

Brett G. Scharffs  
RR Box 240  
944 Hobble Creek Canyon Road  
Springville, Utah 84663

April 16, 2010

In re: **Request to Intervene Pursuant to Utah Code § 63G-4-207**

In the Matter of the Request for a Rate Increase

Of Hidden Creek Water Company

DOCKET NO. 09-2440-01

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

I would like to thank the Commission for its decision in its Order dated March 25, 2010, to schedule a Technical Conference in this matter, which I understand is currently scheduled to be held on April 22, 2010, and to “set a hearing, with time for public witness testimony, to review the application and determine if its February 2010 order should be rescinded, altered, or should remain unchanged, or determine other course of action as necessary.” Commission Order, Docket No. 09-2440-01, Dated March 25, 2010, at 3.

I would like to call the Commission’s attention to the implications of the proposed rate increase for our family. During calendar years 2008 and 2009, we paid a total of \$1,331.33 for our water, an average of \$665.67 per year. Under the Commission’s proposed rate structure, we would have paid a total of \$5,534.90, which is an average of \$2,767.45 per year, an increase of \$4,203.57 over two years, and an increase of more than \$2,100 per year. This would represent an increase of 416%. An increase of this magnitude is neither just nor reasonable, especially in light of rates paid by similarly situated property holders in our neighborhood of Hobble Creek Canyon and Springville.

Under the Company’s proposed rates, our payments would have been even higher: a total of \$6,004.90 over the past two years, an increase of \$4,673.57 (or more than \$2,300 per year), which would represent an increase of 451%.

Please note that under either the Commission’s proposed rate structure, or the Company’s proposed rate structure, based upon actual usage over the past two years, our water rates would increase by more than 400%.

I am writing for several reasons, specifically:

1. To formally petition to intervene in this proceeding, pursuant to Utah Code §63G-4-207.
2. To request that the date of the Technical Conference be rescheduled to a time when I am able to attend.

3. To submit in writing questions that I would like to ask and have answered at the Technical Conference.
4. To object to Tracy Tanner's assertion in her "Dear Customer" letter, dated April 1, 2010, that the Company provided legally sufficient notice of the January 20<sup>th</sup> Hearing, and to respond to her letter of April 12, 2010, in which she objects to the scheduling of a public hearing in this matter.
5. To petition the Commission to order the Company to provide funds for the Customers of the Company, other than the Tanners, to hire an attorney to represent their interests in this matter.
6. To object to the scope of the Technical Conference and to request a thorough enquiry by the Commission into the legality and reasonableness of the Company's proposal.

\* \* \*

**1. Petition to intervene in this proceeding, pursuant to Utah Code §63G-4-207.**

In a letter dated April 5, 2010, from Julie Orchard, Commission Secretary, I was informed that if I would like to participate in discovery or make other formal requests regarding how these proceedings are managed that I would need to petition to intervene as an interested party.

I hereby make a motion to intervene.

Utah Code § 63G-4-207, Procedures for formal adjudicative proceedings – Intervention, requires certain information, which follows:

(1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party.

(a) the agency's file number or other reference number;

Docket No. 09-2440-01

(b) the name of the proceeding;

In the Matter of the Request for a Rate Increase of Hidden Creek Water Company

(c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law;

My wife, Deirdre Mason Crane Scharffs, and I are customers of the Hidden Creek Water Company, and we depend upon the Company for our domestic water and landscaping water needs. Our rights and interests are directly, substantially, and adversely affected by the proposed rate increase.

We purchased our property from the Tanners (operating as Upper Phillips Development, LLC, Tracy MacDonald, Manager) in September 1997. The legal description of the lot in the Real Estate Purchase Contract is Mountain Air Estates, Plat "A" Lot 10 to be known as Mountain Air Estates, Plat "B" Lot 1 in the left fork of Hobbble Creek Canyon, Utah County, Utah. Our street address is 944 Hobbble Creek Canyon Road, Springville, Utah, 84663, and our mailing address is RR Box 240 Hobbble Creek Canyon Road, Springville, Utah, 84663.

We built a house on the property and have lived there since July, 1999. We are directly, substantially, and adversely affected by the proposed rate increase, which according to the Division's own estimates will result in a rate increase of between 139% and 245%. Based upon our estimates, and those of other customers, we believe that the Commission's proposed rate scale will result in monthly bills that could increase by an average of 400% or more.

