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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Utah Division of Public Utilities,

Complainant,

v.

Questar Gas Company,

Respondent.

Docket No. 11-057-_____
REDACTED
COMPLAINT OF THE UTAH DIVISION
OF PUBLIC UTILITIES AGAINST
QUESTAR GAS COMPANY

Pursuant to Utah Code Ann. § 54-4a-1, the Utah Division of Public Utilities (Division) files with the Utah Public Service Commission (Commission) this Complaint against Questar Gas Company (Questar Gas). This Complaint arises out of the March 24, 2009 incident involving Questar Gas' failure to mark its intrastate natural gas pipeline at 1580 East 500 South, Salt Lake City, Utah.

Parties

1. The Division is an agency created by the Utah Legislature. See Utah Code Ann. § 54-4a-1. By statute the Division is granted the right, inter alia, to commence original proceedings pertaining to the jurisdiction of the Commission and to take enforcement actions. See Utah Code Ann. § 54-4a-1(a) and (d).

2. Questar Gas is an intrastate natural gas pipeline operator subject to the jurisdiction of the Commission. See §§ 54-1-1 et seq. Most of Questar Gas' pipeline is buried underground.

Jurisdiction

3. The Commission regulates public utilities, including certain natural gas companies and their operators, such as Questar Gas. See Utah Code Ann. § 54-4-1 et seq. Concurrently, the Commission regulates operators and excavators regarding damage to underground utility facilities. See § 54-8a-2 et seq. Thus, the Commission has jurisdiction over Questar Gas and the incident involving Questar Gas' failure to mark its intrastate natural gas pipeline at 1580 East 500 South, Salt Lake City, Utah.. The Division has complied with the directive set forth in Utah Code Ann. § 54-4a-1(2)(a) to provide Questar Gas reasonable advance notice of this Complaint.

Background

4. Blue Stakes is the Utah association designated to coordinate receipt of proposed excavation activities and to provide notice of such activities to operators of underground facilities. See Utah Code Ann. § 54-8a-9. Questar Gas is a member of Blue Stakes and receives information from Blue Stakes pertaining to excavations and required marking of lines. See Utah Code Ann. § 54-8a-9. Notice to Blue Stakes of a

planned excavation constitutes notice to the operator, here Questar Gas. See Utah Code Ann. § 54-8a-4(5). The excavator must provide notice to the operator of the excavation no less than 48 hours before excavation begins, and the notice cannot be more than 14 days before excavation begins. Utah Code Ann. § 54-8a-4(2).

5. On March 20, 2009, at 10:29, Down Under Construction (Down Under) called Blue Stakes requesting marking of underground utilities near 1580 East 400 South, Salt Lake City, Utah where Down Under planned to install fiber optical conduit. Blue Stakes provided notice of the pending excavation to Questar Gas at 10:40 on March 20, 2009. Questar Gas' designee, One Call Locators, Ltd. Inc. dba ELMLocating and Utility Services, was then notified of the need to mark the area for the pending excavation. Pursuant to Utah Code Ann. § 54-8a-5(1)(a):

Within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall (i) mark the location of its underground facilities in the area of the proposed excavation; or (ii) notify the excavator, by telephone or electronic message or indication at the excavation site, that the operator does not have any underground facility in the area of the proposed excavation.

However, because the 48 hour period for marking does not include Saturdays, Sundays, or legal holidays, and Down Under provided its notice on Friday, March 20, 2009, excavation could begin no sooner than Tuesday, March 24, 2009, at 10:30 AM. See Utah Code Ann. §§ 54-8a-2(6) and 54-8a-5(4).

6. Despite the information being given to Blue Stakes and Blue Stakes providing the same to Questar Gas, Questar Gas' line was not timely marked. Upon information and belief, on March 23, 2009, Questar Gas' designee visited the excavation site, but due to "slush" on the ground, did not mark Questar Gas' line. Upon

information and belief, Questar Gas' designee intended to return the next day to mark the line.

7. On March 24, 2009, the pending excavation area was marked with blue, green, and red utility paint, but no yellow paint indicated the presence of a natural gas line. That day, Down Under made two bores in the area. Although the first bore did not strike Questar Gas' pipeline, the second bore did at 13:36 on March 24, 2009. Down Under noticed mud being blown back from the directional drill, turned off the machine, and called Questar Gas to report a gas leak. Gas was released as a result of the incident.

8. The incident prompted many actions. The fire department responded. Two roads were closed (1580 East Guardsman Way and 500 South), TRAX service was stopped, and 23 buildings on the University of Utah campus were evacuated. The University of Utah campus and several businesses were closed due to the gas leak. The nearby Veteran's Administration hospital was not evacuated; gas concentrations were monitored there every 15 minutes and no natural gas concentrations were found in the buildings. Manhole covers were removed along 500 East and 1580 Guardsman Way, and the natural gas concentration was measured there as well. The highest natural gas concentration measured in the sewer lines was 55%.

