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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint Application of Questar Gas Company, The Division of Public Utilities, and Utah Clean Energy, for the Approval of the Conservation Enabling Tariff Adjustment Option and Accounting Orders	Docket No. 05-057-T01 **UTAH COMMITTEE OF CONSUMER SERVICES' RESPONSE TO JOINT APPLICATION**

Pursuant to Utah Administrative Code R746-100-3, the Utah Committee of Consumer Services (Committee) responds to the Joint Application of Questar Gas Company (Questar), the Division of Public Utilities (Division), and Utah Clean Energy.

INTRODUCTION

From a review of the Joint Application, and now Questar's and the Division's testimony, there is no doubt that the Application's focal point is a request for a full sales and revenue decoupling rate making mechanism. All other requested relief is either secondary to

this focus, or is a illusory enticement intended to distract the Commission from the rate change and ratepayer impacts due to this pass-through of non-gas distribution expenses.

A full sales and revenue decoupling rate making mechanism adjusts utility revenues for any deviation between expected and actual sales regardless of the reason for the deviation. Questar's and the Division's proposal is to apply full sales and revenue decoupling to Questar's non-gas distribution costs. The ratepayer impact is similar to the pass-through mechanism for gas commodity costs.

From the perspective of residential and small business customers, the Committee's constituents, full sales and revenue decoupling does not benefit ratepayers. Such mechanisms may serve to guarantee a gas utility's profit level. Full decoupling insulates utility revenues from, and shifts to ratepayers, the effects of changes in sales due to weather, economic cycles and downturns, or other business risks. Full decoupling may also reduce customers' incentives to conserve. Full decoupling increases the per unit charge to the customer who for any reason, reduces consumption. Full decoupling to respond to reduced sales in months of intense gas consumption, may unfairly and unnecessarily increase per unit gas prices outside of the heating season.

The Joint Application, styled as a tariff adjustment, in fact requests general rate relief in the form of:

(1) Modifies the calculation and collection of Questar's revenue requirement for distribution non-gas revenue per customer to a rate that is based upon a projected year

end number of customers resulting in a direct change to a customer's charges. The Joint Application does not set forth the proposed rate change resulting from the new ratemaking method.

(2) Modifies block rates singularly on a projected basis without regard to a customer's actual natural gas usage, resulting in a direct change to a customer's charges. The Joint Application does not set forth the consequential rate increase or decrease.

(3) Eliminates rates and rate classes. The Joint Application does not set forth the consequential rate increase or decrease.[1]

(4) Modifies the calculation and collection of Questar's revenue requirement for distribution non-gas revenue per customer prior to developing and implementing cost effective demand side management programs, which are the sole justification for the modified ratemaking methodology. The Joint Application does not set forth the consequential rate increases or decreases that may be expected to result from demand side management programs. The Joint Application does not set forth the direct or indirect expense a customer will be expected or required to pay to respond to or participate in a demand side management program. The Joint Application does not set forth the consequential rate increases or decreases that may be expected to result from customer

[1] For example, at the Committee's January 31, 2006 public meeting Questar acknowledged that eliminating expansion area rates would increase GS-1 rates.

initiated conservation or conservation unrelated to Questar's demand side management programs.

(5) The Joint Application does not set forth the proposed rate increase or decrease that results from amortizing the implementation costs, the annual expenses, or imputed interest of the Pipeline Safety Improvement Act, Docket No. 04-057-03.

(6) The Joint Application seeks to implement a new depreciation method in a manner that precludes a proper and legally mandated analysis of the method selected and results of its application. The Joint Application does not set forth the consequential rate change due to the selected method or other methods not selected.

PART I

REQUEST FOR RELIEF AND AGENCY ACTION

I. Interim rate reduction.

The Committee has reviewed the Joint Application, the general concepts it proposes, and has conducted the analysis allowed by the application's limited detail and scarcity of evidence. That review suggests that Questar's rates should be reduced on an interim basis, as a result of the proposed adoption of a new depreciation methodology. Because the proposed depreciation methodology and resulting rate decrease may not be the best possible from the ratepayers' perspective, this adjustment must be interim, subject to the right of any interested party to investigate this change in methodology and raise concerns in an appropriate rate

proceeding.[2] In addition, this interim rate reduction must be detached from the balance of the relief requested in the Joint Application. The applicants have not established any regulatory link between the rate reduction and any of the other items of relief that are appropriately considered only in a general rate case. Furthermore, under Utah Code §54-3-2 and §§54-4-4-1, 4(1)(b), the Commission is authorized to enter such an order.

