



PublicService Commission <psc@utah.gov>

Request for Agency Review or Rehearing

1 message

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Wed, Nov 29, 2023 at 11:27 AM

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REQUEST FOR AGENCY REVIEW OR REHEARING

DOCKET NO. 23-001-003

November 27, 2023

Martell and Ronda Menlove
[1874 West Cedar Ridge Drive](#)
PO Box 252
Garden City, Utah 84028

435-265-2635

As per the Notice of Opportunity for Agency Review or Rehearing contained in the ORDER ON FORMAL COMPLAINT for Docket No. 23-001-03 issued on November 8, 2023, please accept this as our request for a review of this ORDER. We appreciate the time that John E. Delaney has given our complaint but having reviewed the ORDER believe that a review is needed and appropriate. We will also present some new information that we have obtained since the hearing on September 27, 2023. If the submission of this new information necessitates a rehearing to be considered, we would then request a rehearing. If a rehearing is not necessary, a review is all that we are requesting at this time.

We have come to understand through this process that the PSC will not consider our request for financial consideration. This review request is not for financial consideration. However, as stated multiple times in documents submitted prior to the hearing, and our testimonies at the hearing, we continue to seek assistance in assuring that this issue is resolved as initially recommended by Bridgerland Water Company (BWC) or as determined as the best/better resolution by a certified/licensed water engineer.

In our request for a review will address the following four (4) points that we would like reviewed: (1) what has been referred to in the Order as the Precautions Letter, (2) what is referred to in the Order as the "freezing event" or the "freeze point", (3) the "flushing" of the hydrants along this section of BWC's water line that froze, and (4) the recommendations to install a "bleeder" as the solution to this line having frozen multiple times.

Precautions Letter

In the hearing we outlined specifically why we do not believe that the Precautions Letter should be used to demonstrate any culpability on our part for this line freezing. The Letter refers to individual cabins and personal lines freezing but never mentions the freezing of BWC lines. BWC offered no rebuttal or cross examination to our testimonies concerning the Precautions Letter. Additionally, during the hearing Ms.

Heninger testified that “We sent the letter in September as a precaution. So we have mainlines and we have personal lines and never did we intend that asking people to run personal lines so that we keep all mains open. We would never just rely on that. And so the Menloves are correct, we do not expect people to run their personal lines just so that we don’t have to do our job.” (pp 43 of hearing transcript)

As such we request that the Precaution Letter be given little, if any, consideration in the case and that whether we, or any other homeowner, ran or did not run water as a precaution against our personal lines freezing has no relevance to this case and should not be considered to determine culpability for BWC’s main line freezing. We request that the Order reflect this position.

Freezing Event/Freeze Point

Considerable time was expended during the hearing in what appeared to be the desire of the hearing officer to determine where the freeze point or freezing event occurred. We both testified that we did not know where the freeze occurred. Actually, with all lines, both main lines and personal lines buried under ground, No one knows exactly where the line froze. What we do know is that basically simultaneously five homes and a fire hydrant were without water. Verification of three homes and the fire hydrant being without water occurred within 48 hours of the freezing being reported. Also, at no time do we recall that BWC denied that it was their main line that froze and multiple times they referred to their line as freezing.

As such we request that the Order clearly reflect that it was BWC’s main line that froze and that there is no evidence that any personal lines ever froze in connection with this freezing event. Additionally, where the line froze should be given minimal if any consideration in this case.

Flushing of the Hydrants

Flushing of fire hydrants to bring warmer water into the main lines and help prevent the main lines from freezing has been a common practice by BWC for many years. In the most recent past few years, BWC, as per their own testimony, had hired Brandon Weatherston to do this. Their testimony was that Mr. Weatherston is no longer employed to do this. We assert that this action of flushing lines, established over many years by BWC is consistent with their tariff to “use reasonable diligence to provide continuous water service to its customers.”

