

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the
Application of Bumblebee
Water System, Inc., for a
Certificate of Convenience
and Necessity to Operate as Docket No. 13-2567-01
a Public Utility Rendering
Culinary Water Service, or
for an Exemption from Public
Service Commission Regulation

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
 Hearing Room 451
 160 East 300 South
 Salt Lake City, Utah

DATE: Tuesday, December 3, 2013

TIME: 9:40 a.m.

REPORTED BY: Scott M. Knight, RPR

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE: MELANIE A. REIF
FOR DIVISION OF PUBLIC UTILITIES:
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* * *

I N D E X

WITNESS	Page
BRENT BLANCHARD	
EXAMINATION BY THE HEARING OFFICER	9
MARK A. LONG	
EXAMINATION BY MS. SCHMID	15
EXAMINATION (CONTINUED) BY MS. SCHMID	22

* * *

E X H I B I T S

No.	Page
DPU-1	18



1 PROCEEDINGS

2 THE HEARING OFFICER: We'll be on the record.

3 Thank you, everyone, for joining us this morning.

4 My name is Melanie Reif, and I'm the administrative law
5 judge for the Utah Public Service Commission. This morning
6 is the hearing in the matter of The Application of Bumblebee
7 Water System, Inc., for a Certificate of Convenience and
8 Necessity to Operate as a Public Utility Rendering Culinary
9 Water Service, or for an Exemption from Public Service
10 Commission Regulation. This is Docket 13-2567-01.

11 Let's start by taking appearances, please,
12 starting with the Applicant.

13 MR. BLANCHARD: Good morning. This is Brent
14 Blanchard with Blanchard Legal Services representing the
15 Applicant on the legal side. I'm also here in the capacity
16 as a secretary of Bumblebee Water.

17 THE HEARING OFFICER: Thank you, Mr. Blanchard.
18 And just for clarification, you're joining us by telephone
19 this morning?

20 MR. BLANCHARD: Yes, that is correct.

21 THE HEARING OFFICER: Thank you.

22 MS. SCHMID: Patricia E. Schmid with the attorney
23 general's office representing the Division of Public
24 Utilities. And with me, as the Division's witness, is Mark
25 A. Long.

1 THE HEARING OFFICER: Thank you, Ms. Schmid.
2 Mr. Blanchard, this is your application.
3 Typically, I would start with you. And just for
4 clarification, the Commission does have on file your
5 application and the various subsequent filings that you've
6 made. And perhaps to make things move a little more
7 smoothly this morning, the Commission takes judicial--excuse
8 me--administrative notice of those filings.

9 And the purpose of the hearing this morning is to
10 clarify the status of the application. And we can do that
11 when we--do that a little bit further when we hear from the
12 Division. But also, I'd like to get a little clarification
13 from you as well as to what it is that you're seeking and
14 whether you believe that what you have submitted thus far
15 has been completed inasmuch as the Division has requested
16 further information from you.

17 MR. BLANCHARD: Okay. Very good.

18 THE HEARING OFFICER: So you are--you may . . .

19 MR. BLANCHARD: What we have is the original--the
20 developer is not the original developer. Iron Dirt acquired
21 the property a little bit more than a year ago--in fact, I
22 think it's fully a year and a half ago--which included the
23 transfer of enough water rights to service the lots that
24 are--that has been platted out.

25 And it's my understanding that the--the Iron

1 County Commission--you know, the plat and the lots are
2 already approved. But it's far enough outside of Cedar City
3 and Kanarraville. It's west of what's known as Quichapa
4 Lake. It used to be a dry lake out there in the Cedar
5 Basin. And there's an existing water system which needed
6 extensive refurbishing and repairs to it in order to
7 effectively deliver water to those lots.

8 Obviously, you can't sell residential lots and
9 construct homes on them unless there's some water to service
10 those lots. And the purpose of setting up Bumblebee Water
11 after initially starting the predecessor nonprofit Mutual
12 Water Association in August of 2012, the developer decided
13 that it might be easier and definitely more transparent for
14 the purchasers of the lots there if the water system were
15 regulated as a public utility.

