

1 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

2 A. My name is Michele Beck. I am the director of the Utah Office of
3 Consumer Services (Office.) My business address is 160 East 300 South,
4 Salt Lake City, Utah.

5
6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. I will provide the Office's position regarding the Wexpro II Agreement
8 (Agreement or Wexpro II), which was filed for approval by Questar Gas
9 Company (Questar or the Company) and executed by both the Division of
10 Public Utilities (Division) and the Company. In doing so, I will also:

- 11 • address some background that the Office believes is important for the
12 Commission to consider in adjudicating this case;
- 13 • discuss the importance of proper oversight of any Wexpro II or similar
14 agreement;
- 15 • identify certain improvements that must be made in order for this
16 agreement to be in the public interest; and
- 17 • identify some issues that have not been significantly addressed in
18 testimony filed to date on this Agreement.

19
20 **Q. WHAT IS THE OFFICE'S POSITION ON THE COST-OF-SERVICE GAS
21 ISSUE GENERALLY AND THE AGREEMENT SPECIFICALLY?**

22 A. The Office agrees that the original Wexpro Agreement (Wexpro I)
23 provided historical benefits to customers, which has resulted in lower

24 costs to customers than if all of the gas supplies had been purchased at
25 market prices. The Office believes that if it is approached correctly,
26 expanded access to cost of service gas could provide additional benefits
27 to Questar's customers. However, the Office believes that the proposed
28 Agreement is flawed and should not be approved without changes.

29

30 ***Background***

31 **Q. GIVEN THE EVIDENCE OF PAST BENEFITS TO CUSTOMERS FROM**
32 **WEXPRO I, PLEASE EXPLAIN WHY THE OFFICE DOES NOT**
33 **SUPPORT THE EXPANSION OF THAT AGREEMENT WITHOUT**
34 **CERTAIN CHANGES?**

35 A. One primary reason is that the facts and circumstances leading to the
36 development of Wexpro I are significantly different than those leading to
37 the development of Wexpro II. Wexpro I was a compromise solution to
38 resolve multiple prolonged and contentious disputes taking place at the
39 Commission and in the courts. As recognized in the Stipulated Facts 1.19
40 of the Wexpro Stipulation filed with Wexpro 1, "the federal litigation as well
41 as these cases are part of a protracted, time-consuming, expensive and
42 disruptive course of disagreement of the parties." In contrast, the
43 approach to Wexpro II was to seek agreement for a methodology to
44 expand the properties included in cost-of-service gas. Thus, the first
45 agreement was designed to resolve disagreements whereas the second
46 agreement was designed up front as a cooperative process.

47

48 **Q. DID THE AGREEMENT, PARTICIPANTS, AND OVERSEEING BODIES**
49 **ENVISION THAT WEXPRO I WOULD BE REPEATED OR EXPANDED?**

50 A. No. The idea of an expansion of Wexpro I is contrary to the terms of the
51 Agreement itself. Section VIII-3 of Wexpro I states:

52 The scope of this Agreement is limited to the matters directly
53 addressed. It is not intended to cover any future activity, function,
54 acquisition, transaction or other business endeavor initiated by,
55 joined by or otherwise entered into by the Company, Wexpro, or
56 any other subsidiary or affiliate of the Company unless specifically
57 set forth in this Agreement.

58
59 It is particularly noteworthy that Wexpro I explicitly states “it is not intended
60 to cover any future activity.”

61

62 **Q. WHAT ARE SOME ADDITIONAL IMPORTANT DIFFERENCES**
63 **BETWEEN TODAY’S ENVIRONMENT AND THE ENVIRONMENT IN**
64 **WHICH WEXPRO I WAS EXECUTED AND UPHELD?**

65 A. Wexpro I was signed over thirty years ago. In the intervening years, many
66 relevant circumstances have changed including, but not limited to, the
67 following:

- 68
- Statutes and rules governing utility regulation;
 - 69 • The understanding of what constitutes best practices in utility
70 operation;
 - 71 • The understanding and oversight of utility hedging policies and
72 practices; and

- 73 • Rules and statutes governing utility procurement of large energy
74 resources.