The Committee is also concerned that as a mid-cycle adjustment, outside of a general rate case, Questar's proposed rate reduction violates regulatory principles addressed in *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d 1243 (Utah 1980). However, the Committee believes that under Utah Code §54-4-24, a rate decrease resulting from Questar's new depreciation method may be appropriate for an abbreviated proceeding and interim order. The Commission order in Questar's 2002 general rate case required the company to conduct a depreciation study. The new depreciation method is the result of economic and statistical analyses, can be readily compared to other depreciation models, and the amount of the rate change can be precisely analyzed and determined by the Commission. *See Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1247. Under the circumstances, the rate decrease proposed in the Joint

[2]Further analysis of the rate reduction proposed by the Joint Application is necessary to determine whether Questar is being overly generous or not generous enough. The reduction should be ordered however, as customers can benefit from the reduction at this time when customers are bearing the burden of higher energy costs.

Application related to depreciation expenses, is just and reasonable and supported by substantial evidence concerning every significant element in depreciation expense components.

Accordingly, the Committee requests that the Commission enter an order as follows: Pursuant to Utah Code §54-7-12(2) and (3), Questar should be ordered to reduce the revenue requirement for natural gas service by no less than the difference between the depreciation expense calculated under the current approved method, and the newly proposed method, on an interim basis until such time as the Commission issues a report and order in a general rate case. The Committee believes that reduction is approximately $4.8 million. Ultimately, the full extent of the decrease resulting from the new depreciation method will require a deliberate analysis of the depreciation study referred to in the Joint Application.[3]

II. Demand side management pilot program.

The Committee encourages the Commission to consider how best to encourage natural gas conservation, whether utility directed or customer initiated. However, designing conservation measures best implemented by Questar does not require or justify full revenue and sales decoupling.

[3] The depreciation study ordered in the 2002 rate case and completed by December 9, 2005, according to Questar, was not filed with the Commission until January 13, 2006. The Committee respectfully submits that an analysis of the study at least two years in the making, and its rate impact, requires more than 20 days.

Mr. Geller's testimony on behalf of Utah Clean Energy demonstrates the many different forms of demand side management. The testimony infers that demand side management must be tailored to the historical usage patterns, geographic location, weather patterns, customer characteristics, seasonal variances, and cost-benefit considerations that are unique to each utility. Also, demand side management must recognize a distinction between short-term and long-term price responses from customers – turning the thermostat down upon receipt of this month's bill, or planning and financing appliance replacement and energy efficient construction or remodeling.

However, neither Mr. Geller, nor any other witness sponsored by Questar or the Division, address how their proposal encourages and preserves the benefit of customer-initiated conservation measures, which is by far the most readily achievable demand side management program. Neither Mr. Geller, nor any other witness sponsored by Questar or the Division, examines the impact of full sales and revenue decoupling on company sponsored or customer initiated conservation measures.

Mr. Geller's testimony refers to widely varying methods for a natural gas utility to recover its demand side management program costs and lost revenues due to the reduction of gas usage through utility sponsored conservation programs. However, Mr. Geller does not address the full sales and revenue decoupling rate making upon which Questar and the Division condition their willingness to implement any demand side management measures.

Accordingly, the Committee requests that the Commission enter an order incorporating the following general principles and goals: The Commission should order that Questar together with the Division, the Committee and other interested parties, design and implement a three year pilot program adopting utility sponsored demand side management and conservation programs. The pilot program's prudently incurred costs shall be included in Questar's revenue requirement as they are approved by the Commission and expended. The pilot program should consider the following, which are not all inclusive:

a. DSM programs appropriate for low and fixed income customers.

b. DSM programs appropriate for non low-income customers.

c. DSM programs appropriate for existing residences.

d. DSM programs appropriate for residential rental property.

d. DSM programs appropriate for new residential construction.

e. DSM programs appropriate for commercial or non-residential GS-1 customers.

f. Standards and means to measure reduction of gas usage through utility sponsored DSM programs, in comparison to reduction of gas usage through customer initiated, price response conservation, weather, economic cycles and other factors.

g. The cost to the utility, the cost to a customer, by category (i.e. low income, renter, commercial), and the amount of any rebate, credit or subsidy the utility will make available for the implementation or installation of a DSM measure or resource.

h. The availability of, and any restrictions upon, state and local government agencies to implement or assist in implementing or installing any DSM measure or resource.