16 So starting in August of 2013, I started the
17 process of completing the legal work to change the name to
18 Bumblebee Water System, Inc. It's continuing on as a
19 nonprofit corporation. And the developer is simply wanting
20 to bring that land to its highest and best use.

21 In looking at the regulations, the--the water
22 system's already been approved by the Department of
23 Environmental Quality and the infrastructure has been
24 brought up to speed. So lots can be connected. They can
25 start delivering water service. I believe they had the

1 physical capability to deliver water two or three months
2 ago.

3 And at this point, it--you know, it really makes
4 little difference to the developer and to Bumblebee Water
5 whether it's regulated as a public utility or if it's
6 granted an exemption once the Public Service Commission is
7 satisfied with--with the tariff or the water rates and some
8 of the additional details that we're still going through
9 from the second and third data requests a couple of weeks
10 ago.

11 THE HEARING OFFICER: Thank you.

12 MR. BLANCHARD: So how well--how well does that
13 address your information concerns and what you need to know
14 from--from the Applicant?

15 THE HEARING OFFICER: Mr. Blanchard, let me ask
16 you a couple of questions. Is it your understanding that
17 you have fully responded to the questions that the Division
18 has asked?

19 MR. BLANCHARD: No, not at this point. There was
20 a second set of data requests--I believe that was on the
21 20th of November--and a third set of data requests on the
22 23rd of November. We have not yet responded to those, but
23 I'm working on it. Should have it to you either next week
24 or the week after that.

25 THE HEARING OFFICER: Okay. I believe Ms. Schmid

1 has requested an opportunity to speak.

2 Ms. Schmid, do you want to give your presentation
3 now or did you want to address the status of the
4 application?

5 MS. SCHMID: If I could just briefly address the
6 status of the application. First, with regard to the second
7 and third data requests that are outstanding, those pertain
8 to ratemaking issues and so can be separated from the CPCN
9 proceeding. And I believe there's a separate docket, a
10 T-docket--

11 THE HEARING OFFICER: There is.

12 MS. SCHMID: --that has been open to address the
13 rate issues.

14 And then, second, just to cut to the chase, the
15 Division believes the application is complete and has a
16 recommendation to approve.

17 THE HEARING OFFICER: Okay. Very well.

18 Mr. Blanchard, did you hear Ms. Schmid okay?

19 MR. BLANCHARD: Actually, no. I was--I had the
20 sense that she was going to have a break there in just a
21 minute. I--your Honor, I can hear you just fine, but I can
22 only make out about every third word from Ms. Schmid.

23 THE HEARING OFFICER: Okay. Well, she is speaking
24 into a microphone, so I do apologize for you not being able
25 to make that out. But let me just paraphrase what she

1 stated. What she stated is that with respect to the second
2 and third requests for information, the Division is of the
3 position that those pertain to the tariff docket, which you
4 may already know as 13-2567-T01. So she does not believe
5 that those are relevant for purposes of the Commission's
6 consideration of whether a CPCN is issued as a result of
7 this hearing.

8 And the last point that she made was, it is the
9 Division's position that the application for the CPCN is
10 complete, so--and in fact, the Division recommends approval
11 of that. So I think we're in a good position to continue to
12 move forward, with that being said. So I'm assuming you
13 don't have any disagreement with that?

14 MR. BLANCHARD: No full disagreement. That's--
15 that's consistent with what we heard from previous
16 communications from the--the water rights--I'm sorry--the
17 public utilities division. And we're very happy with their
18 cooperation, and especially with their assistance in this
19 process.

20 THE HEARING OFFICER: Okay. Thank you. I know
21 they appreciate that. And thank you for your acknowledgment
22 of that.

23 Mr. Blanchard, may I ask you just a couple of
24 questions before I move to the Division? I wanted to get a
25 bit of clarification. And I think what I'd like to do,

1 because part of this last portion, I do want to make sure I
2 have you sworn in as a witness. And inasmuch as you've
3 indicated that you serve as a secretary for Beehive [sic]
4 Water System, Inc., I think this would be a good opportunity
5 to do that.