75 These differences are not insignificant and must be considered by the
76 Commission in making its determination whether the Wexpro II Agreement is
77 in the public interest and will result in just and reasonable rates.

78

79 ***Proper Oversight***

80 **Q. WHAT REGULATORY OVERSIGHT IS INCLUDED IN WEXPRO II?**

81 A. As currently proposed, the Wexpro II Agreement is essentially
82 unregulated. According to the Agreement, the Commission's review and
83 oversight of any application is limited to approve or not approve a new
84 property under the terms of Agreement. The Agreement has no additional
85 provisions for regulatory review.

86

87 **Q. WHAT IS THE OFFICE'S VIEW REGARDING THE PROPER
88 REGULATORY OVERSIGHT FOR THE WEXPRO II AGREEMENT?**

89 A. The Office advocates that even if the majority of the provisions in Wexpro
90 II parallel those in the Wexpro I agreement, the lack of normal and
91 ongoing regulatory oversight (after the Commission's decision whether to
92 include new properties) would not result in the public interest.

93 To put this in perspective, Wexpro currently comprises about two-
94 thirds of the total cost of gas and over half of the costs included in
95 Questar's 191 passthrough account. Thus, Wexpro costs alone account

96 for approximately 30% of a customer's bill. Consider the difference in the
97 regulatory oversight of Wexpro compared to the distribution, non-gas
98 portion of the bill, which is typically about 30 – 40% of a customer's bill.
99 Distribution costs are reviewed through a general rate case which has
100 detailed rules covering filing requirements and for which filings typically
101 include multiple volumes of testimony, supporting workpapers and other
102 evidence.

103

104 **Q. DOES WEXPRO I HAVE DIFFERENT OVERSIGHT PROVISIONS THAN**
105 **WHAT IS PROPOSED IN WEXPRO II?**

106 A. The provisions are nearly identical. In Wexpro I, the Division is entitled to
107 “monitor the performance of the Company and Wexpro.” (See Section 8.1
108 of Wexpro I.) Wexpro and the Company are required to provide certain
109 quarterly reports. If desired, the Division (in conjunction with Wyoming
110 Public Service Commission staff) can hire an independent accounting and
111 hydrocarbon monitor¹. Also, there is a provision for arbitration in the case
112 that “any party claims that there is any default by any other party of their
113 obligations under the terms or intent of this [Wexpro I] Stipulation or the
114 [Wexpro I] Agreement.” (See Wexpro I stipulation section 9.)

115 In Wexpro II, both the Division and the Wyoming Office of
116 Consumer Advocates (another signatory to the Agreement) are entitled to
117 monitor the performance of Wexpro and the Company, receive certain

¹ It is my understanding that those monitors have been in place essentially from the beginning.

118 quarterly reports, and select an independent accountant and hydrocarbon
119 monitor. In Wexpro II, the same arbitration provision exists and is
120 applicable to “disputes that may arise regarding the performance of this
121 Agreement.” (See Section V-13 of the Agreement.)

122

123 **Q. IF THE SUPREME COURT UPHELD WEXPRO I, WHY IS IT**
124 **NECESSARY TO CHANGE THE LEVEL OF OVERSIGHT FOR**
125 **WEXPRO II?**

126 A. As explained above, Wexpro was a compromise that resolved complex
127 and multiple disagreements. Also, the Office understands that the gas
128 supply associated with Wexpro I properties was only expected to last for
129 eight to ten years. It is appropriate that parties would accept a deviation
130 from normal regulatory review protocols in such circumstances. By
131 contrast, Wexpro II is being entered into with the stated intent of a
132 cooperative expansion of cost of service gas. This time, all parties know
133 up front that any properties acquired through this Agreement could
134 produce gas and be on Wexpro’s books for decades. Further, there is no
135 termination provision for Wexpro II. Thus, it is important to get all of the
136 major provisions and supporting details correct before approval is granted.
137 In particular, regulatory oversight is a key provision that must be in place.