III. Alternative conservation adjustment mechanisms.

Unlike the rate change due to the changed depreciation methodology, the proposed full sales and revenue decoupling rate-making method relies on "bald assertions" not compelling evidence. *See Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1247. Full sales and revenue decoupling goes far beyond what is needed to remove disincentives to utility sponsored natural gas conservation measures. Utility sponsored demand side management conservation programs do not depend upon and do not justify fundamentally altering the rate making methodology historically used in this jurisdiction to determine Questar's revenue requirement, rate of return and class costs of service.

Since revenue requirements recover not only projected operating costs but also a rate of return on invested capital, altering how the revenue requirement is set and recovered in rates alters the underlying business risk associated with obtaining that rate of return. Investor capital that is insulated by full sales and revenue decoupling from the effects of changes in sales due to weather, economic cycles, competition or other normal business risks, shifting those risks to ratepayers, should not earn the same rate of return as investor capital employed by the traditionally regulated utility.

Sound regulatory and public policy requires that any substantial adjustment or changes in the methodology for recovery of revenues and expenses, and non-gas distribution

investment, include a review of the lawful rate of return. This determination can only occur in the context of a general rate case.

Accordingly, the Committee requests that the Commission enter an order incorporating the following general principles and goals: The Commission should order that Questar together with the Division, the Committee and other interested parties, examine mechanisms for removing the link between Questar's retail sales and it non-gas distribution expenses and revenues, and examine the impact of those mechanisms upon Questar's incentive to promote sales and conservation, increase its rate base and drive earnings growth, and upon the company's cost of capital and lawful rate of return. Similar to the process that considered the appropriateness of a power cost adjustment mechanism following PacifiCorp's last general rate case, and similar to the process now being followed in Docket 05-035-102, this examination should take place in anticipation of a hearing and determination coinciding with Questar's next general rate case.

The examination should consider the following, which are not all inclusive:

a. Whether a decoupling mechanism shifts to ratepayers such normal business risks as lower sales due to economic downturns, weather, new energy efficiency technology, and demand response to price increases, and whether a mechanism lessens the utility's incentive to manage fixed costs.

b. Whether a decoupling mechanism removes or weakens the link between usage and rates, discourages ratepayer initiated conservation and increases the cost of company sponsored conservation programs.

c. Whether use of a future test year sufficiently reduces the claimed disincentive to implement conservation programs by taking into account the effect of conservation programs on sales in the future test period.

d. Whether Questar's weather normalization adjustment has fairly benefited both the utility and ratepayers.

e. Whether basic service charges should be modified.

f. Whether a decoupling mechanism disparately impacts categories of customer's within the GS-1 class, including low and fixed income, non low income, renters, and commercial customers.

g. The relative ease of establishing and enforcing a decoupling mechanism.

PART II

PROCEDURAL OBJECTIONS

On January 31, 2006, the Committee by its Director, Leslie Reberg, requested that the Commission stay these proceedings in the interest of permitting all interested and intervening parties to conduct the same analysis, audit and review upon which Questar, the Division and Utah Clean Energy base their Joint Application. The Committee is informed that the nature of the February 3, 2006 hearing is unchanged. Accordingly, this Part II is filed to preserve the Committee's position upon the Joint Application as filed.

In filing this response, the Committee expressly reserves any objection that the Committee may have, grounded in Utah Code §54-7-1 *et seq.*, Utah Admin. Code R746-100, or Utah Code §63-46b-1 *et seq.*, or in the due process provisions of Utah law and the Utah Constitution. The Committee is troubled that Questar and the Division dangle a minor rate

reduction before the Commission and ratepayers, extracting in exchange, the Commission's capitulation to dramatically altered regulation methods, without regard to the major implications for Questar's revenues, rate of return, cost of capital, expenses, and the even greater implications to retail customers. More troubling is that Questar and the Division demand that the Commission sacrifice the deliberate and careful consideration of the proposal that is necessary to assure it results in just and reasonable rates. Most troubling is that by including paragraph 40 in the Joint Application, Questar, the Division and Utah Clean Energy reserve the right to repudiate the initiatory pleading they filed, should the Commission not acquiesce to all that the applicants demand.

