

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

REBUTTAL TESTIMONY OF BARRIE L. McKAY

FOR QUESTAR GAS COMPANY

January 10, 2013

QGC Exhibit 1.0R

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Barrie L. McKay. My business address is 333 South State Street, Salt Lake City, Utah.

Q. Are you the same Barrie L. McKay that filed direct testimony in this Docket on September 18, 2012?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. I will respond to certain aspects of the testimony of Ms. Michele Beck on behalf of the Office of Consumer Services filed December 11, 2012. The testimony acknowledges that the Office has a dilemma. On the one hand, the Office recognizes the benefits customers have received through the Wexpro I Agreement and believes that expanded access to cost-of-service gas, the point of the Wexpro II Agreement, could provide additional benefits. On the other hand, the Office believes that the Wexpro II Agreement is flawed in certain respects and should not be approved without changes. But the Office also recognizes that the Commission cannot require the parties to the Wexpro II Agreement to make changes to the Agreement.

My testimony will explain why the Office's concerns with the Wexpro II Agreement are without merit and do not justify depriving the Company's customers of the option to participate in an expanded cost-of-service program that is not limited to the finite set of properties included in the Wexpro I Agreement. Many of the Office's concerns—such as pricing of future cost-of-service gas, whether or not a proposed property should be included, how a proposed property would impact Questar's hedging plans, whether the data and analysis regarding a proposed property is sufficient, and how a proposed property will impact rates—are focused on issues that should be raised at the time a proposed Wexpro II property is brought before the Commission. These concerns are not related to whether the Commission should approve the mechanism that allows such properties to be brought before the Commission and are therefore, premature. The Commission should approve the Agreement because it simply creates an option for

30 customers to continue to receive the benefit of cost-of-service gas for a much longer time
31 than envisioned under the Wexpro I Agreement.

32 **II. BACKGROUND OF COST-OF-SERVICE GAS**

33 **Q. The Office begins its testimony with a comparison of the circumstances underlying**
34 **the Wexpro I Agreement and current circumstances. Do you agree that the**
35 **circumstances are different?**

36 A. Yes, but I do not draw the same conclusion as the Office based on those differences. The
37 Wexpro I Agreement was the result of a long and contentious dispute and represented a
38 compromise between the parties. As part of that resolution, Questar Gas and Wexpro
39 insisted that the agreement apply only to existing properties so that customers could not
40 claim any interest in new properties that Wexpro or Celsius Energy Company might
41 acquire and develop in the future. The dispute that gave rise to the Wexpro I Agreement
42 resulted from the fact that Questar Gas's predecessor, Mountain Fuel Supply Company,
43 had always had an exploration and development program that provided cost-of-service
44 gas for the benefit of the Company's customers and oil for the benefit of the Company's
45 shareholders. When that historical division of benefits was challenged after oil became
46 significantly more valuable and the Utah Supreme Court essentially indicated that all
47 benefits of the program should go to customers contrary to prior expectations, the
48 Company and Wexpro took the position that they would not continue the program unless
49 they could be assured that there would be a fair apportionment of benefits and that the
50 same challenge could not be made after-the-fact again in the future. The Wexpro I
51 Agreement was the solution to this problem and enabled the cost-of-service program to
52 continue but limited it to a finite set of properties.

53 **Q. Why are the Company and Wexpro now willing to expand the cost-of-service gas**
54 **program beyond the finite set of properties included in Wexpro I?**

55 A. As explained by Mr. Ronald W. Jibson, Chairman, President and Chief Executive Officer
56 of Questar Corporation, in the December 5, 2012 technical conference, Questar
57 Corporation has seen the benefit of the Wexpro I Agreement to both the customers and
58 Wexpro. The careful balancing of interests underlying the Wexpro I Agreement provides

59 a sound basis for the Company and Wexpro to continue providing customers with the
60 opportunity to receive additional cost-of-service gas supplies. Thus, rather than pursuing
61 an exploration and development program outside of the Wexpro I Agreement template, as
62 Questar Corporation successfully did following the Wexpro I Agreement, the Company
63 and Wexpro are now willing to provide customers the option to expand the cost-of-
64 service program to new properties. It is unlikely that this option would have been made
65 available prior to the spinoff of the unregulated exploration and production business of
66 Questar Corporation. However, with that spinoff and the refocusing of Questar
67 Corporation on its core utility businesses, this option is now being made available.

