

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Joint Application of Questar Gas Company
d/b/a Dominion Energy Utah and Enbridge
Quail Holdings, LLC for Approval of the
Proposed Sale of Fall West Holdco, LLC to
Enbridge Quail Holdings, LLC

)
) **Docket No. 23-057-16**
) **Direct Testimony**
) **of Jacob Zachary**
) **On behalf of the**
) **Office of Consumer Services**
)

February 05, 2024

1 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

2 A. My name is Jacob Zachary. I am a utility analyst for the Utah Office of
3 Consumer Services (OCS). My business address is 160 East 300 South,
4 Salt Lake City, Utah 84111.

5

6 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE.**

7 A. I earned a Bachelor of Science in Business Administration with a
8 concentration in Finance from the University of Arizona. Upon graduation,
9 I was a Cost Accountant for Allegheny Technologies Inc., a specialty
10 metals manufacturer. After leaving Allegheny Technologies Inc. and prior
11 to joining OCS, I worked for the State of Oregon Office of Public Defense
12 Services (OPDS). With OPDS, I started as an Accounting Technician and
13 was promoted multiple times to hold positions of Jr. Data Analyst, Fiscal
14 Analyst, and Program Analyst. I have completed The Basics Practical
15 Regulatory Training course through New Mexico State University, along
16 with numerous other courses through NASUCA's (National Association of
17 State Utility Consumer Advocates) regulatory basics training program and
18 NASUCA's industry partnerships.

19

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. The purpose of my testimony is to present the OCS's policy position
22 regarding the joint application of Questar Gas Company d/b/a Dominion
23 Energy Utah and Enbridge Quail Holdings, LLC (Joint Applicants) for

24 approval of the proposed sale of Fall West Holdco, LLC to Enbridge Quail
25 Holdings, LLC. In doing so, I will provide the following:

- 26 • OCS’s view regarding the standard of review for this docket,
- 27 • Comment on the commitments offered by Enbridge Quail
28 Holdings, LLC (EQ Holdings) and Questar Gas in Joint Exhibit
29 5.0, EQ Holdings and Questar Gas Commitment Matrix (The
30 Commitment Matrix),
- 31 • OCS’s view on whether the proposed sale in this docket meets
32 the standard of review and is in the public interest.

33

34 **Q. WHAT IS THE PROPER STANDARD OF REVIEW FOR APPROVAL OF**
35 **THE PROPOSED SALE OF FALL WEST HOLDCO, LLC TO ENBRIDGE**
36 **QUAIL HOLDINGS, LLC.?**

37 A. The OCS relies on two relatively recent cases of particular relevance to
38 the issue of the proper legal standard for the approval of a merger (or sale
39 of all assets), which are *The Application of MidAmerican Energy Holdings*
40 *Company and PacifiCorp for an Order Authorizing Proposed Transaction*
41 *(MidAmerican Merger)* and *Proposed Merger of Questar Corporation and*
42 *Dominion Resources, Inc.* (Dominion Merger). In the MidAmerican Merger
43 case, the Utah Public Service Commission (PSC) stated the standard as
44 requiring the merger to result in “net benefits to Utah customers” and in
45 the Dominion Merger case, the PSC used the terms “net benefit for the

46 public” and “net benefit to ratepayers” interchangeably.¹ Specifically, in
47 the Dominion Merger case, the PSC used the term “net benefit to the
48 public” in the body of the order but in the Findings and Conclusions, stated
49 that the merger should be approved because it “will produce net benefits
50 to ratepayers, is just and reasonable, and is in the public interest.”² Given
51 that the MidAmerican Merger case used the term “net benefit to Utah
52 customers” exclusively and the Dominion Merger case used the term “net
53 benefits to ratepayers” in its actual ruling, the OCS asserts that the
54 appropriate legal standard to approve a merger is whether the merger
55 results in “net benefits to ratepayers.” Accordingly, any potential harm or
56 risks to ratepayers resulting from the proposed transaction must be
57 outweighed by the potential expected positive benefits to ratepayers.
58 Furthermore, while commitments to keep current ratepayer protections in
59 place after the proposed transaction are in the public interest, these alone
60 may not sufficiently produce a clear benefit when netted against possible
61 costs and uncertainties.

62

63 **Q. HOW DID YOU REVIEW WHETHER THE JOINT APPLICANTS’**
64 **REQUEST IS IN THE PUBLIC INTEREST?**

¹ *In the Matter of the Application of MidAmerican Energy Holdings Company And PacifiCorp dba Utah Power & Light Company for an Order Authorizing Proposed Transaction*, Docket No. 05-035-54, Report and Order, pg. 13-14, (Utah P.S.C., January 27, 2006); *Dominion Resources, Inc. of Proposed Merger of Questar Corporation and Dominion Resources, Inc.* Docket No. 16-057-01, Order Memorializing Bench Ruling Approving Settlement Stipulation, pg. 5, 7 (Utah P.S.C., September 14, 2016) (Dominion Merger).

