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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION)	REPLY TO QUESTAR GAS COMPANY’S RESPONSE TO PETITION AND REQUEST FOR AGENCY ACTION AND MOTION TO DISMISS Docket No. 14-2573-01
OF METROPOLITAN WATER)	
DISTRICT OF SALT LAKE & SANDY)	
REQUESTING AN INVESTIGATION)	
INTO PUBLIC UTILITY)	
CONDEMNATION PRACTICES AND)	
INITIATION OF A FORMAL)	
RULEMAKING PROCEEDING.)	
)	
)	

Petitioner Metropolitan Water District of Salt Lake & Sandy (MWDSLS) submits this Reply to Questar Gas Company’s Response to Petition and Request for Agency Action and Motion to Dismiss.

Questar’s Response is largely based on a misunderstanding of MWDSLS’s Petition. Contrary to Questar’s assertions, MWDSLS’s Petition does not impermissibly seek to have the Commission intervene in the three cases pending between MWDSLS and Questar. Rather, MWDSLS believes that this recent flurry of disputes and litigation between Questar and MWDSLS highlight the need for additional Commission oversight. Specifically, MWDSLS has

requested that the Commission require, by rule, that regulated utilities comply with the rules and regulations of metropolitan water districts, to the extent those rules and regulations are authorized and valid. It has additionally requested that the Commission engage in formal administrative rulemaking to require, by rule, that regulated utilities seeking to condemn property owned by metropolitan water districts follow a notice and hearing process similar to that required of political subdivisions. And, with respect to Questar in particular, MWDSLS has requested that the Commission issue an order requiring Questar to follow MWDSLS's Regulations in all unrelated, future interactions with MWDSLS unless there is a final decision holding those Regulations invalid.

Each of these requests is designed to promote the interest of public safety and to reduce the economic impacts to the public of similar future disputes between regulated utilities and metropolitan water districts. As set forth below, the requested actions are within the Commission's jurisdiction, would not interfere with or be inconsistent with the State Courts' jurisdiction, and are not inconsistent with the Eminent Domain Code. Questar has, therefore, failed to provide any reason that the Commission should not consider MWDSLS's Petition.

RESPONSE TO QUESTAR'S BACKGROUND

MWDSLS's Petition contains a detailed description of the three disputes between itself and Questar that led MWDSLS to seek agency action from the Commission. In its Response, Questar has set forth its own statement of the three disputes. To the extent there are discrepancies in the two descriptions of events, this highlights the need for Commission investigation, as requested in MWDSLS's Petition.

In the interest of efficiency and to avoid repetition, MWDSLS relies on its background provided in its Petition. MWDSLS has, however, identified certain portions of Questar's Background that it believes necessitate a response. By responding only to these portions, MWDSLS does not waive its right to later provide additional background information or to respond to each of Questar's individual assertions.

MWDSLS responds to Questar's Background as follows:

A. The Westview Drive Case (Salt Lake Aqueduct)

- MWDSLS disputes that its proposed agreement to Questar "limited Questar Gas ability to safely and prudently operate its system." (Questar Resp. at 3.) When the final version of the agreement proposed to Questar (Ex. 3 to Petition) is compared with the exemplar Rail Line Crossing Agreements Questar has entered with UTA (Ex. 2 to Petition), it is clear that the agreements are materially similar. Given Questar's willingness to agree to materially similar terms with UTA, there is no reason to believe that the terms of MWDSLS's proposed agreement would impact Questar's safe and prudent operation of its system.

- The proposed agreement did not require removal of Questar's natural gas facilities upon 90-days notice if MWDSLS determined "in its 'sole option' to terminate the *BOR License Agreement*." (Questar Resp. at 3 (emphasis added).) The BOR License Agreement had expired in 2006 by the expiration of the fifty-year term.

