State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
*Executive Director*

THOMAS BRADY
*Deputy Director*

CHRIS PARKER
*Director, Division of Public Utilities*

GARY HERBERT.
*Governor*

SPENCER J. COX
*Lieutenant Governor*

# ACTION REQUEST RESPONSE

**To: Public Service Commission**

From: Division of Public Utilities
Chris Parker, Director
Energy Section
Artie Powell, Manager
Doug Wheelwright, Technical Consultant
Eric Orton, Technical Consultant

Date: September 29, 2017

Subject: Action Request Response regarding Docket No 16-057-17. QGC Replacement Infrastructure 2017 Annual Plan and Budget.

## RECOMMENDATION

The Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) deny the Dominion Energy Utah fka Questar Gas Company (Company) request for approval of additional capital investment in the Infrastructure Tracker (Tracker) for the calendar year 2017.

## BACKGROUND

The final order in Docket No. 13-057-05, approved the continuation of the Tracker on a pilot basis. Along with that approval, the Company was then allowed to collect up to $65 million per year (with an annual automatic escalation based on the GDP Deflator Index). The February 21, 2014 Report and Order,[1] which allowed the Tracker to continue, required the Company to submit to the Commission a projected budget each November, for the next calendar year.

On November 15, 2016, the Company submitted its budget to the Commission along with exhibits outlining the planned infrastructure replacement projects for the upcoming 2017 calendar year.

On July 13, 2017, the Company sent a letter to the Commission regarding its Replacement Infrastructure 2017 Annual Plan and Budget Update – Docket No.16-057-17 notifying the Commission of its intent to request the Commission allow the Company to exceed its 2017 Tracker budget cap.

On August 30, 2017, the Company sent a letter to the Commission formally requesting permission to increase its 2017 Tracker budget by $5.27 million based on continued work on FL 51 in Weber County. On that same day, the Commission issued an Action Request to the Division directing the Division to review this filing for compliance and make recommendations. On August 31, 2017, the Commission issued a Notice of Filing and Comment Period, informing interested parties that initial comments on the Company's request are due on or before September 29, 2017, with reply comments due on or before October 13, 2017. This is the Division's response to the Action Request as well as its initial Comments.

**ISSUE**

The central point of the filing revolves around the words of paragraph 22.a. in the Partial Settlement Stipulation approved in Docket No. 13-057-05 stating, "[t]he Company may request Commission approval to exceed the budget cap if there are exigent circumstances requiring immediate Capital expenditures."

[1] Report and Order Docket No. 13-057-05, pages 73-76

In the Division's mind, the real question revolves around the determination as to whether this project is "exigent circumstances requiring immediate Capital expenditures".

**DISCUSSION**

Last year, the Company proposed to increase its tracker budget by $4 million to work on this same pipe, FL 51. It said that it took $2 million from the replacement of FL24 and another $2 million from the IHP work in Salt Lake County to provide the $4 million expected to replace a section of FL89 and requested an additional $4 million be added to the 2016 budget to replace part of FL 51, making a total projected budget for 2016 of $70.89 million. The Division supported that request. Accordingly, the Division also proposed that the Company be required to reduce its 2017 budget by $4 million. The Company vehemently disagreed with the Division's recommendation to reduce its 2017 budget by the corresponding increase amount of $4 million. However, both the proposed increase for 2016 and the proportionate decrease for 2017 were ordered.

In the 2017 budget and plan, the Company outlined the plans for replacing parts of FL 21 and PV0004. The Division discovered in DR Response 1.08 that PV0004 is a high pressure Service Line Tap off FL 26, not a Feeder Line; therefore, it should never have been included in the Tracker. The corresponding budgets for these were: $46.1 million and $0.4 million respectively. The Company budgeted $17.1 million on Belt Line work and $0.55 million for Pre-engineering. All these projects sum to $64.15 million, which is just shy of the $68.7 million budget cap less the $4 million adjustment from the order in Docket No. 15-057-19.

The Division examined the Company's budget increase request filing, issued 14 data requests and discussed the specifics of the filing with Company representatives in order to gain a better understanding of the Company's position on the requested increase in the 2017 budget cap.

