

- 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.	<u>DOCKET NO. 17-2372-01</u>
Formal Complaint of Shane Houskeeper against South Duchesne Culinary Water, Inc.	<u>DOCKET NO. 17-2372-02</u>
	<u>CONSOLIDATED ORDER</u>

ISSUED: February 13, 2018

The Public Service Commission (“PSC”) finds South Duchesne Culinary Water, Inc. (“SDCW”) has failed to comply with applicable administrative rules and provisions of its tariff. The PSC orders SDCW to remedy these violations and to pay associated penalties as detailed in this Consolidated Order.

**I. Procedural History**

On July 27, 2017, Tanya and Nick Olsen filed a formal complaint against SDCW in Docket No. 17-2372-01 (“Olsen Complaint”). Later, on August 28, 2017, Shane Houskeeper also filed a formal complaint against SDCW, assigned Docket No. 17-2372-02 (“Houskeeper Complaint”). This Consolidated Order addresses both dockets.

a. *The Olsen Complaint*

On August 18, 2017, SDCW moved to dismiss the Olsen Complaint. After the parties briefed the motion, the PSC issued an order denying the motion to dismiss and setting the complaint for hearing on December 11, 2017. The hearing was subsequently rescheduled and held on December 19, 2017. Both SDCW and Ms. Olsen appeared at hearing, provided testimony and were represented by counsel.

b. *The Houskeeper Complaint*

The Division of Public Utilities (“DPU”) filed comments in response to the Houskeeper Complaint on September 27, 2017, recommending the PSC hold a hearing and “consider imposing a penalty upon [SDCW].” (DPU Comments at 3.) On September 27, 2017, SDCW filed a response to the Houskeeper Complaint, and the matter was subsequently noticed for hearing to be held December 18, 2017. SDCW appeared at the hearing, provided testimony and was represented by counsel. Mr. Houskeeper appeared telephonically on his own behalf.

**II. Findings and Conclusions**

After reviewing the submissions in these dockets and considering the testimony and other evidence introduced at the hearings, the PSC makes the following findings and conclusions.

a. *The Houskeeper Complaint*

1. The PSC finds credible Mr. Houskeeper’s testimony that he spoke with a SDCW employee, in November 2015, about his desire to go on standby status and requested that SDCW shut his water off. (*See* Hr’g Tr. at 11:7-16; 12:5-12.)

2. The PSC finds credible Mr. Houskeeper’s testimony that he has not used water at the subject property since November 2015. (*See id.*)

3. The PSC finds credible Mr. Houskeeper’s testimony that he repeatedly attempted to contact SDCW’s office about his billing status and that his calls went unanswered. (*See, e.g.*, Hr’g Tr. at 12:5-6.)

4. The PSC finds credible Mr. Houskeeper’s testimony that he received billing statements on an irregular basis. (*See* Hr’g Tr. at 14:6-12.)

5. The PSC finds credible Mr. Houskeeper's assertion that he requested, in October 2016, to be placed on standby status after receiving a bill showing he was still being charged \$40 per month. (*See, e.g.*, Houskeeper Complaint at 1.) The PSC finds credible and concludes to be admissible the text message attached as Exhibit B to Mr. Houskeeper's November 29, 2017 filing, showing Mr. Houskeeper wrote to SDCW's employee on October 28, 2016 stating "I have left messages at the office for months now ... and I can't seem to get a[n] answer about my water account. I have been trying to cancel my account or reduce the bill for months now and nobody's calling me back or returning my messages."<sup>1</sup>

6. The PSC finds credible Mr. Houskeeper's testimony that he stopped paying his water bill because he was not using any water and SDCW failed to communicate with him about his request to change his billing status. (*See Hr'g Tr.* at 12:15-25.)

7. The PSC finds credible Mr. Houskeeper's testimony that SDCW contacted him in May 2017 and informed him he was not eligible for standby service and represented such service only extended to undeveloped lots. (*See id.* at 12:5-18.) In fact, SDCW appears to have made the same representation to the DPU after Mr. Houskeeper filed his complaint, writing "Standby fees are applicable to lots ONLY. Housekeeper [*sic*] has a residence so he is not a standby person. Period." (SDCW Response to Formal Complaint. Emphasis in original.)