9. Because Questar Gas initially believed that damages related to the incident exceeded \$50,000, triggering a particular federal reporting obligation, on March 26, 2009, Questar Gas submitted a Telephonic Incident Report to the U.S. Pipeline and Hazardous Materials Safety Administration. Questar Gas later determined that the actual damages were less than \$50,000, and, on April 13, 2009, requested that the

federal report be rescinded. ***BEGIN CONFIDENTIAL

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX END CONFIDENTIAL ***

10. Mr. David Hassell, the primary investigator for the State of Utah, Division of Public Utilities, concluded that Questar Gas failed to mark its underground facilities within 48 hours of receiving notice. He concluded that Questar Gas violated Utah Code Ann. § 54-8a-5 and failed to follow its Standard Practice 5-00-07, violating R746-409. He also concluded that Questar Gas violated 49 C.F.R. 192.614(c)(5) pertaining to damage prevention.

Specific Statutes and Rules Violated by Questar Gas

Questar Gas Violated Utah Code Ann. § 54-8a-5

11. Questar Gas is an operator as defined by Utah Code Ann. § 54-8a-2(10)(a), and, as such, is subject to the provisions of Utah's Damage to Underground Utility Facilities Statute, found at Utah Code Ann. § 54-8a-2 et seq.

12. Consistent with Utah Code Ann § 54-8a-4, on March 20, 2009 at 10:30, Down Under provided notice of its planned excavation to Blue Stakes, an association established pursuant to Utah Code Ann. § 54-8a-9 to receive notice of excavations and provide such notice to underground utility operators. This notice to Blue Stakes begins the 48-hour period for an operator, here Questar Gas, to mark its lines prior to excavation. See Utah Code Ann. § 54-8a-4(5). On March 20, 2009 at 10:40 am, Questar Gas received a Blue Stakes' notice pertaining to Down Under's excavation activities, starting the 48-hour timeframe for Questar Gas to mark its lines. Although Questar Gas received notice of the proposed excavation, its designee, did not mark the line appropriately. In compliance with the timeline established by the Blue Stakes

statutes which excludes Saturdays, Sundays, and legal holidays from the 48-hour period, excavation could begin March 24 at 10:30 am. On March 24th, Down Under began excavating, striking Questar Gas' unmarked line that afternoon at 13:34. Details of the incident set forth above are incorporated herein by reference.

13. As an operator, Questar Gas has a duty under Utah Code Ann. § 54-8a-5 to mark its facilities under certain circumstances. Utah Code Ann § 54-8a-5 states:

within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall: (1) mark the location of its underground facilities in the area of the proposed excavation; or (ii) notify the excavator, by telephonic or electronic message or indication at the excavation site, that the operator does not have any underground facility in the area of the proposed excavation.

The operator is to mark its underground facility by "stakes, paint, or in some other customary way." Utah Code Ann. § 54-8a-5(1)(b). In Utah, yellow paint is used to indicate the presence of natural gas facilities. By Utah statute, "If there is an association in the county [such as Blue Stakes here], notice to that association constitutes notice to each operator that has facilities within the proposed excavation site. Utah Code Ann. § 54-8a-4(5). Questar Gas' designee failed to mark Questar Gas' line in the excavation area within the 48-hour prescribed period; because the 48-hour period excludes Saturdays, Sundays, and legal holidays, excavation could not begin until March 24, 2009 at 10:30. Despite the requirement to timely mark, on March 24, 2009, no yellow marking indicated the presence of a natural gas line. On March 24, 2009 at 13:36, Down Under struck Questar Gas' unmarked line while boring, causing gas to escape, and the evacuations, road closures, and other events detailed above. By failing to timely and properly mark its underground line consistent with Utah Code Ann. § 54-8a-5

after receipt of notice as outlined above, Questar Gas violated Utah Code Ann. § 54-8a-5.

14. Utah Code Ann. § 54-8a-8 provides that “A civil penalty under this section may be imposed on: (a) any person who violates this chapter in an amount no greater than \$2,500 for each violation with a maximum civil penalty of \$100,000 per excavation.” See Utah Code Ann. § 54-8a-8(2). The statute also provides that certain things shall be taken into consideration when determining the applicable penalty. For example, the operator’s history of prior violations, the seriousness of the violation, and the good faith of the operator shall be considered. See Utah Code Ann. § 54-8a-8(4) and (5).

15. Under the circumstances set forth above, and taking into account the considerations set forth by statute affecting the appropriate penalty, the Division recommends that Questar Gas be fined \$2,500 under Utah Code Ann. § 54-8a-8(2) for violating Utah Code Ann. § 54-8a-5. The Division is recommending the maximum single incident penalty in this case due to the seriousness of the incident and its impact upon public safety and convenience.

