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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

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Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Brenda Salter, Assistant Director
Abdinasir Abdulle, Utility Technical Consultant Supervisor
Joanna Matyjasik, Utility Analyst

Date: December 13, 2023

Re: **Docket No. 23-2643-01**, In the Matter of Mountain Green Mutual Water Company's Application for Exemption.

Recommendation (Approval)

The Utah Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) approve the filing. However, if an intervenor submits evidence that shows improper interference with another utility's facilities, the Division's recommendation could change.

Issue

On November 2, 2023, the Division received an Action Request from the Commission to review and make recommendations pertaining to the application of Mountain Green Mutual Water Company (Company or Mountain Green), which seeks exemption from the Commission's regulatory oversight concerning Mountain Green's planned water system that will provide water [service] to the service area identified. The Commission asked the Division to respond back by December 1, 2023. The Commission subsequently issued a Notice of Filing and Comment Period on November 13, 2023, with comments due on or

Division of Public Utilities

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before December 13, 2023, and reply comments due on or before December 28, 2023. This memorandum represents the Division's comments on the Company's filing.

Discussion

On November 2, 2023, Mountain Green filed an Application for Exemption with the Commission. Per Utah Code Ann. § 54-4-25(4)(a)(i), (a)(ii), and (b), Mountain Green must meet three criteria for a complete filing: provide (1) documentation that the Company "has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority, in order to expand its service area; (2) "a current map showing the water service area of all water utilities surrounding [Mountain Green]"; and (3) a statement that "any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public" and that the expansion will not "constitute an extension into the territory certified to the existing fixed public utility."

Although it is not clear the extent to which the third requirement should apply when dealing with an exempt water company, the Division reviewed the Company's filing along with the above criteria and found the following:

1. Mountain Green included the application for New Public Drinking Water System filed with the Utah Department of Environmental Quality.
2. Mountain Green included two maps. The first map is of its system and applicable subdivision and the second is of the service area in relation to the other water utilities surrounding the service area. The Division is aware that neighboring utilities may assert the maps are inaccurate. Those utilities can assert those claims in this proceeding. As alluded to above, it is not clear that the accuracy of the map is critical to determining whether Mountain Green is entitled to an exemption. If it is outside the Commission's jurisdiction because of its ownership structure, operational interference may be relevant, but it is not clear that the claimed inaccuracies would raise the question of whether Mountain Green is entitled to an exemption.

3. Per the Company's application, its assertion that its application will not conflict with or adversely affect an existing certified public utility is based on an April 2021 Settlement and Mutual Release Agreement between, among others, Highlands Water Company Inc., and Mountain Green shareholder, Soderby LLC.¹ There is not any other apparent operational conflict.

The Division has reviewed the Company's application with the accompanying required documentation and found the application to be substantially complete. It appears Mountain Green qualifies for an exemption because it proposes to serve only its members. The Division notes that an exempt water company may serve only its own shareholder members. It is not necessarily helpful to think of an exempt water company as having territory. It has members at specific locations but if service provided anywhere deviates from the underlying conditions of its exemption, serving member/owners, it is violating public utility law. While the company's facilities have a geographical location, nothing about those facilities' locations create a service territory over which the company may generally serve the public. Mountain Green refers to its service area maps in its application. The other companies seem poised to argue about the accuracy of those maps. Nevertheless, Mountain Green's map should be taken to denote only the locations service is provided to its members, not to delineate territory for general service.

Conclusion

The Division recommends that the Commission approve Mountain Green's Application. As noted, this recommendation could change if evidence arises that Mountain Green's facilities could cause interference with another utility's facilities.

cc: Cassidy J. Wallin, Parr Brown Gee & Loveless
Rulon Gardner, Mountain Green Mutual Water Company

¹ Application of Mountain Green Mutual Water Company for Exemption, Docket No. 23-2643-01, November 1, 2023, page 8.