

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Request for Agency	)	<u>DOCKET NO. 02-2195-01</u>
Action Concerning Docket No. 94-2195-01	)	
Report and Order, Certificate No. 2737,	)	<u>DENIAL OF REQUEST FOR</u>
Issued March 23, 1994	)	<u>AGENCY ACTION</u>

ISSUED: August 07, 2002

By The Commission:

On March 19, 2002, J. Rodney Dansie, on behalf of himself, Foothill Water Co., Dansie Water Co. and Dansie Family Members (Trust) filed a Request for Agency Action (the ARequest@). Pursuant to *Utah Code Ann.* '63-46b-3(3)(d)(ii), each of the requesting parties is notified that the request is denied, for the reasons set forth below.

General deficiency of Request: *Utah Code Ann.* '63-46b-3(3)(b) requires that the person requesting agency action send a copy by mail to each person known to have a direct interest in the requested agency action. The Request seeks determinations and orders regarding Hi-Country Estates Water Company and Homeowners Association. There is no indication that a copy of the request was sent to those entities. This Commission cannot take agency action without the statutory requirements being met and notice to all parties that have a direct interest in the outcome.

Specific claims: The Request seeks modification of an order issued in 1994 in Docket number 94-2195-01, and other determinations by this Commission. We briefly discuss each item.

1. The Request claims that the Supreme Court has determined that the Well Lease Agreement is a valid and binding agreement on the owners of the Hi-Country water system, and that this Commission=s previous order needs to be modified accordingly. However, no citation to a Supreme Court decision is provided. What has been provided, by the Division of Public Utilities, is a copy of a recent decision by the trial court that states:

Third, the Dansies point out that the 1986 PSC decision only requires that the burdens associated with the Well Lease not be passed on to the ratepayers under rates authorized by the PSC. The Dansies then argue that although the burdens of the Well Lease cannot be borne by the ratepayers, they can be borne by the owners of the water system. Under different circumstances this argument may have some merit, however, in this case the ratepayers and the owners are one in the same. Because the water system is collectively owned by the members of The Association who are also the only ratepayers, it would be impossible to impose the burdens on the owners without also imposing those burdens on the ratepayers.

Memorandum Decision and Order, *J. Rodney Dansie v. Hi-Country Estates Homeowners Assoc.*, Third Judicial District Court, Case No. C85-1464, dated November 5, 2001, page 3 (granting the Homeowners Association motion for partial summary judgment).

We also point out that this Commission=s decision in 1994 stated that:

The decertification and certification ordered above are subject to further order of the Commission and reversal in the event that title to the assets necessary to operate the system is affected by subsequent action in the courts.

*Report and Order*, Docket No. 94-2195-01, dated March 23, 1994, page 5. The Well Lease is not an asset necessary to operate the system. No reason to modify the 1994 order has been presented.

2. The Request claims that Hi-Country Water System was ordered to provide fire protection to the Dansie families, and

that it has improperly not done so for the past eight years. The Request is based on an erroneous premise. Our 1994 Report and Order did not order Hi-Country to provide fire protection to the Dansie families. Hi-Country was ordered to provide reports of the Aprogress of efforts to bring the system into compliance with requirements of the Salt Lake Fire Marshall. @ Nowhere was the company ordered to provide fire protection to any persons other than members of the association. The Dansies have chosen not to become members of the Association; therefore, there is no obligation on the company to provide fire protection to the Dansies.

3. The Request seeks Commission action against Hi-Country to require it to pay for certain assets and lines it claims are owned by Foothills Water. The ownership of assets has been the subject of lengthy litigation in District Court. That is the proper forum for such a claim, not the PSC. We have been provided no evidence that any assets necessary to operate the system have been found by the court to not be owned by Hi-Country. No basis for Commission action has been raised.

4. The Request seeks a review of the process to Adecertify@ Hi-Country Estates as a utility, and into the rates and profits of the organization. There is no basis for such a request. Hi-Country Estates was not Adecertified@ as a public utility. In 1996, Hi-Country was found to have met the requirements to be granted a letter of exemption from Commission regulation of its rates, and such an exemption was granted. Mr. Dansie previously raised this same complaint about the process leading to the granting of the letter of exemption. The Commission investigated and in December 2000 notified Mr. Dansie that the exemption had been duly and properly granted. There is no reason to revisit that issue.

#### CONCLUSION

The request is denied. The requesting parties are hereby notified, pursuant to Utah Code Ann. '63-46b-3(3)(d)(ii) that they may request a hearing before the Commission to challenge this denial.

The parties are further notified that pursuant to Utah Code Ann. ' 63-46b-13, an aggrieved party may file, within 20 days after the date of this Order, a written request for reconsideration by the Commission. Pursuant to Utah Code Ann. ' 54-7-15, failure to file such a request precludes judicial review of the Order. If the Commission fails to issue an order within 20 days after the filing of such a request, the request shall be deemed denied. Judicial review of this Order may be sought pursuant to the Utah Administrative Procedures Act (Utah Code Ann. " 63-46b-1 et seq.)

DATED at Salt Lake City, Utah, this 7th day of August, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary