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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF MR. MICHAEL
MOYAL AND THE MASTER METER
SYSTEM AT THE MILLSTREAM
MOTEL**

Docket No. 16-2593-01

**NOTICE OF DISMISSAL PERTAINING
TO THE DIVISION OF PUBLIC
UTILITIES' REQUEST FOR AGENCY
ACTION OR, IN THE ALTERNATIVE,
MOTION FOR COMMISSION
APPROVAL OF SETTLEMENT
AGREEMENT AND MEMORANDUM IN
SUPPORT**

Pursuant to Utah Code Ann § 54-13-2, R746-100-1(C), and Utah Rule of Civil Procedure (URCP) 41(a)(1), the Division of Public Utilities (Division) files this Notice of Dismissal pertaining to its Request for Agency Action or, in the alternative, its Motion and Memorandum in Support requesting that the Public Service Commission of Utah (Commission) approve the attached Settlement Agreement pursuant to Utah Code Ann. §§ 54-7-1, 54-13-2, and R746-100-10(F)(5).

I. INTRODUCTION

A. Jurisdiction

By Utah statute and delegation from the federal government, the Commission has jurisdiction over intrastate natural gas pipeline safety matters. Utah Code Ann. § 54-13-2 states, “the commission is responsible for establishing safety standards and practices for intrastate pipeline transportation and shall make and enforce rules required by the federal Natural Gas Pipeline Safety Act to maintain state control over the regulation of intrastate pipeline transportation.” Utah Code Ann. § 54-13-3 sets forth the Commission’s authority to establish rules pertaining to pipeline safety. The Commission’s intrastate gas pipeline rules are found at R746-409. Finally, pursuant to delegation from the U.S. Department of Transportation, the state of Utah regulates, inspects, and enforces intrastate gas pipeline safety requirements, including those involving natural gas master meter systems.¹ The Division’s Pipeline Safety Section (Pipeline Safety) performs these delegated duties on behalf of the state.

B. Background

On October 20, 2016, the Division filed its Request for Agency Action on Notice of Probable Violation, Proposed Hazardous Facility Order, Proposed Civil Penalty, and Proposed Compliance Order against Mr. Michael Moyal (Request for Agency Action) pertaining to Mr. Moyal’s operation of a natural gas master meter system at the Millstream Motel. The Division and Mr. Moyal are the only parties to this docket.

¹ Utah’s authority is described at:
http://primis.phmsa.dot.gov/comm/FactSheets/States/UT_State_PL_Safety_Regulatory_Fact_Sheet.htm?nocache=7074.

On October 25, 2016, the Commission issued its scheduling order that among other things set November 23, 2016 as the due date for Mr. Moyal's response to the Request for Agency Action and set January 18, 2017 as the hearing date.

On November 9, 2016, the Division issued its First Set of Data Requests to Mr. Moyal.

On November 14, 2016, Pipeline Safety conducted a site investigation of the master meter system.

On November 17, 2016, Mr. Moyal responded to the Division's Data Requests.

On November 21, 2016, a meeting was held in which the Division and Mr. Moyal participated. As a result of that discussion, the Division and Mr. Moyal reached a settlement in principle.

On November 22, 2016, the Division filed its Motion to Suspend Schedule and for Expedited Consideration requesting that Mr. Moyal not be required to file an answer on November 22nd and that further duties of the parties be suspended. Mr. Moyal supported this motion. On November 22, 2016, the Commission granted the Division's motion.

Subsequently, the Division and Mr. Moyal entered into a Settlement Agreement, included here as Attachment A. In part, the Settlement Agreement contains a provision through which Mr. Moyal represents that he has had the master meter locked, the master meter system purged, and that he will not resume natural gas service through the master meter system.

The Division is authorized to represent that Mr. Moyal supports this Notice of Dismissal concerning the Division's Request for Agency Action or, in the alternative, that he supports Commission approval of the Settlement Agreement.

II. ARGUMENT

A. The Division's Notice of Voluntary Dismissal is Consistent with Utah Rule of Civil Procedure 41(a)(1) and should be Acceptable to the Commission

URCP 41(a)(1) states in part that "Subject to the provisions of Rule 23(e) and of any applicable statute, an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer or other response to the complaint permitted under these rules." URCP 41(a)(1) is applicable because the Commission has no rule of its own governing dismissal.

Where the Commission has no rule of its own, "the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate."²

Applying the relevant facts to the rule demonstrates that voluntary dismissal by the Division is consistent with URCP 41(a)(1). The two listed exceptions that could render URCP 41(a)(1) inapplicable do not exist here. URCP 23(e) does not apply because it pertains to dismissal or compromise of class action lawsuits and there are no applicable statutes precluding application of the rule.

Furthermore, there is no reason why the Commission should reject URCP 41(a)(1) as "unworkable" or "inappropriate." The requirements of URCP 41(a)(1) are set forth clearly and the procedure is uncomplicated. The substantive requirements of the rule are met here. Mr. Moyal has not filed an answer or other response in this

² R746-100-1(C).

case.³ The Division's Notice of Dismissal is included as Attachment B. Accordingly, voluntary dismissal by the Division under URCP 41(a)(1) is workable and appropriate in this instance and the Notice of Dismissal should be acceptable to the Commission.