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<sup>1</sup> The text message was admitted over SDCW's objection. The PSC notes evidence in an administrative proceeding may not be excluded solely because it is hearsay. Utah Code Ann. § 63G-4-206(1)(c). Additionally, the text message is not admitted for the purpose of proving the matter asserted (*i.e.*, to prove Mr. Houskeeper had been leaving "messages at the office for months" and had "been trying to cancel [his] account or reduce the bill for months."). *See* Utah R. Evid. 801. Rather, the PSC concludes the text message is admissible to simply show the fact that Mr. Houskeeper sent SDCW's employee this particular text message on October 28, 2016, manifesting his intention to "cancel [the] account or reduce the bill."

8. SDCW sent Mr. Houskeeper a billing statement in June 2017 showing an outstanding balance of \$480.00 with a handwritten \$120.00 late fee, for a total of \$600.00. (*See* Billing Statement attached to Houskeeper Complaint.) Mr. Houskeeper paid the bill but requested the late fee be waived because of the confusion over his standby status. (*See* Letter attached to Houskeeper Complaint.)

9. SDCW subsequently sent Mr. Houskeeper a billing statement, with a due date of August 21, 2017, continuing to charge him \$40.00 per month and containing a handwritten late fee of \$130.00. (*See* Billing Statement attached to Houskeeper Complaint.)

10. SDCW's tariff allows a standby service charge of \$15.00 per month, which "[a]pplies ... where water service has been disconnected by [SDCW] at the request of the customer." The PSC concludes the representations SDCW made to Mr. Houskeeper and to the DPU concerning Mr. Houskeeper's ineligibility for standby status were false and inconsistent with the tariff.

11. The PSC finds Mr. Houskeeper had requested to be placed on standby status by, at the latest, October 2016. The PSC, therefore, finds SDCW overbilled Mr. Houskeeper each month thereafter for which it demanded payment in excess of the standby fee.

12. SDCW's tariff allows "[a]fter thirty (30) days a late charge of 1.5% of the past due balance" may be assessed, equivalent to "18% per annum on all past due amounts." Assuming, for the sake of argument, Mr. Houskeeper owed \$480.00 in June 2017 (as above, the PSC finds he did not) and was eleven months behind, the accumulated late fee at 1.5% per month would have been, approximately, \$29.00. The handwritten \$120.00 late fee appears arbitrary and is plainly in excess of the amount allowed under the tariff.

b. The Olsen Complaint

1. Because of an alleged failure to timely pay, SDCW insisted Ms. Olsen pay for her water service on a quarterly basis in advance. Testimony at hearing was uncertain and conflicted as to the date SDCW instituted this quarterly billing arrangement with Ms. Olsen, suggesting it had been the practice throughout 2015 and SDCW's witness testifying he believed it began in September of 2015. (*See Hr'g Tr. at 32:10-12.*)

2. On October 15, 2016, SDCW mailed a billing statement to Ms. Olsen, representing a forwarded balance of zero and indicating payment of \$120.00 was due on November 2, 2016. (*See Hr'g Ex. A.*) This billing statement covered October, November and December 2016. (*See Hr'g Tr. at 16:21-23.*) Ms. Olsen timely paid this bill on or about October 28, 2016. (*See Hr'g Ex. B.*)

3. On February 16, 2017, SDCW mailed a billing statement to Ms. Olsen, representing a zero forwarded balance and indicating payment of \$120.00 was due on February 14, 2017, *i.e.* two days before the billing statement was mailed. (*See Hr'g Ex. A.*) This billing statement was for the period January, February, and March 2017. (*See Hr'g Tr. at 17:11-12.*)

4. SDCW introduced an invoice dated January 1, 2017 (*See Hr'g Ex. M*) and testified that, in addition to Hr'g Ex. A, Ms. Olsen was mailed a copy of Hr'g Ex. M. SDCW testified that an outside accountant SDCW retained had mailed the billing statements in the form of Hr'g Ex. A and Hr'g Ex. C. SDCW testified that in addition to these billing statements, it also mailed invoices at the beginning of each quarter in the form of Hr'g Ex. M. Ms. Olsen testified she did not receive invoices in the form of Hr'g Ex. M. (*See Hr'g Tr. at 86:10-14.*) The PSC notes Hr'g Ex. M is not postmarked and is dated January 1, 2017, a Sunday. No dispute exists

that SDCW sent, through a contracted agent or otherwise, the postmarked billing statements introduced as Hr'g Ex. A and Hr'g Ex. C. The PSC finds Ms. Olsen's testimony more credible on this point and finds insufficient evidence exists in the record to support SDCW's claim it sent multiple forms of invoices. Therefore, for the purposes of this Consolidated Order, the PSC finds SDCW's billing practices will be evaluated using the undisputed form of postmarked billing statements reflected in Hr'g Ex. A and Hr'g Ex. C.

