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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Request for a Letter of Exemption for Legacy Sweetwater Inc. from the Utah Public Service Commission Regulation.

Docket No. 25-2280-02

MEMORANDUM OPPOSING LEGACY SWEETWATER INC.'S REQUEST FOR A LETTER OF EXEMPTION

Pursuant to Utah Admin Code R746-1-101 through 801 and the Public Service Commission of Utah's ("Commission") March 13, 2025 Notice of Filing and Comment Period, Legacy Mountain Homeowners' Association, Inc. ("Legacy Mountain HOA"), on behalf of its members, submits this Memorandum Opposing Legacy Sweetwater Inc.'s Request for a Letter of Exemption ("Memorandum") and requests that the Commission deny the Legacy Sweetwater Inc.'s ("Sweetwater") Request for a Letter of Exemption ("Request") because Sweetwater is a public utility that serves water to the general public within its service area.

I. BACKGROUND

Legacy Mountain HOA is a Utah non-profit corporation organized to govern and manage several subdivisions located in Sanpete County, Utah, including Skyline Heights Subdivision, The

Meadows Subdivision, and The Hollows Subdivision (collectively, the “Subdivisions”). Legacy Mountain HOA’s members are comprised of the Subdivision’s property owners.

Sweetwater is a Utah for-profit corporation. It is a public utility organized to provide domestic water service to several subdivisions in Sanpete County, including Legacy Mountain HOA’s members. The Commission approved Sweetwater’s current tariff schedule on September 26, 2006, in Docket No. 06-2280-T01. On January 14, 2025, Sweetwater filed a Notice of Intent to File a Request for a Rate Increase (“Notice of Intent”) under Docket No. 25-2280-01 but subsequently withdrew its Notice of Intent and filed the instant Request. Legacy Mountain HOA submits this Memorandum in opposition to Sweetwater’s Request.

II. LEGAL ARGUMENT

In its Request, Sweetwater argues that it is exempt from the Commission’s regulatory authority because it is not a “water corporation” as defined in Utah Code. Specifically, Sweetwater states that it has “only supplied water to its customers and never sold or distributed water to the general public.” It also indicates that it seeks exemption because it desires additional flexibility to adjust its service rates without the burden of a formal rate case. However, as discussed below, Sweetwater is not exempt from the Commission’s authority because it is a water corporation under Utah law. Further, Sweetwater’s historic failure to enforce its existing tariff schedule and provide adequate water to its customers highlight the need for ongoing supervision by the Commission.

a. Sweetwater is a Water Corporation as Defined in Utah Code

Utah law subjects all public utilities to regulation by the Commission. Utah Code § 54-4-1. This includes broad authority over every “water corporation . . . where the service is performed for, or the commodity delivered to, the public generally.” *Id.* § 54-2-1(23)(a). “Water corporations” include “every corporation . . . owning, controlling, operating, or managing any water system for

public service within this state.” *Id.* § 54-2-1(39). Utah law provides an exception for specific types of water suppliers. Applicable here, “private irrigation companies engaged in distributing water only to their stockholders” are not “water corporations” subject to the Commission’s authority. *Id.*

Utah courts have explained that this exception exists because the mutual ownership in these types of private water companies eliminates the monopolistic advantages that regulated public utilities hold over their customers. In *Bear Hollow Restoration, LLC v. Public Service Commission of Utah*, the Utah Supreme Court examined what it means for a water supplier to serve the public generally. 2012 UT 18, ¶ 18, 274 P.3d 956. Ultimately, the court concluded that entities do not serve the public generally and are therefore exempt from the Commission’s regulations when (1) there is a mutuality of ownership among all users [that] is substituted for the conflicting interests that dominate the owner vendor-non owner vendee relationship, (2) the cooperative serves only its owner-members, and (3) the cooperative has the right to select those who become members. *Id.*, ¶ 21. The Court explained that under these circumstances, the monopoly power normally held by public utilities is eliminated because “the owners are both the buyers and sellers of their own services.” *Id.*

