

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)	
Rodney Dansie against Hi-Country Estates)	<u>DOCKET NO. 13-2195-01</u>
Homeowners Association)	
)	<u>REPORT AND ORDER</u>

ISSUED: August 26, 2013

SYNOPSIS

By this order the Commission declines, at this stage of the proceeding, to revise the questioned language in the July 16, 2013, order.

By The Commission:

I. BACKGROUND

On June 13, 2013, Rodney Dansie (“Mr. Dansie”) filed a formal complaint against Hi-Country Estates Homeowners Association (“Hi-Country”) in this docket. Mr. Dansie’s complaint was premised on a summons and complaint he was served by Hi-Country, which alleges certain standby and late fees are due and owing by Mr. Dansie and others in a case presently pending in Third District Court.¹ Mr. Dansie asked the Commission to put the summons “on hold”² and enforce a well agreement against Hi-Country which was the subject of a 2011 Utah Court of Appeals decision.³ Mr. Dansie’s complaint states: “We believe that the PSC lacks jurisdiction on [sic] this Contract matter. However, we respectfully request that the PSC review this matter and[,] if necessary[,] conduct hearings”⁴

¹ See *Hi-Country Estates Homeowners Association v. The Jesse Rodney Dansie Living Trust, et al.*, Case No. _____, filed _____ 2013, Third District Court, West Jordan.

² Formal Complaint at 1.

³ See *Hi-Country Estates Homeowners Association v. Bagley & Company, et al.*, 2011 UT App. 252 (Amended Memorandum Decision).

⁴ Formal Complaint at 3 (emphasis added).

On July 11, 2013, the Division of Public Utilities (“Division”) filed a recommendation to dismiss Mr. Dansie’s complaint.⁵ Similarly, Hi-Country contended Mr. Dansie’s complaint should be dismissed.⁶ In part, Hi-Country asserted: “If Mr. Dansie believes that he has defenses against Hi-Country’s claims, Mr. Dansie can raise those to the district court. The Commission is not the proper forum for these arguments to be made or heard.”⁷

On July 16, 2013, the Commission dismissed Mr. Dansie’s formal complaint for lack of jurisdiction.⁸ In so doing, the Commission stated:

[W]e agree with the parties’ general assessment that jurisdiction over this matter, as presently presented, is not properly before the Commission. The summons and complaint about which Mr. Dansie complains is pending before the district court and involves a contract (i.e., a well agreement) not within the Commission’s jurisdiction. It is, therefore, before the district court that Mr. Dansie’s arguments should be raised.⁹

On August 14, 2013, Hi-Country filed a request for review in which it states the sentence underlined above “could cause confusion in the ongoing general rate case [filed by Hi-Country in] . . . Docket No. 13-2195-020 . . . , and therefore [Hi-Country] requests that the Commission amend this sentence to provide clarification.”¹⁰ Without specifically arguing the issue of jurisdiction, Hi-Country simply concludes the underlined sentence above runs counter to the law and prior dockets before the Commission involving the Dansie well agreement.¹¹

⁵ See Division Memorandum, filed July 11, 2013. The Division’s recommendation does not address the issue of jurisdiction.

⁶ See Response to Formal Complaint of J. Rodney Dansie, filed July 10, 2013.

⁷ Id. at 1 (emphasis added).

⁸ See Order of Dismissal for Lack of Jurisdiction, issued July 16, 2013.

⁹ Id. at 2 (emphasis added).

¹⁰ Request for Review at 1, filed August 14, 2013.

¹¹ See id. at 1-2.

II. DISCUSSION, FINDINGS, AND CONCLUSION

The Commission understands the concern raised by Hi-Country. Nevertheless, the Commission declines to reconsider its prior order for these reasons. First, the Commission issued an order on August 6, 2013, in Docket No. 13-2195-02 determining Hi-Country's application for a rate case is incomplete.¹² Thus, given the current status of Hi-Country's application in Docket 13-2195-02, Hi-Country's argument is moot.

Next, mootness notwithstanding, the briefing in this docket is inadequate to justify reconsideration. Thus, if and when Hi-Country completes its rate increase application and the docket is resumed, any party may address the issue of jurisdiction "at any point during the proceeding[]." ¹³

Whether the motion challenging subject matter jurisdiction is brought under *Rule 12(b)(1)* or under *Rule 56*, the burden of the party seeking to establish jurisdiction "remains essentially the same--they must present affidavits or other evidence sufficient to establish the court's subject matter jurisdiction by a preponderance of the evidence."¹⁴

To argue, as Hi-Country has done in this docket, that jurisdiction can be implied through other dockets where the Commission purportedly addressed the Dansie water well agreement, and citing Utah appellate court cases without directly addressing the issue of jurisdiction, is insufficient. Therefore, the Commission declines to reconsider its prior ruling.

¹² See Order Determining Application for Rate Case is Incomplete, and Cancelling Scheduling Conference, issued August 6, 2013.

¹³ *Utah Dep't of Bus. Regulations, et al. v. Public Serv. Comm'n of Utah*, 602 P.2d 696, 698 (Utah 1979).

¹⁴ *Lantec, Inc. v. Novell, Inc.*, No. 2:95-CIV-97-ST, 2000 U.S. Dist. Lexis 19905, at *10 (D. Ut. Sept. 14, 2000) (unpublished opinion) (citing *Spectrum Emergency Care, Inc.*, 190 F.3d 1156, 1160 n.5 (10th Cir. 1999), attached hereto as Exhibit A.

III. ORDER

The Commission declines, at this stage of the proceeding, to revise the questioned language in the July 16, 2013, order.

DATED at Salt Lake City, Utah, this 26th day of August, 2013.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 26th day of August, 2013, as the Report and Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DH#246501

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 26th day of August, 2013, a true and correct copy of the foregoing Report and Order was served upon the following as indicated below:

By U.S. Mail:

Rodney Dansie
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By Electronic-Mail:

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Administrative Assistant

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EXHIBIT A

Lantec, Inc. v. Novell, Inc., No. 2:95-CIV-97-ST, 2000 U.S. Dist. Lexis 19905 (D. Ut. Sept. 14, 2000)
(unpublished opinion).