

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of Ronda and Martell
Menlove against Bridgerland Water
Company

DOCKET NO. 23-001-03
ORDER ON FORMAL COMPLAINT

ISSUED: November 8, 2023

I. Procedural Background

On June 14, 2023, complainants Ronda and Martell Menlove (“Menloves”)¹ filed a formal complaint against Bridgerland Water Company (“BWC”) relating to a frozen water line servicing their residence 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 a recommendation regarding the Complaint and requesting DPU to ensure the Menloves engaged in the informal complaint process.

On June 22, 2023, DPU advised the PSC that the informal complaint² process had been completed on June 21, 2023, and recommending the PSC proceed with consideration of the Complaint.

On June 21, 2023, BWC filed its response to the informal complaint (“Informal Complaint Response”). On that same date, the Menloves filed a reply to the Informal Complaint Response (“Informal Reply”).

¹ Reference to the Menloves herein refers collectively to Ronda Menlove, Martell Menlove, or both.

² The allegations in the informal complaint are the same as the formal complaint.

On June 26, 2023, the PSC issued a Notice of Filing and Comment Period, providing BWC until July 26, 2023, to submit a written response to the Complaint, and the Menloves until August 10, 2023, to submit a written reply.

On July 17, 2023, BWC filed its response to the Complaint ("Formal Response"). On August 7, 2023, the Menloves filed their reply to BWC's Formal Response ("Formal Reply").³

On August 24, 2023, the PSC issued a Notice of Virtual Hearing and to Parties to be Prepared to Address Specific Issues at Hearing, setting the hearing in this docket. On August 25, 2023, BWC requested to reschedule the hearing which, with the Menloves' consent, was rescheduled ("Hearing").

The Hearing was held on September 27, 2023, from approximately 10:30 am to 12:30 pm. Prior to the Hearing, BWC provided a copy of a letter dated September 10, 2022, that advises BWC's customers to take various precautionary steps to address possible water line freezing during the 2022/23 winter (the "Precautions Letter").

Present at the Hearing were Ronda and Martell Menlove, and Tana Heninger and Rob

³ There were also a series of additional submissions and/or communications from the Menloves regarding this docket. On July 11, 2023, the Menloves provided a submission stating, among other things, their desire that future freezing events be avoided, suggesting specific construction solutions, and expressing concern about whether the water line was appropriately installed. ("July 11 Submission") On August 25, 2023, the Menloves provided a submission requesting, among other things, that BWC utilize a licensed water engineer in the remedy to this situation. ("August 25 Submission") Finally, by submission dated August 28, 2023, the Menloves reasserted the request that BWC utilize a certified water engineer and advised that BWC has refused to inform them who the engineer will be, or whether BWC is using an engineer. ("August/September Communications"). The PSC responded to the August 25 Submission and the August/September Communications explaining, among other things, the PSC's limited jurisdiction in this docket.

Wilson on behalf of BWC. DPU representatives were also present, but only as observers and not as participants.

II. Allegations and Responses of Parties⁴

A. *The Complaint*

The Complaint alleges the Menloves' residence was without water service from February 21, 2023, to May 13, 2023, because of a frozen water line ("2023 Freezing Event").⁵ The Complaint states that BWC had sent the Menloves the Precautions Letter, that advised letting water run in their home in the 2022/23 winter, but the Menloves assumed that it was to protect their Personal Line from freezing, not to protect the Main Line from freezing. The Menloves did not continually let a trickle of water run in their home. The Menloves assert they had been told by multiple people⁶ that running a trickle of water in their home would not have any effect on the Main Line freezing.

The Menloves also allege that historically BWC flushed the Main Line⁷ on a regular basis during winter to bring warmer water into the lines and regularly monitored the water temperature in that line. The Complaint further alleges that BWC

⁴ What follows is not an exhaustive recital of the allegations and responses in this docket, but instead provides the relevant and non-duplicative allegations and responses.