68 **Q. But doesn't the fact that Wexpro I resulted from prolonged and heated litigation not**
69 **currently in place suggest that the Wexpro II Agreement needs to be different?**

70 A. I don't see why. If an agreement is mutually beneficial, it doesn't matter whether it is the
71 result of a heated battle or a happy gathering. The Wexpro I Agreement has provided a
72 tried and tested means of providing tremendous benefits to customers over 30 years, so I
73 see no reason to change the manner in which it is regulated just because there is no
74 prolonged litigation currently. I believe the Office's concerns about differences in
75 context have nothing to do with the central issue in this Docket—whether it is worthwhile
76 to provide an option to expand the cost-of-service program.

77 **Q. Are there other aspects of the history of Wexpro I not mentioned in the Office's**
78 **testimony that are pertinent now?**

79 A. Yes. The Commission discussed its "philosophy and understanding" as background to its
80 order approving the Wexpro I Agreement. As part of that discussion, the Commission
81 said:

82 The Commission believes that exploration for and development of energy
83 resources are an appropriate activity for MFS, both as part of its regulated
84 activities and those which are not subject to a regulated rate of return. The
85 Commission recognizes the past success of MFS's exploration and
86 development program and believes that MFS should continue in the future

87 such programs both for the benefit of its utility operations and those which
88 are not subject to a regulated rate of return.¹

89 The Wexpro II Agreement is very much in line with this philosophy and understanding
90 by providing an option for Questar Gas to participate in an expanded development
91 program in the future for the benefit of its utility operations. This was not acceptable to
92 Questar Gas and Wexpro at the time of the Wexpro I Agreement because of the context at
93 that time. It is acceptable to the companies now.

94 **Q. The Office cites certain differences in the environment then and now that it says the**
95 **Commission must consider. Please respond.**

96 A. The Office cites four differences in environment that it believes are significant, but the
97 testimony does not provide any specifics.

98 First, the Office says that statutes and rules governing utility regulation have changed, but
99 does not identify which statutes or rules it is referring to or how their change affects the
100 issue before the Commission. While there is no doubt that new statutes and rules have
101 been adopted since 1981, I am not aware of any change that is pertinent to whether an
102 option to expand the cost-of-service program is a good idea.

103 Second, the Office says that the understanding of what constitutes best practices in utility
104 operation have changed since Wexpro I was approved. Again, the testimony does not
105 identify what best practice or practices the Office is referring to. I am aware that best
106 practices for the Company would include, among other things, what the Commission has
107 identified in its IRP guidelines and orders. The purpose of the IRP is to provide
108 regulators with an update of the “process in which known resources are evaluated on a
109 uniform basis, such that customers are provided quality natural gas services at the lowest
110 cost to QGC and its customers consistent with safe and reliable service.”² The Wexpro II
111 Agreement would fit well within this practice.

¹ Report and Order on Stipulation and Agreement, Case Nos. 76-057-14, 77-057-03, 79-057-03, 80-057-01, 81-057-01 and 81-057-04 (Utah PSC December 31, 1981) at 6, 9.

² Proposed IRP Guidelines for Questar Gas Company, Docket No. 97-057-06, p.1.

112 Third, the Office says that there is a difference in understanding and oversight of utility
113 hedging practices, but does not state what changes in hedging practices are pertinent to
114 the Commission's decision. The Company has a history of working with the Division
115 and the Office in its IRP process to review its gas procurement practices and use
116 strategies to balance cost-of-service production and winter and spring supply purchases.
117 The issue now is whether an option to expand its cost-of-service production should be
118 approved. Approval of the Wexpro II Agreement will have no effect on Questar Gas's
119 hedging practices because it is only an option.

