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Attorneys for Applicant
Deepwater Distribution Company

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In The Matter of the Application of)	DOCKET NO. 86-999-08
Deepwater Deepwater Distribution)	
Company, Inc. for Exemption)	MEMORANDUM IN SUPPORT OF
)	MOTION TO STAY
)	ORDER TO SHOW CAUSE
)	PROCEEDINGS

Deepwater Distribution Company (“Deepwater”) hereby respectfully submits this memorandum in support of its Motion to Stay the Division of Public Utilities’ Request for Agency Action For an Order To Show Cause Requiring Deepwater Distribution Company, Inc., to Obtain a Certificate of Public Convenience and Necessity to Provide Service (“Order to Show Cause proceedings”) pending review and reconsideration of Deepwater’s request for exemption by the Utah Public Service Commission (the “Commission”).

On September 10, 2009, the Division of Public Utilities (“Division”) initiated the Order to Show Cause proceedings by filing a request for agency action. On that same day, Deepwater

filed its request for review and rehearing regarding its application for exemption. The Commission had denied Deepwater's application for exemption on August 11, 2009, and Deepwater timely filed its request for rehearing. On September 30, 2009, the Commission granted Deepwater's request for review. Until the Commission has resolved the underlying questions of jurisdiction and Deepwater's request for an exemption, the Division's Order to Show Cause proceedings are premature and without legal foundation.

As explained in detail in Deepwater's Reply Memorandum in Support of its Request for Agency Review and Rehearing (attached hereto as Exhibit 1), Deepwater would not be subject to the Order to Show Cause proceedings if the Commission reverses its Order on rehearing and holds that Deepwater qualified for an exemption from regulation. The Order, and its inherent finding of jurisdiction over Deepwater, is a prerequisite to Deepwater's involvement in the Order to Show Cause proceeding. Accordingly, the Order to Show Cause proceeding cannot go forward until the Commission has issued a final decision on jurisdiction and either approved or denied Deepwater's request for exemption.

Moreover, the Commission should grant the stay because there is no harm to the Division in staying the Order to Show Cause proceeding pending the results of the requested rehearing. In the analogous situations in state court, where a party has moved for a new trial, or a motion to alter a judgment, the trial court can grant a motion to stay "the execution of, or any proceedings to enforce" the order. Utah R. Civ. P. 62(b). This discretion is made solely in the court's "discretion and on such conditions for the security of the adverse party as are proper." *Id.* Here, the Division does not stand to recover a monetary award or any other judgment that would be at

risk should the Commission stay this proceeding until rehearing of the request for exemption is completed.

For all the foregoing reasons, as well as those contained in Deepwater's Reply Memorandum, the Commission should stay the Order to Show Cause proceedings pending review and rehearing of Deepwater's request for exemption.

DATED this 1st day of October, 2009.

FLITTON & SWENSEN

/S/

John S. Flitton

Lara A. Swensen

Attorneys for Deepwater Distribution Company

CERTIFICATE OF SERVICE

I hereby certify that on the 1st of October, 2009, I did cause to be sent, by electronic mail and by U.S. Mail, postage prepaid, a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO STAY ORDER TO SHOW CAUSE PROCEEDINGS to the following:

Patricia Schmid
Assistant Attorney General
Division of Public Utilities
Heber Wells Building
160 East 300 South, 5th Floor
Salt Lake City, UT 84111

Public Service Commission (5 copies)
Heber Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

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