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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 for Approval  
of the Wexpro II Agreement

Docket No. 12-057-13  
**RESPONSE OF THE UTAH DIVISION OF  
PUBLIC UTILITIES TO THE UTAH  
OFFICE OF CONSUMER SERVICES'  
REQUEST FOR PRE-HEARING ORDER  
AND SCHEDULE**

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The Utah Division of Public Utilities (“Division”) hereby responds to the Utah Office of Consumer Services’ (“Office”) Request for Pre-hearing Order and Schedule (“Request”) concerning the Application of Questar Gas Company for Approval of the Wexpro II Agreement. The Division has expedited its response in light of the Scheduling Conference currently set for October 3, 2012 in this docket. The Division respectfully requests that the Commission deny the Office’s requests as discussed below and set a schedule for the legal issues to be briefed.<sup>1</sup>

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<sup>1</sup> The Division agrees that this proceeding should be a formal adjudication as the Office argues.

In Paragraph 2,<sup>2</sup> the Office incorrectly states that that the “application seeks to enlarge and extend the 1981 Wexpro Stipulation and Agreement.”<sup>3</sup> To the contrary, as plainly set forth on the face of the Wexpro II Agreement at Paragraph V-17, “Nothing in this Wexpro II Agreement is intended, nor shall it be construed, interpreted or argued, to alter, amend or modify Wexpro I.”<sup>4</sup> Thus, because of its incorrect characterization of the Wexpro II Agreement, the Office’s request for a “repository”<sup>5</sup> concerning what it characterizes as the “complete record”<sup>6</sup> concerning Wexpro I for Case No. 76-57-14 and related documents is irrelevant, unnecessary, and burdensome. To the extent that there is a question of whether the Wexpro I document is “enlarged and extended” by the

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<sup>2</sup> Paragraph 2 states:

Establish within this docket and accessible from the Commission’s website, a repository of all Commission orders and all testimony and parties’ briefs filed in Case No. 76-057-14 and related dockets pertaining to the October 14, 1981 Stipulation and Agreement in the Wexpro and related cases. As the application seeks to enlarge and extend the 1981 Wexpro Stipulation and Agreement, all parties must have access to the record in the Commission cases at issue in the Stipulation and Agreement. Discovery or Utah Government Records Access and Management Act requests from each party who possess or are believed to possess these records will be burdensome and expensive. The Commission is the single entity who is believed to possess the complete record and who can most efficiently provide the parties access to the documentary materials.

Request at p. 1.

<sup>3</sup> Id. at p. 2

<sup>4</sup> See Exhibit D to the Application, p. 21.

<sup>5</sup> Request, Paragraph 2, p. 1.

<sup>6</sup> Request at Paragraph 2, p. 2.

Wexpro II Agreement, the question is of a legal nature considering document interpretation and construction, and is suitable for briefing prior to the Commission's creation of, if ever, the requested repository.

The relief requested in Paragraphs 5, 6, and 8 is unnecessary, improper, and unwarranted.<sup>7</sup> The Office requests the Commission to order that the Division must provide "direct testimony documenting its investigation study, examination and analysis of the initial proposed Wexpro II Agreement,"<sup>8</sup> and document its review and recommendation.<sup>9</sup> Additionally, the Office requests that the Commission order the Division to "file direct testimony containing specific allegations upon which the Division relies to establish its statutory authority to enter the Wexpro II Agreement, to contract with Wexpro Company and to carry out the obligations the Division assumes in the Wexpro II Agreement."<sup>10</sup> Finally, the Office proposes that only after the Division has filed the requested testimony and other filings are made by Questar Gas, does the time to respond to the Application begin to run.<sup>11</sup>

The Division's status as a signatory to the Wexpro II Agreement does not change the appropriate and required procedure for proceedings before this Commission. By signing the Wexpro II Agreement, the Division sought to provide an opportunity for the Commission to evaluate properties, when brought before the

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<sup>7</sup> The Division does not waive any claims of privilege it may have, if any, with regard to the requested information.

<sup>8</sup> Request at Paragraph 5, p. 2.

<sup>9</sup> Id.

<sup>10</sup> Id. at Paragraph 6, pp. 2-3.

<sup>11</sup> Id. at Paragraph 8, p. 3.

Commission, for regulatory treatment. The Office seems to be asserting that the Division's signature on the Wexpro II Agreement renders the Division akin to a "Joint Applicant" with the duty to provide testimony contemporaneously with the Application. The Office's requests for information concerning the statutes the Division relied upon "to enter into the Wexpro II Agreement, contract with Wexpro Company, and to carry out the obligations the Division assumes in the Wexpro II Agreement,"<sup>12</sup> are more suited to a legal challenge of the Division's authority, and should be resolved, if necessary, through thorough briefing - not through the filing of testimony. Indeed, much of the Office's motion asks for what would more properly be filed in response to a legal challenge to the Application. Further, the Division suggests that any motion challenging the legal sufficiency of the Company's Application should be brought in rough accordance with Rule 12 of the Utah Rules of Civil Procedure in a party's initial pleading in the matter. The Division intends to file its testimony in accordance with the schedule set forth at tomorrow's scheduling conference, or as otherwise ordered.

Two of the Office's other requests are premature. The request that "discovery commence immediately"<sup>13</sup> is premature given the legal arguments raised in the Request. If the Commission wishes to schedule legal briefing to run concurrently with factual proceedings, including testimony, in that instance discovery should commence. However, if legal briefing concerning jurisdictional or other threshold issues is to be conducted first, discovery is premature and likely to result in significant resources being wasted if the Commission agrees with a moving party filing a dispositive motion.

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<sup>12</sup> Id. at Paragraph 6, pp. 2-3.

<sup>13</sup> Id. at Paragraph 9, p. 3.

Equally premature is the request to “determin[e] that this matter should not be expedited.”<sup>14</sup> While the Division is not often sympathetic to utility requests to expedite regulatory processes, it is noteworthy that the proceeding in this case is not a proceeding the applicant was obligated to bring. Indeed, given market conditions it may be possible that delays in the proceedings will result in harm to ratepayers. The Division does not object to the Commission providing for an expedited process, through a scheduling order, if it determines such treatment is warranted and due process requirements are met.

Therefore, as stated above, the Division respectfully requests that the Commission deny the relief requested by the Office, except as to the formal nature of this adjudication. The Division also requests that the Commission order that legal issues raised by any party be handled expeditiously regardless of expedited treatment with regard to other issues or consideration of the Wexpro II Agreement and Application.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of October, 2012.

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Patricia E. Schmid  
Attorney for the Division of Public Utilities

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<sup>14</sup> Id. at Paragraph 11, p. 3.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE OF THE UTAH DIVISION OF PUBLIC UTILITIES TO THE UTAH OFFICE OF CONSUMERSERVICES' REQUEST FOR PRE-HEARING ORDER AND SCHEDULE** was served on the following by electronic mail on October 2, 2012:

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