Colleen Larkin Bell (5253)
Jenniffer Nelson Clark (7497)
333 S. State Street
PO Box 45433
Salt Lake City, Utah 84145-0433
(801)324-5556
(801)324-5935 (fax)
Colleen.Bell@questar.com
Jenniffer.Clark@questar.com

Gregory B. Monson
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
(801)578-6946
(801)578-6999 (fax)
gbmonson@stoel.com

Attorneys for Questar Gas Company

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 **RESPONSE OF QUESTAR GAS TO OFFICE'S POST-HEARING BRIEF**

Questar Gas Company ("Questar Gas" or the "Company") hereby responds to the post-hearing brief ("Brief") of the Utah Office of Consumer Services ("Office") dated February 8, 2013.

I. INTRODUCTION

The Office urges the Commission to reject the Wexpro II Agreement ("Agreement") based on an incorrect belief that the Agreement somehow deprives the Commission of its jurisdiction to regulate the Company's rates and charges. The Office assumes that if the Commission rejects the Agreement, the parties will renegotiate the Agreement to modify a few provisions to satisfy the Office's preferences. There is no basis for the Office's assumption. Thus, the Office recommends that the Commission deprive Utah customers of the opportunity to continue to participate in a cost-of-service gas program that has saved them in excess of $1.3 billion over the last 30 years based on erroneous legal technicalities.

The Office's objection to the Agreement is centered in the fact that disputes regarding Wexpro's performance of its obligations are subject to binding arbitration rather than litigation before the Commission. Given that Wexpro is not a public utility subject to regulation by the Commission, there is nothing remarkable about this manner of dispute resolution, and it does not deprive the Commission of any jurisdiction that it otherwise would have. Furthermore, the fact that the Commission may not order Wexpro to take certain actions under the Agreement does not deprive the Commission of any jurisdiction to set the rates and charges of Questar Gas and to disallow costs if it finds, based on substantial evidence, that Questar Gas acted imprudently. Indeed, the Agreement clearly exempts the prudence of Questar Gas's conduct under the Agreement from the binding arbitration provision, recognizing that issue is within the purview of the Commission. Thus, the Office's main objection is without basis.

The Agreement provides a no-cost option for customers to receive cost-of-service gas from properties Wexpro Company ("Wexpro") may acquire in the future at its sole cost and risk. The Commission is not being asked to approve any property for inclusion in the Agreement or to require Questar Gas to incur any cost. When Wexpro acquires a property and Questar Gas proposes its inclusion in the Agreement, the Commission will examine whether development of the property under the terms and conditions of the Agreement is anticipated to provide benefits to customers and is, therefore, in the public interest. If the Commission determines that the proposed property will not provide long-term benefits to Questar Gas's customers over the expected life of the proposed property, the Commission will likely reject the property. On the other hand, if the Commission rejects the Agreement, it will never have the opportunity to make that decision and customers will lose this extraordinary option.

In these circumstances, approval of the Agreement seems obvious.

II. BACKGROUND FOR THE AGREEMENT

The Office's arguments are not new. While attempting to distinguish the basis for the Wexpro Stipulation and Agreement ("Wexpro I"), the Office ignores its background. Therefore, a brief review of the Company's history is necessary.

In 1935, Mountain Fuel Supply Company (now known as Questar Gas) was formed by hydrocarbon exploration companies that had discovered natural gas in southwestern Wyoming and northwestern Colorado and needed a place to sell it.[1] After obtaining regulatory approval and constructing or acquiring facilities to transport and distribute their gas to Wasatch Front customers, the Company began public utility operations, initially supplying 100 percent of its customers' needs with Company-owned gas.

The Company also discovered and produced oil. In an early rate case, the Commission considered whether oil costs and revenues should be included in utility accounts. Commission staff objected to inclusion of costs associated with the highly-speculative oil business in utility rates, and the Commission required the Company to separately account for its non-utility oil business and to allocate its exploration and development costs appropriately.

---

[1] *Committee of Consumer Services v. Public Service Comm'n*, 595 P.2d 871, 881 (Utah 1979) ("*Committee*") (Wilkins, J., dissenting).

In rate cases over the next 30-plus years, the Commission regularly reviewed the Company's allocation of exploration costs between its utility and non-utility accounts and made adjustments when it believed the utility business and its customers were bearing too high a percentage of those costs. In addition, as the Company's load requirements grew, it supplemented its own natural gas supplies with purchases from other producers and pipelines.

