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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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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'  
POST-HEARING BRIEF**

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Pursuant to direction from the Public Service Commission of Utah (Commission), the Utah Division of Public Utilities (Division) submits its post-hearing brief. The Division's brief will address the three questions identified by the Commission at the January 30, 2013 hearing: (1) whether legally significant differing situations exist between the approval of the Wexpro I Agreement and now; (2) the authority of the Division to enter into the Wexpro II Agreement (Agreement or Wexpro II Agreement), and (3) whether the Agreement improperly removes jurisdiction from the Commission. In addition, the Division's brief will respond to the Utah Office of Consumer Services' (Office) post-hearing brief filed on February 8, 2013 (Office's Brief). As demonstrated by the Division through this brief and its prefiled testimony,

Commission approval of the Wexpro II Agreement is consistent with applicable law and is in the public interest.

## **I. Introduction**

The Commission is presented with the opportunity to approve or reject the Wexpro II Agreement.<sup>1</sup> The Office's Brief challenges the authority and legality of approval of the Agreement. In doing so, the Office's arguments suggest a fundamental misunderstanding of not only the Wexpro II Agreement, but also of the regulatory system established in this state.

The Commission does not regulate a public utility's suppliers, vendors, contractors, and other entities with which the utility does business. The Commission regulates the public utility's actions. Thus, dispute resolution and other processes applicable to Wexpro Company (Wexpro) are not within the authority of the Commission. However, if the public utility acquires or manages a resource imprudently, the Commission may disallow certain of the utility's costs without regard for what the utility's obligation toward the third-party may be. Nothing in the Wexpro II Agreement undermines this long-standing, well-functioning system.

## **II. Differing Situations Do Not Preclude the Commission Approving the Agreement**

Some circumstances are different than those existing when the Wexpro I Agreement was executed and approved. For example, the Wexpro I Agreement was the result of a stipulation

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<sup>1</sup> The Office's suggestion that the Agreement should be modified by the Commission is without merit because the parties may not choose to renegotiate and incorporate the Commission's suggestions. If the Agreement is not renegotiated at that point, the public interest would be harmed by the lost opportunity to enter into the no-cost long term physical hedge offered by the Agreement.

presented to the Commission (and the Utah Supreme Court) for approval, and the Wexpro II Agreement is an agreement presented to the Commission for approval. However, changed circumstances do not support disapproving the Agreement because the reasons why the Wexpro I Agreement was approved are still valid today.

A. Approving the Wexpro II Agreement is Consistent with the Utah Supreme Court's Decision Approving the Wexpro I Agreement.

The Wexpro II Agreement is very similar to the Wexpro I Agreement, albeit even more beneficial to ratepayers. The Wexpro I Agreement was upheld by the Utah Supreme Court (Court) and in arguing that the Wexpro II Agreement should be rejected it must be distinguished on some legally significant basis. The Office has failed to do so.

The Office seems to misunderstand much of the 1983 Court's decision approving the Wexpro I Agreement (1983 Wexpro Case).<sup>2</sup> The Office implies that the Court approved an illegal agreement or one which would not have been in the public interest except that the agreement was the product of prolonged, costly, contentious litigation.<sup>3</sup> Actually, after carefully scrutinizing the facts and the law, the Court approved the agreement finding that it was in the public interest<sup>4</sup> and finding that the Commission's order was not illegal.<sup>5</sup> What the Office seems to categorize as "hard facts" in the 1983 Wexpro Case, did not result in the Court making "bad law." The legal principles considered in approving the Wexpro I Agreement support approving the Wexpro II Agreement.

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<sup>2</sup> Utah Department of Administrative Services v. Public Service Commission, 658 P.2d 601 (Utah 1983) (1983 Wexpro Case).

<sup>3</sup> Office's Brief at p. 16.

<sup>4</sup> 1983 Wexpro Case at pp. 615-617.

<sup>5</sup> 1983 Wexpro Case at p. 617.

