the testimony of Mr. Hevert or Mr. Reed, nor does it contain analysis of the required ROE for the Company or comparable companies. The Testimony concludes with a recommendation that the Commission adjust ROE downward by \$22 million, the amount of rate increase sought by the Company.

---

<sup>1</sup> Alan K. Allred and David M. Curtis also provided qualified expert testimony relevant to certain cost of capital issues.

## ARGUMENT

### I. MR. BALL DOES NOT PROVIDE PROBATIVE OR RELEVANT EVIDENCE.

The Commission is not bound by the technical rules of evidence, but may not base a finding solely on incompetent evidence and may exclude non-probative and irrelevant evidence. Utah Admin. Code R746-100-10.F.1. The testimony does not provide probative or relevant evidence on ROE.

#### A. The Testimony Is Not Probative.

Rule 702 of the Utah Rules of Evidence provides:

(a) Subject to the limitations in subsection (b), if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of any opinion or otherwise.

(b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony if the scientific, technical, or other principles or methods underlying the testimony meet a threshold showing that they (i) are reliable, (ii) are based upon sufficient facts or data, and (iii) have been reliably applied to the facts of the case.

(c) The threshold showing required by subparagraph (b) is satisfied if the principles or methods on which such knowledge is based, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.

The central point of the rule is that expert opinion evidence must be provided by an expert qualified by knowledge, skill, experience, training or education, must be reliable and must be based on facts and methods of analysis generally accepted by relevant experts.<sup>2</sup>

The United States Supreme Court has established that determination of the cost of capital to be used in setting just and reasonable utility rates is based on the return “being made at the

---

<sup>2</sup> See *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Franklin v. Stevenson*, 1999 UT 61, ¶¶ 13-18, 987 P.2d 22; *Patey v. Lainhart*, 1999 UT 31, ¶¶ 15-19, 977 P.2d 1193.

same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.”<sup>3</sup> The Court has consistently reaffirmed this foundational principle of ratemaking.<sup>4</sup> This Commission has consistently followed this principle and has been upheld by the Utah Supreme Court in doing so.<sup>5</sup>

Pursuant to this principle, expert witnesses providing probative evidence on ROE utilize financial models to estimate the return expected by investors in utility companies with risks corresponding to those of the company whose rates are being set. As the Commission has repeatedly acknowledged, however, determination of ROE is not simply a mathematical exercise, but requires the application of expert judgment on the inputs, use and weighting of the results of the models and on other factors.<sup>6</sup> Expert witnesses offer informed opinions on the ROE required by investors.

Mr. Ball’s Testimony does not even purport to estimate Questar Gas’ required ROE based on information and methods typically relied upon by cost of capital experts. The only

---

<sup>3</sup> *Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679, 692 (1923) (“*Bluefield*”).

<sup>4</sup> See, e.g. *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“*Hope*”) (“[T]he return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.”).

<sup>5</sup> *Utah Power & Light v. Public Service Comm’n*, 152 P.2d 542 (Utah 1944) (general discussion of and reliance on *Hope*); *Mountain Fuel Supply Co. v. Public Service Comm’n*, 861 P.2d 414, 427 (Utah 1993) (citing *Bluefield* and *Hope* for the proposition that “[t]he primary substantive limitation on the Commission’s authority is that it cannot establish a rate of return that is insufficient to assure confidence in the financial integrity of the utility, such that it would undermine its credit and capital.”); *Re U S West Communications, Inc.*, 1997 WL 875832, \*438 (Utah PSC 1997) (“*U S West*”) (referring to *Bluefield* and *Hope*: “As we have stated many times, these cases counsel us to reach a decision which gives investors the opportunity to earn returns sufficient to attract capital and that are comparable to returns investors require to assume the same degree of risk in other investments they might make. Investors’ required return, the opportunity cost of capital, is the utility’s cost of capital.”)

<sup>6</sup> See, e.g. *U S West*, 1997 WL 875832, \*437 (“We conclude that cost-of-capital estimation is a larger task than mere mathematical application of financial models ....” “We look to be sure witnesses have done the best they can to employ *sound, educated judgments*) (emphasis added).

aspect of the Testimony that addresses ROE is Mr. Ball's recommendation that the Company's ROE be reduced by \$22 million, the amount of the rate increase sought by Questar Gas in this case based on a 2008 test period. Mr. Ball offers no analysis of ROE based on facts and methods reasonably relied upon by experts in the field to support his recommendation.

