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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	Docket No.11-2195-01 Response of the Division of Public Utilities Opposing J. Rodney Dansie's Request for Agency Review and Rehearing

Pursuant to Utah Code Ann. § 54-7-15 and Utah Administrative Code R746-100-11.F, the Utah Division of Public Utilities (Division) files its response opposing Mr. J. Rodney Dansie's Request for Agency Review and Rehearing (Request). Mr. Dansie seeks review and rehearing of the Public Service Commission's (Commission) Report and Order dated July 12, 2012 revoking Hi-Country Estates' (Hi-Country or Company) Letter of Exemption and reinstating its Certificate of Public Convenience and Necessity No. 2737 (Order).

As explained in more detail and for the reasons set forth below, the Division opposes the Request because (1) the Commission correctly found that Hi-Country is a public utility because it is serving non-members; (2) the Order expressly addressed jurisdiction; (3) allegations concerning the so-called "commonality of interest" rule are irrelevant because the rule has been repealed and was not applied by the Commission in its Order; and (4) all other claims for relief

are without merit. The Commission properly revoked the exemption and reasserted jurisdiction over the Company.

1. The Bear Hollow and Garkane Cases Mandate that because Hi-Country is Serving Non-members, it is a Public Utility Subject to Commission Regulation.

Hi-Country is subject to Commission regulation because by serving non-members, it is serving the public generally and is thus a public utility subject to regulation by the Commission. Recently in Bear Hollow Restoration, L.L.C. v. Public Service Commission, 274 P.3d 956 (Utah 2012) (Bear Hollow), the Utah Supreme Court confirmed that a water company serving only its members is exempt from Commission jurisdiction, following the rationale set forth in Garkane Power Co. v. Public Service Commission, 100 P.2d 571 (Utah 1940) (Garkane). Unlike the companies in Bear Hollow and Garkane, Hi-Country is serving non-members.

Testimony received at the June 15, 2012 hearing explicitly established that Hi-Country is serving non-members. Administrative notice was taken of the Division's May 17, 2012 memo detailing service to non-members. Ms. Shauna Benvegnu-Spring testified on behalf of the Division and affirmed that the Company is serving non-members. Mr. Randy Crane, Hi-Country's vice present and a director, testified under oath that several non-members receive water from Hi-Country.[1] Mr. Crane testified that Hi-Country is serving the public generally.[2] Mr. Stephen Olschewski testified under oath that he receives water but is not a member.[3] Numerous declarations under oath stating that non-members were receiving service were admitted as exhibits at the hearing.

Mr. Dansie cross examined Ms. Benvegnu-Springer, Mr. Crane, and Mr. Olschewki, and they confirmed that the Company is serving non-members. Mr. Dansie's arguments to the

[1] See, e.g., June 15, 2012 Hearing Transcript (Transcript) at pp. 33-34 and 35.
[2] Id. at p. 38.
[3] Id. at pp. 107-108.

contrary, based upon his understanding of relationships between the Homeowner's Association and people Mr. Dansie appeared to claim were Mr. Olschewski's predecessors in interest, fail.[4]

Mr. Dansie's testimony under oath at the hearing that Hi-Country was serving only members was not persuasive. Exhibits offered at the hearing did not support his arguments. Documents attached to the Request are neither probative nor timely.

It matters not whether a non-member pays substantially the same fees and receives substantially the same services as a member of the Company, because a member has voting rights, which a non-member lacks. The fact that service is provided to non-members pursuant to a contract does not establish membership – otherwise all customers receiving service from Rocky Mountain Power or Questar Gas Company would be members and Commission jurisdiction over those companies would be prohibited which clearly it is not.

The 1996 order granting Hi-Country's exemption noting service was being provided to two non-members, the BLM and Greg Dehan/Bob Hymas, does not bar the Commission from here revoking the exemption. Utah Code Ann. § 54-7-14.5 states that "The commission may, at any time after providing an affected utility notice and an opportunity to be heard, rescind, alter, or amend any order or decision made by the commission." Here, Hi-Country itself filed for review of the exemption and thus it clearly had notice. The requirement of a hearing was satisfied by the hearing on June 15, 2012.

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[4] See id. at pp. 112-124 and 133-142.

2. The Order Explicitly Determined that the Commission Had Jurisdiction to Assert Regulatory Authority over Hi-Country.

Mr. Dansie's argument that the Order failed to determine jurisdiction is without merit. Jurisdiction is addressed throughout the Order. The law applicable to determining whether jurisdiction lies with the Commission is set out at page 4 of the Order. The Order recited facts from the hearing and declarations establishing that Hi-Country is serving non-members. Various facts enumerated in the Order are examined under the applicable law, and the Order explicitly finds jurisdiction lies with the Commission.[5]

3. The Commission Repealed the So-Called "Commonality of Interest" Rule, Did Not Apply it in its Order, and Arguments Pertaining to that Rule are Irrelevant.

The portion of the Request addressing the former so-called "Commonality of Interest Rule" is irrelevant. [6] This rule was enacted after Garkane "in an attempt to articulate the considerations that determine whether an entity is serving the public and subject to Commission regulation."[7] In March 2012 the Commission gave notice of its proposal to repeal the rule and subsequently repealed the rule. The Court in Bear Hollow found that the process to repeal the rule was proper.[8] The rule remains repealed and was not applied in the Order and thus Mr. Dansie's argument is not pertinent to the revocation of Hi-Country's exemption.

4. The Remainder of Mr. Dansie's Arguments Are Without Merit.

In his Request Mr. Dansie asserts other grounds for agency review and rehearing.[9] For example, Mr. Dansie claims that his due process rights were denied.[10] The transcript shows that no such denial occurred, and that Mr. Dansie was given the opportunity to speak on relevant

[5] See Order, p. 7.
[6] This rule was repealed by the Commission and was not applied by the Commission in reaching its decision to revoke the exemption.
[7] Garkane at p. 966.
[8] Id. at pp. 965-66.
[9] See Request at pp. 7-11.
[10] Request at pp. 10-11.

matters.[11] These assertions are contradicted by the facts presented at the hearing and applicable law.

Therefore, the Division respectfully asks the Commission to deny the Request.

Respectfully submitted this _____ day of August 2012.

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Patricia E. Schmid
Assistant Attorney General

Attorney for Utah Division of Public Utilities

[11] See, e.g., Transcript at pp. 130-31 and 158-59.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Response of the Division of Public Utilities Opposing J. Rodney Denise's Request for Agency Review and Rehearing to be served upon the following by electronic mail or USPS mail, postage prepaid, to the addresses shown below on August _____, 2012:

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