² Dominion Merger at 7.

65 A. I reviewed the testimony and exhibits to evaluate what apparent benefits,
66 costs, and risks are likely to result from this request. I also reviewed
67 previous merger and sale cases that have come before the PSC to
68 provide context regarding what benefits, costs, and risks had been
69 assessed in other similar cases and what had been found to be in the
70 public interest. The Joint Applicants included much of what they appear to
71 view as benefits, and commitments toward ensuring such benefits, in the
72 Commitment Matrix.

73

74 **Q. WHAT IS JOINT EXHIBIT 5.0, THE COMMITMENT MATRIX?**

75 A. As originally filed on October 20, 2023, with the application and
76 supporting direct testimony, the Commitment Matrix is a document that
77 lists 49 commitments (including sub-parts) and associated benefits for
78 how Enbridge, the parent company of EQ Holdings, and EQ Holdings
79 would operate Questar Gas if granted approval of this docket by the PSC.

80

81 **Q. PLEASE PROVIDE AN OVERVIEW OF THE COMMITMENTS IN JOINT**
82 **EXHIBIT 5.0.**

83 A. The initial filing categorizes the commitments into 10 separate sections,
84 however, I believe it would be more helpful to categorize the commitments
85 as follows:

86 • Commitments # 1, 10-13, 15, and 24-32 address financial reporting
87 and ring-fencing protections.

- 88 • Commitments # 8, 17, 22, and 23 discuss customer
89 communication, satisfaction, and a proposal for charitable
90 contributions.
- 91 • Commitments # 4-7, 9, 14, 16, 20, and 21 summarize how current
92 regulatory processes and protections will continue and include new
93 reporting on Wexpro production and natural gas purchases.
- 94 • Commitments # 2, 3, 18, 19, and 33-35 state plans for continued
95 and new business operations.

96

97 **Q. WHAT ARE YOUR GENERAL COMMENTS REGARDING THE**
98 **COMMITMENTS MADE IN JOINT EXHIBIT 5.0?**

99 A. The scope of the commitments generally addresses all topics I would
100 reasonably expect. In fact, it appears that the joint applicants based the
101 Commitment Matrix on the “Terms and Conditions” section in the August
102 15, 2016, Settlement Stipulation filing in Docket 16-057-01: Questar Gas
103 Company & Dominion Resources – Joint Notice and Application
104 (Questar/Dominion Settlement), with minor adjustments and differences
105 reflecting different circumstances in the current application. I also note that
106 before the initial filing, the Joint Applicants gave the OCS an opportunity to
107 provide input into the Commitment Matrix, which we appreciated. In this
108 testimony, I focus on the topics and commitments that were priorities for
109 the OCS.

110

111 **Q. HOW DID YOU DETERMINE WHAT TOPICS AND COMMITMENTS**
112 **WERE PRIORITY FOR THE OCS?**

113 A. I started by reviewing the record in previous acquisition cases. I
114 specifically focused on positions taken by the OCS and the relevant PSC
115 orders. I also conferred with the OCS leadership and staff to gain a
116 broader context and understanding of the OCS's priorities.

117

118 Based on my background research, I narrowed my efforts to the following
119 priority topics:

- 120 • Ring-Fencing Protections and Financial Reporting,
- 121 • Sources of Natural Gas Purchases and Wexpro Production
122 (Commitment #7b),
- 123 • Customer Communication Plans About Change of Ownership
124 (Commitment #8),
- 125 • Uncertainty of Costs to Ratepayers and Future Locations of Shared
126 Services (Commitment #13),
- 127 • Local Control of Thermwise.com Website (Commitment #22), and
- 128 • Reporting Timeline of Customer Satisfaction Standards
129 (Commitment #23).

130

131 **Q. WHAT IS YOUR EVALUATION OF THE RING-FENCING**
132 **PROTECTIONS AND FINANCIAL REPORTING?**

133 A. While I am not an expert in financial ring-fencing protections, I reviewed
134 the relevant commitments in the context of the positions taken by the OCS
135 in the merger of Questar Gas and Dominion Energy in Docket 16-057-01.
136 In that docket, the OCS had contracted with an expert witness with
137 expertise in mergers and acquisitions including ring-fencing and related
138 provisions. The OCS supported the settlement that included provisions
139 largely identical to those being offered by the Joint Applicants and
140 continues to support these provisions as good ratepayer protections to
141 mitigate potential financial risks associated with changing corporate
142 ownership. However, I note that Commitment #31 discussing a “Special
143 Bankruptcy Director” has changed from what was included in the
144 Questar/Dominion Settlement by not specifically requiring an affirmative
145 vote by the Special Bankruptcy Director in the event of bankruptcy. In the
146 technical conference held on December 7, 2023, the Joint Applicants
147 indicated that this language difference was done in error.³ Thus, I
148 anticipate that we will see updated language on Commitment #31 later in
149 this proceeding.