**ISSUES**

The Company's proposal is to take $1.47 million from its IHP work and have customers pay an additional $5.27 million, for a total project cost of $6.74 million. In its August 30, 2017 letter to the Commission, the Company uses four points to make its case that it is now in a circumstance where it needs the Commission "to approve additional necessary capital investment" for the 2017 Tracker. They are:

> 1) That after the submission of its budget "Weber County officials notified the Company that a road project may require replacement of segments of FL51 in 2017."
>
> 2) Until the "confirmation from Weber County officials" on June 29, 2017 it was unaware of the "schedule, budget and footage."
>
> 3) The Company is already "committed to invest $64.15 million" in 2017, which "leaves little flexibility to undertake the replacement of FL51 within the currently approved budget."
>
> 4) The road project requiring this replacement needs to start "beginning in the second half of 2017" as stated in paragraph 2 or alternatively, needs to be completed "by the end of this year." As stated in paragraph 6.

In summary, the Company states that it "believes that the facts and circumstances surrounding the replacement of FL51 are exigent. The Company did not know of the required replacement until after the budget was filed. Requests for a timeline or scope of project were not answered until mid-2017. The county is now requiring replacement before the end of this year". See the Company's letter to the Commission dated August 30, 2017 paragraph 6. The Division investigated each of those claims from the Company in order to determine if these were exigent circumstances. We will address each in turn and make additional comments regarding items that have surfaced during the investigation.

**1) Officials Notified it After the Budget was Submitted**

In its filing, the Company stated that it "did not know of the required replacement until after the budget was filed." Stating that "On November 18, 2016 …Weber County officials notified the Company that a road project may require replacement of segments of feeder Line 51 in 2017…" (Company letter to the Commission July 13, 2017 paragraph 2) In response to data request 1.1, where the Division asked, "Please provide copies of all correspondence to and from Weber County regarding the FL51 project in this filing," the Company provided 229 pages of emails between Company personnel, other contractors, and Weber County. The Division found no 'Weber County officials who notified' the Company implying replacement of Feeder Line 51 in 2017, dated November 18, 2016. In fact, there was nothing from Weber County dated November 18, 2016. There is, on the other hand, an email from the Company to Weber County and others on that date that stated:

> CRS Engineering called me earlier this week and mentioned that Weber County had given CRS the green light to start design for the next segment of the 12th Street Project. …In order to start design and more importantly, request funding from the Public Service Commission, we need a letter from Weber County stating their proposed project and their need for us to relocate our gas pipeline. Any other information on schedule, scope, and deadlines would also be much appreciated.

Closer examination of that same email shows that the Company was notified "earlier [that] week". The budget was filed with the Commission on the November 15, 2016, which means that there were two days separating the budget filing (November 18, 2016) from this email. Therefore, the information was provided to the Company, apparently by another contractor, sometime prior to November 18, 2017.

Additionally, funds were apparently set aside or approved to pay for part of the FL 51 replacement project earlier, because on November 17, 2016, there was a purchase order or approval for $80,000, as demonstrated by this email insert below:

> Project Title: FL51-RELOC 13200' 12" WEBER CO
>
> Project Description: RELOCATE 13200' OF 12" STEEL HIGH PRESSURE PIPE TO ACCOMODATE ROAD CONSTRUCTION BY WEBER COUNTY.
>
> Activity Description: CAPTURE DESIGN COSTS RELATED TO ENGINEERING, SURVEY, DRAFTING, RIGHT OF WAY, ENVIRONMENTAL AND HEALTH SAFETY OR OTHER. PURCHASE

> MATERIALS AND EQUIPMENT. PERFORM ANY OTHER WORK REQUIRED BEFORE CONSTRUCTION ACTIVITIES BEGIN.

This email demonstrates that the Company had already planned for the work to begin and allocated funds before it says it knew about the project.

