- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH ----------

In the Matter of the Application of)
HILDALE CITY and INTERMOUNTAIN) DOCKET NO. 98-057-01
MUNICIPAL GAS ASSOCIATION for an)
Order Granting Access for Transportation)
of Interstate Natural Gas Over the Pipelines)
of QUESTAR GAS COMPANY for) ORDER
Hildale, Utah)

ISSUED: January 15, 1999

SYNOPSIS

The Commission concludes that it has authority to require Questar Gas Company to provide the transportation service requested by Hildale, if found to be in the public interest.

Appearances:

Harold Ranquist J. Craig Smith Nielsen & Senior	For	Hildale City and Intermountain Municipal Gas Association
Jonathan Duke Charles Greenhawt Attorneys	"	Questar Gas Company
Laurie Noda Assistant Attorney General	"	Division of Public Utilities

This docket was initiated to consider an Application filed March 5, 1998, by Hildale City and the Intermountain Municipal Gas Association (Hildale) requesting the Commission order Questar Gas Company (QGC or Company) to provide certain transportation services. Hildale requests that the Commission order QGC to transport Hildale City's natural gas through QGC's facilities for delivery to an anticipated Hildale City municipal natural gas utility. The municipal natural gas utility would then distribute and sell the natural gas to customers of the Hildale City municipal utility. The requested QGC transportation services would accept Hildale City's gas from some interconnection point of QGC's system with an interstate natural gas pipeline, transport Hildale City's natural gas through QGC's facilities, and deliver the natural gas to a delivery point in the town of Hurricane, Utah. Hildale City would then use its existing and future facilities to transport the natural gas to Hildale City and distribute and sell it to customers of a proposed municipal natural gas utility in Hildale City.

In a process similar to the service requested in the Hildale Application, Hildale City currently uses QGC's natural gas transportation service in connection with the operation of a Hildale City electric cogeneration plant. For the electric cogeneration facility, Hildale City obtains natural gas from third parties, arranges delivery of that gas over interstate natural gas pipelines to an interconnection point with QGC's facilities, and pays QGC for transportation services on QGC's system to deliver the gas from the interconnection point to Hurricane, where Hildale City receives the gas. The current service provided to Hildale City is pursuant to QGC Tariff 300. Hildale City owns a 22 mile pipeline that it uses to transport the natural gas from Hurricane to Hildale City's electric cogeneration facility, where the natural gas is consumed in the operations of the facility. The Hildale City pipeline from Hurricane to Hildale City was constructed by

Hildale City when the Company and Hildale City were unable to reach agreement on the terms of construction and costs for extension of the Company's facilities that would have completed delivery from Hurricane to the Hildale City electric cogeneration plant.

Hildale City and QGC have discussed various methods of bringing natural gas service to potential customers in the Hildale City area. While QGC has expressed an interest in and appears willing to serve the Hildale City area, QGC and Hildale City have been unable to reach agreement on the Company's access to and use of the 22 mile Hildale City pipeline between Hurricane and Hildale. Apparently, the duplication of that pipeline would make it uneconomical for QGC to serve the area, if done solely through the extension of QGC facilities. For reasons set out more fully hereafter, QGC refuses to transport natural gas for a Hildale City municipal gas utility. As a result of their conflicting interests and goals, as ultimately, each desires to be the exclusive distributing and selling entity to the potential customers, the two have been unsuccessful in reaching agreement. Thus, Hildale filed its application, desiring to obtain by Commission order what was not achievable through negotiation.

The Commission's proceeding on this matter was bifurcated. With agreement of the parties, we set out in the first phase to determine whether we have the authority to order the requested service. In a second phase we will determine whether the service should be ordered, and the terms of the service, contingent upon our determinations in the first phase. As noted, Hildale's application was filed March 5, 1998. On April 24, 1998, the Company filed a motion for clarification of Hildale's application; Hildale's clarification was filed May 15, 1998. Hildale filed its brief July 31, 1998. The Company's response brief was filed September 11, 1998; as was a brief from the Division of Public Utilities (Division or DPU). Hildale's reply brief was filed September 25, 1998. Oral argument was presented to the Commission on October 1, 1998.