In a letter dated March 8, 201 (a copy of which the Commission has received), I requested Tracy Tanner and the Company to provide an analysis of how the Company's proposed rates and the Commission's proposed rates would have affected our monthly water bills. Specifically, I requested "an analysis of what our system fees and water usage fees would have been for each month of the past three years (2007, 2008, 2009) if the proposed rate structure had been in effect at those times." The Company and Tanner refused to provide this analysis. Tanner did provide an incomplete version of our account history, which did not include information about usage amounts. Thus, the following is my effort to extrapolate the relevant information since she would not provide us with an analysis based upon her information and billing protocols.

**In summary, my calculations indicate that if the Commission's proposed rates had been in effect over the past two years, our water bill would have increased by \$4,203.57, from \$1,331.33 to \$5,534.90, an increase of 416%.**

The base rate increase from \$38.00 per month to \$110.50 per month under the Commission proposal is an increase of 291% per month. Based upon our actual usage over the past two years (and we water less than a half acre of ground), our average monthly rate would increase from \$55.47 per month to \$230.58 per month under the Commission proposal, representing again an increase of 416%. If the Company's proposed rates had been in effect, we would have paid \$6,004.90 over the past two years, an increase of 451%.

**An increase of over 400%, from a total two-year bill of \$1,331.33 to a total of \$5,534.90 would represent an increase of \$4,203.57 over two years, or an increase of more than \$2,100 per year.**

This table summarizes our actual water usage over the calendar years 2008 and 2009. The table indicates what we paid each month under the current rate structure, and what we would have paid under the Company's Proposed Rates and the Commission's proposed rates.

Month	Usage <sup>1</sup>	Current Rates	Company Proposed Rates <sup>2</sup>	Percent increase	Commission Proposed Rates <sup>3</sup>	Percent increase
Jan 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
Feb 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
March 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
April 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
May 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
June 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
July 2008	12,000 21,000	\$5.00 <u>\$49.48</u> \$54.48	\$0 \$130.00 <u>\$105.00</u> \$235.00	431%	\$61.00 \$49.50 <u>\$105.00</u> \$215.50	396%
Aug 2008	12,000 42,000	\$5.00 <u>\$66.00</u> \$71.00	\$0 \$130.00 <u>\$210.00</u> \$340.00	479%	\$61.00 \$49.50 <u>\$210.00</u> \$320.50	451%
Sept 2008	12,000 115,000 42,000 85,490	\$5.00 \$90.30 \$33.00 <u>\$66.94</u> \$195.24	\$0 \$130.00 575.00 \$210.00 <u>\$427.45</u> \$1,342.45	688%	\$61.00 \$49.50 \$575.00 \$210.00 <u>\$427.45</u> \$1,322.95	678%
Oct 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
Nov 2008	-12,000	\$5.00 <u>\$33.00</u>	\$0 <u>\$130.00</u>	342%	\$61.00 <u>\$49.50</u>	291%

<sup>1</sup> This is an extrapolation based upon the information Tracy Tanner sent me.

<sup>2</sup> The Company's proposed rates would be \$130.00 per month for the first 12,000 gallons, and \$5.00 per thousand gallons over 12,000 gallons.

<sup>3</sup> The Company's proposed rates would be \$33.00 per month for a system expense, \$49.50 per month for the first 12,000 gallons, and \$5.00 per thousand gallons over 12,000 gallons

		\$38.00	\$130.00		\$110.50	
Dec 2008	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
<b>2008 Total</b>	<b>449,490 gallons</b>	<b>\$662.72</b>	<b>3,087.45</b>	<b>466%</b>	<b>\$2,853.45</b>	<b>431%</b>
Jan 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
Feb 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
March 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
April 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
May 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
June 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
July 2009	12,000 62,920 44,600	\$5.00 \$49.27 <u>\$33.00</u> <u>\$34.92</u> \$122.19	\$0 \$130 \$314.60 <u>\$223.00</u> 667.60	546%	\$61.00 \$49.50 \$314.60 <u>\$223.00</u> \$648.10	530%
Aug 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
Sept 2009	12,000 66,790	\$5.00 \$52.30 <u>\$33.00</u> \$90.30	\$0 \$130 <u>\$333.95</u> 463.95	514%	\$60.00 \$49.50 <u>\$333.95</u> \$443.45	491%
Oct 2009	12,000 69,480 27,740	\$5.00 \$54.40 \$33.00 <u>\$21.72</u> \$114.12	\$0 \$130 \$347.40 <u>\$138.50</u> \$615.90	540%	\$60.00 \$49.50 \$347.40 <u>\$138.50</u> \$595.40	522%
Nov 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%
Dec 2009	-12,000	\$5.00 <u>\$33.00</u> \$38.00	\$0 <u>\$130.00</u> \$130.00	342%	\$61.00 <u>\$49.50</u> \$110.50	291%

