

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)	
Duncan, Gavril, Workman, Bates, et al.)	<u>DOCKET NO. 13-2477-02</u>
against Eagle’s Landing Water Company,)	
LLC)	<u>REPORT AND ORDER</u>
)	

ISSUED: March 6, 2014

SYNOPSIS

The Commission orders the Company to apply a net-credit for each customer for the amounts they paid in excess of \$35 per month for water usage from June 2010 through January 2014, subject to the usage limitations addressed in the order. Each Complainant who connected to the Company’s water system after September 1, 2008 (the effective date of the tariff), is responsible for the \$100 turn-on fee. The \$4,000 meter set fee only applies to original purchasers as of September 1, 2008. The Company is ordered to file its rate case as soon as practicable and to include in that filing the tariff amendment directed in this order.

BACKGROUND

1. In 2005, the original owner and developer of Eagle’s Landing Development and Eagle’s Landing Water Company went bankrupt, and sometime in 2006 David Olsen (“Mr. Olsen”) purchased the water company.¹

2. On August 18, 2008, the Commission issued Eagle’s Landing Water Company, LLC (“Eagle’s Landing” or “Company”) a certificate of public convenience and necessity (“CPCN”) to operate as a public utility rendering culinary water service within the proposed service area of Eagle’s Landing development located in Birdseye near Highway 89

¹ See Transcript of Hearing at 147, lines 15-19, dated January 21, 2014. See also Gavril Pre-Filed Testimony at 1.

several miles south of Thistle, Utah.² The Eagle's Landing development consists of 95 single family lots on 299 acres.³ At the time the CPCN was issued, there were 7 residents connected to the system.⁴

At the CPCN hearing the Company agreed to cover shortfalls,⁵ and the Commission's order granting the CPCN acknowledged this:

. . . The subdivision's developer/Applicant's owners have agreed they will make up the short fall until such time as sufficient customers are on the system and revenues are sufficient to cover utility operations. In the future, Applicant will likely be turned over to the subdivision's residents through a homeowners association and likely will seek exemption as a mutual water company. Until such time, Applicant will be subject to Commission supervision and regulation.⁶

...

Applicant's rates are approved as set forth *supra*. Applicant shall file a tariff consistent with this Report and Order. . . .⁷

3. The Company's current tariff provides several provisions relevant to this docket:⁸

² See Report and Order (Docket No. 07-2477-01), issued August 18, 2008. The Commission takes administrative notice of this proceeding.

³ See *id.* at 2.

⁴ See *id.*

⁵ See Transcript of Proceeding (Docket No. 07-2477-01) at 4, lines 1-25; at 4, lines 1-24; at 10, lines 16-21; at 14, lines 2-3, August 13, 2008.

⁶ Report and Order (Docket No. 07-2477-01) at 3, issued August 18, 2008.

⁷ *Id.* at 4.

⁸ Eagle's Landing Water Company, L.L.C., Tariff No. 1. The parties to this docket stipulated that this is the tariff about which this docket concerns, and the Commission took administrative notice of the tariff. See Transcript of Hearing at 15, lines 3-25, dated January 21, 2014.

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Rate[s]

The following rate[s] [are] for the period of one month:

<u>Usage</u>	<u>Charges</u>
First 10,000 gallons	\$35.00 Fixed Charge
10,001 – 20,000 gallons	\$2.50 per 1,000 gallons
20,001 – 40,000 gallons	\$3.00 per 1,000 gallons
40,001 – 60,000 gallons	\$3.50 per 1,000 gallons
60,001 – 80,000 gallons	\$4.00 per 1,000 gallons
Over 80,000 gallons	\$5.00 per 1,000 gallons

Service Connection Charges

1" service to property line, where service fronts property line, including meter and materials. One time charge for each service requiring new meter installation.	\$4,000
Turn-on service where meter is already in place	\$100
Turn-off service	\$25
Stand by Fee	\$10 per month

...

RULES AND REGULATIONS (Continued)

5. Service Connections. Any party desiring to obtain a supply of water from the Company shall make application in writing.

...

8. Service Turn-on and Turn-off. Whenever the water is turned off from any premise, it shall not be turned on again until the applicable charge shown in the rate schedule[] has been paid.

...

11. Reading of Meters. All meters will be read by the Company each month, excepting November, December, January, February and March. The monthly charges for the months when meters are read shall be based upon the meter readings, except as provided for in Paragraph 4 [Meter Adjustments] herein above.

The monthly charge for the months the meters are not read will be a rate of \$35.00 per month. In the event that any user surpasses, on average, 10,000 gallons per month, an overage charge will be assessed based upon the rate schedule.

15. Changes and Amendments. The right is reserved to amend or add to these Rules and Regulations as experience may show is . . . necessary and as such changes are approved by the . . . Commission.⁹

...

4. On or about August 15, 2013, eight customers of Eagle's Landing filed an informal complaint with the Division of Public Utilities ("Division") against the Company for various alleged tariff violations.¹⁰ All of the customers live or otherwise own property in the Eagle's Landing development, and receive water service from the Company.

