

Request of South Duchesne Culinary Water, Inc. to Cancel its Certificate of Public Convenience and Necessity

DOCKET NO. 20-2372-01  
ORDER CANCELING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, REVOKING PENALTY, AND VACATING ORDER TO FILE REPORTS AND A GENERAL RATE CASE

ISSUED: July 31, 2020

### **BACKGROUND**

By letter filed with the Public Service Commission (PSC) on May 29, 2020, Utah Mini Ranches Homeowners Association and Duchesne Mini Ranches Homeowners Association (together the “HOAs”) provided notice (“Notice”) that properties within the HOAs have been receiving and continue to receive culinary water service from South Duchesne Culinary Water Company (“SDCW”). The Notice explains that (1) the PSC granted SDCW its initial Certificate of Public Convenience and Necessity (CPCN) December 18, 2001 in Docket No. 01-2372-01 and (2) since the HOAs now own SDCW in its entirety and SDCW provides service exclusively to properties within the HOAs, SDCW no longer provides service to the public and is therefore exempt from PSC regulation under Utah Code Ann. § 54-2-1-(36). Thus, the HOAs request the PSC cancel SDCW’s CPCN.

On June 29, 2020, the Division of Public Utilities (DPU) filed a memorandum (“DPU Memorandum”) recommending that the PSC cancel SDCW’s CPCN, dismiss the suspended penalty of \$14,175<sup>1</sup> and vacate its order in Docket No. 18-2372-01 requiring SDCW to file a

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<sup>1</sup> DPU Memorandum at 1 (citing Docket No. 18-2372-01, *Investigation of South Duchesne Culinary Water, Inc.’s Compliance with Applicable Administrative Rules and Tariff*, Order, p. 2, September 4, 2019).

general rate case on or before October 1, 2020 (“Order to File GRC”).<sup>2</sup> On June 30, 2020, the PSC issued a Notice of Comment Period, requesting comments on the DPU’s Memorandum by July 20, 2020, and no comments were filed.

### **DISCUSSIONS, FINDINGS, AND CONCLUSIONS OF LAW**

The DPU Memorandum confirms that on March 14, 2020, members from the HOAs and Joan Steed and related entities (“Developer”) held a meeting to discuss the transfer of ownership of SDCW to the HOAs, and that a buy and sell agreement (“Agreement”) was executed by the Developer and the HOAs on the same day. DPU explains that the HOAs released all claims against the Developer and the Developer released all claims against, and interest in, SDCW as part of the Agreement. DPU further explains these releases served to cancel any amounts owed by the Developer for unpaid water and standby fees, and any loans or other debts owed by SDCW to the Developer. DPU states that the Agreement effectively severs all ties between SDCW and the Developer. Finally, DPU states that the acquisition of SDCW was approved by the respective boards of the HOAs, and that on March 19, 2020, a new board of directors for SDCW was appointed by the HOAs.

Utah Code Ann. § 54-4-1 vests the PSC with the power and jurisdiction to regulate public utilities, including water corporations. Utah Code Ann. § 54-2-1(36) defines a water corporation as “every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state.” It specifically states that a water corporation “does not include private irrigation companies engaged in

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<sup>2</sup> *Id.* (citing *Investigation of South Duchesne Culinary Water, Inc.’s Compliance with Applicable Administrative Rules and Tariff*, Docket No. 18-2372-01, Order to File a General Rate Case, issued February 20, 2020).

distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.”<sup>3</sup>

The HOAs represent in the Notice that they now own SDCW in its entirety and that SDCW provides service exclusively to properties within the HOAs. The DPU Memorandum also concludes, based on these facts, that SDCW is no longer a public utility because it does not serve the public.<sup>4</sup> The PSC agrees and finds and concludes that SDCW no longer meets the definition of a water corporation under Utah Code Ann. § 54-2-1(36) and is therefore not subject to the PSC’s jurisdiction.

We also find good grounds exist to dismiss the suspended penalty of \$14,175<sup>5</sup> and vacate our Order to File GRC, requiring SDCW to file a general rate case.<sup>6</sup> We appropriately imposed the penalty on SDCW, as a regulated public utility, for violations of its tariff and of the PSC’s administrative rules. In a related case, we also ordered SDCW to file a general rate case on or before October 1, 2020, in part, as an incentive for SDCW to address its violations during the interim and before making such a filing. SDCW is now owned by the HOAs and is no longer a water corporation and, as of the date of this Order, will no longer be subject to our jurisdiction.

