

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application
of Questar Gas Company for
Approval of the Wexpro II
Agreement

Docket No. 12-057-13

~~~~~  
HEARING PROCEEDINGS  
~~~~~

TAKEN AT: Public Service Commission
Hearing Room 451
160 East 300 South
Salt Lake City, Utah

DATE: Thursday, October 4, 2012

TIME: 10:03 a.m.

REPORTED BY: Scott M. Knight, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

HEARING OFFICER: DAVID R. CLARK

FOR DIVISION OF PUBLIC UTILITIES:

PATRICIA E. SCHMID, ESQ.,

ASSISTANT ATTORNEY GENERAL

160 East 300 South

Fifth Floor

Salt Lake City, Utah 84114

FOR OFFICE OF CONSUMER SERVICES:

PAUL H. PROCTOR, ESQ.,

ASSISTANT ATTORNEY GENERAL

160 East 300 South

Second Floor

Salt Lake City, Utah 84114

FOR QUESTAR GAS COMPANY:

COLLEEN LARKIN BELL, ESQ.

QUESTAR GAS COMPANY

333 South State Street

Salt Lake City, Utah 84111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GREGORY B. MONSON, ESQ.,
STOEL RIVES, LLP
201 South Main Street
Suite 1100
Salt Lake City, Utah 84111

FOR SALT LAKE COMMUNITY ACTION PROGRAM:
BETSY WOLF
(Appearing via telephone)
SALT LAKE COMMUNITY ACTION PROGRAM
764 South 200 West
Salt Lake City, Utah 84101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hearing Proceedings

October 4, 2012

PROCEEDINGS

THE HEARING OFFICER: On the record.

This is the time and place for the continuation of a scheduling conference that was convened and duly noticed. It began yesterday and was continued to today to afford the parties an opportunity to put their positions on the record regarding the schedule for the matter in question, which is the Application of Questar Gas Company for Approval of the Wexpro II Agreement, Docket No. 12-057-13.

And let's take appearances of Counsel. And then I--as I understand it, Mr. Proctor has a matter to present. Let's begin with the applicant.

MS. BELL: Yes, good morning. Colleen Larkin Bell and Gregory B. Monson for Questar Gas Company.

MS. SCHMID: Patricia E. Schmid with the Attorney General's office for the Division of Public Utilities.

MR. PROCTOR: Paul Proctor on behalf of the Office of Consumer Services.

THE HEARING OFFICER: Thank you. Any other appearances? I know we have someone on the phone. Perhaps you could identify yourself. I think it's Betsy Wolf.

MS. WOLF: Thank you. It's Betsy Wolf from Salt Lake Community Action Program.

1 THE HEARING OFFICER: Thank you, Ms. Wolf.
2 Mr. Proctor.

3 MR. PROCTOR: Thank you. After the scheduling
4 conference yesterday, Questar, Ms. Bell, Mr. McKay, and I met
5 to see if we could resolve some of the issues that were --we
6 couldn't resolve yesterday during the conference. And it's my
7 understanding that Questar spoke with the Division
8 representatives and that there's an agreement, but I'm not
9 certain about that. I was not party to that.

10 In any event, if I could just go through and let you
11 know what we've been able to resolve. And I think what that
12 brings is that there's--one issue that we need to address today
13 in oral argument pertaining to our--the Office's request. First of
14 all, it would be a formal adjudicative proceeding. With respect
15 to the 1981 cases revolving around the Wexpro stipulation and
16 agreement, it's my understanding--our understanding that the
17 Commission is going to acquire that file to the extent that it
18 exists, from archives. We don't know how long that's going to
19 take or what the format is or even what it contains, but you're
20 going to do your best to acquire as many of the records of that
21 case as possible. And as you know, we're looking in particular
22 for testimony and briefs. So, you know, we appreciate your
23 effort. And if you would just let us know if we can assist.

24 THE HEARING OFFICER: And I'm prepared to do
25 that today. When you've concluded your--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PROCTOR: Okay. Great.

Insofar as our request that Questar Gas file an amended application, the Office would withdraw that request. And that would also apply to the amended application pertaining to both jurisdictional allegations and contracts with Wexpro upon which the Wexpro II agreement is based. Those may become relevant later. But for right now, those two requests are withdrawn.

It is 5 and 6 of our request for prehearing order that are still--we would ask that you hear this morning. Seven, we didn't really discuss. That's something--that's up to the Commission that's back to the provision of notice of the application. That will proceed in its normal course. I don't have any problem with that. So that we don't need to deal with.

The responses to the application, I think that's in part relative to the proposed schedule that we've come up with that--at this point in time, as to No. 9, we requested the discovery commence immediately and establish the time.

(Telephone interruption.)

THE HEARING OFFICER: Has someone joined the proceeding? Has Ms. Wolf left the proceeding? I think that's what happened.

MR. PROCTOR: Okay.

THE HEARING OFFICER: Mr. Proctor, please continue.

1 MR. PROCTOR: As to discovery, what I would ask
2 is that the allowance for discovery proceed as provided for by
3 the rules. And I believe that that discovery can
4 commence--or--you can ask discovery, but responses are not
5 due until such time as a response is filed or the time for filing a
6 response concludes. And that's 30 days.

7 Honestly, I think if the other parties insist, the
8 Office would postpone discovery on any issue other than those
9 that are going to be raised in the October 26 filing. And that's
10 probably minimal, if any, at all.

11 But anyway, the discovery, I think we're just going
12 to let that take its normal course, as well. That's my
13 understanding. I hope I'm--okay. Mr. McKay is shaking his
14 head yes.

15 Ten we'll deal with on the schedule. Eleven,
16 perhaps there was some misunderstanding on the part of the
17 Office as to what was intended by an expedited proceeding. But
18 at least Questar and the Office have agreed that the
19 hearing--the filings and the hearing that would be scheduled
20 now for November 28, 2012, are not the end of this proceeding,
21 and that as a formal proceeding, in the event that the
22 Commission finds it appropriate that this proceeding continue,
23 then there would be provisions for discovery, testimony,
24 hearings, and so forth.

25 So, it was perhaps the Office's misunderstanding

1 that the intent of the Division and the--Questar was that this
2 case would reach a final order by the end of November of this
3 year. And that is plainly not the case. So, that takes care of
4 that.

5 Now, as to the proposed schedule, there are
6 dispositive motions that the Office is contemplating. And it's no
7 surprise to Questar what they are. So, what we did is moved
8 the initial proposed dates that Questar had filed day before
9 yesterday a little bit to accommodate some of the parties'
10 interests, as well as there was a holiday in the middle and also
11 there was some additional proceedings that parties were
12 involved with. So, the one we handed to you, the proposed
13 schedule, is something that Questar and the Office discussed
14 and would--and agreed to. I understand the Division has
15 agreed, as well. I don't know.

16 And so with that, if that would meet the
17 Commission's needs, then, again, the only thing remaining
18 would be our request 5 and 6 in the--
19 that we would have to hear today.

20 THE HEARING OFFICER: Thank you, Mr. Proctor.

21 Any additional information or comment from the
22 other Counsel here?

23 MS. BELL: Maybe just one comment. And Mr.
24 Proctor's representations regarding the proposed schedule are
25 correct. We did meet and we did meet also with the Division.