120 Fourth, the Office says that rules and statutes governing procurement of large energy
121 resources have changed since the Wexpro I Agreement was proposed and approved. This
122 is true. However, the Commission is not being asked to review or approve procurement
123 of any large energy resource. Furthermore, if and when Wexpro acquires a property and
124 Questar Gas proposes it for inclusion as a Wexpro II property, the Company will not be
125 required to apply for approval under the Energy Resource Procurement Act because the
126 mandatory provisions of that Act apply only to electrical corporations. Nonetheless, the
127 process contemplated for approval of potential Wexpro II properties complies with the
128 spirit of the voluntary advance resource approval process contemplated in the Act and is,
129 thus, consistent with this change. The changes to resource procurement statutes and rules
130 are consistent with the process of advance approval of a property being included in the
131 cost-of-service program contemplated by the Wexpro II Agreement.

132 **Q. Are you aware of any other circumstances in which a state commission has recently**
133 **approved a program in which a local distribution company participates in a**
134 **program to increase its gas reserves?**

135 A. Yes. In 2011, the Oregon Public Utility Commission approved an arrangement between
136 Northwest Natural Gas Company and Encana Oil & Gas (USA), Inc. under which
137 Northwest Natural would invest up to \$250 million in Encana's development of gas
138 reserves in the Jonah Field in Southwestern Wyoming in exchange for an interest in wells
139 drilled for a cost per decatherm of approximately \$5.15 for a term of approximately 30
140 years. The terms and conditions of the arrangement are not the same as the Wexpro I or

141 Wexpro II Agreements, but they do reflect a situation in which a state commission found
142 it in the public interest to allow a public utility to participate in a program designed to
143 provide access to gas reserves for a utility.³

144 **III. REGULATORY OVERSIGHT**

145 **Q. The Office's testimony next makes a claim that there is a lack of proper regulatory**
146 **oversight over the Wexpro II Agreement. Do you agree that there is a lack of**
147 **proper regulatory oversight?**

148 A. No. The Office's testimony is based on the premise that the only means of proper
149 regulatory oversight is through litigated proceedings before the Commission in which
150 parties file extensive, adversarial testimony. Regulatory developments during the last
151 thirty years have moved regulation somewhat away from resolving all issues through
152 adversary litigated proceedings and toward the type of reporting, monitoring and
153 compliance review regulation contemplated in the Wexpro II Agreement.

154 **Q. What type of oversight is contemplated in the Wexpro II Agreement?**

155 A. First, no property acquired by Wexpro, at its sole risk, can become subject to the Wexpro
156 II Agreement without prior review and approval by the Commission. Thus, the most
157 essential aspect of regulatory oversight, whether a property will be subject to the
158 Agreement, is left entirely in the hands of the Commission, and, if disputed, will be the
159 subject of a litigated proceeding.

160 Second, once a property has been approved for inclusion in the Wexpro II Agreement, the
161 Division of Public Utilities in Utah and the Office of Consumer Advocate in Wyoming,
162 will monitor Wexpro's performance of its obligations under the Agreement to assure that
163 they are prudent and comply with the Agreement. Wexpro is required to provide detailed
164 reports to them to assist in those efforts and to provide other information they request. In
165 performing this monitoring, these parties will be assisted by expert hydrocarbon and
166 accounting monitors selected by and accountable to them.

³ See Order 11-176, Docket Nos. UM 1520 and UG 204 (Or. PUC May 25, 2011).

167 Third, if a dispute arises regarding whether Wexpro has acted prudently or complied with
168 its obligations under the Agreement, the Division or Office of Consumer Advocate will
169 be able to institute an arbitration proceeding to resolve the dispute.

