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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE FORMAL COMPLAINT AGAINST QUESTAR GAS COMPANY REGARDING NOMINATION PROCEDURES AND PRACTICES FOR TRANSPORTATION SERVICE CUSTOMERS	Docket No. 14-057-19 QUESTAR GAS COMPANY'S MOTION TO DISMISS AND FOR SUMMARY JUDGMENT AND SUPPORTIVE MEMORANDUM
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On July 10, 2014, Complainants filed the Complaint, Request for Declaratory and Injunctive Relief, and Request for Agency Action filed in the above referenced docket (Complaint) in this docket. Pursuant to Rules 12 (b) and 56 of the Utah Rules of Civil Procedure, Questar Gas Company (Questar Gas or Company) respectfully moves the Utah Public Service Commission (Commission) for summary judgment on the claims set forth in Count III of the Complaint, for dismissal of all claims for relief that would require Questar Pipeline Company (Questar Pipeline) to take action regarding its nomination process, and for dismissal of all claims brought by U.S. Magnesium , LLC with prejudice for the reasons described herein.

BACKGROUND

1. On July 2, 2013, Questar Gas proposed certain changes to its Natural Gas Tariff (Tariff) relating to transportation service customers (TS Customers) in its General Rate Case Application. Questar Gas was concerned about the reliability of upstream supplies for TS Customers (both firm and interruptible) and whether those supplies would arrive at Questar Gas' city gates. If upstream restrictions occur and TS Customers' gas supplies do not arrive at the Wasatch Front interconnects (known as the "City Gates"), Questar Gas may need to reduce deliveries to its firm TS Customers. Therefore, Questar Gas proposed tariff language that would have required TS Customers to have firm upstream transportation capacity. *See* Application in Docket No. 13-057-05; Direct Testimony of Tina M. Faust in Docket No. 14-057-19, lines 21-28 (Faust Testimony). Nothing in the Application in Docket No. 13-057-05 addressed nomination processes.

2. On January 6, 2014, parties to the general rate case signed a Partial Settlement Stipulation Regarding TS Tariff Language in Docket No. 13-057-05 (Settlement Stipulation). The Settlement Stipulation was filed on January 7, 2014. The Settlement Stipulation provides, in part, that:

The Settling Parties agree that on or before April 1, 2014, they will invite the Settling Parties and other interested entities to collaboratively explore additional changes to the language of Sections 5.01 and 5.07 of the Company's tariff to address interruption and related concerns and issues.

Settlement Stipulation at paragraph 8.

3. On February 21, 2014, the Commission issued a Report and Order in Docket No. 13-057-05 approving the Settlement Stipulation (Order). *See* Report and Order dated February 21, 2014 in Docket No. 13-057-05.

4. In accordance with the Settlement Stipulation, Questar Gas invited all of the parties to meet and discuss concerns related to the TS Customers. Meetings were held February 28, 2014; March 24, 2014; and May 13, 2014. Representatives of Summit Energy, LLC (Summit); Seminole Energy Services, L.L.C. (Seminole); CIMA ENERGY LTD (CIMA); Utah Association of Energy Users (UAE); US Magnesium, LLC (US Mag); and others attended some or all of the meetings. *See* Complaint at paragraphs 6 and 7, Prefiled Direct Testimony of Matthew Medura at lines 38-40, 52-53 and 59-60; Faust Testimony, lines 30-35.

5. The participants in the meetings discussed potential options for TS Customers or Agents to bring gas to the Questar Gas system. Discussions are ongoing and Questar Gas is willing to continue to meet with interested parties. Faust Testimony, lines 37-41.

6. On May 13, 2014, Questar Pipeline issued a Notice to all of its shippers that electronic confirmations of nominations on Questar Pipeline at the City Gates would be required beginning gas day July 1, 2014 (Notice). A copy of that Notice is attached hereto as Exhibit "A." Questar Gas did not issue the Notice.

7. Summit, CIMA and other parties contacted Questar Gas expressing concerns about the Questar Pipeline Notice. Questar Gas and Questar Pipeline met with Summit on June 3, 2014, and CIMA on June 5, 2014. Questar Gas has continued to meet with these, and other interested parties since that time. Questar Gas has not held additional meetings with UAE, US Mag, or Seminole because they have not contacted Questar Gas regarding concerns over the Notice. Questar Gas remains available to meet with UAE, US Mag, Seminole or any other party. Faust Testimony, lines 67-73.

8. On June 18, 2014, Questar Gas responded to letters from CIMA and Summit about recent discussions regarding the nomination and scheduling of supplies on the Questar Pipeline system. The responses reiterated Questar Gas' willingness to meet with interested

parties to discuss the issue. See Complainant Exhibits 4.5 to the Prefiled Direct Testimony of Matthew Medura.

9. Questar Gas has reiterated its interest and willingness to continue meeting. See Memorandum in Opposition to Motion for Stay in Docket No. 13-057-05.

10. On August 25, 2014, Complainants responded to Questar Gas' First Set of Data Requests. The responses were signed by counsel for Complainants and indicated, in a footnote, that "U.S. Magnesium, LLC has elected not to participate further in this docket as a Complainant, and has not responded to these data requests." See Exhibit "B."

STANDARD OF REVIEW

Summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Ut. R. Civ. P. 56C. "[T]he plain language of Rule 56C mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of any element essential to that party's case, and on which that party will bear the burden of proof at trial." *Shaw Resources LTD., L.L.C. v. Pruitt, Gushee & Bachtell, P.C.*, 2006 UT App 313, 142 P.3d 560 (quoting *Celotex Corp. v. Catrett*, 4787 U.S. 317, 106 S.Ct. 2548 (1986)).

