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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Application of Questar Gas Company to Adjust Rates For Natural Gas Service in Utah))))	Dkt. No. 04-057-04
In the Matter of the Investigation of Questar Gas Company's Gas Quality)))	Dkt. No. 04-057-09
In the Matter of the Application of Questar Gas Company to Adjust Rates For Natural Gas Service in Utah))))	Dkt. No. 04-057-11
In the Matter of the Application of Questar Gas Company for a Continuation of Previously Authorized Rates and Charges Pursuant to its Purchased Gas Adjustment Clause)))))))	Dkt. No. 04-057-13
In the Matter of the Application of Questar Gas Company for Recovery of Gas Management Costs in its 191 Gas Cost Balancing Account)))))	Dkt. No. 05-057-01

**PETITIONERS' OBJECTION TO SUBPOENAS,
MOTION TO QUASH,
AND MOTION FOR PROTECTIVE ORDER**

Petitioners, Jenny Nones, Tolford Young, Larry Norman, Gwen Schamel, and Thomas McGee, through counsel (“Petitioners”), object to subpoenas duces tecum (the “Subpoenas”) which were served upon them February 13, 2006, and which require them

to produce documents and appear for depositions on less than 3 days notice, February 15 and 16, 2006. The Subpoenas were issued by the Utah Public Service Commission (“UPSC” or the “Commission”) at the request of Questar Gas Company (“Questar”). Questar, through the Subpoenas, purports to seek discovery from Petitioners respecting Petitioners’ standing to file and prosecute that certain “Request of Petitioners for Reconsideration of the Report and Order of the Utah Public Service Commission, Issued January 6, 2006, Approving a Gas Management Cost Stipulation” (the “Petition”). Responding to the Subpoenas, and in exchange for withdrawal of the same, Petitioners offered voluntarily to provide Questar with simple records evidencing the status of Petitioners as shareholders and ratepayers, showing their standing to proceed *under Utah Code Ann. § 54-7-15*, so long as Petitioners were allowed a reasonable time within which to search and produce this documentation. Questar, however, declined this invitation from Petitioners, insisting that Questar must depose Petitioners, especially the shareholders, interrogating them concerning their joinder in the Petition and whether this joinder was in the “best interest of the company.” Questar also seeks information respecting communications between Petitioners and other parties in interest who have opposed the Commission's approval of the stipulation noted above, including consumer activists Roger Ball and Claire Geddes. The putative relevance of this information is not apparent from the statute governing requests for reconsideration; nor is it explained in the Subpoenas or other pleadings submitted by Questar. In addition to this objection, Petitioners hereby formally ask the Commission to quash the Subpoenas or in the alternative to issue a protective order, limiting the discovery that Questar may be entitled

to request from Petitioners. As grounds for this objection, motion to quash, and request for protective order, Petitioners show the Commission as follows.

The Subpoenas are illegal because this is not an "investigation." All of the Subpoenas purport to be issued pursuant to *Utah Code Ann.* § 54-7-3. Subpart (2) of this statute is the only potentially relevant provision, but it applies, by its terms, only to “investigations” by the Commission. This docket is not an investigative docket. Indeed, this docket is an adjudicative docket, arising from two requests for agency action, the first by Questar, seeking the allowance of coal seam gas processing costs, and the second by the Commission under the settlement statute of the utilities code. Under the circumstances, there does not seem to be any authority or basis for issuance of the Subpoenas. Accordingly, the Subpoenas should be quashed.

The subpoenas are illegal because they are after the fact. In any event, absent a "live" docket, with issues identified through pleadings, there is no frame of reference by which the Commission may determine the relevance of any request for discovery, such as the Subpoenas. Questar has stated through counsel that the purpose of the discovery is to determine the standing of Petitioners in connection with their Petition for reconsideration of the order noted above. But this statement, without more, is insufficient to set parameters on acceptable discovery.

The subpoenas illegal infringe Petitioners' First Amendment rights. In addition, the subpoenas themselves, by demanding information concerning communications between Petitioners and third parties such as Ball and Geddes go beyond the pale of traditional boundaries in litigation over standing. Absent more definition, it may be impossible to curb Questar from overreaching conduct in connection with this

discovery -- conduct, as noted below, that almost certainly infringes upon the First Amendment rights of these Petitioners. The subpoenas, therefore, should be quashed or deferred until well-defined, appropriate, constitutional boundaries are set to the discovery.

