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Attorneys for South Duchesne Culinary Water Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of Tanya and Nick Olsen against South Duchesne Culinary Water, Inc.	DOCKET NO. 17-2372-01 REPLY IN SUPPORT OF MOTION TO DISMISS
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By and through its attorneys of record, South Duchesne Culinary Water Inc. (“SDCW”), hereby replies to the allegations raised by the Olsens in their Response to the Motion to Dismiss.

SUMMARY OF MATERIAL FACTS

The material facts set forth in SDCW’s Motion to Dismiss have not been controverted. SDCW hereby responds to the facts asserted by the Olsens in their Response in the order presented.

1 & 2. SDCW does not dispute that the Olsens’ paid their water fee of \$120 for the months of October, November and December 2016. This fact is not relevant to the subject dispute.

3. SDCW does not dispute that a billing postcard was sent to the Olsens in early February showing that the Olsens needed to pay their \$120.00 fee for the months of January,

February and March 2017. SDCW, however, believes that this was the second postcard sent out for the January-March billing. Typically, a second postcard will automatically be sent out in the second month if the amount due has not already been paid.

4. SDCW does not dispute that the Olsens paid the January-March billing on March 1, 2017, which would have been tardy and thus generated the \$45 late fee identified in the April billing postcard.

5. SDCW agrees that its billing postcard sent to the Olsens in April show a balance due of \$120 for the January-March cycle and imposes a late fee of \$45 for the late payment for the first quarter. Both of these payments are shown to be due as of April 26, 2017.

6. SDCW agrees that on April 20, 2017, it hand delivered a Final Notice to the property of the Olsens, giving notice that the \$165.00 needed to be paid on or before April 25, 2017 or the water service would be disconnected and that a \$100.00 reconnection fee would then be imposed to restore water service. (See Exhibit B to Motion to Dismiss).

a. On or about April 22, 2017, Tanya Olsen made several telephone calls to SDCW requesting that the water to her cabin be shutoff. She asserted that there was a water leak in the cabin. Representatives of SDCW promptly went to the cabin to inspect the cabin from outside and could see no evidence of a water leak. They informed Ms. Olsen of their findings and informed her that if they proceeded to shut-off the water there would be a \$100 reconnection fee. She informed SDCW that inasmuch as there is a reconnection fee she would need talk to her husband before asking to have the water shut off and then would get back to SDCW. She did not get back to SDCW, thus SDCW did not shut off the water at that time.

b. Upon information and belief, Ms. Olsen was in a dispute with the tenant who was renting the Olsens' cabin and she desired to shut the water off to induce the tenant to vacate the premises.

c. No payment for the SDCW April invoice was received prior to April 25 or April 26, 2017.

7. SDCW agrees that on May 4, 2017, it sent a "Termination Notice" to the Olsens via priority mail. The Termination Notice informed the Olsens that if their payment of \$165.00 was not received on or before May 9, 2017, the water service would be disconnected and that a \$100.00 reconnection fee would be imposed to restore water service. (See Exhibit C of the Motion to Dismiss).

8. SDCW accepts the Olsens' assertion and has no reason to disbelieve that the Olsens deposited an envelope with the United States Postal Service on May 8, 2017 that contained a check payable to the SDCW in the amount of \$165.

9. SDCW denies the Olsens' assertion that it received the Olsens' envelope on May 9, 2017. As noted in the USPS Tracking Results, the envelope was not delivered until May 17, 2017. (Exhibit G to the Response to Motion to Dismiss).

a. SDCW notes that the Tracking Results also states that the envelope was available for pick up at the Duchesne Post Office beginning on May 9, 2017. SDCW sends two employees to the Duchesne Post Office each morning on business days to retrieve any mail delivered to its post office box. SDCW does not know why the Post Office did not deliver the envelope prior to May 17, 2017, only that its employees can

verify that the delivery did not occur until the May 17, 2017 date identified in the Tracking Notice.

10. SDCW agrees that on or about May 13, 2017, its employees proceeded to disconnect the water service from the Olsens' cabin.

11. SDCW agrees that on May 17, 2017, it received a payment of \$165.00 from the Olsens. However, the Olsens did not remit the required reconnection fee of \$100.00. (See Exhibit D to Motion to Dismiss).

12. SDCW agrees that on May 17, 2017, it sent a letter to the Olsens informing them that it could not reconnect the water service until it received the reconnection fee of \$100.00. SDCW also requested that Olsens sign a current contract and begin bi-annual payments of \$240.00 to avoid further delayed payments in the future. (See Exhibit D to Motion to Dismiss).

13. SDCW agrees that counsel for the Olsens sent a demand letter to it on July 11, 2017. (See Exhibit I to Response to Motion to Dismiss).

14. SDCW agrees that on July 17, 2017 it sent a letter to the Olsens' counsel stating that it did not receive the Olsens' check until "5/18/17." SDCW acknowledges that the identification of this date is in error and should have stated "May 17, 2017." (See Exhibit J to the Response to Motion to Dismiss and Exhibit D to Motion to Dismiss).

a. From May 18 until July 27, 2017, the Olsens complained to the local police, the local press, the Commission and others about having their water being disconnected, but they did not make a payment for the reconnection, a payment for water service, or enter a current agreement for water services.

15. SDCW agrees that on the morning of July 27, 2017, it received a letter from the Olsens' attorney, Mr. Russell T. Monahan, dated July 25, 2017, that included (a) a payment from the Olsens in the amount of \$400 (\$100.00 for the reconnect fee, \$240.00 for the water service for the months of July-December 2017 and \$60 for late fees) and (b) a current contract for water service signed by the Olsens. (See Exhibit E to Motion to Dismiss).