⁵ It is not clear from the record which water line froze, but the parties agree that it was most likely the main water line – i.e., the line from the water meter to the road and under the road ("Main Line") – and not the Menloves' personal water line – i.e., the line from the water meter to their house. ("Personal Line")

⁶ The Complaint does not provide the identities of these people or when these statements were allegedly made.

⁷ As used throughout this Order, "flushing" is done by opening fire hydrants and letting the water run out of those hydrants. Flushing creates water circulation and brings warmer water through the Main Line, thus impeding freezing events.

acknowledged to the Menloves that BWC should have been flushing the Main Line in the 2022/23 winter, but BWC did not because it could not find someone who would do it.

The Complaint also chronicles the Menloves' interactions with BWC concerning the 2023 Freezing Event. For example, the Menloves assert that when they first found themselves without water, they discussed multiple alternative water service options with BWC, but could not reach an agreement.⁸ The Menloves further assert that other than finding another place to rent and live, they had no option but to stay in their home and make the best of the situation. The Complaint details the alleged consequences of being without water service.

The Complaint also provides background relating to a similar water line freeze that occurred in 2019.⁹ The Menloves allege that in 2019 they ran water continually and monitored the water temperature weekly, but despite those efforts, the line still froze. The Menloves state that after the 2019 Freezing Event, the road over the Main Line was raised by approximately 16 inches, and BWC assured them that this would solve the freezing problem. The Menloves also explain that in response to the 2019 Freezing Event, BWC waived their water bill for the rest of 2019 as compensation for the inconvenience and additional expense associated with living without water.

⁸ See Complaint at 1.

⁹ The Complaint asserts this occurred in 2021, but the Menloves corrected this date and testified it occurred in 2019 ("2019 Freezing Event").

Finally, the Complaint specifically requests “that the Public Service Commission grant our request that our water bill from [BWC] be waived for the 82 days we were without water from February 21, 2023, until May 13, 2023, and for the remainder of the 2023 calendar year.”¹⁰

B. The Informal Complaint Response

BWC admits the Menloves were without water starting on February 21, 2023. BWC states it regrets the 2023 Freezing Event and asserts it is doing all it can to rectify this issue. BWC states the area of the Menloves’ home has had freezing issues in the past, and BWC is hiring contractors and taking specifically identified steps to remedy the situation.

BWC also outlines various measures it has historically taken regarding potential water line freezing prevention. These include regularly flushing the lines through fire hydrants in the winter and monitoring the water temperature. BWC also asserts it “sent the entire homeowners [the Precautions Letter] about the need to run water in [the] cold weather months as advised by other entities.”¹¹ BWC states the Menloves ran a trickle of water until February 21, 2023, the day when the 2023 Freezing Event occurred. BWC further states that it was in contact with the Menloves

¹⁰ Complaint at 3. The Complaint also raises issues relating directly to an earlier docket, *Bridgerland Water Company’s Application for Culinary Water Rate Increase*, Docket No. 21-001-01, which concerned BWC’s request for a rate increase. These issues are not addressed in this Order because they are not at issue in this docket and those issues could have been, but were not, timely appealed under Utah law.

¹¹ Informal Complaint Response.

after the 2023 Freezing Event, and that it contacted other entities to see what could be done but, finding no viable solution, it had discussions with the Menloves about possible alternative water service options. According to BWC, none of the options were agreed upon by the parties. BWC states it is willing to refund the Menloves' water fees for the entirety of all four months they had no water service.

C. The Informal Reply

The Menloves assert BWC's Informal Complaint Response is incomplete and, in some instances, inaccurate. Relevant to this Order, the Menloves express their appreciation for BWC's commitment to resolve this situation but assert that no work has yet started. The Menloves raise concerns about specific details concerning how BWC is going to remedy the situation and makes specific requests on how that should be done.¹²

The Menloves assert that they did not realize that not trickling their water might impact the status of the Main Line, and now assert they were also concerned about the impact on their septic system if they ran water continuously.

The Menloves again question whether BWC flushed the lines through the fire hydrants, asserting they never saw the hydrants not covered in snow or flushed between January 15 and February 21, 2023. The Informal Reply concludes with an outline of the alleged consequences of not having water service for 82 days.

¹² Similar concerns and requests were raised in the July 11 Submission.

D. The Formal Response

BWC asserts it stands by its Informal Complaint Response. Relevant to this Order, BWC states that after consulting with the Utah Division of Drinking Water, Garden City, and Lutz Construction, and based on their recommendation, BWC is going to take very specific steps to improve the water circulation to avoid future freezing problems. BWC also asserts it “will still recommend that homeowners leave a trickle of water at their own residences in order to keep their personal lines open[,]” stating they “have found, WITHOUT exception, that those who ran water had water this last season.”¹³ Finally, BWC asserts it has refunded the Menloves for the months that they were without water for 2023.

E. The Formal Reply

The Menloves provide a basic summary of their frustrations, concerns, and some recommendations that they would like to have implemented. The Menloves continue to ask that a certified water engineer make the recommendation as to how to solve the problem of this line freezing, that the work be inspected by a certified engineer, and if BWC’s proposed solution is agreed to by an engineer, the Menloves will accept that as the solution.¹⁴

¹³ Formal Response (emphasis in original).

¹⁴ These and similar topics were raised, and responded to by the PSC, in the August 25 Submissions and the August/September Communications. As stated therein, the PSC’s jurisdiction is limited in the complaint process and does not include compelling BWC to include the Menloves in project management and business decision-making.

The Formal Reply also addresses the “culpability of the line freezing” and provides a detailed “request for compensation.” Relevant to the issue of culpability, the Menloves assert that even though they did not trickle water on the day of the 2023 Freezing Event, they deny any culpability claiming “we ran water 24/7 in [2019] and the BWC line still froze.”¹⁵ The Menloves also assert “that there is a level of negligence on the part of BWC and that their action, or lack of action and/or inappropriate action, is the main reason this line froze in [2019] and again in 2023.”¹⁶ In support, the Menloves allege possible inappropriate original engineering when the Main Line was installed, work performed by unqualified contractors, failure to follow the engineer’s specifications, and other similar bases for BWC’s alleged negligence.

On the issue of compensation, the Formal Reply explains how the Menloves dealt with the lack of water service and, in addition to the requested water bill credit, provided an estimate ranging between \$1,122 to \$4,100 of possible compensation amounts.

F. The Evidentiary Hearing

1. The Menloves’ Testimony

The Menloves restated many of the basic facts from the Complaint and other submissions. The Menloves confirmed that the 2023 Freezing Event occurred on February 21, 2023. The Menloves testified they received and read the Precautions

¹⁵ Formal Reply at 2.

¹⁶ Formal Reply at 3.

Letter.¹⁷ The Menloves also testified that they trickled water until February 21, 2023, stating they “[m]ostly[] ... ran a trickle of water at night when it was extremely cold.”¹⁸ The Menloves testified that they assumed the Precautions Letter was intended as a precaution only for their Personal Line, and not the Main Line because it says nothing about trickling water to protect the Main Line. The Menloves also testified that between the time they received the Precautions Letter and the 2023 Freezing Event, they did not contact BWC regarding what that letter said, requested, or otherwise represented.¹⁹

The Menloves testified that running a trickle of water would not have prevented the 2023 Freezing Event, especially because it didn’t prevent the 2019 Freezing Event. The Menloves stated that BWC’s proposed solution to fix this freezing problem, installing a two-inch pipe, seems inconsistent with the Precautions Letter’s advice to trickle an eighth-of-an-inch amount of water. However, the Menloves testified that they understood that running a trickle of water in their home could impact the water lines beyond their Personal Line based on information they learned from BWC in 2019. The Menloves further testified that although the Precautions Letter also advised them to put insulation in the home’s water meter hole, they did not do this.²⁰ The Menloves testified that BWC had asked a neighbor at the end of the Main Line to run water

¹⁷ See Hr’g Tr. at 15:3-5, 25.

