
Formal Complaint of Ronda and Martell Menlove against Bridgerland Water Company	<u>DOCKET NO. 23-001-04</u> <u>ORDER DISMISSING COMPLAINT</u>
---	--

ISSUED: April 4, 2024

1. Procedural History and Positions of Parties

On December 8, 2023, Ronda and Martell Menlove (“Complainants”) filed a formal complaint (“Complaint”) with the Public Service Commission (PSC) against Bridgerland Water Company (“BWC”). That same day, the PSC issued an action request to the Division of Public Utilities (DPU) seeking clarification as to whether the informal complaint process had been exhausted. On January 8, 2024, DPU provided its action request response. The PSC subsequently issued a Notice of Filing and Comment Period. BWC submitted a timely response on February 6, 2024, and Complainants submitted a timely reply on February 20, 2024. All the filings in this docket, from both parties, are informally written emails, and no filing cites any applicable provision of statute, administrative rule, governing tariff, or prior order of the PSC.

The initial Complaint alleges that certain expenses included in the revenue requirement established in BWC’s last general rate case (“Last GRC”),¹ completed in 2022, have not materialized and requests the PSC order a refund or credit against future bills to compensate customers.

¹ See *BWC’s Application for Culinary Water Rate Increase*, Docket No. 21-001-01, Order Approving Stipulation and Associated Tariff Changes issued Feb. 28, 2022 (hereafter “GRC Order”).

In its response, BWC offers a short summary of its financial condition since the 2022 rate increase, noting the increase from the Last GRC took effect on April 1, 2022, and BWC still experienced a significant deficit for calendar year 2022. BWC represents 2023 was the “first time in several years that [it] achieved financial solvency.” BWC further represents it “diligently submit[s] [its] financial records to the State for examination, consistently upholding a track record devoid of any allegations of fund misuse or the necessity for procedural adjustments.” Finally, BWC states it “allocate[s] collected funds to operational or maintenance requirements as [it] deem[s] necessary for [the] company to continue to provide safe and dependable water for [its] customers.”

Complainants’ reply reiterates the allegations from the Complaint concerning certain expenses evaluated in the Last GRC and questions whether BWC’s employee salaries are warranted.

2. Discussion, Findings, and Conclusions

Section 54-7-9 of the Utah Code governs the PSC’s jurisdiction to resolve complaints against utilities. It provides that any person may pursue relief from the PSC when a public utility “violates any provision of law or any order or rule of the [PSC].” Utah Code Ann. § 54-7-9(1). As to complaints regarding the reasonableness of rates, the statute expressly provides: “No request for agency action shall be entertained by the [PSC] concerning the reasonableness of any rates or charges”

unless the request is signed by (i) certain enumerated officials (e.g. mayor, a majority of local legislative body, etc.) of the “city, county, or town within which the alleged violation occurred” or “not less than 25 consumers ... or prospective consumers” of the utility’s service. *Id.* at § 54-7-9(3).

Here, Complainants have not alleged BWC violated any applicable provision of statute, administrative rule, tariff, or prior order of the PSC. Rather, Complainants’ allegations solely relate to their demand for a refund or credit based on allegations concerning BWC’s expenses. While Complainants’ reply notes that one of them sits on the Garden City Town Council, the statute requires a majority of the members of a local legislative body to sign a complaint pertaining to rates before the PSC may entertain it.

Accordingly, the PSC concludes Utah law flatly precludes the PSC from further entertaining the Complaint.

The PSC also notes that Utah law generally prohibits retroactive ratemaking.² That is, when utility rates are established in a general rate case, the rates are set to reflect a just and reasonable amount that allows the utility to recover its anticipated expenses and to earn a fair return on its equity. However, it is expected that a utility’s expenses will almost certainly deviate from those reflected in rates because the underlying conditions are always changing. As a general matter, utilities bear the risk

² See, e.g., *MCI Telecomm. Corp. v. PSC*, 840 P.2d 765 (Utah 1992).

associated with expenses being greater than anticipated, and utilities may earn more than anticipated when expenses are less than those forecast and approved at the time rates are set. Absent certain exceptions pertaining to extraordinary and unforeseen changes in expenses, the law prohibits the PSC from retroactively adjusting rates (i.e. awarding refunds or implementing surcharges) to compensate the utility or customers for the difference between projected costs recovered in rates and actual costs.³ Therefore, even if the PSC could further entertain the Complaint, the PSC could not award a refund to customers simply because expenses were lower than forecast in the Last GRC unless the circumstances qualified as extraordinary and unforeseeable under Utah law.⁴

Nevertheless, the PSC appreciates Complainants' concerns about their utility rates and commends stakeholder engagement. The PSC reviewed its GRC Order, approving BWC's current rates, effective April 1, 2022. In that order, the PSC observed BWC had not requested a rate increase in more than 15 years and the then-existing rates were "gravely inadequate" to operate the utility, especially in light of significant new costs BWC faced associated with necessary capital improvements and compliance with a corrective action plan issued by the Utah Department of Environmental Quality's Division of Drinking Water.⁵ It appears BWC had charged

³ *Id.* at 771.

⁴ *Id.*

⁵ GRC Order at 6.

woefully inadequate rates for a considerable time, placing it in a position where a significant increase was necessary for continued and responsible operation of the utility.

The existing rates are a result of significant work done by the DPU and BWC to establish rates designed to be just and reasonable for customers while allowing BWC to responsibly provide essential utility service, including funding a capital account that may be used to repair and maintain worn out equipment on an ongoing basis.

In other words, whether certain expenses materialized in 2023 or will materialize in a later year, the rates the PSC approved in February of 2022 were set to remediate a significant deficiency in BWC's revenues and to fund necessary capital improvements and a responsible capital account. While we make no conclusive findings on the issue here, it seems unlikely the allegations raised in the Complaint would support a finding, at this time, that the rates established in 2022 are unjust or unreasonable.

3. Order

For the foregoing reasons, the Complaint is dismissed.

DATED at Salt Lake City, Utah, April 4, 2024.

/s/ Michael J. Hammer
Presiding Officer

Approved and confirmed April 4, 2024, as the Order of the Public Service
Commission of Utah.

/s/ David R. Clark, Commissioner

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

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#333172

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 April 4, 2024, 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:

Ronda and Martell Menlove (ronda.menlove@gmail.com, martell.menlove@gmail.com)
Complainants

Ted Wilson (wilson@cbgkr.com)
Tana Heninger (taheninger@wsd.net)
Dixie Wilson (zzgravar@aol.com)
Bridgerland Water Company

Patricia Schmid (pschmid@agutah.gov)
Patrick Grecu (pgrecu@agutah.com)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Administrative Assistant