5. On or about October 24, 2013, Eagle's Landing sent a letter to its customers, stating:

After reviewing with our Attorneys and the Public Service Commission, we are now following the Water Service Rate Schedule for the [Company] that is attached. As of November 11, 2013, water will be billed as per the schedule and meters will be read monthly as weather conditions permit. Payments for the meter set are due upon receipt. If you have any questions, please call David Olsen....¹¹

6. On November 4, 2013, the informal complaint was escalated to a formal complaint and filed with the Commission.¹² The formal complaint includes two additional complaining parties, bringing the total number of complainants to ten.¹³ The complainants are:

⁹ Eagle's Landing Water Company, L.L.C., Tariff No. 1. The parties to this docket stipulated that this is the tariff about which this docket concerns, and the Commission took administrative notice of the tariff. See Transcript of Hearing at 15, lines 3-25, dated January 21, 2014.

¹⁰ See Informal Complaint, dated August 15, 2013.

¹¹ Pre-Filed Testimony of Brent and Raeleen Duncan at 54 of 123, filed December 17, 2013 (emphasis added).

¹² See Formal Complaint, filed November 4, 2013.

¹³ See id.

1) Brent and Raeleen Duncan (the “Duncans”) of 19638 S. Buckskin Circle,¹⁴ 2) John and Mary Gavrila (the “Gavrilas”) of 19659 S. Lariat Circle,¹⁵ 3) Ronald and Phyllis Workman (the “Workmans”) of 4576 E. Cougar Run,¹⁶ 4) Dustin and Brenda Bates (the “Bates”) of 19694 S. Elkhorn Circle,¹⁷ 5) Elmo and Bonnie Richins (the “Richins”) of 4529 E. Cougar Run,¹⁸ 6) Gene and Betty Allen (the “Allens”) of 19643 S. Lariat Circle,¹⁹ 7) Gary and Pam Monson (the “Monsons”) of 19648 S. Lariat Circle,²⁰ 8) Chris and Sheri Paulos (the “Paulos”) of 19664 S. Lariat Circle,²¹ 9) Bryan and Teresa Young (the “Youngs”) of 19719 Elkhorn Circle,²² and 10)

¹⁴ The Duncans’ home was built in 2004. See Pre-Filed Testimony of Brent and Raeleen Duncan at 1, filed December 17, 2013. They purchased their home in 2012 and are the third owners. See id. See also Formal Complaint, Exhibit G, filed November 4, 2013.

¹⁵ The Gavrilas’ home was built in approximately 2004 before Mr. Olsen owned Eagle’s Landing Water Company. See Pre-Filed Testimony of John and Mary Gavrila at 1, filed December 17, 2013. They purchased their home in 2012 and are the second owners. See id. See also Formal Complaint, Exhibit G, filed November 4, 2013.

¹⁶ The Workmans’ home was built in approximately 2007. See Pre-Filed Testimony of Ronald and Phyllis Workman at 1, filed December 17, 2013. They purchased their home from Mr. Olsen in 2011 and are the second owners. See id. See also Formal Complaint, Exhibit G, filed November 4, 2013.

¹⁷ The build date of the Bateses’ home is unknown on this record. However, they purchased their home from Mr. Olsen in 2011 and are the third owners. See Pre-Filed Testimony of Dustin and Brenda Bates at 1, filed December 17, 2013. See also Formal Complaint, Exhibit G, filed November 4, 2013.

¹⁸ The Richins’ home was built in 2007. See Pre-Filed Testimony of Elmo Richins at 1, filed December 17, 2013. They purchased their home in 2013 and are the second owners. See id. See also Formal Complaint, Exhibit G, filed November 4, 2013. The Bates sold their home after this complaint arose.

¹⁹ The Allens’ home was built after they purchased their lot from Mr. Olsen in 2010. See Pre-Filed Testimony of Gene L. Allen and Betty J. Smith, filed December 17, 2013. See also Formal Complaint, Exhibit G, filed November 4, 2013.

²⁰ The Monsons’ home was built in 2007. See Pre-Filed Testimony of Gary and Pam Monson at 1, filed December 17, 2013. They purchased their home in 2011 and are the third owners. See id. See also Formal Complaint, Exhibit G, filed November 4, 2013.

²¹ The Paulos’ home was built in 2007. See Transcript of Hearing at 224, line 20, dated January 21, 2014. They purchased their home in 2012 and are the second or third owners. See Pre-Filed Testimony of Chris and Sheri Paulos at 1, filed December 17, 2013. See also Formal Complaint, Exhibit G, filed November 4, 2013.

²² The Youngs’ home was built in 2008. See Pre-Filed Testimony of Bryan and Teresa Young at 1, filed December 17, 2013. They purchased their home in 2012 and are the second owners. See id. See also Formal Complaint, Exhibit G, filed November 4, 2013.

Trevor and Jessica Butterfield (the “Butterfields”) of 4594 E Cougar Run,²³ (collectively, “Complainants”).

Complainants raise several issues, all of which relate to the Company’s tariff.

