

PATRICIA E. SCHMID (#4908)
 Assistant Attorney General
 Counsel for the DIVISION OF PUBLIC UTILITIES
 SEAN D. REYES (#7969)
 Attorney General of Utah
 160 E 300 S, 5th Floor
 P.O. Box 140857
 Salt Lake City, UT 84114-0857
 Telephone (801) 366-0380
 pschmid@agutah.gov
 Attorney for the Utah Division of Public Utilities

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Pursuant to Utah Admin. Code r.746-1-301, the Division of Public Utilities (Division) files this Response to the Petitions for Redetermination (Petitions)¹ in the above-referenced dockets. The Public Service Commission of Utah (Commission) should deny the Petitions and enforce the penalties established in its March 15, 2018 order (Order).

In return for its Commission-granted Certificate of Public Convenience and Necessity (CPCN), which established a de facto regulated monopoly, a regulated public utility such as South Duchesne Culinary Water, Inc. (SDCW) agrees to fulfill certain duties prescribed by

¹ Each Petition’s caption reads, “Petition for Redetermination.” While this nomenclature is perhaps commonly used in tax proceedings, it is unusual here, and the Division is treating the Petitions as Requests for Reconsideration.

statute, rules, and orders. Charges must be just and reasonable.² Unjust and unreasonable charges are “prohibited and declared unlawful.”³ Service must be “in all respects adequate, efficient, just and reasonable.”⁴ “All rules and regulations affecting or pertaining to its charges or service to the public shall be just and reasonable.”⁵

In addition, as a regulated public utility, SDCW must abide by its Commission-approved tariff.⁶ While SDCW can petition the Commission to approve changes to its tariff, SDCW cannot unilaterally make and implement changes, for example, such as altering its billing cycle and late fees. SDCW must provide service according to published and accessible terms and conditions.

Penalties are an important statutorily-authorized means for the Commission to ensure that its statutes, rules, and orders are followed.⁷ In some ways, the CPCN is the carrot to encourage good behavior by a regulated public utility and a penalty is the stick by which to ensure that the regulated public utility charges only approved rates and implements only previously approved terms and conditions of service.

The Petitions’ claims that, in part, “larger amounts of penalties” were imposed because of SDCW’s failure to “acknowledge its errors” and failure to “work in good faith to resolve the issues”⁸ do not provide justification for reduction or elimination of the assessed penalties. Here, the Commission imposed penalties based upon the facts presented in each case.⁹ The facts

² Utah Code Ann. § 54-3-1.

³ Id.

⁴ Id.

⁵ Id.

⁶ See Utah Code Ann. §§ 54-3-2, 52-3-3, and 54-3-4.

⁷ See Utah Code Ann. §-54-7-25.

⁸ Petitions at p. 2.

⁹ SCDW claims it is a small water company, but according to the 2015 annual reports regulated water companies must file with the Commission, SDCW is approximately the ninth or tenth largest regulated water company.

detailing SDCW's impermissible actions are well supported by a reading of the record and the hearing transcript. The Order is replete with appropriate citations to the record. Indeed, there is more than sufficient factual evidence and applicable law to support the imposed penalties.

Moreover, the Petitions' claims that the "corrective efforts and costs" incurred by SDCW prior to hearing should absolve SDCW from the consequences of failing to fulfill its responsibilities are unpersuasive. The Olsens too incurred attorney fees and costs and both the Olsens and Mr. Houskeeper expended great efforts to resolve the matters before hearing.

Lastly, the Petitions' attempts to persuade the Commission that the number of activities supporting the penalties and the amount of penalties should be tied to revenues SDCW will or has received from a wronged customer is similarly unpersuasive. Penalties can lawfully be imposed for each violation. For example, each billing that does not comply with SDCW's Commission-approved tariff is a separate violation, and each day is a separate violation.¹⁰ Penalties are designed and imposed to correct improper behavior by a regulated public utility and are intended to discourage future bad behavior. Tying a penalty only to the amount of revenue a customer generates for a regulated public utility is not likely to encourage better behavior.

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Rankings may change if the annual reports filed with the Commission reflect changes in the number of a company's connections. Also, while the Division is sensitive to the personal hardships that SDWVC's owners and operators have endured, these hardships do not excuse its misdeeds.

¹⁰ See Utah Code Ann. § 54-7-25.

For the reasons stated above, the Division urges the Commission to deny the relief the Petitions seek.

Submitted this 30th day of March 2018.

/s/ Patricia E. Schmid
Patricia E. Schmid
Assistant Attorney General
Utah Division of Public Utilities