



State of Utah
Department of Commerce
Division of Public Utilities

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Executive Director

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities

Chris Parker, Director

Bill Duncan, Telecommunications / Water Manager *WSD*

Mark Long, Utility Analyst *ML*

Date: April 21, 2014

Re: In the Matter of the Application of Red Canyon Estates Water Users Association for an Exemption from Public Service Commission Regulation, Docket No. 14-2570-01.

Recommendation:

Approve Red Canyon Estates Water Users Association's (Red Canyon, Company or Applicant) request for an exemption from Public Service Commission (Commission) regulation **PENDING** proper notification of its customers or verification that all of its customers have been notified and an extension of time for interested parties to submit comments.

Application for Exemption from Commission Regulation

On or about March 21, 2014 the Commission received from Red Canyon an application for an exemption from Public Service Commission Regulation.

Background on Red Canyon

Red Canyon is listed by the Division of Corporations as an 'Active,' non-profit corporation with a status of 'Good Standing.' Applicant states that there are 14 approved lots, but only seven (7) of those lots presently have a water connection with a total number of 15 occupants. The Utah Division of Drinking Water's records indicate that Red Canyon is classified as a non-public system because it has less than 15 connections and has less than 25 occupants receiving water service from Red Canyon. Applicant provided documentation from the Division of Water Rights showing 28 acre feet of water, which is adequate water for 14 residential dwellings including stock watering and irrigation.

According to the Company's application for exemption, water service likely commenced in the summer of 2001 shortly after the sale of the first water right. Applicant has not previously

requested a Certificate of Public Convenience and Necessity (CPCN) or applied for an exemption from regulation from the Commission and is, therefore, this is the first notice by the Division of Public Utilities (Division) of Applicant's water service to the public.

Applicant Serving Members Only

Applicant states that it "...will only service those lots location within the Red Canyon Estates subdivision." Additionally, the Articles of Incorporation states that every lot owner of record shall be a member of the Association. The Division finds that Red Canyon is serving only customers located within its service area boundaries that are members of the water company and therefore meets the requirements as established by the Commission to operate free of Commission regulation.

Customer Notification

Pursuant to Red Canyon's Application for Exemption on March 21, 2014, the Commission issued an Order on March 25, 2014 requesting from Red Canyon the following:

"Within 10 days following this notice, Red Canyon shall provide proof of notice of the proposed exemption to its affected customers. This proof should include a copy of any notice sent to customers notifying them that the utility is seeking an exemption from the Commission."

On or about April 9, 2014, Mark Long, an Utility Analyst with the Utah Division of Public Utilities (Division) contacted Mr. Justin Wayment, legal counsel for the Applicant, inquiring about the proof of notification of its customers that was due within 10 days following the March 25, 2014 Order. Mr. Long informed Mr. Wayment that the proof of notice was due on April 4, 2014 and asked when he would be providing documentation verifying proof of notification. Mr. Long advised that typically water companies provided proof of notice through certified mail receipts and also showed those customers who were emailed the notice, in addition to certified mail.

Mr. Wayment indicated that he believed all customers were notified via the March 25th Commission Order with an attached Certificate of Service showing that all customers of Red Canyon were sent this notice through U.S. mail. Mr. Wayment also indicated that he spoke to one of Red Canyon's customers who were notified through the Commission's correspondence and that customer had indicated that they spoke to another customer, who was also notified. Mr. Long asked Mr. Wayment if he had personal knowledge or could provide proof that all of the customers had been notified via the Commission's March 25th Order and he indicated that he could not.

The Division believes that Red Canyon did not provide adequate proof notice of the proposed exemption to its customers and provided no evidence of notice to the Commission as required in the Commission's March 25, 2014 Order.

Failure to Obtain a Certificate of Public Convenience and Necessity (CPCN), or an Exemption if Serving the Public

The Division would ask that the Commission remind Red Canyon that it is a violation of state law, pursuant to Utah Code §54-7-25 (1), to continue to serve the public without a certificate of public convenience and necessity (CPCN) or an exemption from regulation, and may subject Red Canyon to applicable fines.

CERTIFICATE OF SERVICE

I CERTIFY that on the 21st day of April, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Justin W. Wayment
Counsel for Red Canyon Estates Water Users Association
PO Box 1808
Cedar City, UT 84721

Red Canyon Estates Water Users Association
Attn: Joe Portolese, President
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Parowan City, UT 84761

Christopher and Nancy Whitney
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Richard and Sherrie Taylor
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Roy Stuchell
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Joe and Michelle Portolese
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Joseph Brandt Matheson
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Chris Robb
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By E-Mail:

Justin W. Wayment (legal@suhdutsingllc.com)
Counsel for Red Canyon Estates Water Users Association

Red Canyon Estates Water Users Association
Attn: Joe Portolese, President (jportol@yahoo.com)
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Assistant Utah Attorneys General