Complainants first assert that since June 2010 the Company has been charging a \$55.00 flat fee for 10,000 gallons of water instead of the \$35.00 fixed fee prescribed by tariff.²⁴

Complainants also assert the Company notified customers in July 2012 that the water rate would be temporarily raised from \$55.00 to \$110.00 during the months of June through October 2012.²⁵

The bill states: “Due to the high water usage this year, water rates will be raised to \$110.00 for the period of June 2012 to October 2012. After that time water rates will return to \$55.00.”²⁶

Complainants next assert that in October 2013, after they filed their informal complaint with the Division, the Company sent each of the nine complainants a \$4,000 bill for a meter set fee and a \$100.00 bill as a hookup fee.²⁷ These complainants allege they are not the original owners; rather, they allege the original owners, i.e., Hearthstone Development, owned by Mr. Olsen who is also the owner and manager of Eagle’s Landing, should be responsible for the fees.²⁸ Another complainant (i.e., the Butterfields) received a \$1,100 bill for meter set and

²³ The Butterfields’ home was built in 2011. See Pre-Filed Testimony of Trevor Butterfield at 1, filed December 17, 2013. They purchased their home in 2011 and are the first owners. See id. See Transcript of Hearing at 132, lines 8-12, dated January 21, 2014.

²⁴ See Formal Complaint at 6. Complainants clarified since filing their complaint that the Company recently started charging \$35.00 for the first 10,000 gallons of water in accordance with the tariff, so this issue is resolved going forward but it is still contested for the time in which the Company charged a \$55.00 flat fee. See Pre-Filed Testimony of Complainants, Cover Letter, filed December 17, 2013.

²⁵ See Formal Complaint at 6.

²⁶ Id., Exhibit B.

²⁷ See Formal Complaint at 6. The nine complainants are: the Allens, the Bates’, the Duncans, the Gavrilas, the Monsons, the Paulos’, the Richins’, the Workmans, and the Youngs. See id., Exhibit G.

²⁸ See id. at 6.

hookup fees, even though the Company had already allegedly charged the builder on the Butterfields' residence for a \$3,000 meter set fee.²⁹

Complaints also assert their meters have not been read in recent years.^{30, 31}

Complainants ask the Commission to order the Company to reimburse them for the difference between the \$55.00 flat fee and the \$35.00 provided in the tariff. Complainants also ask the Commission to dismiss all meter set and hookup fees. In addition, "due to the lack of confidence the [Complainants] have with David Olsen in regards to his ability to administer the water company, [Complainants] have a reasonable fear that he may try to retaliate . . . as [they] feel he did by sending the \$4000 invoices after [Complainants] filed the informal complaint[. . .]. [T]herefore, [Complainants] request a third party be appointed by the . . . Commission to administer the water company. This would include the receipt of payments, paying the power bill for the water pumping, testing of the water, meter reading, water bill computations, and all water repair work. [Complainants] request that the . . . Commission forbid Dave Olsen, or anyone associated with him or the water company, from entering the Eagle[']s Landing Community, and banned from being near the water supply source. . . . In response to Mr. Olsen's continuing [claims] about the water company, 'nearing bankruptcy', [Complainants] would urge the [C]ommission to research the stability and financial security of . . . [the] Company, and provide that information to [Complainants]."³²

²⁹ See Formal Complaint at 6. See also *id.*, Exhibit G.

³⁰ See *id.* at 6.

³¹ Complainants also assert the Company refused to reimburse them for the use of a power generator during a power outage due to wildfires. See *id.* However, this claim was waived at hearing after Complainants acknowledged they had received reimbursement.

³² Formal Complaint at 7.

7. On November 6, 2013, the Commission received a call from one the Complainants alleging that Mr. Olsen had taken the key to the water tank so the residents could not refill it, and that he had threatened some residents with shutting off water to their homes. The Commission shared this information with the Division.³³

8. On November 13, 2013, the Company filed a motion to allow mediation in this matter.³⁴

9. On November 14, 2013, the Commission issued a notice of the Company's motion to allow mediation, and set a response deadline to reply to the motion by Friday, November 29, 2013, at 5:00 p.m.³⁵

10. On November 18, 2013, Complainants responded to the Company's request for mediation. Complainants indicated they did not wish to mediate and that they await a hearing date set by the Commission.³⁶

11. On November 19, 2013, the Company filed a notice of intent to file a rate case.³⁷ Nothing further has been filed to date in the rate case docket.³⁸

12. On December 4, 2013, in response to a Commission action request, the Division filed a memorandum recommending the Commission schedule a hearing in this docket.³⁹ The Division provides the following statements in support of its recommendation:

³³ See E-mail from Laurie Harris Wirz, Commission Staff, to Division personnel (Nov. 6, 2013, 13:03 MST).

³⁴ See Motion for Order Allowing Mediation, filed November 13, 2013.

³⁵ See Notice of Filing of Motion for Order Allowing Mediation, issued November 14, 2013.

³⁶ See E-mail from Mary Gavril, to the Commission (Nov. 18, 2013, 07:10 MST).

³⁷ See Eagle's Landing Water Company – Notice of Intent to File General Rate Case (Docket No. 13-2477-03), filed November 19, 2013.

³⁸ See *id.*

³⁹ See Division Memorandum, filed December 4, 2013.