In the Wexpro I Case, the Court confirmed that the “agency ‘vested with power and jurisdiction . . . to supervise all the business of every such public utility in the state’ is the Commission, not this Court”<sup>6</sup> then stated “the Commission clearly has the authority to determine whether the proposed settlement is in the public interest.”<sup>7</sup> Similarly, the Commission has the authority to approve the Wexpro II Agreement which would be subject to Court action only if the approval “transgress[ed] the tolerable limits of reason.”<sup>8</sup> Consistent with the Court’s discussion of the public interest in the 1983 Wexpro Case, there are ample facts in the prefiled testimony supporting approval of the Wexpro II Agreement and finding that such approval is in the public interest.<sup>9</sup>

Also in the Wexpro I Case, the legality of the stipulation’s provision stating that the parties were “not to challenge any action taken by [MFS]<sup>10</sup> . . . other than through [the agreed] arbitration procedures” was directly challenged as being “an illegal divestiture of the Division of Public Utilities’ statutory powers to act as a party litigant before the Commission.”<sup>11</sup> The Wexpro II Agreement’s arbitration provision is less far-reaching than the strict arbitration provision approved by the Court. The Wexpro II Agreement’s arbitration provision covers only Wexpro not both Wexpro and Questar Gas as did the Wexpro I Agreement, and applies only to claims by a Party that “there is any default by Wexpro of any of its contractual obligations under the terms or intent of the Agreement.”<sup>12</sup> The Wexpro II Agreement expressly states that,

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<sup>6</sup> 1983 Wexpro Case at pp. 615-616.

<sup>7</sup> 1983 Wexpro Case at p. 616.

<sup>8</sup> 1983 Wexpro Case at p. 616.

<sup>9</sup> See Division Witness Mr. Douglas Wheelwright’s Direct, Rebuttal, and Surrebuttal Testimonies presenting proof that the Agreement is in the public interest, DPU Exhibits 1.00D, 1.00R, and 1.00SR.

<sup>10</sup> MFS was a predecessor to Questar Gas.

<sup>11</sup> 1983 Wexpro Case at p. 617.

<sup>12</sup> Wexpro II Agreement at V-13, p. 18.

“In the event that any Party claims that there is a default by Questar Gas of any of its contractual obligations under the terms or intent of this Agreement, such dispute will be adjudicated before the Commissions.”<sup>13</sup> Thus, approving the Agreement with its more narrow arbitration provision is consistent with the Court’s rationale discussed in the 1983 Wexpro Case.

Other aspects of the 1983 Wexpro Case are also worthy of study and support approval of the Agreement. While the properties at issue in the 1983 Wexpro Case were identified at that time, the properties in this Agreement will be identified when presented to the Commission for inclusion under the Agreement, and properties may be accepted or rejected. Thus, despite the Office’s contention, there is no possibility that properties will, independent of and unrestricted by the Commission, be included under the Agreement.<sup>14</sup> Rather there is only the possibility that multiple properties may be presented for the Commission to approve or reject at its discretion.<sup>15</sup>

Finally, the Office’s arguments that the finality of the 1983 Wexpro Case precludes a Wexpro II Agreement<sup>16</sup> seem to go beyond that which the Court intended.<sup>17</sup> The Court addressed finality in the context of res judicata issues pertaining to the Shareholders Association’s request concerning “provisions of the Commission’s order that allocate benefits and establish the parties’ rights (e.g. royalties and net profits interests and financial commitments for sale of gas and for development and rate-reduction payments) in the

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<sup>13</sup> Wexpro II Agreement at V-13, p. 18.

<sup>14</sup> Office’s Brief at p. 2.

<sup>15</sup> Because concerns have been raised about the lack of a termination provision in the Agreement, the Division notes that the Commission’s authority to reject properties serves as a sufficient termination provision in the Agreement, especially given the difficulty of predicting the productive life of a natural gas well. See Office’s Brief at p. 2.

<sup>16</sup> See Office’s Brief at pp. 10 and 15-16.

<sup>17</sup> See 1983 Wexpro Case at pp. 619-621.

properties transferred under the order or designated for exploration or development under it.”<sup>18</sup>

B. The Office’s Fundamental Misunderstanding of the Wexpro II Agreement Results in Its Incorrect Recommendation to Reject the Agreement Due to Differences with the Wexpro I Agreement<sup>[CRP1]</sup>.

As discussed in more detail below, the Office seems to start its analysis with a flawed premise: that Wexpro is, or but for the Agreement would be, subject to Commission regulation. The Office then relies on this premise for arguing that the Agreement waives regulatory authority in a way that the 1983 Court would not have approved. Because Wexpro is not a regulated utility, the Agreement cannot divest the Commission, the Division, or the Office of something it would not otherwise have: regulatory oversight of operations of a company that is not a regulated public utility.

