

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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 ON PETITION FOR REDETERMINATION</u>

ISSUED: April 3, 2018

On March 15, 2018, South Duchesne Culinary Water, Inc. (“SDCW”) filed a Petition for Redetermination (“Petition”) in the above-referenced dockets. The Petition asks the Public Service Commission (“PSC”) to reduce or waive the penalty assessed in the PSC’s Consolidated Order (“Order”), issued February 13, 2018. Neither complainant in either docket filed a response to the Petition. The Division of Public Utilities, which did not participate in the hearing in either docket, filed a response on March 30, 2018, opposing the Petition.

The Petition generally does not contest any specific finding in the Order. (*See* Petition at 2 (representing “SDCW does not desire to contest the corrections” the PSC ordered regarding the complainants’ accounts).) However, the Petition asks the PSC to reconsider its conclusion concerning the appropriate penalty to be assessed.

The Petition argues the penalty the PSC imposed in the Order, totaling \$20,250.00, is an “excessive and onerous burden.” (*Id.*) The Petition supports this conclusion by analogy to the amount of revenue SDCW receives from complainants on a monthly basis, which SDCW asserts is nominal compared to the penalty. (*Id.*) However, we conclude there is no statutory basis for the notion that the amount an individual customer pays on a monthly basis should materially inform the PSC’s decisions with respect to penalties associated with rule and tariff violations.

The Petition's other arguments, which primarily concern how the PSC determined the number of offenses, are similarly unpersuasive.¹ The statute contemplates a utility "is subject to a penalty of not less than \$500" for each offense and provides "[a]ny violation ... is a separate and distinct offense" and "[i]n 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 affirms the Order with respect to the number of offenses and the penalty it found appropriate for each one.

In sum, nothing in the Petition gives the PSC cause to reconsider any finding or conclusion in its Order. Notwithstanding, on further consideration, the PSC concludes SDCW's customers will be best served if the penalty mechanism incentivizes, to the fullest extent possible, SDCW to promptly and thoroughly remedy its unlawful business practices. Therefore, the PSC will suspend 70 percent of the penalty imposed in the Order on the condition that SDCW is not found to have violated any provision of statute, rule or tariff within three years

¹ In so arguing, the Petition makes several unhelpful points. First, the Petition simply misrepresents the Order in asserting "[t]he Hearing Officer believed that Mr. Houskeeper's oral request to one of SDCW's field workers ... in October 2016 was sufficient to satisfy the tariff's provision of allowing a customer to be placed on standby status." (*Id.* at 4.) While the PSC found Mr. Houskeeper's testimony credible, in the same paragraph the Order notes the corroborating text message Mr. Houskeeper introduced to support his testimony. (Order at 3, n.1). Additionally, SDCW's assertion that its counsel's September 15, 2017 conciliatory letter to Ms. Olsen, issued months after Ms. Olsen's attorney had painstakingly put SDCW on notice of its billing issues and after Ms. Olsen had filed her complaint and responded in opposition to SDCW's motion for summary judgment, constitutes a mitigating "corrective effort" is unpersuasive. Finally, SDCW's lamentation that, by pursuing her complaint, Ms. Olsen forced SDCW to, like her, "retain legal counsel to assist [it] to see if [it was] making errors and to try to resolve any mistakes" does nothing to further its cause. As a public utility, SDCW is expected to understand and comply with its tariff and applicable regulations. If SDCW required legal counsel to understand its basic obligations as a public utility, it should have sought such counsel long before Ms. Olsen filed her complaint.

from the date of this Order on Redetermination. If the PSC finds, in an order following an adjudicative process, an additional violation in that period, the PSC will lift the penalty's partial suspension and impose the full penalty in addition to any penalty associated with the new violation.

Accordingly, the PSC orders as follows:

1. Except as modified by the penalty suspension enumerated in the following paragraph, the findings and conclusions of the Order are affirmed.
2. The PSC suspends 70 percent of the penalty imposed in the Order on the condition the PSC does not find SDCW has committed any additional violation of rule, statute or tariff within three years from the date of this Order on Reconsideration.
3. SDCW shall remit the unsuspended portion of the penalty, \$6,075.00, to the PSC within 120 days from the date of this Order. This \$6,075.00 sum constitutes 30 percent of the original \$9,000.00 penalty arising out of Docket No. 17-2372-02 and 30 percent of the original \$11,250.00 penalty arising out of Docket No. 17-2372-01.
4. If the PSC finds, in an order following an adjudicative process, SDCW has committed any additional violation of rule, statute or tariff within three years of the date of this Order on Redetermination, the PSC will lift the suspension and order SDCW to pay the remaining 70 percent of the penalty, totaling \$14,175.00, in addition to any penalty associated with the additional violation.
5. Except as expressly modified herein, the Order remains in full force and effect, including but not limited to the PSC's directives in Ordering Paragraphs 1-4 and 6.

DOCKET NOS. 17-2372-01 and 17-2372-02

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DATED at Salt Lake City, Utah, April 3, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#301087

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 April 3, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

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