POSITIONS OF THE PARTIES

At this point, we provide a brief summary of the parties' positions; we will give greater detail in our later analysis and discussion of the arguments. The Company raises five points on why the Commission cannot order the requested service:

1. The Company cannot be compelled to provide a new tariff offering.

2. Transporting a municipal system's natural gas is not authorized by QGC's existing tariff.

3. Providing the requested service will subject QGC to operational constraints and additional costs.

4. National trends and public policy do not support ordering the requested service.

5. The Company has not denied access to an essential facility.

The Division generally supports the Company's arguments made in points 1 and 2. The Division notes, however, that its legal conclusions aside, the Division does not oppose having QGC provide the requested service from a technical or operational standpoint, if doing so does not adversely affect existing QGC customers. The Division posits situations where the requested service may be the only way some Utah citizens would be able to receive natural gas service. The Division also notes that additional transportation services on the QGC system would generate additional revenues. This would help QGC cover its operating costs and thus benefit QGC and its existing customers.

Hildale argues nine points in support of its conclusion that the Commission should order the requested service.

1. Utah statutory provisions, U.C.A. sections 54-3-1, 54-3-8, 54-4-1, 54-4-7,

54-4-13(1), and 54-4-18, provide the Commission with authority to order the requested service.

2. The Company's certificate of public convenience and necessity supports the application's request for the service.

3. The requested service is not a new service for QGC.

4. QGC's refusal to provide the requested service is to further its own monopoly, which is illegal, contrary to public policy and an improper basis for the refusal.

5. The requested service is in the public interest and the interests of QGC, its shareholders, and current QGC customers.

6. The Federal Energy Regulatory Commission (FERC) supports Hildale's request and the requested service will not subject QGC to FERC jurisdiction and regulation.

7. Granting the application is consistent with national policy and trends to open access.

8. QGC's tariff provisions do not preclude transporting natural gas for a municipal system.

9. Becoming subject to FERC jurisdiction is not legal grounds for denying the requested service.

Although the Commission has bifurcated this proceeding, some of the points made by the parties go beyond whether the Commission has authority to order QGC to provide the requested service. They address what we believe would be a subsequent consideration, viz. whether the Commission should require the provision of the service. These points raise matters which are relevant if we are to make a conclusion on whether the service should be provided. We believe this latter consideration is not purely a question of law and so requires an evidentiary foundation for any Commission conclusion. However, since we have no evidence introduced at this stage of the proceeding, as contemplated by our scheduling, we do not make any resolutions on that aspect of the application.

DISCUSSION OF THE VARIOUS POINTS AND ARGUMENTS

Hildale directs us through a panoply of Utah statutory provisions in urging us to conclude that we do have the authority to order the Company to provide the requested service. Hildale cites U.C.A. §54-4-1, emphasizing the words "supervise all of the business", and language from *White River Shale Oil Corp. v. Public Service Commission of Utah*, 700 P.2d 1088 (Utah 1985), in its argument that this section "grants the Commission broad powers to supervise the business of public utilities and evidences the Commission's authority, both express and implied, to order QGC to provide transportation of gas for Hildale's use in a municipal gas utility." Brief, page 7. Hildale refers to U.C.A. §54-3-1, relying upon the words " . . .every public utility shall furnish, provide and maintain such service . . . as will promote the safety, health, comfort and convenience of . . . the public . . ." Hildale argues that without the requested service, Hildale City "residents and businesses are being forced to utilize alternative energy sources which are more costly, less safe, and less convenient than natural gas." Brief, page 5. Hildale concludes that this statutory language requires QGC to provide a service which promotes the safety, health, comfort and convenience of the public. In addition, Hildale references U.C.A.§54-4-7. This section provides:

Whenever the commission shall find, after a hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation. The commission, after a hearing, shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and on proper demand and tender of rates such public utility shall furnish such commodity or render such service within the time and upon the conditions provided by such rules.

