

RESPONSE TO HI-COUNTRY ESTATES HOA RESPONSES TO DIVISION OF PUBLIC UTILITIES CORRECTED RECOMMENDATIONS DATED JUNE 22, 2012 DOCKET NO 11-2195-01

The following document sets forth J. Rodney Dansie's reply to Mr. Smiths / Hi-Country Estates HOA comments, statements and responses.

BACKGROUND

In 1994 the P. S. C. of Utah granted a certificate of Convenience and Necessity #2737 to Hi-Country Estates HOA and after two years and upon request from the DUP and HI-Country the PSC cancelled the Certificate because all of the customers were members and a few by contract approved by the PSC. Hi-Country HOA has the exact same service area and lots and customers. Nothing has changed and the findings today are the same as in 1996.

IN THE TIME PERIOD FROM 1996 TO 2012 THE DIVISION HAS NOT PRODUCED ANY COMPLAINTS FILED BY ANY WATER USERS.

THE DIVISION OF UTILITIES HAS FILED A RECOMMENDATION THAT HI-COUNTRY BE RE-CERTIFIED ON INCOMPLETE FACTS AND INFORMATION PROVIDED ONLY BY MR. SMITH AND IN SOME CASE MISLEADING AND INCORRECT INFORMATION WHICH MUST BE FURTHER EVALUATED WITH ADDITIONAL FACTS GATHERED BY THE DUP AND INFORMATION ON THE MATTER. THERE IS 35 YEARS OF DISTRICT COURT RULINGS AND MANY APPELLATE COURT DECISIONS THAT MUST BE ADDED TO THE FACTS TO ARRIVE AT AN ACCURATE DECISION. THE P. S. C. HAS BROAD POWERS BUT ONLY THOSE POWERS GIVEN BY TITLE 54 UTAH CODE ANNOTATED AND ANY QUESTION WITH REGARD TO THE PSC POWERS MUST BE INTERRUPTED NARROWLY AND AGAINST THE P.S.C. MANY FACTS AND TESTIMONY WERE GIVEN AT THE MAY 15, 2012 HEARING AND ADDITIONAL DATE AND FACTS HAVE BEEN SUBMITTED SINCE THE HEARING REGARDING MEMBERSHIP IN THE HOA SERVICE AREA AND MUST BE USED IN ARRIVING AT ANY DECISION REGARDING RE-GRANTING A CERTIFICATE OF CONVENIENCE TO HI-COUNTRY HOA.

OBJECTIONS TO RECOMMENDATION

1. J. Rodney Dansie Objects to and Contests the Commission's Possible jurisdiction over Hi-Country HOA Water system AS THE RECOMMENDATIONS OF THE DIVISION ARE INCOMPLETE AND INFORMATION PROVIDED BY MR. SMITH HAS MANY ERRORS IN FACTS PRESENTED.

2. J. Rodney Dansie Specifically objects to any Possible REVERSING of the Letter of Exemption SINCE HI-COUNTRY IS SERVING THE SAME AREA, CUSTOMERS AS WHEN IN 1996 THE COMMISSION APPROVED THE REQUEST BY THE HI-COUNTRY AND THE DIVISION OF PUBLIC UTILITIES IN 1996 TO CANCEL THE CERTIFICATE # 2737 AND NOTHING HAS CHANGED AND WATER IS NOT BEING SERVED TO THE PUBLIC IN GENERAL. (SEE TESTIMONY REGARDING DELROY TAYLORS REQUEST FOR WATER SERVICE IN 1998 THAT WAS DENIED SINCE HE DID NOT

LIVE IN HI-COUNTRY ESTATES BOUNDARIES AND WAS NOT A MEMBER OF THE HI-COUNTRY HOME OWNERS ASSOCIATION) his property was without water and adjoined lot # 9 Hic

3. J. Rodney Dansie Objectives to the possible issuing of a Certificate of Convenience and Necessity being issued at the present time AS THE INVESTIGATION AND TESTIMONY AS TO MEMBERSHIP IS INCOMPLETE.