Due to the Company's noncompliance [by not responding to the informal complaint as required by Utah Admin. Code R746-200-8], the complainants were advised to proceed with filing their Formal Complaint with the Commission.⁴⁰

...

Based on the Division's review of the Company's Tariff Schedule of Rates, Rules and Regulations, the Company is clearly not in compliance of its Commission approved tariff. The Division, therefore[,] recommends that a hearing be scheduled.⁴¹

13. A scheduling conference was held on December 3, 2013.⁴² Several of the complainants appeared in-person and over the phone. J. Craig Smith, attorney, and his associate, Adam Long, appeared on behalf of the Company and were accompanied by Mr. Olsen.

14. On December 17, 2013, Complainants filed their testimony and exhibits.⁴³

15. On January 10, 2014, Mr. Olsen filed testimony and exhibits on behalf of the Company.⁴⁴ Mr. Olsen's pre-filed testimony includes the following statements and background regarding his involvement with the Company, as well as how he feels this matter should be resolved:

I am the owner of Eagle's Landing Water Company.... As such, my responsibilities include the overall management and supervision of the Company as well as various other tasks as needed. I was also the developer of the Eagle's Landing subdivision, but due to the downturn in the economy, the remaining lots that I owned in the development are in the process of being foreclosed upon.⁴⁵

...

I was present at the [CPCN] hearing . . . in Docket [No.] 07-2477-01....⁴⁶

...

⁴⁰ See Division Memorandum, filed December 4, 2013 at 2.

⁴¹ Id. at 3.

⁴² See Notice of Scheduling Conference, issued November 19, 2013.

⁴³ See Pre-Filed Testimony of Complainants, filed December 17, 2013.

⁴⁴ See Testimony of David Olsen, filed January 10, 2014.

⁴⁵ Id. at 1, lines 5-9.

⁴⁶ Id., lines 13-14.

I became involved with the Company and the development when I purchased both at a bankruptcy sale. At that time, there were a couple of houses already constructed and the water system and the subdivision generally were in a state of disrepair.⁴⁷

The development was originally planned and platted for 95 houses, which, at the time looked to be very achievable as the area was attracting more full-time residents than expected. However[,] the crash of the housing market and the general downturn in the economy caused those plans to fall apart. The development currently has 11 completed homes and one that is soon to be built. I do not anticipate that the development will reach anywhere near the planned 95 homes anytime soon. Many of the current owners purchased their houses as short sales or foreclosures.⁴⁸

...The development company has subsidized the operation of the water company for years.... Clearly, the development never really took off and the development company is no longer able to subsidize the operations of the water company.⁴⁹

Basically, the Eagle's Landing subdivision is a failed development that is expected to remain basically in its current state of development for the near future. I believe that the Company and the customers need to work together to make sure that the customers continue to receive quality water service while providing the Company with enough revenue to operate.⁵⁰

Regarding the \$100 turn-on fee, Mr. Olsen's pre-filed testimony states that "[t]his is the fee charged when a new customer starts receiving water service from the Company or when water service that has been turned off for any reason is turned back on."⁵¹ Mr. Olsen adds: "The Company's hope is that the Commission will clarify that the turn-on fee is required to be paid when a customer starts receiving service This fee is to be paid when a new customer

⁴⁷ See Testimony of David Olsen, filed January 10, 2014 at 2, lines 23-25.

⁴⁸ Id., lines 28-33.

⁴⁹ Id., lines 39-42.

⁵⁰ Id., lines 43-44; at 3, lines 45-46.

⁵¹ Id. at 3, lines 59-60.

starts receiving service regardless of whether the house is receiving water service for the first time (after paying the connection fee) or the house had previously had water service.”⁵²

Regarding the \$4,000 connection fee, Mr. Olsen acknowledges “there were a number of customers from whom the connection fees were not collected prior to the service being installed.”⁵³ Mr. Olsen further explains “[t]he Company believes that it is owed this money . . . and, importantly, the Company needs more than \$35 per month from 12 customers to continue to operate. This problem is exacerbated by the additional fact that due to foreclosures and short sales the few homes that have been built in the Eagle’s Landing development have changed hands and the current owners do not believe that they should pay service connection charges, as evidenced by . . . [their] complaints....”⁵⁴

Lastly, regarding the \$55 monthly billing amount (instead of the \$35 fixed charge for the first 10,000 gallons as specified in the Company’s tariff), Mr. Olsen states:

“The Company made an arrangement with customers a number of years ago—in an effort to benefit the water customers—to bill a ‘level bill’ of \$55 per month, regardless of the amount of water used. The Company did this because the system had plenty of capacity to deliver water to the small number of existing customers. Doing so simplified the billing for both the Company and the customers and I believe it was a very beneficial arrangement for the customers as they could essentially use as much water as they wanted for a low monthly cost—particularly low for a small, isolated development. It also saved the Company the expense of reading the meters

⁵² See Testimony of David Olsen, filed January 10, 2014 at 3-4, lines 62-67.

⁵³ Id. at 4, lines 82-83.