¹⁸ *Id.* at 14:22-25.

¹⁹ See *id.* at 29:19-25 and 30:5-6.

²⁰ See *id.* at 30:20-31:16.

(more than a trickle) prior to the 2023 Freezing Event to try to keep the line from freezing.²¹

The Menloves stated they appreciated BWC's quick response to this situation, including BWC looking into various options to try to restore water service immediately, but none of those solutions worked. According to testimony, based on various factors, the Menloves ultimately "decided that we did not want external water into our home. ... So we made the decision ... that we would continue to simply" make do otherwise.²²

The Menloves further testified that there are two fire hydrants near their home, each about 200 feet away. The Menloves stated they had fire safety concerns after the 2023 Freezing Event because of the lack of water available to their house. The Menloves also explained that before the 2022/23 winter, these hydrants were flushed to make sure warm water was coming through the lines. The Menloves testified that they learned from BWC in 2019 that flushing the lines brings warmer water into the line, expelling the colder water and therefore inhibiting line freezing. The Menloves also testified that they did not know historically exactly how often this flushing process occurred, but that it would happen multiple times every winter. The Menloves again explained that BWC told them that BWC could not find anyone to flush the water

²¹ See *id.* at 16:8-12, and 22:24-23:3.

²² See *id.* at 18:8-18.

lines through the fire hydrants.²³ The Menloves also testified that they did not see anyone flushing the lines or evidence that they had been flushed so they do not know if they were flushed in December 2022 through February 21, 2023.

The Menloves testified the water service was restored on May 15, 2023. According to the Menloves, while they were without water from February 21, 2023 through approximately May 15, 2023 – approximately 2.7 months – BWC did not charge them for a total of four months.

The Menloves also testified about their desire that these types of freezing events not happen in the future.²⁴ The Menloves testified that they have told BWC of their desire to know the identity of the engineers that have been engaged to address this issue. The Menloves also testified that although they believe they are entitled to some sort of monetary reimbursement because of this situation, their biggest concern is that the line be fixed properly, and not the easiest or cheapest way. Finally, the Menloves testified that they are concerned about whether the repair job will be timely completed, largely because BWC has not provided any sort of status update.

²³ The Menloves also testified that 2 other people told them that they had a similar conversation with BWC and were told the same thing. However, neither of these people were present at the Hearing to offer sworn testimony about these alleged statements.

²⁴ Many of these issues were raised and responded to in the July 11 Submission, the August 25 Submission, and the August/September Communications. During the Hearing, the Menloves questioned BWC extensively on the “bleeder” solution, including on issues relating to the qualifications of the professionals BWC has engaged.

2. BWC Testimony

BWC admits that it has had freezing issues with its water lines. BWC's testimony confirmed the 2019 Freezing Event, and asserts it added additional gravel to the road over the Main Line to prevent future freezing events. BWC testified that since there was no freezing event in 2020, 2021, or 2022, the additional gravel may have been effective.

BWC testified that it sent the Precautions Letter in September 2022 as a precaution against possible water line freezing events. BWC testified, consistent with the Menloves' testimony, that running a trickle of water at a house impacts the bigger water system, stating "there's no way it couldn't ... [b]ecause [the water for the trickle] has to go through the main line to get to the personal lines[] [s]o it's just a matter of, really, of physics."²⁵ BWC further testified that the Precautions Letter was not intended as the only method of trying to prevent the Main Line from freezing, but was one piece of a greater effort.

