

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petition of Metropolitan )  
Water District of Salt Lake & Sandy ) DOCKET NO. 14-2573-01  
Requesting an Investigation into Public ) ORDER DECLINING REQUEST FOR  
Utility Condemnation Practices and ) AGENCY ACTION  
Initiation of a Formal Rulemaking )  
Proceeding )  
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ISSUED: September 17, 2014

BACKGROUND

This docket involves a dispute between Metropolitan Water District of Salt Lake City & Sandy (Metro Water) and Questar Gas Company (Questar) over Questar's condemnation practices involving Metro Water property. Metro Water asks the Commission to initiate a formal rulemaking proceeding requiring the following: 1) that all regulated public utilities follow Metro Water's rules and regulations, 2) that any regulated public utility seeking to condemn Metro Water's property be required to exhaust available administrative remedies provided by Metro Water before initiating condemnation proceedings, and 3) that the Commission hold a hearing, if requested by Metro Water, before the condemnation could proceed.<sup>1</sup> Both the Division of Public Utilities and Questar challenge the petition on jurisdictional grounds.<sup>2,3,4</sup>

DECISION AND ORDER

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<sup>1</sup> See Petition and Request for Agency Action at 6, filed June 19, 2014.

<sup>2</sup> See Response of the Division of Public Utilities to Request for Investigation and Rulemaking Proceeding, filed July 21, 2014. See also Correction to Response of the Division of Public Utilities to Request for Investigation and Rulemaking Proceeding, filed August 5, 2014.

<sup>3</sup> See Questar Gas Company's Response to Petition and Request for Agency Action and Motion to Dismiss, filed July 21, 2014.

<sup>4</sup> Metro Water asserts jurisdiction is appropriate under Utah Code Ann. §§ 54-4-1, 54-4-2, 54-4-7, 54-4-14, and 54-4-18. See *supra* n.1 at 5-7.

We limit our review here to whether the Commission has jurisdiction to grant Metro Water's request for agency action by initiating formal rulemaking proceedings to require Questar and other regulated public utilities to follow Metro Water's rules and regulations. The administrative rules Metro Water requests would require all regulated public utilities to exhaust administrative remedies identified by Metro Water before initiating condemnation proceedings, and would allow Metro Water the opportunity to request a Commission hearing before a condemnation could proceed. We conclude that we do not have jurisdiction over this dispute.

At its core, this is a dispute between a political subdivision and a public utility. In petitioning action of this agency Metro references only the Legislature's general grants of authority over public utilities. If the Legislature intended the Commission to have the authority to oversee condemnation disputes between a public utility and a political subdivision, it would have expressly granted that authority.<sup>5</sup> We find no evidence of such authority either expressly granted or clearly implied in the statutes defining the Commission's powers. Moreover, in Heber Light & Power Co. v. Utah Pub. Serv. Comm'n., the Utah Supreme Court held:

"It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute." *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (quoting *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n.*, 754 P.2d 928, 930 (Utah 1988)). "When a 'specific power is conferred by statute upon a . . . commission with limited powers, the powers are limited to such as are specifically mentioned.'" *Id.* (quoting *Union Pac. R.R. v. Pub. Serv. Comm'n.*, 103 Utah 186, 134 P.2d 469, 474 (Utah 1943)). "Accordingly, to ensure that the administrative powers of the [Commission] are not overextended, any reasonable

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<sup>5</sup> In addition, Metro Water is essentially asking the Commission to delegate some of its regulatory power over public utilities to Metro Water. We conclude that we do not have the authority to do so.

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doubt of the existence of any power must be resolved against the exercise thereof.” *Id.* (internal quotation marks omitted).

231 P.3d 1203, ¶ 17, 2010 UT 27. Accordingly, we decline the request for agency action.

DATED at Salt Lake City, Utah, this 17<sup>th</sup> day of September, 2014.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 17<sup>th</sup> day of September, 2014, as the Report and Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#260662

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Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order 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 Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 17<sup>th</sup> day of September, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

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