Again, referencing the email above sent from the Company to Weber County on Friday, November 18, 2016, it is noteworthy that the next business day, Monday November 21, 2016, the Company received a reply email from Weber County taking issue with the Company's implication that it may have just been "given the green light to start design for the next segment", stating:

> CRS was given the go ahead months ago to start design, as were you, and are nearly completed. After the communications you and Jared have had over the last several months, he was surprised to hear your design hadn't begun yet. Conversations about the extent and timing of this project have been had with many people at Questar since 2013. We hope this isn't going to be a problem as we move into the 2017 construction season. As you know, we are widening 12th Street from 4700 West to 10,000 West from 66' right of way with 24' wide asphalt to 100' right of way with 48' wide asphalt and a 28" cross section. Construction from 4700 West to the Weber River bridge will be completed by the end of 2016 and we anticipate beginning the next segment, Bridge to 7900 West, the end of April 2017. We will need to have your pipeline design coordinated with our utility design and Mary at CRS and physically relocated prior to our contractor beginning construction in April 2017." Also, on December 2, 2016 the email from Weber County "Looking back through my notes below are the highlights of basic conversations that have been held.
>
> February 4, 2015 CRS and myself sat down with Questar (HP & IHP) to let them know about the project, learn out their existing facilities, future plans and needs. We began meeting monthly after that, exchanged CAD files and scheduled potholing.
>
> April 1, 2015 same people met again, this time the discussion was about HP trying to size their pipe, they needed growth projections, if we could get that quickly design could be ready by September 2015 with construction Spring 2016.
>
> May 6, 2015 another meeting, IHP is going to consolidate 9 bird cages into 2 cat houses or upgrade to one cat house and install 17,400 of 4". HP funding may be an issue because of budget years, are considering no upgrade unless there is a conflict.

> November 16, 2015 coordination meeting at RMP's office, mostly about construction of Phase 1. Burke mentioned the rest of the corridor was being planned better and funding may work out. Let him know as soon as we know our timeline.
>
> August 26, 2016 Jared called Burke about getting design ready for construction next summer (2017).
>
> As you can see this has been a discussion between Weber County and Questar for several years, so I don't know why it wasn't included in the 2017 budget but I'm guessing that may be why Burke asked me for a letter to take before the Public Service Commission to request funding.

It is not surprising that the Company states that its relationship with Weber County "is problematic".

In conclusion, the Division found no evidence that Weber County officially informed the Company on November 18, 2016; rather it was the Company that communicated with the County on that date. On the contrary, the above email indicated that the Company could or should have been aware of Weber County's plans and could have included funds for the project in its initial budget submitted to the Commission that week in November 2016.

**2) Unaware Until Official Confirmation on June 29, 2017**

The Company stated that the "Requests for a timeline or scope of the project were not answered until mid-2017." And "On June 29, 2017 the Company received confirmation from Weber County officials that a significant portion of high pressure pipe on Feeder line 51 would need to be relocated due to a road project beginning in the second half of 2017." Although the Division asked for "copies of all correspondence to and from Weber County regarding the FL51 project in this filing" there was no correspondence from Weber County on June 29, 2017. There is no evidence of this "confirmation from Weber County officials" anywhere in the documents provided by the Company and the Division has no way of verifying the validity of this information. Neither did there appear these 'requests' to Weber County that the Company identified that were allegedly not answered concerning the project timeline or scope prior to June 29, 2017.

The closest source we could find to validate the Company's claim was an email from Weber County on July 10, 2017 responding to a request from the Company dated July 6, 2017. The Company wrote. "I need a representative from Weber County to reply back to this email stating that this information is correct and that a pipeline relocation this year is required. We cannot move forward with this funding for this project until we receive this confirmation." (emphasis in original) The County replied: "Yes you are correct, the project does need the high pressure gas line to be relocated from the Weber River to 7900 West resulting in approximately 15,100 linear feet of pipe being relocated." Therefore, we saw no pre-July requests from the Company for a timeline or scope, and only an offhand confirmation but not on the date the Company claimed. From these and other communications, it appears that the cause of the project not starting until late in the year is not the delay in the county communicating with the Company. Rather statements like this from Company representatives on June 29, 2017 to the County add clarity:

> 1. I was able receive confirmation today, that roadway construction on 12st street start undoubtedly start this year. Therefore, Dominion Energy will have to relocate its existing 8" pipeline due to conflict with the new roadway, this year.
> a. If the county elects to start construction by CMGC, construction could start as early as mid-August. I expressed concerns with this as there is virtually no way that we can have design and contracting complete let alone enough relocation compete to be out of the road contractors way
> b. If the county elects to bid, construction would more than likely start in November. This is more desirable for us as it will allow for more time to get our construction crews to get out of the way of roadway construction.

