

Brett G. Scharffs

UTAH PUBLIC
SERVICE COMMISSION

March 11, 2010

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Ruben H. Arrendondo
Administrative Law Judge
Utah Public Service Commission
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4th Floor
Salt Lake City, Utah 84111

Ted Boyer
Chairman
Public Service Commission of Utah
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Salt Lake City, Utah 84111

Ric Campbell, Commissioner
Public Service Commission of Utah
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Ron Allen, Commissioner
Public Service Commission of Utah
160 East 300 South
Salt Lake City, Utah 84111

Julie Rochard ✓
Commission Secretary
Public Service Commission of Utah
160 East 300 South
Salt Lake City, Utah 84111

In re: In the Matter of the Request for a Rate Increase
Of Hidden Creek Water Company
DOCKET NO. 09-2440-01
REPORT AND ORDER
ISSUED: February 9, 2010

Dear Judge Arredondo, Chairman Boyer and Commissioners Campbell and Allen,

The undersigned, pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, as an aggrieved party to the above-captioned report and order (the "Report and Order"), do hereby respectfully and urgently request an agency review or rehearing of this Order.

Petitioner Brett G. Scharffs lives at _____, Springville, Utah 84663. My wife, Deirdre Mason Crane Scharffs, and I purchased the lot on which our home is built from a company owned or controlled by Tracy Tanner, and other Tanner family members, the operator of the Hidden Creek Water Company (the "Water Company"). Our home is in the service area covered by the Water Company. We are directly and adversely affected by the Report and Order.

The basis for the requested review or rehearing include the following reasons, each of which we believe is sufficient as a basis for granting our request for an agency review or rehearing of this Report and Order. Taken together, we respectfully submit, these reasons serve as an ample basis for a review and reversal of the Report and Order.

I also wish to draw your attention to a letter I wrote Tracy Tanner and the Water Company, dated March 8, 2010, requesting a variety of material that I believe the customers of the Water Company are entitled to receive as they prepare for an agency review or rehearing. A copy of that letter is attached to this letter. Ms. Tanner responded on March 9, 2010 by e-mailing me only two documents: (1) a history of our account, and (2) a copy of "Consumer Rights & Responsibilities" copied of the public utilities website. Her reply was almost completely unresponsive to the request for information and is indicative of the secretive and, in my view, self-serving, approach the Water Company and its principals has taken to this proposed rate increase. A copy of Tracy Tanner's e-mail is also attached to this letter.

I hereby request that the Commission require the Water Company to provide the information requested in my letter of March 8, 2010, and to provide the customers of the Company sufficient time to prepare to respond to the Report and Order once this information has been provided to the customers.

In particular, I note that according to the Division's own analysis, a report prepared by Mark Long, labeled Exhibit 1.0, the rate increase for current customers will range between 139% and 245%. I respectfully submit that these are not reasonable increases.

Insufficient Notice of the January 20, 2010 "Scheduling Conference"

The Report and Order states, "The Commission's administrative law judge held a duly-noticed scheduling conference on January 20, 2010."

We did not attend, receive an invitation to attend, or even receive legally sufficient notice of the "Scheduling Conference" that was held on January 20, 2010. The Commission order, dated October 26, 2009, instructed the Water Company to provide notice of the January 20, 2010 hearing to its customers

"no later than Monday, December 28, 2009. We respectfully submit that the Company failed to comply with this Order, and this is a sufficient basis to trigger an agency review and rehearing in this matter.

To our knowledge, and based upon the Commission Order in this matter, other than Tracy Tanner, the Company operator, none of the residents or lot holders in the service area attended the January 20, 2010 Scheduling Conference. The fact that not a single resident attended the meeting is prima facie evidence that there was ineffective notice of the meeting.

In a "Dear Customer" letter from Tracy Tanner, Dated March 1, 2010, postmarked, March 3, 2010, and received by us on March 5, 2010 (after the "Scheduling Conference" was over), Tanner asserted, "You were noticed of that public hearing on your January water billing statement (mailed on January 1, 2010)." We strongly disagree that this letter provided legally sufficient notice. In any event, by its own account of events, the Company violated the Commission Order to provide notice of the hearing no later than Monday, December 28, 2009.

My wife, Deirdre, who pays the bills in our family, has no recollection of any notice of a public meeting announced for January 20, 2010. If such notice was provided, we believe it was not legally sufficient. Indeed, we believe that any notice, if it existed, was deliberately designed to decrease the likelihood of customer feedback, rather than to encourage it. Based upon a number of conversations with our neighbors in the Service Area, I have not found anyone who believes they were given proper notice of the January 20, 2010 meeting. In any event, in light of what we believe are the overwhelming inequities in this case, we hope the Commission will not take an overly formalistic view of what constitutes or constituted legally effective notice in this case.

We were not made aware of the Water Company's proposed rate increase until after the January 20, 2010 "Scheduling Conference" had already been held. The proposed increase was first brought to our attention by a phone call from a neighbor on March 5, 2010. We then read the news of the Water Company's proposed increase in the Water Company's "Dear Customer" letter, dated March 1, 2010, which we received on March 5, 2010, after the "Scheduling Conference" was held. We respectfully submit that the failure to provide adequate and effective notice for the January 20, 2010 "Scheduling Conference" is a sufficient ground for granting our request for agency review or rehearing.

