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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

BEAR HOLLOW RESTORATION, LLC,

Applicant/Complainant,

v.

LEON H. SAUNDERS; LANDMARK
PLAZA ASSOCIATES; PARLEY'S
CREEK, LTD.; PARLEY'S LANE, LTD.;
PARLEY'S PARK; STUART A.
KNOWLES; TRILOGY LIMITED, L.P.;
TRILOGY ASSET MAANGEMENT, INC.;
LAND & WATER RESOURCES, INC.;
LAWRENCE R. KNOWLES
IRREVOCABLE TRUST; LEON H.
SAUNDERS, STUART A. KNOWLES and
TRILOGY LIMITED, L.P. dba SK
RESOURCES, a Utah general partnership
and/or joint venture; SUMMIT WATER
DISTRIBUTION COMPANY, a Utah
corporation,

Respondents.

**RESPONDENT SUMMIT WATER
DISTRIBUTION COMPANY'S
MOTION TO DISMISS BEAR
HOLLOW'S COMPLAINT AND
REQUEST FOR AGENCY ACTION**

Docket No. 09-015-01

Summit Water Distribution Company (“SWDC”), by and through its undersigned counsel and pursuant to 12(b)(1) and 12(b)(2) of the Utah Rules of Civil Procedure, hereby respectfully moves the Public Service Commission to dismiss the Complaint filed in the above-captioned matter.¹

As explained more fully in the supporting memorandum filed concurrently herewith, the action filed against SWDC is improper on two primary grounds: (1) the Public Service Commission lacks subject matter jurisdiction pursuant to Rule 12(b)(1); and (2) the Public Service Commission lacks jurisdiction over SWDC as an entity pursuant to Rule 12(b)(2).

Applicant’s Complaint in this action represents an attempt to force the Public Service Commission to reconsider its prior decisions finding that SWDC is exempt from regulation. No facts beyond those already investigated and considered by the Public Service Commission have been provided in support of Applicant’s allegations. The Complaint simply re-shuffles the factors carefully considered and decided by the Public Service Commission in its 2002 and 2003 investigations. Under the clear language of the Public Service Commission’s prior decisions and Utah case law, Applicant’s failure to provide any new or additional facts in support of its request that the Public Service

¹ The remaining respondents have notified Summit Water Distribution Company that although they have filed a separate response on procedural grounds, they join in this motion as well.

Commission assert jurisdiction provides the Commission with no legal basis upon which to reopen that question and reconsider its prior rulings.

Moreover, even assuming as true the factual allegations contained in the Complaint, Applicant fails to present any basis upon which the Public Service Commission could assert jurisdiction in this matter. The organization and corporate structure of SWDC fulfills the requirements for exemption from regulation and any such regulatory attempts would indeed be superfluous. It is clear from both the nature and basis of the Complaint that Applicant is seeking to improperly embroil the Public Service Commission in nothing more than a private contract dispute. Applicant seeks not only to harass SWDC for a corporate decision that is clearly outside of the bounds of regulation, but to manipulate this process to gain an undue legal advantage. SWDC should not be made to continually participate in investigations, unsupported by any new evidence, that simply rehash the same factual allegations already deemed insufficient for asserting jurisdiction.

Applicant's Complaint also fails to meet the jurisdictional requirements of Utah Code Ann. Section 54-2-1(16)(a) and well-established Supreme Court precedent. There are no allegations in the Complaint that evidence or even suggest that SWDC provides water to the general public. SWDC supplies water only to its shareholder members and no factual examples have been cited in Applicant's Complaint that evidence or even suggest that this is not the case.

Because SWDC serves only its members and not the general public, it fully satisfies the exemption requirements under the statute and its operations are consistent with those entities found to be exempt under Utah Supreme Court holdings. Accordingly, there is no legal or factual basis for the Public Service Commission to assert jurisdiction over SWDC and the Complaint should be dismissed.

For the foregoing reasons, and as more particularly set forth in the accompanying memorandum, Applicant's Complaint and Request for Agency Review lacks jurisdiction and SWDC, therefore, respectfully requests that it be dismissed with prejudice.

DATED this 12th-day of October, 2009.

_____/S/_____
John S. Flitton
Lara A. Swensen
FLITTON & SWENSEN
Attorneys for SWDC

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____, 2009, I caused to be served upon by electronic mail and by U.S. Mail, postage prepaid, a true and correct copy of the foregoing MOTION TO DISMISS BEAR HOLLOW'S COMPLAINT AND REQUEST FOR AGENCY ACTION to the following:

Electronic and U.S. Mail:
Public Service Commission
Heber M. Wells Building
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Courtesy Copy by U.S. Mail to:
J. Craig Smith
SMITH HARTVIGSEN
215 South State Street, Suite 600
Salt Lake City, Utah 84111

/S/