138

139 **Q. HAS THE BINDING ARBITRATION PROVISION EVER BEEN USED?**

140 A. No. The Company has indicated that the arbitration provision has not
141 been utilized to date.

142

143 **Q. DOESN'T THE FACT THAT THE ARBITRATION PROVISION HAS NOT**
144 **BEEN NECESSARY INDICATE THAT THERE ARE NO PROBLEMS**
145 **WITH WEXPRO?**

146 A. It likely means that there have been no problems identified by the Wexpro
147 monitors or the Division that meet the requirements for challenge within
148 the terms of Wexpro I. Those terms do not establish the same level of
149 review that we are accustomed to in utility regulation.

150

151 **Q. ARE YOU SUGGESTING THAT THE DIVISION OR THE OUTSIDE**
152 **ACCOUNTING AND HYDROCARBON MONITORS HAVE NOT**
153 **CARRIED OUT THEIR OVERSIGHT DUTIES?**

154 A. No. As I've explained, the circumstances under which Wexpro I was
155 negotiated and implemented were very different. I am not alleging any
156 wrongdoing on the part of the Division or the outside monitors. I am
157 simply suggesting that the oversight is at a different level compared to
158 standard regulatory filings. It is telling that in over thirty years of operation,
159 there has not been a single challenge that required use of arbitration. The
160 same could not be said for general rate case or other utility filings that
161 have received more careful and rigorous regulatory oversight. In every
162 general rate case that I am aware of adjustments have been proposed by

163 parties and accepted by the Commission. While prudency challenges
164 aren't frequent in the 191 account filings, over the course of thirty years
165 we have seen a few major challenges.

166

167 **Q. IF THERE WERE A PRUDENCY CHALLENGE REGARDING WEXPRO**
168 **OPERATIONS, HOW WOULD SUCH A CHALLENGE TAKE PLACE?**

169 A. In Wexpro II, there are no provisions for a standard prudency challenge.
170 There is only an arbitration provision in the event that one signatory party
171 alleges that another is in default of their obligations.

172

173 **Q. THE COMPANY SUGGESTED AT THE TECHNICAL CONFERENCE**
174 **THAT OVERSIGHT PROTECTION IS INCLUDED THROUGH THE**
175 **PROVISION FOR THE COMMISSION TO SAY NO TO INDIVIDUAL**
176 **APPLICATIONS TO INCLUDE SPECIFIC GAS PROPERTIES. WHAT IS**
177 **THE OFFICE'S RESPONSE?**

178 A. If it becomes apparent that the terms of the Agreement are not in the best
179 interest of customers, the Commission could reject each individual
180 application for inclusion of a new gas property into Wexpro's books.
181 However, such a strategy is inconsistent with the stated intent of the
182 Agreement; namely, to expand cost-of-service gas to the benefit of both
183 the Company and its ratepayers. .

184

185 ***Necessary Improvements***

186 **Q. PLEASE IDENTIFY THE CHANGES TO THE WEXPRO II AGREEMENT**
187 **THAT THE OFFICE ADVOCATES MUST BE MADE IN ORDER FOR IT**
188 **TO BE FOUND IN THE PUBLIC INTEREST.**

189 A. The following issues must be remedied in order for this agreement to be in
190 the public interest:

- 191 • Incorporation of guideline letters;
- 192 • Binding arbitration used in dispute resolution; and
- 193 • General oversight provisions of Wexpro operations.