Moreover, the Office’s assertion that approval of the Agreement would preclude the Commission from exercising jurisdiction over Questar Gas misrepresents both the law and the Agreement itself. The Office’s assertion that Commission approval of the Agreement would automatically raise rates or result in rate increases not subject to Commission approval demonstrates a fundamental misunderstanding of the Agreement and public utility regulation.

Both Wexpro and Questar Gas are subsidiaries of Questar Corporation. Wexpro is not a regulated public utility but an exploration and production company which sells the gas it produces to Questar Gas at the cost of service pricing set forth in the Wexpro I Agreement. Wexpro neither manages a gas plant for public service nor sells or furnishes gas to Utah

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<sup>18</sup> 1983 Wexpro Order at p. 621.

consumers.<sup>19</sup> Questar Gas, as a regulated utility, distributes the gas to Utah consumers and is subject to regulation by the Commission.<sup>20</sup>

The Office's implication that the Commission would have jurisdiction over Wexpro, or would have but for the Agreement,<sup>21</sup> is patently erroneous because Wexpro does not meet the statutory definition of a public utility.<sup>22</sup> The Office's statement that "once those properties are approved, the gas produced from those properties is no longer subject to the jurisdiction of the Commission"<sup>23</sup> is misleading because the Commission did not have, and does not have, jurisdiction over the gas produced from either approved or unapproved properties, except to the extent that the utility seeks reimbursement for its commodity costs. Contrary to the Office's allegations, merely executing a contract with a public utility, even with the Division as a signatory to that contract, does not eliminate the factual and legal prerequisites that must be satisfied prior to classifying an entity as a public utility subject to Commission jurisdiction and regulation. Thus, the Office's recommendation that the Wexpro II Agreement be rejected because of this jurisdictional issue is flawed.<sup>24</sup> It makes little sense to argue that giving up non-existent jurisdiction is somehow illegal and renders this case different than the 1983 one in a legally significant way.<sup>25</sup>

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<sup>19</sup> See Direct Testimony of Questar Gas witness Barrie L. McKay, lines 54-62, QGC Exhibit 1.0. See also Direct Testimony of Questar Gas witness James R. Livsey, lines 5-9 and 19-42, QGC Exhibit 2.0.

<sup>20</sup> See Utah Code Ann. §§ 54-2-1(9), (10), and (16).

<sup>21</sup> See Office's Brief at p. 2.

<sup>22</sup> See Utah Code Ann. § 54-2-1(9), (10), and (16).

<sup>23</sup> See Office's Brief at p. 2.

<sup>24</sup> The Office correctly notes that the Division can only *require* data from those subject to Commission jurisdiction. The Office's notion that a non-regulated party cannot *voluntarily agree* to provide the Division with data, just as Wexpro does under the Wexpro II Agreement, is unfounded.

<sup>25</sup> Further discussion of jurisdictional issues and the Agreement's preservation of the Commission's authority over Questar Gas is offered in Section IV, below [at p. 11](#).

### III. The Division has Statutory Authority to Execute the Agreement

The Division's defined powers and objectives support its execution of the Wexpro II Agreement. The Office's analysis fails to present an accurate and complete picture of the Division's statutory authority. Not only did the Wexpro I Case discussed above explicitly address the ability of the Division to enter into the Wexpro I Agreement, upon which the Wexpro II Agreement is based, but also numerous statutes and other Utah Supreme Court cases demonstrate that negotiating and executing the Agreement is consistent with the Division's defined powers and objectives.<sup>26</sup>

The Division has the statutory authority to enter into agreements, as admitted by the Office, and the authority to "commence original proceedings . . . appear as a party, present factual information and evidence, and examine witnesses [and] advocate policy recommendations."<sup>27</sup> The Division has the authority, on its own initiative or pursuant to complaint or Commission direction, to "investigate or study" any matter within the jurisdiction of the commission.<sup>28</sup> The Division has the authority to "make recommendations regarding public utility regulatory policy and long-range planning on matters within the jurisdiction of the Public Service Commission."<sup>29</sup>

Executing what is in effect a no-cost mechanism for future physical hedges, to be evaluated thoroughly at a later time by the Commission, is consistent with this authority. The

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<sup>26</sup> The Office claims that approval of the Agreement "clearly prevents the Office from being able to perform its statutory duties." Office's Brief at p. 23. The Office's proposition is unsupported. An agreement cannot prevent the Office from performing its statutory duties; only inaction or incorrect action by the Office can prohibit it from performing its statutory duties. As noted before, the Agreement allows for regular participation in the rate-setting process for Questar Gas and gives away no regulatory authority.