- As fully briefed on appeal in *Metropolitan Water District of Salt Lake & Sandy v. Questar Gas Corporation*, Third District Court No. 120905379 (SLA), MWDSLS's

Regulations do not impermissibly “expand[] the scope” of its easement rights. (Questar’s Resp. at 4.)

- MWDSLS disputes that the “negotiations were unsuccessful.” (Questar’s Resp. at 4.) After much correspondence with MWDSLS staff and counsel and many meetings over the course of years to negotiate Questar’s requested revisions to the MWDSLS Proposed Cooperation Agreement, Questar appealed to MWDSLS’s General Manager to change certain terms, including those regarding insurance and MWDSLS self help to affect or “correct” the Questar gas line in the event of Questar’s default in doing so as required by the agreement. MWDSLS agreed to these changes, as reflected in the redline agreement attached as Exhibit 3 to the Petition. Despite this fact, Questar refused to sign the modified agreement, instead taking the position that it is not subject to MWDSLS’s Regulations.

- MWDSLS’s proposed agreement does not “allow[] Metro Water to turn off, shut down, remove, or otherwise operate . . . Questar Gas’ pipelines” in the broad fashion Questar suggests. (*See* Agreement (Ex. 3 to Petition).) And, nothing in the Agreement grants MWDSLS the authority to operate Questar’s gas line. (*See id.*)

- Because MWDSLS’s proposed agreement does not grant MWDSLS the authority to operate Questar’s gas line, there is no basis for Questar’s assertion that signing the agreement “would be a violation of its non-delegable duties and a violation of [49 CFR Part 192](#).” (Questar Resp. at 5.) [49 C.F.R. Part 192](#) “prescribes minimum safety requirements for pipeline facilities and the transportation of gas.” [49 C.F.R. § 192.1](#).

Questar has failed to identify any way in which MWDSLS's proposed agreement violates or conflicts with these minimum safety requirements.

B. The Point of the Mountain Aqueduct Case

- MWDSLS acquired its easement through the South Fork Estates subdivision through an Order of Condemnation.
- As will be argued in *Metropolitan Water District of Salt Lake & Sandy v. Questar Gas Company*, Third District Court No. 140900286 (POMA), the fact that Questar's gas pipeline was installed in 2006 "without any complaint from Metro Water" (Questar's Resp. at 6) is irrelevant. Any inaction on the part of MWDSLS staff does not bind MWDSLS or somehow excuse Questar's from compliance with MWDSLS's Regulations.

C. The Corner Canyon Case

- While Questar was willing "to discuss its offer to purchase an easement" (Questar's Resp. at 7), it refused to discuss with MWDSLS the possibility of entering into an encroachment agreement or other issues, such as the scope of the easement it sought. MWDSLS therefore disagrees with Questar's assertions that Questar's attempts were "to no avail" and that "Metro Water refus[ed] to negotiate." (Id.) For a complete picture of MWDSLS's repeated efforts to fully understand which issues Questar was willing to discuss, *see* Exhibit 4 to the Petition.
- MWDSLS did respond to Questar's request contained in its June 5, 2014, email. The very next day, counsel for MWDSLS responded, expressing its interest in "understand[ing] all the issues that are in dispute so we can take the appropriate steps to

resolution of those issues in a timely fashion.” (June 6, 2014, email from Shawn Draney attached as Exhibit A.) Counsel for MWDSLS further reiterated that MWDSLS is “currently willing to talk about all things Corner Canyon through counsel.” (*Id.*) Questar’s response to this email confirmed that it was only willing to negotiate the purchase of an easement. (June 6, 2014, email from J.D. Kesler, attached as Exhibit B.)