<b>2009 Total</b>	<b>358,900 gallons</b>	<b>\$668.61</b>	<b>\$2,917.45</b>	<b>436%</b>	<b>\$2,681.45</b>	<b>401%</b>
<b>2YEAR TOTAL</b>	<b>808,390 gallons</b>	<b>\$1,331.33</b>	<b>\$6,004.90</b>	<b>451%</b>	<b>\$5,534.90</b>	<b>416%</b>
<b>Monthly Average over 2 years</b>	<b>33,683 Gallons per month</b>	<b>\$55.47</b>	<b>\$250.20</b>	<b>451%</b>	<b>\$230.58</b>	<b>416%</b>

The effects of the proposed rate increase would be very onerous. Under the Commission proposal, our average monthly water bill would increase from \$55.47 per month to \$230.38 per month, an increase of 416%. Our total water bill over the past two years would increase from \$1,331.33 to \$5,534.90, an increase of 416 percent.

In addition to these clear implications for our rights and interests, we note that our water usage is hardly extravagant. We own 50 acres of land and water less than one-half of one acre. Our average annual water use over the past two years (including both domestic and landscaping use) has been 358,900 gallons per year. We note that an acre-foot of water is 326,000 gallons of water, so our total use is a little more than one acre-foot per year. It is my understanding that as a rule of thumb in U.S. water management, one acre-foot is taken to be the planned water usage of a suburban family household annually. Our average monthly water consumption has been 33,683 gallons per month over the past two years, including both domestic use and outside use.

We also note that the water rates charged by the Company are currently higher than rates paid by other customers in Hobble Creek Canyon, as well as those who receive water service from Springville. It is my understanding that residents in the Upper Whitamore subdivision adjacent to the Company property pay annual association dues of \$750 per landowner, and this includes all of their water usage. I have been told that customers in Holiday Hills pay \$1.05 per thousand gallons, which is less than 1/5 the rates proposed by the Commission. Similarly, it is my understanding that residents in Hobble Creek Haven pay association dues of \$40.00 per month, which includes snow removal as well as water. These rates are all significantly lower than the existing rates charged by the Company, and many times less than the proposed rates.

We also note that when utility rates such as water are disproportionately high in comparison with other nearby land, this has the effect of depressing the value and price of land. It is clear that an owner who can expect to pay an average of \$230 per month for water, rather than the existing price of \$55, or even lower rates in other property in the same neighborhood, will take that into account in evaluating the value of property. We believe that the proposed increase will have a significant, material, negative impact on the value of our property.

Finally, we simply cannot afford a 400+% increase, and suspect many other customers of the Company similarly cannot afford this kind of increase. I am a teacher, with a steady income, but with small although usually predictable annual raises. Perhaps you will not be surprised to know that these

increases in income are not large enough to absorb increases of more than 400% in the costs of a key utility (translating to an increase of \$2,100.00 per year).

(d) a statement of the relief that the petitioner seeks from the agency.

The relief requested is a reconsideration by the Commission of the proposed rate increase, with an opportunity as an interested party to receive the information requested in this letter from the Company, and materially complete and accurate answers to the questions set forth herein, as well as the letter I sent to the Company on March 8, 2010, requesting information, and an opportunity to present evidence and arguments at a public hearing with the aid of counsel, and to present motions about proposed resolutions to the rate increase issue.