Here, Sweetwater does not meet any of the three requirements which, if met, might allow it to be exempt. First, Sweetwater cannot demonstrate mutual ownership among its users. Sweetwater is a privately held, for-profit corporation. Legacy Mountain HOA’s members are not and are not entitled to become Sweetwater shareholders and have no input regarding Sweetwater’s operation or management. Second, Sweetwater does not serve only its owner-members. While it may be true that Sweetwater does serve its shareholders, it only does so because its shareholders also happen to own property within Sweetwater’s service area. The majority of Legacy Mountain HOA’s members are not Sweetwater shareholders and thus, Sweetwater does supply water to the

public generally. Finally, Sweetwater does not have the right to select who it serves. Any member of the public may purchase real property within Sweetwater's service area, without restriction by Sweetwater.

Sweetwater's argument that it does not serve the public generally because it only provides water service within its service area misconstrues Utah law. Sweetwater serves the public generally because any member of the public may become a Sweetwater customer by purchasing property within Sweetwater's service area, without obtaining Sweetwater's consent. In other words, each property owner within Sweetwater's service area has a legal right to service from Sweetwater "which cannot be gainsaid, or denied, or withdrawn" by Sweetwater. *Id.*, ¶ 19. Because Sweetwater serves the public generally, it is a water corporation under Utah law and is subject to the Commission's authority.

b. Sweetwater's Service Problems Demonstrate the Need for Ongoing Regulation

Legacy Mountain HOA and its members have experienced ongoing challenges related to Sweetwater's failures to provide adequate water service. Legacy Mountain HOA is working with the Utah Division of Public Utilities ("DPU") through the informal complaint process to address long-standing problems. Legacy Mountain HOA's informal complaint includes several service-related issues, including that:

- Sweetwater has failed to provide adequate (or any) water pressure reliably or consistently for its customers.
- Sweetwater has failed to provide adequate water pressure for community fire hydrants.
- Sweetwater is aware of breaks in its distribution lines and has failed to make necessary repairs for more than a year.

- Sweetwater has failed to make good faith efforts to collect payment from its customers under its currently approved tariff schedule. Legacy Mountain HOA's members report that Sweetwater does not consistently provide invoices for water service (even upon request from customers), does not deposit checks tendered for water service, has stopped automatic payments, and does not return communications from its customers regarding billing. As a result, Legacy Mountain HOA believes that Sweetwater may be significantly underfunded because many of its customers have not paid for water service, despite being able and willing to do so.

Legacy Mountain HOA is still in the process of addressing these issues with both the DPU and the Utah Division of Drinking Water. However, these types of issues not only impact the ability for property owners to use and enjoy their property, but also create risks to the public health and welfare of the community.

Legacy Mountain HOA believes that these ongoing issues highlight the need for continued supervision by the Commission. As discussed above, Legacy Mountain HOA and its members are not Company stockholders and therefore cannot directly affect the Company's management and operational decisions. As a result, Legacy Mountain HOA and its members rely heavily on the remedies available through the Commission and other state administrative agencies. While some of these issues may be addressed through other agencies (such as the Division of Drinking Water), the Commission plays a vital role in, among other things, ensuring that the Company provides adequate service at rates which are just and reasonable. Utah Code §§ 54-4-4.1(1)(c), 54-4-7. If Legacy Mountain HOA cannot seek remedy through the Commission, it is concerned that these ongoing issues will compound with time.

III. CONCLUSION

Because Sweetwater is a water corporation as defined by Utah law and considering the ongoing service and billing problems encountered by Sweetwater's customers, Legacy Mountain HOA requests that the Commission deny Sweetwater's Request.

DATED this 11th day of April 2025.

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CERTIFICATE OF SERVICE

Docket No. 25-2280-02

I hereby certify that on this 11th day of April 2025, I caused a true and correct copy of the foregoing document, **MEMORANDUM OPPOSING LEGACY SWEETWATER, INC.’S REQUEST FOR A LETTER OF EXEMPTION**, to be served via electronic mail to the following:

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