We have not received a copy of the Water Company's request for a rate increase

The Report and Order makes reference to the Water Company's "request for rate increase." We, an interested party, did not receive a copy of the request for a rate increase before the January 20, 2010 "Scheduling Conference." A copy of the Water Company's request was not included in the Water Company's letter of January 1, 2010, that the Water Company purports provided us notice of the public hearing. A copy of the Water Company's request was not included in the Water Company's letter of March 1, 2010, which informed us of the Report and Order. As of the date of this letter, we have not received a copy of the Water Company's request for rate increase, although we delivered a written request to the Water Company for this information on March 7, 2010. The Water Company's letter,

dated March 1, 2010, included a web site reference, but the Water Company did not provide this information until the date of the January 20, 2010 "Scheduling Conference" had passed.

We hereby renew our request that the Water Company provide us a copy of its "request for rate increase," as well as the other information requested in our letter of March 8, 2010 (a copy of which is attached to this request). This includes, but is not limited to, the information posted on the psc.utah.gov web site.

We respectfully submit that the Water Company's failure to provide us with a copy of the rate increase request renders any purported notice of the January 20, 2010 "Scheduling Conference" materially incomplete and legally insufficient, and provides a sufficient basis for our request for an agency review or rehearing of the Report and Order.

We did not received a copy of the Division's recommendation

The Report and Order makes reference to a Division Recommendation, submitted on December 31, 2009, and the Report and Order includes a brief excerpt from that Division Recommendation. Report and Order, at 1. We, an interested party, did not receive a copy of the Division Recommendation before the January 20, 2010 "Scheduling Conference" and as of the date of this request have not received a copy.

In our letter of March 8, 2010 to the Water Company, we requested that the Water Company provide us a copy of the Division's recommendation, together with related correspondence, but as of the date of this letter, the Water Company has not provided this information. We note, specifically, that this request for information from the Water Company is for information in addition that that posted on the Division's web site.

We respectfully submit that the Water Company's failure to provide us with a copy of the Division's recommendation, as well as other material evidence and information, renders any purported notice of the January 20, 2010 "Scheduling Conference" materially incomplete and legally insufficient, and provides a sufficient reason for granting our request for an agency review or rehearing.

Business Conducted at the January 20, 2010 "Scheduling Conference" Went Beyond Scheduling

The Report and Order states, "the Commission's administrative law judge held a duly-noticed scheduling conference on January 20, 2010. Representing the Company were Tracy Tanner, the Company operator, and Jason Tanner, the Company treasurer and CPA. Assistant attorney general Patricia Schmid was counsel for the division of Public Utilities (Division). Mark Long, Division utility analyst, testified for the Division." Report and Order, at 1.

According to the Report and Order, other than the Tanners, no property owners were present at, were represented by counsel, or testified at the "Scheduling Conference."

As reflected in the Report and Order, the business conducted at the "Scheduling Conference" held on January 20, 2010, went beyond the subject matter of a "scheduling conference." We respectfully submit

that this provides an additional reason for concluding that the notice of the January 20, 2010 Scheduling Conference was materially incomplete and legally insufficient and should serve as a basis for granting our request for an agency review or rehearing.

The Rate Increase is not Just and Reasonable

We disagree with the principal finding of the Report and Order, that the "Company's request for rate increase is just and reasonable." There is no information in the Report and Order that provides a comparative analysis of what customers in the Service Area pay for water with other similarly situated customers of other water systems. There is no information in the Report and Order that provides an analysis of what current customers would have been charged under the proposed rate schedule at their rates of consumption in 2009, or any previous year. There is no evidence of any input from any customer in the Service Area. Based upon the information in the Report and Order, it is impossible to assess whether the proposed increase is just and reasonable.

We respectfully submit that this is a sufficient reason for granting our request for an agency review or rehearing.

The Rate Increase violates the CCRs of the Mountain Air Estates

We believe the rate increase violates the terms and conditions of CCRs of the Mountain Air Estates. We would like the opportunity to present these arguments and evidence at an agency review or a rehearing of the Report and Order.

The Rate Increase violates the terms of the contract for the purchase of our lot from Mountain Air Estates

We believe the rate increase violates the terms and conditions of the contract for the purchase of our lot from the Mountain Air Estates, a company owned or controlled by the Tanners, the operators of the Water Company. We would like the opportunity to present these arguments and evidence at an agency review or a rehearing of the Report and Order.

The Transformation of the Water Company from a nonprofit to a for profit corporation was illegal

We believe the transformation of the Water Company from a nonprofit to a for-profit corporation in 2000 was illegal. In particular, we believe there was a conflict of interest between Tracy Tanner and others who controlled the Water Company on the one hand and other non-operator beneficiaries on the other hand, and that there was not proper disclosure of these conflicts of interests, abstention from decision-making by parties with a conflict of interest, and ratification of this change by disinterested parties. We would like the opportunity to present these arguments and evidence in any agency review or rehearing of the Report and Order.

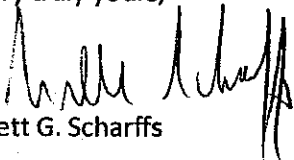
The Accountant and Operator of the Water Company Have Conflicts of Interest

The Report and Order states that the Water Company's treasurer is Jason Tanner, a CPA. We believe he may be an interested party, and may have a conflict of interest as an accountant for the Water Company. In addition, Tracy Tanner, the operator of the Water Company has a conflict of interest. We have requested, and would like to have the opportunity to review and evaluate, information about any financial interest Tracy Tanner and Jason Tanner have in the Water Company, as well as compensation each of them has in connection with their work for the Water Company.

* * *

For the following reasons, Individually, and considered together, we respectfully request an agency review or rehearing of the Report and Order.

Very truly yours,


Brett G. Scharffs

Cc: Hidden Creek Water Company
RR 3 Box 274
Springville, Utah 84663

Encls.: 1. Letter from Brett G. Scharffs to Hidden Creek Water Company, dated March 8, 2010.
2. E-mail from Tracy Tanner to Brett Scharffs, dated March 9, 2010.