150

151 **Q. WHAT DID THE JOINT APPLICANTS COMMIT TO WITH RESPECT TO**
152 **SOURCES OF NATURAL GAS PURCHASES AND WEXPRO**
153 **PRODUCTION?**

³ Docket No. 23-057-16: Joint Application, Recorded Livestream of Technical Conference Presentation, Timestamp 02:35:20, December 7, 2023

154 A. In commitment #7b, the Joint Applicants offered to annually provide
155 information on "the source of Wexpro production and natural gas
156 purchases by pipeline interconnection or hub."⁴ I note that this is an issue
157 raised by the OCS to the Joint Applicants in advance of their filing.

158

159 **Q. DOES THE COMMITMENT SATISFY THE OCS'S INTERESTS IN THIS**
160 **ISSUE?**

161 A. No. I appreciate the Joint Applicants addressing this issue at the request
162 of the OCS but believe that a more robust approach could add value
163 without being significantly more difficult for the Joint Applicants. In
164 particular, the OCS would like to see this reporting for two to three winter
165 seasons prior to the proposed sale to serve as comparison to future winter
166 seasons. One key benefit of this approach would be to facilitate an
167 evaluation of how the proposed sale did or did not change the patterns of
168 natural gas production and purchases to serve ratepayers. Of course, the
169 OCS acknowledges that changes will occur in response to new pipeline
170 availability and other changes in market conditions. Our proposal for
171 additional reporting will give the Joint Applicants an opportunity to explain
172 these trends and improve overall transparency of operations. Further, the
173 OCS is aware of an increased interest among various stakeholders to
174 have better transparency on the sources of natural gas purchases and
175 Wexpro production so the benefits would accrue to a wider set of

⁴ Docket No. 23-057-16: Joint Application, Joint Exhibit 5.0, Page 3 Number 7b, October 20, 2023

176 stakeholders than just those who participate in the regulatory processes. I
177 note that the OCS has been in discussions with the Joint Applicants on
178 this topic, and I am optimistic that we will reach agreement on more
179 specific terms for this commitment.

180

181 **Q. WHAT IS YOUR REACTION TO THE COMMUNICATION PLAN**
182 **OUTLINED IN COMMITMENT #8?**

183 A. As currently written, the Commitment states “EQ Holdings will develop a
184 plan identifying how it intends to communicate the change in
185 ownership....”⁵ This commitment does not identify any specific efforts
186 currently underway or timelines for implementation. Having a well-
187 designed communication plan to keep consumers informed during this
188 time of possible uncertainty is critical to the public interest. The OCS has
189 raised this concern with the Joint Applicants, and in my opinion, we will
190 reach agreement on an approach to the communication plan to present
191 later in this case.

192

193 **Q. WHAT COMMITMENT DID THE JOINT APPLICANTS PROVIDE**
194 **ADDRESSING TRANSITION COSTS AND ASSOCIATED ALLOCATION**
195 **TO RATEPAYERS?**

196 A. In Commitment #13, the Joint Applicants state “Questar Gas will enter into
197 a Master Transition Services Agreement pursuant to which it will receive

⁵ Docket No. 23-057-16: Joint Application, Joint Exhibit 5.0, Page 3 Number 8, October 20, 2023

198 certain corporate services that it currently receives from Dominion Energy
199 and affiliates of Dominion Energy on terms and at rates previously
200 approved by the Commission....”⁶ While not specifically located within
201 Joint Exhibit 5.0, explanation of the Master Transition Services Agreement
202 is in the Joint Applicants’ filing and provides more detail as to what specific
203 transition services could potentially entail.

204

205 **Q. IS THERE UNCERTAINTY ABOUT THE COSTS OF THESE SHARED**
206 **SERVICES THAT WILL BE PASSED TO RATEPAYERS?**

207 A. Yes. The Joint Applicants provide information as to what specific
208 corporate services for Questar Gas will be shared and transitioned over
209 from Dominion Energy to Enbridge. Yet they do not provide specific cost
210 information or how cost allocations may change going forward. These are
211 important details in determining how this corporate ownership change will
212 affect rates charged to consumers. I appreciate the Joint Applicants
213 clarifying during the technical conference that ratepayers will be shielded
214 from any surcharges,⁷ however this does not address the ongoing costs
215 and risks that may arise from changes to how corporate services are
216 implemented.