<sup>27</sup> Utah Code Ann. § 54-4a-1(1)(a).

<sup>28</sup> Utah Code Ann. § 54-4a-1(1)(c).

<sup>29</sup> Utah Code Ann. § 54-4a-1(1)(h).

Division is not limited to a reactive-only role – it need not wait for someone to bring something before the Commission – the Division itself has that authority and authorization to present, on its own initiative, things to the Commission for consideration. Executing the Agreement which Questar Gas then filed for Commission approval is consistent with this responsibility.

Moreover, the signed and filed Wexpro II Agreement, along with the testimony the Division filed initially, then the additional testimony that the Division filed after considering the testimony provided by other parties, and the arguments set forth in this brief represent the Division’s recommendation concerning long term ratepayer gas supply.<sup>30</sup>

It is consistent with the Division’s objectives of acting in the public interest to “provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations” consistent with “promot[ing] the . . . economic, efficient, and reliable operation of all public utilities and their services . . . ;” “provid[ing] for just, reasonable, and adequate rates;” and mak[ing] the regulatory process as simple and understandable as possible so that it is acceptable to the public,” “feasible, expeditious, and efficient to apply . . . and designed to minimize controversies over interpretation and application.”<sup>31</sup> The Division participated in lengthy discussions and negotiations concerning the terms of the Wexpro II Agreement, drafted and filed testimony, and reviewed and responded to or rebutted as appropriate, the testimony of others. This process provided the Commission with “objective and comprehensive information, evidence, and recommendations.” Note that the Division did not just sign the Agreement, file supportive testimony, and ignore the testimony of others—the

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<sup>30</sup> The Office’s contention that because the word “monitor” is not present in statutes applicable to the Division, the Division does not have the authority to monitor as set forth in the Wexpro II Agreement, and notably the Wexpro I Agreement approved by the Court, is unsupportable. See Office’s Brief at p. 13, fn 3.

<sup>31</sup> Utah Code Ann. § 54-4a-6.

Division carefully examined and weighed the merits before deciding to agree or disagree. Signing the Agreement did not shortchange the Division's analysis<sup>32</sup> but instead provided a concrete agreement for discussion before and review by the Commission.

Presenting the Commission with a detailed agreement carefully drafted by those with expertise and experience in operations and regulation complies with the objective of making the regulatory process "simple," "expeditious," and "efficient" as well as the objective of "minimiz[ing] controversy over interpretation and application."<sup>33</sup> Further, signing the Agreement obligated the Company to submit the application for approval of the Agreement and ensured the application could not be withdrawn or the offer's terms changed. Given that Wexpro agreed to provisions granting the Division access to records otherwise unavailable to the Division and providing for ratepayer considerations in the determination of development and other, the signing of the Agreement before its filing served multiple purposes that, from the Division's independent perspective, served the public interest in having this Agreement considered by the Commission.

The Office is wrong that the Division has not shown that the Wexpro II Agreement is in the public interest and the Division had no authority to enter the Agreement. Even the most cursory, casual reading of relevant statutes and the Division's direct, rebuttal, and surrebuttal

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<sup>32</sup> See Office's Brief at pp. 22-23.

<sup>33</sup> Utah Code Ann. § 54-4a-6.

testimony demonstrates that the Division addresses the public interest question and proves that the Agreement is in the public interest.<sup>34</sup>

#### **IV. The Commission's Jurisdiction Is Unimpaired by the Agreement**

The Wexpro II Agreement enhances, not impedes, the Commission's exercise of jurisdiction over Questar Gas<sup>[P2]</sup><sup>[CRP3]</sup>. The Office's Brief demonstrates not only its misunderstanding of the Agreement itself, but also of Utah's regulatory process, and, in particular, the Commission's authority and practice in setting rates for Questar Gas.

The Office mistakenly states that "By approving the proposed agreement the Commission gives up any authority to regulate the rates charged to Questar's customers for the gas Questar purchases from Wexpro."<sup>35</sup> The Office argues that the Agreement removes the Commission from the ratemaking process. The Agreement does no such thing.