The following are procedural errors and improprieties that the Committee has identified as of the date of this response. The Committee reserves the right to amend and supplement this response as the Joint Applicants file or present any additional information, materials or evidence. This reservation includes the right to file amendments or supplements in response to evidence offered or admitted at the hearing of this matter. The Committee further reserves the right to object to the relevance and admissibility of any evidence, including pre-filed testimony, upon both substantive and procedural grounds.

I. The Joint Application violates Title 54.

Joint Application, paragraph 40 reads in its entirety:

> 40. The Parties support of this Joint Application is conditioned on Commission approval of the entire Joint Application. In the event the Commission rejects any or

> all of the entire Joint Application, or imposes any additional material conditions on approval of this Joint Application, each Party reserves the right, upon written notice to the Commission and the other Parties to this proceeding delivered no later than five (5) business days after the issuance date of the applicable Commission order, to withdraw from this Joint Application.

Questar and the Division will no doubt, portray such language as standard for stipulations and therefore, the Joint Application. The true consequences are anything but ordinary.

Nothing in Title 54 permits any party to confine the Commission to only one result by reserving the right to repudiate and withdraw the party's filing by simply giving notice, **after the entry of a final order**. The implication of a party's withdrawal under the terms of paragraph 40 is that as to the withdrawing party, Commission jurisdiction is extinguished and the party need not obey the order.

Paragraph 40's implication for the Commission's authority over Questar, and the Division's statutory obligation to enforce Commission orders, is so profoundly harmful that the Committee can attribute its inclusion only to the applicant's false impression that such a reservation was necessary to allow modifications or amendments to any particular item of relief requested. The Committee suspects that there may be an agreement among the joint applicants that either of them may modify their individual position or withdraw from any individual proposal contained in the application, if during the proceeding, the party feels it necessary or appropriate to its statutory responsibilities or in its constituents interest.

Because paragraph 40 represents an improper impediment to the Commission's jurisdiction, the Committee's preferred remedy would be for the Commission to require that the applicant's amend the Joint Application, striking paragraph 40. If the parties indeed do intend paragraph 40 as an escape from the consequence of having invoked the Commission's jurisdiction, then the Committee is forced to request the Commission to reject and dismiss the Joint Application as it violates Utah Code §54-3-23, §54-4-1, §54-4a-1(1)(d), §§54-7-13 and 15.

II. The Joint Application's violates Title 54, Chapter 7 and Title 63, Chapter 46b.

The Commission must comply with the Utah Administrative Procedures Act and public utilities statutes. *Utah Code §§63-46b-5-9; Utah Code §54-7-1 et seq.*; *PSC R746-100-1 et seq.* The Joint Application bypasses these requirements and asks the Commission to base its order on evidence that falls far short of that required to affect a dramatic change to the ratemaking method and resulting rates.

The December 16, 2005 Joint Application was to have been investigated by the Division, an Applicant, between December 19 and December 25. From a January 5, 2006 scheduling conference, a January 13, 2006 technical conference to consider the application was to have occurred before testimony was to be filed. The hearing was to occur five working days later, January 20. While the schedule was amended, no provision has been

made for intervention, motions, discovery, direct testimony from other parties, or settlement discussions.[4]

In contrast to the proposed truncated process in this docket, for example, if Questar requested pre-approved rate inclusion of its conservation program under Part 4 of the Energy Resource Procurement Act, Utah Code §54-17-401 *et seq*., the Commission would have 180 days to make its determination. The Energy Resource Procurement Act also requires that the Commission consider specified rate, risk and financial impacts of a conservation program. Questar and the Division insist that for their far reaching joint ratemaking and rate change proposal, the Commission must consider the application within 49 days (December 17, 2005 to February 3, 2006), and proceed in nine business days from the first description of the rates in testimony to a final hearing.

The injudicious character of Questar's and the Division's position is made clear by comparing the process in this docket with that being followed in Docket 05-035-102, PacifiCorp's request for approval of a power cost adjustment mechanism. The origins of the power cost adjustment mechanism proposal go back to at least PacifiCorp's 2004 general rate case, a subsequent task force study, and an Application filed in anticipation of and coinciding with a 2006 general rate case.