5. On April 10, 2017, SDCW mailed a billing statement to Ms. Olsen, representing a zero forward balance and indicating payment of \$120.00 was due on April 26, 2017. (*See* Hr'g Ex. C.) Ms. Olsen understood this to be her bill for the months of April, May, and June 2017. (*See* Hr'g Tr. at 20:3-6.) The billing statement indicates SDCW received payment for the February 16, 2017 invoice, for service January through March, on March 1, 2017. Yet, the billing statement includes an unidentified charge of \$45.00 that was later explained to be a late fee. (*See* Hr'g Ex. E.) Ms. Olsen testified she did not understand the basis for the \$45.00 charge. (*See* Hr'g Tr. at 19:2-3.)

6. On April 20, 2017, six days before the identified due date on the April 10 billing statement, SDCW issued a "Final Notice" indicating Ms. Olsen must pay \$165.00 or her service would be disconnected and a reconnection fee of \$100 would be required to restore service. (*See* Hr'g Ex. D.) The document contains a handwritten statement reading "Hand-Delivered."

7. On or about May 4, 2017, SDCW mailed a "Notice of Termination of Water Service" to Ms. Olsen's billing address in Layton, Utah, explaining a notice had been left at the service address (in Duchesne County) and demanding payment of \$165.00 by May 9, 2017. The notice states SDCW "suggest[s] over-night mail to avoid termination and additional fee." (Hr'g

Ex. E.) The notice also states Ms. Olsen must now pay six months in advance to continue service, as opposed to quarterly. (*See id.*) The notice instructs Ms. Olsen to send the payment to a post office box in Duchesne. The notice states the total delinquent amount is \$165.00 and that this sum must be paid to avoid disconnection.

8. After receiving the “Notice of Termination of Water Service,” Ms. Olsen testified she made “several attempts to contact” SDCW by phone but no one answered the calls. (Hr’g Tr. at 22:20-23:2.) The PSC finds this testimony credible.

9. On May 8, 2017, Ms. Olsen sent payment to SDCW by overnight priority mail for scheduled delivery on May 9, 2017. (*See Hr’g Ex. F.*) The United States Postal Service (“USPS”) tracking record shows the payment departed the Layton post office on May 8 and arrived at the Duchesne post office and was available for pickup on May 9, 2017. (*See Hr’g Ex. G.*) The record also shows the payment was “delivered” and signed for on May 17, 2017. (*See id.*)

10. SDCW testified it disconnected Ms. Olsen’s service on Saturday, May 13, 2017. (*See Hr’g Tr. at 77:16-18.*)

11. On or about May 17, 2017, the date the USPS tracking record shows SDCW took possession of Ms. Olsen’s May 8 payment, SDCW sent Ms. Olsen a letter demanding a “\$100 reinstatement fee to reconnect” service. (Hr’g Ex. H.) The letter again informs Ms. Olsen she must now pay six months in advance and demands she return a signed, notarized agreement to do so.

12. On or about July 11, 2017, Ms. Olsen's counsel sent a letter to SDCW, asserting that Ms. Olsen was not delinquent as SDCW had represented and demanding service be restored and associated fees removed from her account. (*See Hr'g Ex. I.*)

13. On or about July 17, 2017, SDCW sent a letter to Ms. Olsen's counsel asserting its "operations are conducted in compliance with ALL laws as mandated by the State of Utah." (*Hr'g Ex. J. Emphasis in original.*) The letter claims Ms. Olsen's payment was not received until May 18, 2017 because of USPS's error. The letter represents SDCW intends to file a complaint with the Utah Housing Authority because SDCW believed Ms. Olsen was attempting to have the water disconnected for the purpose of evicting an elderly tenant. The letter suggests Ms. Olsen's counsel "approach [Ms. Olsen's] husband and encourage him to get this account on track."

