
Formal Complaint of Chris and Erin Jepsen against Bridgerland Water Company	<u>DOCKET NO. 23-001-02</u> <u>ORDER ON FORMAL COMPLAINT</u>
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ISSUED: June 13, 2023

Procedural Background

On March 28, 2023, complainants Chris and Erin Jepsen (“Jepsen”) filed a formal complaint against Bridgerland Water Company (“BWC”) relating to a frozen water line to their cabin located in or around Garden City, Utah (“Complaint”).¹ On that same date, the Public Service Commission (PSC) issued an Action Request to the Division of Public Utilities (DPU) seeking comments on DPU’s investigation into the Complaint (“Comments”).

On March 29, 2023, the PSC issued a Notice of Filing and Comment Period (“Notice”), advising of the filing of the Complaint, providing BWC until April 27, 2023, to submit a written response to the Complaint, and Jepsen until May 12, 2023, to submit a written reply.

On April 19, 2023, DPU filed its Comments. On that same date, Jepsen replied to DPU’s Comments (“Reply”). Pursuant to the Notice, BWC responded on April 26, 2023 (“Response”).² On that same date, Jepsen replied³ to BWC’s Response.

¹ Discussion of the Complaint in this Order also includes information provided in Jepsen’s informal complaint filed with the Division of Public Utilities.

² Discussion of the Response in this Order also includes information provided in BWC’s response to Jepsen’s informal complaint filed with DPU.

³ This reply only addresses a comment in BWC’s Response concerning an issue of Jepsen’s ownership and/or occupancy of a cabin served by BWC, which is not germane to resolution of the Complaint.

Allegations and Responses of Parties

The Complaint alleges that Jepsen’s cabin has “had very low [water] pressure” since March 10, 2023, or that from on or about March 11, 2023, Jepsen has been “without water in our part of the subdivision.” The low water pressure or no water service was allegedly due to a frozen main water line.⁴ The Complaint asserts these water line issues present a safety concern and violate an unidentified provision of the Garden City Municipal Code. Jepsen also claims to have been told BWC “would put in circulators for the system, flush the system regularly, [and] bury lines deeper.” The Complaint admits that in September 2022, Jepsen “w[as] sent a letter stating that [BWC was] no longer going to install the circulation line that year and asked all residents to run water for the winter to help avoid freezing.” The Complaint further admits that for various reasons, Jepsen “chose not to run a hose to manage a water system that has professional people running it.”

The Complaint in essence alleges that BWC failed to manage the water system which caused the main water line to freeze. Jepsen claims monetary damages because of BWC’s alleged actions or inactions, including requesting a \$3,200 check or a water bill credit, which represents two months of Jepsen’s cabin-related expenses. The Complaint also requests “[BWC] to be required to install the circulation pumps as promised last year[,]” and “[b]ury the main line deeper in the section that ...

⁴ The Complaint also provides information about a similar instance in February of 2022. However, the incident in February 2022 is not at issue in this docket.

consistently freezes.” Finally, the Complaint rejects BWC’s “offer[] to ‘not charge those of us with no water while the water main is frozen[,]” asserting “[t]his gesture does not cover the costs of not having a usable home.”

In its Response, BWC states it regrets the main line freezing incident, asserting it is “doing everything possible to keep this from happening such as flushing the hydrants regularly, testing water temperatures, monitoring water tank levels and pressures, etc.” BWC notes that “seasoned cities do have occasional freezing in problem areas and this winter has been no exception.”

BWC also asserts that it has “been making plans to remedy these trouble spots[,]” spending “over a year working with engineers and the state to update the water system which will help deter the freezing we are experiencing in some places and have plans to mitigate other areas as possible in the coming year.” BWC states, however, that this “project was set to begin last summer, but forces beyond our control did not allow us to commence.”

BWC further asserts it has “been advised by professionals to have residents run water during the winter months and have found other cities do the same[,]” and confirms it sent Jepsen a letter in September advising them to that effect. Finally, BWC offers Jepsen a refund for “any water charges to homeowners without water during those months in which their service has been disrupted.”

