

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation of the Water)
System Operations of)
POLE PATCH LAND OWNERS)
ASSOCIATION for Certification as a Public)
Utility or Exemption as a Mutual Water)
Company)

DOCKET NO. 04-2435-01

NOTICE OF HEARING AND
ORDER TO SHOW CAUSE

ISSUED: August 2, 2004

By the Commission:

On July 27, 2004, the Division of Public Utilities (Division) filed a Petition, pursuant to *Utah Code Annotated* §54-4a-1, for an Order to Show Cause why Pole Patch Land Owners Association (Pole Patch or Company) should not be fined \$2,000 per day for each day that it has operated as a private water utility delivering culinary water to customers without the Commission authority required by statute, and why its named officer, John Parker, should not face the criminal sanctions provided by statute. The Division's petition alleges that representatives of the Utah Division of Public Drinking Water have notified it that Pole Patch is currently serving culinary water customers.

In response to a letter initially sent to Pole Patch in September 2003, the Company sent the Division a survey form indicating that the Company serves 19 households. On January 28, 2004, the Division sent the Company a letter requesting completion of an enclosed application for exemption from Commission regulation. On February 27, 2004, the Division sent a second letter and received a return receipt signed by John Parker. On April 30, 2004, counsel for the Division sent a letter to the Company providing notice of its intention to petition the Commission for an order to show cause and received a return receipt signed by Lola Parker. To date, the Company has not filed an application.

The Division's Petition sets forth good cause for an inquiry into whether Pole Patch should be fined, and its named officer required to face criminal sanctions, for failure to comply with UCA § 54-4-25 requiring a certificate of public convenience and necessity prior to utility operation. A copy of the Division's Petition is attached hereto, and

incorporated by this reference. Whereas there appears to be good cause to support said allegations, the Commission enters the following order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

POLE PATCH LAND OWNERS ASSOCIATION and its officers, shall appear before the Administrative Law Judge of the Commission on Tuesday, August 17, 2004, at 9:00 a.m., in the Fourth Floor Hearing Room #451, Hebert M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah, to show cause, if any, why Pole Patch Land Owners Association has operated as a public utility without a certificate of public convenience and necessity, and further to show cause why the Company should not be fined for operating without a certificate, and other remedies imposed on the Company and its named officer.

2. The Division of Public Utilities shall conduct such further investigation as it deems necessary and provide any additional recommendations at the hearing. The Division is further directed to send a copy of this Notice, and a copy of the Petition, without attachments, to each property owner served or potentially to be served by the Company, according to the most current information in the possession of the Division.

3. POLE PATCH LAND OWNERS ASSOCIATION and its officers are directed to cooperate with the Division and provide information requested by the Division in its investigation of the Company.

4. POLE PATCH LAND OWNERS ASSOCIATION customers who will not be present for the hearing may participate by telephone. Customers wishing to participate by telephone should notify Julie Orchard, Commission Secretary, at least one day prior to the hearing at 801-530-6716.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the

hearing.

DATED at Salt Lake City, Utah, this 2nd day of August, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#39641

-ATTACHMENT-

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

:

In the Matter of the Investigation of the Water : **Docket No.**
System Operations of Pole Patch Land Owners : **Petition for An Order**
Association for Certification as a Public : **To Show Cause**
Utility or Exemption as a Mutual Water :
Company :

PETITION FOR AN ORDER TO SHOW CAUSE

July 27, 2004

Pursuant to Commission Rule R746-100-3, the Division of Public Utilities (“Division”) hereby submits its petition for an Order to Show Cause against Pole Patch Land Owners Association (“Company”), and its officer, John Parker. The Division petitions the Utah Public Service Commission pursuant to UCA § 54-4a-1, to open a docket for the purpose of requiring the named principal of the Company to explain why the Company has been operating a water system as a public utility without a certificate of convenience and necessity, and to show cause why the Company should not be fined \$2,000 per day for each day that the Company has not been in compliance with Public Utility Statutes and why the named principal should not face criminal sanctions provided by statute.

In support of the petition, the Division submits:

1. In July, 2003, the Division received a listing of Public Water Systems from the Utah Division of Drinking Water which indicated that the Company operated Water System Number 29107 in Weber County. The listing indicated that the system was approved in May, 2003 for a maximum of 66 culinary water connections.
2. In response to a letter sent to the Company by the Division in September, October, and November, 2003, a Company representative filed a survey form on December 29, 2003, indicating that the mutual water company served 19 households (See Attachment # 1).
3. On January 28, 2004, the Division sent a letter to the designated Company contact, John Parker, at the address listed on the survey response, 4920 No. Burnham Drive, Pleasant View, UT, requesting completion of an enclosed application for exemption from Public Service Commission Regulation and provide the necessary information for the Division to determine whether the Company was operating the water system as a mutual culinary water company or needed to be certificated as a public utility (See Attachment # 2).
4. On February 27, 2004, the Division sent a second letter by certified mail to the designated Company contact

requesting completion of an application. The Division received a return receipt signed by John Parker indicating that the letter was delivered (See Attachment # 3).

5. On April 30, 2004, the Assistant Attorney General representing the Division sent the Company a certified letter to John Parker at the same address providing a: “Notice of Intention to file a petition for an order to show cause for failure to respond to requests for information and for operation of a public utility without a certificate of convenience and necessity”. The Division received a return receipt signed by Lola Parker indicating that the letter was delivered (See Attachment # 4). However, to date the Company has not filed for an exemption.
6. Pursuant to UCA § 54-4-1, the Commission is empowered to supervise and regulate public utilities providing service within Utah. Under UCA § 54-4a-1 ©), the Division is empowered to, “investigate or study, upon complaint, upon order of the Public Service Commission, or upon its own initiative, any matter within the jurisdiction of the commission.”
7. UCA § 54-4-25, provides that: “A . . . water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction .”
8. Administrative Rule R746-331-1 provides that “Upon the Commission’s own motion, complaint of a person, or request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine whether an entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission’s jurisdiction.”
9. Pursuant to UCA § 54-7-25, any public utility that fails to comply with the statute, any rule or order issued by the Commission is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense. The statute

also states that in circumstances where violations are of a continuing nature, each day's continuance of the violation shall be a separate and distinct offense.

10. Pursuant to UCA § 54-7-26 and 28, any officer or agent of the Company, or other individual who either individually, or acting as an officer agent or employee of a corporation other than the public utility, violates any provision of the statute is guilty of a class A misdemeanor.

Wherefore, the Division respectfully requests that the Commission open a docket for the purpose of requiring the Company, its officers and its agents to appear and show cause why the water company and the named individual should not be sanctioned for failing to comply with applicable statutes. The Division recommends that failing an adequate cause showing, the Commission should impose the maximum fine of \$2,000 per incident and find the individual guilty of numerous violations.

Based upon the foregoing facts and circumstances, the Division petitions the Commission to open a docket and request that the Company, and John Parker appear before the Commission and show cause why fines should not be imposed upon the Company for failure to comply with the referenced Statutes.

Dated this 27th day of July, 2004.

/s/ Patricia E. SCHMIDT
Assistant Attorney General
Division of Public Utilities