6 So this is a little bit awkward because you're on
7 the telephone, but if you would kindly raise your right
8 hand. And do you swear that the testimony you are about to
9 give is the truth?

10 MR. BLANCHARD: Yes, I solemnly affirm that.

11 THE HEARING OFFICER: Okay. Thank you.

12 BRENT BLANCHARD,

13 being first duly sworn, was examined and testified as
14 follows:

15 EXAMINATION

16 BY THE HEARING OFFICER:

17 Q So for clarification, the--the residential
18 development that you referred to earlier, is that
19 residential only or is there any commercial that has been
20 approved in there?

21 A It's a residential-only. It's, you might say, a
22 little bit behind the times. It's not one of those mixed-
23 use development ideas. And with--with the number of lots
24 there, it would be kind of hard to have it support mixed
25 use.

1 Q Okay. And how many lots?

2 A Oh, I would actually have to refresh my memory
3 with documents.

4 Q I believe--

5 A I believe it's 52.

6 Q The Division--the Division states--and I believe
7 it's stated elsewhere in some of the other documents--that
8 the maximum is 58. Does that sound right to you?

9 A Oh, yes. Yes, it's 58.

10 Q Okay. And how many houses exist right now?

11 A There's one--one house constructed, and I believe
12 there may be some foundational work being done on a second,
13 but I'm not sure of that. But I do know that one house has
14 been constructed--

15 Q Okay.

16 A --and it's ready to sell to a water user.

17 Oh. And for your information, the electrical
18 utility is already extended out into that subdivision,
19 so--yeah, the--really the only thing left here is the--is
20 the water system to be approved.

21 Q Okay. Is there anyone occupying that house that
22 was constructed in--at--sometime ago?

23 A No. It had been under contract in September or
24 October. Didn't close escrow for a number of reasons, and I
25 believe it may be under contract again--

1 Q Okay.

2 A --but hasn't closed yet.

3 Q Okay. And do you have other--other lots that are
4 under contract or closed?

5 A I believe there's only one other lot which is
6 under contract. It does not have a completed structure on
7 it yet.

8 Q Okay. So you're not actually providing water
9 right now; you're seeking the ability to do so?

10 A Yeah, we're seeking the ability to do so. And,
11 you know, in all candor, I believe that the developer has
12 been using some water from the system for construction
13 purposes, but my understanding is there's been no culinary
14 use.

15 Q Okay. Mr. Blanchard, let me just make sure that--
16 on the record that I confirm your proper means of
17 communication. When--when the Commission sends notices or
18 issues orders in a matter, if we have an e-mail on file, we
19 will typically rely on that. And on your stationery, I
20 believe we obtained the following e-mail address:
21 blanchardlaw1@gmail.com. Is that still a good e-mail
22 address for you?

23 A Yes, that's still a good e-mail address. In fact,
24 I was reviewing some e-mails from the Public Service--from
25 the PSC this morning. I can tell you that on occasion, and

1 for reasons that I do not know, if there's an accidental
2 omission of the numeral "1" at the end of "blanchardlaw,"
3 I'm hearing from other people that they don't get a
4 "No"--"No User Found" bounceback if something--they try to
5 send something to me without that numeral in there.

6 Q Okay. Just--just to alleviate any concern you
7 might have with respect to that, we do have you as being
8 identified with the numeral "1" afterwards--I mean, the
9 actual number "1."

10 A I do appreciate that.

11 Q Okay. Is there an alternative e-mail address that
12 you would like us to have on file as a secondary e-mail
13 address should--should there be a problem?

14 A Yeah, there's--there's another secondary--
15 actually, I have two secondaries. Would you rather have one
16 with a separate e-mail provider or another one with Gmail?

17 Q It's your preference. We would like to be sure
18 that the communication that we're providing is reaching you,
19 so whatever you think is the most reliable.

20 A I'll go ahead and go with--with my other one,
21 because when I first set up these e-mails, I didn't trust
22 every one to be available 24 hours every single day. So
23 let's go with blanchardlaw1@yahoo.com. Everything's the
24 same except the provider is Yahoo.com.