Likewise, on April 27, 2017, implying slow work progress, is this email from the County to the Company, stating:

> I've done everything I can to expedite the potholing and get information to you and CRS as quickly as possible. If you have additional idea for me, I'm open to them. My construction season is getting smaller and smaller by the day.

Therefore, the Division believes that it is disingenuous for the Company to blame the County for the apparent delays.

### 3) Funds Already Committed Leaving Little Flexibility

In its August 30, 2017 letter to the Commission, the Company stated that it "has committed to invest $64.15 million …this leaves little flexibility to undertake the replacement of FL 51 within the currently approved budget."

As of March 31, 2017, the Company's First Quarter Variance Report shows that it spent $11.1 million of the 2017 $64.1 million budget. This is over four months after the Company says it was notified by Weber County (November 18, 2016) of the work on line 51, and several months after potholing on the project had begun, but no proposed alterations to the budget or work plan were mentioned in communications with regulators. Likewise, in the Company's Second Quarter Variance Report, which was submitted after it said it received official notification of the FL51 work requirement in this calendar year, the Company had spent only $26.89 million of the $64.1 million budget, or just under 42% but no alterations to the budget were proposed. Regulators were not informed during this time period when the Company had more time to alter work plans, budgets, and crews to logically minimize any contingent FL51 work or budgetary impact in this calendar year.

The Company is in the practice of changing FL plans, budgets and schedules. For example, just this year, somewhere between its in April 27, 2017 presentation to regulators, and its filing on May 1, 2017 it altered its priority on the first ten FL's from: BEGIN CONFIDENTIAL [redacted], to [redacted] END CONFIDENTIAL. Additionally, in the same April presentation this year the Company changed the total length of the FL 21 replacement from 38,273 LF identified in December 2016 to 54,280.

History has shown that the Company's actual amount spent is often millions of dollars off from its filed budget. For example:

- 2016 FL 6 $1.1 million over budget and FL 24 $1.7 million under budget;
- 2015 FL 6 $2.3 million over budget, FL 26 $3.1 million under budget and FL 34 $2.7 over budget; and
- 2014 FL 6 $3.5 million under budget and FL 34 $2 million over budget, and FL 24 $3.9 million over budget (it is interesting to note that FL 24 had a budget of zero dollars for the year, so the Company inserted work on FL 24 after the budget was submitted).

In prior years it appears that the Company has been able to move finances and work projects at its discretion. Therefore, it is unusual for the Company to now indicate that it is unable to reprioritize the current project schedule.

Also, based on the answer to Division DR 1.03, (submitted on September 1, 2017, and answered on September 26, 2017) the Division asked for evidence supporting the claim that the funds are "already committed leaving little flexibility". The Company provided 133 pages showing the "commitments" of funding. In the response there were many copies of temporary easement agreements for $1 (one dollar) for a year's easement, others for $10 (ten dollars), three or four easement agreements were for a few thousand dollars (between $1,600 and $4,000), and the large expenditure was for all permits from a municipality for $64,000. Other than these, the remaining 70 pages were for contracts to purchase pipe. Therefore, other than a commitment to purchase pipe, the main expenditures sum less than $100,000. The Company's commitment to purchase pipe and not immediately use it, in the Division's mind, does not impair the progression of the Tracker. It simply means that there may be more inventory on hand or it may delay the timing on its installation for a few more months.
Also, the Company mentioned in its April 27, 2017 Technical Conference the possibility of spending on FL 51 in 2017. The Division notes that since April there appears to have been no action to budget or set aside money for this project or establish some sort of contingency fund. The Company failed to make plans to address this situation it reasonably knew was coming when changes could have easily been made. Instead, it chose to wait until the end of August to request approval for additional financing. The Company has known for quite some time that Weber

County planned to continue work on the road, necessitating the relocation of FL 51, yet it didn't set aside any funding for the project as would seem reasonable. If the Company is in a bind, it is there of its own action or inaction.