16. SDCW agrees that upon receipt of the payments and agreement identified in the preceding paragraph, on July 27, 2017, it immediately reconnected the water to the Olsens' cabin. That same morning SDCW contacted Marialie Wright at the Commission to inform her that the payments had been received and that the water would be reconnected immediately. (See Exhibit F to Motion to Dismiss).

17. On July 27, 2017, the Olsens filed a Formal Complaint Form with the Commission with the only request for relief being to reconnect the water to their cabin. (See Exhibit G Motion to Dismiss).

ARGUMENT

The Olsens do not dispute that their water was reconnected on July 27th and that they have already received the only relief they requested in their Complaint.

The Olsens, however, assert that based upon correspondence from their counsel, Cook & Monahan, SDCW should have been aware that the Olsens were also seeking the return of the \$60 late fees and the \$100 reconnection fee even though these fees were not mentioned in the Complaint. SDCW disagrees that this request was apparent from the Cook & Monahan correspondence. In its initial July 11th letter (Exhibit I to Response to Motion to Dismiss), Cook & Monahan made two demands (1) immediately restore water to the cabin and (2) remove any

unlawful service charges from the billings to the Olsens. In its subsequent July 25th letter, Cook & Monahan delivered a check to SDCW for \$400 (\$60 late fees, \$100 reconnection fee and \$240 for water service from July-December) and requested that the water service be restored. (Exhibit K to Response to Motion to Dismiss). This letter merely states that the Olsens are paying the full amount due. This letter does not assert that the late fees or the reconnection fees are improper or disputed. Nor did this letter state that the Olsens reserved any right to challenge these fees or have them refunded. Upon receipt of this letter on July 27, 2017, SDCW believed that the Olsens had finally concurred with the charges and merely made the proper payments to have water service restored, which SDCW immediately did.

SDCW did not become aware that the Olsens sought the return of the late fee and the reconnection fee until it received the Olsens' Response to the Motion to Dismiss. In an effort to reconcile its differences with the Olsens, on September 15, 2017, SDCW refunded the \$60 late fees and the \$100 reconnection fee to the Olsens by way of a \$160 credit to the Olsens' account with SDCW. (See Exhibit A hereto). With the restoration of the water service and the repayment of the late fee and reconnection fee, SDCW does not believe there is any relief due to the Olsens and that this matter is moot and should be dismissed in accordance with the cases cited in the Motion to Dismiss.

In their Response to the Motion to Dismiss, the Olsens also assert that certain SDCW billing practices and procedures appear to violate some of the Commission's rules and that the Commission has authority to penalize SDCW for any violations of Commission rules. The Olsens admit that any such penalties would not be relief to them, but they nonetheless desire to continue this action as a punishment against SDCW. SDCW disagrees that it has violated the

rules asserted by the Olsens and is willing to meet with Commission representatives to review its billing procedures and make any necessary revisions that may be warranted to improve service to its customers. SDCW, however, asserts that the Commission should not allow the Olsens to continue a formal Complaint before the Commission as some sort of personal retaliatory vendetta against one or more employees of SDCW.

Any relief the Olsens may be entitled to in this matter has already been provided and thus this matter is moot. SDCW respectfully requests that the Commission enter an order dismissing the Olsens' Complaint.

Dated this 15th day of September, 2017.

HOLLAND & HART LLP

/s/ David J. Crapo _____

David J. Crapo

John T. Deeds

Attorneys for South Duchesne Culinary Water, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of September 2017, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT OF TANYA AND NICK OLSEN** was served in the manner and upon the recipients names below:

<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input checked="" type="checkbox"/> E-Mail	Russell T. Monahan Cook & Monahan, LLC 323 South 600 East, Suite 200 Salt Lake City, UT 84102 Russell@cooklawfirm.com Attorneys for Tanya and Nick Olsen
<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input checked="" type="checkbox"/> E-Mail	Patricia Schmid pschmid@agutah.gov Justin Jetter jjetter@agutah.gov Asst. Utah Attorneys General
<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input checked="" type="checkbox"/> E-Mail	Erika Tedder etedder@utah.gov Division of Public Utilities
<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input type="checkbox"/> E-Mail	Office of Consumer Services 160 East 300 South, 2nd Floor Salt Lake City, UT 84114

/s/ Peggy M. Watson, Secretary

EXHIBIT A



David J. Crapo
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100605.0001

September 15, 2017

VIA EMAIL – Russell@cooklawfirm.com

Russell T. Monahan
Cook & Monahan, P.C.
323 South 600 East, Suite 200
Salt Lake City, UT 84102

Re: Refund of \$160 to the Account of UMR-330-OLSEN

Dear Russell:

South Duchesne Culinary Water (“SDCW”) was not aware that the Olsens disputed the \$100 reconnection fee or the \$60 late fees they paid on July 27, 2017 until it received the Olsens’ Response to the Motion to Dismiss. Although, SDCW believes that these fees were properly assessed, in a spirit of compromise and good faith, effective today SDCW has refunded these amounts to the Olsens in the form of a credit to their account with SDCW. A credit of \$160 has been applied to the Olsens’ SDCW Account Number UMR-330-OLSEN.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Crapo".

David J. Crapo
Partner
Holland & Hart LLP

DJC:pw

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