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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Petition of Integrated Water Management, LLC for a Declaratory Order	Docket No. 11-999-08  THE DIVISION OF PUBLIC UTILITIES' RESPONSE REQUESTING DENIAL OF INTEGRATED WATER MANAGEMENT, LLC'S PETITION FOR A DECLARATORY ORDER
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On July 18, 2011, Integrated Water Management, LLC (“IWM”) filed its petition requesting the Utah Public Service Commission (“Commission”) to issue a declaratory order such that “[IWM] may purchase gas from Questar Gas Company [“Questar Gas”] where Questar Gas purchases gas from El Paso Midstream Investment Company (“El Paso”), without subjecting El Paso to regulation as a public utility as defined by Utah Code Ann. § 54-2-1.”<sup>1</sup> The Division of Public Utilities requests that the Commission deny IWM’s Petition for a Declaratory Order (“Petition”) because (1) the Petition fails to meet the Commission’s requirements set forth in R746-101 because it lacks an adequate description of “the facts and circumstances in which applicability is to be reviewed”<sup>2</sup> and (2) neither Questar Gas nor El Paso has given written consent to the declaratory proceeding as required by Utah Code Ann. § 63G-4-503(3)(b). Therefore, the Division requests that the Commission deny the Petition.

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<sup>1</sup> Petition for Declaratory Order , p. 1  
<sup>2</sup> R746-101-3(3).

## BACKGROUND

In its Petition, IWM represented that it “owns and operates a wastewater treatment facility in Duchesne County, Utah that stores and processes water produced from oil and gas exploration and production operations.”<sup>3</sup> IWM represented that it would like to use natural gas instead of liquefied propane gas (“LPG”) to operate its equipment. IWM further represented that El Paso “owns and operates a natural gas gathering network and processing facility in the area”<sup>4</sup> and that two El Paso gas lines, one gathering wet gas (unprocessed) from the wellheads and one returning the now dry gas (processed by El Paso’s plant) “back to wellheads for use by exploration and production equipment.”<sup>5</sup>

IWM proposed that it would “tap the El Paso dry gas line and install a meter” and Questar Gas would act as an “intermediary in the transaction” and “buy gas from El Paso at wholesale and in turn sell it to IWM at the regulated tariff rate.”<sup>6</sup> No contracts or other documents evidencing Questar Gas’ and El Paso’s agreement to this proposal were attached to the Petition; the Petition lacked a certificate of service indicating that IWM had served Questar Gas and El Paso, and according to Questar Gas, IWM did not serve Questar Gas.<sup>7</sup>

Procedurally, on August 1, 2011, the Commission issued its Notice of Petition for a Declaratory Order and Schedule for Filing Responses. Questar Gas filed its Petition to Intervene on August 25<sup>th</sup>, and later sought to amend the scheduling order, postponing the intervention and reply filing date. On September 7, 2011, the Commission issued an order extending the time to file responses. El Paso filed a Petition to Intervene and Appear Specially on September 8<sup>th</sup>. Questar Gas was granted intervention on September 14<sup>th</sup>.

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<sup>3</sup> Petition at p. 1.

<sup>4</sup> Petition at p. 1.

<sup>5</sup> Petition at p. 2.

<sup>6</sup> Petition at p. 2.

<sup>7</sup> See Questar Gas’ Motion to Amend the Scheduling Order, p. 2.

## ARGUMENT

The Commission should deny IWM's Petition because the Petition lacks an adequate description of the facts and circumstances for review as required by R746-101.

The Commission is permitted to establish criteria regarding declaratory orders by Utah Code Ann. § 63G-4-503, and the Petition fails to meet the criteria established by the Commission in R746-101. The Petition is fatally flawed because it fails to “describe adequately the facts and circumstances in which applicability is to be reviewed.” R746-101-3A(3). The Commission should deny the Petition.

