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Application of Mountain Green Mutual Water Company for Exemption	<u>DOCKET NO. 23-2643-01</u> <u>ORDER ON PETITION TO INTERVENE</u>
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ISSUED: March 8, 2024

**BACKGROUND**

On November 1, 2023, Mountain Green Mutual Water Company (“MGMWC”) filed with the Public Service Commission (PSC) a request for a letter of exemption with respect to its planned water system that will provide water to a service area identified in a map provided in the accompanying application (“Exemption Request”). The Exemption Request certifies that MGMWC will not conflict with or adversely affect an existing certified public utility based on MGMWC’s reliance on an April 2021 settlement agreement between, among others, Highlands Water Company, Inc. (“Highlands”) and Soderby LLC (a shareholder in MGMWC). Highlands is an existing certified public utility. A map submitted with the Exemption Request shows the area in which MGMWC intends to serve and states Highlands provides water service in the vicinity, and asserts Highlands’ service area boundaries are subject to a currently pending proceeding before the PSC and a settlement agreement that alters Highlands’ original service area boundaries that were established in 1976.

On November 13, 2023, the PSC issued a Notice of Filing and Comment Period, allowing comments on the Exemption Request by December 13, 2023, and reply comments by December 28, 2023. Highlands filed a Petition for Leave to Intervene

("Petition to Intervene") on December 28, 2023. On January 10, 2024, MGMWC filed an opposition to the Petition to Intervene ("Opposition"). On January 19, 2024, Highlands filed its response to the Opposition ("Response").<sup>1</sup>

**DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

The Petition is governed by Utah Code Ann. 63G-4-207 and Utah Admin. Code Rule R746-1-108. Utah law allows nonparties to file a petition for intervention in a docket pending before the PSC.<sup>2</sup> Utah law directs that "[t]he presiding officer shall grant a petition for intervention if the presiding officer determines that:

- (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
- (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention."<sup>3</sup>

Highlands' Petition to Intervene and its Response allege facts that demonstrate Highlands' legal interest that may be substantially affected by the Exemption Request. For example, the Petition to Intervene asserts MGMWC "plan[s] to take current [Highlands'] customers when [MGMWC's] system is in place."<sup>4</sup> Highlands also asserts that its existing infrastructure may be damaged or is threatened with possible damage by MGMWC's plans.<sup>5</sup> Highlands further asserts that as a certificated water company it

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<sup>1</sup> Highlands and MGMWC are currently engaged in another disputed docket before the PSC regarding an application filed by Highlands concerning the geographic scope of its service area (Docket No. 23-010-01).

<sup>2</sup> Utah Code Ann. §63G-4-207(1).

<sup>3</sup> Utah Code Ann. §63G-4-207(2)(a)&(b).

<sup>4</sup> Petition to Intervene at 1.

<sup>5</sup> See *id.* at 2.

has an obligation to protect the interests of its customers, including the water infrastructure and the rate structure.<sup>6</sup> In its Response, Highlands appears to challenge whether MGMWC will only serve its members and not the public generally, asserting MGMWC plans to serve current Highlands' customers, including that "the area MGMWC has identified to serve includes parcels that are certified in the [Highlands] service area as well as parcels where [Highlands] serves existing customers."<sup>7</sup> The Response also provides maps depicting, in relation to the area identified by MGMWC in its Exemption Request application, the locations of the parcels in Highlands' claimed service area, including where it is currently serving, and its existing infrastructure.

In its Opposition, MGMWC asserts Highlands "does not have a legal interest that is relevant to the Commission's inquiry" into its Exemption Request.<sup>8</sup> MGMWC's main argument appears to be that the PSC lacks jurisdiction over it, even though the Exemption Request was filed with the PSC by MGMWC and is currently before the PSC. However, reconciling these apparent inconsistent positions – MGMWC's request that the PSC grant its Exemption Request on the one hand, yet at the same time asserting the PSC has no authority over it – is not necessary at this stage of these proceedings because the Opposition does not persuasively address Highlands' assertions as recounted above for purposes of intervention.

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<sup>6</sup> See *id.* at 1.

<sup>7</sup> Response at 1, emphasis in original.

<sup>8</sup> Opposition at 3.

The Opposition also asserts allowing Highlands to intervene will materially impair the interests of justice and the orderly and prompt conduct of this proceeding.<sup>9</sup> However, MGMWC's support of this assertion appears to rely on an incomplete characterization of Highlands' claimed legal interests.

We find that Highlands has made a sufficient showing at this stage of the proceedings that its legal interests may be substantially affected by the Exemption Request, as discussed above. We further find that Highlands' participation in this docket will not materially impair the interests of justice and the orderly and prompt conduct in the adjudication of the Exemption Request. Specifically, Highlands timely filed its Petition to Intervene and has shown that, based on the apparently conflicting views between MGMWC and Highlands, and the questions currently present in addressing the Exemption Request, justice will be better served by allowing Highlands to present its claimed interests more fully. Moreover, the existence of these questions, especially at this stage of the proceedings, further support our conclusion that Highlands should be party to this docket such that all issues relevant to the Exemption Request, if falling within our jurisdiction, should be adjudicated and resolved in this docket.

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<sup>9</sup> See *id.* at 11.

**ORDER**

For the forgoing reasons, Highlands' Petition to Intervene is granted. Intervention is conditioned upon the intervenor's representatives participating in this matter adhering to the Utah Standards of Professionalism and Civility adopted by the Utah Supreme Court October 16, 2003 (reviewable at internet web address <http://www.utcourts.gov/courts/sup/civility.html> or a copy obtained by request made to the PSC) and all applicable PSC rules and orders.

DATED at Salt Lake City, Utah, March 8, 2024.

/s/ John E. Delaney  
Presiding Officer

Approved and confirmed March 8, 2024, as the Order of the Public Service Commission of Utah.

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#332761

CERTIFICATE OF SERVICE

I CERTIFY that on March 8, 2024, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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