170 I fail to see how this process amounts to a lack of ongoing regulatory oversight. It
171 amounts to continuous and detailed oversight. As acknowledged in the Office's
172 testimony, this is essentially the same process the Office agreed to in the Wexpro I
173 Agreement. It has worked extremely well in assuring that customers receive the benefits
174 to which they are entitled under the Wexpro I Agreement and has withstood the test of
175 time.

176 **Q. The Office's testimony notes that these provisions may have been justified in the**
177 **context of Wexpro I because of its anticipated short term, but are not justified now.**
178 **Do you agree?**

179 A. No. Although parties anticipated that the gas supply produced by the finite Wexpro I
180 properties would be exhausted before now, the terms of the Wexpro I Agreement
181 contemplated that the regulatory monitoring of the development and production of those
182 properties would last for the life of their reserves. This is no different than the Wexpro II
183 properties. And again, I emphasize that there are no Wexpro II properties yet. The
184 Agreement will only become operative if the Commission approves inclusion of specific
185 properties in it based on a determination that the exploration and development of the
186 properties under the terms of the Agreement will be in the public interest.

187 **Q. The Office's testimony also notes that there have been no arbitrations under the**
188 **Wexpro I Agreement, perhaps suggesting that this may indicate lack of proper**
189 **regulatory oversight. Do you agree?**

190 A. No. The Office admits in its testimony that it has no basis to suggest that there has been
191 any wrongdoing on the part of the Division or the monitors. The Office simply suggests
192 that because there have been no arbitrations, the regulatory oversight is at a different
193 level compared to other regulatory matters.

194 Contrary to the Office’s view, the fact that there have been no arbitrations indicates to me
195 that the regulatory process of reporting, monitoring and compliance review has worked
196 unusually well. For over thirty years, the Division has monitored the Wexpro 1
197 Agreement. As provided in the agreement, the Division has retained both a hydrocarbon
198 monitor and an accounting monitor to assist it with its review of Wexpro’s books and
199 accounts, and the performance of the Company and Wexpro under the Agreement. As
200 described by Mr. David Evans, the current hydrocarbon monitor, in prior reports to the
201 Commission and in technical conferences, the current regulatory process has developed
202 into a relationship in which Wexpro not only provides information to him and to the
203 Division, but consults with him regarding unusual matters. There have been no
204 arbitrations because the parties have worked together cooperatively to resolve potential
205 issues proactively.

206 Finally, as a party to the Wexpro I Agreement, the Office has had the right to institute an
207 arbitration proceeding if it believed one were warranted. The fact that the Office has not
208 chosen to do so is presumably an indication that none was necessary.

209 **IV. OFFICE’S SUGGESTED IMPROVEMENTS**

210 **Q. The next portion of the Office’s testimony is devoted to suggested improvements to**
211 **the Wexpro II Agreement. What “improvements” does the Office suggest?**

212 A. The Office suggests three things: (1) changes to the incorporation of the Wexpro I
213 guideline letters in the Wexpro II Agreement; (2) changes in the binding arbitration
214 provision; and (3) changes in oversight of Wexpro operations.

215 **Q. What is the basis of the Office’s suggestion regarding the guideline letters?**

216 A. The Office apparently does not like the fact that the guideline letters are not attached to
217 the Wexpro II Agreement or that the provisions in the guideline letters that may be
218 applicable to Wexpro II properties are specifically identified. The Office recommends
219 that Questar Gas and the Division “should be required to create an explicit record of the
220 governing terms and procedures that have been created through these guideline letters.

221 All terms deemed to be ‘applicable’ to the new agreement should be clearly spelled out in
222 an attachment.” (Beck Direct at ll. 211-214.)