Questar Gas Violated its Standard Practice

16. Questar Gas failed to follow its standard practice filed with the Commission pertaining to Questar Gas’ Underground Facilities Damage Prevention Program, set forth at 5-00-07, Revision 00B, 01/04/2005, AF# QRS 270 (Standard Practice). According to this Standard Practice, “Questar Gas uses Company and contract personnel to locate facilities.” The Standard Practice also establishes a priority for responding to emergency and normal excavation requests. Under the facts set forth

above, the location request pertaining to Down Under's activities would be classified as a "normal" excavation request that would need to be completed in 48 hours.

Underground gas facilities are to be marked with "safety yellow." Marking requirements are set forth in detail, including, but not limited to, marking the centerline and both sides of the pipeline. Additionally, denotation of the date and time the location was marked, the address, and a description and sketch of the markings are required. R746-409-5 requires Questar Gas to file its operation and maintenance plans, such as the Standard Practice discussed above, with the Commission and R746-409-1 requires Questar Gas to comply with the same.

17. Consistent with Utah Code Ann § 54-8a-4, on Friday, March 20, 2009, Down Under provided notice of its planned excavation to Blue Stakes, an association established pursuant to Utah Code Ann. § 54-8a-9 to receive notice of excavations and provide such notice to operators. Notice to Blue Stakes constitutes notice to operators, here Questar Gas. See 54-8a-4(5). On March 20, 2009, Blue Stakes received notice of Down Under's planned excavation activities.; under Utah Code Ann. § 54-8a-4(5), the 48-hour period began at 10:30 on March 20, 2009 when Down Under provided notice to Blue Stakes of the planned excavation; because the 48-hour period excludes Saturdays, Sundays, and legal holidays, Down Under could begin excavation at 10:30 on March 24th, 2009. Although Questar Gas received notice of the proposed excavation, its designee did not mark the line in compliance with the 48-hour timeframe.. Upon information and belief, on March 23, 2009, Questar Gas' designee visited the excavation site, but due to "slush" on the ground, did not mark Questar Gas' line. Upon information and belief, Questar Gas' designee intended to return the next

day to mark the line. On March 24, 2009, no yellow marking indicated the presence of a natural gas line. Questar Gas' line was not timely marked. On March 24, 2009 Down Under began its excavation activities, striking Questar Gas' unmarked line at 13:36 that day. Details of the incident set forth above are incorporated herein by reference.

18. Although Questar Gas received notice of Down Under's planned excavation, Questar Gas' designee did not timely or properly mark Questar Gas' facilities. Questar Gas' failure to mark its line properly violated its Standard Practices regarding locating its natural gas pipelines, including the duty to mark, the method of marking, and memorializing the marking.

19. Commission R-746-409-1 requires the operator of an intrastate pipeline to "comply with the minimum safety standards specified in those Parts of the C.F.R.," including but not limited to 49 C.F.R. Part 192, including marking obligations. Correspondingly, R746-409-5 requires an operator to file with the Commission a plan for the operation and maintenance of the pipeline. If the Division recommends that the plan is inadequate, and the Commission so finds, revision shall be required after hearing. Questar Gas filed its standard plan described above. The Division did not request the Commission to revise Questar Gas' filed plan.

20. Although Questar Gas had filed with the Commission Questar Gas' Standard Practice for marking in conjunction with excavation activities, Questar Gas failed to mark its lines as required by its filed Underground Facilities Damage Prevention Program, set forth at 5-00-07, Revision 00B, 01/04/2005, AF# QRS 270. Thus, Questar Gas violated the Commission rule set forth at R746-409-1.

21. As a public utility regulated by the Commission, Questar Gas is subject to penalties for violating Commission R746-409-1. Utah Code Ann. § 54-7-25 provides for a penalty of not less than \$500 nor more than \$2,000 for each title, rule, or order violation by a public utility when there is no other penalty amount provided.

22. Under the circumstances set forth above, the Division recommends that Questar Gas be fined \$2,000 under Utah Code Ann. § 54-7-25 relating to its violation of R746-409-1. The Division is recommending the maximum penalty in this case due to the seriousness of the incident and its impact upon public safety and convenience.

Claims for Relief

The Division realleges the preceding paragraphs. The Division requests that the Commission find that Questar Gas failed to comply with the Commission's statutes and rules as set forth above. The Division requests that the Commission assess monetary penalties against Questar Gas in the total sum of \$4,500, the maximum amount possible for the incident under Utah Code Ann. §§ § 54-8a-8(2) and 54-7-25, for the above-alleged violations of the Commission's statutes and rules. In addition, the Division requests that the Commission order such other and further relief as is appropriate under the circumstances.

Respectfully submitted this _____ day of _____ 2011.

Patricia Schmid
Attorney for the Division of Public Utilities

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Redacted Confidential Complaint of the Utah Division of Public Utilities against Questar Gas Company to be served this _____ day of _____ 2011 by hand delivering copies of the same, to the following:

Colleen Larkin Bell
General Counsel
Questar Gas Company
180 East 100 South
Salt Lake City, Utah 84111