Hildale argues that as QGC is already providing natural gas transportation service, Hildale is simply requesting the Commission to exercise the authority granted to the Commission in Section 54-4-7 to insure that the service provided is 'just, reasonable, proper, adequate and sufficient.'

Hildale claims that the Company's refusal to transport violates U.C.A. §54-3-8. This section provides:

No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage. No public utility shall establish or

maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service. The commission shall have power to determine any question of fact arising under this section.

Hildale argues that it is not a reasonable basis to condition transportation service upon the use of the natural gas transported. Since QGC is already transporting natural gas for Hildale City's electric cogeneration plant, Hildale argues that it should make no difference to QGC what Hildale City might do with an additional quantity of natural gas delivered to the Hurricane delivery point. Whether Hildale City consumes the additional natural gas in the plant's operations or whether it sells the additional natural gas, should be immaterial to QGC. Hildale concludes that it is discriminatory to refuse to transport natural gas for an entity that will not consume the gas itself. In furtherance of this line of argument, Hildale also relies upon U.C.A. §54-4-18, which provides, in part: "The commission shall have power, after a hearing, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas, and water corporations; . . ." Hildale's argument is that under the provisions of Section 54-4-18, the Commission may override QGC's decision to transport for ultimate consumers of natural gas, but refuse to transport for sellers of natural gas, by ordering the Company to provide the requested service.

Hildale also argues that U.C.A. §54-4-13(1) permits the Commission to order the requested service. That section provides, in part:

Whenever the commission shall find that public convenience and necessity require the use by one public utility of the . . . pipes or other equipment, or any part thereof, . . . belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such . . . pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. . . .

Hildale argues that, although the anticipated Hildale City municipal natural gas system would not be regulated by the Commission, it would still be a "public utility" for purposes of Section 54-4-13(1). Hildale concludes that, under this Section, "the Commission has the authority to order QGC to use the readily available capacity in its pipeline to transport natural gas for Hildale, which serves the public convenience and necessity." Brief, page 8.

The Company contends that the Commission cannot order it "to provide a new service which it has not held itself out to serve." Brief, page 2. The Company bases this conclusion on its application of case law from numerous jurisdictions, including Utah. The Company cites language from *Weyauwega Telephone Co. v. Wisconsin Public Service Commission*, 111 N.W.2d 559 (Wis. 1961) in support of the Company's contentions. We do not find *Weyauwega Telephone*, *supra,* helpful as it is distinguishable as a case whose holding deals with the question of a regulatory commission's authority to order a public utility to provide service in a geographic territory beyond the utility's professed service territory. In this proceeding, Hildale's requested service would be provided to the same geographic area, to Hildale City's transportation line in Hurricane, in which QGC currently provides natural gas transportation service.

The Company incorporates cases from Oklahoma, *Oklahoma Natural Gas Co. v. Corporation Commission*, 839 P.2d 1357 (Okla. 1992), and *Dickinson v. Southwestern Natural Gas Co.*, 66 P.2d 511 (Okla. 1937), in its argument. We interpret these two cases as supporting Hildale's position, rather than the Company's. In *Oklahoma Natural Gas Co., supra,* the Oklahoma Corporation Commission had determined that it had authority to order Oklahoma Natural Gas Company (ONG) to offer 'standby' or partial services to customers who purchased natural gas from other suppliers if the 'standby' service was found to be in the public's best interest. The Oklahoma Supreme Court referred to two Oklahoma statutory provisions in concluding the commission had the authority to order the service. One Oklahoma statute gave the commission power over companies "in all matters relating to the performance of their public duties and their charges therefor. . . ." *Id.* , at 1358. This is similar to U.C.A. §54-4-1. The other Oklahoma statute gave the commission "authority over public utilities as to rates and 'to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business . . .'" *Id.* This is similar to the authority conferred in U.C.A. §54-4-7 and §54-4-18. The Court concluded that "[t]hese two provisions give the Commission authority to compel 'standby' service if the service is in the public's interest but only if the utility company receives renumeration for