1 With regard to the November 28 proposed date for the hearing, I
2 just wanted to mention that we didn't contemplate that a hearing
3 was mandatory. Only necessary, if after review of the briefs the
4 Commission determined in its discretion it wanted to have a
5 hearing. Certainly, if the Commission wanted to just order based
6 on the briefs, it could certainly do that at that time.

7 THE HEARING OFFICER: Thank you. That seems
8 consistent with what I understood Mr. Proctor to say, as well.

9 MR. PROCTOR: Well, of course, yeah.
10 Commission always can forgo a hearing.

11 THE HEARING OFFICER: Ms. Schmid, anything
12 else to add?

13 MS. SCHMID: Yes. The Division agrees with the
14 proposed schedule starting with October 26 and ending with
15 November 28 as proposed. The Division spoke with Questar a
16 little bit about the schedule, but has not spoken with the Office
17 and does not know of any dispositive motions that the Office
18 may do, because we were not involved in that conversation.

19 THE HEARING OFFICER: Thank you. So, if I'm
20 understanding the schedule that's proposed, the dates in
21 question would solely address legal issues. And then if the
22 application were to go forward following the determination of
23 those issues, there would be a subsequent schedule that would
24 address the evidentiary matters and--that would lead to a further
25 examination of the application. I think I have that right.

1 MR. PROCTOR: That is not correct. These would
2 be dispositive motions. Dispositive motions can address
3 factual, as well as legal issues. And--for example, jurisdictional
4 cases are often, if not always, factually driven. So, dispositive
5 motions, they would be motions that would end this proceeding
6 with a final order.

7 THE HEARING OFFICER: I understand that. I
8 didn't mean to suggest there wouldn't be factual elements to the
9 information presented, but simply that we--it's not intended that
10 we conclude the evidentiary examination in the event that the
11 dispositive motions don't resolve the issues before the--

12 MR. PROCTOR: If the case carries on and either
13 on one or more issues, then, of course, there would be an
14 evidentiary hearing ultimately anticipated.

15 THE HEARING OFFICER: I think I'm on the same
16 page with you. Thank you.

17 Just to respond to the elements of the Office's filing
18 that Mr. Proctor addressed that don't relate to the schedule
19 directly, I wanted to note that the materials that have been
20 requested related to Docket No. 76-057-14 have been located in
21 the archives and--but for some maintenance issues with
22 mechanical arms that retrieve them, they'd be here today. But
23 we expect they'll be available by Monday. We would intend to
24 have them here and available to any party that wants to inspect
25 them. That does not amount to a determination of their

1 relevance to the proceeding, but simply the Commission's ability
2 to make its records available to the participants in the
3 proceeding.

4 In addition--and I mentioned this yesterday, but to
5 have it on the formal record that we're developing today--there
6 are several documents related to this--the 76-057-14 case that
7 are currently available on the Commission's website. And they
8 include the--a summary of the settlement agreement in that
9 earlier indication, the Commission's report and order in that
10 case, the stipulation and agreement in that case, and the
11 exhibits and schedules associated with that stipulation and
12 agreement. And those were available under the "Gas" tab and
13 under the "News and Information" heading that is listed on that
14 tab.

15 And this will be a formal proceeding. The parties
16 have reached that agreement. That's the Commission's
17 determination, as well. The Commission's intent is that the
18 order that issues following this hearing today will be distributed
19 to the general service list. And that would be--that would occur
20 in ordinary course. And that's an electronic distribution.

21 And we--I would like to take a brief recess to
22 evaluate the proposed schedule and then come back to the
23 issues that relate to Paragraphs 5 and 6 in the Office's papers,
24 unless there's anything else that the parties would like to raise
25 before we do that. Is there--if possible, I'd like to be able to

1 give you some certainty about the schedule that you proposed
2 today. And so a recess will help me be able to do that. Thank
3 you. We'll be in recess for five minutes.

4 (Recess taken, 10:19-10:25 a.m.)

5 THE HEARING OFFICER: Are we all here?

6 On the record.

7 The proposed schedule for addressing the
8 dispositive motions or legal issues as they're referred to in the
9 schedule is approved. And parties can count on that as we go
10 forward. Commission will issue a written order that will include
11 this schedule. But, as I said before the recess, I thought it
12 would be helpful to me to have that assurance today.

13 So, now, I think it's time for us to take up the
14 positions expressed by the Office in paragraphs--I think it's 5
15 and 6, if I've understood correctly.

16 MR. PROCTOR: Yes, sir.

17 THE HEARING OFFICER: Mr. Proctor, would you
18 like to address those matters? And then I'll hear from the other
19 parties.

20 MR. PROCTOR: I would. Thank you very much for
21 having this hearing. I think this is a better way to resolve this
22 particular matter than further discussions. Yesterday may have
23 reached the same result, but this is a much better way, in our
24 judgment. Thank you.

25 Essentially what we're asking in 5 and 6 of our

1 request for prehearing order is that the Division conform its
2 analysis and evidence with respect to the Wexpro II agreement
3 and--most importantly, their signatures, their executing that
4 agreement closely to, if not precisely, as required by Utah law.

5 And let me set the stage a little bit. I--bear with
6 me, please, because the way that we got to this request is from
7 a careful analysis of what Wexpro was in 1981 and what the
8 Division and Wexpro, Questar, and a Wyoming governmental
9 agency wish it to be today.

10 There are substantive and procedural agreements
11 in the 1981 Wexpro stipulation and agreement that are adopted
12 into this contract between the Division and Wexpro without
13 material change. In particular, relating to this Commission's
14 jurisdiction, the Division's activities in connection with an
15 unregulated oil company. And I say it's an oil company because
16 the summary that's on the Commission's website of the
17 agreement describes Wexpro as an oil company.

18 Those provisions are very unique. And they have
19 not been reproduced or applied in any other litigation or dispute
20 or docket seeking this Commission's approval or action in 31
21 years since they were first put into place.

22 The 1981 stipulation and agreement resolved what
23 that same summary on the Commission's website says or
24 describes as a plethora of pending and threatened litigation and
25 a complex and growing cancer of litigation. That's the

1 description that's on the summary of the agreement that the
2 Commission has posted on its website.

3 The Utah Supreme Court in 1983 approved that
4 stipulation and settlement--or excuse me--stipulation and
5 agreement and explains why it was entered, and the
6 provisions--the unique provisions of it in a much more scholarly
7 manner, in particular, addressing why those unique
8 position--provisions, which the Division and Wexpro want to
9 revive and apply elsewhere--why they were necessary. The
10 Supreme Court did so.

11 The way that the Office reached this decision to
12 ask that the Commission--or the Division explain why they did
13 what they did in signing the Wexpro II agreement is also born
14 from the contrast between a complex and growing cancer of
15 litigation and the necessity for having those provisions back in
16 1981 and the circumstances that exist now.

17 Now, with respect to the Wexpro--1981 Wexpro
18 agreement, which did essentially two things: One, it determined
19 a market value of oil and gas properties that had been conveyed
20 by mountain fuel supply--now Questar--to a subsidiary, Wexpro,
21 and it established a means by which the rate payers would
22 receive a return on their investment, because those properties
23 conveyed to Wexpro had been in part paid for by the rate payer.
24 That's simple. There are many other complications. There are
25 many other subtleties to the agreement. But, in essence, that's

1 what was done.

