J. Craig Smith (4143)
jcsmith@smithlawonline.com
Matthew E. Jensen (10693)
mjensen@smithlawonline.com
SMITH HARTVIGSEN, PLLC
Walker Center
175 South Main St., Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 413-1600
Facsimile: (801) 413-1620
Attorneys for Petitioner

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Hi-Country Estates Homeowners Association's Request for Reassessment of the Commission's Jurisdiction	Objection to J. Rodney Dansie Response to DPU Recommendation, to J. Rodney Dansie Correspondence dated 6/22/2012, 6/25/2012, and 6/25/2012, and to Dansie's Response to Hi-Country Estates HOA Docket No. 11-2195-01 July 3, 2012

Hi-Country Estates Homeowners Association ("**Hi-Country**"), by and through its counsel of record, hereby submits the following Objection to J. Rodney Dansie Response to DPU Recommendation; to J. Rodney Dansie Correspondence dated 6/22/2012, 6/25/2012, and 6/25/2012; and to Dansie's Response to Hi-Country Estates HOA Response.

Introduction

In complete disregard to the Scheduling Order issued by the Public Service Commission (the "**PSC**" or the "**Commission**") and the information specifically requested by the Commission, J. Rodney Dansie ("**Dansie**") has flooded this proceeding with five different unauthorized filings since last week. Specifically, on Tuesday, June 26, 2012, Hi-Country received three documents from Dansie, a letter to Judge Reif dated 6/22/2012, a letter to Judge Reif dated 6/25/2012, and a Response of J. Rodney Dansie to the Division of Public Utilities Corrected Recommendation (the

"**Dansie Response**"). On Thursday, June 28, 2012, Hi-Country received an e-mail demanding payment of his legal fees sent on June 28 but dated June 25, 2012 (the "**Fee Demand**"), and a document entitled Response to Hi-Country Estates HOA Responses to Division of Public Utilities Corrected Recommendations (the "**Dansie Reply**") (the five filings are collectively referred to as the "**Dansie Filings**"). The Dansie Filings contain many "redundant, immaterial, impertinent, or scandalous matter[s];" were not timely under the existing Scheduling Order; exceeded the scope of the documents requested by the Commission; and are not otherwise allowed under the Utah Rules of Civil Procedure and the rules governing formal proceedings before the Commission. Accordingly, the Commission should strike the Dansie Filings and disregard the unauthenticated documents submitted with the Dansie Filings. Additionally, the Fee Demand is based on a clearly erroneous reading of the Well Lease Agreement. That request, if the Commission determines that it is timely or proper, should be denied.

Argument

I. The Dansie Filings Contain Immaterial, Impertinent, and Scandalous Matters

The Commission should strike the Dansie Filings because they contain impertinent and scandalous matters submitted for the purpose of misleading the Commission and delaying this proceeding. Rule R746-100-1 of the Utah Administrative Code provides that "[i]n situations for which there is not provision in these rules, the Utah Rules of Civil Procedure shall govern." Rule 10(h) of the Utah Rules of Civil Procedure provide that "[t]he [Commission] may strike and disregard all or any part of a . . . paper that contains redundant, immaterial, impertinent or scandalous matter." The Dansie Filings contain such matter, and should therefore be stricken.

Dansie's letter dated 6/22/12 was apparently intended to comply with the Commission's request for a certified copy of any recorded agreement between Hi-Country and the Beagleys and Olschewskis. Although Dansie submits both the first and second page of the Right of Way, he incorrectly claims that it is a certified copy, and then repeatedly claims that the conditions in the October 10, 1972 Agreement are somehow a part of, or referenced by the Right of Way. This assertion is patently false. As noted in the Hi-Country Response, the Right of Way is two pages only and does not attach any water service or membership agreement. Additionally, on its face, the Right of Way contains the following language: "This right of way is granted in accordance with and subject to the covenants and agreements contained in that certain agreement entered into between the parties on the **15th day of February, 1973.**" (Emphasis added.) Thus, the repeated statements in the Dansie Filings that the Right of Way incorporates any requirements from the October 10, 1972 Agreement are, at best, disingenuous, and are actually blatant misrepresentations of fact.[1] Indeed, Dansie makes the particularly egregious misstatement that "[t]he Salt Lake County Recorders [sic] office reviewed the Recorded and Certified copy of the Right of Way **and Water agreement** and deemed it to be properly recorded as to notice to the world of the requirements of the lot owners of

[1] For example, in the letter dated 6/22/12, Dansie repeatedly claims that the Beagleys and Olschewskis "agreed to become a member of Hi-Country HOA and take water subject to the water agreement in the Feb. 15, 1973 **recorded agreement**." (Emphasis added.) Of course, the Right of Way is the only recorded document that has been presented to the Commission, and it says nothing about either water service or membership in the association.

