

Lee R. and Sheila Brown
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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of the Investigation of the
Water Association for Certification as a
Public Utility or Exemption as a Mutual
Water Company

Response to May 25, 2006
Recommendation of DPU

By Lee R. and Sheila Brown

Docket No. 04-2437-01

RESPONSE

On May 25th, 2006 the Division of Public Utilities in a memorandum addressed to the Public Service Commission offered a brief recommendation with out providing specific facts or legal opinions why the proceeding should be resolved in “the appropriate court”.

Lee R. Brown and Sheila Brown, Intervening parties of record and representatives of shareholders and customers of Bridge Hollow Water Association, respectfully object to the recommendation of the Division of Public Utilities. We feel the recommendation is both premature and without proper foundation.

The Browns, request this opportunity to rebut on the record, the Memorandum from the DPU dated May 25, 2006 which contains opinions contrary to the interests of intervening parties. Furthermore, the Memorandum was apparently not served on other principal parties to the proceeding. The electronic copy received by the Browns does not indicate the Memorandum was served on Mr. Fluckiger or Mr. Tebbs.

Rebuttal Response:

The Memorandum essentially states that the status of the Divisions investigation thus far reveals the issues to date center around the number of authorized voting shares and corporate governance.

Response: Shareholders and quite possibly the former and current Boards of Directors may agree that the underlining single most significant problem results from improper issuance of shareholder stock certificates and the resultant ownership and voting control of the entity.

These two problems are clearly issues that the Public Service Commission is authorized and required to contemplate when determining a Mutual Water Company's exemption status. (Reference: Rule R746-331 sections B1, B2, B3, and C).

The DPU then states: "The Assistant Attorney General supporting the Division has advised us that, consistent with prior court cases, these issues are outside the jurisdiction of the Commission.

Response: The DPU has failed to identify any court cases to support the assumption that this matter is beyond the scope of authority of the Commission. Furthermore the DPU has not explained the applicability of those alleged cases with the present BHWA facts and circumstances.

By not providing evidence of the court cases and an explanation of the alleged applicability of the facts to the present case, the intervening parties are disadvantaged and left with no basis for understanding the DPU's reasoning or it's relevance to this case, there by providing the Commission and intervening parties no opportunity to assess the veracity of this claim. The DPU'S recommendation that these matters should be resolved in an appropriate court is premature and would limit the rights of intervening parties to participate in this proceeding as well as limit the authority of the Commission. Alternatively, a formal hearing on the matter will enable a review of the issues now properly before the Commission as contemplated by the Notice of Order to Show Cause issued August 3, 2004.

The DPU further states: "Alternatively, since there has been no showing that the criteria for exemption as a mutual water company has been met, the commission could issue a certificate of public convenience and necessity, and perhaps advise the interested parties that additional relief is best sought in an appropriate court. Perhaps the Commission should suspend these proceedings and docket pending resolution of these issues."

Response: Intervening parties can find no record of response to the DPU request for information dated December 12, 2003. Intervening parties on behalf of shareholders and customers of BHWA feel that the current BHWA board should be given the opportunity to answer the questionnaire or specific requests for information that would enable the Commission to decide if the exemption is appropriate. This can best be accomplished by clearly identifying the remaining

unanswered exemption criteria that the Commission requires to make a decision on exemption.

In addition, it would be inappropriate to issue a certificate of necessity and public convenience as the Articles of Incorporation, specifically state: “Article V Shares: The Corporation shall be owned by its shareholders. The Corporation is not a public utility, and is not prepared, able, or legally empowered to serve persons other than its shareholders.”¹

The DPU makes reference to: “the Tebbs family apparently took over the assets of the predecessor developer of Bridge Hollow subdivision who took out bankruptcy,”

Response: This statement shows a basic misunderstanding of the facts in this matter. Our research shows that Bridge Hollow Development (the Newton’s) was the developer of Bridge hollow subdivision. The lot owners are now the owners of the assets of Bridge Hollow Development.² This misunderstanding and perhaps others can best be corrected in a formal hearing before the Commission.

We respectfully submit our objections to the DPU Memorandum dated May 25th, 2006 and request that the Division of Public Utilities reconsider their recommendation and that the Commission go forth with our request for a Hearing and Final Order on this matter.

Sincerely,

Lee R. and Sheila Brown,
Shareholders and Customers of
Bridge Hollow Water Association.

Note: Service of the response by Lee R. and Sheila Brown is being left to the direction of the Public Service Commission Secretary who served the Browns electronically with the May 25th, 2006 DPU Memorandum.

Dated May 31, 2006.

¹ Reference Exhibit number 7, titled “Article of Incorporation of Bridge hollow Water Association” dated 11/14/94 contained in the Brown’s Petition for Hearing and Final Order.

² Reference Exhibit number 6, titled “Agreement” dated 6/8/95 contained in the Brown’s Petition for Hearing and Final Order.