



BOUNTIFUL

City of Beautiful Homes and Gardens

UTAH PUBLIC
SERVICE COMMISSION
May 20, 2009

2009 MAY 26 P 5:34

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1644131

Julie Orchard
Public Service Commission
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Re: Underground Facilities Damage Dispute Board

Dear Miss Orchard,

I am in receipt of your e-mail dated May 5, 2009. Our telephone discussion on April 30th, and your e-mails, raise a number of issues that need to be addressed. I realize that the Board is newly formed and is still establishing itself, and this is also Bountiful City's first involvement with the Board. This letter states the way that we see matters, but if you have further information and law that could change these conclusions I would be happy to review them.

1. The State statute establishing the Board's jurisdiction is Section 54-8a-13, which was passed by the 2008 Utah Legislature. Subsection (5) of that law states: "The board may, upon agreement of the disputing parties, arbitrate a dispute regarding damages...." This requires the consent of both parties before the Board can consider any issue. In this situation, Bountiful City does not consent. I think this situation alone ends the Board's inquiry.

2. Subsection (1) of that law states: "There is created within the commission the Underground Facilities Damage Dispute Board to arbitrate a dispute arising from: (a) an operator's or excavator's violation of this chapter; and (b) damage caused by excavation during an emergency."

The claim of Bountiful City against Rock Images is not based upon a violation of the blue stakes requirements. The claim occurs in a blue stakes context, but we are not alleging that Rock Images violated any blue stakes law. I think this situation alone ends the Board's inquiry.

3. Although it is not raised in this case because the City is the claimant and not the recipient of a claim, for the Board's information I would like to point out that, in my opinion, the Board has no jurisdiction over claims against cities. All claims against cities must follow the claim procedures set out in the Governmental Immunity Act of Utah. Section 63G-7-202 of the Utah Code states that a claimant's exclusive remedy against a City is through that Act, which does not include the Board.

Russell L. Mahan, City Attorney
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4. There is a long constitutional, statutory and case law history of the relationship between the Public Service Commission and municipal electrical power cities. I will simply say that I do not believe that any instrumentality of the PSC has jurisdiction over municipal power operations, including blue stakes.

Again, this subject is new to both of us. If you have other information or law that changes what I have submitted here, I would be glad to take a look at it. Otherwise, I will consider that this particular case is closed and that the Board will not be having a hearing on any Bountiful City related case. If you would like to discuss this further, please call me at 801-298-6143.

Very truly yours,

A handwritten signature in cursive script that reads "Russell L. Mahan".

Russell L. Mahan
Bountiful City Attorney

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