The subpoenas are illegal because they do not give Petitioners 14 days advance notice. Even if Section 54-7-3 is deemed to apply in this docket at this stage of proceedings, and even if appropriate boundaries for Questar's discovery might be established, subpart (2) of the statute essentially incorporates by reference Rule 45 of the Utah Rules of Civil Procedure. In that event, the subpoenas fail to comply with Rule 45. Most of the subpoenas were served late afternoon February 13th. Petitioner Nones was served in her pajamas at almost 9:00 p.m. February 13th. The subpoenas require Petitioners to produce documents and appear for depositions February 15th and February 16th. Rule 45 requires that parties seeking discovery must give witnesses who are subpoenaed no less than 14 days advance notice. This was not done here. Since the subpoenas do not comply with Rule 45, they must be quashed.

Even if Rule 45 permitted the Subpoenas to be issued on less than 14 days notice, Petitioners cannot respond to these requests for information on an expedited 2 or 3 day basis. There is no time for any of Petitioners to gather the documents sought by Questar. Petitioner McGee has employment commitments Friday morning, the day scheduled for his deposition. Petitioner Nones had pre-existing plans to travel to St. George on Friday, so that she can prepare for her upcoming wedding. Petitioner Schamel also has a pre-existing appointment for Thursday afternoon. Petitioner Young has not even been served formally with a Subpoena, although his counsel has received a copy of the same. Parties

to litigation ordinarily attempt to ascertain beforehand what would be convenient dates for all concerned in the conduct of discovery, but Questar is above the rules of civil procedure and, in any case, too important for the observance of such courtesies. The Commission should respond to this high-handedness by quashing the Subpoenas.

The Subpoenas seek irrelevant information. The Subpoenas seek information from Petitioners that is irrelevant to the question of standing. For example, three of the four Petitioners who have been Subpoenaed are shareholders. As such, and without more, they have standing to bring the Petition under *Utah Code Ann.* § 54-7-15. Questar, however, seeks to gain factual “admissions” from Petitioner shareholders that they are not “acting in the best interest of the company” in bringing the Petition, and, therefore, must be disqualified as Petitioners. The statute, however, does not require shareholder Petitioners to agree with Questar on what might be in the best interest of the company before filing a petition for reconsideration. Such a requirement, moreover, would gut the statute. The Petition in this case challenges the competency and/or honesty of the management of Questar, a subject about which shareholders rightly are concerned, and about which shareholders and management are not likely to agree once the spectre of mismanagement is raised. Under Questar’s interpretation of Section 54-7-15, no shareholder who ever disagreed with management would be granted standing to seek reconsideration of a Commission order. The statute, in other words, could never serve the exact purpose for which it was enacted.

Likewise, fishing for carp, Questar asks for information respecting communications between Petitioners, other Petitioners, and Roger Ball and Claire

Geddes. This is totally irrelevant to any standing concerns, or even the merits of the request for reconsideration.

The Subpoenas are illegal because they are overreaching, oppressive, and unduly burdensome. This is evident for at least two reasons. First, the only ostensible purpose to be served by the Subpoenas is to determine the status of Petitioners as shareholders or Nones and McGee as ratepayers for standing purposes. But surely Questar knows (from a review of its own records) who is or is not a shareholder or ratepayer. If Questar is incompetent to search its own records, Petitioners have volunteered to prove their standing as shareholders or ratepayers with simple documentation such as share certificates, dividend checks, copies of annual reports which they have received in the mail, billing statements and receipts or other evidences of payment of utility bills. Second, even if Questar is successful in disqualifying these Petitioners, on standing grounds, from suing for reconsideration under the statute, there are 37 remaining Petitioners, the bona fides of which, for standing purposes, have not been challenged by Questar. The discovery, therefore, is ineffectual and senseless in any event. Indeed, this fact alone, the fact that, even without the Subpoenaed Petitioners, the Petition still stands, shows that the true intent of Questar management is to harass Petitioners and obstruct their constitutional right to petition for redress under our utilities code.

In this regard, Petitioners believe and therefore aver that Questar is not genuinely interested in obtaining the information respecting standing that is described in the Subpoenas (all of which can be found with ease from Questar's own records or through submission of simple records – as already volunteered by counsel for Petitioners).

Petitioners are fearful that Questar really seeks to undercut the activism evidenced by Petitioners in filing the Petition – by intruding into personal correspondence going to the organizational activities of these Petitioners with others and -- by probing into the litigation analysis and strategic deliberations of these Petitioners – and by bullying Petitioners through litigation related threats into withdrawing their Petition. To this extent, the Subpoenas may transgress the attorney work-product doctrine or the attorney client privilege. Moreover, any order from the Commission which allows such intrusiveness may offend the rights of speech and association guaranteed to Petitioners under the First Amendment of the United States Constitution and cases such as *National Association for the Advancement of Colored People v. Alabama*, 357 U. S. 449 (1958) and its extensive progeny.