⁵⁴ Id. at 4-5, lines 83-89, filed January 10, 2014.

every month. Regrettably, the Company apparently did not sufficiently communicate the level billing arrangement as new customers c[a]me on the system.”⁵⁵

16. A hearing was held on January 21, 2014.⁵⁶ Complainants John and Mary Gavrila; Elmo Richins; Phyllis and Ronald Workman; Pamela Monson; Dustin Bates; Sheri and Chris Paulos; Jessica Butterfield, on behalf of Trevor and Jessica Butterfield; Gene Allen and Betty Smith Allen; and Brent and Raeleen Duncan, appeared *pro se*.⁵⁷ J. Craig Smith, attorney, and his associate, Adam Long appeared on behalf of Eagle’s Landing, together with Mr. Olsen.

ISSUES AND POSITIONS OF THE PARTIES

I. Alleged Overcharge Instead of \$35.00 Fixed Charged Permitted in the Tariff, and Failure to Read Meters as Required by the Tariff

A. Customers’ Position

Complainants allege that since 2010, the Company has been charging a flat fee of \$55.00, instead of the \$35.00 fixed charge required by the tariff. Complainants also allege the Company has not read meters in years. Further, Complainants assert the Company notified customers in July 2012 that the water rate would be temporarily raised from \$55.00 to \$110.00 during the months of June through October 2012.⁵⁸

⁵⁵ See Testimony of David Olsen, filed January 10, 2014 at 5, lines 105-06; at 6, lines 107-12, 116-17.

⁵⁶ See Scheduling Order and Notice of Hearing, issued December 6, 2013.

⁵⁷ Bryan and Teresa Young did not attend the hearing, and the Commission took notice of their testimony. See Transcript of Hearing at 11, lines 22-25; at 12, lines 1-5; 127, lines 1-4. The Company moved to dismiss the Youngs’ complaint based on the inability to cross-examine them, claiming its due process rights are deprived without the ability to cross-examine them. See *id.* at 127, lines 7-14. The Company offered no evidence to contravene the Youngs’ complaint; therefore, we deny the Company’s motion.

⁵⁸ The Pauloses assert they paid \$110 in July 2012. See Pre-Filed Testimony of Chris and Sheri Paulos at 1, filed December 17, 2013.

B. The Company's Position

Mr. Olsen testifies that he made an arrangement with customers years ago, which would allow the customers to pay \$55.00 per month, regardless of how much water they used.⁵⁹ He explains this saved the Company the expense of reading the meters every month.⁶⁰ Mr. Olsen further asserts he regretted that as new customers came on the system he did not "sufficiently communicate the level [\$55.00] billing arrangement" with them.⁶¹ Mr. Olsen believes customers would have incurred larger bills had they been charged the tariff rate.⁶² Mr. Olsen argues that the level billing approach was intended to help customers in the same way other utilities help customers through level billing.⁶³ Since this complaint arose, Mr. Olsen states he was advised by his legal counsel to start reading meters, and he has done so.⁶⁴

II. Applicability of "Turn-on" Rate of \$100 and "One time set Meter Charge" of \$4,000

A. Customers' Position

Complainants assert that in October 2013, after they filed their informal complaint, the Company sent nine complainants a \$100 bill as a hookup (turn-on) fee and a \$4,000 bill for a new meter set fee. All but one Complainant testifies the water was already on when they moved into their homes. Complainants also allege they are not the original owners or developer, either of which should have paid the fee. Another complainant -- the Butterfields --

⁵⁹ See Testimony of David Olsen at 5-6, lines 105-07.

⁶⁰ Id. at 6, lines 111-12.

⁶¹ Id., lines 116-17.

⁶² See id., lines 121-23.

⁶³ See Transcript of Hearing at 168, lines 4-6;19-20, dated January 21, 2014.

⁶⁴ See id. at 169, lines 9-10.

received a \$1,100 bill for meter set and hookup fees, even though the Company had allegedly already charged the builder on the Butterfields' residence for a \$3,000 meter set fee.

B. The Company's Position

Mr. Olsen testifies the \$100 turn-on service is charged when a new customer starts receiving water service from the Company or when water service that has been turned off for any reason is turned back on. Mr. Olsen asserts that this fee covers updating the Company's records to show the new customer's billing information and reading of the meter when the new customer comes on the system.⁶⁵ On cross-examination, Mr. Olsen acknowledges that both the Monsons and the Butterfields paid their turn-on fees.⁶⁶

Regarding the \$4,000 one-time meter charge, Mr. Olsen explains this fee covers "the water meter, the service line, and the labor and materials to physically connect the water pipe from the Company's system to the customer's house."⁶⁷ In the hearing, Mr. Olsen explained his rationale for charging the \$4,000:

Because every one of you people that bought one of those houses bought a short sale and the cost of those houses was a hundred to a hundred fifty thousand dollars less than what it cost to build that house. And you all know that you got a good deal. And I had to come out of my pocket with my own money to pay the rest of the subs off to zero it out. Didn't give any money for the water

⁶⁵ See Transcript of Hearing at 168, lines 9-10. See also Testimony of David Olsen at 4, lines 72-74. Mr. Olsen's testimony on reading the meters, however, is not entirely consistent. Compare id. at 6, lines 111-12 (testifying meters were not read during the time the Company was charging customers a "level bill" of \$35 per month), with Transcript of Hearing at 179, lines 4-7 (testifying that meters are read when a new customer comes on the system), with Transcript of Hearing at 180, lines 6-8 (testifying that the Company has only recently begun to check meters). Customers also refuted Mr. Olsen's testimony that their meters were read when they signed up for water service. See, e.g., Transcript of Hearing at 192, lines 11-12 (Mr. Richins stating, "When I contacted the water company and started getting billed \$55 a month, no one came . . . and read my meter.").

