

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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| In the Matter of the Investigation of the |) | |
| Water System Operations of Bridge |) | <u>DOCKET NO. 04-2437-01</u> |
| Hollow Water Association for |) | |
| Certification as a Public Utility or |) | <u>REPORT AND ORDER</u> |
| Exemption as a Mutual Water Company |) | <u>CERTIFICATE NO. 2437</u> |
| |) | |

ISSUED: January 29, 2007

SYNOPSIS

Bridge Hollow Water Association having failed to demonstrate its qualification for exemption from Commission regulation, but having demonstrated its fitness to serve, the Commission grants a Certificate of Public Convenience and Necessity and approves interim rates as indicated.

By the Commission:

PROCEDURAL HISTORY

On July 27, 2004, the Division of Public Utilities (“Division” or “DPU”) filed a Petition, pursuant to *Utah Code Annotated* §54-4a-1, for an Order to Show Cause why Bridge Hollow Water Association (“Bridge Hollow” or “Company”) should not be fined \$2,000 per day for each day that the Company has operated as a private water utility delivering culinary water to customers without the Commission authority required by statute, and why its named officers, John Tebbs and Duane Fluckiger, should not face the criminal sanctions provided by statute. The Division’s petition alleged that representatives of the Utah Division of Drinking Water had notified the Division that the Company is currently serving culinary water customers.

On August 3, 2004, the Commission issued a Notice of Hearing and Order to Show Cause requiring Bridge Hollow and its named officers to appear at hearing before the Administrative Law Judge on August 17, 2004, to show cause, if any, why Bridge Hollow has operated as a public utility without a Certificate of Public Convenience and Necessity (“Certificate”).

Thereafter, upon request of the Division and the Company, the Commission postponed hearing on this matter while the Division continued to investigate this matter.

On September 15, 2004, Lee R. and Shirley Brown (the “Browns” or “Intervenors”) filed a Motion to Intervene. On October 1, 2004, the Commission issued its Order Granting Intervention to the Browns.

On October 14, 2004, Bridge Hollow filed an Application seeking exemption from Commission regulation indicating it provides service to 23 lots and maintains standby service to an additional 17 lots. The Application indicates Bridge Hollow commenced culinary water service in 1998.

Over the following two-plus years the Administrative Law Judge conducted a series of technical conferences and procedural hearings intended to clarify various Company ownership issues bearing on whether or not the Company qualifies for exemption from Commission regulation. During this time, the Company, the Browns, and representatives of BACT and the Tebbs family (hereinafter jointly referred to as “BACT/Tebbs”), a group claiming a continuing controlling interest in Bridge Hollow, engaged in negotiations toward settlement of

the various Company ownership and financial disputes bearing upon the Company's Application for exemption.

On April 19, 2006, the Browns filed a Petition for Hearing and Final Order seeking a hearing and Commission order directing Bridge Hollow to complete the tasks necessary for it to qualify for exemption from Commission regulation.

On May 25, 2006, the Division filed a memorandum noting the complex corporate formation and governance issues raised by the parties to this docket. Specifically, the Division stated that the ongoing dispute between Bridge Hollow's current officers and various individuals and companies, including BACT/Tebbs, regarding the number of authorized and issued shares of stock in the Company precluded the Division from making any recommendation regarding the Company's qualification for exemption from Commission regulation. The Division also stated its belief that resolution of these corporate ownership and governance issues falls outside of the Commission's jurisdiction.

On May 31, 2006, the Browns filed their Response to May 25, 2006, Recommendation of the DPU objecting to the Division's memorandum and renewing their request for hearing and final order.

On January 18, 2007, the Division filed its analysis of the Application, recommending the Commission issue a Certificate and approve interim rates for Bridge Hollow based on the rates currently being charged by the Company.