This system worked well. The undisputed evidence was that even though rates included a return on leasehold investments and some percentage of dry hole, delayed rental and abandoned lease costs from 1960 to 1976, they were lower by from $74.3 million to $123.3 million than they would have been had the Company purchased all of its gas supply on the market. However, in the early 1970s, when the Company discovered new oil reserves and the value of oil increased substantially as a result of the OPEC oil embargo, various customer groups successfully urged the Commission to include all costs and revenues from the non-utility oil business in determining rates.[2] Immediately following the Commission's order, a huge sell-off of Company stock started and the New York Stock Exchange suspended trading. A week later, after an expedited emergency hearing, the Commission reversed its decision to roll-in oil, but refused to modify its underlying findings of fact.[3]

With the cloud of regulation of its non-utility oil business hanging over its head, in 1976 the Company determined to transfer its oil properties to a newly created subsidiary, Wexpro, and to conduct further exploration and development of undeveloped leases under a Joint Exploration

[2] Report and Order, Case Nos. 6668 and 6791 (Utah PSC January 14, 1974).

[3] Supplemental Order, Case Nos. 6668 and 6791 (Utah PSC January 21, 1974). *See also* Report and Order, Case Nos. 6668 and 6791 (Utah PSC July 18, 1974) (essentially affirming Supplemental Order).

Agreement ("JEA") which clearly defined how exploration costs and revenues would be shared. Following lengthy proceedings consuming 15 months, the Commission approved the transfer of properties and the JEA, subject to modifications that the Company and Wexpro were willing to make.[4]

The Division of Public Utilities ("Division") and Committee of Consumer Services (now known as the Office) appealed the Commission's decision. The Utah Supreme Court reversed on the ground that if the capital cost of properties or any portion of the expenses to develop them had ever been included in utility accounts, they were utility properties and could not be transferred to Wexpro without fair market compensation to the Company for the benefit of its customers.[5] The Company and Wexpro attempted through litigation in various forums to avoid the effect of that decision because they could not raise capital to conduct an exploration and development program under the conditions mandated by the court.

Given that the exploration and development program, which supplied a substantial portion of the gas consumed by the Company's customers and generally provided cost-of-service gas to customers at below market prices, was in jeopardy, the parties engaged in lengthy negotiations to find a solution that was fair and workable for all parties. They were represented by experienced and well-regarded legal counsel and nationally-recognized economists, hydrocarbon engineers and accountants. The result of these difficult negotiations was Wexpro I. Wexpro I provided benefits to customers from the properties that had been included in utility accounts, including, with no further risk of unsuccessful exploration, cost-of-service gas, 54

[4] Report and Order, Case No. 76-057-14 (Utah PSC April 11, 1978).

[5] *See Committee*, 595 P.2d at 878.

percent of net revenues from oil and overriding royalties on unexplored leases.[6] This benefit was based on the court's ruling that customers had earned an interest in those properties by providing risk capital.[7] On the other hand, Wexpro I allowed Wexpro and its new affiliate Celsius Energy Company ("Celsius") to develop other properties never included in utility accounts wholly outside the purview of public utility regulation with no expectation that utility customers would ever receive any benefit from them.[8] Company management insisted that it would never again be put in the position where its shareholders' expectations regarding the proceeds from its non-utility operations would be subject to changes in regulatory policy.

The Commission approved Wexpro I despite opposition from consumer groups that customers were not receiving all of the benefits required by *Committee* and that the Commission was somehow giving up jurisdiction,[9] and despite its misgivings about the fact that there would be no exploration and development program to provide cost-of-service gas to the utility beyond Wexpro I. *Id.* at 18-19. On appeal, the Utah Supreme Court affirmed the Commission's decision, holding that the Commission had acted within the mandate of *Committee* and that its finding that customers had received and would receive appropriate benefits from the properties that had touched utility accounts were supported by substantial evidence.[10] Although the court agreed that the Commission's decisions regarding the properties transferred and the benefits

---

[6] *See Utah Dept. of Admin. Serv. v. Public Service Comm'n*, 658 P.2d 601, 606-07 (Utah 1983) ("*Admin. Serv.*").

[7] *See Committee*, 595 P.2d at 876.