194

195 **Q. PLEASE DESCRIBE THE PROBLEMS ASSOCIATED WITH THE**
196 **INCORPORATION OF GUIDELINE LETTERS IN WEXPRO II.**

197 A. Section V-15 (a) indicates that: “All current confidential Wexpro I guideline
198 letters applicable to Wexpro II shall be incorporated herein.” An index of
199 current guideline letters is included as Attachment G to the agreement;
200 however, the guideline letters themselves are not included in the filing.
201 Further, it is not clear how “applicability” to Wexpro II is defined or would
202 be determined. Thus, Wexpro II incorporates by reference a completely
203 undefined set of guidelines. This lack of specificity makes it impossible for
204 the Commission or any party to know the complete set of rules governing
205 the Wexpro II Agreement. The Commission must not grant regulatory
206 approval to an agreement whose governing terms are not clearly defined.

207

208 **Q. DO YOU HAVE A RECOMMENDATION FOR HOW TO REMEDY THE**
209 **PROBLEM CREATED BY THIS VAGUE REFERENCE TO GUIDELINE**
210 **LETTERS?**

211 A. Yes. Questar and the Division should be required to create an explicit
212 record of the governing terms and procedures that have been created
213 through these guideline letters. All terms deemed to be “applicable” to the
214 new agreement should be clearly spelled out in an attachment, rather than
215 simply including an index of thirty years of guideline letters that may or
216 may not be applicable to the current issues. The Office recognizes that
217 developing an explicit listing of all governing terms and procedures may
218 involve a significant effort. However, if determining the governing
219 principles is an effort for those who have been involved in monitoring
220 Wexpro I for the past thirty years, it only underscores how difficult or
221 impossible it would be for any outside party to make such a determination.

222

223 **Q. PLEASE DESCRIBE THE PROBLEMS ASSOCIATED WITH THE**
224 **BINDING ARBITRATION PROVISIONS IN THIS AGREEMENT.**

225 A. Section V-13 details the provisions for dispute resolution. It very clearly
226 indicates that the decision of any arbitration arising under this section will
227 be binding upon the Parties in future Commission decisions. This would
228 prevent the Division from performing its statutory duty of representing the
229 public interest in front of the Commission, as it would be bound by the
230 outcome of the arbitration. Further, Section V-13 (f) restricts parties from

231 initiating arbitration in both Wyoming and Utah on the same subject.

232 Thus, the opinion binding on the Division in a Utah regulatory proceeding,

233 may have arisen from an action initiated in Wyoming.

234

235 **Q. IF THE ARBITRATION OUTCOME IS ONLY BINDING ON THE**
236 **PARTIES TO THE AGREEMENT, WHAT PROBLEM DOES THAT POSE**
237 **FOR THE OFFICE?**

238 A. While only the signatories to the Agreement are bound by the arbitration,
239 only the signatories have been given the responsibility to “monitor” certain
240 areas specified in the Agreement and only the signatories have access to
241 the various quarterly reports provided by Wexpro and the Company. Thus,
242 no other party would have access to adequate information to bring forward
243 any action (such as accounting adjustments or prudency challenges) in
244 front of the Commission.

245

246 **Q. PLEASE DESCRIBE THE PROBLEMS ASSOCIATED WITH THE**
247 **PROVISIONS INCLUDED FOR THE OVERSIGHT OF WEXPRO**
248 **OPERATIONS.**

249 A. The monitoring and arbitration provisions of the Agreement effectively limit
250 the participation of parties who aren't signatories to the Agreement –
251 including the Commission – solely to the initial review of whether a new
252 property could be included into the agreement. Questar witness Barrie
253 McKay indicated that the Company would not oppose having the Office

254 become a signatory. However, that leaves the Office with a very difficult
255 choice between binding itself to the outcome of arbitration that occurs
256 outside the regulatory process or not having the ability to review Wexpro
257 cost and operational information that underlies almost one-third of the bill
258 for the average Questar customer.

259

260 **Q. WHAT SOLUTION DOES THE OFFICE PROPOSE REGARDING THE**
261 **OVERSIGHT OF WEXPRO OPERATIONS?**

262 A. At a minimum, the arbitration provision should be less binding on parties.
263 The results should be appealable to the Commission, whose rulings are
264 informed by an understanding of well-established regulatory principles as
265 well a mandate to uphold the public interest. Given the increasing
266 longevity and volume of gas supplies developed under Wexpro (both I and
267 presumably II), the Office also advocates that the performance reports
268 should be more accessible. The Office would support additional protective
269 measures given the commercial sensitivity of the information.

