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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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HIGHLANDS WATER COMPANY, INC.,

Applicant,

v.

MOUNTAIN GREEN MUTUAL WATER  
COMPANY and VILLAGE AT TRAPPERS  
LOOP LLC,

Intervenors.

**Reply Memorandum Supporting  
Petition to Intervene in Highlands  
Water Company, Inc.’s Request to  
Update Service Area**

Docket No. 23-010-01

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Pursuant to Utah Code § 63G-4-207 and Utah Admin. Code R746-1-108, Mountain Green Mutual Water Company (“**MGMWC**”) and Village at Trappers Loop LLC (“**Village**,” and collectively “**Petitioners**”) submit the following reply memorandum in support of their petition for leave to intervene<sup>1</sup> in Highlands Water Company, Inc.’s (“**Highlands**”) request to update its

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<sup>1</sup> In its email dated November 13, 2023 (2:28 PM), Highlands objects to MGMWC and Village’s Opposition to Highlands’ Request to Update Service Area (the “**Opposition**”), filed as prospective intervenors, on the ground that it is untimely because the initial public comment period closed before the Opposition was filed. Highlands misunderstands Utah Code § 63G-4-207 and Utah Admin. Code R746-1-108, which establish intervention as a distinct procedure for a party to protect its legal interests in a formal adjudicative proceeding—separate from making a public comment. Indeed, R746-1-108(2)(b) provides that “[a] person that is granted intervenor status . . . may not file public comments unless the Commission’s scheduling order provides for

service area (“**Highlands’ Request**”) before the Public Service Commission of Utah (“**Commission**”).<sup>2</sup>

### ARGUMENT

As explained in the Petition, intervention is required because Petitioners’ “legal interests may be substantially affected” by Highlands’ Request and allowing intervention will not materially impair “the interests of justice [or] the orderly and prompt” adjudication of Highlands’ Request. Utah Code § 63G-4-207; Utah Admin. Code R746-1-108. Highlands has not presented effective arguments disputing these elements established in the Petition. Rather, in its email dated November 13, 2023 (2:48 PM), Highlands asserts that it “do[es] not believe that the statements in the [Petition to Intervene] show that the legal interests of [MGMWC and Village] may be substantially affected by the updating of Highland’s service area.” Yet the only support Highlands

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the filing of comments by a party.” And Highlands does not point to any authority establishing that there is a deadline for filing a petition for intervention, and accompanying opposition brief, in a formal adjudicative proceeding before the Commission, much less that there is a deadline for intervention tied to the public comment period.

<sup>2</sup> Highlands’ five separate docket entries filed to oppose the Petition to Intervene in Highlands’ Request to Update Service Area (the “**Petition**”) and to reply to the Opposition failed to comply with applicable rules. Utah Admin. Code R746-1-203; *see also* Utah R. Civ. P. 7(d) (allowing a single memorandum opposing a motion and describing the required contents of the memorandum); *Id.* 7(e) (similarly allowing a single reply memorandum and describing the required and permitted contents of the memorandum). This failure impermissibly puts on Petitioners and the Commission the burden of divining Highlands’ alleged factual and legal bases for its positions. “[R]equiring parties . . . to follow [procedural rules] promote[s] the policies of (1) mitigating prejudice to opposing parties by allowing that party to respond to the [filing] . . . , and (2) assuring that a court can be apprised of the basis of a [filing] and rule upon it with a proper understanding.” *Holmes Dev., LLC v. Cook*, 2002 UT 38 ¶¶ 58–59, 48 P.3d 895) (holding that the trial court did not abuse its discretion in denying motions when movant “did not comply with Utah’s formal motion practice rules” by making “abbreviated requests” left “dangling” on another submission, and which “lack[ed] . . . statements of the grounds” for relief) (cleaned up); *see also Bluffdale City v. Smith*, 2007 UT App 25, ¶ 11, 156 P.3d 175 (holding that party’s failure to comply with the requirements of Rule 7 in opposing memorandum were not harmless when it “did not include a coherent explanation of the grounds for the dispute” or “provide [sufficient] supporting citations as the basis for any dispute of fact”).

offers for this statement is it “do[es]n’t believe there is any reason a mutual water company cannot co-exist in the same service area as a regulated water utility company.” [Highland email to the Commission, Nov. 13, 2023 (2:48 PM).] Petitioners agree that no law prevents overlapping service areas between a regulated water utility and a mutual water company exempt from Commission regulation. Nevertheless, despite conceding this point in opposition to intervention, Highlands promptly argues the contrary point in reply to Petitioners’ Opposition, claiming that MGMWC cannot receive an exemption if it “conflict[s] with or adversely affect[s] the operations of any existing certified public utility . . . .” [Comments from Highlands Water Company, Inc. (Nov. 13, 2023), at 2.] Petitioners must be allowed to participate as a party to address these inconsistent arguments.