A Commission should dismiss claims when it lacks jurisdiction to grant the requested relief. Ut. R. Civ. P. 12(b). In deciding a motion to dismiss, the Commission should "accept the factual allegations in the Complaint as true and draw all reasonable inferences from those facts in a light most favorable to" the Complainants. *Sorensen v. Barbuto*, 2006 UT App 340, 143 P.3d 295, *aff'd* 2008 UT 8, 177 P. 3d 614; *Mackey v. Cannon*, 2000 UT App 36, 996 P.2d 1081.

ARGUMENT

The Commission should grant summary judgment in Questar Gas' favor as to all the claims set forth in Count III of the Complaint. Specifically, the undisputed facts set forth by both Complainants and Questar Gas clearly show that Questar Gas has complied with, and will continue to comply with the Order approving the Settlement Stipulation.

The Commission should dismiss all claims that would result in an order requiring Questar Pipeline to modify its nomination procedures, or take other action regarding the operation of its system. Because the Commission lacks jurisdiction over Questar Pipeline, it cannot grant the relief sought in this Docket that would expressly or, as a consequence, require action of Questar Pipeline Company.

Finally, US Magnesium has expressed intent to withdraw from this docket and therefore the Commission should dismiss all of US Magnesium's claims with prejudice.

I. Questar Gas Has Complied with and Will Continue to Comply with the Report and Order approving the Settlement Stipulation.

There is no need for an order that Questar Gas meet with the working group referenced in the Stipulation and the Report and Order. Questar Gas has met with the working group on numerous occasions and will remain available to meet with interested parties. As noted above, the Settlement Stipulation contemplated that the Settling Parties would meet to discuss alternatives to the proposed Tariff language. The Settling Parties discussed the matters addressed in the Settlement Stipulation. Questar Gas indicated its intention to continue discussions in written correspondence to Summit, CIMA and others, and in pleadings filed with this Commission. Questar Gas has complied with the terms of the Stipulation and the Report and Order and is willing to hold additional meetings and to continue to discuss the issues raised therein. Because there is no dispute of fact or law related to this issue, the Commission should

declare Questar Gas to be compliant with the Settlement Stipulation and the Order and grant summary judgment in Questar Gas' favor as to the claims set forth in Count III of the Complaint.

II. **The Commission Lacks Jurisdiction to Order Questar Pipeline to Modify the Notice or Any Other FERC-Authorized Action.**

Questar Pipeline issued the Notice that electronic nominations would be required effective July 1, 2014. *See* Exhibit "A." Questar Pipeline's notice falls within the jurisdiction of the Federal Energy Regulatory Commission (FERC).¹

In Order No. 587-V, the FERC amended its regulations in 18 C.F.R. §284.12 to incorporate by reference the latest version (Version 2.0) of certain business practice standards adopted by the Wholesale Gas Quadrant of NAESB applicable to natural gas pipelines. *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-V, 140 FERC ¶61,036 (2012). The NAESB standards include standards for the nomination and confirmation of natural gas supplies between interconnecting interstate pipelines and local distribution companies. Section 284.12 requires that an interstate pipeline company, such as Questar Pipeline, that transports gas under the FERC's open access regulations must comply with NAESB Version 2.0 standards. Accordingly, Questar Pipeline Company submitted its compliance filing to amend its FERC Gas Tariff to incorporate the required Version 2.0 NAESB standards into its Tariff. Questar Pipeline's compliance filing was approved by the FERC. Docket No. 13-91, Letter Order, November 7, 2013. FERC has plain and exclusive jurisdiction over the issue of nominations and confirmations on Questar Pipeline.

Accordingly, the Commission should dismiss all claims arising from Questar Pipeline's Notice and its changes to the nominations procedures described herein.

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The FERC has exclusive jurisdiction over the transportation of natural gas by interstate natural gas pipeline companies. 14 USC § 717. In Docket No. CP76-111, the FERC found that Questar Pipeline is an interstate natural gas pipeline company within the meaning of the Natural Gas Act and was, therefore, subject to FERC jurisdiction. *Mountain Fuel Resources, Inc.*, 55 FPC ¶ 2322 (1976).

III. U.S. Magnesium LLC Has Opted Not To Participate Further In This Docket and the Commission Should Therefore Dismiss All of Its Claims.

U.S. Magnesium, LLC has, through its counsel of record, indicated intent to cease participation as a party in this docket. Questar Gas requests that the Commission recognize that withdrawal and dismiss all claims brought by U.S. Magnesium, LLC with prejudice.

CONCLUSION

Questar Gas has, and continues to comply with the Stipulation and the Report and Order and, therefore the Commission should grant Summary Judgment denying the claims set forth in Count III of the Complaint.

Additionally, the Notice at issue in this matter was issued by Questar Pipeline pursuant to FERC authority, not by Questar Gas. The Notice addresses nomination and confirmation issues on Questar Pipeline's system. Questar Gas cannot rescind the Notice. This Commission lacks jurisdiction to order Questar Pipeline to rescind the Notice. Therefore, the Commission should dismiss any claims arising from Questar Pipeline's actions or its issuance of the Notice on July 1, 2014.

Finally, because U.S. Magnesium, LLC has opted to cease participation in this docket, the Commission should dismiss all of U.S. Magnesium's claims with prejudice.

RESPECTFULLY SUBMITTED this 28th day of August, 2014.

QUESTAR GAS COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Questar Gas Company's Motion to Dismiss and for Summary Judgment and Supportive Memorandum was served upon the following persons by e-mail on August 28, 2014.

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