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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

**COMPLAINANTS' RESPONSE
AND OBJECTION TO QGC
MOTION TO DISMISS AND FOR
SUMMARY JUDGMENT**

The Complainants hereby respond and object to the motion to dismiss and for summary judgment (“Motion”) filed by Questar Gas Company (“QGC”) in this matter. The Motion is deficient and should be denied in its entirety because (1) QGC has submitted no affidavits or sworn testimony in support of facts that it relies upon for summary judgment as to Count III of the Complaint; the facts relied upon by QGC are insufficient to support summary judgment in any event; and genuine disputes as to relevant material facts preclude summary judgment; (2) none of the relief requested in the Complaint is aimed at Questar Pipeline, so there is no such claim to be dismissed; and (3) US Magnesium has elected not to participate further in this docket

and moves for dismissal; however, the dismissal should be without prejudice, as it is not on the merits.

I. QGC Failed to Support its Motion for Summary Judgment on Count III with Affidavits or Other Sworn Testimony; the Facts Relied Upon Do Not Support Summary Judgment; and Genuine Disputes as to Material Facts Preclude Summary Judgment.

QGC seeks summary judgment on Count III of the Complaint. That Count alleges that Questar violated the Stipulation and Commission Order in Docket 13-057-05. Among other things, the Complainants allege that Questar acted in bad faith in abruptly terminating task force discussions that were required by the Stipulation and Order to be “global,” “collaborative” and “holistic,” and that Questar violated its implied covenant of good faith and fair dealing under the Stipulation. These claims are highly fact intensive and cannot be resolved summarily. Indeed, summary judgment would be appropriate only if sworn, undisputed facts had been presented that clearly demonstrate that there are no genuine disputes as to any material facts and that the moving party is entitled to judgment as a matter of law. *See Rule 56, Utah Rules of Civil Procedure.* No such showing has or can be made.

QGC’s Motion lists 10 “Background” facts that allegedly support the Motion. The portion of the Motion that seeks summary judgment as to Count III of the Complaint is seriously deficient for several reasons. First, Rule 56, Utah Rules of Civil Procedure, requires that a motion for summary judgment be supported by pleadings, depositions, interrogatory answers, admissions and sworn affidavits that demonstrate there is “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” The Motion clearly fails to do so.

The portion of the Motion seeking summary judgment on Count III relies on “background facts” 5 and 7, which allege that task force discussions are ongoing and that QGC remains available

to meet with parties. Even if those “facts” otherwise supported summary judgment as to Count III -- which, as discussed below, they do not -- they are supported only by the unsworn prefiled testimony of Tina Faust, which fails to satisfy the requirement of Rule 56 for sworn affidavits.

Second, the “background facts” stated in QGC’s motion for summary judgment are facially insufficient to establish that QGC fully complied with all of its obligations under the Stipulation or the Order. In particular, they do not demonstrate that QGC satisfied its implied covenant of good faith and fair dealing under the Stipulation. Simplistic factual statements that meetings were held and that QGC allegedly remains willing to meet are insufficient to demonstrate full compliance with QGC’s express and implied obligations.

Finally, Even if unsworn prefiled testimony were sufficient to satisfy Rule 56, and even if the simple background facts listed in the Motion otherwise supported summary judgment, genuine disputes as to material facts preclude summary judgment. The prefiled direct testimony of Matthew Medura in this docket (Complainants Exhibit 4.0, lines 51-93, 180-195), for example, testifies about QGC’s abrupt termination of working group meetings, its unwillingness to discuss or pursue a meaningful pooling arrangement, and its violation of the “intent and spirit of the rate case stipulation, the Commission’s order and the legitimate expectations of the working group members” (lines 191-193). Similarly, in the prefiled rebuttal testimony of Matthew Medura, filed contemporaneously herewith (Complainants Exhibit 4.0R, lines 19-28), Mr. Medura testifies that task force discussions were not pursued in good faith by QGC and challenges Ms. Faust’s claim to the contrary. These allegations and facts clearly demonstrate that QGC’s argument that it fully complied with its express and implied obligations under the Stipulation and Order, and particularly

its implied covenant of good faith and fair dealing, is highly contested. Summary judgment is thus unavailable and improper.

II. None of the Claims or Requests for Relief Relate to Questar Pipeline, so there are no such Claims to be Dismissed.

QGC correctly notes that this Commission lacks jurisdiction to order Questar Pipeline to change its directive requiring electronic confirmations. However, none of the claims or requests for relief in the Complaint seek relief relating to Questar Pipeline. Indeed, the Motion fails to identify even a single claim targeted by the motion for dismissal.

Complainants have made it clear that they support Questar Pipeline's belated use of electronic confirmations. The Complaint targets only QGC's actions in eliminating pooling/aggregation services that had previously been provided, and in refusing to formalize pooling/aggregation arrangements. QGC's motion for dismissal of "all claims arising from Questar Pipelines' Notice and its changes to the nomination procedures" is thus moot, as none of the claims or relief target Questar Pipeline's actions.

III. US Magnesium Should be Dismissed from this Action Without Prejudice.

US Magnesium, one of the original Complainants, has elected for undisclosed business reasons not to participate further in this docket. Accordingly, US Magnesium requests dismissal from this action without prejudice. QGC's Motion improperly requests dismissal with prejudice, but it provides no support or basis for dismissal with prejudice.

Under Rule 41, Utah Rules of Civil Procedure, when a party is voluntarily dismissed upon request, the dismissal is without prejudice unless otherwise stated in the notice of dismissal. Dismissal with prejudice is contemplated under Rule 41 only if the party has previously been

dismissed from the same action. *Rule 41(a)(1), Utah Rules of Civil Procedure*. U.S. Magnesium does not oppose, and indeed requests, dismissal from this action without prejudice.

IV. Conclusion

QGC's Motion is deficient in all respects and should be denied in its entirety. The Commission should enter an order voluntarily dismissing U.S. Magnesium without prejudice.

DATED this 10th day of September 2014.

HATCH, JAMES & DODGE

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 10th day of September 2014 on the following:

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