

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1769

In the Matter of

MOUNTAIN HOME WATER
DISTRICT,

Application to Abandon Water Service
And Abandon Water Utility

INTERVENORS RESPONSE IN
OPPOSITION TO MOUNTAIN
HOME WATER DISTRICT'S
MOTION REQUESTING
APPEARANCE OF WITNESSES BY
TELEPHONE

Intervenors Mel and Connie Kroker (“intervenor”) provide this response in opposition to Mountain Home Water District’s (“Applicant”) Motion Requesting Appearance of Witnesses by Telephone, dated November 29, 2016 (“Motion”). For the reasons stated herein, Applicants Motion should be denied, or in the alternative, Applicants named witnesses should be required to appear *via* videoconference.

ARGUMENT

A. Applicant’s Motion should be Denied.

Applicant moved to have the cross-examination testimony of two witnesses, Steve Hougak (“Mr. Hougak”) and Vance Wagner (“Mr. Wagner”) (collectively “Applicant’s Witnesses” or “Witnesses”), occur by telephone during the hearing. Applicant has articulated no undue hardship or other basis upon which the Commission may grant its motion. Merely residing an hour and twenty minutes away from the potential hearing location, and missing work to attend the hearing, does not justify an order of telephonic appearance at the hearing.

Given that the upcoming hearing is solely for cross-examination of all witnesses who have supplied testimony in this matter, and for the potential presentation of exhibits, it would not

be prudent to allow Applicant's witnesses to appear by telephone. The testimony presented by Applicant's Witnesses is crucial to the outcome of this matter and to conduct such cross-examination of Applicant's Witnesses without them being present at the hearing will be difficult, inefficient, and prejudicial to Intervenors' interests.

B. Witnesses Testimony is Relevant to a Determinative Issue in these Proceedings.

In its Motion, Applicant incorrectly states that the Witnesses testimony "addresses a discrete, ancillary issue in this proceeding – the circumstances of the failure of the Company's water supply well." *Motion p. 2, Ln 16-17*. This is simply untrue. The *only* reason cited by Applicant in Section (d) of its Application to Terminate Water Service and Abandon Water Utility ("Application") was that "[t]he well serving the District's customers has failed and cannot be repaired." *Application p. 2, ¶ d*.

Applicant further incorrectly states in its Motion that, contrary to the express allegations in its Application, there were three entirely different reasons for requesting termination and abandonment in its Application: regulatory compliance issues, ongoing financial constraints, and the owner's personal circumstances. *Motion p. 2, Ln 25, p. 3, Ln. 1*. None of these three purported reasons were listed in the Application. These cited reasons were supplied pursuant to a data request from Staff, and were never included in the Application. *DR 11, Staff/102*. Intervenors dispute the allegation that the well serving the Applicant's customers had failed and cannot be repaired.

Witnesses are the Applicant's only witnesses who can attest to Applicant's alleged condition of the well and its alleged failure of the well. Mr. Hougak's and Mr. Wagner's testimony is relevant to a determinative issue in these proceedings and, therefore, face-to-face

cross examination is necessary and failure of the Witnesses to personally appear, or to appear *via* videoconferencing, will result in substantial prejudice to Intervenor.

Based on the foregoing, Intervenor requests that the Hearing Officer deny Applicant's Motion or, in the alternative, require Applicant's Witnesses to appear *via* videoconferencing so that Intervenor will retain the ability to cross-examine face-to-face.

Dated this 6^h day of December, 2016.

JORDAN RAMIS PC

By: s/ Peter D. Mohr

PETER D. MOHR

OSB # 013556

Two Centerpointe Dr 6th Flr

Lake Oswego OR 97035

Telephone: (503) 598-7070

Peter.Mohr@jordanramis.com

Attorney(s) for Intervenor

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date shown below, I filed the foregoing
INTERVENOR'S RESPONSE TO MOUNTAIN HOME WATER
DISTRICT'S MOTION REQUESTING APPEARANCE OF WITNESS BY
TELEPHONE by electronic transmission on:

Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088
PUC.FilingCenter@state.or.us

I further hereby certify that on the date shown below, I served a true and
correct copy of the foregoing MOTION TO AMEND PREHEARING
CONFERENCE MEMORANDUM on:

Jennie L. Bricker
Jennie Bricker Land & Water Law
818 SW Third Ave, PMB 1517
Portland, OR 97204

Celeste Hari
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Sommer Moser
PUC Staff – Department of Justice
1162 Court St. NE
Salem, OR 97301

- by first class mail, postage prepaid.
- by hand delivery.
- by facsimile transmission and first class mail, postage prepaid.
- by electronic transmission.
- by electronic transmission and first class mail, postage prepaid.

DATED: December 6, 2016.

s/ Peter D. Mohr
Peter D. Mohr, OSB # 013556
Attorney for Mel and Connie
Kroker, Intervenors

CERTIFICATE OF FILING AND SERVICE

JORDAN RAMIS PC
Attorneys at Law
PO Box 230669
Portland OR 97281
Telephone: 503.598.7070 Fax: 503.598.7373
53364-74986 2471177_1\CED/12/6/2016