**B. The Issues Discussed in the Testimony Are Irrelevant to ROE.**

Mr. Ball's Testimony starts with a review of evidence presented regarding the earnings of the Company in 2007 and prior years and its projected earnings in 2008 absent a rate case. Mr. Ball proceeds, as he did in his testimony on test period, to argue that because the Company did not file a rate case in years when its return was in the same range as it was in 2007, it should not be allowed to file a rate case now. This testimony has nothing to do with the Company's ROE for purposes of this case.

Mr. Ball proceeds to argue that Questar Gas' direct contribution to Questar Corporation profits is only a fraction of its value to stockholders. He then reviews the history of various reorganizations of and property transfers by Mountain Fuel Supply Company ("MFS"), including the establishment of Wexpro Company ("Wexpro"), Questar Exploration and Production Company ("QEP") and Questar Pipeline Company ("QPC"). Mr. Ball raises the coal-seam gas issue and recommends that the Commission impute profits from Wexpro and revenues from QEP and QPC. Finally, he recommends that the Commission comprehensively investigate the Questar Corporation family of companies. None of this discussion has any bearing on the cost of equity capital of Questar Gas.

Mr. Ball next discusses the Conservation Enabling Tariff ("CET"), the Company's southern area expansion and proposed expansion area tariff changes, the Company's participation as a sponsor of the 2002 Winter Olympics and the current customer complaints resulting from back-billing resulting from transponder problems that is being investigated in

Docket No. 08-057-11 as evidence of the Company's aversion to risk. He discusses management compensation and claims it creates an incentive for managers to benefit stockholders at the expense of customers. He then addresses House Bill 320 passed in the 2000 General Session of the Utah Legislature and Senate Bill 61 passed in the 2003 General Session, bemoaning the fact that the Legislature has opened the door to the use of future test periods in setting rates.<sup>7</sup> He claims all of the foregoing transfer risk from stockholders to customers. Again, none of this discussion addresses the ROE that should be used in setting Questar Gas' revenue requirement in this case or provides any analytical framework for comparison of the risks or performance of Questar Gas to a proxy group of companies.

Finally, Mr. Ball concludes with a recommendation that the Commission should adjust the Company's authorized ROE downward by \$22 million to restore the balance of risks. The Testimony provides no expert analysis of cost of capital in support of this recommendation.

In short, none of Mr. Ball's Testimony is relevant to a determination of ROE, so it should be stricken.

---

<sup>7</sup> Mr. Ball consistently raises these same issues in his testimony or argument in every Questar Gas docket in which he participates. The Commission has previously informed him that this testimony and argument are inappropriate. For example, Mr. Ball made similar arguments about affiliates and raised questions regarding the coal-seam gas case during the hearing in the CET case. The Commission sustained objections to questions about the coal-seam gas docket. Docket No. 05-057-T01, Transcript (May 27, 2006) at 106-107, 113-114. During the course of a hearing on expansion area rates, the Commission repeatedly admonished Mr. Ball regarding statements similar to those in his Testimony and struck certain statements from the record, noting that they were improper and irrelevant. Docket No. 06-057-T04, Transcript (Mar. 27, 2007) at 132-139, 159-161. Ultimately, the Commission determined that the best way to deal with Mr. Ball's improprieties was to treat them as argument rather than evidence. Decision and Order Designating Oral Presentation as Argument, *In the Matter of the Application to Remove GSS and EAC Rates from Questar Gas Co.'s Tariff*, Docket No. 06-057-T04 (Utah PSC Apr. 2, 2007).

## II. MR. BALL'S CONTENTIONS ARE BARRED BY RES JUDICATA AND LAW OF THE CASE.

Mr. Ball devotes nearly half of the Testimony to complaints about reorganizations of and property transfers by MFS, including the 1981 Wexpro Stipulation and Agreement (“Wexpro Settlement”). Aside from numerous factual inaccuracies, the Testimony fails to mention that the Commission and the Federal Energy Regulatory Commission (“FERC”) previously approved each of those reorganizations and property transfers.<sup>8</sup> The Testimony also fails to acknowledge the Utah Supreme Court’s unequivocal holding that the Commission’s approval of the Wexpro Settlement is res judicata,<sup>9</sup> a holding that would apply equally to approvals of the other reorganizations and property transfers.