[8] *See Admin. Serv.*, 658 P.2d at 613.

[9] Report and Order, 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, 10-11 ("*Wexpro I Order*").

[10] *See Admin. Serv.*, 658 P.2d at 613-15.

received for them were res judicata, it also ruled that the Commission had not given up any jurisdiction as a result of its approval of Wexpro I. *Id.* at 621. The court also specifically rejected the same argument that the Office makes in its Brief that the Division cannot enter into an agreement with binding arbitration because doing so is inconsistent with its statutory duty. *Id.* at 617.

Wexpro I has worked exceptionally well for 30 years, providing benefits to customers in excess of $1.3 billion. In addition, Wexpro has been successful in developing a gas supply that has lasted far longer than originally anticipated, and Celsius (now known as QEP Resources ("QEP")) has had a very successful exploration and development program on newly acquired properties.

Prior to the spinoff of QEP from Questar Corporation in June of 2010, it is unlikely that management of Questar Corporation would have considered anything like Wexpro II. However, following the spinoff, new management recognized that Wexpro I has been beneficial to both Questar Gas and Wexpro and that the finite properties included in Wexpro I will eventually be depleted, depriving customers of the opportunity to receive cost-of-service gas in the future. Therefore, consistent with the Commission's "philosophy and understanding" expressed in its order approving Wexpro I,[11] Questar Gas and Wexpro were directed to explore the possibility of continuing the cost-of-service gas program in the future beyond the Wexpro I properties. After a year of meetings and negotiations, the Company, Wexpro, the Division and the Wyoming Office of Consumer Advocate ("OCA") reached agreement on Wexpro II, which provides Questar Gas

[11] *Wexpro I Order* at 6.

customers the opportunity to receive the same benefits provided in Wexpro I, but without incurring the risk of acquisition and dry holes that was the basis for their interest in Wexpro I properties. Wexpro will acquire properties at its sole risk and cost, and customers will bear no costs associated with them unless the Commission concludes after public hearings that inclusion of those properties in Wexpro II is in the public interest.

Just as Wexpro and Celsius believed in agreeing to Wexpro I that they could not conduct a successful exploration and development program under public utility regulation, Wexpro continues to believe that it cannot successfully participate in the oil and gas development business with unregulated partners if it is subject to public utility regulation. Thus, Wexpro has insisted that the same protections against this condition in Wexpro I remain in Wexpro II. However, in recognition of questions raised by the Division and Office, the Parties have made clear that the Company's actions under the Agreement remain subject to regulatory oversight and review.

III. ARGUMENT

The Office objects to approval of the Agreement on three grounds. First, the Office contends that approval of the Agreement will result in loss of oversight by the Commission. Second, the Office argues that in entering into the Agreement, the Division has abrogated its responsibility to represent the public interest. Third, the Office claims that the dispute resolution provision in the Agreement deprives the Commission of jurisdiction to protect the public interest. Each of these related arguments is based on a fundamental misperception of the current status of regulation absent the Agreement and is, therefore, incorrect.

A. The Commission Will Not Lose Any Oversight by Approving the Agreement.

Although the Office claims that the Commission will lose oversight by approving the Agreement, it fails to clearly enunciate what oversight the Commission currently has that will be lost or even what functions the Commission will lose oversight over. In its summary of this argument, the Office mentions two concerns. First, the Office is concerned that cost-of-service gas might be more expensive than market prices and that the lack of a termination provision in the Agreement is against good public policy. Brief at 2-3. Questar Gas fails to see how either of these concerns demonstrates a loss of Commission oversight. Instead these concerns are raised in an effort to suggest that loss of oversight could have significance. However, the Office fails to acknowledge that the Commission makes decisions about asset acquisitions that may at some point turn out to be disadvantageous to customers. In these circumstances, ongoing oversight does not allow customers to avoid the costs the Commission has previously determined were prudently incurred.[12] Wexpro II is no different.

In the body of its argument, the Office fails to address loss of oversight as a separate issue from dispute resolution. Instead, it engages in a discussion ranging over *Committee*, *Admin. Serv.*, the Division's monitoring function and the nature and scope of utility regulation in Utah without ever tying this discussion directly to the claimed loss of oversight. Brief at 5-14. In these circumstances, Questar Gas has no duty to make the Office's argument for it and then demonstrate why it is erroneous. Therefore, Questar Gas will affirmatively address three reasons that the Commission's jurisdiction is not diminished by the Agreement.