In addition to participating to prevent a decision that could undermine MGMWC’s exemption request, Petitioners should also be allowed to present evidence on why expansion of Highlands’ service area is not in the public interest. Indeed, to decide whether to grant Highlands’ Request, the Commission must make a fact-specific inquiry in light of its statutory obligation to regulate utility operation considering the public interest. [See *Utah Dep’t of Admin. Servs. V. Pub. Serv. Comm’n*, 658 P.2d 601, 611 (Utah 1983) (holding that the Commission is “charged with the duty of seeing that the public receives the most efficient and economical service possible. This requires consideration of all aspects of the public interest” (cleaned up)); see also Utah Code § 54-4-18 (“The commission shall have power, after a hearing, to ascertain and fix *just and reasonable* standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water corporations.”) (emphasis added).] MGWMC and Village, as a mutual water company and landowner/developer operating in the service area at issue, respectively, have a legal interest in a Commission

determination that grants the exclusive right to operate as a public utility in the service area to a utility that would operate in the public interest—either alongside or in the absence of MGWMC. As intervenors, Petitioners will argue that their legal interests are harmed if Highlands is permitted to claim the exclusive right as a public utility to serve parcels for which it has agreed not to claim “any exclusive right” under the Settlement Agreement [See map attached as **Exhibit A**; Opposition at 2, 7.] Highlands asks the Commission to effectively preclude any other regulated utility from serving these parcels. Furthermore, the interests of landowners in the Highlands’ proposed future service area,<sup>3</sup> including Village and other shareholders of MGMWC, will be harmed if Highlands is granted the exclusive right to operate as a public utility in the expanded service area. Based on information and belief, Highlands does not have adequate fire flow capacity for the service area but seeks to exclude any other regulated utility from serving the area.

Highlands’ responses to the Petition and Opposition also show that there are several significant factual disputes related to Highlands’ Request that require Petitioners’ intervention to present relevant evidence. These factual disputes include: (a) whether Highlands has adequate fire flow capacity to provide water service in the best interests of landowners and water users, (b) the extent of MGMWC infrastructure in the service area, and (c) whether landowners in the service area are interested in water service from Highlands. The Commission should take evidence, including testimony, from Petitioners in their capacity as intervenors to determine whether the facts support a grant or denial of Highlands’ Request.

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<sup>3</sup> In its in-line comments on the Petition to Intervene, Highland claims that it “has not requested to expand its service area. It is requesting to update it.” Petition, ¶ 2; *see also id.* ¶ 4. But in Highlands’ Response to Mike Johanson with Cottonwood Mutual Water Company (filed Nov. 14, 2023), Highlands concedes that it is seeking Commission recognition for an expanded service area: “To be clear, our goal in requesting the update to our service area is to make sure an accurate record is on file with the Commission of our existing service area, **and to record other areas we could possibly serve in the future.**” *Id.* at 1 (emphasis added).

Finally, Highlands essentially concedes the second element of the intervention inquiry by failing to address it in its filings. And, indeed, Petitioners' intervention in this docket will not materially impair the interests of justice and the orderly and prompt conduct of this proceeding because the Commission has not yet set a hearing date, and justice will be served by allowing Petitioners to present their interests.

**REQUESTED RELIEF**

For these reasons, Petitioners respectfully request that the Commission grant Petitioners' timely petition to intervene and permit Mountain Green Mutual Water Company and Village at Trappers Loop LLC to participate in this proceeding, each with full rights as a party.

DATED this 20th day of November 2023.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Matthew E. Jensen

Matthew E. Jensen

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Tammy M. Frisby

*Attorneys for Mountain Green Mutual Water  
Company and Village at Trappers Loop LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of November 2023, I caused a true and correct copy of the **Reply in Support of Petition to Intervene in Highlands Water Company, Inc.'s Request to Update Service Area** to be served via e-mail to the following:

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        /s/ Matthew E. Jensen          
Matthew E. Jensen  
*Attorney for Intervenors*





MGMWC & Village at Trappers Loop LLC  
Reply In Support of Petition to Intervene

Docket No. 23-010-01

**Exhibit A**  
**MGMWC & Highland Service Area Map**

# Proposed Service Areas Map

## Legend

-  Highlands Proposed Expansion Area
-  Highlands Proposed Service Area
-  MGMWC Service Area
-  Village PUD Boundary

