

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the
Application of Hi-Country
Estates Homeowners Association Docket No. 13-2195-02
for Approval of Its Proposed
Water Rate Schedules and Water
Service Regulations

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
 Hearing Room 451
 160 East 300 South
 Salt Lake City, Utah

DATE: Tuesday, March 4, 2014

TIME: 9:09 a.m.

REPORTED BY: Scott M. Knight, RPR

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A P P E A R A N C E S

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1 PROCEEDINGS

2 THE HEARING OFFICER: We are on the record this
3 morning. And thank you all for being here. My name is
4 Melanie Reif, and I serve as the administrative law judge to
5 the Utah Public Service Commission. This morning is the
6 scheduled hearing in Docket 13-2195-02 entitled "In the
7 Matter of the Application of Hi-Country Estates Homeowners
8 Association for Approval of Its Proposed Water Rate Schedule
9 and Water Service Regulations."

10 Let's start by taking appearances. And let's
11 start with you, Mr. Smith.

12 MR. SMITH: Thank you. Craig--oh. Turn on my
13 mike. Craig Smith and Adam Long on behalf of the applicant
14 Hi-Country Estates Homeowners Association.

15 THE HEARING OFFICER: Thank you.
16 Ms. Schmid.

17 MS. SCHMID: Patricia E. Schmid with the Attorney
18 General's Office on behalf of the Division of Public
19 Utilities.

20 MR. FLITTON: John Flitton behalf of the
21 intervenors, the Dansies.

22 THE HEARING OFFICER: And Mr. Flitton, just a
23 reminder: If you could kindly make sure your microphone is
24 on.

25 MR. FLITTON: Sorry.

1 THE HEARING OFFICER: For those who have
2 identified themselves, I wish also note there is another
3 party here, an intervenor. Mr. Coon is here, and he does
4 not wish to sit at the table. So I just want to make note
5 for the record that he is present.

6 Mr. Coon, if you change your mind at any point and
7 wish to take part in this hearing in more of an active role,
8 you're welcome to do that at any point.

9 And just to back up, I wish to know if the parties
10 have in--also with them their witnesses.

11 Mr. Smith, do you have a witness with you today?

12 MR. SMITH: Yes--yes, we do.

13 THE HEARING OFFICER: Okay. And could you
14 identify your witnesses or witness?

15 MR. SMITH: Yeah. We have three witnesses here.
16 Two of them are here; one's coming. We have Randy Crane,
17 who's a representative of the homeowners association. We
18 have Krystal Fishlock-McCauley, who is our accounting
19 expert, financial person. And then we--we'll have--also
20 have with us Justun Edwards, and he is the--he's employed by
21 Herriman City. Herriman City operates the water system on
22 our behalf under contract. And he's--he's the person in
23 charge of operating the water system.

24 THE HEARING OFFICER: Okay. When do you
25 anticipate Mr. Edwards arriving?

1 MR. SMITH: We'd anticipate him arriving at eleven
2 o'clock.

3 THE HEARING OFFICER: Okay. Thank you.

4 Ms. Schmid, your witnesses?

5 MS. SCHMID: Yes, the Division intends to present
6 Ms. Shauna Benvegnu-Springer as its witness, and she is
7 present in the hearing room today.

8 THE HEARING OFFICER: Okay. Thank you.

9 And, Mr. Flitton, I know your motion is pending,
10 and we will get to that in just a minute.

11 MR. FLITTON: Okay. Thank you.

12 THE HEARING OFFICER: All right. Very well.
13 Thank you again, everyone, for being here. And I--I wish--
14 before we get into the hearing itself, I wish to address the
15 motion that's pending. Mr. Flitton, this motion was filed
16 by you yesterday, and it's entitled "Intervenor Rodney
17 Dansie's Motion for Continuance of Rate Case Hearing."

18 MR. FLITTON: Correct.

19 THE HEARING OFFICER: This motion was filed and in
20 the Commission office at 4:49 yesterday afternoon. Sir,
21 there--there is a certificate attached. I do note that the
22 parties are purported to have been served, although the
23 mailing date on this is the 3rd, so I'm not entirely certain
24 that all parties were aware.

25 MR. FLITTON: That must be an error.

1 THE HEARING OFFICER: When was--

2 MR. FLITTON: I spoke with both the DPU's counsel
3 and Mr. Smith yesterday about this, and we had conversations
4 throughout the day. I had a call from--from the counsel for
5 the PSC, you know, late in the day, and so we filed a
6 motion. You know, following those discussions, they could
7 not reach you.