---

[12] *See, e.g.*, Utah Code Ann. § 54-17-403.

First, neither the parties through an agreement or the Commission through a decision can deprive the Commission of any jurisdiction that it has.[13] This issue was discussed at some length in *Admin. Serv*. There the court approved the Commission's conclusion that in approving Wexpro I it was not relinquishing any jurisdiction that it had.[14] If the Commission did not relinquish jurisdiction by approving Wexpro I, under which properties that the Supreme Court, had concluded were utility properties were transferred to Wexpro and Celsius, it is inconceivable that it is relinquishing jurisdiction or oversight by approving an agreement under which properties in which the Company has never had an interest may be proposed for development under the same terms if approved by the Commission.

Second, the Commission can only lose something if it already has it. The Commission's jurisdiction is limited to the utility business of Questar Gas.[15] It has no jurisdiction over Wexpro or any other Questar Gas vendor, contractor, or supplier. The Office would never claim that the Commission should exercise oversight over Chevron because Questar Gas purchases natural gas from Chevron. The Commission does not gain jurisdiction over Wexpro simply because Wexpro is affiliated with Questar Gas. The policy that transactions with affiliates are subjected to a higher level of scrutiny than those with unrelated third parties[16] does not mean that the Commission has jurisdiction over affiliates doing business with a utility. It simply means that

---

[13] *Utah Hotel Co. v. Pub. Utils. Comm'n*, 204 P. 511, 515-16 (Utah 1922); *Wexpro I Order* at 18 ("The Commission does not and could not waive any of its jurisdiction, or regulatory power and authority [by accepting Wexpro I].").

[14] *Admin. Serv*., 658 P.2d at 620 ("'[B]y adopting and approving the Stipulation, the Commission does not relinquish or limit any jurisdiction or statutory authority it possesses'").

[15] Utah Code Ann. §§ 54-2-1(16)(c), 54-4-1.

[16] *US West Comms., Inc. v. Public Service. Comm'n*, 901 P.2d 270, 274 (Utah 1995).

the Commission may disallow costs incurred by the utility in transactions with its affiliates if, after applying a higher level of scrutiny, the Commission finds that the costs are imprudent. Nothing in the Agreement deprives the Commission of the right to disallow costs incurred by Questar Gas under the Agreement if the Commission finds they were incurred imprudently by Questar Gas. The Commission loses no jurisdiction under the Agreement.

Third, the Office ignores the fact that the Agreement will only be operative if the Commission allows properties acquired by Wexpro at its sole cost and risk to be included in the Agreement. Thus, the Commission clearly has oversight over the most fundamental aspect of the Agreement. Each time a property is proposed for inclusion in the Agreement, the Commission will have the opportunity to examine all facts presented to it and to make a determination whether development of the property under the terms and conditions of the Agreement is likely to be beneficial to the customers of Questar Gas. If, after allowing a property to be included in the Agreement, claims arise that Wexpro has imprudently developed the property in a manner that is harmful to Questar Gas or its customers, those claims will be decided by arbitration. However, if there is a claim that Questar Gas has acted imprudently in exercising its rights under the Agreement, that claim will be decided by the Commission. Thus, it is not necessary for the Commission to exercise oversight over Wexpro's operations under the Agreement in order to exercise oversight over the actions of Questar Gas over which it undisputedly has jurisdiction.

In summary, the Commission's appropriate oversight over Questar Gas is not affected in any way by the Agreement, nor could it be. The Commission can only lose something if it already has it. The Commission has no jurisdiction over companies, like Wexpro, that are not public utilities. The Commission retains jurisdiction over the most fundamental aspect of the Agreement—inclusion of properties in it.

B. The Division Is Authorized to Monitor the Agreement and to Enter Into the Agreement.

In its summary argument, the Office states that the Division has abrogated its responsibility to represent the public interest before the Commission because "it has contractually agreed that the gas properties acquired under the [A]greement have no ongoing oversight by the … Commission." Brief at 3. The Office also argues that the Division does not have authority to enter into an agreement "to allow the Division (rather than the Commission) to determine what the just and reasonable rate is to be that the utility charges ratepayers." *Id.* at 3-4. In the body of its argument, the Office claims that the Division has no statutory right to monitor something like the Agreement. *Id.* at 9, 15. Each of these arguments is defective.

