

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of Steven Watterson
against Bridgerland Water Company

DOCKET NO. 23-001-01
ORDER ON FORMAL COMPLAINT

ISSUED: June 8, 2023

Procedural Background

On March 17, 2023, complainant Steven Watterson (“Mr. Watterson”) filed a formal complaint against Bridgerland Water Company (“BWC”) relating to “frozen pipes” at his cabin located in or around Garden City, Utah (“Complaint”). On that same date, the Public Service Commission (PSC) issued an Action Request to the Division of Public Utilities (DPU) seeking comments based on DPU’s investigation into the Complaint (“Comments”). DPU filed its Comments on April 3, 2023.

On March 20, 2023, the PSC issued a Notice of Filing and Comment Period, advising of the filing of the Complaint, providing BWC until April 17, 2023, to submit a written response to the Complaint, and providing Mr. Watterson until May 2, 2023, to submit a written reply. BWC responded on April 14, 2023 (“Response”), and Mr. Watterson did not file a timely written reply.¹

A review of the filings through May 4, 2023, suggested that the parties may have informally resolved the Complaint, but that was unclear so on that same date, the PSC issued a Notice of Virtual Status Update Conference (“Status Conference”) to determine whether the Complaint had been resolved.

¹ However, Mr. Watterson did file replies on May 8 and May 11 (“Replies”).

On May 12, 2023, Mr. Watterson, his granddaughter, a representative from BWC, and representatives from DPU appeared for the Status Conference. The Status Conference revealed that the parties had not resolved the Complaint, but further revealed that the parties had not yet engaged in any discussions even though BWC's Response had offered Mr. Watterson certain concessions in an apparent effort to resolve his claims. The parties were thus allowed until May 26, 2023, to try to informally resolve this matter and to report back whether, after having settlement discussions, the matter was informally resolved or should continue formally through the PSC's process.

By submissions dated May 26, 2023, Mr. Watterson and BWC separately reported that the matter was not resolved, each providing some level of detail as to why it was not.

Allegations and Responses of Parties

The Complaint alleges that Mr. Watterson's cabin has been without running water since February 22, 2023. Mr. Watterson alleges that "BWC did not properly take care of the pipes which has led them to freeze[]" and that BWC failed to open "fire hydrants to keep the water running, which has resulted in frozen pipes."² Mr. Watterson claims the lack of water at his cabin has caused him monetary damages, specifically asserting, "that I would like to see ... it ... be resolved and fixed. I would

² Complaint.

also like to be [compensated] for every day that we are/and have been left without running water.”³

In its Response, BWC states that “in spite of [its] best efforts,” water line freezing does occur in and around the area of Mr. Watterson’s cabin.⁴ BWC asserts that “we asked ... homeowners wishing to use their cabins during the [2022-23] winter months to leave a trickle of water running so as to help the water lines from freezing.”⁵ According to BWC, “Mr. Watterson admitted in [a call between Mr. Watterson and two BWC employees, Rob Wilson and Steve Randal] that he was not running water even though he had received a letter [from BWC] asking all residents, including those like the Wattersons who use [their] cabin occasionally, to run water during the cold months to help keep the water flowing.”⁶ In its Response, BWC extended an offer to credit Mr. Watterson for his water fees for the time his cabin was without water, and states it “deeply [regrets] the inconvenience we have caused Mr. Watterson[.]”⁷

In its Comments, DPU notes that the issue of freezing pipes was raised in BWC’s 2021/2022 rate increase case (“Rate Case”).⁸ The Rate Case Order was issued February 28, 2022, with an effective tariff date of April 1, 2022.⁹ DPU states that part

³ *Id.* A cover letter with the Complaint indicates that, with respect to his claim for damages or compensation, Mr. Watterson claims to spend “around \$85 per day” for his cabin-related expenses.

⁴ Response.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Bridgerland Water Company’s Application for Culinary Water Rate Increase*, Docket No. 21-001-01.

