

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Questar Gas)
Company for an Investigation and) DOCKET NO. 07-057-06
Determination of Rights of U.S. Magnesium,)
LLC, to Preferential Service Under Main) ORDER DENYING
Extension Agreement) MOTION TO DISMISS
)

ISSUED: January 29, 2008

By The Commission:

On September 11, 2007, Questar Gas Company (“Questar”) filed a Petition for Investigation and Determination of Right to Preferential Service (“Petition”) pursuant to *Utah Code Ann.* §§ 54-3-7, 54-3-8, 54-4-1, 54-4-2, 54-4-4 and 63-46b-3 and Utah Administrative Code R746-100-4 seeking a Commission investigation and determination whether US Magnesium, LLC (“US Mag”, hereinafter jointly referred to with Questar as the “Parties”) is entitled to preferential service from Questar under the terms of a Main Extension Agreement (“Agreement”) entered into between Mountain Fuel Supply Company and National Lead Company–Magnesium Division on June 3, 1970.

On October 10, 2007, the Division of Public Utilities (“Division”) filed a memorandum noting its conclusion that the issues raised by the Petition are legal in nature and stating the Division therefore anticipated responding to the Commission’s Action Request of September 12, 2007, via a legal pleading prepared by the Attorney General’s Office.

On October 24, 2007, the Utah Committee of Consumer Services (“Committee”) entered its appearance in the above-entitled matter pursuant to *Utah Code Ann.* § 54-10-4.

Also on October 24, 2007, the Commission issued a Notice of Scheduling Conference setting a scheduling conference to convene in the above-entitled matter on October 31, 2007.

On October 29, 2007, counsel for US Mag filed a memorandum advising the Commission that US Mag intended not to participate in the October 31, 2007, scheduling conference and asking, based on the unavailability of counsel, that said conference be continued if the Commission determined to proceed in this docket. US Mag argued the Commission lacks jurisdiction to resolve what it views as a contractual dispute between US Mag and Questar. US Mag informed the Commission that in April 2007 it had filed a complaint in the Third Judicial District Court of Tooele County, Utah, seeking enforcement of the Agreement.

On November 15, 2007, Questar filed a memorandum stating its view that the Commission has exclusive jurisdiction over the Parties' dispute and noting Questar had no objection to a reasonable continuance of the scheduling conference based on the stated unavailability of US Mag counsel.

On November 19, 2007, the Commission issued a Notice of Scheduling Conference re-scheduling the scheduling conference to convene before the Administrative Law Judge on December 4, 2007.

The scheduling conference convened as noticed on December 4, 2007, at which time attendees agreed to a December 18, 2007, deadline for filing of motions responsive to the Petition, as well as a January 4, 2008, deadline for filing of responses to any such motions.

On December 18, 2007, US Mag filed a Special Appearance, Motion to Dismiss and Motion to Stay ("US Mag Motion") disputing the Commission's personal jurisdiction over

US Mag and subject matter jurisdiction over what it termed a contractual dispute between the Parties. In the alternative, US Mag seeks a stay of Commission proceedings pending decision by the Third Judicial District Court on Questar's motion to dismiss for lack of jurisdiction filed in that matter.

On the issue of personal jurisdiction, US Mag argues that none of the statutory provisions or rule under which Questar purported to file its Petition confers Commission jurisdiction over US Mag. Moreover, Questar has not asked the Commission to issue, or attempted to serve, any kind of legal process on US Mag that could arguably give the Commission personal jurisdiction over US Mag. Thus, since no findings or conclusions stemming from Commission action regarding the Petition will be binding upon US Mag, and any Commission investigation would not impact US Mag's legal rights in any manner, the Petition should be dismissed.

Regarding subject matter jurisdiction, US Mag argues Questar's tariff recognizes the terms and conditions of a line extension agreement with an industrial customer are left to bilateral contractual negotiations and resolution of contractual disputes falls within the jurisdiction of the District Courts of the State of Utah. Since it is Questar's private contractual obligation, not the Commission-approved tariff, that is at issue, it is properly the District Court's role to interpret, enforce and remedy any breach; it is the Commission's role to determine any potential implications of the Court's decision in the ratemaking context.

On January 4, 2008, Questar filed its Response to the US Mag Motion arguing the issues raised in the Petition address the terms and conditions of utility service between Questar and US Mag such that if US Mag's position on the Agreement is upheld Questar's ability to

provide service to other customers in accordance with the terms and conditions of its tariff will be impaired. Therefore, the Commission should confirm its jurisdiction in this matter and proceed to address the issues raised in the Petition. Questar further argues any potential problem with personal jurisdiction over US Mag may easily be remedied by Questar amending its Petition to make clear that it is filed, *inter alia*, under *Utah Code Ann.* § 54-7-11¹ and by Questar seeking issuance and service of a summons pursuant to *Utah Code Ann.* § 54-7-2.

Also on January 4, 2008, the Division filed its Response to the US Mag Motion noting its conclusion that the Commission has jurisdiction over the dispute in the above-entitled matter. The Division notes *Utah Code Ann.* § 54-4-1 provides the Commission with general jurisdiction over public utilities; *Utah Code Ann.* § 54-4-2 grants the Commission power to conduct investigations of public utilities; *Utah Code Ann.* § 54-4-4 provides the Commission jurisdiction over classification, rates, and services for public utilities; *Utah Code Ann.* § 54-3-7 mandates charges according to the appropriate schedules; and *Utah Code Ann.* § 54-3-8 prohibits preferences in conjunction with service provided by a public utility.

The Division argues the dispute raised in the Petition affects Questar's provision of service to US Mag and highlights the differences between firm and interruptible transportation services provided by Questar, affecting not only US Mag but other customers on the subject line, as well as Questar's customers in general. Making US Mag's interruptible contract "special" would create a preference, affecting not only US Mag but also Questar's other customers on the subject line and throughout the Questar distribution system. With respect to the issue of

¹This statutory provision refers to Commission procedure regarding complaints filed by utilities.

personal jurisdiction, the Division argues the Commission can exercise such over US Mag by issuing a subpoena under *Utah Code Ann.* § 54-7-3.

On January 10, 2008, US Mag filed a Reply Memorandum informing the Commission of the oral ruling of the Third Judicial District Court judge following hearing on January 8, 2008, holding that the pipeline construction agreement contained within the Agreement represents an optional, bilateral contract which stands on its own, is supported by consideration and is not governed by Questar's tariff such that the interpretation and enforcement of this optional contract properly falls within the jurisdiction of the district court.²

Having reviewed and considered the arguments of the Parties and the Division, the Commission concludes it possesses the requisite jurisdiction to investigate and resolve the matters raised by Questar's Petition. *Utah Code Ann.* § 54-4-1 vests the Commission "with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction". Questar's Petition asks the Commission to investigate and determine whether US Mag is entitled to certain service under the terms of the Agreement. As this question focuses squarely on the provision of service by Questar, it is one over which the Commission clearly enjoys the jurisdiction conferred by the Legislature.

²Given that the court has now issued its ruling, the Commission views as moot US Mag's Motion to Stay and therefore herein renders no decision on said motion.

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Therefore, having considered these matters and for good cause appearing, the Commission issues this ORDER denying US Mag's Motion to Dismiss. Further proceedings will be scheduled as appropriate.

DATED at Salt Lake City, Utah, this 29th day of January, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#56081