According to BWC, other water line freezing prevention efforts included adding gravel to the road after the 2019 Freezing Event, flushing the lines through the fire hydrants and testing the water temperature, and requesting the Menloves' neighbor to run water from his hose bib outside his cabin during the 2022/23 winter. BWC testified that it flushed the hydrants and checked the line's water temperature in the 2022/23

²⁵ Hr'g Tr. at 64:5-13.

winter. Specifically, BWC admitted that it told the Menloves that it did not have anyone to flush the hydrants, but it did not tell them that it was not going to flush the lines and in fact did flush the lines with the help of the homeowner's association president.²⁶ BWC further testified that perhaps the reason the Menloves did not see evidence of the flushing was "because it snowed every other day[.]" and "[e]very time [BWC] went up there, [BWC] had to dig out the hydrants[]" because "[t]he snowfall this year was crazy."²⁷

BWC also addressed the fire safety issue raised by the Menloves. BWC testified that as part of the line flushing activity, one of the two fire hydrants around the Menloves' house was not frozen and was thus available to address any fire emergency.

BWC testified about the solution it will employ to attempt to prevent future freezing events. Consistent with its Formal Response, BWC testified that, based on recommendations from Garden City's water master, an employee of the Utah Water Association, and a representative from Lutz Construction, BWC is going to have a "continual bleeder" installed.²⁸ According to BWC, this is the best solution, and it is not the easiest or cheapest solution, because BWC is "very interested in fixing [this freezing issue] and hopefully getting a solution that is permanent."²⁹ Based on its

²⁶ *Id.* at 48:11-17.

²⁷ *Id.* at 48:19-23.

²⁸ A "bleeder" is also referred to as a "circulator," which is a "way to run ... water continuously, 24 hours a day instead of just flushing[]" the lines. Hr'g Tr. at 54:16-20.

²⁹ *Id.* at 44:25-45:3.

reliance on the assurances of its contractor, BWC testified the bleeder will be installed this season.

III. 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 public utility that is claimed to be in violation of the law or a rule or order of the [PSC]." ³⁰

The Complaint ³¹ does not identify a specific law, or rule, or order that BWC has allegedly violated. However, BWC's obligation to provide water service to its customers is governed by its tariff, which as applicable in this matter 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, additions, or repairs, acts of God, acts of third persons, government interference, or other unavoidable causes beyond the Company's control.

³⁰ Utah Code Ann. § 54-7-9.

³¹ As used in this section of the Order, Complaint refers to all submissions to the PSC by the Menloves.

("Tariff"). The Complaint seeks (1) monetary damages that were allegedly caused by BWC's negligence, and (2) a determination that BWC is at fault and a PSC directive that BWC take certain actions to prevent future freezing events.

The Menloves' Negligence Claim

The Complaint alleges, in essence, that BWC improperly installed and/or managed the Main Line. The Menloves allege the Main Line may have been inappropriately engineered, not buried deep enough, was installed by unqualified contractors, was never inspected, and/or BWC failed to flush the lines through the fire hydrants in the winter of 2022/23. The Menloves claim these actions and/or inactions of BWC caused the Main 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. The Complaint seeks an award for the Menloves' water charges from February 21, 2023, through December 31, 2023, the value of which is approximately \$966.00, and otherwise also requests an award of possible expenses incurred ranging from \$1,122.00 to \$4,100.00.

The Menloves provide no authority empowering the PSC to award such damages,³² and the PSC is aware of no such authority. As we have previously concluded, the PSC "unquestionably has no authority to adjudicate liability for

³² We understand that BWC has credited the Menloves' water bill for the entirety of February through and including May (a value of approximately \$376), which is something the parties were able to agree upon between themselves without PSC involvement.

common law tort claims,” such as negligence, “and [has] no authority to award money damages for associated harms.”³³

Accordingly, we find that the Menloves’ assertions that BWC acted negligently, or failed to act, are insufficient to conclude that BWC has done, or failed to do, something over which the PSC has jurisdiction. Accordingly, we conclude that the Menloves’ allegations of negligence are a tort claim, and any money damages 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.

The Menloves’ Fault and Directive Request

The Complaint also seeks what we understand as a request that the PSC find BWC legally responsible for the 2023 Freezing Event and that the PSC direct BWC to prevent future freezing events with the Main Line. BWC’s obligations under the Tariff govern this issue. The Menloves thus appear to argue that BWC’s actions relating to the 2023 Freezing Event specifically (and the Main Line generally) were not reasonable.