**4) Required Completion by Year End**

The Division asked the Company to "Please provide copies of all correspondence to and from Weber County regarding the FL51 project in this filing." In response to data request 1.1, the Company provided 229 pages of emails between Company personnel, other contractors and Weber County. The Division found no official notification from Weber County requiring replacement of Feeder Line 51 in 2017, or any requirement to finish by year end from Weber County. The only reference to a time restriction was an email sent on July 27, 2017 by the Company, which stated: "The current plan is to start construction in late September. The hope would be to get it tied in by the end of the year so we can get recovery on the capital investment. This being said it would be a late December tie in." The only ending time restriction was in a Company sponsored email, not a County email.

Additionally, it is part of the regular consideration for changes in the Tracker to be made based on coordination with government officials. The Company expected both FL 26 and 51 to be affected based on Utah and Weber County Officials' input, according to its Feeder Line Update presentation of April 27, 2017. Likewise, according to the Company, coordinating with governing authorities is part of the Company's regular Tracker work. The Division would expect close coordination with local governments to be an integral part of the Company's regular work, resulting in minimal surprises.

**Other Remarks**

<u>Regulators</u>

The Company stated that only three days following the Company's budget filing (November 15, 2017 – November 18, 2017) it was informed of the road project, although the Company provided no evidence to validate that claim. If it is true, that means that the Commission and other regulators were officially informed by the Company some eight months later in a letter dated

July 13, 2017. There were some suggestions of coming changes in the April 27, 2017 slide show, but funding began in November 2016 and potholing was ongoing since at least March 2017. Still, the Commission was not informed until July. The Division asked the Company why it chose not to inform regulators in data request DPU DR 1.11:

> Since the Company knew about (or at least suspected) the replacement of portions of FL51 in 2017, please explain why nothing was budgeted for or set aside contingent upon the possibility of moving ahead with the work?
>
> No contingency was planned for FL51 because Weber County had not completed its road plans and conflicts could not be identified. Budgeting for road projects that are in the preliminary stages where conflicts may or may not exist reduces the scope of work the Company can complete on other replacement projects. If the Company had set aside funds for this project and no relocation was necessary, it would unnecessarily delay the replacement of other feeder line replacement projects. If the Company budgeted for projects it "suspected" may occur, this could amount to multiple years of future delay.

The Company was aware, had allocated funds, made plans, and should have informed regulators along the way.

<u>FL 51 Schedule</u>

Additionally, in the last sentence of the first paragraph of the July 13, 2017, letter to the Commission in this docket, the Company stated that "FL51 was originally scheduled to be constructed in 2035." This statement is inaccurate. The 62,046 lf of FL51 was originally scheduled to be replaced in 2024 (see docket 13-057-05 Settlement Stipulation filed December 13, 2013 Exhibit #7). Although the Company proposed to extend the length of the Tracker saying that it will now take a seven years longer (2028-2035) than is currently planned, the Division does not believe that the Tracker end date has been extended nor that the order from the rate case has been altered as the Company has implied, but that "an approval of an extension of the high pressure or belt lines replacement schedules beyond those dates presented in the 2014 Order or in Dominion's infrastructure tracker compliance filing made in accordance with that order" has not been granted. (See Commission letter dated June 5, 2017 in docket 16-057-17)

Financing

The Company said to Weber County and other contractors, “In order to start design and more importantly, request funding from the Public Service Commission, we need a letter from Weber County stating their proposed project and their need for us to relocate our gas pipeline.” And that “the PSC are get eager to know if we will have to reallocate budget to relocate the pipeline this year.”

The Division is greatly concerned that the Company is using the Commission as a stick to coerce local governments to compose letters “requiring the Company to do” specific projects. At the least, this is disingenuous and purportedly places regulators in a position to approve or disapprove the Company’s investments and unfairly places the Commission as the pocket-book between the Company and local Governments. The Commission does not generally ‘approve funding’ of individual projects, rather it is the Company’s responsibility to invest its capital as it believes is required for safe, adequate, and reliable service regardless of the method of cost recovery. If prudent capital spending is within the confines of the Tracker, the Company should seek recovery of those funds in that arena; however, if it is not, the Company should spend and invest as it sees fit in its own infrastructure and then seek recovery of those capital expenditures in general rate cases. In other words, the Tracker is physically and fiscally limited. The Company should invest whatever amount is necessary to safely operate, maintain and expand its system, independent of the recovery method – Tracker funds or general rate case. Purported “funding approval of the Commission” should not be used as a stick to get local governments to act, particularly when the Commission is being told that it should act because the local government drove the infrastructure decision. Whether intentional or due to miscommunication, the Company’s claimed exigent circumstances have been inaccurately portrayed in its filing.

