

Witness OCS 1SR Beck

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**
)
) **Surrebuttal Testimony of**
) **Michele Beck**
) **On behalf of the**
) **Office of Consumer Services**
)

January 24, 2013

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 **Q. DID YOU EARLIER PRE-FILE DIRECT AND REBUTTAL TESTIMONY**
6 **IN THIS PROCEEDING?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

9 A. I respond to certain issues raised in the rebuttal testimony of Questar Gas
10 (Company) witness Mr. Barrie McKay and Division of Public Utilities
11 (Division) witness Mr. Douglas Wheelwright.

- 12 • Provide clarifications to the Office's testimony in response to certain
13 questions and mischaracterizations in the Division and Company
14 rebuttal testimony;
- 15 • Further explain the Office's insistence that the supporting parties
16 must demonstrate that the Agreement is in the public interest; and
- 17 • Summarize the Office's position regarding the changes that need to
18 be made to the Wexpro II Agreement (Agreement) to enable the
19 Utah Public Service Commission (Commission) to determine the
20 Agreement is in the public interest.

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24 ***Clarifications to the Office's Testimony***

25 **Q. THE DIVISION INDICATES THAT YOU DO NOT PROVIDE WORKABLE**
26 **SOLUTIONS. (SEE WHEELWRIGHT REBUTTAL, LINES 22 – 24) DO**
27 **YOU AGREE?**

28 A. No. To the contrary, the Office has presented a relatively simple proposal.
29 First, we ask the Commission to uphold the standard that the parties
30 requesting approval of this Agreement must demonstrate that their request
31 is in the public interest. Second, we recommend that two changes be
32 made to the Agreement before the Commission enters any finding that it is
33 in the public interest. We acknowledge that the Division does not agree
34 with our two proposed changes, or else this proceeding would have
35 unfolded differently. However, neither the Division nor the Company has
36 demonstrated that our recommendations are unworkable. I will further
37 address these two proposed changes below.

38 **Q. BOTH THE DIVISION AND COMPANY CRITICIZE YOUR PROPOSAL**
39 **FOR EXPLICIT INCLUSION OF THE GUIDELINE LETTERS INTO THE**
40 **AGREEMENT. (SEE WHEELWRIGHT REBUTTAL, LINES 87 – 97 AND**
41 **MCKAY REBUTTAL, LINES 224 – 243) WHAT IS YOUR RESPONSE?**

42 A. Both parties focus on the details over the substance of the Office's
43 argument. It may be the case that the guideline letters are too voluminous
44 to restate and too complicated to summarize. However, it cannot be the
45 case that the Agreement is left without explanation of how to determine
46 whether or not a guideline will be applicable to a future property. The

47 argument that “I’ll know it when I see it” should be found to be insufficient.
48 The Office offers two options that would alleviate its concerns. One option
49 would be to detail the rules by which parties will determine in the future
50 whether or not existing guideline letters would be applicable to new
51 properties. The other would be for the Commission to order that in each
52 application for inclusion of a potential new property, the applicant must
53 indicate each specific guideline letter that would be applicable. An
54 Agreement of this length (no termination) and potential magnitude must
55 include a provision that clearly explains whether and how guideline letters
56 are to be applied to potential new properties.

57 **Q. THE COMPANY SUGGESTS THAT YOUR PROPOSAL TO INCLUDE**
58 **COMMISSION OVERSIGHT WOULD BE ‘INEFFICIENT AND**
59 **ADMINISTRATIVELY CONFUSING.’ (SEE MCKAY REBUTTAL, LINES**
60 **303 – 305.) DO YOU AGREE?**

61 A. No. The Company overstates the differences that would exist between
62 Wexpro I and Wexpro II. The Office has not proposed an entirely
63 separate path for dispute resolution. The oversight would be substantially
64 similar. The Office has simply proposed that the final arbiter should be the
65 Commission, who is charged with the duty and responsibility of upholding
66 the public interest, rather than a panel of individuals who don’t have public
67 interest responsibilities. I would also note that since the arbitration has not
68 been used in the over thirty years, it is unclear why the Office’s proposal

69 appears to create such concern and perceived risk for the Company and
70 Wexpro.