8 THE HEARING OFFICER: I'm sorry. I didn't
9 understand.

10 MR. FLITTON: They could not reach you, so we
11 filed a motion late in the day.

12 THE HEARING OFFICER: Okay. That would be the
13 normal protocol in such a--

14 MR. FLITTON: Right.

15 THE HEARING OFFICER: --in such a case, to file a
16 motion regardless, just for future reference.

17 So do you know whether the date on this is
18 incorrect?

19 MR. FLITTON: It is. It was filed yesterday.

20 THE HEARING OFFICER: Well, it was filed
21 yesterday, but the certificate of service says it was mailed
22 yesterday.

23 MR. FLITTON: It was the wrong--

24 THE HEARING OFFICER: It was mailed yesterday?

25 MR. FLITTON: Yes, it was.

1 THE HEARING OFFICER: Okay.

2 MR. FLITTON: It was served electronically as
3 well.

4 THE HEARING OFFICER: And were the Coons part of
5 your conversation about this?

6 MR. FLITTON: They were not.

7 THE HEARING OFFICER: You're aware that they are
8 intervening parties and have the right to be fully
9 informed--

10 MR. FLITTON: Sure.

11 THE HEARING OFFICER: --as any other party?

12 MR. FLITTON: Sure.

13 THE HEARING OFFICER: Sir, this is your motion,
14 and I'd like to give you the opportunity to present your
15 position on the motion. And then I will go and ask the same
16 for each of the other parties.

17 Mr. Coon, if you wish to participate in this
18 conversation, again, I invite you to come to one of the
19 microphones.

20 So, Mr. Flitton, the floor is yours.

21 MR. FLITTON: Okay. It's very simple. I was
22 informed at about noon yesterday by my client that he had
23 suffered a fall--through his family that he had suffered a
24 fall and was taken to the hospital and he's currently in the
25 hospital and he's unable to be here.

1 THE HEARING OFFICER: Do you know how long he's
2 anticipated to be in the hospital?

3 MR. FLITTON: No. He doesn't know for sure.

4 THE HEARING OFFICER: Have you spoken to him?

5 MR. FLITTON: No, I've spoken to his brother, but
6 he's been in the hospital. I'm not sure when the fall
7 happened, but they said that he would be at least a couple
8 of days before he's released from the hospital.

9 THE HEARING OFFICER: Okay. And do you know when
10 he was originally hospitalized?

11 MR. FLITTON: I don't. I think it was yesterday,
12 but I'm not--I'm not positive.

13 THE HEARING OFFICER: Yesterday being Monday?

14 MR. FLITTON: Yeah.

15 THE HEARING OFFICER: Okay. And what is it that
16 you're seeking, sir?

17 MR. FLITTON: Just the continuance of the hearing
18 so that he can testify and participate.

19 THE HEARING OFFICER: Okay. And other than the
20 testimony that we received in the case from Mr. Dansie,
21 what--what new information would Mr. Dansie be presenting
22 that we haven't already received?

23 MR. FLITTON: I mean, it depends on what's--what--
24 the testimony that's given here. I mean, you know, I'm sure
25 there are things that would be responsive to other testimony

1 that's presented here.

2 THE HEARING OFFICER: Assuming that no new issues
3 were raised, what would--

4 MR. FLITTON: I'm not sure--I'm not sure there
5 would be anything else.

6 THE HEARING OFFICER: Okay. Mr. Flitton, are you
7 aware that the Commission is statutorily required to issue a
8 decision in 240 days of the completeness of the application
9 from Mr. Smith?

10 MR. FLITTON: No, but--yes, I . . .

11 THE HEARING OFFICER: Okay. Just--just to let you
12 know, the Commission is statutorily required to issue a
13 decision within 240 days, at a very short window of time.
14 And if we don't do that, what happens in the result--and
15 this is also by statute--the application is deemed--let's
16 see--I'll just read to you what--what it says here in the
17 code. It says, "If the Commission does not issue a final
18 written order within 240 days, the public utilities proposed
19 rate increase or decrease is final."

20 So if--if this matter were to be postponed and the
21 Commission was unable to meet its deadline--and that's the
22 reason why we hold the scheduling conference--

23 MR. FLITTON: Right.

24 THE HEARING OFFICER: --to give us enough of a
25 window--it's quite possible that the things that Mr. Dansie

1 is arguing against in his testimony that has been prefiled
2 could be made moot by the fact that the Commission wasn't
3 able to get its order out. So it's--what I'm trying to
4 emphasize is, it's essential that we have a schedule and
5 that the 240 days be strictly adhered to.

6 MR. FLITTON: No, and I appreciate that. But, you
7 know, we're in kind of a--between a rock and a hard place
8 here because, you know, he wants to participate. He is
9 unable to. His circumstances are beyond anybody's control.
10 And, you know, he would like to be heard.

11 THE HEARING OFFICER: Right. And I--I've heard
12 what you've had to say about that. Is there anything more
13 that you wish to add?

14 MR. FLITTON: No, that's it.

15 THE HEARING OFFICER: Okay. Mr. Smith?

16 MR. SMITH: Thank you. Yeah, we were notified.
17 Mr. Flitton called me yesterday. And I did get a copy of
18 his motion yesterday--called me yesterday to inform me about
19 Mr. Dansie's situation. Obviously, we--my clients are
20 anxious to get this thing done, but also we don't want to
21 be--I've been doing this kind of stuff long enough to know,
22 you know, the wheel turns--comes around, if you know what I
23 mean by that, which means at some point we all have those
24 kinds of situations. And so, you know, I don't want to
25 oppose if we can have a very short continuance.

1 So I'm not--I'm not--I'm willing to agree to a
2 short continuance, if it can be a short continuance, and
3 also with the understanding that hopefully Mr. Dansie's
4 health condition improves, but if it doesn't that we still
5 go forward--I know he has siblings who are also members of
6 the trust that is the--I think that's the main intervenor is
7 the family trust they have--so that we get this thing done.