270

271 ***Issues Inadequately Addressed***

272 **Q. DOES THE OFFICE HAVE ADDITIONAL CONCERNS BEYOND THE**
273 **SPECIFIC IMPROVEMENTS IDENTIFIED ABOVE?**

274 A. Yes. The Office is concerned about the process that has been followed to
275 date. First, the Office notes that very little supporting testimony has been
276 filed in this docket addressing an issue that has far-reaching and long-

277 lasting impacts on the ratepayers of Questar. Questar provided two
278 witnesses and filed a total of fifteen pages of direct testimony that focused
279 primarily on the big picture issues rather than explaining and justifying the
280 details of the agreement. Also, the Division, despite being a signatory to
281 the agreement in advance of its filing with Commission, did not provide
282 any testimony to explain the agreement, its reasons for signing, or
283 whether and how it may be in the public interest. Finally, the process is on
284 a relatively compressed timeline. Although discussions have been
285 ongoing for over a year, those discussions were limited to certain parties
286 and not part of a public process.

287

288 **Q. WHAT ARE THE PRACTICAL IMPACTS OF THE PROCESS ISSUES**
289 **YOU RAISE?**

290 A. The practical impacts are likely twofold. First, it is uncertain whether
291 interested parties (as well as the Commission) will have access to
292 adequate information and time to consider the complexities and details of
293 this proposed Agreement. The Division and Office had the opportunity of
294 multiple in-depth meetings with the Company across several months from
295 which to analyze Questar's Wexpro II proposal and draw their
296 conclusions. After this level of analysis, the Division and Office came to
297 very different conclusions. I believe this indicates that the public interest
298 relative to this agreement is not self-evident. It is essential that the

299 Commission is provided adequate time and the required level of evidence
300 commensurate with the significance of the issue.

301

302 **Q. ARE THERE OTHER EVIDENTIARY CONCERNS THAT RESULT**
303 **FROM THE PROCESS ISSUES YOU HAVE IDENTIFIED?**

304 A. Many significant issues have simply not been adequately justified with
305 supporting evidence. Fifteen pages of direct testimony from Questar
306 witnesses and a two-hour technical conference is insufficient to provide
307 supporting evidence justifying that the complexities of this agreement are
308 in the public interest. Some of the issues that have not been adequately
309 addressed include:

- 310 • Rate of return: This Agreement proposes to use the identical
311 calculation for pricing of the different products and properties as
312 used in Wexpro I. This includes the calculation of the base rate of
313 return, as well as return premiums, and all the way down to the
314 same set of comparable companies from thirty years ago (or as
315 modified through intervening guideline letters). Although the
316 Company provided some rationale for the parallel rates of return in
317 the technical conference, to date no demonstration has been made
318 by Questar that using all of the same pricing and return calculations
319 as in Wexpro I will result in just and reasonable rates.
- 320 • Division's authority to enter into the Agreement: In signing this
321 Agreement, the Division has agreed to resolve all disputes outside

322 of the regulatory process through binding arbitration. Thus, the
323 Agreement essentially creates a potentially large, new, and
324 completely unregulated affiliated transaction for a regulated utility.
325 Such an action needs to be carefully demonstrated as being in the
326 public interest.

327 • Proper treatment of affiliated transactions: Currently, a standard
328 regulatory review of affiliated transactions is for the affiliate to
329 provide the product or service at the *lesser of cost or market price*.
330 The FCC and some state jurisdictions have codified such a
331 requirement. Clearly, the Agreement contemplates a much different
332 type of affiliated transaction. Such a stark divergence from
333 regulatory best practices also needs to be carefully demonstrated
334 as being in the public interest.

