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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN THE MATTER OF THE  
REQUEST OF PINEVIEW WEST  
WATER COMPANY FOR  
APPROVAL OF A RATE INCREASE

Docket No. 09-2438-01

MOTION OF DIVISION OF PUBLIC  
UTILITIES FOR STAY OF  
PROCEEDINGS DUE TO  
APPLICANTS' FILING OF  
COMPLAINT IN THIRD DISTRICT  
COURT AND REQUESTING  
SHORTENED RESPONSE TIME TO  
THIS MOTION

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The Division of Public Utilities hereby submits this motion seeking stay of the  
aforecaptioned proceedings before the Public Service Commission (Commission) due  
to Titan Development, LLC, Pineview Estates, LLC, and North Eden Acres, LLC,  
(Applicants) filing a complaint on October 19, 2009 in Third District Court (Complaint)  
addressing issues virtually identical to those currently before the Commission. Even  
though the Complaint had already been filed in Third District Court, during the October  
20, 2009 hearing, counsel for the Applicants did not disclose the Third District Court  
filing. Pineview was apparently served with the Complaint after the hearing and

provided a copy to the Division. A copy of Applicants' Complaint filing is attached as Attachment 1. In the Complaint, the Applicants allege that the Third District Court has jurisdiction over the purported indebtedness, which was the subject of (1) Applicants' Application for Review and Request for Rehearing, (2) the hearing held October 20, 2009, and (3) identified as the subject of posthearing briefs. At the conclusion of the October 20, 2009 hearing, the parties were invited to file posthearing briefs with initial briefs being due November 5, 2009 and reply briefs being due November 16, 2009. Due to the rapidly approaching due date for the initial briefs, the Division requests that the time to respond to this motion be shortened to three days and respectfully requests an expedited decision from the Commission granting or denying the requested stay.

The Division's support for its motion is set forth below. As the Division has consistently stated during these proceedings, including at the October 20, 2009 hearing, and as the Division would put forth in much more detail in its posthearing briefs, the Division believes that the existence of the indebtedness is a contractual matter to be litigated in district court and is thus outside the purview and jurisdiction of the Commission. See *Garkane Power Association v. Public Service Commission*, 681 P.2d 1196, 1207 (Utah 1984) wherein the Utah Supreme Court stated:

There can be no doubt not every contract entered into by a public utility is subject to the jurisdiction of the PSC. Many contracts for the purchase of supplies and equipment, and other contracts dealing with the ordinary conduct of a business, are contracts that could be litigated only in a district court and not before the PSC.

Seemingly Applicants agree that the proper forum is in state court, not before the Commission, because Applicants chose to file the Complaint on October 19, 2009 in Third District Court, claiming that that court has jurisdiction. Also, the goal of judicial

economy supports staying these proceedings before the Commission. Because the Applicants have chosen to most recently pursue claims in a different forum, claims virtually identical to those at issue before the Commission, it is appropriate to stay proceedings in this docket until the Third District Court renders its decision regarding those claims. Once the Third District Court determines if there is a valid contract, ratemaking issues associated with that decision could be addressed before the Commission. Finally, the Division respectfully requests that the Commission shorten the allowed time to respond to this motion to three calendar days so that the Commission can issue timely its decision regarding this motion for stay.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of October 2009.

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Patricia E. Schmid  
Michael L. Ginsberg  
Attorneys for the  
Division of Public Utilities

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the MOTION OF DIVISION OF PUBLIC UTILITIES FOR STAY OF PROCEEDINGS DUE TO APPLICANTS' FILING OF COMPLAINT IN THIRD DISTRICT COURT AND REQUESTING SHORTENED RESPONSE TIME as served upon the following persons by email on this \_\_\_\_\_ day of October 2009.

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# ATTACHMENT 1