8 So that's kind of our position. We--you know, we
9 understand this is something that's unexpected and obviously
10 can't plan for and--but we do want to get done within this
11 240 days.

12 THE HEARING OFFICER: You're anticipating my next
13 question, which is that you do understand the importance of
14 the 240 days?

15 MR. SMITH: I do.

16 THE HEARING OFFICER: And how short of a time
17 frame that puts us in as far as getting an order out, even
18 assuming that we have a hearing today?

19 You've--you've heard my question of Mr. Flitton
20 about the testimony that's been filed in this case. Do you
21 anticipate new issues arising in this hearing that haven't
22 already been briefed for the Commission?

23 MR. SMITH: I don't think so. I think--you know,
24 the--first of all, most of the issues we are in the
25 process--we have--we are agreeing with the Division for most

1 of the issues, with their take on it. Obviously, the issue
2 involving Mr. Dansie, his intervention, is not something,
3 obviously, we're going to have an agreement on. But we
4 think we've briefed that with our motion for summary
5 judgment, that that's been fully--not fully briefed,
6 because, obviously, we haven't had the full briefing done,
7 but I think we've raised the issues as we see them as being
8 important issues.

9 THE HEARING OFFICER: And, Mr. Smith, do you see
10 that the Company would be--Mr. Flitton has identified that
11 he would desire that his client be here to have the
12 opportunity to participate in the hearing. But inasmuch as
13 Mr. Dansie is not here, isn't it the Company who would be
14 prejudiced in this matter by not having the opportunity to
15 cross-examine him?

16 MR. SMITH: Yeah. No, I think that's right. His
17 testimony's been submitted, and we would be the ones not
18 having the opportunity to do cross-examination.

19 THE HEARING OFFICER: And to that extent, if
20 Mr. Dansie--if the hearing did go forward and if there were
21 issues that had not already been raised and testimony
22 submitted on, would you be willing to accept in that
23 situation a post-filing brief by Mr. Dansie addressing
24 issues that came up in the hearing that had not been
25 addressed previously and--and had testimony filed on? In

1 other words, absolutely brand-new issues, not rehashing
2 issues that have already been identified and outlined in
3 each of the respective testimony that's been filed?

4 MR. SMITH: I think that's one way that could be
5 handled. I think the issue involving Mr. Dansie and--and my
6 client, the Company, is more of a legal issue than a factual
7 issue. And yeah, I think that's--those are legal issues
8 that are mostly involved there.

9 THE HEARING OFFICER: Okay. Okay. Thank you.
10 Anything further?

11 MR. SMITH: No.

12 THE HEARING OFFICER: Okay. Ms. Schmid.

13 MS. SCHMID: Thank you. The Division supports the
14 motion to continue. Mr. Dansie's circumstance is unusual
15 and wasn't able to be anticipated. As an intervenor, he is
16 entitled to and was relying upon the ability to participate
17 fully and fairly in this hearing. Not only does Mr. Dansie
18 and the Dansies apparently have issues concerning the well
19 lease, but also, I note that he owns two lots currently
20 within the area served by Hi-Country. I believe that those
21 lots are on a standby--in a standby status, but I am not
22 quite sure.

23 The Division supports a short continuance. If it
24 appears that Mr. Dansie is going to be unable to testify,
25 perhaps his testimony could be adopted by another in the

1 trust and the hearing could proceed on that basis, with
2 cross-examination of that witness being part of the
3 continued hearing.

4 THE HEARING OFFICER: Do you have such a person in
5 mind, or do you know if such a person is in mind?

6 MS. SCHMID: I know there are other members of the
7 trust. I do not know them personally, nor do I know of
8 their willingness or capacity to adopt such testimony. I
9 remember that at the scheduling conference, one of
10 Mr. Dansie's brothers was present.

11 THE HEARING OFFICER: I believe it's Mr. Dansie
12 who has intervened, though, isn't it?

13 MS. SCHMID: I believe it is, but there is some
14 question as to whether--it might just be in my mind as to
15 whether or not it was Mr. Dansie or the trust or both. It
16 possibly could have been Mr. Dansie individually, in which
17 case my suggestion to have testimony adopted may not be a
18 very good one.

19 THE HEARING OFFICER: I'm looking at the order
20 granting intervention, and the order granting intervention
21 is to Mr. Dansie.

22 MS. SCHMID: Okay.

23 THE HEARING OFFICER: So--so I don't think that
24 that would accommodate the other parties being treated as
25 though they had intervened.

1 And I'm also looking at--yes, the motion for
2 intervention was for Mr. Dansie, so . . .

3 MS. SCHMID: I'll note that the Division has had
4 witnesses adopt the witness of another and testify, but I
5 also recognize that the Division is in a different position,
6 as it is part of the Department of Commerce and its
7 witnesses are employees of the state.

8 THE HEARING OFFICER: And how would that apply to
9 this case?

10 MS. SCHMID: I was using that as an analogy but
11 noting that there are definitely factual differences between
12 Mr. Dansie and any of his relatives and the Division.