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<sup>3</sup> *Id.*

<sup>4</sup> DPU Memorandum at 3.

<sup>5</sup> On February 13, 2018, the PSC issued a consolidated order in *Formal Complaint of Tanya and Nick Olsen*, Docket No. 17-2372-01 and *Formal Complaint of Shane Houskeeper*, Docket No. 17-2372-02, imposing a penalty of \$20,250 in connection with SDCW’s violation of numerous PSC regulations and tariff provisions. On April 3, 2018, the PSC issued a Consolidated Order on Petition for Redetermination suspending 70 percent of the \$20,250 penalty, but providing “[i]f the PSC finds, in an order following an adjudicative process, an additional violation in [the next three years], the PSC [would] lift the penalty’s partial suspension and impose the full penalty in addition to any penalty associated with the new violation.” (“Order on Review”)

<sup>6</sup> See Order to File GRC at 9.

The HOAs and the Developer agreed to release any claims against each other pursuant to the Agreement. In addition, according to DPU, SDCW is working with the Department of Environmental Quality, Division of Drinking Water to resolve any outstanding issues relating to SDCW's water system that were the subject of complaints against SDCW before the change in ownership.<sup>7</sup> Finally, DPU recommends that we revoke the suspended penalty and vacate our order requiring SDCW to file a general rate case.

We do not believe it is in the public interest to pursue the penalty under the circumstances described above. In addition, we cannot order SDCW to file a general rate case because, as of the date of this Order, we will no longer have jurisdiction.

### **ORDER**

For the reasons mentioned above and based on the DPU's recommendation and there being no opposition or comments filed during the comment period, we find it in the public interest to cancel SDCW's CPCN No. 2372, issued to SDCW on December 18, 2001, as set forth in the letter of exemption attached to this Order as Exhibit A. We also vacate (1) our Order on Review imposing and suspending a penalty against SDCW in the amount of \$14,175; (2) our Order to File GRC, requiring SDCW to file a general rate case on or before October 1, 2020; and (3) our order requiring SDCW to file a report in September 2020, apprising the PSC of the status of its delinquent accounts.<sup>8</sup>

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<sup>7</sup> DPU Memorandum at 3.

<sup>8</sup> September 4, 2019 Order in Docket No. 18-2372-01 at 6.

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DATED at Salt Lake City, Utah, July 31, 2020.

/s/ Yvonne R. Hogle  
Presiding Officer

Approved and Confirmed July 31, 2020, as the Order of the Public Service Commission  
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#314866

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 written 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. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on July 31, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Adam Long ([along@shutah.law](mailto:along@shutah.law))  
Nathan S. Bracken ([nbracken@shutah.law](mailto:nbracken@shutah.law))  
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Duchesne Mini Ranches HOA

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Division of Public Utilities

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Administrative Assistant

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Exhibit A



## Public Service Commission

THAD LeVAR  
*Chair*

DAVID R. CLARK  
*Commissioner*

RON ALLEN  
*Commissioner*

## State of Utah

GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

LETTER OF EXEMPTION NO. 237

July 31, 2020

South Duchesne Culinary Water, Inc.  
c/o Adam Long  
Smith Hartvigsen PLLC  
257 East 200 South, Suite 500  
Salt Lake City, Utah 84111

Dear Mr. Long,

The Public Service Commission (PSC) has reviewed the proposed request for exemption, filed on behalf of South Duchesne Culinary Water, Inc. (SDCW) on May 29, 2020.

On June 29, 2020, the Division of Public Utilities (DPU) recommended the PSC grant the request for exemption because SDCW is “only serving its members and not the public generally.” Utah Code Ann. § 54-2-1(36) excludes water corporations from PSC regulation that distribute water only to their stockholders or members; thus, an exemption for SDCW is appropriate.

Please be advised that this Letter of Exemption No. 237 is granted pursuant to the representations contained in the Notice filed with the PSC May 29, 2020, and on the basis of the DPU’s conclusion that SDCW serves only its members and not the public generally. SDCW has a continuing obligation to update the PSC within 30 days of any change.

This Letter of Exemption No. 237 is revocable for cause at any time. Please refer to this letter number in any future correspondence with either the PSC or the DPU.

Sincerely,

/s/ Gary L. Widerburg  
PSC Secretary  
DW#314866