D. Questar Gas’ Actions are Consistent with Existing Tariff Provisions

- Section 7.05 of Questar’s Utah Natural Gas Tariff is irrelevant to the disputes discussed in MWDSLS’s Petition. Section 7.05 provides that every *customer* requesting the installation of pipelines and related facilities necessary or incidental to the furnishing of natural gas service provide an easement for the necessary facilities and ensure that:

- (1) The right-of-way shall be free and clear of any hazardous, dangerous, or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance . . .;
- (2) No retaining walls or deep-rooted trees or shrubs are allowed within the right-of-way without the Company’s prior written consent;
- (3) No building or other improvements are built or constructed over or across the right-of-way without the Company’s prior written consent;
- (4) No change is made to the contour of the right-of-way without the Company’s prior written consent; and
- (5) The right-of-way is lawfully authorized for the specific use proposed by Requestor, including the installation, operation, maintenance and repair to facilities.

MWDSLS, in the context of the three disputes discussed in the Petition, is not a “customer, applicant, or individual or entity . . . requesting the installation of pipelines and related facilities.”¹

- The Commission did not “deem[] those provisions to be just and reasonable.” (Questar’s Resp. at 8.) It merely “accept[ed] the Company’s proposal and approve[d] the Tariff modification.” (Report and Order on Cost of and Rate Design, Dec. 22, 2008, Dkt. No. 07-057-13 at 79.)

- Questar has failed to explain how its “efforts in each of the conflicts outlined above were consistent with Section 7.05 of the Tariff.” (Questar’s Resp. at 8.) Again, MWDSLS, in these contexts, is not a customer requesting service. And, nothing in the proposed agreement provided to Questar or in MWDSLS’s Regulations is inconsistent with the purpose of Section 7.05. To the contrary, MWDSLS’s Regulations contain restrictions on use of the Aqueduct Corridors very similar to those Questar imposes on its customers with regard to its own easements.² Section 7.05 simply does not explain Questar’s actions and, specifically, its refusal to recognize MWDSLS’s regulatory authority.

¹ In other contexts in which MWDSLS was a customer requesting the installation of pipelines and related facilities, Questar has relied on Section 7.05 to seek an easement much greater than that necessary for the pipelines and facilities required to furnish the requested service. This practice is in conflict with the plain language of Section 7.05, which requires the customer to “provide, as required by the Company, rights-of-way, easement, public utility easement, or other property rights . . . *necessary for the Facilities.*” Section 7.05 (emphasis added).

² Interestingly, MWDSLS has not been able to identify any statutory or similar authority for the restrictions imposed in Section 7.05. According to Questar, these restrictions “have been the basis for the Company’s right-of-way policy for many years and . . . the proposed Tariff modification will make the Company better able to enforce these requirements.” (Report and Order on Cost of and Rate Design, Dec. 22, 2008, Dkt. No. 07-057-13 at 79.) MWDSLS finds it curious that Questar apparently believes it can condition service to its customers on compliance with these restrictions while simultaneously arguing that MWDSLS cannot impose similar restrictions on the use of its fee and easement interest in the Aqueduct Corridors.

- MWDSLS's Petition does not seek, even in part, "to revisit the reasonableness of Questar Gas' right-of-way requirements." (Questar's Resp. at 8.) MWDSLS has not challenged, and does not challenge, the requirements of Section 7.05 for the simple reason that those requirements are, by their plain terms, inapplicable to the disputes at issue. Again, MWDSLS, in these contexts, is not a customer subject to Section 7.05.

ARGUMENT

I. THE COMMISSION HAS AUTHORITY TO GRANT THE AGENCY ACTION REQUESTED.

MWDSLS recognizes that "the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by the statute." [*Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n of Utah*, 754 P.2d 928, 930 \(Utah 1988\)](#). In its Petition, MWDSLS identified the broad grant of authority contained in [Utah Code § 54-4-1](#) as one basis of the Commission's jurisdiction. However, because this Section does not "extend the Commission's authority beyond that which has been specifically granted by the Legislature," [*In re Utah Power & Light Co.*, 1993 WL 601258, at *3 \(Utah P.S.C. 1993\)](#), MWDSLS cited other specific statutory grants of authority that establish the Commission's jurisdiction over the Petition:

