



State of Utah
Department of Commerce
Division of Public Utilities

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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: February 19, 2016

Re: In the Matter of the Application of Bumblebee Water System, Inc.'s for an Exemption from Public Service Commission Regulation. Docket No. 16-2567-01.

Recommendation:

Approve Bumblebee Water System, Inc.'s (Bumblebee) request for an exemption from Public Service Commission (PSC or Commission) regulation.

Background of Bumblebee:

Bumblebee was established for the purpose of providing water service for 58 lots in the Sunset Subdivision (formerly known as Hunter Ridge) located in Iron County, Utah at the southwesterly end of Cedar Valley in the vicinity of Quitchipa Lake. Lots consist of a minimum of seven to twenty acres. There are currently eight homes connected to the water system. Bumblebee provided documentation showing that it has been fully approved by the Utah Division of Drinking Water. Bumblebee is operated by an experienced certified water operator, George Mason. The Division verified the above information with the Division of Drinking Water and they confirmed that Bumblebee was approved and active. Drinking Water personnel also indicated that Bumblebee's certified operator, Mr. Mason, is well known to them and indicated that he has a reputation in their office as an excellent certified water operator.

Although the law does not require testing by Drinking Water at present due to insufficient hook-ups and subdivision population, it is still tested monthly and maintained according to the standards of the Division of Drinking Water. Bumblebee has also provided documentation showing that there are adequate water rights to serve the 58 lots.

Regulatory History of Bumblebee:

- On September 9, 2013, the PSC received an application for a certificate of public convenience and necessity (CPCN) from Bumblebee.
- On January 2, 2014, the PSC approved Bumblebee's CPCN, Certificate No. 2567 in Docket No. 13-2567-01. The order in this docket also stated that the tariff filed in this docket is suspended until the Commission issues a final order after a hearing is held.
- On March 13, 2014, Commission Secretary, Gary L. Wideburg sent Bumblebee's legal representative of record, Brent A. Blanchard a letter advising that Bumblebee is not allowed to provide water service until its tariff is approved by the Commission.¹
- On February 9, 2016, the PSC received an application from Bumblebee requesting a Letter of Exemption from the PSC.

Bumblebee states in its February 9, 2016 application,

“Water services were commended shortly after the sale of the first lot which occurred on or about early part of the year 2013, and after the system was completed. Although the exact date of water service delivery is unknown, actual water service commenced in October, 2013.”²

The applicant also states, “At the present time, the water system furnishes water to eight homes ...”³

Based on the information submitted by Bumblebee in regards to its water service, it appears as though Bumblebee willingly and knowingly disregarded the Commission's order not to provide water service.

A short time before filing its Application for Exemption with the Commission, Bumblebee contacted the Utah Division of Public Utilities (Division) seeking guidance on its options regarding compliance with Commission rules, laws and orders.

¹ Correspondence from Gary L. Wideburg to Brent A. Blanchard, Blanchard Legal Solutions, PC, March 13, 2014. “As you are aware, the Commission issued a Report and Order on January 2, 2014 (“Commission Order”), approving a certificate of public convenience and necessity (Certificate No. 2567) in Docket No. 13-2567-01. [...]

“As of the date of this order, the Company's tariff filed in Docket No. 13-2567-T01 is suspended until the Commission issues a final order after a hearing is held.” Please note that this suspension is still in place. Further, as noted in the Division's March 5, 2014, memo filed with the Commission, the Division is unable to make a recommendation concerning the pending tariff until the Company responds to the outstanding discovery requests from the Division, which the Division notes have gone unanswered for over 100 days. Please be advised that the Company is not allowed to provide water service to the general public until its tariff is approved by the Commission.”

² Application for Exemption from Public Service Commission Regulation, page 2, 7.(b)., February 9, 2016.

³ Historical Operating Statement of Bumblebee Water Systems, Inc., page 2, first complete paragraph, January 23, 2016.

Division Comments and Basis for its Recommendation

Bumblebee 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.^{4 5}

Although Bumblebee blatantly disregarded the Commission's order not to provide water service, Bumblebee has sought to remedy its non-compliance through its application for exemption. The Division does not feel that fines, penalties or sanctions levied against Bumblebee are in the public interest in this case. The Division also believes that the Company is making efforts, including the changing of legal counsel, to better understand the regulatory environment and comply with Commission rules.

Customer Notification

Pursuant to Bumblebee's Application for Exemption on February 9, 2016, the PSC issued an Order on February 10, 2016, requesting from Bumblebee the following:

"Within 10 days of this notice, Bumblebee shall file in this docket proof that it has notified affected customers of this request for exemption."

On February 12, 2016, Bumblebee submitted a Certificate of Service to the Commission showing that 21 unique addresses were sent notifications of Bumblebee's request for exemption.⁶

Based on the prima facie evidence provided by Bumblebee the Division believes that Bumblebee has provided proof that it fulfilled its responsibility in notifying its customers that it is seeking an exemption from regulation from the PSC.

CC: Justin W. Wayment (legal@subdutsingllc.com)
Patricia Schmid (pschmid@utah.gov)

⁴ Article of Incorporation, Article X, (C), To distribute water to its stockholders for their own personal use and for use on lands owned and used by the stockholders within the geographical area of the Hunter Ridge Subdivision, ...and no other lands.", July 31, 2012.

⁵ Amended By-Laws, Section 1.6 Service Area. "The Company shall only serve its stockholders who are the owners of lots within the geographical area in which the company is authorized by the Utah State Engineer to use its water rights, which area, as of the date hereof, includes all of the lots within Blocks 1-12, inclusive, of the Sunset Subdivision ..."

⁶ Certificate of Service by Mailing,

"I hereby certify that on the 11th day of February 2016, a true and correct copies of the Letter to the State of Utah giving history of the subdivision, Application of Exemption to the Public Service Commission, Docket, and Notice of Filing and Comment Periods and Request for Proof of Notice to Customers were mailed, first-class mail, postage prepaid to the following:", February 12, 2016.