The Agreement does not, and may not by law, impair the Commission's exercise of jurisdiction over the rates Questar Gas is permitted to charge its customers. Rates are set by the Commission.<sup>36</sup> Rate increases may be approved by the Commission only after hearing.<sup>37</sup> And, there is a specific defined procedure for determining the prudence of Questar Gas' expenditures for gas – the 191 Account review process.<sup>38</sup>

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<sup>34</sup>See, e.g., Direct Testimony of Douglas D. Wheelwright, lines 146-147, 148-156 and 273-284 DPU Exhibit 1.00D; Rebuttal Testimony at lines 134-161 DPU Exhibit 1.00R; and Surrebuttal Testimony at lines 82-141 DPU Exhibit 1.00SR.

<sup>35</sup> Office's Brief at p. 2.

<sup>36</sup> See Utah Code Ann. §§ 54-4-4 and 54-7-12.

<sup>37</sup> See Utah Code Ann. § 54-7-12.

<sup>38</sup> See Utah Code Ann. § 54-7-13.5. See, e.g., the Commission's decision in Re Questar Gas Company, Docket No. 12-057-08 et. al (2012), 2012 WL 4044558.

Analysis of the Agreement itself demonstrates that, despite the Office's discomfort, the Wexpro II Agreement contains ample protections for ratepayers. First, if Questar Gas, which has the power to manage delivered gas volumes from Wexpro,<sup>39</sup> allows the overdevelopment of a property, the Commission may disallow costs. Second, if Questar Gas manages Wexpro supplies imprudently, for example by failing to have wells shut in when economic conditions warrant, the Commission may disallow costs. Third, a newly-developed well will enter the portfolio only if it is a commercial well, which serves as a market-based check on the pricing of newly-developed properties.<sup>40</sup> While there are provisions in the Agreement that address Wexpro's returns, the prudence of Wexpro's actions, and other Wexpro obligations and rights, those provisions provide regulators with additional information and additional protections, not fewer. Indeed, it would be exceedingly rare and generally inappropriate for a utility regulator to peer beyond the public utility's cost of acquiring a product (in this case a physical hedge) to determine whether the utility can recover its costs associated with the acquisition. The prudence of a contractor's costs to build a generation plant, the profit of a bank offering a financial swap, and the rate of return of an office building manager leasing space to a utility are all apropos of nothing to the regulator. However, the Wexpro II Agreement allows a view into the third-party vendor that is unique and adds value to the regulators.

The Agreement allows evaluation by the monitor and arbitrators of certain Wexpro expenses and determinations of commerciality and the like. These checks are not abrogations of regulatory authority. They are dispute resolution provisions that allow ratepayer interests to be considered in the evaluation of contractual compliance. Wexpro has granted ratepayer

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<sup>39</sup> Wexpro II Agreement, Section IV-8, p. 15.

<sup>40</sup> Wexpro II Agreement, Section III-7, p. 12.

protections and exposed itself to disallowances of costs that it would not be subject to in a regular market transaction. An example may be instructive.

Assume that a utility enters into a long-term physical hedge at an index price. If a dispute arises about the index price in the future, the contract would contain provisions for resolving that dispute between the utility and the counterparty. That may include litigation, arbitration, or some other contractual dispute resolution process. It would not involve the Commission. It could not involve the Commission. The Wexpro II Agreement, however, allows the Division to participate in those dispute resolution processes to advocate the public interest.<sup>41</sup> That is an added protection, not a diminished one.

Despite its protestations to the contrary, the Office's arguments seem to amount to a distaste for a truly long-term hedge with a price set at the cost of service. If the Commission is satisfied that no property could be brought forward under the Wexpro II Agreement with favorable long-term economics for ratepayers given the Agreement's provisions, it should deny the Company's application. If the Commission can envision circumstances under which a low Wexpro II property acquisition price coupled with commercial development and uncertain or volatile price forecasts may provide ratepayer and utility hedging benefits, it should approve the Wexpro II Agreement and consider individually identified future properties as they are presented based on then-current economics.

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<sup>41</sup> The Division has statutory authority to participate in proceedings to advocate the public interest and to take actions consistent with that mandate. Utah Code Ann. § 54-4a-1(1)(a) and (b).

Approving the Agreement is consistent with correct exercise of the Commission’s jurisdiction and case law. The Commission’s jurisdiction is defined by statute,<sup>42</sup> and has been interpreted by case law limiting it to those powers expressly granted or clearly implied. Though unpersuasive, the few cases set forth by the Office in support of its proposition that issues associated with the Commission’s jurisdiction prevent it from approving the Agreement warrant further discussion. The Commission has ample “expressly granted” or “clearly implied” authority to approve the Wexpro II Agreement.