25 Q Okay.

1 A That was actually the first one I set up after I
2 got out of law school.

3 Q Okay. Thank you.

4 Mr. Blanchard, I'm going to come back to you once
5 we hear from the Division, so I will likely have more
6 questions for you. But before we actually move on to the
7 Division, let me ask you one final question: Is it your
8 testimony that granting a CPCN--otherwise known as the
9 certificate of public convenience and necessity--for
10 Bumblebee Water System, Inc., to provide water to the
11 community of 58 residential lots is in the public interest?

12 A Yes, I do believe it is in the public interest.
13 The surrounding area there has been experiencing significant
14 growth over the last ten years. And it's--it's kind of a
15 natural fill-in to put the lands there to the highest and
16 best use. The area where--that Bumblebee would serve is
17 only marginally suitable for agricultural purposes. And
18 with population growth in Iron County, Utah, it appears it
19 would definitely be in the public interest for Bumblebee
20 Water to operate as a public utility, be appropriately
21 regulated, and provide quality drinking water for the new
22 residents moving into the subdivision.

23 Q Okay. And with respect to the tariff issue, you
24 do recognize that that is a separate issue which will be
25 addressed under a separate docket and addressed separately

1 by the Commission as well?

2 A Yes. We will address that going forward.

3 Q Okay. Thank you, Mr. Blanchard.

4 I am going to turn now to Ms. Schmid. And I'm
5 going to ask her to please speak as clearly as she can
6 directly into her microphone. And Mr. Blanchard, if you
7 have difficulty hearing, please speak up right away, because
8 this is very important and we want you to be able to
9 participate and hear what's happening.

10 MR. BLANCHARD: Very good. Thank you, your Honor.

11 THE HEARING OFFICER: You're very welcome.

12 Ms. Schmid?

13 MS. SCHMID: Thank you. I have turned up the
14 volume, so hopefully it will work better.

15 Mr. Blanchard, can you hear me?

16 MR. BLANCHARD: So far, so good. Thank you.

17 MS. SCHMID: Thank you.

18 Judge Reif, could--

19 THE HEARING OFFICER: Ms. Schmid, I don't think
20 your microphone is on.

21 MR. LONG: Can't hear it either.

22 THE HEARING OFFICER: Doesn't appear to be on.

23 MS. SCHMID: The light is on. Now the light's
24 off. Now it's on.

25 THE HEARING OFFICER: Okay.

1 MS. SCHMID: Off, on.

2 THE HEARING OFFICER: I can hear you barely
3 amplified. I wonder if we can make an adjustment. Just one
4 moment.

5 Okay. Give us a test.

6 MS. SCHMID: Testing one, two, three.

7 MR. BLANCHARD: I heard all of the syllables in
8 "Testing one, two, three."

9 THE HEARING OFFICER: It sounded a bit better to
10 me.

11 Okay. Please proceed.

12 MS. SCHMID: Thank you. The Division would like
13 to call Mr. Mark Long as its witness. Could Mr. Long please
14 be sworn?

15 THE HEARING OFFICER: Yes.

16 Mr. Long, please raise your right hand. And do
17 you swear that the testimony you are about to give is the
18 truth?

19 MR. LONG: Yes, I do.

20 THE HEARING OFFICER: Thank you.

21 MARK A. LONG,
22 being first duly sworn, was examined and testified as
23 follows:

24 EXAMINATION

25 BY MS. SCHMID:

1 Q Mr. Long, could you please state your full name,
2 employer, position, title, and business address for the
3 record?

4 A Yes. My full name is Mark A. Long. My employer
5 is the Division of--Utah Division of Public Utilities at the
6 Heber M. Wells Building in Salt Lake City, Utah. And I'm a
7 utility analyst with the Division.

8 Q Mr. Long, have you participated on behalf of the
9 Division in this docket?

10 A Yes, I have.

11 Q I see that memorandums were filed with the name
12 Ron Slusher as the utility technical consultant named there.
13 Could you please address why you are participating now?

