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Submitted: January 3, 2007

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

DOUGLAS J. MARKHAM AND)	
ANDREA GASPORRA,)	
)	Docket No. 07-2025-_____
PETITIONERS,)	
V.)	
)	
DAMERRON VALLEY WATER WORKS,)	COMPLAINT and
RESPONDENT.)	REQUEST FOR INVESTIGATION
)	

Pursuant to Utah Code Ann. §§ 54-7-9 and 63-46b-3(3)(a) and Utah Admin. Code § R746-100-3.F.1, Douglas J. Markham and Andrea Gasporra (“Petitioners”) file this Complaint and Request for Investigation. Petitioners are new customers of Dammeron Valley Water Works (“DVW”),¹ have been significantly overcharged for water service

¹Damerron Valley Water Works is a DBA registered with the Utah Department of Commerce.

for the months of May through October 2006 relative to prior billing statements and are subject to future overcharges. In addition, Petitioners believe DVW has improperly manipulated previous billings to some customers in a way that (a) is in violation of DVW's filed tariff provisions, (b) is discriminatory, (c) has improperly encouraged Petitioners to use quantities of water significantly beyond levels they would otherwise have used, (d) may establish that DVW's current rates are not just and reasonable, and (e) may establish that DVW's current rates were improperly established in Docket No. 04-2025-01.

BACKGROUND

1. Petitioners are the current owners of property located at 979 Dammeron Valley Drive, Dammeron Valley, Utah ("Property") and own three water shares in DVW and are provided culinary and irrigation water service by DVW under DVW accounts No. 595-22-44 ("Culinary Water") and 596-22-44 ("Irrigation Water") (collectively referred to as "Water Rights").

2. Petitioners purchased the Property and Water Rights from John J. Bradley and Darby Bradley ("Bradleys") after a contested trial on specific performance in the Fifth District Court, Washington County, Utah, *Markham v. Bradley*, Case No. 04-0501848. The Petitioners prevailed in that matter, and the Bradleys were required by court order to sell the Property and Water Rights to Petitioners. The Property and Water Rights were conveyed to Petitioners on May 18, 2006.

Brooks Pace was the applicant and is the registered agent for DVW.

3. While this litigation was in progress, the Bradleys continued to live at the Property, which has eight acres, including a large horse pasture and a pond of approximately 3,000 square feet. In addition, on information and belief, Mr. Bradley was building other homes in the Dammeron Valley area, and Brooks Pace, the owner of DVW, is also the owner/developer of the property being developed into subdivisions in Dammeron Valley that relies on the DVW for water.

4. On information and belief, Mr. Pace has started at least one new phase of development that will dramatically increase the number of homes serviced by the DVW and has previously selected Mr. Bradley as one of his primary builders on the lots being sold in the Dammeron Valley area.

5. During at least 2006, 2005, possibly during 2004 and prior to the time the Property was conveyed to Petitioners, the Bradleys were, on information and belief, encouraged by DVW to use extensive amounts of Irrigation Water for their horse pasture and to fill their pond. The purpose was, apparently, to help DVW “prove” to the Utah State Engineer DVW’s need for a nearly ten-fold increase in water rights for which it was applying, to increase service from 36 homes to 363 homes. A copy of the application to the State Engineer for this change is attached as Exhibit A.

6. On information and belief, DVW not only asked the Bradleys to use extensive amounts of water for their pastureland and their pond, but also encouraged other large property owners in the area who had horse pasture or other uses for water to use their water extensively, as well as to assist in this goal to prove its need for the water.

7. The tariff rate filed with the Commission in June 2004 states the Irrigation Water rate as \$0.25 per thousand gallons, with \$2.00 per thousand gallons as an overage rate beyond the customer's culinary allotment and the irrigation allotment governed by water shares held by the customer.

8. Apparently, in order to encourage extensive water use by the Bradleys and others who owned shares in DVW, DVW agreed to bill the Bradleys \$0.25 per thousand gallons of use regardless of whether they were into the "overage block" of the tariff rate specified at \$2.00 per thousand gallons.

9. To the extent that other users on the DVW system were billed and paid the tariff overage rate, the Bradleys and perhaps others were subsidized in their use by the tariff rates imposed on other users. On information and belief, DVW did not, and has not, collected the appropriate tariff rate for the overage use by the Bradleys and some others from at least the year 2004 to the present time.

10. After the Bradleys conveyed the Property and Water Rights to Petitioners in May 2006, Petitioners received a billing statement for Irrigation Water for May/June 2006 from DVW showing the rate calculation DVW had been using to bill the Bradleys for Irrigation Water, including a rate of \$0.25 per thousand gallons for all usage over 48,000 gallons. This bill of \$485.00 for 1,700,000 gallons was paid by Petitioners on July 21, 2006. A copy of this billing statement is attached as Exhibit B.