14. On or about July 25, 2017, Ms. Olsen's counsel sent SDCW a check for \$400.00 and a signed copy of the agreement SDCW demanded, requesting the service be turned back on by July 27, 2017. Ms. Olsen testified she made this payment in protest because she had a tenant at the property and needed the service reconnected. (*See Hr'g Tr. at 29:12-16.*)

15. Utah Admin. Code (hereafter "Rule" or "Rules") R746-200-4(A) states a utility "shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months." Additionally, SDCW's tariff on file with the PSC provides "charges will be rendered monthly." SDCW's practice of billing Ms. Olsen in advance quarterly installments violated the Rules and its own tariff. SDCW's more recent insistence that Ms. Olsen pay for six months of service in advance is, of course, also a violation.



16. The Rules require a utility to “mail or deliver an *accurate* bill to the account holder for each billing cycle.”<sup>2</sup> The Rules further provide customers “shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date,” a requirement which is also reflected in SDCW’s tariff.<sup>3</sup> The Rules establish other minimum requirements for billing statements, including proper identification of any late charges being assessed, notice of potential late charges and a notice to contact the utility with questions about the billing statement.<sup>4</sup> SDCW’s billing statements and practices contained serious inaccuracies and violate these Rules. First, all three of the billing statements introduced into evidence (Hr’g Ex. A and C) fail to allow Ms. Olsen 20 days to pay. Additionally, the billing statement in Hr’g Ex. C reflects full payment was received on March 1, 2017 and assesses an unexplained, unidentified late fee of \$45.00, which is a violation of the Rules. Worse still, the PSC finds Ms. Olsen was not, in fact, late in making payment and no late charge should have been assessed. The billing statement Ms. Olsen received for the period January through March is postmarked February 16 and contains a due date of February 14, 2017, which is an obvious problem. (*See* Hr’g Ex. A.) Nevertheless, Hr’g Ex. C reflects SDCW received Ms. Olsen’s payment on March 1, 2017, less than two weeks after the billing statement for the period is postmarked. SDCW’s billing statement reflects that Ms. Olsen made payment within 20 days despite the billing statement containing an obvious error with respect to the due date (*i.e.*, a due date two days prior to mailing). Therefore, the billing statement is inaccurate and no late charge

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<sup>2</sup> Rule R746-200-4(C). Emphasis added.

<sup>3</sup> Rule R746-200-4(E).

<sup>4</sup> *See* Rules R746-200-4(C)(5), (8), (9).

should have been assessed. SDCW's failure to include a notice of potential late charges and a notice to contact the utility with questions about the bills are additional failures to comply with the Rules.

17. The Rules allow a utility to assess "not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the [PSC] ... against an unpaid balance in excess of new charges."<sup>5</sup> "No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date."<sup>6</sup> SDCW's tariff allows "[a]fter thirty (30) days a late charge of 1.5% of the past due balance" may be assessed, equivalent to "18% per annum on all past due amounts." SDCW's April 2017 billing statement to Ms. Olsen assessed a \$45.00 late fee, which, as discussed, was not properly identified or assessed. It was also excessive under the Rules and SDCW's tariff. The late fee of \$45.00 constitutes 37.5% of the \$120.00 amount invoiced, grossly in excess of the 1.5% allowed under the tariff.

18. For good reason, the Rules contain requirements utilities must follow prior to terminating service for lack of payment. First, when an account is delinquent, the utility should, before termination of service, issue a written late notice ("Late Notice") to inform the customer she is delinquent.<sup>7</sup> The Late Notice must contain information enumerated in the Rules, including a statement the account is delinquent and an invitation to communicate with the utility's billing department to the extent the customer has questions.<sup>8</sup> The first notice of impending service

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<sup>5</sup> Rule R746-200-4(D)(1).

<sup>6</sup> Rule R746-200-4(D)(2).

<sup>7</sup> See Rule R746-200-7(B)(2).