- [Utah Code Ann. § 54-4-2](#), which grants the Commission authority to conduct an investigation when such investigation "is in the *public interest*" as to "*any act or omission to act, or of anything accomplished or proposed . . . of any public utility*";
- [Utah Code Ann. § 54-4-7](#), which grants the Commission the authority to investigate the practices of a public utility and determine whether they are "unjust, *unreasonable*, *unsafe*, improper, inadequate or insufficient," and to fix the same by order, rule, or regulation;

- [Utah Code Ann. § 54-4-14](#), which grants the Commission the authority to require “by general or special order, rules or regulations or otherwise . . . every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises *in such manner as to promote and safeguard the health and safety of . . . the public*”; and
- [Utah Code Ann. § 54-4-18](#), which grants the Commission authority to “fix just and reasonable . . . practices” and other conditions pertaining to the supply of regulated utilities’ product.

As the Utah Supreme Court has explained, “[t]he lack of explicit statutory authority to [do the thing requested] . . . is not dispositive of [whether the PSC has jurisdiction] because the PSC certainly has considerable latitude in performing its” authorized functions. [Kearns-Tribune Corp. v. Pub. Serv. Comm’n of Utah, 682 P.2d 858, 860 \(Utah 1984\)](#). “The question then, is whether the activity the Commission is attempting to regulate is closely connected to its [authorized functions] and whether the manner of the regulation is reasonably related to the legitimate purpose of [those functions].” *Id.* “What is called for . . . is a realistic appraisal of the particular situation to determine whether the administrative action reasonably promotes or transgresses the pronounced legislative judgment.” *Id.* (internal quotation marks omitted).

Through enactment of the Public Utility Code, the Legislature has made clear its intent that the Commission regulate public utilities in the manner set forth above to protect the public interest and ensure public health and safety. MWDSLS’s requested actions are closely connected to both of these functions. Central to MWDSLS’s requests are its Regulations for Non-District Uses of Salt Lake Aqueduct and Point of the Mountain Aqueduct Corridors. These

Regulations were promulgated by MWDSLS's Board of Trustees in an effort to provide protection for the critical public infrastructure MWDSLS holds in trust for the public. Questar's repeated refusal to comply with these Regulations undermines the safety of not only MWDSLS's Aqueducts, but Questar's provision of natural gas throughout the state as well. MWDSLS's requested actions are designed to address this safety concern. Indeed, the Division of Public Utilities recognizes that "the Commission might arguably have jurisdiction to order a public utility to abide by another entity's requests, rules, or policies if the company's refusal jeopardize the company's provision of safe, adequate, and reliable services." (Division's Resp. at 6.)

MWDSLS's requested actions, both with regard to its Regulations and promulgation of a rule governing regulated utilities' condemnation of property owned by metropolitan water districts, would further the public interest. As the three disputes described in MWDSLS's Petition demonstrate, absent some oversight from the Commission, similar disputes over MWDSLS and Questar's relative rights and interests are likely to persist. And, similar disputes between Questar and other metropolitan water districts are likely to arise. By establishing a forward-looking process that is fair and efficient, the Commission would be furthering the interests of the public served by both entities. For instance, the costs incurred with litigation over such disputes, which are passed through both entities to their customers, could be avoided.

While, as Questar notes, the Commission's jurisdiction is limited, this does not, in and of itself, establish that the Commission lacks jurisdiction in this case. MWDSLS requests that the Commission consider the vital public interest MWDSLS serves in providing a safe and secure water supply, and the ways in which Questar's actions have interfered and will continue to interfere with that function. The sections of the Public Utility Code identified above grant the

Commission the authority and jurisdiction to address these issues in the manner requested in MWDSLS's Petition. Notably, unlike MWDSLS's Petition, the issues raised in *In re Utah Power & Light Company* did not involve the public interest, health, or safety. [See 1993 WL 601258](#) (involving request that the Commission order Utah Power and Light to sell an ownership interest in certain segments of its system).