The Petition lacks the specificity required to support IWM's request for a declaratory order. The Petition lacks any evidence of any meeting of the minds as to what and how this venture is going to develop. Absent is a contract or even a memorandum of understanding between IWM and Questar Gas, or even a statement from Questar Gas that it is supportive of the Petition. No contract, memorandum of understanding, or statement of support between IWM and El Paso is attached either. Thus, there are insufficient facts relative to the proposed transaction for the Commission to evaluate. The circumstances under which the sale of the gas by El Paso and the purchase of the gas by Questar Gas would occur are undefined. On its face, the Petition presents no facts that El Paso and/or Questar Gas even know about, let alone intend to participate in, IWM's endeavor.

The Petition also fails to provide the jurisdictional and regulatory significance of the terms dry gas, wet gas, processing plant, gathering area, and the significance of the processed gas being used by IWM to run its equipment that “separates residual trace oil from the wastewater” as compared to the current situation in which the processed gas which now flows to the field to be used by exploration and production equipment. Whether the federal government or a state, or both, have jurisdiction over various activities, and the actors, associated with the transportation, use, and safety of natural gas is a complicated, and fascinating, question. The nature of the gas,

(including whether it is processed or not), the mode of transporting the gas and where the gas goes (including whether or not it is via a gathering line, an intrastate pipeline, or an interstate pipeline), the ownership of the gas (including whether the gas is sold), and the use of the gas (by the gatherer itself or a third party) all affect jurisdiction. In an unsupported, cursory manner, the Petition briefly touches upon the nature, the mode, the path, and the use of the gas. The Petition does not address the jurisdictional questions inherent in IWM's proposal. Thus, the Petition fails to satisfy the Commission's requirement that "the petition shall . . . describe adequately the facts and circumstances in which applicability is to be reviewed" as required by R746-101.<sup>8</sup>

The Commission should reject the Petition because Questar Gas and El Paso did not consent to this declaratory proceeding.

IWM failed to satisfy the requirement set forth in Utah Code Ann. § 63G4-503(3)(b) that "An agency may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding." Thus, because Questar Gas and El Paso did not provide such consent, the Commission must reject IWM's request for a declaratory order.

Under Utah law, Questar Gas and El Paso are each a necessary party whose rights would be substantially prejudiced by this proceeding under Utah law absent their consent. Utah has characterized a necessary party as "one whose presence is required for a full and fair determination of his rights, as well as of the rights of other parties to the suit."<sup>9</sup> Questar Gas's consent is necessary because IWM is relying upon Questar Gas to purchase gas from El Paso and to sell that gas to IWM. El Paso's consent is necessary because IWM's Petition seeks to use El Paso's facilities; without use of El Paso's facilities, IWM's plan cannot be implemented.

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<sup>8</sup> See R746-101-3(3).

<sup>9</sup> See *Green v. Louder*, 29 P.3d 638 (Utah 2001) at 650 (internal citations omitted).

Substantial prejudice could result because critical facts known only to Questar Gas and El Paso are necessary and essential for the Commission to reach an informed decision in this docket, which facts have not been provided. Questar Gas has knowledge concerning its practices regarding the purchase and sale of gas. El Paso has knowledge regarding the lines IWM wishes to use. Also, left unaddressed by the Petition is whether Questar Gas and El Paso even intend to participate in IWM's endeavor and, if so, to what level.

#### CONCLUSION

The Petition suffers from fatal deficiencies. It presents insufficient facts and circumstances to be used by the Commission in rendering a decision. No contracts with, or documents evidencing an intent to participate by, Questar Gas and El Paso have been presented. IWM's plan requires Questar Gas to purchase and sell gas to IWM and El Paso to allow IWM's use of its lines, but neither Questar Gas nor El Paso has given the consent to a declaratory proceeding required by Utah Code Ann. § 63G-4-503(b). For the reasons set forth above, the Division urges the Commission to deny the Petition.

Respectfully submitted this \_\_\_\_\_ day of September, 2011.

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Patricia E. Schmid  
Attorney for the Division of Public Utilities

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of September 2011, I caused to be e-mailed a true and correct copy of the Division's Response Requesting Denial of Integrated Water Management, LLC's Petition for a Declaratory Order to:

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