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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

**DIVISION OF PUBLIC UTILITIES'
MOTION OPPOSING OFFICE OF
CONSUMER SERVICES' BRIEFING
REQUEST, AND REQUEST FOR
EXPEDITED TREATMENT AND
SHORTENED RESPONSE TIME**

The Division of Public Utilities (Division) objects to the request for post-hearing legal briefs raised in Office of Consumer Services (OCS) witness Michele Beck's surrebuttal testimony filed in this docket on Thursday, January 24, 2013¹ because the OCS has already expressly waived its right to file briefs on any perceived legal issues in this matter.² In the event the Public Service Commission of Utah (Commission) believes briefing is required to satisfy it on a specific point of law, the Commission should order briefing of a specific question by only the parties that did not expressly waive their right

¹ Beck Surrebuttal, lines 188-89.

² See Attachment A, containing the original email from Mr. Proctor and also the request from Mr. David Clark, counsel to the Commission, to place the email into the file and docket for this case.

to brief the issues. This should be done on an expedited schedule with briefs to be filed by Friday, February 1. The Division also requests a shortened time for response, if any, to its motion.

The OCS has had ample opportunity to raise legal issues in this docket. In the initial scheduling conference held on October 3, 2012, the OCS noted that it had significant legal concerns with the Wexpro II Agreement (alternatively, Agreement). The scheduling conference was extended to October 4, 2012 and a court reporter invited so the OCS could further explain its concerns and so the other parties could argue for a schedule to accommodate the treatment of those legal concerns without undue delays.

In response, on October 16, 2012, the Commission issued a scheduling order to address legal issues while delaying the scheduling of substantive matters. After its hard-fought effort to delay the substantive proceedings in this case until the completion of legal briefing and hearing, the OCS expressly waived its right to file legal briefs in this matter by email from its counsel, Paul Proctor, dated October 22, 2012. That email stated, in part,

the Office is electing not to file a dispositive motion allowed for by the Commission's October 16, 2012 Scheduling Order. It is the Office's intention to answer and address the utility rate and regulatory actions proposed by the application and contract at issue through the public hearing process and in testimony.³

No legal issues have been raised that warrant further briefing. Indeed, having already delayed the proceeding to establish what it viewed as a necessary and separate legal track only to expressly waive the right to file any legal briefing days before its initial

³ See Attachment A.

brief was due, the OCS now unfairly seeks to again delay the consideration of this case for legal briefing that it apparently once again views as necessary.

Nowhere does the OCS identify any legal issues that would require briefing, but instead generically claims that proponents of the Wexpro II Agreement have failed to meet their burden of proving the Agreement's service of the public interest.⁴ The proponents have now filed three rounds of substantive testimony explaining why the Agreement is in the public interest. The OCS has responded to that testimony. There is, and will be after hearing, ample evidence in the record on which to conclude that the Wexpro II Agreement is in the public interest. No party has raised a legal issue of the type that would, in civil litigation, require dismissal of the case or question the Commission's jurisdiction. The OCS's request in Ms. Beck's surrebuttal testimony amounts to an odd request for legal briefing to ascertain whether the factual record evidence is sufficient.

Indeed, for the OCS to raise more than a jurisdictional claim about the Commission's power to consider this matter at this point in the proceedings would be patently unfair because the OCS has expressly waived its right to do so. It also undermines the Commission's scheduling process. Prior to and at the initial scheduling conference in this docket the OCS vigorously pushed to have legal issues considered preliminary to the consideration of substantive matters. Questar Gas Company and the Division raised concerns with delaying the consideration of the Wexpro II Agreement. In consideration of those concerns, the Commission ordered a reasonable schedule for prompt resolution of legal matters and subsequent consideration of substantive matters,

⁴ See, inter alia, Beck Surrebuttal at lines 200-203.

if necessary. The scheduling order set October 26, 2012 as the “Deadline for the Office and other parties opposing the application on legal grounds to file briefs in support of their positions” and established deadlines for responsive briefs, reply briefs, a “date to hear legal issues, if necessary,” and for a “scheduling conference to schedule further proceedings, if necessary.”⁵

As noted before, the OCS expressly waived its right to file legal briefs in the specially created earlier phase. Having done so, it would be unfair to now create a new legal phase to this proceeding on the basis of a vague and unfocused request, especially given previously expressed concerns about delaying tactics. Further, it would undermine the Commission’s scheduling authority by ignoring the earlier legal phase only to seek creation of another one.

If, however, the Commission believes that there exists a specific legal issue that must be resolved before it can issue an order on the Wexpro II Agreement, the Commission should clearly and specifically identify the legal issue for briefing by the parties that have not waived the right to brief legal issues. The Division believes no legal deficiencies exist and it cannot be expected to file a brief anticipating another party’s thinking on the matter. Given that the OCS expressly waived its right to explain the legal deficiencies it perceives, it would be unfair to now afford it the opportunity to offer new legal matters it wishes to be briefed. Thus, if the Commission has specific legal concerns, the Division is happy and willing to address those in order to provide the Commission the comfort it needs to approve the Wexpro II Agreement. The Division and other parties should not be made to wait for the OCS to create and avail itself (or not) of

⁵ See Attachment B.

another opportunity to raise legal issues to which the Division and other parties will need to respond.

In the event the Commission raises specific legal issues for briefing, it should allow the parties that have not expressly waived their right to brief legal issues the opportunity to brief the questions on an expedited schedule, with briefs due on Friday, February 1. If, for due process reasons, the OCS must be afforded the opportunity to file briefs, it should do so on the same schedule. No responsive briefs or hearing are necessary.

For the foregoing reasons the Commission should deny the OCS's request for post-hearing briefs or ask for briefing of a specific and detailed legal question with briefs to be filed by Friday, February 1. The Division requests expedited treatment of this objection by the Commission, including a shortened time for responses, with the responses due at the start of the hearing on January 30, 2013.

Respectfully submitted this _____ day of January, 2013.

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CERTIFICATE OF SERVICE

EXHIBITS A AND B