2 And I will be citing on occasion to the Utah
3 Supreme Court, in which they noted that the purpose of the
4 proceeding was to determine a market value of those properties
5 conveyed and that the appropriate benefits from those
6 properties would benefit the customers and Questar. And that
7 was the purpose of the agreement. And that was the basis--the
8 beginning of their analysis of the contract.

9 What we have now, however, is a Wexpro II that
10 continues to operate favorably for the benefit of Wexpro,
11 Questar, and the rate payers. In other words, the Wexpro
12 agreement from 1981 continues to--everyone continues to
13 receive the benefit of their bargain.

14 There is remaining on Wexpro properties--i.e.,
15 those that were defined in the Wexpro agreement, that had been
16 conveyed to Wexpro for which the consumer receives
17 cost-of-service gas and for which Wexpro receives a
18 formula-driven rate of return, which is presently approximately
19 20 percent.

20 That continues on, and in fact, using the proven
21 gas reserves that--within those properties conveyed, there is
22 another 11 1/2 years of gas supply available to Utah retail
23 consumers from the properties governed by the pricing
24 mechanisms and the ownership and the rate of return that was
25 determined back in 1981.

1 Now, that's proven reserves. There are
2 exponentially greater probable and possible reserves within
3 those dedicated properties. The other thing you must--I would
4 like you to realize--
5 and it's very apparent within the Utah Supreme Court's 1983
6 decision--is that the stipulation and the agreement and the
7 Supreme Court's approval of it, as well as the report and order
8 that the Supreme Court was reviewing, do not upset the
9 conveyance of those properties. The conveyance of those
10 properties back in--actually the late--mid and late '70s was
11 determined to be a property conveyance and a matter of
12 contract. And that was final and set in stone, never to be upset
13 again.

14 Today--so now we're facing a situation, not a
15 cancer of litigation, not complex and difficult litigation, not
16 expensive litigation, not the cessation of exploration, not the
17 threat to the gas supplies at a certain price to retail consumers
18 in Utah--we're not facing any of that. There is no exigent
19 circumstance that would require anything even close to the
20 agreement of 1981 even if it was appropriate to do so. And,
21 yeah, the Division and Wexpro have agreed to apply to this
22 future agreement the same provisions that governed that
23 cancerous litigation.

24 Now, I will say as we talked yesterday, the
25 summary that is on the Commission's website is not dated.

1 Although you can determine the date from its contents--and that
2 is sometime prior to August of 1981--but certainly close to the
3 time when the agreements were finalized and signed. And its
4 author is not identified either. And there's been speculation
5 about who wrote it. But, nevertheless, the Commission has
6 chosen to use that as a summary. And that's why I cite to it.

7 The Supreme Court's order is an equally
8 appropriate summary. They describe the same circumstances
9 as what started from the 1979 remand from the Utah Supreme
10 Court back to the Commission, the circumstances were very
11 different. In fact, they said the ground was shifting beneath
12 their feet--refer to this parties--
13 partly because of the parties' own actions, but more importantly
14 because of the legal and economic realities over which neither
15 had complete control. Wexpro exercised its equitable right to
16 terminate a joint exploration agreement. And, thereafter, the
17 parties sought new approaches to the development and
18 exploration of the contested properties that would be feasible
19 and legal.

20 What we have in the Wexpro II agreement is a
21 voluntary agreement that the Division of Public Utilities has
22 described as--gives the Commission an opportunity to evaluate
23 properties in the future--we don't know who they are--and also
24 describes it as the proceeding in this case is not a proceeding
25 the applicant was obligated to bring, as if this is a purely

1 voluntary contract that the Division has entered and the Division
2 has signed it because they want you to have an opportunity to
3 look at properties, but it's not something that really is even
4 requiring the Commission's approval.

5 And that--those two statements are found on page
6 3 and on page 5 of the Division's response to our request for
7 prehearing order. So, what we have--what we're faced with are
8 1981 provisions under very exigent circumstances approved by
9 the Utah Supreme Court and made final and binding. And never
10 more have they seen the light of day except with connection
11 with an unregulated oil and gas company. We're going to take
12 those and put them right here.

13 The importance of that to this proceeding is this: In
14 1981, in order to determine whether or not to approve the
15 Wexpro agreement, there were eight days of hearings to
16 determine if, in fact, the transfer of properties was for market
17 value, what that market value is, and to determine if the benefits
18 to come back to the consumer on the basis of cost of service
19 and a formulaic rate of return benefits the customers and
20 Questar Gas.

21 The Division participated in that hearing. And if
22 you read the Supreme Court's opinion about the contents of that
23 hearing, they noted that the Commission heard from qualified
24 accountants, economists, petroleum engineers, energy and
25 utility rate consultants, petroleum geologists, security analysts,

1 shareholders, officers of the companies, and assistant attorney
2 general, and public witnesses, including rate payers. And the
3 Division was very much a part of that, eight days of hearings to
4 determine it. Went to the Supreme Court. The Supreme Court
5 approved it for specific purposes.

6 In this case, the Division of Public Utilities has in
7 explaining this agreement, and explaining why it entered this
8 agreement, including its authority to enter the agreement, has
9 provided this Commission with a signature. They signed it. And
10 that's it. And now they would ask the Commission to approve it
11 and they would ask all the parties--the Office included, but also
12 intervening parties, to just file a response to address the issues
13 when the only thing we have explaining the Commission--the
14 Division's entry into a contract is a signature.

15 Now, the Office can and has examined Questar
16 Corporation and the subsidiaries. It's a public company. We've
17 looked at analyst-culled transcripts. We examined most recently
18 a presentation given by Questar Corporation in New York,
19 Barclays Capital Energy Conference. That was September 5,
20 2012. SEC filings, all of those pertaining to Wexpro and its
21 ongoing operations, and also to this Wexpro II agreement.

22 Questar Corporation actually filed--made a filing
23 with the SEC to say, "We have signed this agreement." But--and
24 we can test some of the explanation that Questar gave as to
25 why they did also in the testimony from Mr. Livsey on behalf of

1 Wexpro and Mr. McKay on behalf of Questar Gas. So, we know
2 those things. And we have questions about it. And we can get
3 partly to the answers with respect to Questar Gas, but we have
4 no idea why did the DPU do it.

5 So, that's why we made the request that we did.
6 And it's that request, I think, is nothing more than asking that
7 the DPU perform the duties that it's required to do. In 54-4a-6,
8 the Legislature has defined the Division's objectives. One of
9 those is to act in the public interest in order to provide the PSC
10 with objective and comprehensive information, evidence, and
11 recommendations consistent with establishing economic and
12 efficient reliable operations of public utilities, consistent with
13 the establishment of just, reasonable, and adequate rates, and
14 also in a manner that is understandable to the public.

15 We believe that the Commission should have
16 before it, and we believe that the Office, intervenors, and public
17 should have before it the objective and comprehensive
18 information, evidence, and recommendations of the Division
19 explaining this Wexpro agreement and, in particular in this case,
20 explaining why they signed it without any review by the Public
21 Service Commission in advance.

