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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	Memorandum in Opposition and Objection to J. Rodney Dansie's 8-30-2012 Request to Review 1996 Order Docket No. 11-2195-01 September 13, 2012

Hi-Country Estates Homeowners Association ("**Hi-Country**"), by and through its counsel of record, hereby submits the following Memorandum in Opposition and Objection to J. Rodney Dansie's 8-30-2012 Request to Review 1996 Order.

Introduction

J. Rodney Dansie ("**Dansie**") continues to file unauthorized filings with the Public Service Commission (the "**Commission**"); the latest is a request that the Commission revisit an order from sixteen years ago (the "**Request**"). As with previous filings, the Request contains "redundant, immaterial, impertinent, or scandalous matter[s]," is filed in bad faith to harass Hi-Country, and is not otherwise allowed under the Utah Rules of Civil Procedure or the rules governing formal

proceedings before the Commission. Accordingly, the Commission should deny or strike Dansie's Request. Furthermore, the cost to Hi-Country of responding to the prolific Dansie filings is significant. This fact coupled with the fact such filings contain impertinent matters and are not filed in good faith should cause the Commission to employ its inherent authority to award Hi-Country its attorney fees incurred in responding to the Request.

Argument

Dansie's Request should be stricken or denied for lack of any good faith factual or legal basis. First, the Request misrepresents the reasoning and contents of the 1996 Order of the Commission that resulted in Letter of Exemption 0057 to Hi-Country. Second, the Request seeks a burdensome and unnecessary review of the past sixteen years. Third, the Request is in furtherance of a pattern of multiple filings that fail to comply with applicable rules and that lack any good faith legal or factual basis.

I. The Request Misrepresents the Contents of the 1996 Order and Should Be Stricken

The Commission should strike the Request because it contains 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." As further discussed below, the Request contains such matter, and should therefore be stricken.

Chief among the misrepresentations in the Request is the heart of Dansie's claim that the 1996 Order required Hi-Country to "provide service to the existing customers 'provided they become members of the company.'" (Request at 1.) Thus, Dansie asserts that the Commission's 1996 Order

contains an explicit, quoted requirement for nonmember customers to become members of Hi-Country. But neither the asserted requirement nor the allegedly quoted language appear in the Order. (*See* 1996 Order attached hereto as **Exhibit A**.) Indeed the 1996 Order expressly acknowledged that Hi-Country "serves a limited number of nonmembers pursuant to specific contracts" but did not place any membership requirement or express any concern regarding those nonmember customers.

Dansie's bare assertion that the Department of Public Utilities ("**DPU**") did not properly complete its audit following the 1996 Order also lacks a factual basis. First, the audit was ordered at Hi-Country's request for the purpose of "ensur[ing] that [Hi-Country's] bookkeeping system is set up appropriately for a water company." It therefore had nothing to do with membership requirements. Second, the 1996 Order was issued on February 5, 1996, but had a delayed effective date to accommodate the audit and was to become effective sixty days from the date of the Order unless DPU recommended a stay based on the audit. Consistent with this sixty-day period, the Commission, acknowledging DPU's recommendation of exemption, issued Letter of Exemption No. 0057 on May 14, 1996. (*See* Letter of Exemption No. 0057 attached hereto as **Exhibit B**.) Thus, there is no indication whatsoever that DPU failed to conduct or complete the requested audit. Dansie's blatant misstatements about the Commission's previous rulings are grounds to deny or strike his Request.

II. Investigation of the Past 16 Years of Hi-Country Rates Is Not Warranted

Based on the allegations refuted in Part I above, Dansie requests that the Commission conduct a comprehensive review of Hi-Country's actions for the past sixteen years. Such a review is improper, unnecessary, dilatory, and beyond the scope of this proceeding. When the Letter of Exemption was issued in 1996, the Commission expressly noted that Hi-Country had an obligation to notify the Commission of any changed circumstances, indicating that changed circumstances

could result in revocation of the Letter of Exemption.

Following completion of the litigation between Dansie and Hi-Country over a Well Lease Agreement, Hi-Country fulfilled its duty to notify the Commission of potential changed circumstances by a letter dated December 23, 2011. As a result of that inquiry and a review of Hi-Country records by DPU, the Commission issued its Report and Order dated July 12, 2012, canceling Letter of Exemption 0057 and reinstating CPCN 2737. Hi-Country fully complied with the Commission's orders and there is no period, contrary to Dansie's allegations, where Hi-Country operated as an unauthorized public utility. Thus, Hi-Country's activities during the sixteen years that it was exempt are irrelevant, and it would be improper, burdensome, and wasteful to conduct an investigation into this period as Dansie requests.

Although a comprehensive review of rates and financial data from the past sixteen years is not warranted, Hi-Country understands and fully expects a review and assessment of its rates and relevant records when Hi-Country submits a revised tariff in the near future. One of the issues that will need to be addressed in the upcoming tariff proceeding is the effect of the Well Lease Agreement. Dansie asserts that all pertinent issues have been decided by the courts and that the Commission lacks jurisdiction over that contract. But although the civil courts have determined that Hi-Country has prospective obligations under the Well Lease Agreement, they have acknowledged that such obligations are expressly 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. Indeed, the Utah Supreme Court has expressly held that the Commission is "clearly within [its] rate-making authority" to limit the extent to which Hi-Country rate payers are impacted by the Well Lease Agreement. *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023 (Utah 1995). Thus, the few relevant issues in the Request, including performance under the Well Lease Agreement, will be

addressed in due course, but the sweeping investigation that Dansie requests is neither proper nor necessary.

III. Dansie's Continual Bad Faith Filings Will Improperly Raise Rates of Other Customers, and the Commission Should Require Dansie and Not the Customers to Bear This Cost

This Request is but another in a long series of improper and bad faith filings by Dansie. Accordingly, the Commission should order Dansie to pay Hi-Country's attorney fees in responding to this motion, rather than having the customers bear this unnecessary expense. The Commission has broad authority "to do all things . . . which are necessary or convenient in the exercise of [its power and jurisdiction to supervise and regulate public utilities]." Utah Code Ann. § 54-4-1. One of the Commissions specific powers and duties is to prevent unjust, unreasonable, discriminatory, or preferential rates or charges. *Id.* § 54-4-4. As Dansie notes in his Request, Hi-Country and its ratepayers have been required to pay substantial attorney fees over the past twenty-seven years. What Dansie fails to acknowledge, however, is that the vast majority of those fees have been incurred as a result of Dansie's claims. Such is the case with this Request. Hi-Country has again been required to incur additional fees to respond to a baseless and bad faith filing by Dansie. Rather than continue to have these charges accrue to the ratepayers, the Commission should require Dansie to pay Hi-Country's attorney fees incurred in preparing and filing this response.

Conclusion

Dansie's Request should be stricken or denied. It contains arguments and assertions that are contrary to well-established law and fact and for which Dansie had no good faith basis. Hi-Country also requests an award of its attorneys' fees incurred in responding to the Request.

DATED this _____ day of September, 2012.

SMITH HARTVIGSEN, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Memorandum in Opposition and Objection to J. Rodney Dansie's 8-30-2012 Request to Review 1996 Order** was served on the following on September ___, 2012 as follows:

Via U.S. mail and email to:

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