Beagley subdivision to become members of the association." (Emphasis added.) Such blatant misrepresentations of fact are both impertinent and scandalous.[2]

The Dansie Response also contains many of the same objectionable materials. Dansie again makes the unsupportable statement that some agreement "requiring [the Beagleys] to become members of the association" was "recorded at the Salt Lake County Recorders [sic] office February 15, 1973." In fact, not only is this a gross misreading of the recorded Right of Way, but a civil court has already determined that any membership the Beagleys may have had in Hi-Country was terminated almost thirty years ago. Following the hearing in this matter, Hi-Country conducted a thorough search of its records and public records to verify the testimony of Stephen Olschewski that there was a court order terminating their membership in Hi-Country. **Exhibit B** contains a 1984 court order that affirms that the Beagleys and their successors "have no further membership with [Hi-Country], and are hereby ordered to refrain from the exercise of any future voting rights, either in person or by proxy, at any future meetings of, or conducted by, [Hi-Country]." **Exhibit C** contains an agreement that further explains the relationship between the Beagleys and Olschewskis and Hi-Country. That Agreement further confirms that the Beagleys and Olschewskis have no voting rights in Hi-Country. In addition to containing false and misleading statements, the Dansie Response also contains a discussion of the same points made at the hearing presentation and in the other Dansie Filings. The Dansie Response should therefore be stricken as redundant, impertinent, and scandalous.

The Fee Request is immaterial and impertinent and should be stricken. Dansie claims in the Fee Request that the Well Lease Agreement requires Hi-Country to pay his legal fees related to this proceeding before the Commission. Not only is this claim unsupported by the Well Lease Agreement, but it is well beyond the scope of this proceeding. First, the Well Lease Agreement does not support any claim by Dansie to attorneys' fees in this proceeding, and actually illustrates Dansie's failure to comply with the very provision he is quoting. The full provision provides that

> Dansie further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and **Dansie shall cooperate fully in all respects** as may be required to obtain such permits or approvals as may be required by the Public Service Commission. Bagley agrees to pay all costs incurred in obtaining such approval, including but not limited to, legal and engineering fees.

(Emphasis added.) At a minimum, this provision requires Dansie not to object to Commission jurisdiction as he has done in this proceeding. But Dansie is now requesting that the Hi-Country ratepayers subsidize and pay for Dansie to seek legal representation to further breach the covenant of cooperation. The plain language of the Well Lease Agreement cannot countenance such a result. In addition to being an incorrect reading of the Well Lease Agreement, Dansie's claim for fees is immaterial to this proceeding and beyond the scope of the Commission's statutory authority. Interpretation of the Well Lease Agreement to determine who pays legal fees has nothing to do with whether Hi-Country serves water to nonmembers and whether Hi-Country's letter of exemption

[2] Dansie complains in this letter that Hi-Country has not disclosed the BLM agreement for water service. We recently discovered a copy of the agreement and the PSC Order approving that agreement. Those documents are attached as **Exhibit A**.

should be revoked.

Finally, the Dansie Reply is largely redundant and contains immaterial, impertinent, and scandalous materials. It again makes the false claim that there is a "recorded and certified copy of agreement to become members." The Dansie Reply then asserts that Hi-Country has misrepresented facts to the Commission in regards to the Well Lease Agreement. In fact, the opposite is true. Specifically, Dansie makes the puzzling claim that the statement that "Mr. Dansie seeks numerous connections with no charge to nonmembers of Hi-Country and seeks delivery of millions of gallons of [sic] annually at No charge is a Total MISREPRESENTATION OF THE FACTS TO THE COMMISSION." (Emphasis in original.) But the numerous demands from Dansie, some of which are attached as **Exhibit D**, conclusively establish that Dansie is indeed seeking such free connections and water under the Well Lease Agreement—an agreement that was not pre-approved by the Commission and one that, the Commission determined in 1986, improperly places an undue burden on the customers of the Hi-Country water system.