223 **Q. How do you respond to this recommendation?**

224 A. The Office’s first concern that only an index of the guideline letters is attached rather
225 than the letters themselves exalts form over substance. The guideline letters are
226 incorporated in the Agreement through the listing just as they would be if they were
227 attached. However, they are relatively voluminous and in many cases confidential.
228 Therefore, it is more practical to attach a listing rather than the letters themselves. In
229 doing so, the Company is not attempting to exclude review of the letters by appropriate
230 parties. The Company has always been willing to provide the guideline letters to the
231 Division, the Office or the Commission, if requested, so long as their confidentiality was
232 appropriately protected. This will not change under the Wexpro II Agreement. (Note: A
233 complete copy of all confidential guideline letters has been submitted to the Division, the
234 Office, the Wyoming Commission staff and the Wyoming Office of Consumer
235 Advocate.)

236 The Office’s recommendation that the parties be required to specifically identify which
237 provisions of the guideline letters are applicable is impractical. It is anticipated that some
238 of the properties that Wexpro may acquire and propose for inclusion under the Wexpro II
239 Agreement are interests of others in the same properties included in the Wexpro I
240 Agreement. The guideline letters were developed in consultation with the hydrocarbon
241 monitor to address specific issues that arose with respect to those properties. Thus, until
242 Wexpro acquires interests in properties, it is not possible to determine which provisions
243 of the guideline letters may have applicability to Wexpro II properties.

244 **Q. What is your response to the Office’s suggestion that the binding arbitration
245 provision should be changed?**

246 A. The Office complains that the Division would be prevented from performing its statutory
247 duty of representing the public interest in proceedings before the Commission because it
248 would be bound to the arbitration decision on a disputed issue under the Wexpro II
249 Agreement. Acknowledging that I am not an attorney, I understand that the same

250 argument was made before the Utah Supreme Court on appeal of the Commission's order
251 approving the Wexpro I Agreement, and that the Court said:

252 The Department also claims that the parties' stipulation "not to challenge
253 any action taken by [MFS] or Wexpro in accordance with the terms of the
254 Agreement other than through the [the agreed] arbitration procedures,"
255 constitutes an illegal divestiture of the Division of Public Utilities'
256 statutory powers to act as a party litigant before the Commission. Since
257 that restriction on the powers of the Division of Public Utilities only
258 applies to the enforcement of the agreement and to the "Properties"
259 transferred under it, we think it is not illegal. The parties stipulated that
260 the Division was "to monitor the performance of [MFS] and Wexpro
261 under the Agreement" and they established means (including access to
262 information) to facilitate that monitoring. Since the sound policy of the
263 law looks with favor on agreements to arbitrate [citation omitted], we can
264 see no reason why that favoritism should not permit the parties to agree
265 that the Division could enforce this limited function by means of
266 arbitration.⁴

267 The Division is free to advocate any position it believes is in the public interest in a
268 proceeding to determine whether a property will be included in the Wexpro II
269 Agreement. Once a property is included, the Division will be allowed to monitor
270 Wexpro's performance of its obligations under the Agreement and to resolve any dispute
271 regarding that performance through binding arbitration in the same way that it may do so
272 under the Wexpro I Agreement. I fail to see how this would be appropriate under the
273 Wexpro I Agreement, but not be appropriate under the Wexpro II Agreement.

274 **Q. The Office states that the fact that arbitration is only binding on parties presents a**
275 **problem for it because it is not a signatory to the Wexpro II Agreement. How do**
276 **you respond?**

277 A. The Office was a major participant in the year-long process that led to the Wexpro II
278 Agreement. In fact, the Agreement was modified in significant ways in an effort to
279 address issues raised by the Office. However, despite these modifications, the Office
280 chose not to sign the Agreement. As just discussed, in the case of the Wexpro I
281 Agreement, the Utah Supreme Court not only agreed that arbitration was a favored
282 mechanism but specifically stated in this instance that binding arbitration should be

⁴ *Utah Dept. of Administrative Services v. Public Service Commission*, 658 P.2d 601, 617 (Utah 1983).

283 approved. Additionally, the arbitration provision was narrowed even further in the
284 Wexpro II Agreement to include only a default by Wexpro. The Office and all other
285 parties may always raise issues of concern before this Commission as they relate to
286 Questar Gas. This is a self-imposed dilemma for the Office that is easily remedied.

