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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Hi-Country Estates Homeowners Association for Approval of Its Proposed Water Rate Schedules and Water Service Regulation)
) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO EXCLUDE**
) **INADMISSIBLE PORTIONS OF**
) **DIRECT TESTIMONY OF**
) **RODNEY DANSIE**
)
)
) Docket No. 13-2195-02

Hi-Country Estates Homeowners Association (“Hi-Country”), by and through its undersigned counsel, Smith Hartvigsen, PLLC, hereby submits this Memorandum in support of its Motion to Exclude Inadmissible Portions of Direct Testimony of Rodney Dansie, and requests that portions of the direct testimony filed by Intervenor Rodney Dansie (“Dansie”) on January 30th, 2014, be excluded for the reasons set forth herein.

INTRODUCTION

On January 30th, 2014, Intervenor Dansie filed prefiled written testimony in the above-captioned docket. Dansie’s prefiled testimony, and indeed his involvement with Hi-Country generally, focuses on a Well Lease Agreement made in 1977 between Jessie H. Dansie and Gerald H. Bagley and an amendment to that agreement made in 1985 (together, the “Well Lease Agreement”). For purposes of this Memorandum, “Dansie” means both J. Rodney Dansie as an

individual and as a representative of the Dansie Trust, as the facts of the case or context may require. Although the term of the lease for the actual well as contemplated by the Well Lease Agreement has long since expired, the Well Lease Agreement has nonetheless been the subject of extensive litigation during the preceding decades between Dansie and Hi-Country.

ARGUMENT

Mr. Dansie, through his prefiled testimony, reaches numerous legal conclusions that are inappropriate for a lay witness, or possibly any witness, to make. Hi-Country acknowledges that multiple court cases over many years have been litigated in an attempt to establish the “meaning” of the Well Lease Agreement; accordingly, Hi-Country makes no objection to citations by Mr. Dansie to various court opinions. Hi-Country does, however, object to the variety of legal conclusions reached by Mr. Dansie and presented as facts in his prefiled testimony. Irrelevant evidence is not admissible. Utah R. Evid. 402. Accordingly, Dansie’s legal conclusions are not admissible.

1. The personal interpretations by Dansie of the Well Lease Agreement are irrelevant.

The Utah Administrative Procedures Act provides that a hearing officer may “exclude evidence that is irrelevant, immaterial, or unduly repetitious.” Utah Code Ann. § 63G-4-206(1)(b)(i) (2013). Many of the statements by Mr. Dansie in his testimony, as detailed in this Memorandum, are just that and should be excluded. His opinions as to the meaning of the Well Lease Agreement are irrelevant in light of the years of litigation and numerous court opinions on that very topic. Indeed, Mr. Dansie has repeated his chant of “free water, free water” for decades and maintains that demand throughout his testimony, while conveniently ignoring the various court opinions.

2. Dansie is not a legal expert qualified to provide opinion testimony as to the meaning of a contract

By the Utah Rules of Evidence, opinion testimony offered by a lay witness is limited to opinions that are “(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Utah R. Evid. 701. Even without regard for the Rules of Evidence, testimony before the Commission must necessarily be justified using similar logic to allow orderly adjudication of matters before the Commission. Even if, in some hypothetical situation, the opinions of a legal expert could possibly be admissible as to the meaning of a contract, Mr. Dansie is not a trained legal expert and is unqualified to make any such statements in his testimony—particularly in light of the voluminous court record on this topic to which Mr. Dansie could presumably cite.

3. Interpretation of contract provisions is a matter of law and not the proper subject of opinion testimony

Additionally, interpretation of contract provisions is a question of law. *See e.g., Bodell Constr. Co. v. Robbins*, 2009 UT 52, ¶ 16, 215 P.3d 933; *Zions First Nat'l Bank, N.A. v. Nat'l Am. Title Ins. Co.*, 749 P.2d 651, 653 (Utah 1988). In the present situation, there can be no question that interpretation of the Well Lease Agreement is a matter of law. Indeed, neither party to these current proceedings was a even party to the Well Lease Agreement when it was made over three decades ago. Accordingly, it is impossible that Dansie would have opinion testimony regarding the Well Lease Agreement that would be admissible.