14 A Yes. Mr. Slusher's going to be out of the office
15 for a few weeks, and I'm filling in for him.

16 Q So as part of your duties with the Division, is it
17 true that you have reviewed the material in this docket and
18 the memorandums filed by Mr. Slusher and the Division?

19 A That's correct.

20 Q With that, have you read the Division's memorandum
21 dated November 15th, entitled "In the Matter of the
22 Application of Bumblebee Water System, Inc., for a
23 Certificate of Convenience and Necessity to Operate as a
24 Public Utility Rendering Culinary Water Service, or for an
25 Exemption from Public Service Commission Regulation, Docket

1 No. 13-2567-01"?

2 A Yes, I'm familiar with that.

3 Q Do you have any comments to make regarding the
4 recommendation for approval?

5 A Yes.

6 Q Is it perhaps a correction to the memorandum?

7 A Yes. Under the original recommendation, the--
8 Mr. Slusher recommended that the CPCN be approved based on
9 Bumblebee Water System amending their bylaws to exclude
10 Article 7, Section 7.1 through 7.4. Upon further review,
11 the Division believes that it should be all of Section 7, or
12 Section 7.1 through 7.12.

13 All of those issues are--in the bylaws are
14 contrary to what a regulated utility would be able to
15 perform on their--be able to perform themselves rather than
16 have the Commission approval. And additionally, most of
17 these issues are also addressed in their tariff that is
18 being done in another docket.

19 Q So these sections deal with assessments and things
20 like that?

21 A That's correct.

22 Q And this would be covered, then, by an approved
23 tariff?

24 A That's correct.

25 Q So with the modification at the beginning

1 paragraph of the memorandum changing "Sections 7.1 through
2 7.4" to "7.1 to 7.12" and with the same modification on the
3 last paragraph of the memorandum on page 2, do you adopt
4 this memorandum as corrected as your testimony in this
5 docket?

6 A Yes, I do.

7 Q Do you have a statement to--or actually, at this
8 moment I'd like to request the admission as DPU Hearing
9 Exhibit 1 of the November 15th memorandum as corrected. The
10 court reporter has been provided the file document, which
11 does not at this point reflect the amendment or the change.

12 THE HEARING OFFICER: Mr. Blanchard, are you aware
13 of the memorandum that Ms. Schmid is referring to?

14 MR. BLANCHARD: Yes, I am. And there is no
15 objection to it being admitted.

16 THE HEARING OFFICER: Okay. Okay. Thank you. So
17 admitted.

18 MS. SCHMID: Thank you.

19 BY MS. SCHMID:

20 Q Mr. Long, do you have a statement that you would
21 like to present concerning the approval of the CPCN
22 application?

23 A Yes. The Division would recommend that the
24 Commission approve this application, that it is in the
25 public interest and--that it's approved and we move forward

1 with the tariff in the other docket.

2 Q And so the Division's recommendation is
3 conditional upon--the Division's recommendation is that the
4 certificate be issued contingent upon the removal of
5 Section 7?

6 A I'm sorry. That's correct.

7 Q Anything further?

8 A Not at this time.

9 MS. SCHMID: Thank you.

10 Mr. Long is available for questions.

11 THE HEARING OFFICER: Thank you.

12 Mr. Blanchard, questions?

13 MR. BLANCHARD: I believe this is more of a
14 housekeeping thing: Once I have the documentation for the
15 amendment of the bylaws as requested by the Division of
16 Public Utilities, do you want the--the amended bylaws to be
17 certified, as the--as it was done in the original filing?

18 THE HEARING OFFICER: Mr. Blanchard, this is an
19 opportunity for you to ask questions of Mr. Long. Is that a
20 question for Mr. Long?

21 MR. BLANCHARD: Yes, that is.

22 THE HEARING OFFICER: Okay.

23 THE WITNESS: Yes, that's--that's what we would
24 require.

25 MR. BLANCHARD: Okay. Very good. We will be

1 doing that, then.