217

⁶ Docket No. 23-057-16: Joint Application, Joint Exhibit 5.0, Page 4 Number 13, October 20, 2023

⁷ Docket No. 23-057-16: Joint Application, Recorded Livestream of Technical Conference Presentation, Timestamp 01:50:10, December 7, 2023

218 **Q. BEYOND COSTS, WHAT OTHER CONCERNS DO YOU HAVE ABOUT**
219 **THE DETAILS GIVEN FOR SHARED SERVICES?**

220 A. I am concerned that the transition plan for shared services does not
221 provide information as to what will happen to each of these services once
222 they have been fully moved under Enbridge. For example, a business
223 function currently operating from Salt Lake City could be moved to
224 somewhere else in the United States or Canada. In many cases when a
225 function is moved to a new location it will not have a negative impact on
226 service, yet in some cases it could result in less responsiveness for
227 ratepayers or regulatory proceedings. We understand these are business
228 decisions to be made by the Joint Applicants, but not being provided
229 additional detail does cause concern.

230

231 **Q. WHAT IS YOUR REACTION TO THE JOINT APPLICANTS’**
232 **COMMITMENT #22 REGARDING THE THERMWISE.COM WEBSITE?**

233 A. I note that the OCS raised this issue to the Joint Applicants before filing. I
234 appreciate the Joint Applicants’ commitment to maintain local control of
235 thermwise.com to ensure access to up-to-date information about energy
236 efficiency programs. This commitment is in the public interest and
237 provides benefits to ratepayers.

238

239 **Q. WHAT IS YOUR CONCERN ABOUT THE CUSTOMER SATISFACTION**
240 **REPORTING DESCRIBED IN COMMITMENT #23?**

241 A. The Joint Applicants commit to providing quarterly Customer Satisfaction
242 reports “until the next general rate case filing.”⁸ We anticipate the next
243 general rate case filing will be sometime in early 2025. During the
244 Technical Conference on December 7, 2023, it was stated the total
245 transitional period for the sale of Questar Gas could last up to 30
246 months.⁹ This means the Joint Applicants would be able to stop reporting
247 before the transition is completed. In my opinion, this reporting period
248 should be extended to last at least through the entire transition period. We
249 have discussed this issue with the Joint Applicants, and I believe we will
250 reach a resolution before the end of the case.

251

252 **Q. PLEASE SUMMARIZE YOUR EVALUATION AND PROVIDE YOUR**
253 **RECOMMENDATION REGARDING THE PROPOSED SALE OF FALL**
254 **WEST HOLDCO, LLC TO ENBRIDGE QUAIL HOLDINGS, LLC.**

255 A. My evaluation shows the following:

- 256 • It appears there are a substantial number of commitments to keep
257 current ratepayer protections in place and to mitigate many of the
258 potential risks.
- 259 • However, I have also identified unaddressed risks regarding shared
260 services cost allocations to ratepayers and business functions
261 possibly changing locations.

⁸ Docket No. 23-057-16: Joint Application, Joint Exhibit 5.0, Page 5 Number 23b, October 20, 2023

⁹ Docket No. 23-057-16: Joint Application, Recorded Livestream of Technical Conference Presentation, Timestamp 01:43:30, December 7, 2023

- 262 • I identified two verbal commitments (related to Commitment #13
263 and #31) made or clarified by the Joint Applicants in the technical
264 conference.
- 265 • I identified two minor changes to make commitments #8 and #23
266 more appropriate.
- 267 • I have not identified any specific harm to Utah ratepayers that the
268 sale of Fall West Holdco, LLC to Enbridge Quail Holdings, LLC
269 would cause.
- 270 • I have identified two items of specific incremental (albeit small)
271 benefit: the response to the OCS's request that the Joint
272 Applicants maintain the thermwise.com website with local control
273 and more transparency regarding natural gas supply purchases.
274 However, I also suggested improvements to the commitment
275 regarding natural gas purchases that would improve its value to
276 the OCS and the public interest.

277

278 I appreciate the Joint Applicants' willingness to accept feedback and
279 respond to concerns, and the OCS intends to continue this dialog with the
280 Joint Applicants. However, at this time the evidence does not
281 demonstrate that the proposed sale would result in net benefits. The small
282 incremental benefits I have identified are outweighed by the uncertainties
283 that I identified. Thus, the OCS cannot recommend approval of the

284 proposed sale of Fall West Holdco, LLC to Enbridge Quail Holdings, LLC
285 at this time.

286

287 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

288 A. Yes.

289