71 **Q. IF YOU SUGGEST THAT A CHANGE IN DISPUTE RESOLUTION**
72 **SHOULD NOT BE PERCEIVED AS A SERIOUS RISK, WHY DO YOU**
73 **INSIST THE CHANGE SHOULD BE MADE?**

74 A. It is important to keep the Commission as final arbiter because it maintains
75 proper regulatory oversight and keeps the decision within an agency that
76 has the statutory duty to uphold the public interest. The deviation from
77 this process should be limited to Wexpro I, which was conceived and
78 upheld under much different circumstances. Expanding the scope of
79 issues that are removed from the Commission's oversight could also set a
80 bad precedent for future requests before the Commission.

81 **Q. THE COMPANY SUGGESTS THAT YOUR OPPOSITION TO**
82 **ARBITRATION IS PREMISED ON THE IDEA THAT DISPUTED ISSUES**
83 **MUST ONLY BE RESOLVED IN FULLY LITIGATED PROCEEDINGS.**
84 **(SEE MCKAY REBUTTAL, LINES 148 – 153) WHAT IS YOUR**
85 **RESPONSE?**

86 A. Practical experience simply isn't consistent with this assertion. The Office
87 regularly participates in dockets that do not normally require the
88 preparation and filing of extensive, adversarial testimony. There is nothing
89 in the Office's testimony that suggests litigated proceedings would be
90 necessary with any kind of frequency.

91 **Q. THE COMPANY ALSO ASSERTS THAT YOU HAVE EXPRESSED**
92 **CONCERN THAT ARBITRATION WOULD NOT BE BINDING ON THE**
93 **OFFICE SINCE IT IS NOT A SIGNATORY. (SEE MCKAY REBUTTAL,**
94 **LINES 274 – 276) WHAT IS YOUR RESPONSE?**

95 A. First, it appears that the Company has mischaracterized my testimony. I
96 never indicated concern that arbitration would not be binding on the Office.
97 Yet the Company uses this as a basis to describe its perception of the
98 Office's decision regarding participation. The Office's view is that it would
99 be improper to sign any agreement with binding arbitration in place.

100 **Q. WHAT IS THE COMPANY'S STATED REASON FOR OPPOSING**
101 **HAVING THE COMMISSION AS ARBITER?**

102 A. According to Mr. McKay's rebuttal testimony (see McKay Rebuttal, Lines
103 296 – 303) the apparent reason for opposition is that Wexpro does not
104 want to be subject to Commission regulation.

105

106 ***Demonstration of Public Interest***

107 **Q. THE COMPANY INDICATES THAT YOU RAISED THE ISSUE THAT**
108 **THIS AGREEMENT IS TAKING PLACE IN A DIFFERENT CONTEXT**
109 **THAN WEXPRO I WITHOUT PROVIDING DETAILS. WHAT IS YOUR**
110 **RESPONSE?**

111 A. It is ironic that the Company asserted that the Office did not provide
112 sufficient details about changed circumstances in 2012 as compared to
113 1981. In lines 89 – 93 of Mr. McKay's rebuttal testimony, Company talked

114 about changing circumstances as well and provided little in the way of
115 details. In fact, Questar Gas, the Division and the Office have all
116 acknowledged the obvious point that utility regulation and the energy
117 industry environment is much different thirty years after the approval of
118 Wexpro I. The Office has pointed out a number of circumstances that have
119 changed over the last thirty years in order to emphasize the need for the
120 signatories to the Agreement to specifically demonstrate that the new
121 Agreement is in the public interest, rather than rely on the outcome of
122 processes from over thirty years ago.

123 **Q. THE COMPANY INDICATES THAT MANY ISSUES YOU RAISE ARE**
124 **BETTER ADDRESSED WHEN INDIVIDUAL PROPERTIES ARE**
125 **BROUGHT TO THE COMMISSION. (SEE MCKAY REBUTTAL, LINES**
126 **21 – 28 AND 331 – 349) WHAT IS YOUR RESPONSE?**

127 **A.** It is incorrect to suggest that the Office “mixes up the purpose” (McKay
128 Rebuttal, line 332) of this proceeding and future proceeding to address the
129 potential inclusion of new properties into Wexpro II. What the Company is
130 deflecting is the fundamental question about whether public interest has
131 been demonstrated. In my direct testimony, I identified a number of
132 issues that the Office believes have not been sufficiently addressed to
133 demonstrate public interest. These issues include the Office’s two
134 recommended changes that, at a minimum, must be made for the
135 Agreement to be found in the public interest. The fundamental concern

136 we are raising is that parties asking for approval of the Agreement have
137 the burden to show public interest.