13 THE HEARING OFFICER: Okay. So how would--how
14 would that play out under your analogy?

15 MS. SCHMID: It perhaps would be possible,
16 although perhaps likely not advisable, for Mr. Dansie's
17 testimony to be adopted by another.

18 THE HEARING OFFICER: And that another would be
19 who?

20 MS. SCHMID: My guess would be another member of
21 his family who is familiar with it. But again, I don't know
22 the circumstances to know if that would be appropriate. I
23 just put it forward as a possibility in case Mr. Dansie is
24 incapacitated for a long time.

25 THE HEARING OFFICER: How would that be legally

1 possible if Mr. Dansie is the party in this case and the
2 other individuals who are--or may be part of the trust that
3 is not a party to this matter are not intervenor--are not
4 the intervenors and are not parties to the case?

5 MS. SCHMID: I would look to see whether it would
6 be possible for Mr. Dansie to give a power of attorney or
7 other authority to that witness. But again, I do not know
8 it's possible.

9 THE HEARING OFFICER: Okay.

10 MS. SCHMID: And it perhaps was not a very good
11 suggestion.

12 THE HEARING OFFICER: Do you know if Mr. Dansie
13 has indeed given power of attorney to somebody else?

14 MS. SCHMID: I do not know. And I do not know if
15 his incapacity would prevent that from happening since his
16 accident.

17 THE HEARING OFFICER: Okay. Ms. Schmid, are you
18 aware how long Mr. Dansie may be incapacitated?

19 MS. SCHMID: I do not know. As represented by
20 Mr. Flitton and Mr. Smith, we did--Mr. Flitton and I and
21 Mr. Smith did talk yesterday. We were made aware of the
22 hospitalization early in the afternoon, if not--I can't
23 remember the exact time, but I know that there was a
24 distinct effort to coordinate with the parties--with the
25 Company and with the Division--to see what could be done.

1 And I regret that I did not think to add the Coons to that
2 discussion.

3 THE HEARING OFFICER: Okay. And you are aware of
4 the 240-day limitation that the Commission is under?

5 MS. SCHMID: Very well aware, and aware of all the
6 repercussions.

7 THE HEARING OFFICER: And that we do not waive
8 that?

9 MS. SCHMID: I understand that.

10 THE HEARING OFFICER: Okay. The motion itself--
11 and I'm--I'm--I'm mentioning--mentioning this generally--and
12 actually, before I do that, Ms. Schmid, was there anything
13 further that you wish to add?

14 MS. SCHMID: I do not wish to add anything.

15 THE HEARING OFFICER: Okay. Thank you.

16 Mr. Coon, thank you for joining us at the table.
17 If you would make sure your microphone is on. And if you
18 kindly introduce yourself, first of all, your full name.

19 MR. COON: I'm William B. Coon. I'm a resident of
20 Hi-Country Estates Phase I.

21 THE HEARING OFFICER: Thank you, sir. And you are
22 an intervenor in this case, correct?

23 MR. COON: Yes, I am.

24 THE HEARING OFFICER: And I assume by your
25 presence at the table that you wish to address this issue?

1 MR. COON: Yes, I do.

2 THE HEARING OFFICER: Please go ahead.

3 MR. COON: Okay. Good. To be simple, I do not
4 agree with a continuance.

5 THE HEARING OFFICER: Anything further, sir?

6 MR. COON: I see no reason to continue anything.
7 This has been going on so long, me as an intervenor, I could
8 not care less. I want to get it resolved and got on with.

9 THE HEARING OFFICER: And do you see any issue
10 with what's been hypothetically proposed as--as proceeding
11 today as scheduled and given--giving Mr. Dansie the
12 opportunity to, in a post-hearing brief, raise any issues
13 that haven't already been raised that might come up in the
14 hearing?

15 MR. COON: No, I don't see any reason. I think
16 that's just fine.

17 THE HEARING OFFICER: Okay. Do you wish to add
18 anything further, sir?

19 MR. COON: No, just like to see the hearing
20 continue.

21 THE HEARING OFFICER: Okay. Thank you. Thank you
22 very much.

23 Okay. So, Mr. Flitton, this may be best directed
24 at you. And in part, it's drawing on the language of your
25 motion, which indicates that Mr. Dansie's prognosis is

1 uncertain and that once he recovers, you're requesting that
2 this matter be heard and that a scheduling hearing be set to
3 move forward. And I'm assuming that you would probably want
4 that done today. It seems to me that based on the lack of
5 information of Mr. Dansie's condition and what Ms. Schmid
6 has--has even described as--that he may be incapacitated for
7 some time, we--we simply don't know when he will be
8 available. So how could we even feasibly go--

9 MR. FLITTON: My understanding is--my expectation
10 is--let me put it that way--is that he will be in the
11 hospital for a few days and then be able to--you know,
12 whatever difficulty he has, or whatever, I think he will be
13 okay. I mean, I can't be certain of that, but that's the
14 information that I have.

15 THE HEARING OFFICER: Okay. And is that based on
16 information from his doctor?

17 MR. FLITTON: It's from his brother.

18 THE HEARING OFFICER: Okay. Does anyone wish to
19 add anything further regarding the motion that's pending
20 before the Commission at this time?

21 MS. SCHMID: I do.

22 (To Mr. Flitton) Go ahead. It's your motion.

