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April 25, 2022

VIA EMAIL
yhogle@utah.gov

Yvonne R. Hogle, Presiding Officer
 Public Service Commission of Utah
 160 East Broadway, 4th Floor
 Salt Lake City, UT 84111

Re: UT Docket No. 22-2438-01, Public Service Commission of Utah (PSC)
 Information Requests

Dear Ms. Hogle,

The Pineview West Water Company has asked that we respond to the Information Requests issued by your office on April 4, 2022. We will first address the specific matters raised in PWWC Information Request No. 1 and will then offer some additional context for the information contained in the responses to the Information Requests that were served on us by the Utah Division of Public Utilities (DPU) on April 20, 2022.

PWWC Information Request 1.

The PSC requested that PWWC respond to questions related to a document entitled The Case for [PWWC] Rate Increase authored by John Durig, Vice President of PWWC, and Confidential PWWC Exhibit 7, Graphs 20 04 10 Q1 Culinary April in Docket No. 19-2438-01. The PSC’s specific questions asked why these documents were designated confidential.

Although PWWC had previously been advised by Smith Hartvigsen, the law firm that now represents the Applicants in this matter, PWWC was not represented by legal counsel before the PSC in connection with either Docket No. 09-2438-01 or Docket No. 19-2438-01. It worked instead on its own with, and greatly appreciated the support of, the DPU in preparing and presenting its rate cases. PWWC initially prepared and submitted to DPU a graph that included

the names of its shareholders and contract customers. Mark Long at the DPU asked if PWWC really wanted to list all of those names in the public record and suggested instead they be kept confidential. PWWC accordingly deleted that information and submitted it to the PSC, as suggested by Mr. Long.

The last paragraph in the version in PWWC's files of the document in Docket No. 19-2438-01 filed by Mr. Durig does not include customer names. It reads in its entirety:

Several contract users should also be removed from the service area. They either have their own well water supply and should be removed from the service area or others will be refurbishing their well soon and should be removed from the service area.

PWWC had no reason for designating any of the information it filed as confidential other than the protection of its shareholders. If there is another version of Mr. Durig's document in the PSC docket that includes customer or shareholder names, that information would have been changed or designated confidential because of Mr. Long's suggestion.

Additional Context for the Information in the DPU Response.

DPU reports that the list of customers referenced in the 2009 rate case was furnished by PWWC and included the Snowberry Inn. PWWC believes that is correct – the company had just been turned over to the residents by the nearly bankrupt developer, who had allowed the Inn to be connected to the PWWC system in response to the Inn's claim that PWWC had unlawfully interfered with the Inn's water right. (The then-developer did not contest the water right interference claim which was later thrown out as a matter of law by the Utah Supreme Court.)

If PWWC understands it correctly, DPU also reports that it included the Inn in its 2019 rate calculations, but that the 2019 rate calculations "would have been unchanged by reducing the number of customers by one." (DPU Response to PSC Information Request 1.3.) PWWC elected to offer this additional context statement because of the acknowledgement in DPU's response that it does not use water usage amounts in its rate models. DPU's response illuminates precisely why the dispute between the Inn's owners and PWWC is critical to and, indeed, threatens the viability of PWWC.

PWWC was formed to supply water to the residences in the subdivisions associated with the Radford Hills development. PWWC was furnished with only the source capacity necessary to serve those residences. Its original service area was described accordingly. PWWC was not intended or equipped to serve the Snowberry Inn, and the original service area did not extend to the Inn's location. The Inn was wrapped into the 2009 rate case only because the departing developer had allowed it to connect rather than evaluating the Inn's now-dismissed water right interference claim. The Inn was removed from the service area described in the 2019 rate case for the reasons described by Mr. Durig in his testimony that was filed on June 4, 2020. He noted

there that PWWC had 82 connected customers and he believed PWWC would not have adequate capacity for all of its 119 shareholders at full build-out of the subdivision it was formed to serve and still provide water to the Snowberry Inn

While service to non-shareholder Snowberry Inn may have a negligible impact on *rate calculations* as reported by DPU, the *operational impact* of the Inn on a small company like PWWC is huge. Snowberry Inn has its own well and holds two separate water rights, the largest of which was acquired and approved in 2017 to support the Inn's need to serve 21 guests on a 365 day/year basis, as that need was reported by the Inn in its filing with the Utah State Engineer's office. The Inn's filing for this new water right in 2017 (made nine years *after* the then-developer allowed the Inn to connect to the PWWC system) clearly indicated the Inn's awareness that it is obligated to supply its own water needs and did not expect perpetual support from PWWC. However, in the five years since it obtained the 2017 water right, the Inn has taken no steps to develop the source capacity needed to supply the additional water authorized by that right.

The Inn's owners alleged at Paragraph 75 of their Formal Complaint that the Inn uses an average of only 5,805 gallons of PWWC water per month and, at Paragraph 70, claim that continued water service to the Inn will not be detrimental to PWWC's shareholders. Both statements are incorrect.

That average figure reported by the Inn in the Formal Complaint is misleadingly low, perhaps because the average was calculated over an extended period of COVID-related business interruption. More recently and more tellingly, the Inn consumed an average of *15,253 gallons-per-month over the first three months of this year, more than five times the 3,012 gallons-per-month average drawn by PWWC's residential shareholders*. The Inn's owners' argument that PWWC has the capacity to continue serving them without detriment to its shareholders is based on the false syllogism that PWWC will be able to provide water service to the Inn in the future simply because it has been able to do so in the past.

The Inn's argument ignores the fact that PWWC was created and equipped with the source capacity to serve only the water needs of its residential shareholders and has been able to make past water deliveries **only** because Radford Hills has not reached full build-out. In other words, the Snowberry Inn currently monopolizes source capacity owned by and dedicated to PWWC's shareholders who have not yet built on their lots. PWWC simply does not have adequate source capacity needed to meet its obligations to all of its shareholders over time and continue to supply the Inn's needs, as demonstrated in the 2019 rate case filings.

DPU concedes that usage is not considered in its rate calculations, and there is no regulatory cap on the amount of water the Inn can consume. Thus, if PWWC were obligated to continue supplying water to the Inn, the Inn would be free to decide to continue its current practice of buying water that will be required to meet the future needs of PWWC's shareholders rather than investing in its own business to develop the source capacity required by the water

rights it recently acquired to support its ongoing commercial purposes; indeed, the Inn's argument would allow future expansion, perhaps doubling its size, with a concomitant increase in the amount of water it claims PWWC is obligated to provide. A requirement that PWWC meet the needs of its shareholders while continuing to provide water service to the Snowberry Inn will become impossible over time, and even in the short-term given the ongoing drought conditions. The Snowberry Inn has its own resources, including water rights sufficient to supply all of its needs. PWWC is a small water company that simply does not have the capacity to serve its shareholders and the Snowberry Inn. That is why it was and should remain excluded from the service area map in the most recent tariff.

Please feel free to contact us if you have further questions.

Very truly yours,

CLYDE SNOW & SESSIONS



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