1. The Commission Has Never Had Oversight Over Wexpro II Properties.

The Office's argument that the Division has abrogated its statutory responsibility by agreeing that the Commission has no ongoing oversight over Wexpro II properties suffers from the same defect as its argument that the Commission is losing regulatory oversight by virtue of the Agreement. The Commission certainly has no regulatory oversight over any oil and gas property that is not currently owned by Questar Gas or Wexpro. The Commission will certainly have no regulatory oversight over any property acquired by Wexpro at its sole risk and expense in the future. Therefore, the concept that the Commission would have any ongoing regulatory oversight over any such property is a non sequitur.

More fundamentally, the Commission has no regulatory oversight over any property owned by anyone that sells gas to Questar Gas. The Commission simply has regulatory oversight over Questar Gas. If Questar Gas is imprudent in its purchases of gas from any supplier, Wexpro included, the Commission may disallow costs incurred to the extent they result from that imprudence. If Questar Gas is imprudent in consulting with Wexpro regarding development of any property included in Wexpro II, the Commission may disallow costs incurred by Questar Gas to the extent those costs arise from the Company's imprudence.

2. The Commission Determines Just and Reasonable Rates Under Wexpro II.

As in Wexpro I, the Division has authority to monitor the performance of both Wexpro and Questar Gas under Wexpro II. Questar Gas's rates are determined in rate cases before the Commission. That will not change under Wexpro II. If the Division or the Office believes that the costs paid by Questar Gas to Wexpro under Wexpro II are imprudent, they may make such claims in the Company's pass-through cases before the Commission. The Office has been able to review the reasonableness of charges under Wexpro I in past pass-through proceedings, and nothing in the Agreement will affect its right to do so under Wexpro II in the future.

Because the Division has the right to monitor performance of Wexpro II, it will be well informed about any issue that it believes indicates imprudence on the part of Questar Gas. Thus, as a result of entering into Wexpro II, the Division will be better able to perform its statutory responsibility to represent the public interest in rate cases before the Commission.[17] However, it does not now, nor will it ever, determine whether the costs incurred by Questar Gas are just and reasonable. That is the Commission's function, and it will not be impaired in any way by Wexpro II.

3. The Division Has Authority to Monitor the Agreement.

The Office's argument that the Division has no authority to monitor the Agreement is internally inconsistent. On the one hand, the Office bemoans the fact that the Agreement deprives the Commission of oversight over Wexpro's development of properties that may be

---

[17] *See* Utah Code Ann. § 54-4a-6.

included in the Agreement and over the properties themselves. Brief at 1-2. On the other hand, the Office claims that the Division exceeds its statutory authority in monitoring the Agreement. Brief at 3-4.

The Office acknowledges that the Division has authority to investigate matters within the jurisdiction of the Commission. Brief at 15. Thus, if the Division does not have authority to monitor performance of the Agreement, it must follow that the Agreement is beyond the jurisdiction of the Commission. If on the other hand, the Agreement is within the jurisdiction of the Commission as the Office's argument assumes, the Division has authority to investigate the performance of the Agreement. The Division's monitoring of Wexpro I was implicitly approved by the Supreme Court.[18] Wexpro II is no different.

The Division has been monitoring the performance of Wexpro I for over 30 years with no complaint by anyone. Surely, if the Division has been exceeding its statutory authority for over 30 years, someone would have raised the issue before now. The Office's argument is unpersuasive.

C. The Dispute Resolution Provision in the Agreement Does Not Deprive the Commission of Jurisdiction and Is Not Improper.

The Office's third claim that the dispute resolution provision in the Agreement is improper is the only one it attempts to directly address in the body of the Brief. The Office argues that the arbitration clause of the Agreement eliminates the power of the Commission to supervise all of the business of Questar Gas. Brief at 16. It argues that the arbitration provision

[18] *See Admin. Serv.*, 658 P.2d at 617 ("The parties stipulated that the Division was 'to monitor the performance of [MFS] and Wexpro under the Agreement' and they established means (including access to information) to facilitate that monitoring. … [W]e can see no reason why … the Division should not enforce this limited function by means of arbitration.")

is an unconstitutional delegation of public authority to a private entity. *Id.* at 16-18. Finally, the Office attempts to distinguish *Admin. Serv*. *Id.* at 18. Each of these arguments is in error.