23 If--

24 MR. FLITTON: All I wanted to say is that this
25 idea of not--of moving forward and having a post-hearing

1 brief, I think that is very insufficient. I think
2 Mr. Dansie should have the opportunity to hear what's
3 presented. I think that he should be able to participate in
4 the hearing. His interests are fairly high here. You know,
5 not the only--not only does he have lots within the
6 subdivision, but he--but the well lease agreement is at
7 issue as well. And I think that it would be patently unfair
8 to deny him the opportunity to participate, to be able to
9 respond, and, you know, give further testimony. And a post-
10 hearing brief, to me, just does not meet the standards I
11 think that are required here.

12 THE HEARING OFFICER: Okay. Mr. Flitton, the
13 issues that you've identified Mr. Dansie has already filed
14 testimony on, and he has filed his direct testimony as well
15 as his surrebuttal testimony, what further information would
16 he be offering on those issues?

17 MR. FLITTON: Well, I don't know. I mean, when's
18 the last time one of these hearings stuck exactly to the
19 testimony that was filed? You know, the witnesses will
20 testify. Questions are raised. You have cross-examination.
21 That changes the testimony. And he--he should--he should
22 have the ability to respond to that.

23 THE HEARING OFFICER: Okay. And inasmuch as a new
24 issue is raised which hasn't been already briefed, why would
25 it be inadequate for him to have the opportunity to raise

1 that in a post-hearing brief?

2 MR. FLITTON: I don't know. I look at--I look at
3 that as a question of, you know, some criminal defendant not
4 being able to--

5 THE HEARING OFFICER: This is not a criminal
6 matter, sir.

7 MR. FLITTON: I understand that. But all I'm
8 suggesting is that being in the moment and hearing the
9 testimony and gauging the witnesses, gauging what they're
10 saying, there's a lot of value in that. And I think the
11 courts place a high value on that as well in terms of being
12 able to see what's happening at the time. And, you know,
13 the Supreme Court talks all the time about the fact that,
14 you know, it's hard for them to gauge the demeanor and the
15 statements of the witnesses.

16 And I think he should have the opportunity to be
17 able to participate in the proceeding rather than have the
18 proceeding go on without him and then say, "Well, you can
19 file a brief afterwards." How much--I have a concern how
20 much value that would have. I think that--that you, as an
21 administrative law judge, would appreciate seeing
22 Mr. Dansie's demeanor, understanding what he has to say,
23 hearing what he has to say out of his own mouth. I think
24 there's a value in that that's lost if you just say, "Let's
25 put that in a post-hearing brief."

1 You haven't met Mr. Dansie and you don't--you
2 don't know who he is and what he has to say. And, you know,
3 part of your job, I think, is to judge what he has to say
4 and, you know, the way he says it.

5 THE HEARING OFFICER: I understand your points,
6 Mr. Flitton. I am familiar with Mr. Dansie, I have met
7 Mr. Dansie, and I do understand your points as they relate
8 to this docket.

9 MR. FLITTON: I mean that respectfully. I just--
10 you know--he--the bottom line is, he would like to
11 participate. He would like to be here. He would like to be
12 able to give his testimony and be heard out of his own mouth
13 rather than through a brief or something else.

14 THE HEARING OFFICER: Okay. But again, I ask,
15 what is it about what he has filed so far that would be
16 different had he been here present today?

17 MR. FLITTON: I don't know. I think there's a
18 color that goes to when someone testifies. I mean, what you
19 have before you now is something on a piece of paper. And I
20 think--

21 THE HEARING OFFICER: Do you think he would
22 testify to different facts?

23 MR. FLITTON: No, not necessarily.

24 THE HEARING OFFICER: Okay.

25 MR. FLITTON: We went through those facts and, you

1 know, prepared the testimony. But I--but I--I just think
2 there's a color that goes with it that is not--you just
3 can't get from a paper document.

4 THE HEARING OFFICER: Okay. Thank you very much.

5 Ms. Schmid, you wanted to add something?

6 MS. SCHMID: Thank you. Frankly, given the
7 acrimonious nature and longstanding relationship between the
8 parties, I respectfully caution that adopting an unusual
9 procedure might, in the long run, prevent or--prevent the
10 issue from being resolved as cleanly as it might be, and
11 might indeed present opportunities for appeal.

12 Again, I say that respectfully. And I have not
13 researched or--and I do not know whether or not a
14 post-hearing brief would be sufficient. I do note, however,
15 that if Mr. Dansie is not in the courtroom or available by
16 phone, not only is he not present, but he's unable to assist
17 his counsel in cross-examining witnesses that are the
18 stand--on the stand.

19 As this is the first request for a continuance--
20 and hopefully the only request for a continuance--I urge you
21 respectfully, again, to consider a short postponement.
22 These are unusual and unexpected circumstances. The timing,
23 the notice that we received--because we received notice only
24 yesterday, the timing was certainly unfortunate and presents
25 more of a procedural and practical challenge, but again, I

1 respectfully urge that you consider a short continuance.