22 In essence, the Division, by signing this, by
23 entering this agreement, has already decided that it's in the
24 public interest, has already assumed we have sufficient record
25 we--to enter into this agreement, believing that the rates are

1 just and reasonable and it's going to promote efficient and
2 economic operation of a public utility, and that information is
3 available. But they are unwilling to provide it. We have to
4 guess and the Commission has to guess.

5 We believe that the intent of the 54-4a-6 was that
6 the Commission--or the Division is going to review proposals,
7 rate cases, and such, and they're going to gather together that
8 objective, comprehensive information and they're going to
9 provide it along with their recommendation to the Public Service
10 Commission, not that they're going to begin the process by
11 executing a contract which contains specific obligations and
12 grants the Division only specific rights entered into with an
13 unregulated oil and gas exploration company. And if you read
14 the contract carefully, the only material obligations outlined in
15 that agreement are upon the Division and Wexpro, not Questar
16 Gas. So, we believe that the objectives are simply not being
17 met.

18 But it's more serious than that. The Division is also
19 established for certain function--to perform certain functions.
20 And that's 54-4a-1. And if you read throughout them, the
21 proceedings they may commence, the proceedings they may
22 intervene in, the obligations that they have to conduct audits,
23 the requirement that someone must provide information to
24 them--every one of the obligations, the functions that the
25 Legislature has directed the Division to do are regarding matters

1 within the jurisdiction of the Public Service Commission. The
2 information they are to provide is all going to the benefit of the
3 Public Service Commission, other parties to the case, and the
4 general public.

5 The addition of public utilities, we believe, and will
6 be addressed ultimately doesn't have the authority to enter into
7 a contract which by their own explanation, they don't have--it's
8 outside of your jurisdiction. Somehow, the Division has the
9 authority to say to the Commission, "Well, we'll let you take a
10 look at this, but after you take a look at these properties, you
11 have nothing more to do with it."

12 Now, one of the reasons we decided also to ask the
13 Commission to require the Division provide their
14 recommendations, their analysis, their studies of the proposal
15 by the Wexpro II agreement, document the review and provide in
16 the testimony or some form--it needn't be testimony--an
17 explanation of the results of that study and that investigation
18 and that examination and also the specific circumstances,
19 allegations, law, whatever upon which it relies to establish its
20 statutory authority to enter the agreement. That's a pretty
21 important thing for the Division, a State agency, to do.

22 The Office may be wrong in its assessment of the
23 Wexpro II agreement. The Office may very well be--
24 misunderstand the law pertaining to the statutory authority the
25 Division of Public Utilities. We may very well be. And that's

1 why we were wanting the Commission to order that they do so,
2 and do so up front, not wait until they feel the timing is
3 appropriate. Everybody has a strategy going into this.

4 But governmental entities are in a different
5 category. We have obligations to the public from the beginning
6 to explain things, and particularly when the statutory authority
7 and the statutory duties that an agency is given, the Office is
8 the same way--says you're supposed to be providing information
9 objective, comprehensive information to the agency that is the
10 adjudicative agency that is going to make the decision, not
11 acting outside of those--that scope of that statutory authority.

12 As you're well aware, if the Legislature says--or has
13 not said you can do it, then the Legislature is presumed to have
14 said you can't do it. And that's the Supreme Court opinion for
15 decades, and most recently in the Heber Light & Power case.

16 So, that's what we want. Tell us, Division, what
17 analysis you did, what examination you did. Why is this
18 agreement one that establishes efficiency, economic
19 operations? Why is it necessary in light of Wexpro? Why did
20 you incorporate provisions from 31 years ago that were entered
21 for specific reasons and to address particular problems? Why
22 are you bringing those forward and agreeing to them for the
23 future to deal with unidentified properties, made at Wexpro's
24 discretion, based upon standards that are certainly unknown to
25 the Office? I don't think they're-- they may be unknown to

1 everybody. They may not exist, but standards, reasons for
2 bringing a particular property which are unstated. If the Division
3 has that type of information, the Commission is entitled to it as
4 are the other parties, as are the general public to understand
5 this process.

6 The functions of the Division are also always based
7 upon matters within the jurisdiction of the Commission. So, if
8 there's a question there, that has to be addressed. If this
9 matter truly is voluntarily, the applicant doesn't have to even
10 bring it--and the Division's just offering the Commission some
11 information, it doesn't have to offer to them, then this entire
12 proceeding need not go forward and the Division can contract all
13 it wishes. Then it comes up to the Legislature or somebody else
14 to say, No, you can't do that.

15 The other problem is--and I'm not certain that this
16 is the case, because I have not seen anything from the
17 Division--I've seen certainly what the--what Questar relief
18 is--what--relief Questar is seeking--pardon me. I know that. We
19 think we know why. But as to the Division, I'm assuming that
20 they also are seeking by their signature to not only bind
21 themselves, but to bind everyone else, including the Office.

22 And so, for example, the Division's agreement that
23 they will only resolve questions about Wexpro properties that
24 this Commission may approve for inclusion and treatment--rate
25 treatment as a Wexpro II property will always be resolved

1 outside the Public Service Commission process by binding
2 arbitration, binding upon the Commission, and therefore binding
3 upon also the Office of Consumer Services. I have to assume
4 that they want--the Division intends by its execution of that
5 agreement to enforce that contract as against all other parties
6 with an interest, including the Office of Consumer Services.

7 I went through and looked at the Office's statutory
8 functions, of course. We do that often. We try to stay--to stick
9 within it. I thought, Well, what if the Office of Consumer
10 Services had also signed this agreement and committed to the
11 same obligations that the Division has? Can we do that? It's
12 plain that the Office doesn't have that statutory authority, and I
13 don't think that the Division does either. And again, maybe the
14 scope of their statutory authority is so great that it would
15 encompass it. But I think that under these circumstances, the
16 Commission needs to know that and they need to know it up
17 front.

18 There was an instance several years ago in which
19 the division became a joint applicant with Questar in that case
20 and both proposing a particular outcome, you know, whatever
21 one may think of the ultimate outcome is not relevant, but it
22 became so difficult even then to kind of figure out what it is that
23 the Division had done outside of the Commission process that
24 would--they would join with the utility and advance a particular
25 regulatory policy rather than scrutinizing the policy and

1 providing that comprehensive information, evidence, and
2 recommendations to the Commission.

3 Well, this goes even a step further. They
4 insist--and you read that I'm certain, in their response to our
5 request for a prehearing order--
6 this is--they are not joint applicants. And that makes it worse,
7 because now you have a governmental entity, a governmental
8 agency with public obligations entering into an agreement with
9 an unregulated private company and saying--and assuming
10 certain responsibilities outside of the Commission's jurisdiction.
11 It's not submitting any evidence to you and then saying, we may
12 or may not tell you why. Because remember, at this point in
13 time, until--unless the Commission says, "Thou shalt file this,"
14 you may not ever know from the Division why they did what they
15 did. I believe the Commission submitted an action request to
16 the Division, asking, I believe, for an analysis of the contract or
17 something. I wasn't able to get that off of your website. I'm
18 sure it's my computer, not your website.