The Subpoenas require Petitioners to produce documents or testify at depositions respecting all communications between Petitioners and Roger Ball or Claire Geddes. We have been scratching our heads over this request. What relevance do these communications have to the standing of Petitioners? The statute regulating standing in this regard, Section 54-7-15, merely requires Petitioners to be shareholders or ratepayers; it does not qualify standing by reference to associations or communications with others. It is not difficult to surmise the causes for Questar's inquiries into Petitioners' communications and associational relationships with Ball and Geddes. These causes are unworthy of the Commission's attention, and none should receive the imprimatur of the state through the Commission.

The first cause is arrogance. Questar wants to use the depositions as a forum to lecture or even catechize shareholders such as Schamel, a septuagenarian and a woman,

in connection with the "true faith" of Questar management and the financial benefits to shareholders like her of fobbing all the costs of the coal seam plant off on ratepayers while keeping all the revenue and the asset for themselves? But what if Ms. Schamel actually cares more about the integrity and fairness of management in the Questar system? Petitioners respectfully submit that the Commission has no business in aiding and abetting Questar management in what -- at best -- is partisan proselytizing and at worst ritual bullying of corporate shareholders.

The second cause is hypocrisy. Although Questar is free to preach the gospel of higher rates and inflated profits in its annual reports, in billing inserts, and press releases - - and, alas, we note *even on the Commission's own website (!?)* -- the company's management does not believe that the same rights, to organize, solicit, assemble, and speak, should be vouchsafed others such as shareholders and ratepayers. Questar believes that its point of view is the only point of view, that others may not dissent from its corporate ideology, and, most important, that Ball, Geddes, and other private citizens and consumer advocates who have the temerity to organize that dissent through traditional democratic institutions, the rump caucus or citizen committees, should be silenced and punished through the expense, time, trouble, and fear induced from harassing depositions. Petitioners respectfully submit that the Commission has no jurisdiction to aid Questar in this effort.

The third cause is a desire to impair or defeat the associational and speech rights of these Petitioners, together with Ball and Geddes. Questar is looking for dirt on Ball and Geddes; it wants evidence of "defamation" or "misrepresentation" in e-mails or other correspondence with Petitioners. Questar also is looking for evidence that Petitioners

have an "association" or "relationship" with Ball and Geddes, and that, through this connection and the solicitations of Ball and Geddes, Petitioners have been induced to file the request for reconsideration in this docket. Cutting through the posturing and pettifoggery, this is the long and the short of it.

And so what? Petitioners, Ball, and Geddes are protected, for sound policy reasons, from tort liability in connection with litigation before the Commission. Ball and Geddes are free to correspond with Petitioners and Petitioners are at liberty to return those communications. All are free to think for themselves, to disagree with Questar, to speak their minds, to solicit, associate, organize, assemble, and petition their government, through the Commission and the courts, for redress of wrongs. The efforts of Questar to discourage or derail this effort, using state power, through a subpoena and order of the Commission, are attempted violations of the First Amendment rights of these parties. *See, e.g., National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958) and related cases. The Commission does not have jurisdiction to enlist in this cause, and Petitioners trust that, even were the power at hand, it would not be exercised in so unworthy and unwise an endeavor. *Cf. Kearns-Tribune Corp. v. Public Service Commission*, 682 P.2d 858 (Utah 1984).

In the event that the Commission determines not to quash the Subpoenas, the Commission should give close scrutiny to the motives of Questar in conducting the discovery, ascertaining beforehand whether Questar is actuated by illicit desires to stifle speech or otherwise to impair or suppress the associational rights of these Petitioners. Petitioners respectfully request that, in view of these First Amendment concerns, the Commission grant Petitioners an opportunity to take discovery and create a record that

will enable the Commission to discharge this duty of close scrutiny in furtherance of protecting these important constitutional principles. In all events, the Commission should limit the inquiry of Questar to relevant information, to information that is not protected by the work product or attorney client privileges, and to dates, times, and circumstances which are not incompatible with the employment and schedules of each subpoenaed Petitioner.

Finally, Petitioners have expressed concern in the Petition respecting the impartiality of Chairman Campbell insofar as he may intend to continue involvement in this docket and in connection with the questions respecting gas processing cost recovery. Petitioners incorporate those arguments by reference in this pleading, and respectfully request that Chairman Campbell be disqualified from further participation in this docket generally and in connection with any ruling on this objection and motion in particular.

For all the foregoing reasons, Petitioners request that these Subpoenas be quashed.

Dated this 15th day of February, 2006.

Respectfully submitted,

Janet I. Jenson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection to Subpoenas, Motion to Quash and Motion for Protective Order of Petitioners in Dockets 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01 was hand delivered, sent by United States mail, postage prepaid, or mailed electronically this 15th day of February, 2006 to the following:

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