There is no dispute that the Menloves were without water service from February 21, 2023, through approximately May 13, 2023. There is no dispute that

³³ *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>

events like the 2023 Freezing Event had occurred before. There is no dispute that the Precautions Letter was received and read by the Menloves, and that the Precautions Letter was an attempt to try to prevent water lines from freezing. There is also no dispute that between the time the Menloves received the Precautions Letter and the 2023 Freezing Event, they did not contact BWC regarding what that letter said, requested, or otherwise represented.

The Precautions Letter specifically provides:

It's that time of year to start thinking about the winter. Last year was a record with the number of lines freezing; Sweet Water reported over 200 cabins frozen. Fortunately our numbers were not so severe, but we hate to see any cabins without water at any time. We have been working with our engineers and have circulators in the works, but it doesn't look like they will be able to be installed before the winter comes.

If you are worried about being out of water during the winter months we recommend you run an outside hose (pencil thin) of water and make sure it drains away from your house and septic field. We will not charge you for any overages in the spring – just let us know you left the water on.

Most cabins in most winters are just fine without running a little water, but we want to make sure you are not inconvenienced this year.

Another thing that would help is putting a garbage bag with insulation in your meter hole after Oct 1 and removed by April 20. In a bag so it doesn't disintegrate in the hole and be irremovable.

Let me know if you have any further questions.

There is no dispute that at least on February 21, 2023, the Menloves did not trickle water, whether inside their house or outside (as recommended in the Precautions

Letter). Finally, there is no dispute that the Menloves did not put insulation in the water meter hole.

The Menloves argue, in essence, that the Precautions Letter was not a reasonable attempt for BWC to comply with its Tariff obligations. First, the Menloves argue the Precautions Letter did not make clear that its intent was to protect the Main Line, as opposed to the Menloves' Personal Line. It is unclear how this distinction bears on whether the Precautions Letter was a reasonable attempt to fulfill BWC's Tariff obligations. The object of the Precautions Letter was about uninterrupted water service during the 2022/23 winter, regardless of whether such involved the Main Line, Personal Line, or both. This understanding is illustrated by the Menloves' testimony that they understood running a trickle of water inside their house (e.g., Personal Line) impacts the bigger water system (e.g., the Main Line), and Menloves did not dispute similar testimony from BWC. Finally, the Menloves never contacted BWC between the time they received the Precautions Letter and the 2023 Freezing Event about this alleged ambiguity, especially considering their prior experience with the 2019 Freezing Event. Additionally, in a related but separate customer complaint, we previously made a factual finding that the Precautions Letter was a reasonable request by BWC.³⁴ Although we do not rely on that finding for purposes of this Order,

³⁴ See *Formal Complaint of Steven Watterson against Bridgerland Water Company*, Docket No. 23-001-01, Order issued June 8, 2023, at 7, available at <https://pscdocs.utah.gov/water/23docs/2300101/3282842300101oofc6-8-2023.pdf>.

nothing in the record of this complaint causes us to reconsider that previous finding. The Precautions Letter was a reasonable action by BWC, especially in light of other efforts to prevent line freezing, in furtherance of its Tariff obligations.

Second, the Menloves assert that even if they had fully employed the recommendations in the Precautions Letter, the 2023 Freezing Event would have still occurred. The Menloves offer no direct evidence to support this conclusion. Instead, the Menloves rely anecdotally on the 2019 Freezing Event. However, other than that the 2019 Freezing Event occurred even though the Menloves trickled water then, there is insufficient evidence to draw an appropriate comparison between that event and the 2023 Freezing Event. For example, there is nothing in the record providing any information about the weather or temperature conditions in 2019 compared to 2023. Moreover, there is nothing in the record to explain why no such freezing event happened in 2020, 2021, or 2022. Thus, because the suggestions in the Precautions Letter were not fully followed, there is no basis to show, and no evidence supporting, what might or might not have happened if those suggestions had been followed.