19 And the response was, Well, we have a scheduling
20 hearing and we have to expedite this. That just makes no
21 sense. It's no sense within the operations that--the statutory
22 and the proper operation. That's why we want it. If the Division
23 has reasons, we would like to know them. I would think the
24 Commission would, as well. That's why we asked in our
25 request, Paragraphs 5 and 6.

1 Thank you.

2 THE HEARING OFFICER: Thank you, Mr. Proctor.
3 Just to sharpen this question a little for me, if I may impose on
4 you now to help me--before the other Counsel speak, how do
5 you distinguish the Division's posture versus them signing a
6 settlement agreement or a settlement stipulation in a rate
7 making matter?

8 MR. PROCTOR: Glad you asked. If you look
9 at--hope I get these numbers right--54-4a-1, it's sub (3), one of
10 the functions of the Division is certainly to negotiate. "Any
11 settlements, stipulations, or other forms of compromise or
12 agreement negotiated by the Division shall be approved by the
13 Commission before becoming effective."

14 So, it to some extent describes the fact that--and
15 by implication, that the Commission--the Division can enter into
16 settlement stipulations and other forms of compromise and
17 agreement. No question. And 57-7-1, of course, encourages
18 parties to negotiate in such matters and so forth.

19 That presumes--that particular section presumes
20 that there is a dispute or a request for action pending in front of
21 the Public Service Commission and the Office and the Division
22 are by administrative rule, I believe, maybe statute--
23 always parties to those proceedings. And of course, we do
24 enter into settlements, we entered into a settlement most
25 recently with Rocky Mountain rate--Rocky Mountain Power in a

1 rate case. It happens all the time.

2 But there is a definitive request by a public utility
3 for a decision or an action within the jurisdiction of the
4 Commission that is first reviewed and examined by the Division
5 and the Office and other parties if they wish. And in the end,
6 the Division has the authority under statute to negotiate a
7 resolution to that dispute. This contract is not a dispute.

8 I mean, if you look at the description of the Wexpro
9 agreement from 1981 and the stipulation in particular, look at
10 the stipulation--the description of the amount, the complexity,
11 the significance, and the expense of the litigation certainly falls
12 within the realm of a governmental agency's authority to settle
13 disputes by stipulation and agreement.

14 But if you also look at the Supreme Court decision
15 approving it, you'll see how they addressed the Division's role in
16 the agreement with respect to the properties that had been
17 conveyed, a conveyance transfer that was certain because it
18 was a matter of property law or contract law. The Division
19 assumed certain responsibilities with respect to those
20 properties, the monitoring and the arbitration proceeding. They
21 address--the Supreme Court addressed the legality of the
22 Commission's--or the Division's role as to those properties and
23 said in that case it's not illegal. But this is very different. This
24 is them reaching out and entering into a voluntary agreement
25 that incorporates specific obligations on the part of the Division

1 of Public Utilities, which is a part of the Department of
2 Commerce of the State of Utah that is voluntary, totally
3 voluntary. They set a rate for gas. And they set a rate of return
4 for a unregulated oil and gas exploration company with no
5 evidence or information pertaining to the calculation of a proper
6 rate of return on a particular oil and gas resource. That's what
7 they do in that contract.

8 So, it is not a settlement--an ongoing dispute. And
9 those words mean something. This is a contract, a private
10 contract that the Division has entered into. Now, if they have
11 some reason that they believe it's a settlement of a dispute or of
12 a pending case in front of the Public Service Commission or
13 some other forum in which they may intervene and participate,
14 then they should explain that. They should--we want them to
15 explain that, because as I said, the Office has been wrong, will
16 be wrong again, may be wrong in this case. My analysis of their
17 functions and their statutory authority may very well be wrong.
18 It's been wrong before, it'll be wrong again, may be wrong in
19 this case. But they've got to tell you. This has as much in the
20 interest for the Commission as it is for the general public and
21 the other parties who are going to participate in this proceeding.
22 Tell us up front. That's all we want.

23 THE HEARING OFFICER: Thank you, Mr. Proctor.
24 Ms. Schmid.

25 MS. SCHMID: Thank you. Like the Office, the

1 Division appreciates the opportunity to explore this issue on the
2 record and before the Commission in this forum. The Division
3 believes that this will present the Commission with an
4 appropriate source of information upon which to make its
5 decision concerning Paragraphs 5 and 6 in the Office's
6 pleading.

7 First of all, the Office suggested that we look at the
8 Wexpro I case. The Wexpro I case is an important case. It does
9 have bearing on the Wexpro II agreement that is presented to
10 the Commission. The circumstances of Wexpro I were different.
11 Indeed there were a large controversy and a settlement was
12 reached; however, that settlement was approved and approved
13 by the Utah Supreme Court.

14 I do not believe that an action that would be illegal
15 was made legal by the Supreme Court because of the hard
16 circumstances. The Division either had the authority to do what
17 it did in Wexpro I or it did not. The Commission either had the
18 authority to do what it did in Wexpro I or it did not. Those are
19 legal issues which were examined, I believe, by the Court. And
20 I encourage the Commission to read the Wexpro I case in that
21 light.

22 With regard to other things, I'll just clear up a
23 couple of things before I move into the next part. Perhaps I was
24 not as clear as I could have been when I wrote that it was a
25 voluntary agreement. What I intended to establish is that there

1 was no obligation for Questar Gas to decide to bring this to the
2 Public Service Commission unless Questar Gas wanted the
3 participation of the Utah rate payer. This was not an
4 opportunity where Questar had been previously forced to
5 present an opportunity to the Commission. Therefore, it is in
6 that light that I used the word "voluntary."

7 Clearly, the jurisdiction of the Commission is
8 important and finding that it has jurisdiction is a prerequisite to
9 continuing forward. The agreement has been submitted to the
10 Commission along with the application for the Commission's
11 review, and for the Commission's approval or disapproval.

12 What we have before us is a mechanism. As we
13 said, it is a mechanism through which future property
14 opportunities will be presented to the Commission for review. At
15 this point, it is not a wholesale acceptance of any properties,
16 nor are any properties presented at this time for the
17 Commission's review. There it is clearly distinguished from the
18 Wexpro I case, where much was made of the eight days of
19 hearing and the value of properties.

20 The value of properties and the appropriateness of
21 including them as a long-term hedge for Utah rate payers will be
22 decided if the application is approved and ordered by the
23 Commission to do so in the second presentation before the
24 Commission, a presentation of each property on its merits where
25 there will be a full and fair hearing, opportunity for intervenors,

1 for agencies and others to explore whether or not those
2 properties should be included.

3 Much was made--or sorry--pardon me. The Division
4 recognizes its statutory obligations and seeks to act in
5 accordance with those. The Division takes its responsibilities
6 very seriously and looks forward to a full and fair hearing of all
7 these issues. However, the Division believes that the issues
8 raised by the Office are of a legal nature as has been
9 established even more so today through the argument of the
10 Office. These legal issues should be determined on the basis of
11 legal briefs. It is not appropriate to ask the Division through
12 direct testimony to answer questions that have not yet been
13 asked. The Office is asking the Division to reply to what is, in
14 essence, unanswered questions--or sorry--unasked questions.

15 There is a process that the Commission uses that
16 has been proven to allow proceedings to proceed in an orderly
17 manner. Here it has been suggested that the legal issues be
18 resolved first and then if jurisdiction is found and the matter is
19 determined to be proper for continued Commission
20 consideration, then testimony would be presented.