<sup>8</sup> See *id.*

disconnection must include a copy of the “Statement of Customer Rights and Responsibilities” found in R746-200-1(G).<sup>9</sup> Additionally, “[a]t least 10 calendar days before a proposed termination of residential utility service,” a utility must “give written notice of disconnection [“Ten Day Notice”] for nonpayment to the account holder.”<sup>10</sup> This period is calculated from the date the notice is postmarked or the date it is electronically sent (where applicable).<sup>11</sup> As for the Late Notice, the Rules also enumerate disclosures a utility must include in the Ten Day Notice, including, but not limited to, the Statement of Customer Rights and Responsibilities, the PSC-approved policy on termination for the utility, and information pertaining to informal and formal procedures to dispute bills (and specifically, the PSC’s address, website and telephone number).<sup>12</sup> The Rules also require a utility “[a]t least 48 hours before termination of service” to make “good faith efforts to notify the account holder [“48-Hour Notice”] ... by mail, by telephone or by a personal visit to the residence.”<sup>13</sup> “If personal notification has not been made ... the utility shall leave a written termination of service notice at the residence.”<sup>14</sup> To ensure the customer will have the ability to promptly facilitate reconnection, a utility may not terminate residential utility service from “Thursday at 4:00 p.m. and Monday at 9:00 a.m.”<sup>15</sup>

19. The PSC finds SDCW wrongfully disconnected Ms. Olsen’s service because her account was not delinquent according to SDCW’s billing statements and SDCW failed to follow

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<sup>9</sup> See Rule R746-200-7(B)(4).

<sup>10</sup> Rule R746-200-7(G)(1).

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> Rule R746-200-7(G)(2).

<sup>14</sup> *Id.*

<sup>15</sup> Rule R746-200-7(H).

applicable Rules with respect to notice and manner of disconnection. First, Ms. Olsen's April 10 billing statement (*See* Hr'g Ex. C) represented payment was due on April 26, 2017. Merely ten days later, and nearly a week before payment was due, on April 20, 2017, SDCW issued a "final notice," representing payment must be made before April 25 (a day earlier than previously represented) or "the water will be turned off." (Hr'g Ex. D.) The PSC finds this "final notice" fails to satisfy any requirement regarding termination of service under the Rules because Ms. Olsen was not, in fact, delinquent when it was issued. The only other notice SDCW provided prior to terminating the service on May 13, 2017 is the Notice of Termination (*See* Hr'g Ex. E), which appears to have been mailed May 4, 2017, less than 10 days before service was disconnected, and threatens disconnection if payment is not received by May 9, 2017. Finally, Ms. Olsen sent an expedited payment to SDCW to arrive on May 9, 2017, but SDCW failed to retrieve the payment from the post office until May 17, 2017. The PSC finds the record is ambiguous as to whether SDCW failed to take possession of the payment owing to USPS error or its own negligence. In either case, SDCW bears responsibility for issuing accurate billing statements, complying with applicable notice requirements and other Rules prior to disconnecting service and ensuring customers have adequate means to contact it to provide payment and to inquire about their bills. Under the totality of the circumstances, the PSC finds SDCW wrongfully disconnected Ms. Olsen's service. The PSC further finds the process SDCW utilized prior to disconnection was grossly deficient and substantially failed to comply with the Rules. SDCW failed to provide a Late Notice, a proper Ten Day Notice and a 48-Hour Notice. Additionally, SDCW disconnected the water on May 13, 2017, a Saturday, in violation of the Rules.

20. Finally, the Rules also impose an “obligation of good faith, honesty, and fair dealings” with respect to agreements for utility service.<sup>16</sup> One of the most troubling aspects of SDCW’s conduct as regards Ms. Olsen is its persistent refusal to acknowledge its errors and work in good faith with its customer to remediate them. On May 17, 2017, SDCW retrieved Ms. Olsen’s May 8 payment from the post office and therefore had knowledge (i) Ms. Olsen had complied with the request in SDCW’s “Notice of Termination,” by overnighting her payment to SDCW and (ii) SDCW had nevertheless disconnected her service on May 13, 2017. Despite this knowledge, SDCW did not work in good faith with Ms. Olsen to resolve the issue. Instead, SDCW sent Ms. Olsen a letter the same date demanding a \$100.00 reconnection fee and demanding Ms. Olsen sign a new contract in violation of Rules and tariff that required Ms. Olsen to make advance payments for six months of service. In all caps, SDCW stated Ms. Olsen must have this document “NOTARIZED.” (Hr’g Ex. H. Emphasis in original.) Further, even after Ms. Olsen went to the considerable trouble of retaining counsel, who drafted a clear letter outlining the problems with SDCW’s treatment of Ms. Olsen’s account, SDCW continued to refuse to accept responsibility for its errors or to work in good faith to resolve the issues. Instead, SDCW adopted a hostile, adversarial posture toward its customer, refused to acknowledge the mistakes it had made, and insulted Ms. Olsen by suggesting her counsel “approach her husband and encourage him to get this account on track.” (Hr’g Ex. J.) The PSC finds SDCW’s conduct as regards Ms. Olsen’s account failed to satisfy its obligation to act fairly and in good faith.