I hereby formally request the Commission order the Company to provide each customer of an analysis of how the Company's proposed rate increases and the Commission's proposed rate increases would have affected their actual water bills if those rates had been in effect for at least the past two years. Without basic baseline information, and an analysis of how the new rates would have affected past bills, it is impossible for the Company to justify a rate increase, and it seems implausible that the Commission can make reasonably informed decisions about whether a rate increase is reasonable or justified.

I also hereby formally request that the Commission order the Company to provide funds in an escrow account to provide for reasonable and customary attorneys fees so the Customers, other than the Tanners, can hire an attorney to represent their interests.

I also hereby formally request that the Commission order the Company to answer the questions, accurately and in a way that is materially complete, contained in this letter, and to provide the information requested in the letter I sent to the Company on March 8, 2010, and the information requested in this letter.

(2) The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

We respectfully submit that for the reasons outlined in this letter, our legal interests will be substantially affected by the formal adjudicative proceedings in this matter, and that the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

We note in particular that the Tanner's objection that holding a hearing will place "undue financial hardship on the water company" is a very weak argument, considering that the Company's evident

strategy in this matter has been to minimize the likelihood of customer feedback and involvement in the process of requesting this rate increase.

**2. Request that the date of the technical hearing be rescheduled.**

I also request that the date of the technical hearing be rescheduled to some time between May 11 and May 31, 2010. I will be teaching at Central European University's Law School in Budapest, Hungary, and leave on April 21 and do not return until May 10, 2010. The dates of my travel and teaching had been set for some time prior to the receipt of the notice of the technical conference.

It is my understanding, based upon a "Dear Customer" letter from Tracy Tanner dated April 1, 2010, that a technical conference relating to this matter is scheduled for April 22 at 10:00 a.m. in room 474 of the Heber M. Wells Building located at 160 East 300 South, Salt Lake City, Utah.

After meeting with concerned neighbors several weeks ago, it was evident that a number of customers interested in this matter will not be in town on April 22. It is my understanding that several customers contacted Tracy Tanner and asked her to schedule the conference sometime between May 10 and 31<sup>st</sup>. In an e-mail to Steve Thompson, dated April 14, 2010, Tracy Tanner rejected this request, responding as follows:

"Hidden Creek Water Company is not able to reschedule the technical conference set for April 22, 2010. Between the number of individuals involved via the Division of Public Utilities, Jason Tanner and my schedules (all who's attendance is mandatory by the PSC), it is not possible to reschedule that conference in May during the dates you have suggested. Regardless, it has been my experience in years past with the community members, that no matter what date a meeting is scheduled, it is likely it would not meet everyone's desires. The water company will execute the PSC's mandate to hold a technical conference within 45 days of the Commission's Stay of Order and so has scheduled that conference along with the required notice to all it's customers regarding said conference."

As I understand it, the Commission has the authority to reschedule the technical conference at a time that is convenient to customers, and if a mutually acceptable date can be found, I hope this will be done.

If it is not possible to reschedule the technical conference, I respectfully request that the Commission instruct the Company to respond in writing to the questions I am submitting in this letter, together with the information requested in this letter and the letter I send the Company on March 8, 2010. If the Company objects to answering questions or providing information, I request the Commission to issue an order with respect to information it believes we should receive.

In addition, I respectfully request that the subsequent public hearing be scheduled at a time that gives customers adequate time to respond to the questions raised by me and others at the technical conference, to review information provided by the Company as ordered by the Commission, to confer with counsel, and to prepare presentations and motions to be made at the Public Hearing.



I am scheduled to be out of town from April 21-May 10, 2010, from June 3-13, 2010, from July 14-30, 2010, and from August 5-20, 2010. I would appreciate it if the Public Hearing could be scheduled at a time when I am in town this summer.

### **3. Questions for the Technical Conference.**

Since it appears that I will not be able to attend the technical conference, I would appreciate it if the Company could provide written answers to the following questions. Based upon my prior experience in asking questions, and requesting information from the Company and the Tanners, I believe the Commission may need to issue an Order to the Company directing them to answer these questions and provide the requested information.

