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| In the Matter of the Formal Complaint of) | <u>DOCKET NO. 05-057-14</u> |
| Theron Daniel Whiting versus Questar) | |
| Gas) | <u>REPORT AND ORDER DISMISSING</u> |
|) | <u>COMPLAINT</u> |

ISSUED: December 13, 2005

By The Commission:

PROCEDURAL HISTORY AND BACKGROUND

On October 3, 2005, Complainant Theron Daniel Whiting filed a Complaint against Respondent Questar Gas Company (“Questar”) alleging irregularities and improprieties in Respondent’s award of gas line, service line and meter installation contracts during the years 2000, 2001, and 2002 resulting in a loss to Complainant in excess of \$10 million. Complainant owns Dan Whiting Construction Company, a firm that had previously been awarded contracts by Respondent to perform such installations. Among other things, Complainant alleges that, although his firm was the lowest bidder, the contracts in question were awarded to another firm that had hired a former Questar employee who, while employed by Questar, had access to relevant bid prices and contractor ratings. Complainant claims Respondent has violated the Utah Antitrust Act, the Utah Unfair Practices Act, and the Utah Trade Secrets Act.

On November 22, 2005, the Division of Public Utilities (“Division”) filed a memorandum recommending the Commission dismiss the Complaint based on its conclusion that Questar had not violated any statute, rule or tariff provision, and that the Commission lacks the authority to enforce the statutes which Complainant claims have been violated.

On December 6, 2005, Respondent filed its Answer claiming Complainant was not awarded the contracts in question because of unsatisfactory performance on prior contracts. Respondent also indicated Complainant previously filed suit in the Fourth District Court of Utah on the same claims that are the subject of this Complaint and that said suit is currently before the Utah Court of Appeals on Motion for Reconsideration filed by Complainant. Respondent states it has not violated any provision of statute, rule or tariff and Complainant is not entitled to any relief. Respondent further notes Complainant appears to seek monetary damages not available in this forum.

CONCLUSIONS

Complainant's specific allegations of statutory violations pertain to statutes over which this Commission commands no jurisdiction. Furthermore, having reviewed the Complaint, we conclude it fails to provide even *prima facie* evidence of any violation of statute, rule or tariff by Questar. Finally, to the extent Complainant seeks monetary damages for the alleged violations, such damages are not within our power to award; our statutory authority to award reparations being limited to cases in which charges have been levied in excess of schedules, rates, and tariffs on file with the Commission. Utah Code Annotated § 54-7-20.

Therefore, we conclude this matter does not constitute a proper complaint before the Commission and dismiss the same.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The complaint filed herein is dismissed.
2. Pursuant to Utah Code §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 13th day of December, 2005.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 13th day of December, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary