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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN RE. COMPLAINT OF TANYA AND NICK OLSEN AGAINST SOUTH DUCHESNE CULINARY WATER, INC.	<b>PETITION FOR REDETERMINATION</b>  Docket No.: 17-2372-01
IN RE. COMPLAINT OF SHANE HOUSKEEPER AGAINST SOUTH DUCHESNE CULINARY WATER, INC.	Docket No.: 17-2372-02

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Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, South Duchesne Culinary Water, Inc. (“SDCW”) respectfully submits this Petition for Redetermination and requests a hearing before the Commissioners of the Public Service Commission (the “Commission”).

On February 13, 2018, the Commission issued its Consolidated Order in the above captioned Dockets and found 15 violations in the first Docket and 12 in the second Docket. Based on these violations, the Commission imposed total penalties in the amount of \$20,250 and ordered corrections to the billings for Mr. Houskeeper and Mr. and Ms. Olsen.

In accordance with the Commission’s Order, on February 21, 2018, SDCW corrected the billing for Mr. & Ms. Olsen and sent them a letter explaining the corrections and included a refund check for \$125. A copy of this letter is attached hereto as Attachment A. On February

21, 2018, SDCW also corrected the billing for Mr. Houskeeper and sent him a letter identifying the corrections and included a refund check for \$240 dollars. A copy of this letter is attached hereto as Attachment B.

SDCW does not desire to contest the corrections ordered by the Commission regarding the separate accounts of the Mr. & Mrs. Olsens and Mr. Houskeeper. However, SDCW believes that the penalties imposed in this matter are excessive and requests a reconsideration and reduction of the penalties imposed. The \$20,250 in penalties imposed by the Commission in its February 13, 2018 Order would represent more than 30 years of monthly payments received from Mr. Houskeeper and the Olsens ( $\$20,250/(\$15 + \$40) = 368$  months or 30.68 years). These penalties represent an excessive and onerous burden upon a small, rural water company like SDCW. For the reasons set forth herein, SDCW respectfully requests that the Commission exercise its authority to modify and reduce the amount of penalties imposed in the February 13, 2018 Order to be \$5,500 or such lesser amount that the Commission believes is appropriate.

The Commission has discretion as to when it will impose a penalty when a residential customer claims that a water utility has failed to comply with the “customer service rules,” “Commission rules” or the “company tariff.” Utah Admin. Rule R746-200-10(A). Utah Admin. Rule R746-200-10(A) states that the Commission “may” assess a penalty under Utah Code Ann. § 54-7-25 if it considers the imposition to be “appropriate.”

It appears from the Order that the Hearing Officer imposed a larger amount of penalties, in part, because of his concern that SDCW did not initially acknowledge its errors to its customers and did not try to work in good faith to resolve the issues with its customers, and because the Olsens were required to retain an attorney to assist them.

SDCW acknowledges that it made errors and that the Hearing Officer's observations are correct in part. However, the Hearing Officer's comments fail to consider the corrective efforts and costs that SDCW incurred to try and resolve these matters with these two customers prior to proceeding to formal hearings.

SDCW is a small rural water company with approximately 600 accounts in total (about 160 at the \$40 monthly fee and the remainder at the \$15 monthly standby fee). This water company was started by Mr. Joe Steed who constructed and operated the water company for almost a decade. Several years ago, Mr. Steed passed away unexpectedly and the operation of the water company was left to his wife and a small staff. Clearly, the staff could have handled these two situations better. Nevertheless, when the complaints proceeded to the Commission for informal and then formal resolution, SDCW was also required to retain legal counsel to assist them to see if they were making errors and to try to resolve any mistakes in a proper manner.

In relation to Mr. Houskeeper's matter, SDCW's staff had the misunderstanding that only empty lots were entitled to standby status and that because Mr. Houskeeper had an existing cabin and a metered connection, he was not allowed such status. In the internal review SDCW conducted with its counsel, SDCW staff was informed that the language of its tariff would in fact allow standby status to a customer if he or she made a proper request to go on such status and that SDCW's late fees had been calculated improperly. With this information, SDCW contacted Mr. Houskeeper and agreed to remove the unpaid late fees from his account. SDCW informed Mr. Houskeeper that they believed that he needed to submit a written request to go on standby status but would agree to retroactively apply the standby fee in his situation. Mr. Houskeeper rejected these offers and demanded to proceed to a formal hearing before the Commission. At the hearing, SDCW acknowledged the error in the late fees and the hearing officer imposed 2

penalties for these errors. SDCW also acknowledged that Mr. Houskeeper could go on standby status but disputed whether Mr. Houskeeper had ever made a valid request in writing. The Hearing Officer believed that Mr. Houskeeper's oral request to one of SDCW's field workers, Mr. Schnars, in October 2016 was sufficient to satisfy the tariff's provision of allowing a customer to be placed on standby status. The Hearing Officer then imposed 10 penalties for this offense. One for the month of the request in October 2016 and then one for each of the nine months thereafter until the complaint was filed. SDCW believes that the error regarding the standby charge was an honest mistake by the SDCW staff and that SDCW should only pay one penalty and that the other nine should be waived. SDCW believes that in light of the small amounts involved in this matter – \$25 a month (the difference between the \$40 regular fee and the \$15 standby fee), that the imposition of \$9,000 in penalties is excessive. The difference between the normal monthly water charge (\$40) and the standby charge (\$15) is relatively small and Mr. HousKeeper had not been paying either charge for multiple months. SDCW respectfully requests that the penalties for the Mr. HousKeeper matter be reduced to 2 late fee errors and 1 standby error and that the penalties be set at \$500 per offense for a total penalty of \$1,500. A \$1,500 penalty would be significant in this matter and would represent more than 8 years of monthly payments received from Mr. Houskeeper ( $\$1,500/\$15 = 100$  months of payments or about 8.3 years).

In relation to the Olsen matter, there are 15 offenses. Similar to the HousKeeper matter, SDCW retained an attorney to review its practices and through this internal review discovered that it had made several errors. With this information, SDCW corrected its billing and other errors and attempted to resolve the dispute with the Olsens and directed its counsel to send the Olsens a letter on September 15, 2017 crediting back the reconnection fee and an erroneous late

fee. A copy of this letter is attached hereto as Attachment C. These corrective steps and the refund, however, were not sufficient for the Olsens and they desired to proceed to the Formal Hearing. At the Formal Hearing, SDCW admitted to several of the errors regarding late fees and deficiencies in the termination notices, and it will not here seek for redetermination for those admitted errors. Nevertheless, SDCW does contest the 8 penalties assessed for an unlawful billing cycle. Several years ago, SDCW and the Olsens entered into an agreement to have their water billed on a three-month basis (quarterly). SDCW believed that it was authorized to make this type of a modification because of difficulties it had previously had in receiving payments from the Olsens. Once instituted, this cycle worked well for both parties for several years and in fact was not the cause of the dispute between the parties in this matter which arose from an asserted missed payment and improper imposition of penalties and termination of service. The Hearing Officer imposed a penalty for the improper quarterly billing cycle and then imposed 7 additional penalties for each billing cycle thereafter. SDCW is willing to accept a penalty for the mistake of a longer billing cycle, but in this circumstance, it would not be appropriate to impose 7 additional penalties. If these 7 penalties are removed, all of the other offenses would total 8. If the 8 offenses are each subject to a \$500 minimum penalty the total penalty for the Olsen matter would be \$4,000. The \$4,000 penalty would be significant in this matter and would represent more than 8 years of payments received from Mr. & Ms. Olsen ( $\$4,000/\$40 = 100$  months of payments or about 8.3 years).

SDCW notes that the penalty in this matter seems overly harsh considering the Commission's position in *Thomas J. Peck & Sons, Inc. v. Pub. Serv. Comm'n of State of Utah*, 700 P.2d 1119 (Utah 1985). In *Peck*, the Commission noted that Peck had more than 212 proven violations, did not act in good faith and engaged in subterfuge in complying with the regulations.

“Faced with a total of 212 proven violations, rather than assess the minimum penalty of \$500 for each violation, the PSC imposed a penalty of \$25,000 and suspended \$15,000 thereof upon payment of \$10,000 within 60 days.” *Id.* at 1123. Utah Supreme Court affirmed the Commission’s penalty stating, “[i]n light of the size of Peck's business operation and the gravity of the numerous operations, together with the lack of good faith in achieving compliance with the regulations, as evidenced by the subterfuge, the penalty imposed was statutorily reasonable and appropriate.”

In this matter, there are far less than 212 violations and the violations were much more innocent, yet the penalty is more severe. SDCW respectfully requests that the Commission either reduce the penalties to a total of \$5,500 as identified above or waive the penalties completely and require a Public Utility Division to verify improvement and compliance.

RESPECTFULLY SUBMITTED this 15th day of March, 2018.

CRAPO | DEEDS PLLC

/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 March, 2018, a true and correct copy of the foregoing **PETITION FOR REDETERMINATION** was served in the manner and upon the recipients named below:

BY EMAIL:

Mr. and Mrs. Olsen through their counsel - Russell Monahan ([Russell@cooklawfirm.com](mailto:Russell@cooklawfirm.com))

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