II. MWDSLS'S PETITION DOES NOT SEEK ANY ACTION THAT IS INCONSISTENT WITH OR WOULD INTERFERE WITH THE STATE COURTS' JURISDICTION.

Questar argues that MWDSLS's Petition should be dismissed because the State Courts have jurisdiction over the three pending cases between the parties. This argument is based on Questar's assertion that MWDSLS's Petition "re-raises issues that are the subject of current litigation," which "risk[s] subjecting the parties to inconsistent orders." (Questar's Resp. at 10.) This assertion is based on a misunderstanding of MWDSLS's Petition.

To clarify any confusion created by MWDSLS's Petition,³ MWDSLS does *not* seek for the Commission to take any action that is inconsistent with or would interfere with the State Courts' jurisdiction. As Questar notes, MWDSLS recognizes that State Court is the proper forum to resolve the specific disputes between MWDSLS and Questar, and to obtain a declaration that MWDSLS has statutory regulatory authority to regulate the uses of its Aqueduct Corridors. To be clear, MWDSLS has not sought and does not seek a determination from the Commission that it has such authority—the primary issue involved in Case Nos. 120905379 (SLA) and 140900286 (POMA). Rather, MWDSLS has simply requested that (1) the

³ Any such confusion likely stems from MWDSLS's inclusion of a detailed description of the three ongoing disputes between itself and Questar. These background facts, included under the heading "Circumstances Requiring Commission Investigation," were set forth to provide the necessary context for MWDSLS's Petition. They were not intended to elicit a ruling or determination from the Commission on those ongoing disputes.

Commission issue an Order requiring Questar to comply with MWDSLS's Regulations unless there is a final decision of an appellate court holding those Regulations to be invalid; and (2) the Commission, through formal administrative rulemaking, require by rule that all regulated public utilities adhere to the rules and regulations of metropolitan water district. Neither interferes with or would be inconsistent with the State Courts' jurisdiction.

First, the requested Order that Questar comply with MWDSLS's Regulations unless there is a final decision of an appellate court holding those Regulations are invalid does not "directly conflict[] with the district court decision" in Case No. 120905379 (SLA), as Questar asserts. MWDSLS does not seek for the Commission to require Questar's compliance with MWDSLS's Regulations with regard to the dispute underlying Case No. 120905379 (SLA). MWDSLS acknowledges that this would be inappropriate pending resolution of MWDSLS's appeal. This fact, however, does not preclude the Commission from requiring Questar's compliance with MWDSLS's Regulations in other unrelated interactions with MWDSLS. Doing so will promote the interest of public safety in the interim until there is a final determination of the validity of MWDSLS's Regulations.

Requiring Questar's compliance in unrelated interactions with MWDSLS further is not inconsistent with the district court's decision.⁴ The arguments Questar raised in Case No. 120905379 (SLA), and the district court's order were narrow. Questar's argued (1) that MWDSLS could not expand its easement rights through its Regulations, and (2) that MWDSLS

⁴ Notably, while Questar now portrays the district court's decision as a binding decision with *res judicata* effect, it recently represented to the Utah Court of Appeals that the district court "entered the [Proposed] Order on January 2, 2014, dismissing *without prejudice* Metro Water's claims in their entirety." (Questar's Appellate Resp. Br. At xii (emphasis added).) If, as Questar has represented, the district court's order was without prejudice, it could not contain any ruling on the merits of MWDSLS's claims and would not be binding in any other case.

could not interfere with the County's ability to grant franchises. As a result, as explained in MWDSLS's Petition, the district court's order did not specifically address MWDSLS's regulatory authority to regulate non-District uses of the Aqueduct Corridors generally. Rather, the district court merely concluded that MWDSLS does not have the authority to modify or interfere with Salt Lake County's right to grant a franchise where MWDSLS has only an easement interest. This narrow ruling is simply inapplicable to a vast number of potential interactions between MWDSLS and Questar for one of two reasons. First, MWDSLS's interest in the SLA Corridor is not limited to easements. It holds fee title to a significant portion of the SLA Corridor, including the Corner Canyon property at issue in Questar's condemnation. Second, much of the SLA and POMA Corridors are not located in county roads. Again, this distinction applies to the Corner Canyon property at issue in Questar's condemnation. Because the district court in Case No. 120905379 (SLA) made no general ruling that MWDSLS lacks regulatory authority to regulate use of its Aqueduct Corridors, requiring Questar's compliance with those Regulations in unrelated interactions, such as the Corner Canyon condemnation, would not conflict with the district court's order.