4. The evidence was heavily contested at the hearing and with documents submitted as per request of the Administrative Law Judge and by evidence submitted at the hearing that Hi-Country is NOT providing service to THE PUBLIC IN GENERAL and that all uses of water are members of the water company and are treated as members and pay the same rates some users (Beagleys) may have waived SOME OF their voting rights by their own actions and to avoid having having their lands burdened by CC and R's as in Hi-Country phase one. (See recorded and certified copy of agreement to become members and pay as per the water company agreements referenced in right of way recorded against the property.

5. The statements by Mr. Smith are in error regarding connections and service to numerous connections without charge to non-members of Hi-Country is a major misrepresentation of the facts of this matter. No members of the general public would be served by Hi-Country or Dansie's. Dansie's are requesting the water under a contract to the Dansie family members and any other water would be served through Dansie Water Company to its members and not to the public in general. All water from Hi-Country Estates HOA would go to Dansie Water and then to its members, No water would be served to the General Public. All Water from Hi-Country would be as per the well lease agreement and orders of the District court and Court of Appeals Decisions. Hi-Country would be serving the same customers and lots and people and members as was being served before the PSC decertified Hi-Country since it was serving its only its members and not the public in general. (See order of PSC in 1996 De-certifying Hi-Country HOA.)

There have been no complaints to the DPU in the years since 1996 to 2012 and regulation by the P. S. C. is unnecessary under title 54 Utah Code Annotated.

6. The validity of the well lease has been decided by District Court and affirmed by the Court of appeals and certiorari was denied by the Supreme Court of Utah.

7. The statement that (Mr. Dansie seeks numerous connections with no charge to nonmembers of Hi-Country and seeks delivery of millions of gallons of annually at No charge is a Total MISREPRESENTATION OF THE FACTS TO THE COMMISSION Such use of water owed by contract to Dansies does not constitute service for water to the public in general. See courts comments regarding the delivery of water by contract and under the well lease. (SEE UTAH STATE COURT OF APPEALS DECISION AND DISTRICT Court order all documents and the well lease have been submitted to the commission and are in the file.) See The Rulings of the District court and decision of court of appeals regarding title 54

8. The Hi-Country HOA water system does not meet the requirements of a Public Utility under Utah Code 54-2-1 and should not be subject to regulation by the commission.

9. The trial court ruled that the Well Lease is not void as against public policy and it was affirmed by the court of appeals. (See Amended Memorandum Decision case No. 20090433-CA filed July 29, 2011)

10. THE PSC ORDER OF 1986 IS NO LONGER INEFFECT. AND THE COURT RULED THAT THE WELL LEASE IS NOT VOID AS AGAINST PUBLIC POLICY. Any challenges to prior trial court rulings that that might have been appealed but not were at that point waived. (failing to raise issues ripe for appeal results in waiver of the right to raise them at a later time.)

11. It is well established that the commission has no inherent regulatory powers other than those expressly granted, or CLEARLY implied by statue. When a "specific power is conferred by statue upon a tribunal board or commission with limited powers, the powers are limited to such as are specifically mentioned." All powers retained by the PSC are derived from and created by statute. The PSC has no inherent regulatory powers and can only assert those which are expressly granted or clearly implied as necessary to the discharge of the duties and responsibilities imposed upon it. Accordingly, "to insure that the administrative powers of the PSC are not over extended "any reasonable doubt of the existence of any power must be resolved against the exercise there of".

12. Despite it's broad language, section 54-4-1 does not confer upon the Commission a limitless right to act as it sees fit, and this court has never interpreted it as doing so. "7/20/95 – HI-Country Estates Homeowners Association Supreme Court of Utah" 879P.2nd 2666 (Utah 1994)

13. Based on the above facts , Utah State Statues and court decisions Hi-Country is not a public utility under Utah Code Section 54-2-1 and should not be subject to regulation by the commission .