the 'standby' service." *Id.*, at 1359. ONG argued that the commission could not compel "standby" service unless ONG had professed to offer such service. The Oklahoma court noted that this was a factual question; it was not addressable at that stage of the appeal as the appeal was of an interlocutory order dealing with questions of law and not factual matters. ONG further argued that the commission did not have the requisite authority even if the service were in the public interest. ONG cited numerous cases, including *Dickinson v. Southwestern Gas Co., supra,* in support of its argument. In the opinion, the Oklahoma court again notes that the commission had not made the factual determination that the service was in the public interest. The court, however, proffered a distinction for *Dickinson v. Southwestern Gas Co,* as a situation where the ordered service might never have been used and the utility would not have received any remuneration for the ordered service. The Oklahoma court concludes that the Oklahoma commission had the authority to order the service and remanded the case for further proceedings to determine whether the public interest would be served through the service. In this proceeding, we have not reached the stage where we have a factual basis upon which we could conclude that Hildale's requested service would be in the public interest; nor have we determined what the rates or terms of service should be for the requested service, if ordered.

QGC argues that *City of Bardstown v. Louisville Gas and Electric Co.,* 383 S.W.2d 918 (Ky. Ct. App. 1964) supports its conclusion. We think *City of Bardstown* is instructive; however, it does not lead us to the same conclusion that QGC obtains from the opinion. In that case, Louisville Gas and Electric Company (LG&E) operated primarily as a retail natural gas distribution company in Jefferson County, Kentucky. However, it also sold natural gas at wholesale to two other natural gas public utilities. In one case, the other gas public utility had an allocation of natural gas on an interstate gas pipeline company with which LG&E was connected. That allocation was assigned to LG&E for LG&E's use in serving Louisville, in exchange for LG&E furnishing (delivered through LG&E's system) an equivalent amount of gas to the other gas utility for that utility's use in another area of the state. In the other case, LG&E delivered and sold, at traditional wholesale, natural gas to another public utility. In order to improve its operational capabilities, LG&E received an additional certificate to build and operate a gas transmission line, known as the Calvary line, that would be used to connect LG&E's Louisville facilities with another interstate pipeline company. Bardstown sought to have LG&E wholesale natural gas to Bardstown from the new Calvary line. In *City of Bardstown,* the Kentucky Court of Appeals concludes that neither the common law nor Kentucky statutes, that made companies that transport natural gas 'common carriers', imposed upon a transporter of natural gas a duty to also be a supplier or wholesaler of natural gas. The Kentucky court then sought to determine if statutes that governed public utilities generally and their regulation by the Kentucky commission imposed a supplier duty. The Kentucky court concluded that LG&E's duties are bounded by the public utility certificates of public necessity and convenience issued to the company. The Calvary line was operated under a certificate that only authorized the transportation, not the supply, of natural gas on the Calvary line. LG&E's operations, including wholesaling or supplying natural gas, in the other areas of Kentucky were controlled by the certificate(s) issued for those areas and could not have an impact upon the authority and duties arising under the certificate for the Calvary line.

In this docket, QGC operates its facilities under more than one certificate of public convenience and necessity issued by this Commission. QGC received authorization to expand its facilities into the southern portion of the State of Utah, including its current services in Hurricane, under Certificate Number 2201, in a combined proceeding in Docket Nos. 86-2016-01, 86-057-03, 86-091-01 and 86-2019-01, pursuant to an order issued January 5, 1987. In that order, QGC is "authoriz[ed to] construct, operate, and maintain pipelines and other related facilities as part of its distribution system in the State of Utah, . . . for the purpose of serving natural gas for domestic, commercial, and industrial use in communities . . . ." QGC began offering transportation services, i.e., transporting natural gas owned by a customer, rather than supplying gas to the customer, pursuant to the Company's application for approval of interim transportation tariffs in Docket Number 86-057-07, approved by a Commission order issued January 26, 1987. (Under unique emergency conditions, one customer was permitted to transport natural gas beginning November 26, 1986.) Seemingly, QGC believes that its transportation services fall within the service authorization conferred by its certificates, including Certificate Number 2201, as the Company has never requested that the certificates be altered in connection with its offering of transportation services. All of QGC's current transportation services continue to be offered under the authority of those, unmodified, certificates. If we are to apply the approach taken in *City of Bardstown,* the authority conferred through issuance of Certificate 2201 must either permit or preclude Hildale's requested transportation service. Given that QGC~~'s~~ considers that current transportation services, in the southern portions of the State, are authorized by the language used in the January 5, 1987, order and Certificate 2201, we conclude that Hildale's requested transportation service could also be permitted under the language used. We are unable to distinguish how the language permits QGC's

current transportation services but would preclude Hildale's requested transportation service.

