

## -BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

-----

IN THE MATTER OF THE	)	<u>DOCKET NO. 98-057-13</u>
APPLICATION OF QUESTAR	)	
GAS COMPANY TO ADJUST	)	
RATES FOR NATURAL GAS	)	
SERVICE IN UTAH	)	<u>PROTECTIVE ORDER</u>

-----

ISSUED: October 20, 1999

By the Commission:

At the direction of the Commission, pursuant to § 54-4-1.5, UCA, the Division of Public Utilities (Division) and Committee of Consumer Service (Committee) have initiated discovery in the above-captioned proceeding. On September 27, 1999, Questar Gas Company (QGC or the Company), submitted an unopposed motion requesting that the Commission issue a Protective Order in the above-entitled proceeding. In its motion, QGC stated that the entry of its proposed Protective Order would expedite the production of documents and other information and that said Protective Order would afford necessary protection to private financial information and to valuable, confidential, trade secret, and business information. The Commission finds that sufficient grounds exist for entry of the following Protective Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That:

- (a) *Confidential Information.* All documents, data, information, studies and other

materials furnished, or made available pursuant to any interrogatories, or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by QGC, its affiliates, or other parties to this proceeding to be of a trade secret, proprietary, or confidential nature shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, confidential, or proprietary commercial and financial information, or confidential individual financial information (hereinafter referred to as "Confidential Information"), and shall neither be used, nor disclosed except in accordance with this Order. All material claimed to be Confidential Information shall be so marked by the party or affiliate by stamping the same with a designation indicating its trade secret, proprietary, or confidential nature. For purposes hereof, notes made pertaining to, or as a result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this Order.

(b) *Use of Confidential Information and Persons Entitled to Review.* All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties (which shall include the Division of Public Utilities), and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Any member of the Public Service Commission and its staff may have access to any Confidential Information made available pursuant to this Order, and shall be bound by the terms of this Order.

(c) *Nondisclosure Agreement.* Prior to giving access to Confidential Information, as contemplated in paragraph 1(b) above, to any expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person, and prior to disclosure such person shall agree in writing to comply with and be bound by this Order. In connection therewith, Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit "A" unless otherwise indicated herein. The Nondisclosure Agreement (Exhibit "A") shall require the person to whom disclosure is to be made

to read a copy of this Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party and the Commission. The members of the Public Service Commission of Utah, its Advisory Staff & Court Reporter may have access to any Confidential Information made available pursuant to this Order without signing "Exhibit A."

(d) *Availability of Documentation.* As to highly sensitive documents and information, the party from whom information is requested shall have the right, at its option, to refuse to provide copies to counsel for other parties, or to their experts as defined in paragraph 1(b). Should the party from whom information is requested refuse to provide copies, such documents shall be made available for inspection and review by counsel, or experts at a place and time mutually agreed upon by the parties. Where copies are not provided, the counsel, or expert reviewing the Confidential Information may make notes regarding the Confidential Information for reference purposes only. Such notes shall not constitute a verbatim, or substantive transcript of the Confidential Information.

2. (a) *Challenge to Confidentiality.* This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement, or ruling on the confidentiality of any such document.

(b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies, or other matters constitute trade secret, confidential, or proprietary commercial and financial information, the party objecting to the confidentiality claim shall forthwith submit the said matters to the Commission for its review pursuant to this Order. When the Commission rules on the question of whether any documents, data, information, studies, or other matters submitted to them for review and determination are Confidential Information, the Commission will enter an order resolving the issue.

(c) Any party at any time upon 10 days prior written notice may seek by appropriate pleadings to have documents that have been designated as Confidential Information, or which were accepted into the sealed record in accordance with this Order removed from the protective requirements of this Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN CASE NO. 98-057-13." It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this order either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event that the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order, or from the protection of the sealed record, the parties, at the request of the providing party and to enable the providing party to seek a stay, or other relief, shall not disclose such information, or use it in the public record for 10 business days.

3. (a) *Receipt into Evidence.* Provision is hereby made for receipt of evidence in this proceeding under seal. Prior to the use of, or substantive reference to any Confidential Information as evidence, the party intending to use such Confidential Information shall provide written notice of that intention to the counsel for the providing party. The party intending to use such Information shall use its best efforts to provide said notice 10 days prior to the use of such Information, but, in any event, shall provide such notice at least three (3) days prior to the use of such Information. The requesting party and the providing party shall make a good faith effort to reach an agreement so that the Information can be used in a manner which will not reveal its trade secret, confidential, or proprietary nature. If such efforts fail, the providing party shall separately designate which portions, if any, of the documents to be offered, or referenced on the record contain Confidential Information. At least one (1) day prior to the use of the Information, the providing party shall provide the Commission and counsel for the other parties with a written description of the portions of the documents so designated. The portions of the documents so designated shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general reference to Confidential Information in these proceedings.

(b) *Seal*. While in the custody of the Commission, these materials shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN CASE NO. 98-057-13," and due to their confidential nature they shall not be considered as records in the possession of, or retained by the Commission within the meaning of the open meetings, or public records statutes.

(c) *In Camera Hearing*. Any Confidential Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this Order. Similarly, cross-examination on, or substantive references to Confidential Information, as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.

(d) *Appeal*. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

(e) *Return*. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within 30 days after final settlement, or conclusion of this matter, including administrative, or judicial review thereof. In order to facilitate their ongoing regulatory responsibility, the Commission and the Division may retain Confidential Information obtained under this Order subject to the other terms of this Order. At least six (6) days prior to the use of any of the retained Confidential Information in any subsequent case, the Division shall provide written notice to counsel for the party providing the information.

4. *Use in Pleadings*. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, argument, or motions, it shall be by citation of title, or exhibit number, or by some other non-confidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed an Exhibit "A." All the protections afforded in this order apply to materials prepared and distributed under this paragraph.

5. (a) *Use in Decisions and Orders*. The Commission will attempt to refer to Confidential Information in only a general, or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information in other than a general, or conclusionary form, it shall be placed in a separate section of the order, or decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) *Summary for Record*. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the decision, or order, to be placed on the public record.

6. *Segregation of Files*. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to the order of the Commission and/or final order of a court having jurisdiction.

7. *Preservation of Confidentiality*. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Order shall neither use, nor disclose the Confidential Information for purposes of business, or competition, or any other purpose other than the purposes of preparation for and conduct of this proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Order.

8. *Reservation of Rights.* The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object on any legal ground to the production or admissibility of any and all data, information, studies and other matters requested or forwarded furnished under the terms of this Protective Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion, or finding of trade secret, confidentiality, or proprietary designation, and to appeal any such determination of the Commission, or such assertion by a party.

The Commission finds that the provisions of the Government Records Access and Management Act do not affect this Protective Order. However, in addition to and not in lieu of the provisions of this Order, any party to this proceeding may submit any Confidential Information under the provisions of the Government Records Access and Management Act.

9. The provisions of this order are specifically intended to apply to data, or information supplied by and from any party to this proceeding, and any nonparty that supplies documents pursuant to process issued by this Commission.

DATED in Salt Lake City, Utah this 20<sup>th</sup> day of October, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard, Commission Secretary

#### EXHIBIT "A"

I have reviewed the Protective Order approved by the Public Service Commission of Utah on the \_\_\_\_\_ day of September, 1999, in Docket No. 98-057-13 and agree to be bound by the terms and conditions of such Order.

Signature

Residence Address

Employer or Firm

Business Address

Party

Date