287 As stated in my direct testimony and during the December 5, 2012 technical conference,
288 the Company and Wexpro would still welcome having the Office become a party to the
289 Wexpro II Agreement as it was to the Wexpro I Agreement. If the Office chooses to sign
290 the Agreement, it will have access to the information it seeks and be able to engage in
291 monitoring functions. Just because the Office regards this as a difficult choice is no
292 reason that the Office cannot make this choice just as the Division and Office of
293 Consumer Advocate did.

294 **Q. The Office suggests that arbitration decisions under the Wexpro II Agreement**
295 **should be appealable to the Commission. How do you respond?**

296 A. Wexpro was only willing to enter into the Wexpro I Agreement and continue the cost-of-
297 service program if it could be assured that doing so would not subject it to regulation by
298 the Commission. Thus, it required that disputes regarding its performance of its
299 obligations under the Wexpro I Agreement be resolved through an arbitration panel made
300 up of oil and gas experts rather than in proceedings before the Commission. In that
301 context, the parties agreed that this was a reasonable resolution. Wexpro still has the
302 same concerns today and requires the same terms and conditions to expand the cost-of-
303 service gas program. It would be both inefficient and administratively confusing to
304 create two separate paths for dispute resolution of similar technical oil and gas issues for
305 Wexpro I and Wexpro II. However, as stated above and in my direct testimony, disputes
306 concerning Questar Gas may be brought before the Commission.

307 **Q. The Office also suggests that performance reports should be more accessible under**
308 **the Wexpro II Agreement. Do you agree?**

309 A. The oil and gas exploration and production business is a highly competitive business.
310 Wexpro would like the same protections of limited access to reports and confidentiality
311 that it has under Wexpro I.

312

V. OTHER ISSUES

313 **Q. The Office's testimony then discusses other issues that the Office claims have been**
314 **inadequately addressed. What issues does the testimony raise?**

315 A. The testimony claims that the Commission does not have a sufficient evidentiary record
316 to make a significant decision whether to approve the Wexpro II Agreement because the
317 Company only filed fifteen pages of testimony and the Division did not initially file any
318 testimony. It also raises issues regarding the rate of return earned by Wexpro under the
319 Agreement, the Division's authority to enter into the Agreement, whether the Agreement
320 is consistent with standards for affiliate transactions, how the Agreement will impact
321 Questar Gas's hedging practices and whether the Agreement complies with procurement
322 standards.

323 **Q. Do you have a general response to these issues?**

324 A. Yes. Some of these are the same issues previously discussed presented in a slightly
325 different manner. Others mix up the decision to include properties in the Wexpro II
326 Agreement with the decision to approve an option to expand the cost-of-service gas
327 program. The Office does not suggest how the Commission should address most of these
328 issues, it only raises them in an effort to persuade the Commission that the Agreement
329 should not be approved as written. None of the issues raised by the Office provides a
330 reason for the Commission to reject the option offered by the Agreement.

331 **Q. What about the claim that the Commission does not have sufficient evidence?**

332 A. This is one of the claims that mixes up the purpose of this proceeding with future
333 proceedings to approve specific properties. The decision before the Commission now is
334 whether to approve the Agreement which simply creates an option. Approval of the
335 Agreement will not affect rates or gas supply in any way. The issue before the
336 Commission is relatively straightforward and does not require much evidence,
337 particularly in light of the fact that the Agreement is patterned after the Wexpro I
338 Agreement with which the Commission is thoroughly familiar. Wexpro has proposed to
339 allow the Company and its customers an option to consider whether properties it may
340 acquire in the future should be included in a cost-of-service program to be developed on

341 essentially the same terms as the properties included in the Wexpro I Agreement are
342 developed. Other than providing an explanation of the terms of the Wexpro II
343 Agreement and the benefits that have come to customers as a result of the Wexpro I
344 Agreement, additional information is not needed. More detailed information will be
345 needed to decide whether any particular property should be included in the Agreement.
346 The nature of that information is specified in the Wexpro II Agreement. The Office has
347 not claimed that the information to be provided in the future is inadequate presumably
348 because the Office was a full participant in the process of specifying that information and
349 because the information is extensive.