138 **Q. HAS THE COMMISSION ALSO WEIGHED IN ON WHAT ISSUES**
139 **WOULD NEED TO BE ADDRESSED TO DEMONSTRATE THAT THE**
140 **AGREEMENT IS IN THE PUBLIC INTEREST?**

141 A. In its Amended Notice of Technical Conference (issued November 28,
142 2012), the Commission included a list of questions¹ on a number of
143 issues. These questions Raised many that have not yet been sufficiently
144 addressed to demonstrate that the Agreement is in the public interest.

145 **Q. BOTH THE DIVISION AND THE COMPANY REFERENCE THAT THIS**
146 **IS A NEGOTIATED AGREEMENT AND NEEDS NO FUTHER**
147 **ATTENTION. (SEE WHEELWRIGHT REBUTTAL, LINES 24 – 28 AND**
148 **MCKAY REBUTTAL, LINES 350 – 352) WHAT IS YOUR RESPONSE?**

149 A. Both the Company and the Division have mentioned the Office's role in
150 discussions prior to the filing of this Agreement and have given misleading
151 information about the Office's role. The Office regularly meets with all
152 manner of interested parties before and during regulatory processes to
153 scope issues and try to find common ground. The Office did not endorse
154 nor knowingly engage in a process whereby all concerns would be
155 resolved privately prior to the filing of this Agreement in a public forum.
156 The Office was not aware that other processes were considered and

¹ The Commission provided this list at the following link:
<http://www.psc.utah.gov/utilities/gas/12docs/1205713/Discussion%20Items%20and%20Questions%20for%20December%205%202012%20Tech%20Conf.pdf>

157 specifically rejected. The Office fundamentally believes all regulatory
158 issues should be fully vetted in public forums. There is no other way to
159 demonstrate public interest. This is the reasons the Office has raised
160 questions it believes the supporting parties should have addressed in the
161 public forum.

162 **Q. DO YOU AGREE WITH THE DIVISION'S CHARACTERIZATION THAT**
163 **SIGNIFICANT CONCESSIONS WERE MADE BY THE COMPANY**
164 **PRIOR TO THE FILING OF THE AGREEMENT? (SEE WHEELWRIGHT**
165 **REBUTTAL, LINES 24 – 26)**

166 A. No. I would characterize the changes primarily in the nature of
167 clarification and style. Even if it had been true that significant concessions
168 were made, such a statement should in no way be construed as evidence
169 and is certainly not reason for the Commission to find that the Agreement
170 is in the public interest. The Commission is bound to uphold the public
171 interest and cannot approve an agreement that is not in the public interest
172 regardless of whether the problems are few or many and regardless of
173 how much concession was or was not made prior to filing with the
174 Commission.

175

176 ***Other Issues***

177 **Q. THE COMPANY RAISES THE ISSUE OF THE NORTHWEST NATURAL**
178 **GAS COMPANY AND ENCANA AGREEMENT RECENTLY APPROVED**
179 **IN OREGON. WHAT IS YOUR RESPONSE?**

180 A. As I indicated in my rebuttal testimony, the NW Natural and Encana
181 agreement includes several key components that are different from the
182 Wexpro II Agreement, notably that the Oregon Commission maintained its
183 oversight of the transactions covered by the agreement.

184 **Q. DO YOU HAVE OTHER CONCERNS ABOUT THE COMPANY'S**
185 **REBUTTAL TESTIMONY?**

186 A. Yes. Despite his statement indicating that he is not an attorney, Mr.
187 McKay provides testimony on several issues that appear to be legal in
188 nature. The Office suggests that the only way for the Commission to rule
189 on such issues is by accepting post-hearing briefs from all parties.

190

191 ***Summary and Conclusion***

192 **Q. PLEASE RESTATE THE OFFICE'S POSITION IN THIS CASE.**

193 A. The Office asserts that the Agreement cannot be found to be in the public
194 interest unless the following two changes are made:

- 195
- 196 • Address more specifically how guideline letters will or will not be
197 applicable to potential new properties to be governed by Wexpro II;
198 and
 - 199 • Allow final determination of dispute resolution to be made by the
Commission.

200 Further, the Office recommends that the Commission must require the
201 signatories to demonstrate the Agreement to be in the public interest,

202 rather than just rely on findings from Wexpro I, a case that was
203 determined over thirty years ago.

204 **Q. DOES THAT CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

205 **A. Yes.**