2 THE HEARING OFFICER: And, Ms. Schmid, do you also
3 understand that Mr. Coon has been completely left out of
4 this as a party to this matter and that there are
5 individuals here today who are seemingly interested in the
6 matter and are--are here in accordance with--with a
7 scheduling order that was issued and that will likely be
8 wishing to participate in the public witness portion of this
9 hearing which is scheduled at tomorrow noon?

10 MS. SCHMID: Yes, I do understand that. And I
11 apologize for not including Mr. Coon. That was a mistake
12 and it was something I should have remedied, and I did not.
13 I understand and appreciate the sacrifice that the
14 individuals have made to be here today. I understand that
15 passions run high, that this is a very important case to not
16 only the parties that have requested and been granted
17 intervention, but also the parties that are sitting in the
18 audience. And I do not wish to preclude anyone from
19 speaking or having an opportunity to participate as is
20 appropriate, but I do note these are unusual, uncommon,
21 unforeseen circumstances.

22 THE HEARING OFFICER: Thank you.

23 Ms. Schmid, I'm going to ask you the same question
24 that I raised with Mr. Smith: Isn't it the Company that is
25 really the party who is prejudiced by Mr. Dansie not being

1 here?

2 MS. SCHMID: I respectfully disagree. The
3 Division represents the public interest. And unless all
4 intervenors are present and participating to the extent that
5 they wish, it could be argued that not all information or
6 color--I'll use that word--was available to be presented to
7 the Commission.

8 THE HEARING OFFICER: Is it your understanding the
9 Commission makes its decisions on facts or color?

10 MS. SCHMID: It is my understanding that the
11 Commission makes its understanding on facts. It is also my
12 understanding that the Commission gauges the veracity of the
13 witness, and often, if there is an objection, say, perhaps
14 to the nature of the testimony the individual has given,
15 that the Commission will decide the weight to award such
16 facts, and that could be very well based upon the
17 credibility of the witness and examination of the witness by
18 the Commission.

19 THE HEARING OFFICER: Okay. And again,
20 Mr. Flitton has responded to the question of what additional
21 information would Mr. Dansie provide that hasn't already
22 been provided in his testimony. The response to that was
23 "None." And the offer was given that if there are--if there
24 is new information that is presented that has not already
25 been briefed and resolved--not--excuse me--not resolved, but

1 responded to by each of the respective parties in their
2 testimony that they chose to file in this matter, what harm
3 is there in giving Mr. Dansie the opportunity to respond to
4 any of those issues--again, new issues, not rehashing issues
5 that have been rehashed over time--what harm is there in
6 offering him that opportunity?

7 MS. SCHMID: Again, given the nature of the
8 relationship between these parties, it may present with an
9 unintended consequence of a route to appeal or continuation
10 of the process. I, however, have stated my opinion and the
11 position of the Division, and so I respectfully have nothing
12 more to add.

13 THE HEARING OFFICER: Okay. And to support your
14 position, Ms. Schmid, do you have a rule or statute or case
15 that would prevent the Commission from continuing this
16 matter as scheduled?

17 MS. SCHMID: I do not.

18 THE HEARING OFFICER: Okay. Thank you.
19 Mr. Flitton, same question to you, please.

20 MR. FLITTON: Which is?

21 THE HEARING OFFICER: Do you have a statute, rule,
22 or case that would prevent this matter from continuing?

23 MR. FLITTON: No. I--but I--I agree with--with
24 Ms. Schmid. I think that it is--it has been a contentious
25 process. There are a lot of issues that underlie this.

1 This isn't as simple as it appears. I mean, there's
2 litigation that's currently pending between my client and
3 Hi-Country Estates.

4 And I think that her point is very valid. And
5 that is that my client should have the opportunity to be
6 able to--to, you know, gauge the witnesses as well and
7 participate in cross-examining them and give information for
8 those things. And I think moving forward and--and denying
9 him the opportunity to participate only invites appeal. It
10 only invites issues.

11 And I just think, you know, the prudent course is
12 to--is to postpone it for a very short time. The parties,
13 you know, other than Mr. Coon are in agreement to
14 postponement and to move forward. And I think that's the
15 prudent course of action here because it includes everyone
16 to be heard and have their say, you know, understand what
17 the other parties are saying and participate. So--but as
18 far as a rule, I don't have anything additional.

19 MS. SCHMID: Pardon me.

20 THE HEARING OFFICER: Ms. Schmid.

21 MS. SCHMID: I do have something to add. My
22 witness has reminded me that in his surrebuttal testimony,
23 Mr. Dansie put forth the proposition that the Company and
24 the Division should have explored actions for sourcing the
25 water. Without him being present, we do not have the

1 ability to cross-examine on those issues.

2 Thank you.

3 THE HEARING OFFICER: Mr. Smith, do you wish to
4 add anything?

5 MR. SMITH: I don't think I have anything more to
6 add at this time.

7 THE HEARING OFFICER: Okay. And even though you
8 don't have anything more to add, I'd like to ask you a
9 question.

10 MR. SMITH: I'll do my best to answer.

11 THE HEARING OFFICER: Do you agree with the
12 general statements that have been offered, that if we
13 continue, this opens up the opportunity for further appeal
14 in this situation?