21 Let's look at--as our last point, let's look at the
22 contract and at this process. The Division did sign a contract.
23 That contract has been presented to the Commission for its
24 review and consideration. That contract has, as one of its
25 clauses, that it is commissioned on--that it is conditioned upon

1 Commission approval. That contract contains provisions that
2 address what happens if Commission approval of the contract
3 provision is not received. This contract is an opportunity for
4 people to comment, is an opportunity for the Commission to
5 examine. The Division looks forward to an orderly process to
6 determine whether or not the contract is appropriate.

7 The Division, again, believes that Paragraphs 5 and
8 6 of the Office's request do not merit at this point an order from
9 the Commission and such an order would be improper.

10 The Office has characterized the Division as a joint
11 applicant or worse. The Division is not a joint applicant. The
12 Division has signed a contract subject to Commission review
13 and approval and has presented that along with a--and--for
14 Commission review and approval.

15 Thank you.

16 THE HEARING OFFICER: Thank you, Ms. Schmid.

17 I just want to--

18 (Telephone interruption.)

19 THE HEARING OFFICER: Pardon me a second.
20 Has someone joined us on the phone? Please identify
21 yourselves.

22 MS. WOLF: I'm sorry. I keep pressing a button.
23 And it did something odd.

24 THE HEARING OFFICER: That's all right.

25 MS. WOLF: I apologize.

1 THE HEARING OFFICER: We recognize the voice,
2 Ms. Wolf. Thank you.

3 Ms. Schmid, just a question: So, if I--
4 am I understanding your position correctly to be that the
5 Division anticipates at some point providing testimony, analysis,
6 evidentiary materials, whether by experts or otherwise, exhibits,
7 that support the position that it takes in this docket regarding
8 the application?

9 MS. SCHMID: Exactly. And that process would
10 begin after the legal issues had been determined. It is the
11 second phase, if we get there of this process where testimony
12 would be submitted. And it is through that testimony that the
13 Division would present the reasons why it urges--why it has
14 signed the contract.

15 THE HEARING OFFICER: So, in the Division's
16 view, there isn't a connection between the Commission's
17 jurisdiction to examine this matter and the Division's
18 presentation of evidentiary support.

19 MS. SCHMID: The Commission's jurisdiction is a
20 prerequisite to the examination of the support offered by the
21 applicant, by the Division, and by any other intervening party.

22 So, in effect, it would be a two-part process. But
23 the Division, as I stated before, complies with its statutory role
24 and obligations, wants to comply with that, looks forward to a
25 full and fair hearing on this issue, and looks forward to a full

1 discussion of the facts through testimony, as appropriate.

2 THE HEARING OFFICER: Thank you, Ms. Schmid.
3 Ms. Bell.

4 MS. BELL: May we take just a few minutes? I
5 didn't anticipate that we would be responding to the length of
6 argument presented by Mr. Proctor. And I just want to make
7 sure I have touched all the issues. I think-- Mr. Monson will
8 actually be responding on our behalf. If I can just--

9 THE HEARING OFFICER: Sure.

10 MS. BELL: --take a few minutes with my clients.

11 THE HEARING OFFICER: Five minute recess
12 adequate?

13 MS. BELL: Yes.

14 THE HEARING OFFICER: And I think it's probably
15 time for that, in any event. We'll be in recess until 20 after.

16 (Recess taken, 11:15-11:21 a.m.)

17 THE HEARING OFFICER: We'll be on the record.
18 Mr. Monson.

19 MR. MONSON: Thank you. Well, Mr. Proctor
20 covered a lot of ground. And I hope not to respond to all
21 aspects of what he said. In fact--
22 mine--in some ways, we appreciate the fact that really I think
23 we've heard the Office's position not just on the Division signing
24 the agreement and on whether they should file testimony but on
25 the arguments that are going to be presented on the 26th and

1 probably on the whole case, because he kind of covered all that.
2 And it's hard to draw the line here between, you know, the legal
3 issues that we're going to argue down the road and responding
4 to that argument.

5 And I hope I don't get too much into the substance
6 of the legal arguments, because I think that's what we're
7 reserving for the 26th. But our position is simply this: The
8 Wexpro agreement--the original Wexpro agreement did result
9 from litigation. But what the Division has done and we think this
10 is the right thing for regulators to do--is the Division has, with
11 the company--and with the Office participating and with
12 Wyoming regulators participating has attempted to avoid the
13 same problem that exists--that led to those years of litigation by
14 being proactive and by getting an option not committing to do
15 anything, really, except to exercise--to have the opportunity to
16 exercise an option that could lead to future benefits for rate
17 payers similar to the tremendous benefits that rate payers have
18 realized as a result of the Wexpro I agreement.

19 And that's kind of at the guts of this issue. And I
20 think of this in terms of maybe a difference in how regulation is
21 evolving over time. And Mr. Proctor may be right, that maybe
22 back in--the 1970s, and early '80s we always had to get in a
23 fight about things and a dispute before we addressed an issue
24 or an opportunity. But we've had some statutes passed since
25 then under which we approach things a little bit differently. And

1 I think it's very healthy.

2 And the thing I'm thinking about is the major plant
3 addition statute. Rather than a utility now going out and
4 investing in a major plant and then coming in after that
5 investment's made and saying, "Do I get to get rate recovery for
6 it?" we now have a process to determine in advance if that
7 investment makes sense. And if it appears to make sense, then
8 everybody kind of buys into it and then we proceed. That's a
9 difference approach than the way we used to approach things.

10 And this Wexpro II agreement is a little bit similar
11 to that. We're saying, Look, we have an opportunity right now
12 to, we think--to acquire some properties at relatively good
13 prices. And, you know, we--this opportunity we hope will
14 continue for a while. We don't know how long it will continue.

15 Wexpro could go out and acquire these properties
16 and develop them. And--but if it does that, and if there's no
17 participation or commitment on the part of the regulators and
18 the rate payers in Utah, then it's going to deal with those
19 properties as it sees fit and it's going to sell that gas at market
20 prices.

21 Well--and then what probably will happen because
22 we--I hope we learned a lesson from the Wexpro experience
23 back in the 1970s and 1980s--probably someone will come in
24 here and say, Hey, Wexpro's an affiliate of Questar Gas.
25 Questar Gas should get the benefit of those discoveries and

1 that gas. And we'll get into some big fight. And we're saying
2 let's avoid that fight. If you want to participate in those
3 properties, we're going to give you an option and you can
4 participate. And the terms and conditions on which you can
5 participate will be the same terms and conditions that were
6 approved by the Commission in the Wexpro agreement and
7 which were upheld by the Supreme Court.

8 I'm afraid I'm getting a little too much into the
9 substance here. But the point is, we want to avoid that fight.
10 We want to have everybody know up front what they're going to
11 do. No one's obligated to let us put any property in. They--as
12 Ms. Schmid said, that the examination of whether or not a
13 property should go in and whether it's a good property and
14 whether it's going to confer benefits to customers will be made
15 when that property's proposed.

16 So, by way of background, I think things have
17 changed. I think we've got a new approach. And the approach
18 is a proactive one. We applaud the Division for trying to deal
19 with this circumstance in a positive and a proactive way.