⁹ The Rate Case Order includes a settlement stipulation between BWC and DPU concerning BWC’s application for a rate increase.

of the Rate Case concerned “[providing] funding for [BWC] to connect to Garden City’s water system to provide a redundant water source to satisfy the Utah Department of Environmental Quality, Division of Drinking Water’s corrective action plan.”¹⁰ DPU also states “[i]t was ... noted that connecting to Garden City would create additional circulation within the water system so pipes wouldn’t be as susceptible to freezing in future winters.”¹¹ However, as further noted by DPU, “the loan and necessary engineering studies delayed the ... connection to Garden City[.]”¹²

In its investigation of Mr. Watterson’s Complaint, representatives of DPU learned from BWC that it had advised customers “of the necessity of leaving their water running a trickle to help avoid frozen pipes.”¹³ DPU also confirmed that neighboring Garden City’s municipal water company similarly “advised [its] customers to leave the water on.”¹⁴ Finally, DPU cites to paragraph 9 of BWC’s tariff, which provides:

Disruption Liability: The Company shall use reasonable diligence to provide continuous water service to its customers and shall make a reasonable effort to furnish all customers with a clean, pure supply of water that meets applicable State and Federal water guidelines. The Company shall not be held liable for damages to any customer or water user by reason of any stoppage or interruption of water service caused by a scarcity of water, accidents to works, water main alterations,

¹⁰ Comments at 3. The Rate Case Order similarly notes that “part of the costs covered in [the proposed] rate increase is the cost of [BWC] to hook into Garden City’s water system.” Rate Case Order at 4. However, neither the Rate Case Order nor the settlement stipulation provide a time frame within which BWC was required to connect to Garden City.

¹¹ Comments at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 4.

additions, or repairs, acts of God, acts of third persons, government interference, or other unavoidable causes beyond the Company's control.

Based on this provision of BWC's tariff, DPU concludes that BWC "made a reasonable request for its customers to leave their water running at a trickle to avoid frozen pipes. This remedy appears to be universally accepted to help prevent frozen pipes."¹⁵ In addition to Garden City, DPU cites the American Red Cross and the Travelers Insurance Company as providing independent support for that proposition.¹⁶

Mr. Watterson's Replies do not provide substantive support for the allegations in the Complaint or in opposition to BWC's Response or to DPU's Comments. Critically, the Replies do not dispute that Mr. Watterson received BWC's letter advising him to "trickle" the water at his cabin to help avoid pipe freezing, nor do they dispute that Mr. Watterson did not heed that advice and "trickle" the water at his cabin.

Discussion, Findings, and Conclusions

The scope of the PSC's jurisdiction to adjudicate complaints against public utilities is specifically enumerated in the Utah Code. The PSC may not adjudicate a complaint unless the issues that require resolution are within its statutory jurisdiction. By statute, any such complaint must "specify the act committed or omitted by the

¹⁵ *Id.* at 4.

¹⁶ *Id.* ("the American Red Cross, which is in the business of emergency preparedness, advises, 'Running water through the pipe – even at a trickle – helps prevent pipes from freezing.'" Citing and quoting <https://www.redcross.org/get-help/how-to-prepare-for-emergencies/types-of-emergencies/winter-storm/frozen-pipes.html>; and "Travelers Insurance advises, 'For pipes that are at risk of freezing ... let water drip from faucets.'" Citing and quoting <https://www.travelers.com/resources/home/maintenance/how-to-prevent-frozen-pipes>).

public utility that is claimed to be in violation of the law or a rule or order of the [PSC].”¹⁷

Here, the Complaint seeks primarily monetary damages.¹⁸ The Complaint asserts a claim for compensation “for every day that we are/and have been left without running water.”¹⁹ Mr. Watterson points to no authority that empowers the PSC to award such damages, and the PSC is aware of no such authority. As the PSC has previously concluded, it “unquestionably has no authority to adjudicate liability for common law tort claims . . .” which are a civil wrong committed against an individual or an entity, such as negligence, “and no authority to award money damages for associated harms.”²⁰

Mr. Watterson’s claim thus seeks monetary damages he maintains were caused by the acts or omissions of BWC. Specifically, the Complaint alleges that “BWC did not

¹⁷ Utah Code Ann. § 54-7-9.