#### **Background Questions relating to the Company**

1. When was the Company organized? Please provide copies of all organizational documents.
2. Please provide documentation to substantiate the asserted capital investment of approximately \$550,000.00.
3. Was the cost of providing water to the lots calculated into the price at which you sold lots?
4. When you sold a lot, how much did you pay to the water Company to cover the cost of future improvements and maintenance to the water system? If nothing, why not?
5. Please provide documentation relating to the transformation of the Company from a non-profit entity to a for-profit entity. Why did Company customers have no notice or information about this transformation?
6. What are the assets of the Water Company?
7. Who do you believe owns the water rights utilized by the Water Company?
8. Have Company profits been paid to the Tanners? What assurances do Customers have that the increased revenues the Company collects will be used for replacing infrastructure, rather than paying the Tanners?
9. Why have you continued to inform purchasers of lots that the Water Company is a nonprofit entity?
10. What do you understand your duties and obligations to the Customers of the Company to be as the operator of the Company?
11. Who are the shareholders and directors of the Company? Please explain the capital structure, and governance structure.

**Questions relating to use of the Company infrastructure:**

1. How many customers utilize Company infrastructure? Who is included? Please provide a list of customers, names and addresses, so we can communicate with each other.
2. How many lots serviced by the Company are now or have been owned by the Tanners or entities controlled by the Tanners?
3. Is Tracy Tanner's residence part of the Company water system?
4. If so, what is the water usage by Tanner? How many gallons per month has she used for the past 10 years? How many acres have the Tanners been irrigating of their own property? Has the Company infrastructure been used for such irrigation?
5. Has Tanner paid water rates on the same basis as others?
6. If not, why not? What has Tanner contributed to pay for the use of the Water Company infrastructure, and to set aside for future repairs and improvements?
7. Have payments for water been made by other property included in the Company service area and owned by the Tanners?
8. If not, why not?
9. Have any other customers been given waivers or exemptions from payment? Please provide details of the names and values of these exemptions or waivers.

**Questions relating to Income Statement analysis**

1. Please provide copies of the Company's tax returns for the past five years.
2. Please provide copies of audited Company financial statements for the past five years (prepared by someone other than a family member).
3. Please explain the Water Sales Revenue line: There is income from Minimum Charge for 12,000 gallons (\$10,811.00), but nothing for charges for usage over 12,000 gallons: Why not?
4. Please explain the Income line "System Fee": what does this cover?
5. Please explain the expense line relating to "purchased power" (\$7,260.00, 7,500.00): was this power all for the water Company, or does this include power used elsewhere (such as Tanner's house)?
6. Please explain the expense line for Contractual Services – Professional (\$2,400): What did this pay for?

7. Please explain the expense line for Water Master (\$8,400.00): was any of this paid to a member of the Tanner family? Who set this rate?
8. Please explain the expense line Contractual Services – Legal: Have company funds been used to pay for any professional services in connection with the preparation of this rate increase request. In particular, what amounts, if any, have been paid to lawyers, engineers, accountants, or others in connection with the Company’s efforts to have a rate increase approved by the Commission?
9. Please explain the expense line, Testing (\$1,200): Is this paid to Tanner?
10. Please explain the expense line, Maintenance (\$2,000, \$667.00): What does this cover? Who is this paid to?
11. Please explain the expense line, Pump Replacement (\$1,500): What does this cover?
12. Please explain the expense line, Insurance Expense (\$2,222.00): What does this cover? Who is the beneficiary of the policy? What does it protect against?
13. Please explain the Depreciation Analysis (Exhibit 1.3)

#### **Questions for the Commission**

1. How large an increase in water fees do you intend to be approving with the Commission proposal?
2. Are you surprised that this will result in a 400% increase, or more, for some, if not all, customers?
3. What are the Customers options for moving the process forward and having the rate increase reconsidered?
4. Based upon your information, how do the rates proposed by the Commission compare with other rates paid by water users in Hobbie Creek Canyon, Springville, and Utah County?
5. Does the Commission have a track record of approving increases in water rates in the range of 200-500%?
6. Can you explain the assurances you have from the Company that increased revenues will be used to replace infrastructure rather than to pay the Tanners?

#### **4. Adequacy of Notice of January 20<sup>th</sup> Hearing and Need for Hearing**

I strongly object to the Company's continuing effort to short-circuit the process of soliciting customer feedback and participation in the process of deliberating the proposed rate increase, and its effort to avoid a genuine public hearing in this matter.