Although we provided testimony that Rob Wilson told us that they should have been flushing the lines but could not find anyone to do it, that we have been told by Steve Waterson and Steve Randall (two homeowners impact by his event) that Rob Wilson told them the same thing, that we asserted this in our original complaint and BWC never denied this assertion prior to the hearing, these testimonies don’t appear to be considered in the Order. We also find it concerning that Rob Wilson rebutted our testimony that we never saw evidence of the hydrants being uncovered and flushed by testifying that the snow covered up any evidence within a day or two. This he testified even though he also testified that he did the flushing and was at the site on only Saturday or Sunday. How does he know the daily snow conditions when he testified that he was only here weekly? Additionally, Rob Wilson testified that Tony Hudson helped him flush the hydrants even though we now know the Tony Hudson has never helped flush the hydrants along this section (cul-de-sac at the top of Cedar Ridge Drive) of BWC’s main line and only once in 2023 did he help Rob Wilson flush a single hydrant near his home on Huckleberry Circle. This flushing occurred sometime after the line in question froze. It may also worth noting that in the hearing Rob Wilson never testified that he flushed the hydrants in question prior to their freezing on February 21, 2023 nor does he provide and dates or logs that would indicate that the hydrants were flushed prior to this date. (see Hearing transcript pp 48-49)

There seems to be no substantial evidence that BWC abided by their tariff and employed their own established practices of reasonable diligence to provide continuous water service to its customers. In light of the facts about the involvement of Tony Hudson not assisting in flushing hydrants in question, the lack of any testimony from Mr. Wilson’s about his flushing the lines prior to February 21, 2023, the multiple

testimonies that Rob Wilson acknowledged that the lines were not flushed, and the potentially contradicting testimony of Mr. Wilson's claims to know if or when evidence of him flushing the lines was no longer evident, we request a review of the statement in the Order that "BWC offered credible rebuttal testimony at the Hearing addressing and explaining" (Order pp 21) our doubts that the lines were flushed. We continue to contend that BWC violated their own established practice, and therefore their tariff, by not properly flushing the main line that supplies water to our home prior to their line freezing on February 21, 2023.

We do not assume any authority or responsibility to determine in this case whether BWC violated their tariff or whether they were negligent or not in using "reasonable diligence" to provide continuous water. However, we request that the testimonies be reviewed in light of what we believe are the facts provided above and that those with the responsibility to make this determination do so.

The Bleeder

We appreciate that the bleeder installation was completed on or around November 17, 2023. We acknowledge BWC's efforts to have this completed and are hopeful that it will resolve the issue of their line freezing this year and in the future. However, we are not yet convinced that this installation is the appropriate and/or best fix to the issue of this line freezing. We have asked multiple times to see a formal engineer report addressing what is the appropriate fix and have not been provided such a report. The only response to this request is an email dated October 25, 2023 from Tana Hening where she states that "we did talk with the engineers about putting in a bleeder at the end of your cul-de-sac and that they were amenable to that idea." We do not believe that this response addresses our concerns or that the bleeder being amenable represents that this is the best/better resolution or even an appropriate solution.

On page 44 of the hearing transcription Mr. Wilson states that, "So Riley from Garden City, who's their water master, and Mike from the Utah Water Users Association, and then Darren Lutz have all said the better thing than digging up all the lines and burying them deeper is to put a continual bleeder as the end of the cul-de-sacs that are – tend to be longer. . . . We're very interested in fixing it and hopefully getting a solution that is permanent." Since the hearing we have talked with Riley (Argyle) who tells us that he told Rob Wilson that a bleeder may be a satisfactory temporary fix but that the only appropriate permanent fix is to have the water line deeper in the ground. What Mr. Argyle tells us appears to be inconsistent with Mr. Wilson's testimony. We have also communicated with Darren Lutz, the person originally asked by BWC to fix this problem, through text messaging and he reported that his only conversation with Rob Wilson was that Rob informed him that an engineer recommended a bleeder to him. We believe that this may also be inconsistent with the testimony of Mr. Wilson. We have not communicated with Mike from the Utah Water Association and our Google search for this Association resulted in not finding an association in Utah with this name.

Again, as noted at the beginning of this request for a review, we would like BWC to provide a permanent long-term fix to this problem as determined by those who have experience in this area and are certified/licensed to make such a recommendation.

Summary

We believe that BWC is basically, if not totally, responsible for not fulfilling their tariff according to the Disruption Liability section. The flushing of water hydrants to bring warmer water into their main lines is a practice they established and a practice that they testified to in the hearing. We do not believe that they have credible evidence of this practice occurring prior to the freezing of their line on February 21, 2023. As such, we assert that BWC is in violation of their tariff. Although we believe that BWC owes us some financial compensation, our only request at this time is that BWC repair the line that has frozen two of the last four years in a manner that is appropriate and most likely to eliminate the freezing of the line in the

future. We contend that this repair needs to be overseen by a certified/licensed engineer to: (1) determine the best/better solution, (2) be formally engineered, and (3) be inspected during construction.

Anything that you can do to help this request come to fruition would be greatly appreciated. REQUEST FOR AGENCY REVIEW

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