11. On information and belief, at some point after this May/June 2006 billing, Mr. Bradley made claims to DVW that he had not transferred any water shares to

Petitioners and indicated to DVW that Petitioners should be billed as a “nonowner” using DVW’s water. After these communications by Mr. Bradley to DVW, the next billing statement by DVW to Petitioners for July/August 2006 totaled \$1,684.00 and showed that the amount charged for overage was the tariff rate of \$2.00 per thousand gallons. This increased Petitioners’ total water charge by nearly 350% over their May/June billing, even though Petitioners had decreased their water usage by approximately 37% from 1,700,000 to 1,064,000 gallons. A copy of the July/August billing statement is attached as Exhibit C.

12. When Petitioners questioned DVW about this increase in the rate from \$0.25 to \$2.00 on the July/August billing, DVW then sent a “corrected” billing statement for May/June 2006 use, claiming \$2,824.00 to be owed, nearly six times the \$485.00 it had previously been billed and which had been paid in full. A copy of the “corrected” May/June 2006 billing statement is attached as Exhibit D.

13. Petitioners have also received a billing statement for September/October 2006 totaling \$1,388.25, which used the overage rate of \$2.00 rather than the historic \$0.25 per thousand gallons. The September/October 2006 billing statement also referenced the “corrected” May/June 2006 billing. A copy of the September/October billing statement is attached as Exhibit E.

14. Petitioners have paid in full and under protest all statements regarding Irrigation Water for May/June, July/August and September/October referred to above. They have not yet received a statement for November/December 2006, but anticipate that

it will likewise show a charge for any overage at the \$2.00 per thousand gallon rate rather than the historic \$0.25 per thousand gallons.

DISCUSSION

Regardless of its reason for doing so, DVW has selectively and discriminatorily misapplied certain portions of its posted tariff rates. By billing some customers at a rate of \$0.25 per thousand gallons regardless of the amount of water usage or overage—a rate that is only 12½% of the posted tariff overage rate—and billing others at the full rate, DVW’s selective and unauthorized discounting of bills for water service to certain customers constitutes a material violation of its tariff provisions and of Utah Code Ann. § 54-3-8.²

Equally importantly, DVW’s actions, as set forth above, raise serious questions about (a) its overall billing practices, (b) whether its current rates are just and reasonable, (c) whether there are grounds to investigate the prior establishment of rates in Docket No. 04-2025-01 to determine if they were set on the basis of misrepresentations of projected costs or revenues, and (d) whether circumstances exist to justify redetermining those rates and ordering corresponding refunds.³

Apart from the billing ramifications of DVW’s actions outlined above, there are disturbing questions about a course of action that appears to have encouraged the

²By filing this Complaint and Request for Investigation, Petitioners do not dispute their billings to date under the culinary water portions of DVW’s tariff.

³Petitioners recognize that the Commission has very little authority to adjust rates retrospectively. However, under certain limited conditions established by Utah case law, the Commission may make such adjustments with correspondingly appropriate refunds to a utility’s customers.

wasteful use of water to support the unregulated commercial enterprise of DVW's owner/developer in the area. In a part of the country where water is a such a valuable resource to be used wisely and for legitimate purposes, DVW's apparent actions as a party to encourage wasteful water usage that is primarily designed to "prove up" the need for additional water rights for an unregulated commercial development is squarely contrary to public policy.

Although the Commission may not have direct jurisdiction over parts of this matter, it should take such measures as are within its authority to prevent or discourage such usage. An investigation into DVW's rate-setting and billing practices is an appropriate action in these circumstances.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that:

1. The Commission, pursuant to Utah Code Ann. § 54-4-1.5, require the Division of Public Utilities to conduct a complete and thorough audit of DVW's books, record-keeping and billing practices and to determine the extent to which:

(a) DVW has violated its filed tariff,
(b) DVW has engaged in discriminatory treatment of its customers,
(c) DVW has taken actions that have improperly induced customers to use excess water because of below-tariff billings, and

(d) DVW has presented information and data to establish its current rates in Docket No. 04-2025-01 that did not accurately reflect known and expected conditions on

its system.

2. The Commission order such refunds to Petitioners and other DVW customers as it deems just and reasonable upon completion of its investigation into the operations of DVW.

DATED this ____ day of January 2007.

Respectfully submitted,

JONES, WALDO, HOLBROOK & MCDONOUGH, P.C.

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CERTIFICATE OF SERVICE

I certify that on January ____, 2007, I caused correct copy of the COMPLAINT AND REQUEST FOR INVESTIGATION *to be mailed via US Mail to:*

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