4. Legal conclusions in Dansie’s testimony should be excluded

The following portions of the Direct Testimony of Rodney Dansie listed below are improper legal conclusions and should be excluded based on the foregoing reasoning. Note that the relevant portions of Dansie's testimony are italicized and the line number references include page numbers as the line numbers are not continuous throughout the document filed by Dansie.

Page 2, Lines 14-15: "*Specifically, I have an agreement --- Well Lease Agreement --- with Hi-Country Estates that prohibits them from charging me the proposed charge of \$3.85/1000 gallons.*" This statement attempts to interpret the Well Lease Agreement, purporting to reach a legal conclusion about what rates Hi-Country, as a public utility, may charge to Dansie as a customer.

Page 2, Lines 17-18: "*I have the right to receive water from the Company under the terms of the Well Lease Agreement and am not subject to the proposed rate increase.*" This statement again reaches a legal conclusion about what Hi-Country, as a public utility, may or may not do and also makes a legal conclusion about the meaning of the Well Lease Agreement.

Pages 3-4, Lines 27-3: "*That quiet-title action did not effect [sic] the terms and conditions of the Well Lease Agreement. Hi-Country Estates Homeowners Association received ownership of the water system along with all of the rights and obligations attendant to that system.*" This statement reaches a legal conclusion about the legal effect of the action that quieted title to the water system in Hi-Country without citing to any legal authority.

Page 4, Lines 10-11: "*Along with my siblings, we are the successors-in-interest to his interest in the Well Lease Agreement.*" This statement is a legal conclusion about the duration of an agreement upon transfer to a trust and eventual death of a party to the agreement and about the rights in the Well Lease Agreement that may or may not have been transferred to Dansie.

Page 5, Lines 9-10: “*As a result, those PSC findings should have no bearing on the instant rate case.*” This statement is a legal conclusion about the precedential authority of prior findings of the Utah Public Service Commission, a question which is clearly a matter of law.

Page 5, Lines 11-12: “*This means that the Dansies are entitled to receive water under the terms of the Well Lease Agreement at no cost.*” This statement is a legal conclusion about the meaning of a provision of the Well Lease Agreement.

Page 6, Lines 4-8: “*As a result, the Dansie Family is entitled to the benefits of the Well Lease Agreement. Allowing the Association’s arguments that the prior findings of the PSC with respect to the Well Lease Agreement should be given effect over the judgments of the Court would undermine the extensive prior litigation and conflict with the principles of res judicata.*” This is a legal conclusion as to the effect of the Well Lease Agreement and the related court cases in the present proceedings before the Public Service Commission.

Page 6, Lines 12-13: “*Hi-Country has improperly disconnected Well No. 1 from the water system . . .*” This is a legal conclusion, apparently referring to a purported obligation of Hi-Country to connect to a particular well and is improper opinion testimony.

Page 6, Lines 16-17: “*Under the terms of the Agreement, Hi-Country is obligated to pay the costs of reconnection.*” This statement is an improper legal conclusion as to the obligations, if any, of the parties under the Well Lease Agreement.

Page 6, Lines 22-23: “*There is no question that the Dansies performed all of their obligations under the Well Lease Agreement.*” This statement is a legal conclusion and is not proper lay opinion testimony.

Page 7, Lines 11-13: “*Well Lease Agreement provides that Hi-Country is liable to the Dansies for legal costs and fees associated with Public Service Commission proceedings. Those costs are owed to the Dansies and should be included in the rate case.*” This statement is a legal conclusion as to the meaning of the Well Lease Agreement and the purported obligations of Hi-Country thereunder.

CONCLUSION

Mr. Dansie, through his prefiled testimony, has made numerous legal conclusions that are irrelevant and beyond the proper scope of his testimony; accordingly, those portions of his testimony making such conclusions should be excluded.

Dated this 20th day of February, 2014

/s/ J. Craig Smith
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*Attorneys for Hi-Country Estates
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2014, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE INADMISSIBLE PORTIONS OF DIRECT TESTIMONY OF RODNEY DANSIE** by causing the same to be delivered to the following:

Via hand delivery and email to:

UTAH PUBLIC SERVICE COMMISSION
c/o Gary Widerburg, Commission Secretary
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/s/ J. Craig Smith