In its *Order Approving Wexpro Settlement*, the Commission found as a matter of fact and concluded as a matter of law that the transfer of properties was for fair market value, that appropriate benefits redounded to customers and that the Wexpro Settlement was in the public interest.<sup>10</sup> The Commission emphasized the importance of finality:

The Commission’s findings and conclusions with regard to the transfer of properties and the allocation of benefits contemplated by the Settlement, including the findings and conclusions that the transfer of properties and the allocation of benefits are reasonable and for market value and are in the public interest, are intended by the Commission to be final and not subject to future change (except through an appropriate and timely petition for rehearing or judicial review). The Commission so concludes because to insure the proper development of said properties the parties must be able to rely on the finality of the findings and conclusions

---

<sup>8</sup> See Report and Order on Stipulation and Agreement, Case No. 76-057-14 (Utah PSC Dec. 31, 1981) (“*Order Approving Wexpro Settlement*”); *Mountain Fuel Supply Co.*, 24 FERC ¶ 61,120 (1983); Order, Docket No. 84-057-10 (Utah PSC Oct. 1, 1984).

<sup>9</sup> *Utah Dep’t of Admin. Services v. Public Service Comm’n*, 658 P.2d 601, 621 (Utah 1983) (“*Wexpro IP*”).

<sup>10</sup> *Order Approving Wexpro Settlement*, Findings of Fact 8-12; Conclusions of Law 5-6.

in regard to the transfer of properties and apportionment of benefits. The Commission also [is] entitled to rely on the finality of its order.<sup>11</sup>

On appeal, the Utah Supreme Court not only upheld the Commission's decision, it concluded that it was res judicata. The Court held:

In this case, the principle of *res judicata* assures finality to those provisions of the Commission's order that allocate benefits and establish the parties' rights (*e.g.*, royalties and net profits interests and financial commitments for sale of gas and for development and rate-reduction payments) in the properties transferred under the order or designated for exploration or development under it.<sup>12</sup>

Contrary to Mr. Ball's claim that the Company produced 100 percent of its customers' gas requirements prior to Wexpro but that "Wexpro sat on the properties previously owned by the utility and did little to find or develop additional supplies" (Testimony at lines 63-65), MFS supplied about 30 percent of its total customers' gas requirements from Company-owned wells at cost-of-service prices prior to Wexpro (Wexpro Stipulation ¶ 1.2), and Wexpro has produced over one trillion cubic feet of gas for customers and generally supplies about 40 to 45 percent of the Company's firm sales customers' gas requirements at cost-of-service prices today. The Wexpro Settlement has been a boon to customers, saving them approximately \$1.5 billion in gas costs over the past 26 years.<sup>13</sup>

Similarly, FERC approved MFS' application to transfer its production and transmission functions to subsidiaries, including the transfer of transmission pipelines to Mountain Fuel Resources ("Resources"), the predecessor of QPC. The Commission, the Wyoming Public Service Commission and the National Association of Regulatory Utility Commissioners opposed some aspects of the application on jurisdictional grounds. FERC approved the application and

---

<sup>11</sup> *Id.*, Conclusion of Law 6.

<sup>12</sup> *Wexpro II*, 658 P.2d at 621 (emphasis in original).

<sup>13</sup> QGC Exhibit 2.0, lines 201-207.



rejected the contentions of the state regulators.<sup>14</sup> The Commission and other parties appealed FERC's decision to the Tenth Circuit Court of Appeals. The Court of Appeals upheld FERC's decision.<sup>15</sup> These decisions are also res judicata.

Likewise, when MFS reorganized by creating Questar Corporation as a parent holding company and making MFS and Resources separate subsidiaries of Questar Corporation in 1984, the Commission carefully reviewed the proposed structure to determine if it had any impact on MFS' rates or quality of service, the Commission's ability to regulate MFS, or the Wexpro Settlement. The Commission concluded that it did not have any adverse impacts and authorized the Company to proceed with the reorganization.<sup>16</sup> That order was not appealed and became final and res judicata with regard to this reorganization.

As a result of these reorganizations, QPC's rates and terms and conditions of service have been regulated by FERC for approximately 30 years. As a result of subsequent FERC orders,<sup>17</sup> QPC is an open-access common carrier and is strictly prohibited from discriminating in favor of Questar Gas or its customers.

Mr. Ball asks the Commission to ignore these prior rulings and impute Wexpro's profits and a portion of QEP's and QPC's revenues to lower Questar Gas' rates. Doing so is barred by res judicata and would be clear error.

Mr. Ball's Testimony also raises miscellaneous issues such as coal-seam gas processing, the CET, the expansion area cases, the gas burned in the 2002 Olympic torch and the current

---

<sup>14</sup> *Mountain Fuel Supply Co.*, 24 FERC ¶ 61,120.