In its Comments, DPU recounts its interpretation of the allegations in the Complaint. DPU discusses BWC's 2021/2022 rate increase case ("Rate Case"),⁵ noting that the issue of freezing pipes was raised in that case. The Rate Case Order was issued February 28, 2022, with an effective tariff date of April 1, 2022.⁶ DPU states that part of the Rate Case concerned "provid[ing] 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."⁷ 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."⁸ However, as further noted by DPU, "the loan and necessary engineering studies delayed the ... connection to Garden City[.]"⁹

In its investigation of Jepsen's Complaint, representatives of DPU learned from BWC that it had advised customers about leaving their water running a trickle to help avoid frozen pipes. DPU also confirmed that neighboring Garden City's municipal water company similarly "advised [its] customers to leave the water on."¹⁰ Citing to

⁵ *Bridgerland Water Company's Application for Culinary Water Rate Increase*, Docket No. 21-001-01.

⁶ The Rate Case Order includes a settlement stipulation between BWC and DPU concerning BWC's application for a rate increase.

⁷ Comments at 3. The Rate Case Order similarly notes that "part of the costs covered in [the proposed] rate increase is the cost of Bridgerland to hook into Garden City's water system." Rate Case Order at 4. However, neither the Order nor the settlement stipulation provide a time frame within which BWC was required to connect to Garden City.

⁸ Comments at 3.

⁹ *Id.*

¹⁰ *Id.* at 3-4.

paragraph 9 of BWC's tariff,¹¹ DPU concludes that BWC made a reasonable request for Jepsen to leave their water running at a trickle to avoid frozen pipes as "[t]his remedy appears to be universally accepted to help prevent frozen pipes."¹²

Finally, DPU's Comments state the Rate Case did not provide funding for additional measures to prevent pipes from freezing during some winter months. Thus, "[a]dditional [freeze] mitigating measures or excessive punitive payments other than refunding the months affected by the freeze to its customers, would require additional funding [for BWC], perhaps as a special assessment."¹³ DPU does not recommend a special assessment.

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

¹¹ **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, additions, or repairs, acts of God, acts of third persons, government interference, or other unavoidable causes beyond the Company's control.

¹² *Id.* at 4 (citing to and quoting from the American Red Cross and the Traveler's Insurance Company as independent support for this proposition). Jepsen's Reply disagrees with DPU on this point, claiming that the "contractor who installed our septic system ... informed us a trickle of water 'drip from faucets' would overwhelm and ruin [our] system ... [.]" and "[r]unning water outside was also not a possibility as the hose bibs and faucets were buried under many feet of snow." However, this disagreement is not material here, because as explained below, Jepsen's Complaint is outside the jurisdiction of the PSC.

¹³ Comments at 3.

public utility that is claimed to be in violation of the law or a rule or order of the [PSC].”¹⁴

Here, the Complaint seeks damages which were caused by the acts or omission of BWC. The Complaint alleges, in essence, that BWC failed to properly manage the system by not installing the circulation pumps or allegedly not burying the water lines deeply enough, which caused the main water line to freeze and thus resulted in certain damages. These claims amount to an assertion that BWC was negligent, which is a common law tort claim. In addition, the Complaint seeks \$3,200 in monetary damages. However, Jepsen 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,” such as negligence, “and no authority to award money damages for associated harms.”¹⁵

We find and conclude that BWC’s actions in this matter were reasonable in its efforts to provide reliable water service, and therefore has not violated its tariff. Moreover, we find that Jepsen’s assertions that BWC failed to act are insufficient to conclude that BWC has failed to do something over which the PSC has jurisdiction.¹⁶

¹⁴ Utah Code Ann. § 54-7-9. The Complaint also alleges BWC has violated an unidentified provision of the Garden City Municipal Code, but the PSC does not have jurisdiction over that alleged violation.

¹⁵ *Formal Complaint of Kip Swan and David Thompson against Rocky Mountain Power*, 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>

¹⁶ However, 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. This connection is

The record supports BWC's reasonable actions and does not indicate its alleged failures implicate such a legal requirement. Accordingly, we conclude that Jepsen's allegations are a tort claim, or claim of a violation of the Garden City Code, and the money damages and/or enforcement they seek as allegedly arising from these claims can only be resolved in a court with jurisdiction to adjudicate them and with lawful authority to award them the relief they seek.

However, and 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, as previously found in the Rate Case and as the PSC again so finds, it must be done.

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

something that BWC has represented to the PSC it is planning to do, is one of the bases upon which the PSC granted BWC a rate increase in the Rate Case, and as set forth below is an issue the PSC is ordering BWC to address.

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.

DATED at Salt Lake City, Utah, June 13, 2023.

/s/ John Delaney
Presiding Officer

Approved and confirmed June 13, 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#328343

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 13, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Chris and Erin Jepsen (ejep1@outlook.com)
Complainants

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