Second, MWDSLS's request that the Commission require, by rule, that all public utilities comply with the rules and regulations of metropolitan water districts is, naturally, limited to only valid regulations. MWDSLS does not intend for the Commission to require compliance with regulations that have been deemed invalid. This would be obviously inappropriate. It further does not intend for the Commission to issue any opinion or determination as to the validity of metropolitan water districts' regulations. Any challenge to those regulations would properly be brought in the State Courts. The only thing MWDSLS seeks is a rule requiring regulated public

utilities to comply with the rules and regulations of metropolitan water districts until those rules or regulations have been held invalid, much as they must comply with statutes, ordinances, and other municipal regulations unless and until they have been held invalid. Such a rule would in no way prejudice a regulated public utility's ability to challenge either the authority for or scope of the regulation. It would, on the other hand, promote the interest in public safety by ensuring compliance with regulations designed to protect critical public infrastructure held in trust by metropolitan water districts and promote equity by ensuring that all regulated utilities are subject to uniform treatment when dealing with a particular metropolitan water district.

In sum, MWDSLS's Petition does not seek Commission action that is inconsistent with or would interfere with the State Courts' jurisdiction. MWDSLS acknowledges that State Court is the appropriate forum to resolve the specific disputes between itself and Questar outlined in its Petition. MWDSLS merely seeks Commission intervention to establish generally applicable principles designed to minimize future similar disputes. This type of intervention is consistent with the Commission's oversight of regulated utilities and would work to minimize the expense to the public, passed through both metropolitan water districts and regulated utilities, incurred as a result of disputes such as those between MWDSLS and Questar.

III. MWDSLS'S PETITION DOES NOT REQUEST THAT THE COMMISSION AMEND THE EMINENT DOMAIN CODE.

Questar argues that MWDSLS's Petition impermissibly requests the Commission to amend the Eminent Domain Code through formal administrative rulemaking. Again, Questar's argument is based on a misunderstanding of MWDSLS's Petition. MWDSLS has requested that the Commission engage in formal administrative rulemaking to require, by rule, that regulated public utilities seeking to condemn property owned by a metropolitan water district first exhaust

administrative remedies provided by that district, and second provide a notice and opportunity to be heard in front of the Commission regarding the necessity of the property to be taken.

The second component of this request is based on the similar requirement imposed upon political subdivisions under [Utah Code § 78B-6-504](#). Under this Section, a political subdivision seeking to condemn property must “provide written notice to each owner of property to be taken of each public meeting of the political subdivision’s governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.” The governing body of the political subdivision must then approve the taking before the political subdivision can initiate condemnation proceedings. [Utah Code Ann. § 78B-6-504\(2\)\(b\), \(c\)](#). Questar apparently reads MWDSL’s suggestion that these requirements “could be tailored to address the primary concerns when a regulated utility seeks to condemn property of a metropolitan water district” (Petition at 24, ¶ 90), as a suggestion that the Commission *amend* [§ 78B-6-504](#). This is not what MWDSL intended. Rather, MWDSL has suggested that the Commission adopt, by rule, similar requirements for regulated utilities.

