

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Mountain Green Mutual Water Company for Exemption	<u>DOCKET NO. 23-2643-01</u> <u>ORDER GRANTING APPLICATION FOR EXEMPTION</u>
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ISSUED: July 18, 2025

PROCEDURAL HISTORY

On November 1, 2023, Mountain Green Mutual Water Company (“MGMWC”) filed with the Public Service Commission (PSC) an Application for PSC Regulation or Exemption, containing numerous exhibits (“Application”). On November 2, 2023, the PSC issued an Action Request to the Division of Public Utilities (DPU), requesting its review and recommendation concerning the Application. On November 13, 2023, the PSC issued a Notice of Filing and Comment Period, allowing comments on the Application by December 13, 2023, and reply comments by December 28, 2023.

On December 13, 2023, the DPU filed comments recommending the PSC approve the Application, but reserving the right to change this recommendation if the evidence showed an improper interference between the operations of MGMWC and Highlands Water Company, Inc. (“HWC”).¹ On December 28, 2023, HWC filed a Petition for Leave to Intervene which was granted by Order dated March 8, 2024.

A scheduling conference was held on April 15, 2024, and a Scheduling Order and Notice of Hearing was issued on April 22, 2024. Pursuant to that order, MGMWC

¹ See DPU Action Request Response, December 13, 2023 at 1 (“DPU Comments”). HWC is a public utility (water corporation) that is regulated by the PSC.

provided written direct testimony and rebuttal testimony from its witness (“Gardner Testimony”), DPU provided written direct testimony from its witness (“Matyjasik Testimony”), and intervenor HWC provided written direct testimony of its witnesses (“HWC Testimony”).²

On October 4, 2024, MGMWC and HWC filed a stipulated motion³ requesting the PSC to decide this matter on the evidence and to vacate the scheduled evidentiary hearing in this docket (“Stipulated Motion”). That motion was granted by Order dated October 8, 2024.

DISCUSSION, FINDINGS, AND CONCLUSIONS

The Application seeks a letter exempting MGMWC from PSC regulation and represents, among other things, that (1) MGMWC will only provide water service to its members and not the public generally;⁴ and (2) the Application will not conflict with or adversely affect an existing certified public utility.⁵

² The HWC Testimony is the exact same testimony submitted by HWC in a previous docket regarding an application filed by HWC concerning the geographic scope of its service area, which was resolved by HWC voluntarily dismissing its application (“HWC Application Docket”). *See* Docket No. 23-010-01. In the HWC Application Docket, HWC sought to formalize the specific geographic area within which it was operating and planned to operate. MGMWC and Village at Trappers Loop, LLC intervened in that docket based upon their concern that HWC’s application in the HWC Application Docket could conflict with MGMWC’s application in this docket. The HWC Application Docket involved different facts and analysis than applicable in this docket, and thus the HWC Testimony is of limited value here.

³ According to the Stipulated Motion, DPU was consulted about this motion and did not object.

⁴ *See* Application at unpaginated 1.

⁵ *See id.* at unpaginated 2. According to the Application, this assertion is based on an “April 2021 Settlement and Mutual Release Agreement between, among others,” HWC and Soderby LLC, a shareholder of MGMWC. *Id.* at “Explanatory,” unpaginated 8.

The Utah Code vests the PSC with the power and jurisdiction to regulate public utilities, including water corporations.⁶ The Utah Code defines a water corporation as “every corporation and person[] ... owning, controlling, operating, or managing any water system for public service within this state[.]”⁷ but “does not include private irrigation companies engaged in distributing water only to their stockholders[.]”⁸

MGMWC’s first representation – that it will only provide water service to its members, and not the public in general – is not disputed by the HWC Testimony. Moreover, the Gardner Testimony, DPU’s Comments, and the Matyjasik Testimony support this representation, all providing that MGMWC intends to only serve its members and not the public generally. Thus, the evidence supports the conclusion that MGMWC does not currently meet the definition of “water corporation” under Utah law.

