



# State of Utah

## PUBLIC SERVICE COMMISSION OF UTAH

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Chairman  
Dave Clark  
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Thad Levar

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UTAH PUBLIC  
SERVICE COMMISSION

2013 NOV -4 P 1:20 Legal Counsel

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### MEMORANDUM

TO: All Parties Seeking Further Resolution After Exhausting the Informal Complaint Process.

FROM: The Division of Public Utilities

As a consumer / complainant that has filed an informal complaint against a utility and remain dissatisfied with the utility's response, the Division of Public Utilities is obligated to advise the complaining party to consider alternatives to seek further remedy and resolution, through mediation or a formal proceeding before a hearing officer of the Commission.

Pursuant to Public Service Commission Administrative Rules R746-200-7 and R746-240-7, (see rules on reverse side) the Division extends the offer to the parties to mediate the dispute in seeking a satisfactory remedy.

#### THE MEDIATION PROCESS

Mediation is a process that is less formal than litigation. It is a good faith exercise wherein the parties to a conflict come together and attempt to find a mutually acceptable or satisfactory solution to a dispute or conflict. This is accomplished with the assistance of a third party neutral or mediator and of course the willingness of the parties. A mediator is not a judge. The mediator has no authority and should have no preconceived biases. The mediator shall not favor one party over another; he or she does not take sides or make assumptions, and draws no conclusions. The process establishes no right or wrong and does not establish blame or fault.

The parties' good faith participation is entirely and strictly voluntary. If resolution or settlement is reached it is because of the parties 'good faith' efforts and compromises. A contractual agreement as a result of settlement efforts is usually drafted listing the details and specifics but will be binding only to the extent of all parties good faith and determination.

The mediator, assigned by the Division shall regard all discussion, measures, procedures, and processes in the mediation process as strictly confidential and shall be maintained that way. Confidentiality by the conflicting parties is self mandated. The mediators' notes and records will be destroyed at the conclusion of the process, regardless of whether or not a satisfactory resolution or agreement is reached. Mediators are protected by the law; they cannot be deposed, subpoenaed, or ordered to testify, for any reason, at any time, for either party for any matter related to the proceeding.

Any of the parties, including the mediator, has the right to abandon the process at any time for any reason. Participation in mediation does not compromise the complainant's right to request a formal review of the dispute by the Commission in the event the mediation process is unsuccessful.

**The mediator has no rules; the agenda belongs to the parties.**

After reviewing the above mediation process, if you would like to try the mediation approach to dispute resolution please contact the Division at (801) 530-7622 with your request. The Division will then contact the other party

advising them of your request to mediate the dispute and attempt to establish a time that is convenient to all parties. The Division may request additional information from the parties and conduct a review of the facts prior to the scheduled mediation date and time.

**Please keep in mind that disputed issues and items that can be mediated are only those subject to the Commission's jurisdiction and covered by State Statute, or Rule, or those covered by the utility's tariff or price list. Also, monetary damages for harm suffered due to a utility's action or inaction cannot be considered in the conflict or dispute, nor will any consideration for the utility to provide service for free be entertained.**

**R746-200-8. Informal Review.**

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. **Mediation** - If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. **Division Access to Information during Informal Review or Mediation** - The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. **Commission Review** - If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-6(F), Termination of Service Without Notice.

**R746-200-8. Formal Agency Proceedings Based Upon Complaint Review.**

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

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**R746-240-7. Review and Resolution of Disputes.**

A. **Informal Review** - A person who is unable to resolve a dispute with a telecommunications corporation concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the telecommunications corporation that an informal complaint has been filed. Absent unusual circumstances, the telecommunications corporation shall attempt to resolve the complaint within five business days. In no circumstance shall the telecommunications corporation fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the telecommunications corporation's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The telecommunications corporation shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days.

A proposed solution may be that the telecommunications corporation requests that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The telecommunications corporation shall inform the Division employee of the telecommunications corporation's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the telecommunications corporations, the complaint shall be presumed to be unresolved.

B. **Mediation** - If the telecommunications corporation or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten

business days after the date of the mediation request, and so advise the mediation requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the telecommunications corporation's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the telecommunications corporation. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation-The telecommunications corporation and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint within five business days of the Division's request, if reasonable possible or as expeditiously as possible if they cannot be provided within five business days.