15 MR. SMITH: You know, I guess so. I think I do,
16 yeah. You know, any time they do anything that's--well,
17 unfortunately, as everybody knows--and I don't think there's
18 any--any--you know, when it's been contentious--I don't
19 think this hearing has been contentious, but there has been
20 a long history of litigation between Mr. Dansie and my
21 client.

22 THE HEARING OFFICER: Isn't it by nature an
23 ongoing appeal?

24 MR. SMITH: Seems like--seems like it goes on
25 forever, yeah.

1 THE HEARING OFFICER: So--okay. That answers my
2 question.

3 Anything further?

4 Mr.--Mr. Coon?

5 Thank you. We'll be in recess.

6 (Recess taken, 9:45-10:12 a.m.)

7 THE HEARING OFFICER: Thank you, everyone. Do we
8 have all of the parties here? Everyone . . .

9 Okay. We'll be back on the record. Thank you for
10 the delay. I wish to note that the Commission has received
11 a handwritten note during recess which states the following:
12 The parties, including Mr. Coon, propose that the public
13 witness hearing be held tomorrow as scheduled.

14 All parties are in agreement on this. And it's
15 signed Trisha Schmid, representative of the Division.

16 Mr. Flitton?

17 MR. FLITTON: Yes.

18 THE HEARING OFFICER: Could you give us a date
19 when you and Mr. Dansie will be available for this?

20 MR. FLITTON: During recess, the parties have--
21 have got together and talked. And I think the 11th, which
22 is next Tuesday, would be acceptable to us. I'm not--I
23 called to--to Mr. Dansie's brother during the recess as
24 well.

25 THE HEARING OFFICER: Yes, sir.

1 MR. FLITTON: He said that the hospital looks like
2 it's going to hold him for another two days. He didn't--he
3 didn't expand. He said there's some blood issues or
4 whatever that they're looking at. But I think Mr. Dansie
5 would be available on the 11th. And if not, then--then his
6 brother Richard would--would be willing to testify in his
7 place.

8 THE HEARING OFFICER: Okay. And you do understand
9 that you have the ability to call other witnesses?

10 MR. FLITTON: Yes, I do.

11 THE HEARING OFFICER: Okay. And you could call
12 anyone else you choose to do?

13 MR. FLITTON: Yes.

14 THE HEARING OFFICER: Okay.

15 MR. FLITTON: And I also agreed with Ms. Schmid
16 during the break that if that--if that is what has to
17 happen, if his brother Richard testified instead, then I
18 would waive any appeal rights as far as not having, you
19 know, Rodney being able to testify.

20 THE HEARING OFFICER: Okay. I'm--I'm not
21 addressing that issue per se--

22 MR. FLITTON: Right. I just want--

23 THE HEARING OFFICER: --but I recognize that you
24 have said that.

25 And is that amendable with the Division and the

1 Company and Mr. Coon?

2 MR. SMITH: We're talking about Tuesday?

3 THE HEARING OFFICER: Yeah. That would be next
4 Tuesday. And the earlier the better. Even if we can get
5 started at 8:30, that would be great.

6 MR. SMITH: Yeah, that works--that works for us.

7 THE HEARING OFFICER: Mr. Coon, is that difficult
8 for you, since you're coming from a long distance?

9 MR. COON: No.

10 THE HEARING OFFICER: Mr. Flitton, is that
11 difficult for you and/or Mr. Dansie or an alternate?

12 MR. FLITTON: No, 8:30 would be fine.

13 THE HEARING OFFICER: Okay. So--

14 MS. SCHMID: It is also fine with the Division.

15 THE HEARING OFFICER: Okay. Thank you.

16 Okay. I want to note that the Commission
17 appreciates the input on this very much and the fact that
18 you've come to an agreement on a fairly close alternative to
19 what we already have scheduled. That's important. And it's
20 mostly difficult for the Commission because we're up against
21 a very short time frame, and the longer we delay, the
22 shorter the time frame. So thank you for helping us out in
23 that regard.

24 For those here who are--who are present and plan
25 to participate in the public witness portion of this

1 hearing, that will be as scheduled. It will be tomorrow at
2 noon. And if you wish to look online for further
3 information, the scheduling order is there under this docket
4 number, which is 13-2195-02. We will take public witness
5 input at that time, and anyone is welcome to attend and
6 provide their information at that time.

7 And this hearing itself will be postponed until
8 Tuesday--that'll be the 11th of March--at 8:30 a.m. We will
9 start promptly. And please give yourself time to do
10 whatever you do before you get up here so that we can start
11 promptly. And . . .

12 The--Mr. Smith, with respect to postponing the
13 hearing, and to the extent that there are individuals here
14 or individuals who may wish to participate in that hearing
15 who are not here, is there any way that the Company has the
16 ability to convey the--there will be an order rescheduling
17 the hearing. Is there any way to get that to the customers
18 so that they know that the hearing that was scheduled for
19 today and possibly tomorrow will be rescheduled for next--
20 next Tuesday?

21 MR. SMITH: If I could just check with my client
22 on that.

23 THE HEARING OFFICER: Sure.

24 MR. SMITH: Is that--do you have e-mail or some
25 way--

1 MR. WILLIAMS: We have a limited list, less than a
2 third.

3 MR. CRANE: But we'd need to mail out, pay for
4 mailing because we've already done that once. So, gladly do
5 it. They need to pay for the mailing to do so.