MGMWC’s second representation – that MGMWC’s activities will not conflict with or adversely affect an existing public utility – was disputed by certain allegations in HWC’s Petition to Intervene. This representation, and HWC’s allegations disputing it, is relevant here because of the breadth of the PSC’s jurisdiction to protect the public interest.⁹ However, the weight of evidence in this docket does not support HWC’s

⁶ See Utah Code Ann. § 54-4-1 (PSC is “vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things ... which are necessary or convenient in the exercise of such power and jurisdiction[.]”)

⁷ *Id.* at § 54-2-1(39).

⁸ *Id.*

⁹ See, e.g., n.6, *supra*.

dispute on this point. The HWC Testimony¹⁰ asserts that granting the Application could result in HWC losing some existing connections.¹¹ However, other HWC Testimony inconsistently asserts, for example, that there is nothing prohibiting MGMWC from serving customers in HWC's service area¹² and that property owners in HWC's service area have the choice of whether they want to use either HWC or MGMWC as a water service provider.¹³ Moreover, DPU's consent to the Stipulated Motion without changing its initial qualified recommendation is at least a tacit acknowledgment that it did not believe the HWC Testimony supported the existence of a conflict between MGMWC's and HWC's operations. Thus, the evidence currently before the PSC does not support that MGMWC's activities will conflict or adversely affect HWC.

ORDER

Relying on the veracity of MGMWC's representations in the Application as supported by the Gardner Testimony, and the DPU Comments as supported by the Matyjasik Testimony, the PSC understands MGMWC will serve only its members, not the general public. Therefore, based on the foregoing, the PSC concludes MGMWC is not currently a "water corporation" within the meaning of Utah Code Ann. § 54-2-1(40) and is not subject to the PSC's regulation. The PSC emphasizes its findings and conclusions are made in reliance on representations MGMWC has made in the

¹⁰ See n.2, *supra*.

¹¹ See Direct Testimony of Marjalee Smith for Highlands Water Company, Inc. at 3:57-3:59.

¹² See, e.g., *id.* at 2:35-2:37.

¹³ See, e.g., *id.* at 3:46-3:48.

Application and supporting materials. If conditions have materially changed or change, MGMWC must notify the PSC within 30 days. This exemption is revocable for cause at any time should MGMWC engage in any conduct that renders it subject to the PSC's jurisdiction.

The PSC grants the Application. A letter of exemption is attached to this Order as Exhibit A.

DATED at Salt Lake City, Utah, July 18, 2025.

/s/ John E. Delaney
Presiding Officer

Approved and Confirmed July 18, 2025 as the Order of the Public Service Commission of Utah.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

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

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#340704

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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Exhibit A



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Public Service Commission

JERRY FENN
Chair

DAVID R. CLARK
Commissioner

JOHN S. HARVEY, Ph.D.
Commissioner

LETTER OF EXEMPTION NO. 249

July 18, 2025

Via Email

Kassidy J. Wallin
Parr Brown Gee & Loveless
101 S 200 E #700
Salt Lake City, UT 84111
kwallin@parrbrown.com

Dear Ms. Wallin,

The Public Service Commission (PSC) has reviewed the application for exemption filed on behalf of Mountain Green Mutual Water Company ("MGMWC") on November 1, 2023.

On December 13, 2023, the Division of Public Utilities (DPU) recommended the PSC grant the request for exemption because MGMWC intends to only serve its members and not the general public. It is not a water corporation subject to regulation as defined in Utah Code Ann. § 54-2-1(39). Given these facts, MGMWC's request for exemption from regulation by the PSC is warranted and appropriate.

Please be advised this Letter of Exemption No. 249 is granted pursuant to the representations contained in the Application and based on DPU's confirmation that MGMWC will only serve its members. MGMWC has a continuing obligation to update the PSC within 30 days of any change regarding this matter. Similarly, the PSC would be legally obligated to reevaluate the matter should any third party submit a notice of facts suggesting that MGMWC is subject to the PSC's jurisdiction.

This Letter of Exemption No. 249 is revocable for cause at any time. Please refer to this letter number in any future correspondence with either the PSC or DPU.

Sincerely,

/s/ Gary L. Widerburg
PSC Secretary
DW#340704

CERTIFICATE OF SERVICE

I CERTIFY that on July 18, 2025, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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