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**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 SURREBUTTAL TESTIMONY OF ROGER J. BALL</b>

Questar Gas Company (“Questar Gas” or the “Company”) moves the Commission to strike the Rate of Return Surrebuttal Testimony of Roger J Ball dated May 12, 2008 (“Surrebuttal Testimony”) pursuant to Utah Administrative Code R746-100-3.H and R746-100-10.F.1. The Surrebuttal Testimony is not probative or relevant, seeks relief that is barred by prior Commission orders and is unduly repetitious. Therefore, it should be stricken.

**ARGUMENT**

Mr. Ball’s Surrebuttal Testimony suffers from the same defects as his Direct Testimony and Rebuttal Testimony. Questar Gas incorporates in this argument the points made in its

motions to strike Mr. Ball's Direct and Rebuttal Testimony. The Surrebuttal Testimony does not provide probative or relevant evidence on the rate of return on equity ("ROE") being earned by investors in other companies of corresponding risk or whether an ROE allowed will maintain the financial integrity of the Company or allow it to attract the capital necessary to serve the public on reasonable terms.<sup>1</sup> Mr. Ball continues to recommend that the Commission make imputations from affiliates of Questar Corporation to Questar Gas. (Surrebuttal Testimony at lines 25-27.) These recommendations are not only unfounded and irrelevant to making a determination of ROE, they are barred by res judicata and law of the case. In addition, the Surrebuttal Testimony offers no new information and is, thus, unduly repetitious. Rule R746-100-10.F.1 allows the Commission to exclude unduly repetitious evidence.

Mr. Ball claims in the Surrebuttal Testimony that his ROE testimony stands uncontroverted, implying that his mischaracterizations of history and misunderstanding of the issues on ROE are therefore binding. This illustrates a problem with Mr. Ball's understanding of evidence and the requirements of law and process. First, this "testimony," like many other aspects of Mr. Ball's testimony, is more legal argument than evidence. Second, the fact that parties have not filed testimony in response to Mr. Ball's testimony does not affect its inadmissibility or require that the Commission rely on it. The Commission cannot ignore unrebutted competent and credible testimony.<sup>2</sup> It may ignore testimony that is not probative, relevant or credible, that seeks relief barred by res judicata and law of the case, that argues

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<sup>1</sup> See Utah Code Ann. § 54-4a-6(4)(a); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679, 692 (1923); *Mountain Fuel Supply Co. v. Public Service Comm'n*, 861 P.2d 414, 427 (Utah 1993); *Re U S West Communications, Inc.*, 1997 WL 875832, \*438 (Utah PSC 1997).

<sup>2</sup> See *U.S. West Communications v. Public Service Comm'n*, 901 P.2d 270, 275 (Utah 1995) (quoting *Jones v. California Packing Corp.*, 244 P.2d 640, 644 (Utah 1952) ("The law does not invest the Commission with any such arbitrary power to disbelieve or disregard uncontradicted, competent, credible evidence ....").

positions contrary to law, that is unduly repetitious and that consists of inaccurate representation of matters of which the Commission can take notice, unfounded speculation about the Company's and others' motives, unqualified legal opinions, personal perspective on the Company and others, including the Legislature, and advice on how the Commission ought to do its job.

### **CONCLUSION**

Based on the foregoing, Questar Gas respectfully submits that the Commission should strike Mr. Ball's Surrebuttal Testimony as well as his Direct and Rebuttal Testimony on ROE.

RESPECTFULLY SUBMITTED: May 15, 2008.

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## 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 SURREBUTTAL TESTIMONY OF ROGER J.**

**BALL** was served upon the following persons by email on May 15, 2008:

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