

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Nicole McMillian *et al* vs. Wilkinson) DOCKET NO. 09-019-01
Cottonwood Mutual Water Company) ORDER

ISSUED: February 22, 2010

By The Commission:

This matter is before the Commission on Wilkinson Cottonwood Mutual Water Company's (Company) Motion to Dismiss Nicole McMillian's formal complaint against the Company.

Ms. McMillian filed her formal complaint on or about December 14, 2009. She asks the Commission to investigate the Company and find that jurisdiction exists to regulate the Company. In support of her complaint, she makes several allegations in support of a Commission investigation and eventual jurisdiction. She states, in part, that the Company "has failed to issues shares to its members or to hold a meeting of its shareholders", *Complaint*, p.2, has "yet to issue shares to its members and has not held a shareholder meeting allowing its members to vote" *Id.* at p.3. Additionally, Ms. McMillian states the "Company is currently obligated to provide both indoor culinary and outdoor irrigation water to over 200 homes and is obligated to provide water service to an existing elementary school." *Id.* at p.4.

On January 11, 2010, the Company filed a Motion to Dismiss, moving the Commission to dismiss the complaint. It claims that because it serves only its members, and because it "does not hold itself out as serving the public generally," *Memo. Supp. Motion to Dismiss*, p.3, it is not a public utility and not subject to Commission jurisdiction. Alternatively,

it states the complaint must be dismissed because the Company qualifies for, and has been granted, an exemption from regulation pursuant to R746-331-1.

When considering the Motion to Dismiss and in ascertaining the facts needed to establish jurisdiction, the Commission must “accept the factual allegations in the complaint as true and consider all reasonable inference to be drawn from those facts in a light most favorable to the plaintiff.” *Ho v. Jim’s Enters.*, 2001 UT 63, ¶ 6 (quoting *Prows v. State*, 822 P.2d 764,766 (Utah 1991)). When jurisdiction is at issue, the Commission “under Rule 12, . . . may determine jurisdiction on affidavits alone, permit discovery, or hold an evidentiary hearing.” *Anderson v. American Soc’y of Plastic Surgeons*, 807 P.2d 825, 827 (Utah 1990).

Here the parties dispute a key allegation upon which Commission jurisdiction lies. The complaint, on its face, alleges the Company “has failed to issues shares to its members” and “yet to issue shares to its members” and is providing water to “over 200 homes and is obligated to provide water service to an existing elementary school.” The Commission must determine if any of the 200 homes or the existing elementary school, or any other party, receives water without being issued any share in the Company. That is—whether the Company serves those who are not members, and could be considered members of the general public.

ORDER

The Commission will decline to rule on the Motion at this time pending a limited investigation by the Division of Public Utilities (Division) to determine if the Company serves those who are not shareholders. The Division has 30 days from the issuance of this Order to issue its findings to the Commission. The parties shall cooperate with the Division in conducting

DOCKET NO. 09-019-01

- 3 -

its investigation, included answering data requests. If the Division requires more time to conduct its investigation, it may move for an extension of time. After the investigation is concluded and once the findings are filed, the Commission will set an evidentiary hearing to determine if the complaint should be dismissed for lack of jurisdiction.

DATED at Salt Lake City, Utah, this 22nd day of February, 2010.

/s/ Ruben H. Arredondo
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary
G#65325