Pursuant to Notice issued on December 22, 2006, hearing on the Application was held before the Administrative Law Judge on January 22, 2007. Lorin Barker of Kirton &

McConkie represented Bridge Hollow. Duane Fluckiger, President of Bridge Hollow, testified on behalf of the Company. Stan Fitts of Strong & Hanni represented BACT/Tebbs. John Tebbs, an agent for BACT, and John Fleming, a consultant to the Tebbs family, testified on behalf of BACT/Tebbs. Patricia Schmid, Assistant Attorney General, State of Utah, appeared on behalf of the Division with Bruce Moio testifying for the Division. Mr. Lee Brown testified on behalf of the Intervenors.

At hearing, BACT/Tebbs moved for a continuance of the proceedings to enable the parties to continue negotiations toward settlement of the Company ownership and financial issues that have clouded these proceedings. In issuing the findings, conclusions, and order based thereon provided below, we hereby deny the BACT/Tebbs motion.

BACKGROUND, DISCUSSION, AND CONCLUSIONS

Applications by water companies seeking exemption from Commission regulation are typically adjudicated in an expedient and straightforward manner. Commission Rule 746-331-1(C) provides that if the Commission finds that the applicant

is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous, then the Commission shall issue its finding that the entity is exempt from Commission jurisdiction ...

Therefore, if an applicant for exemption satisfies these criteria, the Commission will exempt that applicant from further Commission regulation.

In the instant case, the Division determined, and no party disputes, that the Company maintains good standing with the Division of Corporations and has an approved rating from the Division of Drinking Water. While there is some dispute among the parties concerning the adequacy of water supply and water rights to serve an expanded customer base, the evidence establishes that Bridge Hollow possesses adequate water rights to serve its current users in the Bridge Hollow subdivision and several adjacent lots.

However, because of the stock ownership and various financial disputes between the Company and BACT/Tebbs, the Division has been unable to determine precisely who exercises control over the assets of Bridge Hollow, as well as whether a commonality of interest exists with respect to the voting rights exercised by current users and stock holders. The Browns assert the Commission should decide these ownership issues based on the various development agreements, stock issuance records, and other evidence they have submitted. The Division, on the hand, argues the Commission lacks the jurisdiction to decide these corporate ownership and governance issues. The Division notes these ongoing disputes render it unable to conclude that Bridge Hollow qualifies for exemption from regulation under Commission Rule 746-331-1 and therefore recommends the Commission issue a Certificate to Bridge Hollow.

Whether the Commission is competent to determine which party properly owns and controls the Company is a question that we need not reach in deciding the matter before us. Instead, it is enough that we conclude that Bridge Hollow has failed to meet its burden of proving a commonality of interest exists between its members and therefore does not qualify for exemption from Commission regulation. Bridge Hollow possesses all required consent and

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permits and has been providing culinary water service to its users for almost a decade. It appears that provision of this service does not adversely affect the operations of any existing certificated public utility. Therefore, we determine to regulate the Company as a culinary water utility and conclude, as a matter of law, that Bridge Hollow should be issued a Certificate.

The Division also recommends the Commission approve interim rates based on the rates currently charged by Bridge Hollow. The Division notes that once the outstanding ownership issues have been settled by the parties or resolved in the appropriate forum it will be in a better position to obtain the accurate rate base information necessary to a final determination of just and reasonable rates. The rates currently charged by the Company, and recommended for interim approval by the Division, are as follows:

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| Water Use | \$165/quarter |
| Standby Fee | \$120/quarter |
| Connection Fee | \$1500 |

The Division notes the Company has been able to meet its demands for maintenance and repairs, as well as ongoing operations, with these rates in place. The Division believes the proposed rates are just and reasonable on an interim basis and recommends Commission approval of the same. We concur and approve said rates on an interim basis.¹

¹By letter dated January 19, 2007, Bridge Hollow informed the Division that, in addition to the water usage rates discussed above, the Company has also been collecting an assessment of \$40.00 per quarter per lot on 40 lots in the Surrey Ridge area adjacent to the Bridge Hollow subdivision. This assessment is apparently based on various agreements entered into in years past between the Company and BACT/Tebbs, or its predecessors-in-interest. Bridge Hollow testified that, based on this assessment, it has actually collected approximately \$5,400 per year. These payments have been made in order for Bridge Hollow to maintain the water rights necessary to serve the Surrey Ridge area at some future time. By its letter to the Division on January 19, 2007, the Company apparently intended that this assessment be included in any interim rates approved by the Commission. At hearing, the Division noted the Surrey Ridge area is currently undeveloped and is not served by Bridge Hollow's plant or facilities. Therefore, the Division testified that while it would welcome "voluntary" payments to Bridge Hollow by

The final issue before us at this time appears to be the determination of the specific service territory within which Bridge Hollow will be authorized to serve. Bridge Hollow currently serves those lots within the Bridge Hollow subdivision in Summit Co along with several adjacent lots located in an area commonly referred to as Deer Haven. There is also some evidence indicating that at its inception the Company was intended to serve development in the Surrey Ridge area adjacent to Bridge Hollow. Surrey Ridge is owned by BACT/Tebbs, or some related entity. However, Surrey Ridge is currently undeveloped and Bridge Hollow maintains no plant or facilities in Surrey Ridge. Because it currently serves no customers in Surrey Ridge and because of the ongoing financial and ownership disputes between Bridge Hollow and BACT/Tebbs, Bridge Hollow and the Browns assert the Company's service territory should be limited to those areas currently served by Bridge Hollow. BACT/Tebbs and the Division argue the Company's service territory should include Surrey Ridge because the Company and BACT/Tebbs have always assumed, and have entered into agreements indicating that, the Company would serve the Surrey Ridge area.

In deciding this issue, we note that applicants for exemption or certification typically specify their service territory based on the area they currently serve or anticipate serving. In this matter, Bridge Hollow's Application notes only that the Company was, at the time of application, "serving 23 lots and 17 lots on standby" and that the Company intended to

BACT/Tebbs, the Division is aware of no rate mechanism by which Bridge Hollow could be authorized to charge BACT/Tebbs this assessment amount. We concur and decline to approve any rate element that would impose a charge for water service on the Surrey Ridge area. Of course, Bridge Hollow retains the right to petition the Commission for such rates if and when the Company desires to commence service to the Surrey Ridge area.

serve “23 homes + 17 lots”. Given the testimony provided at hearing, it appears that these numbers refer to the Bridge Hollow subdivision, not including the undeveloped Surrey Ridge area. In any event, given the ongoing disputes between the parties regarding ownership of assets, voting shares, financial obligations, and availability and control of sufficient water and water rights—the settlement of which may ultimately bear upon the Commission’s continuing regulation of Bridge Hollow, as well as the territory to be served by the Company—it is reasonable that we limit Bridge Hollow’s certificated service territory at this time to that area currently being served by the Company, including the several lots in the Deer Haven area. However, in doing so, we note that the Commission routinely entertains petitions by water utilities to expand their service territory. If and when Bridge Hollow files such a petition to include Surrey Ridge, the Commission will evaluate said petition based on the facts presented at that time.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- BRIDGE HOLLOW WATER ASSOCIATION is hereby granted Certificate of Public Convenience and Necessity No. 2437 to operate as a water corporation providing culinary water within the Bridge Hollow subdivision, and adjacent lots as noted *supra*, in Summit County, Utah.

- BRIDGE HOLLOW WATER ASSOCIATION shall comply with all requirements of the Utah Division of Drinking Water.
- BRIDGE HOLLOW WATER ASSOCIATION's rates are approved on an interim basis as set forth *supra*. Applicant shall file a tariff consistent with this Report and Order within 30 days of the date of this Order. The Division of Public Utilities shall review the revised tariff sheets for compliance with this Report and Order.

Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission 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 Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission'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 Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 29th day of January, 2007.

/s/ Steven F. Goodwill
Administrative Law Judge

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Approved and Confirmed this 29th day of January, 2007, as the Report and Order
of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#52245