⁶⁶ See id. at 192, lines 16-22.

⁶⁷ Testimony of David Olsen at 4, lines 73-74.

company, nor the connections. The whole thing has been carried by my wallet. And I'm not doing it any more, okay?⁶⁸

. . . .
[Y]ou guys prospered with the short sale on every one of the houses. That's what aggravates me. You're arguing about a \$4,000 fee when every one of you got \$100,000 worth of value, or . . . [\$150,000]....⁶⁹

Mr. Olsen also maintains that as the developer of Eagle's Landing, "I paid all the subs. The water company is not a sub. It's a different business. It's supposed to be running on its own. And if it had its money, we wouldn't be here because it would be carrying itself, okay? Even with these few houses, if those connections would have been paid, it would still have been cash flowing."⁷⁰

Mr. Olsen asserts that the original owners -- who were two and three owners before the Complainants in this matter -- were never charged the \$4,000 fee by the Company because it "[f]ell through the cracks. It just didn't happen."⁷¹

On cross-examination, complainant Mr. Paulos asked Mr. Olsen why he was charging him instead of the prior owner, Rick Olsen, Mr. Olsen's brother, and Mr. Olsen stated: "Rick [Olsen] was supposed to get a new loan and get [the home] refinanced because I was carrying it, and he never did. And if he [would] . . . have paid me what he owed me back then, this wouldn't even be an issue and you wouldn't be having a bill."⁷² Also on cross-examination, Mr. Olsen acknowledged the Monsons overpaid their meter installation fee by \$1,000.⁷³

⁶⁸ Transcript of Hearing at 211, lines 9-17, dated January 21, 2014.

⁶⁹ Id. at 213, lines 7-11.

⁷⁰ Id. at 212, lines 15-20.

⁷¹ Id. at 186, line 25.

⁷² Id. at 222, lines 19-22.

⁷³ See Transcript of Hearing at 233, lines 3-6, dated January 21, 2014.

In closing, Mr. Smith, Mr. Olson's legal counsel argued the one-time \$4,000 meter installation should apply to replaced meters as well as original meter installations.⁷⁴ Mr. Smith explained that under this theory, the Duncans should be required to pay a \$4,000 fee because their meter was not working and had to be replaced.⁷⁵ Mr. Smith also added that "these fees have never been paid. They've never been charged before. ...Some people have paid them; some people haven't. We think that causes some kind equitable problem among the people that live there.... So we felt it was our responsibility to try to collect those fees. ...And if we don't collect this money, we're going to collect it from the same people through a different method. That's really what this is about."⁷⁶

DISCUSSION, FINDINGS AND CONCLUSIONS

I. Alleged Overcharges Instead of \$35.00 Fixed Charged Permitted in the Tariff, and Failure to Read Meters as Required by the Tariff

The Company's tariff authorizes a \$35.00 fixed charge for the first 10,000 gallons of water.⁷⁷ The tariff does not authorize the Company to charge a "level billing" to its customers, regardless of whether the Company thinks it is a good idea or that it constitutes a cost-saving measure for the Company or its customers, and regardless of whether the customers agree. Similarly, the Company cannot unilaterally raise rates temporarily for reasons it thinks may be prudent.

⁷⁴ See Transcript of Hearing at 253, lines 3-16, dated January 21, 2014.

⁷⁵ Id. at 8-16.

⁷⁶ Id. at 253, lines 17-18, 21-23, 25; at 254, lines 1, 16-18.

⁷⁷ See Tariff No. 1 at 3, effective September 1, 2008.

The Company's tariff also requires that "[a]ll meters will be read by the Company each month, excepting November, December, January, February, and March."⁷⁸ By virtue of the CPCN the Commission issued the Company on August 18, 2008, any changes the Company desires to make to the tariff must first be presented to the Commission for review and, only if the Commission approves those changes may the tariff then be amended.⁷⁹ Indeed, the tariff itself acknowledges this in paragraph 15 under "Rules and Regulations:" "Changes and Amendments. The right is reserved to amend or add to these Rules and Regulations as experience may show is to be necessary and as such changes are approved by the . . . Commission."⁸⁰ Further, to the extent the Company seeks a rate change, the Company must submit a complete rate case that complies with Utah Admin. Code R746-700-50.

