

Public Service Commission - Re: Discovery on LW billing records.

From: "Larry & Sharon Zini" <[REDACTED]>
To: Melven Smith <msmith@smithknowles.com>
Date: 8/1/2012 5:40 PM
Subject: Re: Discovery on LW billing records.
CC: Mark - PSC Long <mlong@utah.gov>, "Duncan, Bill- PSC" <wduncan@utah.gov>...

Mel, it is obvious you do not yet clearly understand the reasons why the Complainants filed the initial data request to review the billing records of Lakeview Water and Mountain Sewer.

The two legal teams representing Lakeview Water and Mountain Sewer failed to respond at all to our initial data request. The Complainants had to subsequently file a Motion to Compel due to that lack of response. Ultimately, the Law Judge issued an order to show cause based on the lack of a response by your combined legal teams to the data request and Motion to Compel. This was the reason for the July 19, 2012 hearing. Any delays, along with the filing of the Motion to Compel and finally the order to show cause hearing on July 19, 2012, was due to the failure of Lakeview Water and Mountain Sewer legal teams to respond in a timely manner.

At the July 19th hearing the Law Judge seemed to immediately grasp our reasons for the data request. After a few questions regarding our intent, he ordered that Lakeview Water Corporation to provide all available customer records from Lakeview Water for our discovery efforts.

As we explained to Judge Clark, the Complainants have access to several billing records and receipts provided by current customers of Lakeview Water. These records and receipts show over billing of water connection fees, waivers of fees for both Mountain Sewer and Lakeview Water customers, and indications of commingling of funds between Lakeview Water and Mountain Sewer. The Complainants also have evidence of offers to provide water and sewer connection fees at a reduced rate from both utilities. Our purpose in reviewing Lakeview Water records is to compare the customer records and receipts we have with existing Lakeview Water records to determine how much the customers of both corporations ultimately paid for approved tariffed services.

We are optimistic that the missing Lakeview Water connection fee records may suddenly appear during the discovery and hearing process. We look forward to the appearance of these records so that we can possibly resolve some of the billing issues regarding Lakeview Water.

In response to your statement "If you think there are other records in the possession of Lakeview Water that you did not see, please let me know, and I will respond to your request)."

1. Since the law judge ordered that the complainants have access to all Lakeview Water records, the Complainants would like to review all Lakeview Water customer records from the time that Mr. Bowden took over to the end of July 2012. This would include any connection fees, and standby fees billed to individual customers during that time.
2. We would also like to review the terms of the two Long Term Debts noted in Exhibit C, Page

2/4 of Lakeview Water Corp. Notes to Revenue Requirement Calculation, Note (e)-Estimated Revenue Shortfall from the 2006-2007 Lakeview Water rate case. Also, please provide us a status on both of these loans and the amount still owed if any on each.

When we requested this information from you on Monday you indicated there were no loans for Lakeview Water other than the \$180,000 Promissory Note of March 2012 to Valley Enterprises. However, since there is a line item "Stockholder Loans" for 2009 and 2010 on the Balance Sheet for Lakeview Water provided to the DPU in response to a DPU data request on Docket # 11-540-01 (and Mountain Sewer Docket # 11-097-02) our request is relevant.

Thank you for your cooperation,

Larry and Sharon Zini

On Wed, Aug 1, 2012 at 12:47 PM, Melven Smith <msmith@smithknowles.com> wrote:

Please see my comments in red below.

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From: Larry & Sharon Zini [mailto:larry@zini.com]
Sent: Wednesday, August 01, 2012 10:39 AM
To: Mark - PSC Long; Duncan, Bill- PSC; Patricia (Trisha) PSC Schmid; Chris Parker
Cc: Cheryl (Consum Svcs) Murray; Melven Smith; Long, Adam
Subject: Discovery on LW billing records.

Complainants discovery efforts of July 30, 2012 regarding Lakeview Water records.

LW attorney Mel Smith claimed on July 30, 2012 that there are no connection fee records for the years LW was owned by R. Catanzaro (I did not say there are no connection fee records for the years LW was owned by Catanzaro. There may be records somewhere. Ron or Jeff or someone may have them, if they exist, but Ray just does not know. What he does know is he does not have them and does not know where he may find them, and does not want to spend LW funds trying to find them, if they even exist. Ray's focus is on getting LW solvent, not wasting money) that would indicate if each individual customer paid any connection fees at all, or the amount each customer paid, and the dates the connection fees were paid up through the year 2011. We told Mr. Smith that any records regarding Lakeview Water connection fees would be a starting point up through the present year. We reminded Mr. Smith that Judge Clark's order of July 19, 2012 included **all** Lakeview Water records (and I made all the records available to you that is in the present possession of LW. Mr. Clark did not order Lakeview Water to create records that are not in existence. If you think there are other records in the possession of Lakeview Water that you did not see, please let me know, and I will respond to your request).