350 Questar Gas believes that effective regulation and proceedings do not necessarily have to
351 be adversarial, complex and difficult. In fact, Questar Gas engaged in a year-long
352 process before filing its application in this case to attempt to reach consensus.

353 **Q. How do you respond to the Office's claim that the Company has not demonstrated**
354 **that the pricing and rate of return calculations under the Agreement will result in**
355 **just and reasonable rates?**

356 A. I believe this claim is wrong for two reasons. First, the time to consider the impact on
357 just and reasonable rates is when a property is proposed to be added to the Agreement.
358 As noted above, approval of the Agreement now will have no impact on rates. Second,
359 as the Company explained in the December 5, 2012 technical conference, requiring
360 properties under the Wexpro II Agreement to earn different rates of return than properties
361 under the Wexpro I Agreement would result in disincentives for Wexpro to invest in
362 development of one set of properties. The properties should be developed based on
363 sound industry practices and prudent judgment, not because a greater return is available
364 on one set of properties versus the others.

365 **Q. What about the Office's claim that "the Agreement essentially creates a potentially**
366 **large, new, and completely unregulated affiliate transaction?" (Beck Direct II. 323-**
367 **324.)**

368 A. I have already explained why it is not appropriate to call this transaction unregulated.
369 There would be constant, ongoing regulatory oversight of the operation of the Wexpro II
370 Agreement just as there is with Wexpro I.

371 **Q. What about the Office's statement that the affiliate must provide the product or**
372 **service to the utility at the lesser of cost or market price?**

373 A. While I acknowledge that this is a general principle that applies to affiliate transactions,
374 the Commission has made an explicit exception for the Wexpro I Agreement.⁵ When the
375 parties entered into the Wexpro I Agreement, they recognized that cost-of-service gas
376 might be more expensive than market prices on occasion, but they also recognized that
377 Wexpro could not be expected to invest huge amounts of money in development and
378 production unless it knew what return it would receive on successful wells. Therefore,
379 they agreed that there should be an exception to this general rule in this instance. This
380 decision has enabled Wexpro to proceed with a program in which it has invested
381 hundreds of millions of dollars to produce a cumulative net benefit to customers of \$1.3
382 billion over the past thirty years. This recognition of public interest remains necessary to
383 provide Wexpro with an incentive to continue to expand its cost-of-service program.
384 Thus, the Wexpro II Agreement is not a stark divergence from regulatory best practices,
385 but a continuation of a long-established program that is in the public interest and has been
386 proven to produce tremendous benefits.

387 **Q. What about the Office's claim that the Utah Supreme Court's exception to the no-**
388 **profits-to-affiliates rule was justified only with respect to Wexpro I properties?**

389 A. I have already addressed the fact that the changed circumstances do not require a
390 different result. Given that the Wexpro II Agreement contains essentially the same terms
391 as Wexpro I, it makes no sense to suggest that Wexpro II would offend the no-profits-to-
392 affiliates rule when the Wexpro I Agreement did not.

393 **Q. What about the Office's question about lack of a termination provision?**

394 A. The Wexpro I Agreement also does not have a termination provision other than that it is
395 for the life of reserves of the properties to which it is applicable. The Wexpro II

⁵ See Order, Case No. 84-057-10 (Utah PSC October 1, 1984) at 22.

396 Agreement will only be in effect for the life of reserves of any property the Commission
397 determines may be included in the Agreement. While it is true that there is no date after
398 which Wexpro may not propose that a new property be included in the Agreement, as a
399 practical matter the Commission always has the right to reject any new property.
400 Therefore, the Commission may effectively terminate the Agreement with respect to the
401 addition of any new properties simply by announcing that it will not approve any new
402 properties for inclusion in the Agreement.