20 With regard to the Division's authority, I guess
21 that's really a legal question. But we don't read the statute the
22 same way Mr. Proctor does. The statute does not say that the
23 Division can only enter into agreements after a dispute has
24 arisen. It doesn't say that. It says the division can engage in
25 settlement negotiations and make stipulations or agreements

1 regarding matters within the jurisdiction of the Commission.

2 There doesn't have to be a pending proceeding for
3 the Division to determine that an agreement that's going to be to
4 the benefit of customers or could be to the benefit of customers
5 makes sense. So, the Division is acting proactively. We think
6 that's a good thing.

7 Mr. Proctor made a reference to the conservation
8 enabling tariff matter in which the Division has a joint applicant.
9 Well, that's very different--first of all, the Department was a joint
10 applicant. They aren't a joint applicant here. The company has
11 filed this application. The Division signed an agreement that
12 gives an option. The Division apparently felt like that was an
13 option worth having. But in the course of this proceeding, the
14 Division's not bound by any position. It can review all the
15 evidence and it can take whatever position it wishes.

16 In the CET matter, the Division did become a joint
17 applicant and again, we went through some process a little bit
18 similar to this, but ultimately, the Commission approved that.
19 And we think the Commission will likely approve this agreement,
20 as well, here.

21 And the other thing is the Office--it's not like the
22 Office has been operating in a vacuum or out in the dark and
23 doesn't know what's been going on. There's been a one-year
24 process in which the Office has been a full participant. The
25 Office understands why the Division signed this agreement. The

1 Office thinks this agreement--has stated publicly that they think
2 this agreement is probably a good thing. They just have some
3 legal questions about it. And so we propose that those legal
4 questions be resolved and we've agreed on a schedule to do so.
5 There's no reason that the Division needs to file any explanation
6 of why it signed the agreement. It's not like that's a secret.
7 The Division did it, because it believes this is an option worth
8 having.

9 The other issue about the lengthy proceeding, I
10 think Ms. Schmid addressed it correctly--that was because at
11 that time the question was--is--was, is appropriate market value
12 being conveyed for these properties from Wexpro to the utility
13 and are rate payers going to receive a sufficient benefit from
14 this transaction.

15 That was a difficult issue. And it did require eight
16 days of hearing. We aren't in that process right now. We
17 haven't decided anything about those issues other than Wexpro
18 has said it will make these properties available for acceptance.
19 It will give an option to allow these properties to be included as
20 Wexpro properties in accordance with the terms of the Wexpro II
21 agreement.

22 Commission and the parties can examine those
23 properties, as I said earlier, and determine whether they think
24 that's a good deal. If they don't, they don't have to accept
25 them. It's just an option.

1 So, we could have--you know--we could have not
2 gone through this process. We could have not offered this
3 option, but we thought let's not get ourselves in the same
4 position we were in when we got in the Wexpro case originally.
5 Let's not go down that road. Let's figure this out in advance in
6 a proactive positive way. And so that's where we are.

7 That's all. Thank you.

8 THE HEARING OFFICER: Thank you, Mr. Monson.
9 Mr. Proctor.

10 MR. PROCTOR: Yes. Thank you. I can't--I cannot
11 let go unresponded the allegations about the Office's
12 participation for the last year in this particular matter which is
13 true. We have been involved and we have made intense efforts
14 to explain to our constituents that the development of a
15 dedicated cost-efficient, properly priced natural gas resource for
16 the future as a hedge may be an appropriate thing in their
17 interest and in the interest of maintaining low rates.

18 We have also with equal intensity explained in our
19 judgment this agreement is not the way to do it. And any
20 agreement must be placed before the Commission because the
21 Commission makes regulatory policy. And then with the
22 provision by the State agencies charged with the responsibility
23 to provide comprehensive, objective information and evidence
24 pertaining to the Questar and Wexpro's proposal. Our position
25 has been explained all along that it can't be done the way

1 they're doing it. That's for another day.

2 The problem is that the Division is creating this
3 policy by signing a contract and providing no information, no
4 evidence, no studies, no analysis, no information, no
5 recommendations to this Commission which the statute requires
6 them to do. Who can sign an agreement such as this one and
7 then return to the Commission and say, upon objective analysis,
8 we think that we can't do this. We think this improperly
9 establishes rates outside of the Public Service Commission
10 jurisdiction. We believe it's too expensive. We don't believe
11 that the information on individual properties are appropriate.
12 We want more.

13 Any number of things that could come, the Division
14 has essentially frozen itself out of that objective evaluation.
15 One wonders whether or not, if the analysis has not occurred
16 and they signed this without that analysis, whether they can
17 carry on and act as the Division of Public Utilities in this
18 proceeding. I don't want to get into that, because I'm going to
19 presume that the Division of Public Utilities did all of the
20 analysis and all of the examination and all of the study that they
21 are obligated to do under Section--or--yeah, 54-4a-1 and
22 54-4a-6. I'm going to presume that they've already done that.
23 A State agency would not sign a contract such as this one
24 without having done that evaluation.

25 The Commission and the Office are entitled and

1 need the benefit of that information. And that information
2 should be presented now, not later, because the Division has
3 already agreed with the application and agrees with the
4 company. They have signed this agreement. Now, if they had
5 not and they had approached it from the standpoint of an
6 analysis in a deliberate and careful manner with the application
7 for a new regulatory policy to this Commission, we would not be
8 here complaining about it, but they didn't. In fact, I would dare
9 say that this--participation that the Office has had directly
10 recommended that they not.

11 So, the fact that the Office has concerns, yes, we
12 think that the concept that is being proposed may be in the
13 benefit of the rate payer--may--we haven't done an analysis of it
14 yet, because we don't have the information that we need. Yes,
15 there are some legal failings, we believe, and those will be
16 tested. But ultimately, we're going to get to--we are going to go
17 through an evidentiary proceeding, unless the Commission just
18 simply throws this out, we are going to go through a proceeding
19 to do that analysis and that evaluation.

20 The Division, unless they come forth immediately
21 as they did in the joint application on the CET--they filed direct
22 testimony--unless they do the same thing here, basically,
23 it's--they're functioning outside of their statutory authority with
24 respect to the Commission. Again, we'll presume that they did
25 that analysis carefully and deliberately before they signed.

1 We'd like to see that. We'd like to know what their analysis and
2 recommendation is.

3 But the recommendation embodied in signing a
4 private agreement with an unregulated oil and gas exploration
5 company with nothing said why, we do not believe is appropriate
6 and this Commission should grant our request for information.
7 That's what we want. It's not necessary that this Commission
8 finally decide this case on the basis of our request for a
9 prehearing conference--or prehearing order. We just want the
10 information that the Division has upon which they rely when they
11 signed this contract.

12 Thank you.

13 THE HEARING OFFICER: Thank you, Mr. Proctor.
14 I'd like to present the hypothetical question to you. I'm going to
15 ask you to set aside whatever legal challenges that you have in
16 mind to present on October 26, and just focus on the arguments
17 that you've made with respect to the Division and its
18 participation and--in the agreement to this point.