The Complainants feel that LW has not fully complied with the show cause order of Judge Clark (in which way? What more do you think Mt. Sewer or LW is obligated to do? Please explain with specificity). The records of connection fees dates, amounts paid by each customer, and which of the three connection fee types applied to each customer, are fundamental to the operation of Lakeview Water's billing process (the fact that you want records, or there is a need for records, does not mean that Lakeview Water has the records. If you want evidence that is not presently available in order to prove your case, you must spend your resources, not the limited resources of Lakeview Water, to obtain the information. As far as I know, Mountain Sewer has fully complied with Mr. Clark's Order.

For example, Lakeview Water has three types of connection fees:

Each type of connection fee now has a specific but different connection fee rate.

1. Single family dwelling within a subdivision.
2. Other single family dwelling units and single business connections.
3. Multiple family dwellings.

Without the specific details regarding the connection fees, such as the date paid, amount paid, and which type connection fee was applied, it would be almost impossible for the DPU staff or any regulatory oversight body to perform a comprehensive audit to ensure that the approved tariff fees had been applied properly for each customer. I too wish LW had access to those records, but it does not.

The absence of connection fee records could explain why numerous overcharges for the connection fees for Lakeview Water customers were not identified or addressed by the DPU during the LW rate case filed in 2006.

We requested a detailed customer list from Lakeview Water with specific connection fee records on Monday, and Mr. Mel Smith said he would provide all current Lakeview Water records by July 31, 2012 (Please see your attached email that states you wanted the report by August 1, which request I met. I sent the report to you this morning). We received the attached list this morning. It is a general list of LW customers lacking the specifics on connection dates, connection fees, and which type connection fee was applied for each customer (because LW does not have that information). Since the supplemental complaint lists billing irregularities for both corporations, Mountain Sewer and

Lakeview Water, that included commingling of funds between corporations, waivers on connection fees and standby fees, and offers from LW and MS to provide connection fees at reduced rates, it is essential that the specific information listed above from Lakeview Water be provided (this information will not lead to any realistic remedy. If you disagree, you must get the information and prove your case. Neither MS nor LW is interested in pursuing information that increases the cost to rate payers and leads nowhere.

If the Complainants do not received the detailed information regarding the connection fees as requested, we are left with no alternative than to return to Judge Clark for assistance. This could be avoided if the DPU can provide assistance on this matter with Lakeview Water.

Larry, your request for information that is not in the possession of Lakeview Water or Mountain Sewer with a threat to go back to the PSC (more hearings equals more costs) in an attempt (which will fail) to force Lakeview Water or Mountain Sewer to obtain information that is not in its possession only increases the attorney time spent in opposing or responding to your requests, all at an increase cost to the ratepayers. If you believe your efforts are beneficial to ratepayers, please consult with them and make sure they agree with your theories (you couldn't even tell me what you wanted in my office, other than you want information). You make arguments and demands, which so far have not resulted in a single benefit to rate payers, who will have to pay the bill through higher rates. You have already increased the cost by many thousands of dollars, and what have you accomplished? The interim rate was approved. The newly filed rate will be approved, so what is the point? Your only success has been in making Mountain Sewer jump through many hoops, and spend countless hours and thousands of dollars, in proving its case, but to no benefit to anybody, other than to attorneys. Your efforts have only increased the costs to ratepayers and have not saved any money. Ray Bowden wants to spend his time and the resources of the companies on improving the systems, not fighting.

Sincerely,

Larry and Sharon Zini

Melven Smith

From: Larry & Sharon Zini
Sent: Monday, July 30, 2012 4:21 PM
To: Melven Smith
Cc: Long, Adam ; Patricia (Trisha) PSC Schmid; Mark - PSC Long; Duncan, Bill- PSC
Subject: Lakeview Water Loans

AmicusFileId: 16305
AmicusFileName: Bowden, Ray - Mountain Sewer Corporation
AmicusId: 2087228
AmicusStatus: Saved

Mel, thank you for your hospitality today. Once the reason for our visit was resolved we do appreciate your efforts to give us access to some of the latest Lakeview Water records.

We still have some outstanding records to review on Lakeview Water. Among those are:

1. You have committed to providing us with a complete list of Lakeview Water customers in a similar format to that provided to the DPU on Mountain Sewer. If you could send us the list of Lakeview Water customer by Wednesday, August 1 it would be appreciated.
2. As we left you gave us copies of a few documents which we did not review until we got home. One was a Promissory Note. We had understood from our discussion with you this afternoon that earlier this year Lakeview Water took out a \$180,000 loan to run the company. The copy we received was a \$180,000 Promissory Note dated March 21, 2012 for Mountain Sewer Corp. We would appreciate it if you would scan and send us a copy of the \$180,000 note we discussed for Lakeview Water by August 1 a well.

Thanks,

Sharon and Larry Zini