1. The Arbitration Clause Does Not Eliminate the Commission's Power to Regulate Questar Gas.

The Office's argument that the arbitration clause eliminates the Commission's power to supervise the business of Questar Gas is just a different way of stating its first argument that the Agreement deprives the Commission of jurisdiction. Rather than repeating itself, Questar Gas refers the Commission to its argument above on that issue which demonstrates why it is incorrect.

2. The Arbitration Clause Is Not an Unconstitutional Delegation of Public Authority to a Private Entity.

Citing *Salt Lake City v. International Assn. of Firefighters*, 563 P.2d 786 (Utah 1977) and *Stewart v. Utah Public Service Comm'n*, 885 P.2d 759 (Utah 1994), the Office claims that the arbitration provision in the Agreement is improper because it allows private arbitrators to determine public-interest questions that must be decided by the Commission. Both cases are easily distinguishable. *Admin. Serv.*, on the other hand, is directly on point and is controlling precedent on this issue. In addition, Section 63G-5-201 of the Utah Code specifically authorizes state agencies to enter into agreements for alternative dispute resolution.

In *Salt Lake City*, the court found that a statute authorizing a private body to resolve disputes regarding the conditions of employment of public employees was an unconstitutional delegation of a government function to a private body. 563 P.2d at 789. Likewise, in *Stewart*, the court found a statute allowing a public utility to opt out of an incentive regulation plan adopted by the Commission to be unconstitutional. 885 P.2d at 776-77. Neither of these cases addresses the situation presented in Wexpro II.

In Wexpro II, disputes regarding whether Wexpro, an unregulated entity, is performing its duties under the Agreement are to be resolved by binding arbitration. Determination of whether any private party that does business with a public utility is in breach of its contract with the public utility is not a matter within the jurisdiction of the Commission.[19] Rather, it is a matter to be resolved by a court or by alternative dispute resolution. Thus, the policy of the law favoring resolution of disputes through arbitration or other means of alternative dispute resolution applies to Wexpro II.

The Wexpro II arbitrators have no authority to determine the costs that will be included in Questar Gas's rates or to determine if Questar Gas has acted prudently in its performance of its obligations under the Agreement. They do not have authority to determine any public-interest question. Therefore, Wexpro II is not delegation of public authority to a private entity.

This is made manifest by the fact that the arbitration provision in Wexpro I was specifically upheld by the Supreme Court in *Admin. Serv*. In an essentially identical situation, the court held that a binding arbitration provision was appropriate. Furthermore, in reaching this conclusion, the court cited *Lindon City v. Engineers Construction Co.,* Utah, 636 P.2d 1070 (1981). *Lindon City* distinguished *Salt Lake City*, explaining why it did not apply to a circumstance similar to that presented in Wexpro I.

In 2001, the Utah Legislature adopted Section 63G-5-201(1), which specifically provides:

> An agency may use an ADR procedure to resolve any dispute, issue, or controversy involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemakings, enforcement

[19] *See, e.g., Atkin, Wright & Miles v. Mountain States Tel. & Tel. Co.*, 709 P.2d 330, 334-35 (Utah 1985) (holding that Commission did not have jurisdiction to determine tort or contract claims between plaintiff and utility).

> actions, permitting, certifications, licensing, policy development, and contract administration only with the consent of all the interested parties.

It is apparent that the Office's concern about arbitration is inconsistent with Utah law.

3. *Admin. Serv.* Is Controlling Precedent.

The Office attempts to distinguish *Admin. Serv.*, claiming it did not deal with functions or powers within the statutory purview of the Division or Commission because Wexpro I is limited to specific properties while Wexpro II is not. Brief at 18. This attempt fails.

It is true that the main difference between Wexpro I and Wexpro II is that the former is limited to specifically identified properties and the latter will be applied only to properties not yet identified, but which may only be included in the Agreement if approved by the Commission. However, the Office fails to explain how this difference has any effect on resolution of disputes regarding how Wexpro performs its obligations under the Agreement. If it is appropriate for binding arbitration to be used to resolve disputes about Wexpro's performance of its obligations under Wexpro I, it is certainly appropriate for binding arbitration to be used to resolve disputes about Wexpro's performance of its identical obligations under Wexpro II.