In her "Dear Customer" letter, dated April 1, 2010, Tracy Tanner asserts as follows:

"It is important to note that the company complied with the Division of Public Utilities notice requirements regarding the prior public hearing on this rate case held this past January 20, 2010 the purpose of which was to allow for customer comment on the proposed rate increase. The Company included notice of that January 20, 2010 hearing on each customer's January 1, 2010 billing invoice which invoice was mailed out to each customer on January 2, 2010. It is also important to note that after a six month complete and thorough audit and analysis of the company by the Division of Public Utilities, the Division recommended and the Commission approved a new rate structure. The Commission approved the company to initiate the new rate structure which is why each customer's March 1, 2010 invoice reflected the new rate and fee charges."

In an e-mail, dated 4/12/2010, Tracy Tanner writes Judge Arrendondo, formally objecting to the Commission's Order of Stay and Order of Technical Conference dated March 25, 2010, "wherein it states in the last paragraph that the Commission "will" set a hearing, with time for public witness testimony. . . .' The water company understood that the original hearing held this past January 20, 2010 was for that very purpose. It is the water company's position that proper and adequate notice was given to all customers of Hidden Creek Water Company regarding the January 20, 2010 hearing on each customer's Jan. 1, 2010 invoice as per the specific instructions received from the Division as to how the company noticed each customer. The fact that most customers paid their Jan. 1, 2010 invoice provides ample evidence that they did indeed receive those invoiced which included notice of the hearing. The commission has not as of this date (to the water company's knowledge) made a legal finding that improper and/or inadequate notice was made by the water company to its customers regarding the Jan. 20, 2010 public hearing. In fact, the transcript of that public hearing confirms my answer to you that I had indeed noticed every customer on their Jan. 1, 2010 invoices."

Later in the same e-mail, Tanner asserts, "further delay in implementing the new rate structure approved in the Commission's REPORT AND ORDER dated February 9, 2010 will place undue financial hardship on the water company. The Division completed a very thorough, professional and efficient audit and analysis of the water company over a six month period of time and the record will reflect that the water company was fully cooperative during that process."

I strongly object to several assertions and implications in these communications.

First, the "notice" included in the January 1, 2010 billing notice was neither "notice" nor was it "legally sufficient." Rather, it was a small font message designed to minimize the likelihood of customer attendance at the hearing. We did not even notice it in the invoice. There was absolutely no information about the Company's proposal, or the amount of the proposed rate increase. I respectfully submit that on any fair reading, it was designed to be not noticed, rather than to be noticed. It did not include any

information about the proposed rate increase, or the proposal the Company had submitted to the Commission.

Second, Tanner states that payment of the January invoices by some customers is evidence that notice was received. This is not true. Payment of the bill is evidence that the bill was paid, not evidence that a small font cryptic note at the bottom of the bill was seen by customers or that it represented legally sufficient notice. If evidence is needed that the alleged “notice” was neither notice nor sufficient, it is that no customers showed up at the January 20<sup>th</sup> hearing. When customers did learn of the rate increase, in the March 1, 2010 bill, where the increase was presented as an increase that had already been approved by the Commission, customers were quick to object to the rate increase.

In my opinion, the Company’s strategy throughout this process has – and continues to be -- to discourage public comment and participation in the rate increase decision. No customer, to my knowledge, was consulted by the Company about this rate increase prior to the March, 2010 notification that a rate increase had already been approved. At this late date, after the Commission has indicated its intention to hold a public hearing, the Company is still maintaining the same strategy of trying to eliminate public comment and input on the proposed increase.

It is my position that it is impossible for the Commission to reach a reasoned and justified determination in this matter without an effective solicitation, receipt, and consideration of Customer opinion, especially when the proposed increase is of a magnitude of more than 400%, and when Customer interest in being heard is so high.

I commend the Commission for its stated “desire that ratepayers have sufficient notice to voice their opinions before any rate increase is approved.” Commission Order, dated March 25, 2010. I also commend the Commission for its statement that, “After the technical conference is held, the commission will set a hearing, with time for public witness testimony, to review the application and determine if its February 2010 order should be rescinded, altered, or should remain unchanged, or determine other course of action as necessary.” Id.

It is vital that the technical conference be a step in the process of soliciting and receiving Customer feedback, especially since by its terms the technical conference is designed to afford “some time for questions and answers,” but does not contemplate public testimony.