D. Commission Review - If the telecommunications corporation has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal review or mediation by the Division or a Commission review of a dispute, no termination of telecommunications service shall be permitted, if amounts not disputed are paid when due, subject to the telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

#### **R746-240-8. Formal Agency Proceedings Based Upon Complaint Review.**

The Commission, upon its own motion, the petition of the Division of Public Utilities, or any person, may initiate formal hearings or investigative proceedings upon a matter arising out of an informal complaint.

## **FORMAL COMPLAINT INSTRUCTIONS**

### **PUBLIC SERVICE COMMISSION OF UTAH**

The Public Service Commission Rules of Practice and Procedure, Section R746-3(A), (B), (C) & (F) require any person wishing to have a hearing before the Commission on a complaint against a utility to file the formal complaint in writing (8 1/2 x 11 paper). Attached is a sample form which you may follow. The Commission will take no formal action on oral complaints.

You may either fill in the blanks on the attached form, or you may write your own complaint, but the same information must be included in your complaint. Complaints which are incomplete or illegible will be returned.

Please state your complaint in simple, straightforward, non-technical language. Decide what you want to accomplish in complaining. Do you just want to vent your frustration about high rates? Do you want your telephone fixed? Do you want to make sure you're being charged the proper rate? Be specific in stating your complaint.

The utility involved has thirty days within which to answer your complaint. Your complaint will be reviewed by the Commission's legal counsel to determine if the Commission has the statutory authority to help you through its hearing process. If a hearing is scheduled, the Commission will send you a notice indicating the hearing date and time, and it will be conducted much like a court hearing with a court reporter recording the proceedings. All testimony will be under oath, and false testimony may be made the basis for a felony prosecution for perjury. The opposing side may cross examine all witnesses, including you as Complainant. You have the responsibility of proving the merits of the complaint.

Utility companies are represented by their lawyers. You may also have a lawyer, if you wish. If you come without your lawyer, you will be held to have given up your right to legal representation. If you fail to attend a hearing, and have not alerted the Commission, your complaint will be finally dismissed.

Formal complaints are the last resort in the complaint process. The Commission will not permit a customer to file a formal complaint unless it seems unlikely that a settlement can be reached through the informal process.

The State Legislature has granted the Commission limited authority over utilities in regard to customer complaints. The Commission may order a utility to: a) correct service problems; and b) refund incorrect billings.

The Commission has no authority to correct property damage from maintenance operations or sales of defective telephone equipment, nor rudeness on the part of the utility representative to name three examples.

Your rights and responsibilities are contained in Utah Law (Title 54 Chapter 1) and PSC rules and regulations. Mail or bring, your written formal complaint to: Public Service Commission, 160 East 300 South, Fourth Floor, P.O. Box 45585, Salt Lake City, Utah 84145-0585. Questions should be directed to GARY WIDERBURG at the Public Service Commission telephone 530-6716

(Please note: Complaints elevated to formal complaints and filed with the Commission are public documents and will be published on the Commission's website.)

**FORMAL COMPLAINT FORM  
PUBLIC SERVICE COMMISSION  
Heber M. Wells State Office Building  
160 East 300 South, Fourth Floor  
P.O. Box 45585  
Salt Lake City, Utah 84114**

1a. Name of Complainant: Brent & Raeleen Duncan

Address: 19638 S. Buckskin Circle Birdseye, Utah  
HC13 box 312  
Fairview UT 84629

Telephone No.: 801-420-6213  
E-Mail: [info@lqd8r.com](mailto:info@lqd8r.com)

1b. Name of Complainant: John & Mary Gavrila

Address: 19659 S. Lariat Circle Birdseye Utah  
HC13 box 302  
Fairview UT 84629

Telephone No.: 801-873-3334  
E-Mail: [gavrila1@cut.net](mailto:gavrila1@cut.net)

1c. Name of Complainant: Ronald & Phyllis Workman

Address: 4576 E. Cougar Run Birdseye Utah  
HC13 box 307  
Fairview UT 84629

Telephone No.: 801-874-5245  
E-Mail: [dworkman2009@gmail.com](mailto:dworkman2009@gmail.com)