Third, the Menloves argue that BWC's proposed solution to this problem – the “bleeder” installation – is inconsistent with the trickle recommendation in the Precautions Letter. Specifically, the Menloves argue that this solution, which involves installing a two-inch pipe, is much more significant in comparison to the Menloves running a small one-eighth of an inch trickle of water. However, there is nothing in the record that demonstrates exactly what is required to resolve the Main Line freezing

issue, whether that requirement is either the “bleeder” solution or running a small one-eighth of an inch trickle of water, or both.³⁵ Therefore, there is nothing in the record to support any inconsistency between these two courses of action.

Fourth, although unclear, it appears that the Menloves did not fully follow the suggestions in the Precautions Letter because trickling their water would have negatively impacted their septic system. Although they could have, the Menloves never raised this issue with BWC prior to the 2023 Freezing Event nor was it raised at the Hearing. Moreover, this argument is inconsistent with the fact that the Menloves did trickle until February 21, 2023, and there is no evidence of whether such trickling would have, or did, have any impact on their septic system.³⁶

Moreover, the Menloves do not dispute other efforts BWC used to try to prevent the 2023 Freezing Event. For example, BWC asked the Menloves’ neighbor to run water throughout the 2022/23 winter in a further effort to try to prevent the water lines from freezing. The Menloves also do not dispute that after the 2019 Freezing Event, BWC added more gravel³⁷ to the road covering the Main Line.

There is also no dispute that flushing the Main Line through the fire hydrants helps prevent the lines from freezing. BWC asserts that, as part of its efforts to

³⁵ BWC testified it believes installing the bleeder will prevent future freeze events, but BWC has also stated it will still recommend homeowners run a trickle of water after it has been installed.

³⁶ It is worth noting that the Precautions Letter directs that the trickle occur from an outside hose, so how such could impact a septic system is unclear.

³⁷ The Menloves dispute the amount of gravel that BWC added but do not dispute that additional gravel was added.

prevent the 2023 Freezing Event, it flushed the hydrants. The Menloves have expressed doubt about BWC's position on this issue. However, BWC offered credible rebuttal testimony at the Hearing addressing and explaining this potential doubt and the Menloves did not challenge that testimony at the Hearing.

Finally, the Menloves also appear to request the PSC to, in essence, direct BWC to involve the Menloves, including getting their approval, in BWC's decisions in how it will continue to attempt to prevent future freezing events involving the Main Line. This request appears to be based on the Menloves' belief that the initial installation of the Main Line may have been inappropriately engineered, not buried deep enough, was installed by unqualified contractors, and was never inspected. However, as explained in the August 25 Submission and the August/September Communications, these requests are outside the PSC's jurisdiction as it relates to this docket. While the Menloves' desire that any future freezing event never happen again is understandable, the Tariff's standard of reasonableness does not equate to perfection.

Accordingly, we find and conclude that BWC's actions were reasonable in its efforts to provide reliable water service, and therefore BWC has not violated the Tariff. We find that BWC took reasonable steps to attempt to mitigate against the 2023 Freezing Event and has also taken appropriate steps to attempt to mitigate future freezing events, including engaging professionals and determining a course of action that the record indicates will occur soon. We conclude that BWC's decisions on these points are reasonable and therefore comply with the Tariff.

The PSC acknowledges the Menloves' frustration with these circumstances. The PSC also acknowledges BWC's efforts to at least try to partially address the Menloves' claim for damages by providing them with certain monetary concessions and its efforts to avoid future freezing events.

ORDER

Based on the foregoing, 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, the Complaint is dismissed.

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

/s/ John E. Delaney
Presiding Officer

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

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#330685

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. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

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

By USPS:

Ronda and Martell Menlove
1874 West Cedar Ridge Drive
Garden City, Utah 84028

By Email:

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