2 THE WITNESS: Okay.

3 THE HEARING OFFICER: Okay. Any further
4 questions, Mr. Blanchard?

5 MR. BLANCHARD: No, not at this point.

6 THE HEARING OFFICER: Okay. Mr. Long, just a
7 couple of clarifying questions for you, please. Are you
8 aware that the Division filed a memorandum on this--on
9 November 7th, 2013?

10 THE WITNESS: Yes, I am.

11 THE HEARING OFFICER: Okay. And the memorandum
12 that you were referring to, the memorandum that was
13 subsequently filed on November 15, 2013, does that resolve
14 all issues and concerns that the Division had at the time of
15 the November 7, 2013, memorandum?

16 THE WITNESS: It does in regard to the CPCN
17 application.

18 THE HEARING OFFICER: Okay. Very good. In
19 particular, it was specifying that the application was
20 incomplete.

21 THE WITNESS: Right.

22 THE REPORTER: Did you say "incomplete"?

23 THE HEARING OFFICER: Yes, I did.

24 And for further clarification, is it your
25 understanding that this development in which Bumblebee Water

1 Systems seeks a CPCN is a residential community?

2 THE WITNESS: That's my understanding.

3 THE HEARING OFFICER: Okay. And is it also
4 correct that the Division is recommending that the maximum
5 connections be 58, as--as--assuming that the Commission
6 issues a CPCN, that it be limited to 58 connections?

7 THE WITNESS: That's correct.

8 THE HEARING OFFICER: Thank you, Mr. Long. I
9 don't have any further questions.

10 THE WITNESS: Okay.

11 THE HEARING OFFICER: Mr. Blanchard, back to you,
12 please. And again, I remind you you're still under oath.
13 You've heard what Mr. Long has indicated. And I take from
14 your follow-up question from him that Beehive [sic] has no
15 objection to the request from the Division that the bylaws
16 be amended so that all of Section 7 be eliminated?

17 MR. BLANCHARD: That is correct, your Honor.

18 THE HEARING OFFICER: Okay. And do you have a
19 sense as to when you will be doing that?

20 MR. BLANCHARD: Definitely before the end of the
21 month. I'm anticipating before the 13th.

22 THE HEARING OFFICER: Okay. And then the other
23 part of the recommendation is that they recommend that the
24 CPCN be limited to 58 connections. Do you also understand
25 and agree with that limitation?

1 MR. BLANCHARD: Yes. The 58 connections is
2 exactly what's been requested. And I see no way for that to
3 be changed.

4 THE HEARING OFFICER: Okay. And just one other
5 final housekeeping matter, which we've addressed, but just
6 for clarification, you do understand that the tariff issue
7 will be addressed separately under a separate docket number,
8 Docket 13-2567-T01?

9 MR. BLANCHARD: Yes, the tariff requires separate
10 approval, which we're continuing to work on.

11 THE HEARING OFFICER: Okay. Very good.
12 Are there any questions before we finish?

13 MR. BLANCHARD: None from the Applicant.

14 MS. SCHMID: If I may just ask one more of
15 Mr. Long.

16 THE HEARING OFFICER: Absolutely.

17 EXAMINATION (CONTINUED)

18 BY MS. SCHMID:

19 Q Mr. Long, do you believe that issuing the
20 certificate as requested and as modified with the amendment
21 to the bylaws to remove Section 7 is in the public interest?

22 A Yes, I do.

23 THE HEARING OFFICER: Okay. Thank you very much.
24 And Mr. Blanchard, do you agree with that as well?

25 MR. BLANCHARD: Yes, I do. Thank you.

1 THE HEARING OFFICER: Okay. Thank you. Very
2 good. I appreciate everyone's time today. Thank you for
3 your patience. And I realize sometimes weather and other
4 things happen. And I really appreciate the cooperation of
5 everyone. Thank you.

6 The Commission will take this under consideration
7 and issue an order once--once we see the transcript.

8 Thank you, and have a good day.

9 We're off the record.

10 (Proceedings concluded at 10:08 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Scott M. Knight, RPR
Utah License No. 110171-7801