19 If the Commission goes on to examine the merits of
20 the application and if there are schedules developed for the
21 presentation of testimony and if the showing that the--that you
22 presumed--of analysis that you presume the Division has made
23 is ultimately presented to the Commission, would there be legal
24 error in the process of the Commission evaluating that evidence
25 at that time and then ruling on the record as it would exist?

1 Again, I'm asking you to set aside whatever legal challenges
2 that you'll--you express.

3 MR. PROCTOR: There would be--pardon me.
4 Certainly the merits--the outcome presumably would be the
5 same, whether the merits are considered on the basis of
6 evidence and a hearing tomorrow or six months from now,
7 because the merits of the agreement, the manner in which it
8 would work and operate and so forth essentially--
9 are the same. They're not going to change between now and
10 then.

11 The error that exists, however, is in the deprivation
12 of the Commission and intervening parties of the flaws and
13 benefits and deficiencies or omissions that the Division is
14 presumed to have relied upon when they executed the
15 agreement. Before it was even submitted to this Commission--
16 that's the error. Here's the great error. They signed it without
17 doing that analysis, without even considering objectively--

18 MS. SCHMID: I will object to that characterization.
19 I do not believe that Mr. Proctor knows exactly what was done,
20 nor do I believe it is appropriate for him to make such
21 speculation and assertions.

22 THE HEARING OFFICER: I appreciate your
23 objection, Ms. Schmid. I'm going to allow Mr. Proctor to
24 characterize the circumstances as he understands them. And
25 I'll also accept your characterization and allow you to elaborate

1 on it in any way you'd like to when he's complete. And I
2 recognize that these are legal arguments and that you're making
3 them on the basis of your understanding of the facts as they've
4 been developed to this point.

5 Mr. Proctor, please continue.

6 MR. PROCTOR: I believe I prefaced by saying "if."

7 MS. SCHMID: I apologize. I did not hear the "if."

8 MR. PROCTOR: Well, maybe I didn't use "if." But
9 I will now. If they did not do that analysis, that objective
10 comprehensive development of evidence, similar to which they
11 would--process they would undergo when responding to a
12 generate case application by Questar or Rocky Mountain power
13 in evaluating components of their rate request, components of
14 their regulatory policy, and the ultimate rate impact--if that's
15 absent, but they signed the contract for other reasons, policy
16 reasons--they believed it was appropriate and in good faith
17 believed it was a good thing that it would in fact ultimately
18 provide benefits to the rate payers, that, in my judgment, would
19 be error because, one, it was not--it was a decision that they
20 made binding themselves and really beginning to bind other
21 parties without sharing that same analysis or the absence of the
22 analysis or simply the good-faith assumptions.

23 Their role is not to enter into a contract and then
24 defend it in front of the Commission. Their role is to evaluate
25 the proposals and the complaints and the request for action and

1 the rate cases and the regulatory policy proposals that are
2 presented by other parties objectively, comprehensively, and
3 recommend a conclusion to the Commission. And they can
4 appeal the Commission's order if they disagree with it. So,
5 that's the error.

6 But it's more than that. This is an administrative
7 agency. This is not a court. The administrative procedures act
8 and the Commission's rules pertaining to procedure are
9 designed to prevent the precise thing that is happening here.
10 And that is that parties don't have to tell the Commission or the
11 other parties or interested parties or the general public why
12 they're asking what they're asking.

13 Questar filed--prefiled direct testimony by a Wexpro
14 representative, an officer of Wexpro, and by an officer and
15 representative of Questar Gas supporting this agreement. They
16 did it. They're a signatory to the party.

17 The Division, a governmental agency, is also a
18 signatory to the party, and they provided nothing of an
19 explanation to this Commission or to the intervenors or the
20 Office or the general public why they did it. That's all we are
21 asking for at this point.

22 The concept of this agreement may have merit.
23 This agreement may have merit. But the parties and the general
24 public and the Commission, more importantly, are entitled to
25 review it from the beginning on the basis of the same

1 information that was available to Questar and to the Division, I
2 dare say it to Wexpro, that compelled them to sign that
3 agreement. And you're entitled to that right now. And I think so
4 is the general public and so is the Office of consumer services.
5 There's why we asked for the information.

6 Now, that's in 5. In No. 6, we're saying tell us your
7 statutory authority. And--does it ask for a legal conclusion?
8 Yes, in a way, but then administrative agencies and executive
9 agencies constantly provide the statutory authority for the
10 actions they're about to take, whether they're legal or not,
11 because we're administrative agencies. They have to.

12 So, the procedure in this case is very different.
13 There is no trial by ambush in front of this Commission. And I'm
14 not saying that the Division will withhold information and then
15 spring it on us at the last minute. But I am saying that they
16 should be forthright and provide the information upon which they
17 relied when they entered into this agreement. Because the
18 agreement, as I explained initially, is one that has its roots in
19 intense, complex, and difficult litigation with a very narrow
20 purpose in resolving it. And they've incorporated--some very
21 important material and frankly troubling provisions into this
22 forward-looking, uncertain, unspecified commercial transactions
23 that they want this Commission to sign off on. And that's the
24 problem.

25 Thank you.

1 THE HEARING OFFICER: Thank you, Mr. Proctor.
2 Ms. Schmid, I told you I'd provide you an
3 opportunity to address the assertions and arguments-- Mr.
4 Proctor briefly. Would you like to say anything more about that?

5 MS. SCHMID: Very briefly. The Division intends to
6 comply with its statutory requirements, intends to be
7 transparent, intends to provide the information that is pertinent
8 to the discussion in this docket, but objects to being treated as
9 a joint applicant when indeed it is not.

10 Thank you.

11 THE HEARING OFFICER: Anything further that we
12 need to address before we conclude the hearing today?

13 MR. PROCTOR: Thank you very much, Judge
14 Clark.

15 THE HEARING OFFICER: Ms. Bell.

16 MS. BELL: Yes. With regard to your hypothetical, I
17 believe that that was the question you asked Mr. Proctor with
18 regard to whether this would be legal error. And we do not
19 believe it would be legal error should this Commission continue.

20 There are two parts to this proceeding. And I think
21 we need to be clear on that. We have agreed that we would
22 brief the legal issues. And everything that Mr. Proctor has
23 raised on behalf of the Office are legal issues. Those issues
24 may be addressed in briefs. If we then can resume this
25 proceeding, we will have a full evidentiary proceeding and all

1 parties can put on testimony. I do not read the statute the way
2 Mr. Proctor does with regard to the duty of the Division of Public
3 Utilities, nor does Ms. Schmid. And I think that is a legal
4 argument. And I just want to be clear on that. And I think that
5 is why we have agreed to a briefing schedule, to allow these
6 issues to be properly briefed and not try today to put in
7 evidence about the merits of either Wexpro I or Wexpro II,
8 because if that is the case, I will have Mr. Barrie McKay sworn
9 in and put in today as a witness to support and correct some of
10 the statements that have already been made on this record.

11 Thank you.

12 THE HEARING OFFICER: Thank you, Ms. Bell.

13 Anything further from any of the parties?

14 Thank you very much for your participation today.

15 The Commission will issue a written order and--in due course on
16 the matters that we've discussed. Thank you.

17 MS. SCHMID: Thank you.

18 (Proceedings concluded at 11:48 a.m.)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Scott M. Knight, RPR

Utah License No. 110171-7801