¹⁸ One issue that might be considered non-monetary in nature is Mr. Watterson’s request that “he would like to see ... it ... be resolved and fixed.” Complaint. However, this request is vague because it does not define what the “it” is that he’d like to be resolved. To the extent “it” means his cabin’s lack of access to water, that seems likely to be resolved as a function of warmer weather. Alternatively, to the extent “it” means some sort of relief from the PSC ensuring that the pipes will never freeze again, such a request is not reasonable for many of the facts discussed in this Order. However, as also discussed below, BWC’s planned connection to the Garden City Municipal water system appears to be one method, among others, that could mitigate against freezing pipes in the future, is something that BWC has represented to the PSC it is planning to do, and is one of the bases upon which the PSC granted BWC a rate increase in the Rate Case.

¹⁹ As indicated above, the Complaint appears to quantify that compensation at \$85 per day, yet Mr. Watterson’s May 26, 2023, submission now asserts a claim of \$18.99 per day. In that submission Mr. Watterson states that he seeks relief from the PSC “for both the direct damages and the consequential loss in property value,” and then provides an accounting of the same that results in a total daily “inconvenience fee [of \$18.99] for not accessing water at our Cabin.”

²⁰ *Formal Complaint of Kip Swan and David Thompson against RMP*, Docket No. 21-035-67, Order issued March 3, 2022, at 5, available at <https://pscdocs.utah.gov/electric/21docs/2103567/3226412103567o3-3-2022.pdf>.

properly take care of the pipes which has led them to freeze[]” and that BWC failed to open “fire hydrants to keep the water running, which has resulted in frozen pipes.”²¹

These claims amount to an assertion that BWC was negligent. We find that Mr. Watterson’s suggestion that BWC should have opened fire hydrants to be insufficient to conclude that BWC’s failure to do so constitutes a violation over which the PSC has jurisdiction. The record does not indicate such an action to be a legal requirement. Accordingly, we conclude that Mr. Watterson’s allegations are a tort claim, and the money damages Mr. Watterson seeks as allegedly arising from this tort claim can only be resolved in a court with jurisdiction to adjudicate them and with lawful authority to award Mr. Watterson the money damages he seeks.

Moreover, even if the PSC had jurisdiction to adjudicate Mr. Watterson’s Complaint, the filings in this case and the undisputed facts support the conclusion that BWC did not violate any law, rule, or order of the PSC, including its tariff. First, it is undisputed that BWC sent Mr. Watterson a letter before the 2022/23 winter season advising him of the necessity of leaving his water running at a trickle to help avoid frozen pipes. Second, it is undisputed that Mr. Watterson did not follow the advice in BWC’s letter. We find that BWC’s letter in this regard was a reasonable request. And we further conclude that BWC’s actions did not violate its tariff, but instead were consistent with the tariff.

²¹ Complaint.

Notwithstanding the foregoing, the PSC is aware that BWC has not yet connected to the Garden City municipal water system. As explained above, completing that connection was one of the bases BWC claimed as justification for its need to increase rates in the Rate Case. And while the PSC understands from DPU's Comments that BWC has had delays relating to loans and engineering studies relative to completing this connection, the fact remains that it must be done.

Finally, the PSC acknowledges Mr. Watterson's apparently sincere frustration with these circumstances. The PSC also acknowledges BWC's efforts to work with Mr. Watterson to at least try to partially address his claim for damages by offering him certain monetary concessions. The PSC encourages the parties to continue to engage in efforts to try to reach a resolution on that issue.

ORDER

The PSC finds and concludes the Complaint fails to allege BWC violated any governing statute, rule, order, or tariff provision. For the reasons set forth herein:

(1) the Complaint is dismissed; and

(2) BWC shall file with the PSC and DPU by **Thursday, July 20, 2023**, a notice stating when its connection to the Garden City municipal water system will be completed and operational. This notice shall also provide the PSC an explanation of how the stated times of connection and operation will relate to the requirements of the Utah Department of Environmental Quality, Division of Drinking Water's outstanding notice to BWC regarding its required redundant water source.

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DATED at Salt Lake City, Utah, June 8, 2023.

/s/ John Delaney
Presiding Officer

Approved and confirmed June 8, 2023, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#328284

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on June 8, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

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