<sup>15</sup> *National Ass'n of Regulatory Utility Commissioners v. Federal Energy Regulatory Comm'n*, 823 F.2d 1377, 1378, 1388 (10<sup>th</sup> Cir. 1987).

<sup>16</sup> Order, Docket No. 84-057-10 (Utah PSC Oct. 1, 1984).

<sup>17</sup> See e.g. Order No. 436, 1982-85 FERC Stats. & Regs., Regs. Preambles ¶ 30,665 (1985); Order No. 636, 1991-96 FERC Stats. & Regs., Regs. Preambles, ¶ 30,939 (1992).

transponder issue. Each of these issues, except the last one, has been resolved in prior litigation. The last one is subject to a current investigatory proceeding. Mr. Ball has participated in most of these proceedings. But whether he participated in them or not, he should not be allowed to retry these issues in every new Questar Gas docket.

Finally, Mr. Ball continues to claim either that Questar Gas cannot file a rate case based on projected 2008 earnings or that its projected underearning in 2008 should be nullified by an ROE adjustment that has no basis in cost of capital analysis. In its Order on Test Period, the Commission expressly rejected his argument that Questar Gas could not file a rate case until it was underearning. Furthermore, in adopting a 2008 test period, the Commission implicitly rejected his argument that the rate case cannot be based on projected underearnings. This ruling is the law of the case. Mr. Ball should not be allowed to continue to argue positions in this docket that the Commission has already rejected.

### **CONCLUSION**

Based on the foregoing, Questar Gas respectfully submits that the Commission should strike Mr. Ball's Testimony.

RESPECTFULLY SUBMITTED: March 28, 2018.

---

Colleen Larkin Bell  
Questar Gas Company

Gregory B. Monson  
Stoel Rives LLP

*Attorneys for Questar Gas Company*

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **MOTION OF QUESTAR GAS TO STRIKE RATE OF RETURN DIRECT TESTIMONY OF ROGER J. BALL** was served upon the following persons by email on March 28, 2018:

Michael Ginsberg  
Patricia E. Schmid  
Assistant Attorney Generals  
160 East 300 South  
P.O. Box 140857  
Salt Lake City, UT 84114-0857  
[mginsberg@utah.gov](mailto:mginsberg@utah.gov)  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Paul H. Proctor  
Assistant Attorney General  
160 East 300 South  
P.O. Box 140857  
Salt Lake City, UT 84114-0857  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Gary A. Dodge  
Hatch, James & Dodge  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

Kevin Higgins  
Neal Townsend  
Energy Strategies  
39 Market Street, Suite 200  
Salt Lake City, UT 84101  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)  
[ntownsend@energystrat.com](mailto:ntownsend@energystrat.com)

F. Rober Reeder  
William J. Evans  
Vicki M. Baldwin  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
[bobreeder@parsonsbehle.com](mailto:bobreeder@parsonsbehle.com)  
[bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com)  
[vbaldwin@parsonsbehle.com](mailto:vbaldwin@parsonsbehle.com)

Damon E. Xenopoulos  
Shaun C. Mohler  
Brickfield, Burchette, Ritts & Stone,  
P.C.  
105 Thomas Jefferson Street, N.W.  
800 West Tower  
Washington, DC. 20007  
[dex@bbrslaw.com](mailto:dex@bbrslaw.com)  
[scm@bbrslaw.com](mailto:scm@bbrslaw.com)

Ronald J. Day, CPA  
Central Valley Water Reclamation  
Facility  
800 West Central Valley Road  
Salt Lake City, UT 84119  
[dayr@cvwrf.org](mailto:dayr@cvwrf.org)

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)

Gerald H. Kinghorn  
Jeremy R. Cook  
Parsons Kinghorn Harris. P.C.  
111 East Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[ghk@pkhlawyers.com](mailto:ghk@pkhlawyers.com)

Lee R. Brown  
Roger Swenson  
US Magnesium LLC  
238 North 2200 West  
Salt Lake City, UT 84116  
[lee.brown@prodigy.net](mailto:lee.brown@prodigy.net)  
[roger.swenson@prodigy.net](mailto:roger.swenson@prodigy.net)

Utah Ratepayers Alliance  
c/o Betsy Wolf  
Salt Lake Community Action Program  
764 South 200 West  
Salt Lake City, Utah 84101  
[bwolf@slcap.org](mailto:bwolf@slcap.org)

Roger J. Ball  
1375 Vintry Lane  
Salt Lake City, UT 84121  
[ball.roger@gmail.com](mailto:ball.roger@gmail.com)

---