403 **Q. What about the Office's question about hedging practices?**

404 A. This is another issue on which the Office is premature. If and when Wexpro acquires a
405 property and Questar Gas proposes its inclusion in the Wexpro II Agreement, the
406 Commission may consider how inclusion of the property may be likely to provide a
407 source of gas that could act as a long-term hedge. At that time, the Commission will be
408 provided with information about the likely cost at which gas may be produced from the
409 property and the anticipated reserves to be developed. The Commission will also be
410 provided with the best available information on estimates of the future market price of
411 gas during the anticipated period during which the reserves from the property will be
412 produced. Once properties are included in the Agreement, they will be considered along
413 with all other sources of gas reasonably available to the Company in its integrated
414 resource planning process. However, now the Commission is simply being asked to
415 decide whether the Company and its customers may have the option to participate in this
416 expanded program.

417 **Q. Finally, the Office raises a question about how the Wexpro II Agreement fits with**
418 **procurement standards. How do you respond?**

419 A. Again, this issue is premature and should be considered in the context of a request to add
420 a particular property to the Agreement. When such a request is filed, it will include all
421 information necessary for the Commission to determine whether the addition of the
422 property is in the public interest. In addition, Questar Gas's entry into the Wexpro II
423 Agreement does not foreclose it in any way from considering sources of gas supply other
424 than Wexpro. Therefore, it does not foreclose competition from other providers of gas.
425 The Wexpro II Agreement is simply an option.

426

VI. OFFICE'S RECOMMENDATIONS

427 **Q. Do you agree with the Office's recommendation that the Commission may find**
428 **certain provisions of the Wexpro II Agreement unenforceable or voidable but**
429 **approve the balance of the Agreement?**

430 A. No. The Office seems to believe that this provision was intended to allow the
431 Commission to modify the agreement. This is not the case. Section V-2 allows the
432 Agreement to remain in force if a particular provision is found to be legally
433 unenforceable or voidable. The Company's application is for the approval of an
434 agreement, not for negotiation of a new agreement, which is what the Office seems to
435 want. The Commission may approve or reject the Wexpro II Agreement, but I do not
436 believe it may modify it. Wexpro has made a proposal to allow the Company and its
437 customers to have the option to expand their participation in a cost-of-service gas
438 program.

439

VII. CONCLUSION

440 **Q. Why is the Company requesting expedited treatment of this Application?**

441 A. As was referred to in the Application, the Company is requesting expedited treatment
442 because the current market conditions of low natural gas prices may provide an
443 opportunity for Wexpro to acquire a property now, and in the near future, at favorable
444 prices. In the interest of maximizing this opportunity for obtaining such properties to
445 expand cost-of-service production for the benefit of Questar Gas's customers, Questar is
446 requesting expedited treatment of its Application.

447 **Q. Do you believe that the Wexpro II Agreement is in the public interest?**

448 A. Yes. Approval of the Wexpro II Agreement will provide an opportunity for the
449 Company's customers to receive the benefits of cost-of-service gas for generations
450 because the program will not be limited to the finite properties that are subject to the
451 Wexpro I Agreement. The Company believes this will allow the Company to continue to
452 provide gas to customers at prices among the lowest in the nation and will be in the
453 public interest of the state of Utah for many reasons, including enhancing its

454 competitiveness in economic development and providing a long-term source of gas
455 supply.

456 **Q. Does this conclude your testimony?**

457 A. Yes.

State of Utah)
) ss.
County of Salt Lake)

I, Barrie L. McKay, being first duly sworn on oath, state that the answers in the foregoing written testimony are true and correct to the best of my knowledge, information and belief. Except as stated in the testimony, the exhibits attached to the testimony were prepared by me or under my direction and supervision, and they are true and correct to the best of my knowledge, information and belief. Any exhibits not prepared by me or under my direction and supervision are true and correct copies of the documents they purport to be.

Barrie L. McKay

SUBSCRIBED AND SWORN TO this ____ day of January, 2013.

Notary Public