#### **5. Petition for Company to provide funds for a lawyer to represent Customer’s interests.**

As noted earlier in this letter, I hereby petition the Commission to order the Company to provide funds in an escrow account to pay for reasonable and customary attorney fees so the Customers can hire an experienced water-law attorney to represent their interests in this matter.

In the questions earlier in this letter, I have asked the Company whether Company funds have been used to retain legal counsel in connection with the Company’s petition. If so, it is especially important that

Counsel be appointed to represent the Customers' interests as well. In any event, utilizing Company funds to protect the interests of Customers is warranted under the circumstances of this case.

With a rate increase of the proposed magnitude here, and with the Company represented by counsel, it is imperative that the Customers' interests be represented as well. It is well within the Commission's prerogatives to order the appointment and payment of such an attorney to be paid for by the Company.

**6. Request that the Commission undertake a thorough enquiry into the legality and reasonableness of the Company's proposal.**

In a letter I wrote to the Commission, dated March 11, 2010, I raised a number of concerns with the proposed rate increase, and the process of enquiry conducted by the Commission. Among other objections, I argued that the proposed rate increase is not just and reasonable, that it violates the CCRs of the Mountain Air Estates, that it violates the terms of the contract for the purchase of our lot from Mountain Air Estates, that the transformation of the Water Company from a non-profit to a for-profit company was illegal, and the accountant and operator of the Water Company have conflicts of interest.

In its Order dated March 25, 2010, the Commission states as follows: "Please take note that issues surrounding conditions, covenants, and restrictions (CCR's), contractual obligations, transformation of Hidden Creek from a non-profit to a for-profit entity, and matters of internal corporate governance are beyond the jurisdiction of the Public Service Commission. These proceedings will only consider the proposed rate increase."

I respectfully request the Commission and the Administrative law court to reconsider this limitation of the scope of the technical conference and, in any event, the subsequent hearing and enquiry. As I understand it, the Commission has broad jurisdiction to determine whether a proposed rate increase is just or reasonable. The Company bears the burden of persuading the Court that a rate increase is both just and reasonable. The legality of a proposed rate increase is clearly within the scope of a determination of both the justice and reasonableness of an increase.

It appears in this situation that we have a non-profit corporation, set up for the benefit of the customers of the Company, which has been illegally transformed by the operators into a for-profit company. We do not even know who the owners of the Company are. If they are the Tanners, then it is very likely that the transformation was illegal, since there is a clear conflict of interest and the beneficiaries of the non-profit company did not have any input into the transformation. I have been told by several Customers who purchased their lots from Tracy Tanner after 2000 that they were informed by Tracy Tanner that the Water Company was a nonprofit entity, as late as 2005.

Similarly, if the proposed rate increase is a violation of the CCRs of the property owners, or if it is a violation of the contract of sale for the land, this also bears directly upon whether the proposed increase is just or reasonable. If it is illegal, it is hard to see how it could be either just or reasonable. This is not an issue beyond the jurisdiction of the Public Service Commission.<sup>4</sup>

---

<sup>4</sup> I urge the Commission and the Court to consider this issue very carefully before concluding that in the context of a Commission or Court hearing that issues of this character are beyond its jurisdiction. I am concerned, on the one hand, that this may not be consistent with other positions taken by the Commission and the Court about the scope

Finally, it is imperative that the Commission and Court do something to address the conflicts of interest of the Tanners -- both Tracy Tanner, who is the operator of the Company (and who apparently pays herself for her services, without the oversight or supervision, or approval of anyone), and Jason Tanner, the accountant, who is the brother of Tracy, and who has refused to provide information about the Company when requested.

If the Commission and Court are not willing to broaden this enquiry into a fulsome determination of the reasonableness and justice of the proposed increase, including the legality of the Company's actions, I respectfully request that my objection be preserved for the record in future court proceedings.

Could you also please add my e-mail address for distributions of future public information relating to this matter. It is [scharffsb@law.byu.edu](mailto:scharffsb@law.byu.edu). Thank you.

Very truly yours,

Brett G. Scharffs

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

---

of the Commission's or the Court's jurisdiction, and, on the other hand, I am concerned about the implications for the Court and the Commission and their future ability to conduct inquiries if the legality of matters before the Commission or Court are deemed to be beyond its jurisdiction.