The Commission is not being asked to approve an improper or illegal agreement. The scope of the Court’s review in the 1983 Wexpro Case included whether the Commission’s approval of the stipulation was consistent with general law under a correction of error standard, the sufficiency of the Commission’s findings of basic fact, and the intermediate standard of “reasonableness or rationality,”<sup>43</sup> resulting in the Court affirming the Commission’s approval of the stipulation.

In the 1983 Wexpro Case, not only was the legality of the arbitration provision challenged but also whether the stipulation’s provisions were “plainly unlawful terms that divest the Commission of its jurisdiction over the public utility properties transferred to Wexpro and Celsius, over the sale of natural gas from them to MFS, and over the activities of those affiliates in general.”<sup>44</sup> A broader version of the Wexpro II Agreement’s arbitration clause, which troubles the Office, was considered by the Court in the 1983 Wexpro Case, and the Court decisively

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<sup>42</sup> See, e.g., Utah Code Ann. §§ 54-4-1 through 54-4-39.

<sup>43</sup> 1983 Wexpro Case at pp. 607-610.

<sup>44</sup> 1983 Wexpro Case at p. 616.

concluded that the Wexpro I arbitration provision was not “an illegal divestiture of the Division of Public Utilities’ statutory powers to act as a party litigant before the Commission.”<sup>45</sup>

The Court reached a similar conclusion in *Lindon City v. Engineers Construction Co.*<sup>46</sup> when it found Lindon City’s agreement to arbitrate a construction contract was not unconstitutional under Article VI, Section 28 of the Utah Constitution which prohibits a municipal corporation delegating its functions to a special commission. The Court rejected the argument that “enforce[ing] the binding arbitration clause . . . would be tantamount to subjecting a municipal corporation to the interest of a group antagonistic to the public with no responsibility to the public.”<sup>47</sup> The Court stated that the arbitration clause “did not involve a delegation of unlimited discretion to an ad hoc panel of private persons to make basic governmental policy”<sup>48</sup> but pertained to “disputes about compliance with terms fixed by the contract.”<sup>49</sup> The Lindon case is far more pertinent to the issues at hand than the *Salt Lake City v. International Association of Firefighters* ~~case~~<sup>50</sup> ~~case~~ cited by the Office in support of its position.<sup>51</sup>

The facts currently before the Commission differ from the facts in front of the Court in *Stewart v. Utah Public Service Commission*<sup>52</sup> wherein the Court found that a statute granting a public utility the right to veto a revenue sharing plan from the Commission was illegal and unconstitutional.<sup>53</sup> Here, the Agreement enhances the Commission’s oversight of Questar Gas

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<sup>45</sup> 1983 Wexpro Case at p. 617.

<sup>46</sup> 636 P.2d 1070 (Utah 1981) (Lindon).

<sup>47</sup> Lindon at p. 10754.

<sup>48</sup> Lindon at p. 1075.

<sup>49</sup> Lindon at p. 1075.

<sup>50</sup> -563 P.2d 786 (Utah 1977).

<sup>51</sup> Office’s Brief at pp. 24-26.

<sup>52</sup> 885 P.2d 759 (Utah 1994) (Stewart).

<sup>53</sup> Stewart at pp. 777-779.

because it requires additional monitoring and reporting applicable to the utility and a third-party. Under the Wexpro II Agreement, the Commission retains its jurisdiction over Questar Gas and the rates that it charges. The Commission never had jurisdiction over Wexpro, so the Agreement does not equate to the impermissible veto in Stewart.

## **V. Conclusion**

Commission approval of the Wexpro II Agreement is supported by statute and case law and is in the public interest. The Agreement is a no-cost option providing the Commission with the ability to, on a case by case basis, decide whether to approve a long term physical hedge by Questar Gas. The Agreement does not impede Commission regulation of Questar Gas, but enhances it. The Commission retains the ability to decide in a 191 Account proceeding whether Questar Gas' resource decisions, including managing production from Wexpro, were prudent. Therefore, the Division urges the Commission to approve the Wexpro II Agreement.

Respectfully submitted this \_\_\_\_\_ day of February, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2013 I caused to be served, via email, overnight mail or hand delivery, a true and correct copy of **DIVISION OF PUBLIC UTILITIES' POST-HEARING BRIEF** to the following:

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