6 THE HEARING OFFICER: Can you--can you just take
7 a--are you within proximity that you could hand-deliver it?

8 MR. WILLIAMS: Not legally, because we can't put
9 things in the mailbox, according to the postal service.

10 THE HEARING OFFICER: You can't deliver it to
11 their door?

12 MR. CRANE: We're over 600 acres.

13 THE HEARING OFFICER: Oh, you are? Okay. I see.
14 Well, how about a phone tree? Can you call people and let
15 them know?

16 MR. CRANE: We have a limited number of phone--
17 Hi-Country is very secretive. A lot of people don't want to
18 be on a phone tree. They don't want to be on an e-mail
19 address. They just want to live up there and be left alone.

20 THE HEARING OFFICER: Okay. For the record, sir,
21 could you identify who you are?

22 MR. CRANE: I am Randy Crane. I'm vice president
23 of the HOA.

24 THE HEARING OFFICER: Okay. Okay.

25 MR. SMITH: We'll do our best to get information

1 out.

2 THE HEARING OFFICER: You know, I will mention
3 this at the public witness hearing, and if you have the
4 ability to e-mail and/or call people just to let them know
5 about the postponement and the actual substantive hearing,
6 that would be--that would be helpful.

7 MR. SMITH: Okay.

8 THE HEARING OFFICER: There's a gentleman behind
9 you, Mr. Smith, who has a question.

10 MR. WILLIAMS: Yes. I think that most--my name is
11 Noel Williams. I'm the president of the homeowners
12 association board of directors.

13 THE HEARING OFFICER: Yes, sir.

14 MR. WILLIAMS: I think most of the people that
15 have already been notified, the thing they're going to be
16 most interested in is not this proceeding but their
17 opportunity to act as witnesses tomorrow. And that is not
18 being changed.

19 THE HEARING OFFICER: That is not being changed.
20 Is that clear with everybody? That is not being changed.
21 That will be tomorrow at noon. And I would anticipate that
22 the parties would be here to hear that input and take that
23 into consideration for your hearing next week.

24 I do--I do want to note that the original hearing
25 also reserved the day after in the event that we needed to

1 go to a second day, and that is, as far as I know, still a
2 possibility. So if it goes into the 12th, does that make it
3 difficult for you? Does that--is that an option if we
4 reserve--if we set it for the 11th and reserve the 12th?
5 Are you okay with that?

6 MS. SCHMID: The Division is fine with that.

7 MR. SMITH: And we're . . .

8 MR. LONG: Randy can't.

9 MR. CRANE: I have issues with that.

10 MR. SMITH: Well, we can get you done.

11 MR. CRANE: But I need to be for the whole thing,
12 testimony. All I can say is, I have limited vacation that I
13 can attend.

14 MR. SMITH: That could cause us a little--we're
15 going to do our best to try to get done in one day.

16 THE HEARING OFFICER: Mr. Flitton?

17 MR. FLITTON: I would think we could get it done
18 in one day. I mean, I obviously don't have an issue with
19 going over two days, but I think we can get it done in one
20 day. We'll do our best to do that.

21 THE HEARING OFFICER: We've been here for a couple
22 of days before. I just--you know, I want to be realistic,
23 and I don't want to have to schedule it out another week
24 later, you know, and coming back. So my preference would be
25 to reserve the 12th.

1 And your client, Mr. Smith, this is their
2 application.

3 MR. SMITH: I understand that, yes.

4 THE HEARING OFFICER: So I think, you know, to the
5 extent that your client--you can get your client here, that
6 would be very helpful.

7 MR. SMITH: Okay.

8 MR. FLITTON: How late could we go?

9 THE HEARING OFFICER: It could go--normally--it
10 could go--it could go till seven o'clock at night. I mean--

11 MR. FLITTON: Yeah, I think if that were the case,
12 we could make sure we get it done.

13 THE HEARING OFFICER: I mean, it could go. I
14 certainly don't--I'm not inviting that, but--

15 MR. FLITTON: No, me neither.

16 THE HEARING OFFICER: --I would like--if you
17 wanted to try to stay within a one-day--my idea of one day
18 is finish by 5:00.

19 MR. FLITTON: Right.

20 THE HEARING OFFICER: But we've been here before,
21 Mr. Flitton, and it--it's not always that short. But this
22 may be a different situation. So--okay.

23 So is there anything else that needs to be
24 addressed as far as the scheduling issue? The Commission
25 will issue a rescheduled hearing--notice of rescheduled

1 hearing. And again, for those of you who are present and
2 are interested in participating in the public witness
3 hearing, that will occur as scheduled. That will be here
4 tomorrow, and that is at 12:00 p.m. And you may want
5 to--those of you who are interested may want to take a look
6 at the notice just to make sure that you are following what
7 the Commission has requested there.

8 So are there any questions?

9 Okay.

10 MR. SMITH: None. Thank you.

11 THE HEARING OFFICER: Thank you.

12 MS. SCHMID: Thank you.

13 MR. FLITTON: Appreciate your time. Thank you.

14 (Proceedings adjourned at 10:24 a.m.)
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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Scott M. Knight

Scott M. Knight, RPR
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