



JON HUNTSMAN Jr.  
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State of Utah  
Department of Commerce  
Division of Public Utilities

FRANCINE GIANI  
*Executive Director*

THAD LEVAR  
*Deputy Director*

CONSTANCE B. WHITE  
*Director, Division of Public Utilities*

January 18, 2007

## MEMORANDUM

**TO:** Public Service Commission of Utah

**FROM:** Division of Public Utilities  
Constance B. White, Director  
Laura Scholl, Manager, Telecom and Water Section  
Bruce Scott Moio, Technical Consultant

**RE:** 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**

### RECOMMENDATION:

The Division of Public Utilities (DPU) recommends the Commission issue a Certificate of Public Convenience and Necessity for Bridge Hollow Water Association (Company) and approve interim rates as explained in this memorandum

### SUMMARY:

On October 14, 2004 the Company filed for exemption from Commission regulation after being contacted by the DPU for operating a utility without certification or exemption. The DPU reviewed the application and requested from the Company some clarification on voting rights. Pursuant to R746-331-1, to be exempt from Commission regulation, a water company's assets must be controlled by the Company and based on voting control there must be a commonality of interest.

The DPU found the Company being run mainly by its users, the Company was in good standing with the Division of Corporations, there were adequate water rights to serve the users, and the Company had an approved rating by the Division of Drinking Water. Further the DPU found the individuals running the day-to-day operation of the Company to be cooperative and quite concerned about the Company complying with all applicable state statutes. The Company could be

eligible for exemption except for the unclear status of the control of assets and the voting rights.

There are multiple complex corporate formation issues involving issuance of more shares of stock than authorized and general corporate governance issues. The Assistant Attorney General supporting the DPU has advised that, consistent with prior court cases, these issues are outside the jurisdiction of the Commission.

There have been multiple technical conferences with the Commission, DPU, Company, and the Tebbs Family. The Tebbs Family asserts it has voting and asset control in the Company. After two and a half years these issues have not been resolved. The DPU believes this Docket has been delayed due to the lack of attendance in all relative proceedings by the Tebbs family, specifically John Tebbs and Clement Tebbs. Although the Tebbs family has sent representatives those attending had been given no decision making authority. The DPU notes through Utah Code §§ 54-7-3 and 54-7-25 the Commission has the authority to subpoena and or fine individuals not cooperating with a Commission inquiry.

**DETAILS:**

Mr. Duane Fluckinger is the current Director of Bridge Hollow Water Association and is actively managing the daily operations; he is also a resident of the Bridge Hollow Subdivision. The Company has been managed properly with good books and records since Mr. Fluckinger has assumed this role. Currently the water users are adhering to the following rates:

Water Users	\$ 160	Quarterly
Standby Fee	\$ 120	Quarterly
Connection Fee	\$1500	

Based on the DPU analysis defined in DPU Exhibits 1.1 through 1.5 these rates do not produce a reasonable rate of return. Generally the allowed reasonable rate of return for water companies of this size is around 12%. In this case the shortfall of \$40,389 (see Exhibit 1.4) is partly determined by the rate base of \$342,845 shown on Exhibit 1.2. This rate base figure is calculated using all recorded information made available by the water company and the Tebbs. The DPU cannot corroborate the accuracy of this number.

With these current rates the Company has been able to meet its demands for maintenance and repairs, as well as the ongoing operations.

**RECOMMENDATION:**

There are unresolved issues and discrepancies involving authorization and issuance of stock shares and corporate governance. These are matters that DPU believes cannot be resolved within Commission jurisdiction. The DPU

recommends at this time the Commission issue the Company a Certificate of Public Convenience and Necessity and approve the current rates as interim until such time as the unresolved issues are settled by all parties in the appropriate forum. Once the Company or parties are able to corroborate the accuracy of the rate base the DPU recommends the Company file for a rate increase at that time.