QGC uses *Mountain States Telephone and Telegraph Co. v. Public Service Commission,* 754 P.2d 928 (Utah 1988) (*Lifeline*), to argue that the Commission may not rely upon U.C.A. §54-4-1 and §54-4-7. We acknowledge that *Lifeline* reiterates numerous Utah Supreme Court holdings that §54-4-1 does not give to the Commission the expansive authority which the literal language of that section would seem to confer. We also note that *Lifeline* contains language which precludes reliance upon §54-4-7 if Hildale's requested service is characterized as 'new service', as it is by QGC. While QGC attacks Hildale's attempts to argue that what it seeks is not 'new service', QGC does so because QGC characterizes Hildale as "hav[ing] correctly acknowledged that Utah follows the general principle that a utility cannot be compelled to offer a new service." Brief, at page 5. We do not believe that Utah follows this principle.

QGC relies upon *Utah Power and Light Co. v. Public Service Commission,* 249 P.2d 951 (Utah 1952) (*Nephi*), for the proposition that "a public utility cannot be compelled to perform a service it has not professed to provide." Brief, page 5. We disagree that this is a correct interpretation of that case. In *Nephi*, the Commission ordered Utah Power and Light to wholesale electric power to the City of Nephi for the city's operation of a municipal electric utility. The issue raised in *Nephi* was the contention that the Commission's order required Utah Power and Light to serve in a new geographic territory beyond its professed service territory.

The Utah Power & Light Company attacks the lawfulness of the order of the Commission that it sell such power to Nephi City at the nearest point on its inter-connected system where there are facilities of adequate capacity, on the grounds that it violates the Utah State Constitution and the United Sates Constitution because the order requires it to render service in an area it has never professed to serve with one exception (The Thermoid Rubber Co.) and such requirement constitutes a taking of property without due process of law. *Nephi, supra, at* 287.

Much like Hildale's proposal in this docket, in *Nephi,* the City of Nephi intended to use city built and owned transmission facilities to connect with Utah Power and Light's existing facilities and use the city's facilities to transmit electrical power to the city's municipal utility. Contrary to the contentions made by Utah Power and Light, there was no need to extend Utah Power and Light's facilities beyond the geographic territory in which Utah Power and Light served. As stated by the Court: "The energy, according to the Commission's order, is to be sold within the territory served by the Utah Power & Light Company and not elsewhere. Nephi City is to receive the power there and once this energy has entered the transmission line belonging to the city it becomes the property of the city and the Utah Power & Light Company has no further concern about it." *Id., at* 289. The Court notes that Utah Power and Light did have tariff provisions to sell wholesale power to municipalities. Since Nephi City was willing to extend the city's facilities to interconnect with Utah Power and Light's existing facilities, *Nephi* is resolved on the basis of the Court determining that the service beyond existing service territory contention was factually incorrect, rather than the Commission not having authority to order a 'new service'. As the Court determined that Nephi City's requested service was one already offered by Utah Power and Light, the Court's opinion does not make any determination on the Commission's authority to order a 'new service'. We do not interpret *Nephi* as making any holding on whether the Commission does or does not have authority to order the provision of a 'new service'.

There is, however, language in *Lifeline, supra,* which does speak to the Commission's authority to order a 'new service'. At page 931 of *Lifeline, id.*, we find the following:

Viewed as a whole, section 54-4-7 allows the Commission to regulate and supervise services and commodities; the statute does not authorize the Commission to cause public utilities to provide new services and commodities at the Commission's behest and according to the methods the Commission deems desirable. Therefore, as with the previously examined statutes, section 54-4-7 does not grant the Commission the power to pool Lifeline surcharges from all participating companies.