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[4]The Commission's willingness to hear from any person or entity without requiring formal intervention does not allay the Committee's concerns that the procedure will not result in the deliberate and meaningful process that the law requires to develop the substantial evidence necessary for a reasoned report and order.

The Commission should take notice of the Division's different approaches to these two similar pass through proposals: for PacifiCorp, proceed deliberately; for Questar, approve impulsively. The Committee contends that, given the similar ratepayer impact of the two proposals, both must be thoroughly vetted.

The Commission's power to fix rates and establish accounting procedures is not unlimited. The Commission has authority to set rates "only in general rate proceedings … [and has] limited authority to permit interim rate changes which are necessary because of unexpected increases in certain specific types of costs." *Questar Gas Co. v. Public Service Commission,* 2001 UT 93 P12, 34 P.3d at 222-223, citing *Utah Department of Business Regulation v. Public Service Commission,* 720 P.2d 420, 423-424 (Utah 1986). While the Commission's limited authority to permit fuel cost pass-through rate changes outside of a general rate proceeding, is recognized, the Utah Supreme Court held that "a utility's attempt to use procedures established in the fuel cost pass-through statute to recover specific nonfuel-related expenses is invalid." *Utah Department of Business Regulation v. Public Service Commission,* 720 P.2d at 423-424. In this Docket, there is no evidence of a "prior practice" or evidence of a fair and rational basis, to extend 191 Account treatment or principles to undefined demand side management programs and non-gas distribution costs.

The Commission should be mindful of the fact that accepting a tariff or an abbreviated proceeding as the means to implement major regulatory policy changes with accompanying

rate impact has been shown to be an unsatisfactory, error filed process. *Utah Committee of Consumer Services v. Public Service Commission,* 75 P.3d 481 (Utah 2003)*; Utah Department of Business Regulation v. Public Service Commission,* 614 P.2d 1242 (Utah 1980).

III. The Joint Application violates Utah Code §54-4-4.

The Commission's broad authority to regulate a utility's business must harmonize with general rules for rate making set by the legislature. All rate making must be prospective in effect and rates may be fixed only in general rate proceedings. *Utah Department of Business Regulation v. Public Service Commission,* 720 P.2d at 423. The Joint Application disregards the general rules for rate making in its request for a full sales and revenue decoupling rate making methodology. The Questar and Division proposal precludes the Commission's review of Questar's revenues, expenses and investments, and precludes the Commission's scrutiny of the full revenue and sales decoupling method, and the rates that will be determined thereby. The Joint Application seeks to adjust rates and rate making unsupported by substantial evidence concerning every significant element in the rate making components which is claimed to justify a full revenue and sales decoupling and the consequence to retail customers. *Utah Department of Business Regulation v. Public Service Commission,* 614 P.2d at 1250.

As justification for the relief requested, the Joint Application cites genuine but very generalized nation-wide interest in programs promoting energy conservation and efficiency.

The application also cites the efforts and evaluations of task forces and study groups ordered by the Commission in Docket No. 02-057-02. Neither the NARUC November 16, 2005 Resolution nor the conclusions and recommendations of the Commission-directed task force and study group reports are substantive evidentiary support for the kind of changes and rate adjustment the Commission is asked to adopt as a final order in this proceeding.

The inadequacy of the proceeding initiated by the Joint Application prevents the Commission from making the necessary evidentiary and legal findings predicate to ordering the adjustments and changes proposed in the Joint Application. *See Questar Gas Co. v. Public Service Commission,* 201 UT 93, 34 P.3d 218 (2001). A final order in this Docket must be the product of statutorily required scrutiny and must establish just and reasonable rates as required by Utah law. This result is dependent upon the Commission affording the Committee and other interested parties the fair opportunity to investigate and analyze Questar's and the Division's audits, studies and projections. The parties must be given a fair opportunity to ask and have answered questions pertaining to the Joint Application and all of the programs and policies it contemplates. The parties must be given a fair opportunity to prepare testimony and to prepare for a hearing.

RESPECTFULLY SUBMITTED this 2nd day of February 2006.

/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served upon the following by e-mail February 2, 2006:

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