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<sup>16</sup> Rule R746-200-1(D).

### **III. FINDINGS AND CONCLUSIONS REGARDING PENALTIES**

Under Utah Code Ann. § 54-7-25, a utility that violates any rule or order issued under Title 54 “is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense.” *See also* Utah Admin. Code R746-200-10 (authorizing penalties for violations of “customer service rules, other [PSC] rules, [and] company tariff” pursuant to § 54-7-25.). “In the case of a continuing violation, each day’s continuance of the violation shall be a separate and distinct offense.” Utah Code Ann. § 54-7-25.

The PSC appreciates SDCW is a small utility with finite resources. The PSC is also mindful of the testimony that the owners and operators of SDCW have suffered some personal hardship. (*See* Hr’g Tr. at 83:8-15.) Nevertheless, SDCW is a public utility that enjoys the attendant privileges and responsibilities under the law. SDCW had at its disposal the benefit of a third-party accountant who was contracted to provide billing services, but SDCW elected to ignore the due dates in the billing statements the third-party accountant issued, assessing conflicting late fees, issuing premature and unwarranted disconnection notices, and otherwise behaving belligerently with its, understandably, confused customers.

SDCW’s consistent disregard of its tariff and the Rules have caused considerable inconvenience to the complainants. Ms. Olsen was so frustrated by SDCW’s inconsistent practices that she reasonably retained counsel at, the PSC expects, considerable expense. Ms. Olsen should never have had to take this step. The billing problems at SDCW were chronic and patent. SDCW’s refusal to work in good faith with Ms. Olsen and Mr. Houskeeper even after its errors were made apparent is an aggravating factor that supports the assessment of penalties.

Accordingly, and consistent with the foregoing findings and conclusions, the PSC concludes relief and penalties under Title 54 are warranted with respect to both complaints.

a. Penalties Arising Out of Houskeeper Complaint

1. Excessive Late Fees: As detailed above at II(a)(8), (9), (11), on two occasions SDCW sent Mr. Houskeeper billing statements with excessive late fees in violation of its tariff. Deeming each of these instances as a separate offense yields a minimum penalty of \$1,000.00 and a maximum penalty of \$4,000.00.

2. Refusal to Place Mr. Houskeeper on Standby Status and Consequent Overbilling: As detailed above at II(a)(5), (10), Mr. Houskeeper has requested since at least October 2016 to be placed on standby status and SDCW has unreasonably refused his request in violation of its tariff. Consequently, SDCW overbilled Mr. Houskeeper every month from November 2016 to August 2017 (the latest billing statement in the record). Deeming each of these 10 monthly overbillings as a separate offense yields a minimum penalty of \$5,000.00 and a maximum penalty of \$20,000.00.

3. Having weighed the relative size of SDCW against its direct, obvious, and repeated violations of its tariff and the Rules, the PSC concludes the minimum penalty is insufficient and will impose a penalty of \$750.00 for each offense, which constitutes approximately 38 percent of the maximum penalty. The total penalty for the 12 offenses found in the Houskeeper Complaint is, therefore, \$9,000.00.

b. Penalties Arising Out of Olsen Complaint

1. Unlawful Billing Cycle: As detailed above at II(b)(15), SDCW's insistence Ms. Olsen pay on a quarterly, and later, bi-annual billing cycle is a violation of Rule and tariff. The

record suggests SDCW implemented this arrangement no later than September 2015, from which the PSC infers Ms. Olsen was billed on a quarterly basis for the last quarter of 2015, each quarter of 2016, and the first two quarters of 2017 (Hr'g Ex. C for the second quarter is the latest billing statement in the record). Each of these seven billings was a violation of the Rules and tariff. Additionally, SDCW later insisted Ms. Olsen agree to pay bi-annually, six months in advance for continued service and required her to sign a contract agreeing to the term before reconnecting service, an additional offense. Tallying these eight offenses yields a minimum penalty of \$4,000.00 and a maximum penalty of \$16,000.00.