1d. Name of Complainant: Dustin & Brenda Bates

Address: 19694 S. Elkhorn Cir. Birdseye Utah  
165 Highland Hills Blvd  
Decatur TX 76234

Telephone No.: 940-539-2100  
E-Mail: [dandbbates@yahoo.com](mailto:dandbbates@yahoo.com)

1e. Name of Complainant: Elmo & Bonnie Richins

Address: 4529 E. Cougar Run, Birdseye UT  
HC13 box 310  
Fairview, UT 84629  
Telephone No.: 801-372-5038  
E-Mail: [bill.richins@gmail.com](mailto:bill.richins@gmail.com)

1f. Name of Complainant: Gene & Betty Allen

Address: 19643 S Lariat Cir, Birdseye UT  
HC13 box 308  
Fairview UT 84629  
Telephone No.: 801-873-3438  
E-Mail: [Bettyborgquist@AOL.com](mailto:Bettyborgquist@AOL.com)

1g. Name of Complainant: Gary & Pam Monson

Address: 19648 S Lariat Cir, Birdseye UT  
HC13 box 309  
Fairview UT 84629  
Telephone No.: 801-873-3439  
E-Mail: [monsongp69@gmail.com](mailto:monsongp69@gmail.com)

1h. Name of Complainant: Chris and Sheri Paulos

Address: 19664 S Lariat Cir, Birdseye Utah  
HC13 box 300  
Fairview UT 84629  
Telephone No.: 801-873-3212  
E-Mail: [candspaulos@hotmail.com](mailto:candspaulos@hotmail.com)

1i. Name of Complainant: Bryan & Teresa Young

Address: 19719 Elkhorn Cir, Birdseye UT  
HC13 Box 314  
Telephone No.: 520-207-2631 cell: 520-310-8921  
E-Mail: [bryanfitycal@gmail.com](mailto:bryanfitycal@gmail.com)

1j. Name of Complainant: Trevor & Jessica Butterfield

Address: 4594 E Cougar Run, Birdseye UT  
HC13 box 311  
Fairview UT 84629  
Telephone No.: Cell 801-830-6639 cell 435-749-9728  
E-Mail: [jessas1108@gmail.com](mailto:jessas1108@gmail.com)

*If represented by counsel, list:*

Name: NONE

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

2. The utility being complained against is: Eagles Landing Water Company, LLC
3. What did the utility do, which you (the Complainant) think is illegal, unjust, or improper? Include exact dates times, locations and persons involved, as closely as you can.
  - a. Since June of 2010 the water company has been charging a flat rate of \$55.00 per month for 10,000 gallons of water usage per month.
  - b. On July 1, 2012 we received a water bill for the water billing cycle of 6/30/12 for a fixed rate of \$110.00 for June 2012, which the water company stated is to be the rate through October 2012. Then the rate would go back to \$55.00 for the 10,000-gallon monthly fixed rate--knowing the rate had not been approved by the PSC, all residents paid regular \$55 amounts. (#1 - See attached June 2012, \$110.00 Water Invoice.)
  - c. In June 2012, there was a power outage due to wildfires. In order to maintain water to our homes, the homeowners had to rent a generator to power the pump at the well. The water company refused to pay for the generator and the homeowners ended up paying for the cost of the generator and gas to run for two days. (#2 - See \$129.17 rental receipt attached.)
  - d. On Oct. 25, 2013, nine of the Complainants received an invoice for \$4,000.00 for a Meter set fee, and a \$100.00 hook up fee. (#3 - See Invoices attached.)
  - e. On Oct. 25, 2013, one of the Complainants received an invoice for \$1,100.00 for Meter set and hookup fees.
4. Why do you (the Complainant) think these activities are illegal, unjust or improper?
  - a. The set rate for water is \$35.00 for the first 10,000 gallons. Meters have not been read in recent years, for accurate water usage.
  - b. The water company is responsible to insure a continuous supply of clean potable water.
  - c. The owners of the nine homes are not the original owners and some of the homes have been sold 2 and 3 times since the original owners (Hearthstone Development, owned by David Olsen, was the original owner of 6 of the homes) the new owners should not be held responsible for non-payment of the original fees. Additionally, once a house is connected to water and the company turns it on, the company automatically accepts that all fees have been 'paid in full'. (#4 - Please see attached letter from resident Bryan Young, to Eagles Landing Water Company regarding, title search, HUD1 documents and applicable federal websites.)