335 • Even though the Utah Supreme Court addressed this issue with
336 respect to Wexpro I (the application of the “no-profits-to-affiliates”
337 rule), the different circumstances of Wexpro II would appear to
338 require additional justification and evidence. In its order affirming
339 the Wexpro I agreement, the Supreme Court referenced the “limited
340 circumstances of gas produced on certain acreage included in the
341 current settlement².” The Supreme Court also indicated that: “In
342 the context of that [Wexpro I] settlement, which resulted from

² *Utah Dept. of Administrative Services v. Public Service Com’n*, 658 P.2d 601, 14 (Utah 1983).

343 adversary negotiations including the Division of Public Utilities, the
344 terms of this purchase within the affiliate relationship have none of
345 the ‘sweetheart’ characteristics that the rule sought to counteract³.”

346 Termination: In the Wexpro II technical conference, the
347 Commission raised legal concerns with the lack of termination
348 provision. In addition, it isn’t clear that having an agreement
349 without termination options would be good regulatory policy.

350 • Hedging practices: Although the Wexpro I gas supply is often
351 described as a form of a price hedge against variations in market
352 prices, Questar has not explained how this agreement impacts its
353 overall hedging and gas procurement plans. Wexpro I gas
354 production currently constitutes a historically high percentage of
355 overall gas supplies and the impact of Wexpro II on the overall
356 hedging and gas procurement strategy needs to be better
357 explained.

358 • Procurement standards: Utah’s energy procurement act specifies a
359 competitive RFP process by which large energy resources must be
360 procured by utilities. Regardless of whether this Agreement is
361 governed by that act, Questar should address certain procurement
362 issues and whether the approach taken in the Agreement results in
363 the public interest. For example, Wexpro II outlines a procedure
364 by which new resources will be obtained without following an RFP

³ *Id.*

365 process and which excludes any and all competitors. Such a
366 process is outside typical utility practice and requires supporting
367 evidence.

368

369 ***Recommendations***

370 **Q. WHAT IS THE OFFICE'S PRIMARY RECOMMENDATION IN THIS**
371 **CASE?**

372 A. The Wexpro II Agreement, as filed, contains certain flaws that make it
373 contrary to the public interest and may result in rates that are not just and
374 reasonable. The Office also believes improvements to agreement could be
375 made that remedy these flaws and create a process that provides benefits
376 to natural gas customers in Utah, both now and into the future.

377

378 **Q. WHAT ACTION DOES THE OFFICE RECOMMEND THAT THE**
379 **COMMISSION TAKE?**

380 A. The manner in which this Agreement was filed limits the options available
381 to the Commission. Since the Company and the Division chose to execute
382 an Agreement and ask for Commission approval, it would appear that the
383 Commission must approve or deny the application. However, Section V-2
384 of the Agreement addresses the integrated provisions and states, "To the
385 extent that any singular provision is found to be unenforceable or voidable
386 by a court or agency with proper jurisdiction, it is the intent of the Parties
387 that the remaining terms of this Agreement will remain in force and be

388 enforceable by the Parties.” Thus, it may be possible for the Commission
389 to find certain provisions unenforceable or voidable in such a manner that
390 the problems with the current agreement can be appropriately addressed
391 and remedied. The Office would prefer to see the agreement fixed rather
392 than rejected, but is uncertain what specific actions to recommend that
393 would accomplish that goal.

394

395 **Q. DOES THE OFFICE HAVE ANY OTHER RECOMMENDATIONS FOR**
396 **THE COMMISSION?**

397 A. Yes. If the Commission rejects the Wexpro II agreement, the Office
398 strongly recommends that the Commission give as much guidance as
399 possible regarding specific terms that would need to be changed and
400 issues that would need to be addressed to create an agreement more
401 likely to result in the public interest. Such guidance would be more likely to
402 lead to a positive outcome rather than a simple abandonment of the
403 current Agreement.

404

405 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

406 A. Yes.