In *Admin. Serv.*, the court said:

> The Department also claims that the [arbitration clause] constitutes an illegal divestiture of the Division of Public Utilities' statutory powers to act as a party litigant before the Commission. Since that restriction on the powers of the Division of Public Utilities only applies to the enforcement of the agreement and to the "Properties" transferred under it, we think it is not illegal. … Since the sound policy of the law looks with favor on agreements to arbitrate, *Lindon City v. Engineers Construction Co.*, Utah, 636 P.2d 1070 (1981), we can see no reason why that favoritism should not permit the parties to agree that the Division could enforce this limited function by means of arbitration.

658 P.2d at 617. Thus, *Admin. Serv.* dealt specifically with the question of whether it was within the statutory authority of the Division to agree to arbitration. The Office's claim that the case did not deal with functions or powers within the statutory purview of the Division is plainly wrong.

This analysis applies equally to Wexpro II and is, in fact, controlling precedent on the question raised by the Office.[20]

IV. CONCLUSION

The Office has now had at least three opportunities to present its arguments on legal issues associated with approval of Wexpro II in this docket. When its arguments are exposed to rigorous analysis, they are difficult to articulate, let alone sustain.

All of the Office's arguments derive from the mistaken notion that the Agreement somehow deprives the Commission of jurisdiction. As explained above, the Agreement does not and could not do so. When considered in analogous situations, it is apparent that no one would argue that the Commission has authority to regulate or supervise or have oversight over the business of any other producer of natural gas. On the other hand, the Agreement does not diminish the ability of the Commission to supervise and regulate Questar Gas in any respect.

Wexpro II presents an extraordinary opportunity for customers of Questar Gas to continue to have the option to participate in a cost-of-service gas program which has been beneficial to them for almost 80 years. The Commission should welcome that opportunity and not be dissuaded by the Office's unfounded concerns.

---

[20] *Admin. Serv.*, 658 P.2d at 608 (finding that legal conclusions of the PSC are reviewed for correction of error "with no deference to the expertise of the Commission").

Dated: February 15, 2013.

QUESTAR GAS COMPANY

____

Colleen Larkin Bell
Jenniffer Nelson Clark
Questar Gas Company

Gregory B. Monson
Stoel Rives LLP

Attorneys for Questar Gas Company

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **RESPONSE OF QUESTAR GAS TO OFFICE'S POST-HEARING BRIEF** was served upon the following persons by email on February 15, 2013:

Patricia E. Schmid
Justin Jetter
Assistant Attorney Generals
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857
pschmid@utah.gov
jjetter@utah.gov

Jerrold Jensen
Assistant Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857
jerroldjensen@utah.gov

Chris Parker
Artie Powell
Doug Wheelwright
Dennis Miller
Division of Public Utilities
160 East 300 South
P.O. Box 146751
Salt Lake City, UT 84114-6751
chrisparker@utah.gov
wpowell@utah.gov
dwheelwright@utah.gov
dennismiller@utah.gov

Michele Beck
Eric Orton
Office of Consumer Services
160 East 300 South
P.O. Box 146782
Salt Lake City, UT 84114-6782
mbeck@utah.gov
eorton@utah.gov

Ivan Williams
Senior Counsel
Wyoming Office of Consumer Advocate
2515 Warren Avenue, Suite 304
Cheyenne, WY 82002
Ivan.Williams@wyo.gov

Bryce Freeman
Administrator
Wyoming Office of Consumer Advocate
2515 Warren Avenue, Suite 304
Cheyenne, WY 82002
Bryce.Freeman@wyo.gov

Gary A. Dodge
Hatch, James & Dodge
10 West Broadway, Suite 400
Salt Lake City, UT 84101
gdodge@hjdlaw.com

Kevin Higgins
Neal Townsend
Energy Strategies
215 S. State Street, #200
Salt Lake City, UT 84111
khiggins@energystrat.com
ntownsend@energystrat.com

Yvonne R. Hogle
Senior Counsel
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
yvonne.hogle@pacificorp.com

David L. Taylor
Utah Regulatory Affairs Manager
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
dave.taylor@pacificorp.com

Betsy Wolf
Salt Lake Community Action Program
764 South 200 West
Salt Lake City, UT 84101
bwolfe@slcap.org