B. In the Alternative, Commission Approval of the Settlement Agreement is Consistent with Utah Code Ann. § 54-7-1, Just and Reasonable, in the Public Interest, and No Hearing Is Necessary

Commission approval of the Settlement Agreement is consistent with Utah Code Ann. § 54-7-1 and is in the public interest. This statute explicitly provides the Commission with objectives, procedure, and criteria for approving settlements. Additionally, the statute allows the Commission to approve appropriate settlements "at any stage of the adjudicative procedure."⁴ Furthermore, the facts here support approval of the Settlement Agreement without a hearing as no hearing has been requested by either of the only two parties to the docket.

1. Statutory Objectives and Requirements for Approval of the Settlement Agreement Are Satisfied

Commission approval of the Settlement Agreement is consistent with the objectives of Utah Code Ann. § 54-7-1. The statute encourages settlement to "minimiz[e] the time and effort" expended by the parties, "enhance administrative efficiency," or allow the Commission to concentrate on otherwise unresolvable issues.⁵ Approving the Settlement Agreement would achieve each of these three objectives.

³ Because the Division is pleading in the alternative, it asserts that Mr. Moyal's support for Commission approval of the Settlement Agreement does not constitute a response as contemplated by URCP 41(a)(1). If the Commission determines that Mr. Moyal's support constitutes a response rendering URCP 41(a)(1) inapplicable, but the Commission desires to dismiss the Request for Agency Action, the Division submits that dismissal by Commission order under URCP 41(a)(2) would be appropriate.

⁴ Utah Code Ann. § 54-7-1(3)(e)(i).

⁵ See Utah Code Ann. § 54-7-1(1).

Additionally, because “the commission may adopt a settlement proposal related to an adjudicative proceeding at any state of the adjudicative procedure,”⁶ approval of the Settlement Agreement now is permitted by the statute.

The deliberative process set forth in Utah Code Ann. § 54-7-1 requires that the Commission “consider the significant and material facts related to the case,”⁷ and determine that the settlement proposal is “just and reasonable in result” and is supported by record evidence to that effect.⁸ These criteria are fulfilled here. Pertinent facts include that the Settlement Agreement resolves contentious issues between the Division and Mr. Moyal. The submitted Settlement Agreement is “just and reasonable in result” because it expeditiously resolves what the Division considered a public safety issue. The Division executed the Settlement Agreement after receiving the advice of Pipeline Safety that the Settlement Agreement promotes public safety because the master meter has been locked, the master meter system has been purged, and Mr. Moyal has committed to not restoring natural gas service through that system. The Request for Agency Action, this pleading, and the Settlement Agreement provide the necessary evidence to support approval. Thus, approving the Settlement Agreement is in the public interest and the Division urges the Commission to do so.

2. No Commission Hearing is Required to Approve the Settlement Agreement

No hearing is required for Commission approval of the Settlement Agreement. Utah Code Ann. § 54-7-1 only requires a hearing if it is “requested by any party initiating

⁶ Utah Code Ann. § 54-7-1(3)(e)(i).

⁷ Utah Code Ann. § 54-7-1(3)(d)(ii).

⁸ Utah Code Ann. § 54-7-1(3)(d)(i).

the adjudicate proceeding,” “any party against whom the adjudicate proceeding is initiated,” or “an intervening party to the adjudicate proceedings.”⁹ Neither the Division nor Mr. Moyal has requested a hearing. There are no intervening parties to this docket. Therefore, no hearing is required.

For the reasons set forth above, approving the Settlement Agreement, and doing so without a hearing, is consistent with the Commission’s delegated powers and applicable statutes found in Title 54 of the Utah Code.

III. CONCLUSION

The Division’s Request for Agency Action should be dismissed pursuant to its Notice of Dismissal or, in the alternative, the Commission should approve the Settlement Agreement. URCP 41(a)(1) and R746-100-1(C) support the Division’s voluntary dismissal of its Request for Agency Action. Alternatively, based upon the “significant and material facts” in this case and because the Settlement Agreement is “just and reasonable in result,” supported by record evidence, and satisfies the objectives and criteria set forth in Utah Code Ann. § 54-7-1, the Commission should approve the Settlement Agreement, and do so without a hearing as no hearing has been requested.

RESPECTFULLY SUBMITTED this 21st day of December 2016.

_____/s/_____
Patricia E. Schmid
Attorney for the Division
of Public Utilities

⁹ Utah Code Ann. § 54-7-1(3)(e)(ii).

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing **NOTICE OF DISMISSAL PERTAINING TO THE DIVISION OF PUBLIC UTILITIES' REQUEST FOR AGENCY ACTION OR, IN THE ALTERNATIVE, MOTION FOR COMMISSION APPROVAL OF SETTLEMENT AGREEMENT AND MEMORANDUM IN SUPPORT** to be served this 21st day of December, 2016, by email and/or USPS mail, postage prepaid, to the following:

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_____/s/_____