Accordingly, all Complainants are entitled to a credit for amounts they paid in excess of \$35 per month, beginning June 2010 through January 2014, unless the Company can demonstrate to the Division within 30 days of this order that a given customer's average monthly usage exceeded 10,000 gallons during any portion of the June 2010 through January 2014 time period.⁸¹ Upon such a showing, the Company is entitled to reduce a given customer's credit by the allowed tariff amount(s) for the higher usage for the months the average usage exceeded 10,000 gallons per month. This approach gives effect to the entire usage provision of the tariff, not just the lowest tier.

⁷⁸ See Tariff No. 1 at 6, ¶ 11, effective September 1, 2008.

⁷⁹ See also Utah Code Ann. § 54-3-3 (LexisNexis 2010) (stating same).

⁸⁰ Tariff No. 1 at 7, ¶ 15, effective September 1, 2008.

⁸¹ This is based on uncontroverted testimony from the Company that Complainants paid less than their actual use under the level billing arrangement. See *supra* n.62.

II. Applicability of “Turn-on” Rate of \$100 and “One time set Meter Charge” of \$4,000

A. “Turn-on” Rate of \$100

The Company’s tariff authorizes a \$100 charge for “[t]urn-on service where [a] meter is already in place[.]”⁸² The tariff also states: “Whenever the water is turned off from any premise, it shall not be turned on again until the applicable charge shown in the rate schedule[] has been paid.”⁸³ Given the testimony, we find that each Complainant who connected to the Company’s system on or after September 1, 2008, which is the date the Company’s tariff took effect, is responsible for the \$100 turn-on fee, with the following exceptions:

- The Butterfields submitted a copy of an uncontested statement from Mr. Olsen to Utah County, stating “that the water fees have been paid [f]or [the Butterfields’] lot”⁸⁴ The Company stipulated that the \$100 fee had already been paid.⁸⁵ Thus, the Company has already recovered a \$100 turn-on fee from the Butterfields and the tariff does not allow further recovery.
- The Duncans submitted uncontroverted testimony that they paid a \$200 turn-on fee, rather than the \$100 turn-on fee authorized by the tariff. Therefore, the Duncans are entitled to a credit of \$100.⁸⁶

⁸² Tariff No. 1 at 3.

⁸³ Id. at 5, ¶ 8.

⁸⁴ Pre-Filed Testimony of Trevor Butterfield, filed December 17, 2013.

⁸⁵ See Transcript of Hearing at 129, lines 18-21.

⁸⁶ See Pre-Filed Testimony of Brent and Raeleen Duncan at 28, filed December 17, 2013.

- The Monsons testified they purchased their home in 2007, which is after the Company existed but before the tariff was approved; therefore, the tariff does not provide a basis for charging the Monsons a \$100 turn-on fee.

B. \$4,000 Meter Set Charge

The Company's tariff allows a "[o]ne time charge [of \$4,000] for each service requiring new meter installation."⁸⁷ The tariff further explains that this service connection charge includes a "1" [pipe] service to property line, where service fronts property line, including meter and materials."⁸⁸ This one time charge is the responsibility of the customer of record at the time the facilities are installed and the meter is set. Further, it is the Company's responsibility to bill and collect this charge. In its testimony, the Company acknowledges its failure to charge the original purchasers – referring to it as "[falling] through the cracks" and admitting "[i]t just didn't happen." The plain language of the tariff provides no notice to a subsequent property owner of liability for a prior uncollected meter set charge. It would be unfair and unreasonable to hold subsequent owners liable for this charge. Thus, for customers who were not the property owners at the time the meter was set, the Commission finds the Company's recent billing of a meter set fee is void. However, since the Butterfields are original owners, the charge applies to them.

⁸⁷ Tariff No. 1 at 3 (emphasis added).

⁸⁸ Id. (emphasis added).

The tariff does not address the issue of replacement meters or the cost therefor.⁸⁹ Thus, we find the tariff does not support the Company's argument at hearing that customers receiving a replaced meter should also be charged a \$4,000 fee.⁹⁰

The Company acknowledges the following payments have already been made by two customers (or their predecessor in interest), thus satisfying (or reducing) the one-time \$4,000 meter set fee:

- The Butterfields provided a copy of a ledger showing a \$3,000 "water hook up" fee paid to Eagle's Landing Water Company on August 15, 2011.⁹¹ The Company offered to stipulate that \$3,000 of the \$4,000 fee had already been paid; thus leaving \$1,000 still owing.⁹² The Butterfields contested the additional \$1,000.⁹³ The tariff, however, permits recovery of the remaining \$1,000 from the Butterfields.

- The Monsons produced a receipt showing a \$5,000 "water connection fee" had been paid to Eagle's Landing Water Company on May 9, 2007.⁹⁴ Mr. Olsen testified the fee "should have been four."⁹⁵ However, because we lack jurisdiction for events occurring before the Company was certificated as a utility and the tariff was in effect (September 1, 2008), we lack authority to require the Company to issue a credit in this circumstance.

⁸⁹ See id.

⁹⁰ The Commission recognizes that while replacement meters have some cost, the cost would be less than \$4,000 since the pipe and associated materials already exist. The Commission recommends the Company address this issue in a tariff amendment.

⁹¹ Pre-Filed Testimony of Trevor Butterfield at 4, filed December 17, 2013.