One interpretation of this part of the *Lifeline* opinion is to apply it exactly as stated: viz. that section 54-4-7 does not confer any authority for the Commission to order the provision of 'new services'. It does not address whether other sections of the Utah Code, those used by Hildale in this proceeding, confer any authority. Another interpretation is that the words, "does not authorize the Commission to cause public utilities to provide new services and commodities", are *obiter dicta*. This is a possible interpretation as the issue raised on appeal in *Lifeline* was not that Lifeline services were

objected to as being 'new services', beyond the Commission's authority to order provided by telecommunications companies. Rather, it was the funding mechanism ordered for payment of such services that constituted the basis for the appeal. "Mountain Bell does not object to the establishment of Lifeline or to its basic administrative structure. Mountain Bell does object, however, to the method by which Lifeline is funded. . . . Mountain Bell argues that the Commission does not have the statutory authority to fund Lifeline by pooling, that the pooling arrangement is not proper rate making, and that pooling results in an illegally levied tax." *Id., at* 929, 930.

We do not accept QGC's proposition that the Commission cannot order 'new services' as the proposition is contrary to the results obtained in *U.S. West Communications, Inc. v. Public Service Commission,* 882 P.2d 141 (Utah 1994). In that case, the Commission ordered the public utility to upgrade various facilities based upon the Commission's determination that the existing facilities, while performing as intended, provided inadequate service. As part of the Commission's reasons for the need to replace the equipment, to remedy the inadequacy, was the following: "The Commission further finds that the modernization plan will enable USWC to provide *new services that are not currently available in Utah." Id., at* 145 (emphasis added). US West Communications challenged the Commission's order, in part, based on arguments of lack of sufficient subsidiary findings to support the conclusion of inadequate service and lack of substantial evidence to support the conclusion of inadequate service. These arguments are rejected by the Court. "Even if inadequacy under §54-4-7 were the only basis for ordering improvements, that assertion is clearly wrong. The Commission relied on the testimony of USWC witnesses to find that the upgrades were necessary for the state to remain economically competitive because '[w]ithout modernization to provide higher quality, lower cost and advance [sic, should be "advanced"] services, the gap between public and private offerings will widen, sophisticated users will shift increasingly to private networks and the remaining users will find it difficult to secure basic and enhanced services at reasonable rates. . .'" *Id., at* 145, 146. The underlying rationale is that the equipment will be replaced to enable the provision of *new services*; services which could not be provided by the existing equipment and which were not offered by the utility. It is incongruous to posit that the Commission cannot order 'new services' while this case holds that the Commission may require replacement of perfectly functioning, but 'inadequate equipment', with the inadequacy being based on the equipment's inability to provide "new services that are not currently available in Utah". Based upon our interpretation of these cases, we conclude that based upon an adequate factual basis, the Commission may order a public utility to offer new services, if the provision of the services would be in the public interest and the utility is provided an opportunity to recover the costs of providing the services.

While our conclusion removes the importance of the 'new service' distinction, as relied upon by QGC, we still believe that it has relevance to an ultimate conclusion. We believe that if the Commission is to order the provision of services, the context of the Commission's statutory authority and common sense limit the possible services to those that are considered utility services. That is, the Commission would not be able to order a public utility to provide, e.g., health care services, even if it was established that it was in the public interest and the utility could recover costs associated with the service. While we are dissatisfied with the articulation of the following, but lacking a better articulation, we also believe that the nature of the service needs to have a reasonable relationship with the utility's existing services. As an example of this consideration, we would not order a natural gas utility to offer a public telecommunications service where the gas utility had never before offered any public telecommunications services. The dichotomy of our natural gas/telecommunications example could be accepted without much discussion. It may not be as readily apparent where, as in this docket, the requested service is already being offered, but under different tariff terms then desired. In this context, we have not found, in all of the cases cited by the parties, any insight on how or the criteria upon which one might reach a determination that the ordered service is consistent or inconsistent with this desired relationship. The closest is *City of Bardstown, supra.* But we view the resolution in that case based upon a distinction between the requested service and the possible services authorized in the certificate of public convenience and necessity covering the facilities through which the requested service would be provided. *City of Bardstown* is not based upon a conclusion that the requested service was a 'new service' relative to actual services offered under all certificates (Recall that, in *City of Bardstown,* the utility was providing the requested service, supplying natural gas at wholesale, in other areas of the state of Kentucky on its other facilities). As we have already noted in this proceeding, pursuant to the southern expansion order and certificate, QGC is already transporting customer owned natural gas to Hurricane; indeed it is doing so for Hildale City. The *City of Bardstown* situation presented a clearer distinction between the requested service and existing service. In that case, it is the distinction between the wholesale supply of natural gas and the existing service of transporting gas for the utility's own use. In this proceeding, QGC asks that we distinguish the requested service of transporting customer owned natural gas for a customer and the existing service of transporting customer owned natural

