

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Duncan, Gavril, Workman, Bates, et al.) DOCKET NO. 13-2477-02
against Eagle's Landing Water Company,) REPORT AND ORDER
LLC)

ISSUED: April 23, 2014

SYNOPSIS

The Commission orders the Company to apply a net-credit for each customer for the amounts they paid in excess of \$35 per month for water usage from June 2010 through January 2014. The Commission further orders the Company to file its amended tariff as soon as practicable.

BACKGROUND

1. On March 6, 2014, we issued an order in this docket in which we stated, in part:

... all Complainants are entitled to a credit for amounts they paid in excess of \$35 per month, beginning June 2010 through January 2014, unless the Company can demonstrate to the Division within 30 days of this order that a given customer's average monthly usage exceeded 10,000 gallons during any portion of the June 2010 through January 2014 time period. Upon such a showing, the Company is entitled to reduce a given customer's credit by the allowed tariff amount(s) for the higher usage for the months the average usage exceeded 10,000 gallons per month. This approach gives effect to the entire usage provision of the tariff, not just the lowest tier.¹

...
[Thus, we ordered, in part:] Regarding the alleged overcharges for water usage, all Complainants are entitled to a credit for the amount they paid in excess of \$35 per month for water usage, within 30 days of this order that a given customer's average usage exceeded 10,000 gallons per month as explained above.²

¹ Report and Order at 17 (footnote omitted), issued March 6, 2014.

² Id. at 22-23.

2. On April 4, 2014, the Division of Public Utilities (“Division”) filed a memorandum, recommending the Commission order the Company to credit each customer for amounts they paid in excess of \$35 per month for water usage, beginning June 2010 through January 2014, because the Company submitted inadequate meter readings to demonstrate that a given customer’s average usage exceeded 10,000 gallons per month.³ The Division provided the following explanation for its recommendation:

The Commission’s Order required Eagle’s [L]anding to provide the average monthly water usage for each customer. Instead, the Company provided average monthly water usage amounts for each lot since the meter was originally set. The Company ignored the fact that, in every instance, the customer was not the original owner and may have had significantly different water usage amounts than the previous customer(s). Had the company followed its tariff which requires that “*[a]ll meters will be read by the Company each month, excepting November, December, January, February, and March.*” or even obtained a meter reading when new customers had their water service turned on, a more representative amount would have been attainable and the Company may have been able to make their case for no refund.

Based on the Company not providing usage amounts for each customer, which was a direct result of the Company not following its tariff, the Division recommends that the Commission order the Company to give each customer a credit for amounts they paid in excess of \$35 per month for water usage, beginning June 2010 through January 2014 as stated in the Order.⁴

3. The Division also recommended the Commission rescind its order to require the Company to file its rate case immediately.⁵ Lastly, the Division recommended the Commission order the Company to amend its tariff as soon as practicable in order to avoid any additional misunderstanding with its current or future customers.

³ See Division Memorandum, filed April 4, 2014.

⁴ *Id.* at 2-3.

⁵ *Id.* at 1.

4. The Company filed no response to the Division's recommendation.
5. On April 16, 2014, counsel for the Company filed a notice of withdrawal in this docket.⁶

DISCUSSION, FINDINGS AND CONCLUSIONS

A. Recommendation to credit customers

The Division's recommendation, filed April 4, 2014, explains how the Company failed to provide adequate proof of each customer's average monthly water usage from June 2010 to January 2014. According to the Division, the Company filed average monthly water usage amounts for each lot since the respective meter was originally set, but failed to provide average monthly water usage amounts for each customer. As noted by the Division, "[t]he Company ignored the fact that, in every instance, the customer was not the original owner and may have had significantly different water usage amounts than the previous customer(s). Had the company followed its tariff which requires that *"[a]ll meters will be read by the Company each month, excepting November, December, January, February, and March."* or even obtained a meter reading when new customers had their water service turned on, a more representative amount would have been attainable and the Company may have been able to make their case for no refund. Based on the Company not providing usage amounts for each customer . . . , the Division recommends that the Commission order the Company to give each customer a credit for amounts they paid in excess of \$35 per month for water usage, beginning June 2010 through January 2014 as stated in the Order."⁷

⁶ See Notice of Withdrawal of Counsel, filed April 16, 2014.

⁷ Division Memorandum at 2-3, filed April 4, 2014.

The Company filed no response to the Division's recommendation.

Based on the Division's explanation above and the lack of response filed by the Company, the Company has failed to demonstrate to the Division that a given customer's average usage exceeded 10,000 gallons of water per month. Accordingly, the Company should be required to credit each customer for amounts they paid in excess of \$35 per month for water usage, beginning June 2010 through January 2014.

B. Recommendation to rescind requirement that a rate case be filed immediately

The Division next recommends the Commission amend its March 6, 2014, order to remove the requirement that the Company is ordered to file its rate case immediately. The March 6, 2014, order states, in part: "The Company is ordered to file its rate case as soon as practicable..."⁸ Accordingly, no amendment to the order is necessary.

C. Recommendation to require amended tariff be filed as soon as practicable

Lastly, the Division recommends the Commission amend its March 6, 2014, order to require the Company to file an amended tariff as soon as practicable, based on recommendations outlined in the Commission's order. The Division recommends the Commission enter an order on this issue to avoid any additional misunderstanding with its current and future customers.

The March 6, 2014, order states, in part: "The Company is ordered . . . to propose the tariff amendment[s] noted above."⁹ The tariff amendments noted above refer to changes the

⁸ Report and Order at 23, ¶ 5, issued March 6, 2014.

⁹ Id.

Commission recommends the Company address in its future tariff. Based on the Division's explanation, and to avoid any ambiguity regarding the Commission's prior order, we find it just and reasonable, and in the public interest to order the Company to file its tariff as soon as practicable.

ORDER

Based on the Division's recommendations filed in this docket, and given that no opposition has been filed to the recommendations made, we order:

1. Regarding the alleged overcharges for water usage, all Complainants are entitled to a credit for the amount they paid in excess of \$35 per month for water usage, beginning June 2010 through January 2014. This provision amends page 22, paragraph 1 of our March 6, 2014, order.

2. The Company is ordered to file a tariff amendment, as required in our March 6, 2014 order, as soon as practicable. This provision clarifies page 23, paragraph 5 of our March 6, 2014, order.

DATED at Salt Lake City, Utah, this 23rd day of April, 2014.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#253670

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 order by filing a request for review or rehearing with the Commission 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 Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission'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 the 23rd day of April, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

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