Furthermore, Dansie makes the false claim that even upon service under the Well Lease Agreement to the Dansie Water Company, "Hi-Country would be serving the same customers and lots and people and members as was being served before the PSC decertified Hi-Country." At the time of decertification, Hi-Country's water system had since 1994 been totally disconnected from the Dansie water system, and no water was being delivered to Dansie under the Well Lease Agreement. *See Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2008 UT App 105, ¶ 5, 182 P.3d 417. The civil courts have determined that Hi-Country has some remaining duty under the Well Lease Agreement subject to the rulings of the Commission. *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2011 UT App 252, ¶ 14, 262 P.3d 1188.[3] Provision of water under the Well Lease Agreement would require reconnection of the systems and delivery of water to the Dansie Property, which is defined in the Well Lease Agreement. With the exception of Lot 51, the entirety of the Dansie Property is outside the areas approved for service at the time Hi-Country received its Letter of Exemption. Furthermore, those receiving water in this area would not be members of Hi-Country, and Hi-Country would have no say as to whether they could connect. Accordingly, Dansie's statement that the people served would be the same as those served at the time of exemption is false and misleading. The Dansie Reply should accordingly, be stricken.

II. The Dansie Filings Failed to Comply with the Scheduling Order or Applicable Rules.

In addition to the objectionable contents of the Dansie Filings, they also failed to comply with Scheduling Order and the applicable rules. The Scheduling Order entered by the Commission allowed for Hi-Country and an intervenor such as Dansie to file a Response to the Division of Public Utilities Report on or before Friday, June 22, 2012. Hi-Country timely filed their response, but Dansie did not file any document with the Commission until the following Tuesday. Dansie was required to file his response concurrently with Hi-Country, and the Scheduling Order did not

[3] Hi-Country is committed to complying with applicable court rulings and is also committed to complying with public utility regulations.The Utah Supreme Court has already expressly held that the Commission is "clearly within [its] rate-making authority" to limit the extent to which Hi-Country is impacted by the Well Lease Agreement. *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023 (Utah 1995). The most recent decision also acknowledges the Commission's ability to address the Well Lease Agreement issue. 2011 UT App 252.

contemplate or allow a Reply Memorandum by either Hi-Country or Dansie. Notwithstanding the clear deadlines of the Scheduling Order, Dansie, having now had the opportunity to review Hi-Country's filing, filed his late Dansie Response, and even later filed his Dansie Reply. The Commission's Order to have simultaneous briefs was therefore frustrated to the prejudice of Hi-Country. In addition to the Dansie Response and Dansie Reply, Dansie also filed three additional letters with the Commission with no authorization under the Scheduling Order or applicable rules. All five Dansie Filings should therefore be stricken.

Conclusion

Hi-Country Objects to the Dansie Filings and requests that the Commission strike those documents under rule 10(h) of the Utah Rules of Civil Procedure. Because the Dansie Filings contained materials intended to mislead the Commission such that Hi-Country was required to respond to preserve the integrity of the proceeding, Hi-Country also requests an award of its attorneys' fees in connection with this Objection.

DATED this _____ day of July, 2012.

SMITH HARTVIGSEN, PLLC

____

J. CRAIG SMITH
MATTHEW E. JENSEN
Attorneys for Hi-Country Estates HOA

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Response of Hi-Country Estates HOA to Division of Public Utilities' Corrected Recommendation** was served on the following on July ___, 2012 as follows:

Via U.S. mail and email to:

Dennis Miller – Legal Assistant
Division of Public Utilities
Heber M. Wells Building 4th Floor
160 E 300 S, Box 146751
Salt Lake City, UT 84114-6751
dpudatarequest@utah.gov
dennismiller@utah.gov

Via U.S. mail to:

J. Rodney Dansie
7198 West 13090 South
Herriman, UT 84096

Via email to:

Patricia Schmid (pschmid@utah.gov)
Shauna Benvegnu-Springer (sbenvegn@utah.gov)]

____

4839-6219-9568, v. 1