2. Failure to Allow 20 Days to Pay: As detailed above at II(b)(16), the Rules require a utility to allow a customer 20 days to pay her billing statement. All three of the billing statements in the record failed to allow Ms. Olsen 20 days to pay with one demanding payment before the billing statement was even postmarked. The minimum penalty for these three offenses is \$1,500.00 and the maximum penalty is \$6,000.00.

3. Inaccurate and Excessive Late Fee: As detailed above at II(b)(16), (17), SDCW charged Ms. Olsen an improperly identified, excessive and inaccurate late fee on her April 2017 invoice. (*See* Hr'g Ex. C.) The minimum penalty for this violation is \$500.00 and the maximum penalty is \$2,000.00.

4. Termination of Service without Proper Notice: As detailed above at II(b)(18), SDCW failed to properly provide any of the notices prior to termination required under the Rules. The minimum penalty for this violation is \$500.00 and the maximum penalty is \$2,000.00.



5. Improper Termination of Service Despite Ms. Olsen's Timely Payment: As detailed above at II(b)(19), Ms. Olsen sent expedited payment to SDCW as it requested. SDCW failed to pick up the payment from its post office box and wrongfully terminated Ms. Olsen's service. Although SDCW lays responsibility on the USPS, the PSC finds the evidence on the issue of USPS error to be ambiguous and concludes, in light of the myriad problems with SDCW's billing and practices, that SDCW is fully responsible for the wrongful termination of Ms. Olsen's service. The minimum penalty for this violation is \$500.00 and the maximum penalty is \$2,000.00.

6. Improper Termination of Service on a Saturday: As detailed above at II(b)(9), SDCW terminated Ms. Olsen's service on a Saturday in violation of the Rules. The minimum penalty for this violation is \$500.00 and the maximum penalty is \$2,000.00.

7. As with the Houskeeper Complaint, the PSC concludes a penalty of \$750.00 for each offense is appropriate. The total penalty for the 15 offenses arising out of the Olsen Complaint is \$11,250.00.

#### **IV. ORDER**

With respect to the Houskeeper Complaint, the PSC orders as follows:

1. SDCW shall treat Mr. Houskeeper's request to be placed on standby status effective as of November 1, 2016. Because SDCW was incorrectly billing Mr. Houskeeper \$40.00 per month after October 2016, it did not properly assess any late fee and Mr. Houskeeper owes no late fee. SDCW shall refund to Mr. Houskeeper \$25.00 (the difference between the \$40.00 charged and the \$15.00 standby fee) for each month after October 2016

that he has paid a \$40.00 charge regardless of when Mr. Houskeeper made such payment. SDCW shall refund these sums to Mr. Houskeeper within 30 days from the date of this Order.

2. SDCW shall refund to Ms. Olsen the \$100.00 reconnection fee and all late fees she was charged and has paid. SDCW shall refund these sums to Ms. Olsen within 30 days from the date of this Order.
3. SDCW shall bill Ms. Olsen on a monthly basis consistent with its tariff. To the extent Ms. Olsen has already prepaid for months in advance, SDCW shall refund the prepayments to Ms. Olsen within 30 days from the date of this Order.
4. SDCW shall send regular, consistent and accurate monthly bills to its customers.
5. SDCW shall remit a total of \$20,250.00 to the PSC as penalty for its numerous violations of the Rules and tariff. As detailed above, \$9,000.00 of this total arises out of the Houskeeper Complaint and \$11,250.00 arises out of the Olsen Complaint. SDCW shall remit these funds to the PSC within 120 days from the date of this Order.
6. The DPU shall conduct a review in six months, beginning on or before August 13, 2018, to ensure SDCW has adopted billing procedures, including the assessment of late fees, that are consistent with the Rules and its tariff. The DPU shall file a report with the PSC on or before October 1, 2018, apprising the PSC of the status of SDCW's compliance.

DATED at Salt Lake City, Utah, February 13, 2018.

/s/ Michael J. Hammer  
Presiding Officer

Approved and Confirmed February 13, 2018, as the Order of the Public Service  
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#300020

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this written Order by filing a written request with the PSC within 30 days after the issuance of this 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 PSC does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the PSC'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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 13, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Raphael Morris  
7239 S 1540 E  
Salt Lake City, UT 84121

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Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
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Administrative Assistant