⁹² See Transcript of Hearing at 129, lines 18-21.

⁹³ See id. at 129, lines 24-25; 130, lines 1-3.

⁹⁴ Pre-Filed Testimony of Gary and Pam Monson at 3, filed December 17, 2013.

⁹⁵ Transcript of Hearing at 233, line 6.

III. Additional “billing and payment” violation

Complainants do not raise this issue, but the Commission raises it *sua sponte*. The Company’s tariff, in part, states: “Bills covering the charges shall be rendered monthly and shall be due fifteen (15) days after being rendered.”⁹⁶ On October 24, 2013, the Company notified customers that it would be complying with tariff rates and reading meters, and noted “[p]ayments . . . are due upon receipt.”⁹⁷ This language does not comply with the tariff. Further, copies of various invoices submitted in this docket show the Company is not complying with the tariff’s “fifteen (15) day” requirement, but rather is setting remittance deadlines anywhere between 4 and 14 days.⁹⁸ This practice does not comply with the tariff. Pursuant to the tariff, the Company must allow customers 15 days to remit payment.

IV. Status of the “Stand By Fee”

Although not raised as an issue in the complaint, Complainants at hearing raised the issue of the stand by fee and whether it applies to existing homes. In particular, Mr. Bates asserted at hearing he was entitled to a refund for the difference between the minimum \$35 monthly charge and the \$25 stand by fee for the months he was not occupying his home.

Stand by fees are traditionally the amounts charged to undeveloped lots after the lot has been purchased but before the meter is set. We apply this definition in this instance and

⁹⁶ Tariff No. 1 at 6, ¶ 12 (emphasis added). The Commission notes this deadline is 5 days shorter than what is allowed by Commission rule. See Utah Admin. Code R746-200-4(E) (“Statement Due Date – An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.”). The Commission recommends the Company address this issue in its future tariff.

⁹⁷ Supra n.11. (emphasis added)

⁹⁸ See, e.g., Pre-Filed Testimony of Brent and Raeleen Duncan at 26, 27, 29, 30, 31, 32, 34, 38, 39, 40, 41, (9-day remittance deadline); at 42, 43, 44, 46, 47, 51, 53 (14-day remittance deadline); at 45 (4-day remittance deadline); at 48, 49, 50 (10-day remittance deadline); and at 55, 56 (7-day remittance deadline).

direct the Company to amend its tariff to make the definition of this fee explicit. The current tariff requires a \$35.00 fixed charge per month for any lot with water service, which covers usage between zero and 10,000 gallons. Therefore, once a home is built and receiving water, the tariff provides no basis for designating it as a “stand by” account. Accordingly, we deny the refund requested by Mr. Bates.

V. Need for a Rate Case and Reminder of Penalty Provision

The Company’s testimony in this docket demonstrates a rate case is needed. The Commission recognizes a notice of intent has been filed, but the dire financial situation of the Company should be addressed promptly. Further, Complainants are free to participate in the rate case to address any concerns regarding the Company’s fees, charges, operating practices, and its financial viability going forward.

In addition, we note the Company is potentially subject to a penalty of not less than \$500, per offense, for failing to comply with Commission rules and orders, including failure to properly implement its tariff.⁹⁹ Therefore, we direct the Company to implement its tariff appropriately as directed in this order.

ORDER

Pursuant to our discussion, findings, conclusions, we order:

1. Regarding the alleged overcharges for water usage, all Complainants are entitled to a credit for the amount they paid in excess of \$35 per month for water usage, beginning June 2010 through January 2014, unless the Company can demonstrate to the Division

⁹⁹ See Utah Code Ann. § 54-7-25 (LexisNexis 2010).

within 30 days of this order that a given customer's average usage exceeded 10,000 gallons per month as explained above.

2. Regarding the applicability of a \$100 turn-on rate, each Complainant who connected to the Company's water system after the date its tariff took effect (September 1, 2008), is responsible for the \$100 turn-on fee, with the following exceptions:

a. The Butterfields, who have already paid the turn-on in fee in full; and
b. The Duncans, who overpaid by \$100, and are entitled to a credit for that amount.

3. The \$4,000 meter set fee does not apply to customers who became owners of the subject property after the facilities were installed and the meter was set.

4. The \$4,000 meter set fee does apply to original owners. The Butterfields, being original owners, are required to pay the remaining balance of \$1,000.

5. The Company is ordered to file its rate case as soon as practicable and to propose the tariff amendment noted above.

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DATED at Salt Lake City, Utah, this 6th day of March, 2014.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#251238

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 Commission 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 Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission'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. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 6th day of March, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

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Fairview, UT 84629

John & Mary Gavrila
HC13 Box 302
Fairview, UT 84629

Ronald & Phyllis Workman
HC13 Box 307
Fairview, UT 84629

Dustin & Brenda Bates
HC13 Box 313
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Elmo & Bonnie Richins
HC13 Box 310
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Gene & Betty Allen
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Gary & Pam Monson
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Chris & Sheri Paulos
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Bryan & Teresa Young
HC13 Box 314
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Trevor & Jessica Butterfield
HC13 Box 311
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