Unlike with political subdivisions, which arguably represent the majority of condemnation actions, the Legislature has delegated direct, primary oversight of regulated utilities to the Public Service Commission. [Utah Code Ann. Title 54](#). Perhaps for this reason, while the legislature has imposed certain notice and hearing requirements on political subdivisions as a prerequisite to condemnation, it has not done the same with regard to other entities, such as regulated utilities. For this reason, MWDSL has suggested that the Commission require regulated utilities to provide similar notice and opportunity to be heard, particularly where the property to be condemned is owned by a political subdivision, such as a

metropolitan water district. The parallels between the Legislature’s oversight of political subdivisions and the Commission’s oversight of regulated utilities supports MWDSLS’s suggestion that the Commission is the appropriate entity to impose such requirements on regulated utilities.

Notably, requiring by rule that regulated utilities follow a similar notice and hearing procedure outlined in [Utah Code § 78B-6-504](#) is not inconsistent with the Eminent Domain Code as Questar represents. Rather, it would impose an additional requirement on regulated utilities similar to, but not in any way in conflict with, that already imposed on political subdivisions. Questar’s cited authority regarding the Commission’s inability to adopt rules inconsistent with governing or other statutes is, therefore, inapplicable. Nothing suggests that the Commission lacks the authority to impose additional requirements on regulated utilities that are not inconsistent with those contained in the Eminent Domain Code.

Questar additionally argues that the Commission is the inappropriate forum for MWDSLS to challenge Questar’s compliance with the Eminent Domain Code. MWDSLS’s Petition does not do so. Again, MWDSLS acknowledges that the State Court, or statutorily authorized arbitration or mediation, is the appropriate forum for such a challenge. Although unrelated to the issue presented to the Commission—a request for rulemaking to impose a notice and hearing requirement on regulated utilities—MWDSLS feels it is necessary to briefly respond to Questar’s assertions regarding its compliance with the Eminent Domain Code.⁵ Questar maintains that it made a reasonable effort to negotiate with MWDSLS, but MWDSLS “instead

⁵ In doing so, MWDSLS does *not* seek a ruling, determination, or other consideration from the Commission. The following is provided only to provide the Commission with the full context of the parties’ interactions.

discussed only a limited license agreement.” (Questar’s Resp. at 12.) Two points on this matter. First, as will be explored in the condemnation proceeding, MWDSLS believes that in order to satisfy the “necessary” prerequisite for condemnation, Questar was required to fully explore obtaining an encroachment agreement with MWDSLS for the Corridor land that would satisfy its need for the Feeder Line 6 project. Questar has not been willing to engage in negotiations on this issue, instead offering to discuss only the terms of purchasing an easement. Second, MWDSLS has repeatedly indicated to Questar that it is willing to negotiate the purchase of an easement over MWDSLS’s non-Corridor land, but that MWDSLS staff does not have authority to finalize such an agreement. (*See* Correspondence attached as Exhibit 4 to Petition.) Again, these are issues that will be resolved in the State Court condemnation proceeding, not before the Commission. They do, however, highlight the potential benefit of a Commission rule requiring notice and an opportunity to be heard. MWDSLS believes that had such a process taken place in this case with Commission oversight, many of the issues involved in the condemnation proceeding could have been resolved without need for litigation.

IV. MWDSLS’S PETITION IS NOT A CONSUMER COMPLAINT.

MWDSLS’s Petition is not a consumer complaint. MWDSLS simply cited [Utah Code § 54-7-9](#) as the means by which to request agency action under the Public Utilities Code. MWDSLS did not mean to imply that Questar has violated an applicable law, rule, or order of the Commission. MWDSLS apologizes for any confusion this may have created.

Notably, MWDSLS additionally cited [Utah Code § 63G-4-201](#) as the basis for its request for agency action.

CONCLUSION

For the foregoing reasons, MWDSLS requests that the Commission deny Questar's Motion to Dismiss and consider MWDSLS's Petition.

DATED this 5th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **REPLY TO QUESTAR GAS COMPANY'S RESPONSE TO PETITION AND REQUEST FOR AGENCY ACTION AND MOTION TO DISMISS** was served upon the following persons by e-mail and U.S. Mail on the 5th day of August, 2014:

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