gas for customers as being a 'new' service.

We believe this proceeding does not necessarily turn on whether the requested service is characterized as 'new', but whether the existing tariff terms, by which QGC provides transportation service of customer owned natural gas, are reasonable. This implicates the authority conferred by §§54-3-1, 54-3-8, 54-4-1, 54-4-7, 54-4-18 in respect to the Commission's authority to investigate and determine the reasonableness of the terms under which service is offered, i.e., whether tariff terms are just and reasonable and whether service is sufficient and adequate. Here, Hildale is not requesting a 'new service', rather it is objecting to the terms and conditions under which the Company currently offers natural gas transportation for customer owned gas. The existing tariff terms permit Hildale City to transport gas under certain conditions, but not under others. To this point, we agree with the Company that a reasonable reading of Tariff 300's terms would not permit the service requested by Hildale City. We do not accept Hildale's argument that the requested service can somehow fit within the tariff terms. The plain, inconsistent language of the tariff provisions, e.g., "industrial service on an annual service agreement available to end use industrial customers who acquire their own gas supply", delivery to a "meter serving customer's premises" and "transportation service for industrial customers"could not encompass Hildale's requested service. The conflict is more so when one also considers the context and proceeding in which these tariff provisions were originally reviewed by the Commission. We agree with Hildale, however, that the existing words of the current tariff provisions do not end the matter. Tariff provisions are subject to modification by utility initiative, customer initiative or Commission initiative to ensure that they are consistent with Sections 54-3-1, 54-3-8, 54-4-1, 54-4-7, and 54-4-18 and remain just and reasonable.

We conclude here only this: that we have the authority to require QGC to provide the requested service under just and reasonable terms, if we determine that doing so is in the public interest and provide QGC a reasonable opportunity to obtain sufficient revenues to cover its costs. On this record we cannot resolve the other points or issues raised by the parties. We will not give what would be construed as an advisory ruling on the merit or lack of merit on any contention that has been raised or could be raised for an informed consideration by the Commission on the ultimate question on whether provision of the requested service is in the public interest and can be offered under terms which are just and reasonable. The subsequent evidentiary proceedings contemplated by our scheduling will need to provide us with an adequate factual basis to deal with the differing contentions. It will be necessary to determine whether modifications to Tariff 300's provisions can reach a balanced resolution of the interests of Hildale, the Company (the Company's customers and shareholders), the State and its citizens that is just and reasonable and in the public interest. We believe that each of the points and arguments raised by the parties are appropriate and can be considered by the Commission. Hildale will have to establish evidentiary support for its contentions, the Company is expected to produce evidence in support of its contentions and we anticipate that each will present evidence rebutting one another. Other participants will also present evidence supporting their positions. Only then will we be able to advance and reach the merits of the parties' cases

Wherefore, we order that Questar Gas Company's request to dismiss the petition with prejudice is denied. We may proceed to determine whether the Company's tariff provisions are just and reasonable, and if not, whether they may be modified to permit the requested service, consistent with the public interest. Further proceedings in this matter will be at the initiative of the parties and will be scheduled at a scheduling conference requested by a party.

DATED at Salt Lake City, Utah, this 15th day of January, 1999.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary