

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Investigation of the Water )  
System Operations of BRIDGE HOLLOW )  
WATER ASSOCIATION for Certification as a )  
Public Utility or Exemption as a Mutual Water )  
Company )

DOCKET NO. 04-2437-01  
NOTICE OF HEARING AND  
ORDER TO SHOW CAUSE

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ISSUED: August 3, 2004

By the Commission:

On July 27, 2004, the Division of Public Utilities (Division) 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 Fluckinger, should not face the criminal sanctions provided by statute. The Division's petition alleges that representatives of the Utah Division of Public Drinking Water have notified it that the Company is currently serving culinary water customers.

In response to a letter initially sent to Bridge Hollow in September 2003, the Company, on December 1, 2003, sent the Division a survey form indicating that the Company serves 43 households. On December 12, 2003, the Division sent a letter to the designated Company contact, Duane Fluckinger, at the address listed on the survey response requesting completion of an enclosed application for exemption from Commission regulation. This letter was returned as undeliverable. On February 6, 2004, the Division sent a second letter by certified mail to the same address, but this letter was also returned as undeliverable. On February 27, 2004, the Division sent a certified letter to John Tebbs, the Company agent on file with the Division of Corporations, requesting completion of the application and received a return receipt signed by Barbara Tebbs. On April 30, 2004, counsel for the Division sent a certified letter to Mr. Tebbs

providing notice of its intention to petition the Commission for an order to show cause. This letter was returned as unclaimed. On May 5, 2004, the Division sent the letter by certified mail to the address listed for Mr. Tebbs in the Qwest telephone directory. This letter was also returned unclaimed. Repeated attempts by Division staff to reach Mr. Tebbs by telephone have been unsuccessful.

The Division's Petition sets forth good cause for an inquiry into whether Bridge Hollow should be fined, and its named officers required to face criminal sanctions, for failure to comply with UCA § 54-4-25 requiring a certificate of public convenience and necessity prior to utility operation. A copy of the Division's Petition is attached hereto, and incorporated by this reference. Whereas there appears to be good cause to support said allegations, the Commission enters the following order.ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. BRIDGE HOLLOW WATER ASSOCIATION and its officers, shall appear before the Administrative Law Judge of the Commission on Tuesday, August 17, 2004, at 10:00 a.m., in the Fourth Floor Hearing Room #451, Heber M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah, to show cause, if any, why Bridge Hollow Water Association has operated as a public utility without a certificate of public convenience and necessity, and further to show cause why the Company should not be fined for operating without a certificate, and other remedies imposed on the Company and its named officers.

2. The Division of Public Utilities shall conduct such further investigation as it deems necessary and provide any additional recommendations at the hearing. The Division is further directed to send a copy of this Notice, and a copy of the Petition, without attachments, to each property owner served or potentially to be served by the Company, according to the most current information in the possession of the Division.

3. BRIDGE HOLLOW WATER ASSOCIATION and its officers are directed to cooperate with the Division and provide information requested by the Division in its investigation of the Company.

4. BRIDGE HOLLOW WATER ASSOCIATION customers who will not be present for the hearing may participate by telephone. Customers wishing to participate by telephone should notify Julie Orchard, Commission Secretary, at least one day prior to the hearing at 801-530-6716.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 3<sup>rd</sup> day of August, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#39640

-ATTACHMENT-

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

:

**In the Matter of the Investigation of the Water** : **Docket No. 04-2437-01**  
**System Operations of Bridge Hollow Water** : **Petition for An Order**  
**Association for Certification as a Public** : **To Show Cause**  
**Utility or Exemption as a Mutual Water** :  
**Company** :

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**PETITION FOR AN ORDER TO SHOW CAUSE**

July 27, 2004

Pursuant to Commission Rule R746-100-3, the Division of Public Utilities (“Division”) hereby submits its petition for an Order to Show Cause against Bridge Hollow Water Assn. (“Company”), and its officers, John Tebbs and Duane Fluckinger. The Division petitions the Utah Public Service Commission pursuant to UCA § 54-4a-1, to open a docket for the purpose of requiring the named principal of the Company to explain why the Company has been operating a water system as a public utility without a certificate of convenience and necessity, and to show cause why the Company should not be fined \$2,000 per day for each day that the Company has not been in compliance with Public Utility Statutes and why the named principal should not face criminal sanctions provided by statute.

In support of the petition, the Division submits:

1. In July, 2003, the Division received a listing of Public Water Systems from the Utah Division of Drinking Water which indicated that the Company operated Water System Number 22117 in Summit County. The listing indicated that the system was approved in February, 1999 for a maximum of 40 culinary water connections.
2. In response to a letters sent to the Company by the Division in September, October and November, 2003, a Company representative filed a survey form on December 1, 2003, indicating that the mutual water company served 43 households (See Attachment # 1).
3. On December 12, 2003, the Division sent a letter to the designated Company contact, Duane Flukinger, at the

address listed on the survey response, 1501 Oak Haven Lane, Wanship, UT, requesting completion of an enclosed application for exemption from Public Service Commission Regulation and provide the necessary information for the Division to determine whether the Company was operating the water system as a mutual culinary water company or needed to be certificated as a public utility. The letter was returned by the US Post Office as undeliverable (See Attachment # 2).

4. On February 6, 2004, the Division sent a second letter by certified mail to the designated Company contact requesting completion of an application. However the certified letter was returned by the US Post Office as undeliverable (See Attachment # 3).
5. On February 27, 2004, the Division sent a letter requesting completion of an application by certified mail to John Tebbs, the Company agent on file with the Utah Division of Corporations at PO Box 36, Bountiful, UT. The Division received a return receipt that the letter was delivered to Barbara Tebbs on March 9, 2004 (See Attachment # 4). However, the Division did not receive a response.
6. On April 30, 2004, the Assistant Attorney General representing the Division sent the Company a certified letter to John Tebbs at the same address providing a: "Notice of Intention to file a petition for an order to show cause for failure to respond to requests for information and for operation of a public utility without a certificate of convenience and necessity". The letter was returned by the US Post Office unclaimed on May 4, 2004. (See Attachment # 5). The letter was mailed certified mail on May 5, 2004 to John Tebbs at 3642 South Bountiful Blvd, Bountiful UT 84010, which is the address for Mr. Tebbs in the Qwest phone book. The letter was returned by the US Post Office unclaimed on May 27, 2004. Repeated attempts to reach Mr. Tebbs by phone have been unsuccessful.
7. Pursuant to UCA § 54-4-1, the Commission is empowered to supervise and regulate public utilities providing service within Utah. Under UCA § 54-4a-1 (c), the Division is empowered to, "investigate or study, upon

complaint, upon order of the Public Service Commission, or upon its own initiative, any matter within the jurisdiction of the commission.”

8. UCA § 54-4-25, provides that: “A . . . water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction .”
9. Administrative Rule R746-331-1 provides that “Upon the Commission’s own motion, complaint of a person, or request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine whether an entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission’s jurisdiction.”
10. Pursuant to UCA § 54-7-25, any public utility that fails to comply with the statute, any rule or order issued by the Commission is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense. The statute also states that in circumstances where violations are of a continuing nature, each day’s continuance of the violation shall be a separate and distinct offense.
11. Pursuant to UCA § 54-7-26 and 28, any officer or agent of the Company, or other individual who either individually, or acting as an officer agent or employee of a corporation other than the public utility, violates any provision of the statute is guilty of a class A misdemeanor.

Wherefore, the Division respectfully requests that the Commission open a docket for the purpose of requiring the Company, its officers and its agents to appear and show cause why the water company and the named individual should not be sanctioned for failing to comply with applicable statutes. The Division recommends that failing an adequate cause showing, the Commission should impose the maximum fine of \$2,000 per incident and find the individual guilty of numerous violations.

Based upon the foregoing facts and circumstances, the Division petitions the Commission to open a docket and request that the Company, John Tebbs and Duane Flukinger appear before the Commission and show cause why fines should not be imposed upon the Company for failure to comply with the referenced Statutes.

Dated this 27<sup>th</sup> day of July, 2004.

/s/ Patricia E. Schmid

Assistant Attorney General

Division of Public Utilities