ADDITIONAL DOCUENTS AND CLARIFICATION

The documents Exhibit B , Exhibit C and maps provided are sufficient to become the basis of any service area for a certified water company and are incomplete and not an accurate representation of the proposed service area and contain errors and should be stricken with a request to have the DUP review all of the requirements and request corrected maps, service areas and areas of facilities which can serve the area proposed by the applicant HI-Country HOA. Finally, Exhibit E is unclear and means nothing. The recorded certified copy of an agreement date 2/15/1973 submitted to the administrative law judge at her request establishes that Beagley subdivision and all owners taking water are members of the association and are considered members of the Hi-Contry Water company as approved by the Public Commission and DUP IN 1996 WHEN THE WATER COMPANY WAS DE-CERTIFIED BECAUSE ALL USES OF WATER AND CUSTOMERS WERE MEMBERS OF THE ASSOCIAION AND A FEW CUSTOMERS SERVED BY CONTRACT APPROVED BY THE P. S. C. . Nothing has changed and water is not provided to the public generally by either Hi-Country or by Dansie water co.

CONCLUSION

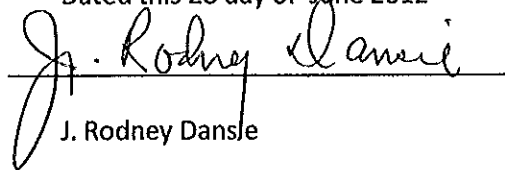
HI-COUNTRY HOA LETTER OF EXEMPTION SHOULD NOT BE REVOKED AND THE CERTIFICATE OF CONVENIENCE AND NECESSITY # 2737 SHOULD NOT BE REINSTATED AND DANSIES SHOULD BE AWARDED LEGAL COST INCURRED BECAUSE OF HI-COUNTRYS REQUEST FOR PSC JURISDICTION AND FOR ANY FURTHER LEAGAL COSTS INCURRED UNDER THE WELL LEASE PROVISION PAGE 7 PARAGRAPH 3.

IN THE ALTERNATIVE IF THE COMMISSION BELIEVES THAT FUTHER INVESTGATION IS NECESSARY IN THIS MATTER THAT HI-COUNTRY BE REQUIRED AS PER THE WELL LEASE TO PAY FOR ALL OF DANSIES LEGAL COSTS TO PERSUE CREATING A WATER COMPANY WITH PSC JURISDATCION AS PER THE WELL LEASE PROVISIONS PAGE 7 PARAGRAPH 3 OF THE WELL LEASE.

IN ADDITION ALL CASES INVOLING THIS MATTER FOR THE PAST 35 YEARS MUST BE CONSIDERED. AND AS THE COURT OF APPEALS HAS STATED WILL THE PSC EXCERISE JURISDICTION AND REQUIREMENT PAYMENT FOR WATER " (NONE OF US CAN FORTELL THE FUTURE -STATUTES CAN BE AMENDED; REGULATIONS CAN BE REPEALED, ADMINISTRATIVE POLICIES AND ATTITUDES CAN CHANGE. THUS, OUR OPINION WISELY HAZARDED NO GESS AS TO WHETHER THE PSC COULD OR WOULD EXERT JURISDICTION IN THE FUTURE, AND THUS MADE NO ATTEMPT TO ADJUDICATE THE RIGHTS OF THE PARTIES OR THE ENFORCEABILITY OF THE WELL LEASE GOING FORWARD.

TO BE CLEAR THE EFFECT OF THE FINAL JUDGEMENT, AS AFFIRMED AND EXPLAINED IN OUR 2008 OPINION AND IN THE AMENDED MEMORANDUM DECISION, IS THAT THE DANSIES ARE, GOING FORWARD, ENTITLED TO THEIR CONTRACTUAL RIGHTS TO FREE WATER AND FREE HOOK-UPS UNLESS THE PSC INTERVENES AND DETERMINES OTHERWISE. (CASE NO 20090433-CA) FILED JULY 29,2011 AMENED MEMORANDUM DECISION)

Dated this 28 day of June 2012



J. Rodney Dansie

CERTIFICATE OF SERVICE

J. Rodney Dansie

I hereby certify that the foregoing **Response of** ~~HEB-COMM. of Public Utilities BOB~~ **to Division of Public Utilities' Corrected Recommendation** was served on the following on June ~~20~~ ²⁸, 2012 as follows:

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J. Rodney Dansie