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THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of the Formal Complaint of Tanya and Nick Olsen against South Duchesne Culinary Water, Inc.	RESPONSE TO MOTION TO DISMISS DOCKET NO. 17-2372-01
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The Petitioners, Nick and Tanya Olsen, by and through their attorney Russell T. Monahan, hereby provide the following response to the South Duchesne Culinary Water (SDCW), Inc.'s Motion to Dismiss for the convenience and guidance of the Commission.

STATEMENT OF FACTS

1. SDCW invoiced the Olsen's for \$120.00 for the period starting October 1, 2016. The due date listed is November 2, 2016. The invoice shows that there is no balance owing. The postmark on the invoice shows that it was sent by SDCW on October 15, 2016. Exhibit A.
2. On October 28, 2016, the Olsen's sent a check for the balance due. Exhibit B.
3. SDCW invoiced the Olsen's for \$120.00 for the period starting January 1, 2017. The due date listed is February 14, 2017. The invoice shows that there is no

balance owing. The postmark for the invoice shows that it was mailed February 16, 2017, two days after the due date on the invoice. Exhibit A.

4. The February invoice was paid on March 1, 2017. Exhibit C.

5. SDCW invoiced the Olsen's for \$165.00 for the period starting April 1, 2017. The due date listed is April 26, 2017. The invoice shows that the prior balance was paid and there is no balance owing at that time. SDCW invoiced the Olsen's for a \$45.00 late fee. The Invoice was postmarked on April 10, 2017. Exhibit C.

6. On April 20, 2017, six days prior to the due date listed on the invoice, SDCW posted notice on the Olsen's property indicating that SDCW were going to cut off their water service. Exhibit D.

7. On May 4, 2017, SDCW mailed the Olsen's notice of their intent to cut off their service on May 9, 2017, unless payment is made by May 9, 2017. Exhibit E.

8. The Olsens sent a check via Express Mail. Exhibit F.

9. SDCW received the check on May 9, 2017 at their PO Box at 7:17 am.

Exhibit G.

10. On May 13, 2017, SDCW disconnected the Olsens' water service. SDCW Statement of Fact Number 8.

11. On May 17, 2017, SDCW picked up the Olsens' check from the Post Office. Exhibit G.

12. On May 17, 2017, SDCW sent a letter to the Olsens demanding that they sign a new contract and pay a \$100.00 reinstatement fee prior to restoring their water service. Exhibit H.

13. On July 11, 2017, Counsel for the Olsen's sent a demand letter to SDCW demanding that SDCW restore the water service to the Olsens' property. The letter was also faxed to the number listed by SDCW as their fax number. Exhibit I.

14. On July 17, 2017, SDCW sent a letter to the Olsens' Counsel. SDCW's letter claimed that the Post Office made a mistake and they SDCW did not receive the check until May 18, 2017. Exhibit J.

15. On July 25, 2017, the Olsens' Counsel sent a letter SDCW with the \$400.00 demanded by SDCW along with a signed notarized copy of the contract demanded by SDCW. Exhibit K.

16. On July 27, 2017, SDCW restored the Olsens' water service.

ARGUMENT

The Commission should not dismiss this action. Based on the Petitioner's Statement of Facts above, along with the documentary evidence, it is clear that SDCW has engaged in a pattern of illegal practices under the administrative regulations of the Commission. Under Administrative Rule R746-200-10, the Commission has the power to penalize a regulated utility under Utah Code 54-7-25 for violations of Commission rules. These penalties are not relief to the Petitioner. The penalties are within the inherent power of the Commission to levy if they determined that a rule has been violated

through the formal complaint procedure. A utility cannot moot formal complaints by finally doing what should have been done prior to the complaint. The rule violation has occurred and the Commission has the power to levy the penalty for that violation. The following are rule violations by SDCW:

1. SDCW used a three month billing cycle with the Olsens. SDCW then demanded, as a requirement that SDCW restore the Olsens' water service, that the Olsens sign a contract with a six month billing cycle. SDCW's practices are in violation of R746-200-4(A) limits billing statement to "not greater than two months."

2. SDCW's billing statements failed to comply with R746-200-4(C). Exhibit C contains a late charge that is not identified as a late charge as Required by R746-200-4(C)(5). In addition, the billing statement fails to comply with R746-200-4(C)(8) and (9).

3. SDCW's Agreement to Purchase Culinary Water violates R746-200-4(D) pertaining to late charges. The Agreement imposes both a \$60.00 late fee and an 18% per annum late fee.

4. SDCW has repeatedly mailed out billing statements less than 20 days from the due date in violation of R746-200-4(E).

5. SDCW has not had personnel available 24 hours each day to reconnect. This is a violation of R746-200-6.

6. SDCW issued a notice of disconnection without the Statement of Customer Rights and Responsibilities as required by R746-200-7(B)(4).

7. SDCW issued a notice of disconnection failed to comply with R746-200-7(G).

In addition to these violations, SDCW terminated the Olsens' service after SDCW received payment. SDCW then improperly imposed late fees and reconnections fees to restore the services. The Olsens are entitled to receive reimbursement for the illegally obtained late fees and reconnections fees. SDCW's restoration of service does in no way legitimize these illegally gained fees. Based on the correspondences between the parties, SDCW was fully aware that the Olsens were challenging SDCW actions in the termination of services, not just their refusal to reconnect the water services. Any defect in the Olsens' initial filing has not affected the substantial rights of the parties.

If the Commission is inclined to dismiss, the Olsens request 7 days to file an amended complaint which will list additional remedies requested by the Olsens.

CONCLUSION

Based on the repeatedly violations of Commission Rules, the issue of penalties remain for the Commission to decide. This case is not moot for that reason. The Commission should deny SDCW Motion to Dismiss.

DATED this 5th day of September 2017.

/s/Russell T. Monahan
RUSSELL T. MONAHAN
Attorney for Petitioners

CERTIFICATE OF SERVICE

RUSSELL T. MONAHAN hereby declares that she is the attorney for the Petitioner herein; and that she served the attached **RESPONSE TO MOTION TO DISMISS** upon:

By E-mail

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Executed on September 5, 2017.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

/s/ Russell T. Monahan
RUSSELL T. MONAHAN
Attorney for Petitioners