The "Stone Creek (Eagles Landing) Development History: August 2002 – March 2012" (written by Bryan Amundson) states, in pages 7-9 that the two original homes built in 2004 paid the developers and subcontractors fees, as required at time, to get the water lines, generator, HP pump, distribution lines, and empty water reservoir operational. Dave Olsen (Hearthstone on July 5, 2006 purchased the Development from the bank. Later Dave Olsen requested the PSC approve Tariffs, which were approved in August 2008. (#5 - See attached "Stone Creek Development History")

d. The Company charged \$3,000.00 to the builder for the Meter set on the Butterfield residence. This fee was paid in full and the water was connected. The water company has now billed the homeowner an additional \$1,000 set fee and \$100 turn-on service, saying the builder was under charged. (Once the water company accepts payment in full and connects water to the house, all fees are then accepted as 'paid in full' by the water company.)

1. What relief does the Complainant request?

Since Eagle's Landing Water Company has not been non-responsive to residents prior informal complaints and had even threatened to turn off water to a resident when discussing its current \$4100 requests for immediate payments, it is our hope that the Commission will move forward in a swift and speedy manner. Our requests are as follows:

- a. The water company should reimburse all homeowners, for over charges that have been paid and begin charging the mandated amount of \$35 as specified in the August 2008 tariff. (#7 - See attached 'Eagle's Landing Residences' Timelines and Specifics'.)
- b. The water company should reimburse homeowners who paid for the generator rental, the cost of the use of the generator, and the gas to run it.
- c. All charges for Meter set and hookups should be dismissed and all meter set fees and hookup fees should be considered 'paid in full' for all existing customers, and as agreed to in the HUD1 closing documents and purchase agreements.
- d. Any additional charges for meter set should be dismissed and all meter set fees should be considered 'paid in full', as agreed to in the HUD1 closing documents and purchase agreements.
- e. In addition, due to the lack of confidence the homeowners have with David Olsen in regards to his ability to administer the water company, we have a reasonable fear that he may try to retaliate to these complaints as we feel he did by sending the \$4000 invoices after we filed the informal complaints. The residents therefore, request a third party be appointed by the Public Service 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. We request that the Public Service Commission forbid Dave Olsen, or anyone associated with him or the water company, from entering the Eagles Landing Community, and banned from being near the water supply source.
- f. In response to Mr. Olsen's continuing complaint about the water company, 'nearing bankruptcy', we would urge the commission to research the stability and financial security of Eagle's Landing Water Company, and provide that information to Eagle's Landing residents. (#8 - See attached email from Dave Olsen's attorney, Craig Smith, addressing Ms. Maria Martinez at the PSC.)

Signatures of Complainants:

1. R Demura
2. John & Mary Garrila
3. Ronald & Dylis Hochman
4. out-of-town
5. Edna & Robert
6. Gene and Betty Allen
7. Gary & Pam Monson
8. Chris & Sheri Pauls
9. out-of-town
10. Jessica Butterfield
11.

Dated: October 31, 2013



Bryan and Teresa Young (currently in Tucson Arizona) would like to participate as a member of the Birdseye housing development group, in the remediation of this water service dispute. Please allow Ronald and Phyllis Workman, in lieu of our physical presence to speak for us in future meetings. They are trusted confidants and will represent our best interests. We will, of course, maintain the right to either agree with or abstain from any final decision directly impacting us and the signing of any binding documents.

Thank you,

Bryan and Teresa Young

# SUPPORTING DOCUMENTS

#1 - JUNE 2012 \$110 WATER INVOICE (1 page)

#2 - \$129 RENTAL RECEIPT FOR GENERATOR (1 page)

#3 - OCTOBER 2013 WATER INVOICES FOR \$4000 AND \$100 (3 pages)

#4 - 2013 LETTER FROM RESIDENT BRYAN YOUNG (2 pages)

#5 - 'STONE CREEK DEVELOPMENT HISTORY' BY BRYAN AMONDSON (9 pages)

#6 - EAGLE'S LANDING RESIDENCES' TIMELINES AND SPECIFICS (1 page)

#7 - EMAIL FROM DAVE OLSEN'S ATTORNEY TO MS. MARIA MARTINEZ (2 pages)