**EXIGENT CIRCUMSTANCES**

The pivotal question in this filing is the determination as to whether this project (segment of FL 51 replacement) results from “exigent circumstances requiring immediate capital expenditures.” The Tracker is a method providing recovery of costs the Company incurs in replacing its large aging, infrastructure. The Division has concluded that although FL 51 is on the list of HP lines to be replaced, this replacement project would not qualify for inclusion in the Tracker replacement projects that are "exigent circumstances requiring immediate capital expenditures." The Company has known that there are plans to work on the road near FL51 that could necessitate replacement, and it made inadequate plans to cover this foreseeable capital cost. The Division sees no evidence of exigent circumstances in this filing regarding FL51.

The Company can and should spend whatever it prudently needs in order to: move pipe for road projects, install new construction, do line enhancements, install upgrades, replace pipes, etc. These are fundamental operational duties of a public utility. The Tracker is a specific mechanism with certain financial and time limited bounds examined every three years. The Tracker, as designed, provides the Company a method to recover necessary and prudent costs it incurs to replace its large, aging high pressure infrastructure. It contains ratepayer safeguards and boundaries, namely an annual dollar cap (with escalation), the requirement that the Company file a rate case every three years, and an annual filing with the Commission of an updated Master List of all HP pipelines demonstrating the progress of the program, along with the directive to "explain any material changes to the schedules set forth."

**SUMMARY**

As evidenced in this filing and elsewhere, the Company regularly choses to move millions of dollars between projects during the budget year and alters the replacement schedule after it has been submitted. It is common practice for the Company to move project schedules around from year to year based on its own judgment, convenience and other factors. Additionally, the recent statement regarding extending the life of the Tracker clearly demonstrates that the rate of the replacement work is not time sensitive and therefore the decision by the Commission to not approve the requested budget increase in the Tracker, will not materially impair its progress. Finally, the Company has claimed no imminent safety concern or other real exigent circumstance requiring immediate attention.

The Division has not been able to validate the Company's claims that would demonstrate an exigent circumstance as follows:

1) That after the submission of its budget "Weber County officials notified the Company that a road project may require replacement of segments of FL51 in 2017."

2) Until the "confirmation from Weber County officials" on June 29, 2017 it was unaware of the "schedule, budget and footage."

3) The Company is already "committed to invest $64.15 million" in 2017, which "leaves little flexibility to undertake the replacement of FL51 within the currently approved budget."

4) The road project requiring this replacement needs to start "beginning in the second half of 2017" as stated in paragraph 2 or be completed "by the end of this year." As stated in paragraph 6.

The Company's lack of action in establishing a contingency fund or proper planning to deal with the high probability of FL51 work does not create an urgent need for more ratepayer funding. Additionally, weeks before the Company filed this request it already had plans on what it would do if the Commission doesn't allow this increase in its budget, so it will not be caught off guard by the Commission denying its request.

Adding to the ratepayers' payment for the Tracker program for this project is not in the public interest given the facts as they appear. The 2017 Tracker budget should not be increased. The Tracker's impact to customers should be stable and remain at the current Commission approved level.

Regulators have limited oversight regarding what the Company spends the Tracker money on, with only three main guide posts to help keep the spending reasonably in line with the intent of the program: 1) the annual budget, 2) the filing of a general rate case every three years, and 3) updated lists showing progress. If one of those three legs of the stool are withdrawn, regulatory oversight of the Tracker program is imperiled. Given the lack of apparent exigent circumstances, the Commission should reject the Company's request.

**CONCLUSION**

In its letter, the Company filed with the Commission on August 30, 2017, outlining the Replacement Infrastructure 2017 Annual Plan and Budget Update, it stated that it believes that the facts and circumstances surrounding the replacement of FL51 are exigent and should lead the Commission to increase its 2017 budget. The Division cannot find sufficient evidence supporting the Company's statements and its request. Indeed, evidence exists inconsistent with those claims. Therefore, the Division recommends the Commission deny the Company's request for more Tracker money.

CC: Kelly Mendenhall, Dominion Energy Utah
Michele Beck, Office of Consumer Services