

CRAPO | DEEDS PLLC  
David J. Crapo #5055  
John T. Deeds #13513  
106 West 500 South, Ste. 100  
Bountiful, Utah 84010  
Telephone: (801) 599-4545  
*djcrapo@crapodeeds.com*  
*jtdeeds@crapodeeds.com*

*Attorneys for South Duchesne Culinary Water, Inc.*

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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INVESTIGATION OF SOUTH DUCHESNE  
CULINARY WATER, INC.'S  
COMPLIANCE WITH APPLICABLE  
ADMINISTRATIVE RULES AND TARIFF

**SOUTH DUCHESNE CULINARY  
WATER, INC.'S RESPONSE TO THE  
UTAH DIVISION OF PUBLIC  
UTILITIES' MAY 30, 2019 AUDIT  
REPORT**

Docket No.: 18-2372-01

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South Duchesne Culinary Water, Inc. ("SDCW") hereby responds to the Utah Division of Public Utilities' ("DPU's") May 30, 2019 Audit Memorandum (the "Audit Report").

In the Audit Report, the DPU identifies six (6) items that it asserts are "violations" that should be corrected. SDCW does not agree that these items are violations and responds to each of the items in the order presented in the Audit Report.

**Item # 1 – Unapproved Fee**

Per its tariff, SDCW is authorized to charge a monthly minimum service charge of \$40 for cabin lots that have an active water connection and \$15 for cabin lots that do not have an active water connection (i.e. "Standby Fee"). *See* SDCW Tariff No. 1, Sheet No. 3

(August 15, 2003)(hereinafter the “Tariff”). One of SDCW’s customers owns two adjacent lots: (1) Lot 93 which has a cabin and is subject to the monthly \$40 minimum water fee, and (2) Lot 94 which is vacant and is subject to the monthly \$15 Standby Fee. The customer did not want to receive two separate invoices each month and asked SDCW to combine the billing and invoice them \$55 a month. SDCW accommodated this request. During the audit, the DPU reviewed this account and stated that it believed SDCW should not combine the invoice amounts and requested that SDCW issue two separate invoices. SDCW does not believe it was charging an “unapproved fee” by combining the authorized \$15 and \$40 charges for these two lots as requested by the customer. Nonetheless, SDCW accepted the DPU’s recommendation to separately bill the amounts in two separate invoices. Upon notice of this item from the DPU, SDCW immediately changed the invoices in its QuickBooks system with the DPU auditor (Ms. Springer) present. Copies of the two separate invoices were provided to Ms. Springer and this customer has been sent two separate invoices since the May billing cycle.

## **Item # 2 – Delinquent Accounts**

The DPU noted that Commission Rule R746-200-7 provides instruction on how to treat delinquent accounts and then noted that a significant number of accounts were delinquent, most of which are lots that are only charged a Standby Fee (“Standby Account”). The DPU’s audit recommendation is that SDCW should apply consistent collection and termination practices to write off uncollectable accounts. The fact that SDCW has a number of delinquent accounts is not a violation of the Tariff or the Commission rules. Nor did the DPU assert that SDCW had violated any collection procedure identified in Rule R746-200-7. The delinquent Standby Accounts provide a unique situation because the provisions of Rule R746-200-7 primarily explain the steps that a utility should take in order

to give notice to a non-paying customer prior to disconnecting his/her service. For a standby customer, there is no service to be disconnected. SDCW has worked with many of its standby customers this past year to educate them about the fee and make appropriate payment arrangements. During the past year, SDCW has helped more than twenty-five Standby Accounts become current from their delinquent status. In addition, and as noted in the Audit Report, SDCW is pursuing a contract with a collection agency to assist it in trying to collect and/or write off delinquent accounts. SDCW does not believe it has violated its tariff or any rule in relation to the fact that it has a number of delinquent Standby Accounts.

### **Item # 3 – Meter Readings**

SDCW acknowledges that its tariff currently states that “meters shall be read by the Company monthly.” Tariff at ¶12, Sheet No. 5. SDCW also agrees with the DPU’s report that SDCW read the meters in December 2018 and April 2019 but that the meters could not be read in January, February and March 2019 due to the heavy snow covering the meters. When meters cannot be read, SDCW only bills the minimum rate of \$40 consistent with paragraph 5 of its Tariff, and then makes appropriate adjustments once the meter can be read again.

SDCW would agree with the DPU’s recommendation that the Tariff should be amended to accommodate inclement weather. Nevertheless, SDCW does not believe that this meter reading situation is a violation, and it believes it has made good faith efforts to read the meters in a manner consistent with the Commission’s rules. Rule R746-200-4 provides that “[w]hen weather conditions prevent regular meter readings . . . , the utility will make arrangements with the customer to get meter readings at acceptable intervals.”

SDCW has also been exploring the possibility of using transponder equipment that could allow automated meter reading even through heavy snows. SDCW is also willing to

amend its Tariff on this issue, but has been waiting for the resolution of this proceeding so that any other identified items could be handled in one tariff amendment.

#### **Item # 4 – Late Charges**

The DPU asserts that SDCW should be charging a larger late fee. SDCW asserts that it is not a violation to charge a smaller late charge than may be authorized. The Company's tariff provides that after thirty days it may charge a late fee of 1.5% of the "past due balance." Tariff at ¶13, Sheet No. 6. SDCW interpreted the term "past due balance" to mean the balance due for water services and thus only applied the late fee percentage to this amount; i.e. simple interest. The DPU asserts that the late fee percentage should apply not only to the balance due for water services but also to any prior interest amounts that are due; i.e. compound interest. Thus, the DPU recommends a larger late fee. SDCW believed its interpretation of charging the smaller simple interest was appropriate, however, it does not oppose the DPU's recommendation to charge a larger late fee. SDCW is willing to increase the late fee as recommended by the DPU, and a DPU representative assisted SDCW during the audit visit to amend the late fee calculations in QuickBooks to now impose the late fee on the past due balance for water fees and interest.

#### **Item # 5 – Developer/Owner Charges**

Utah Mini Ranches ("UMR") was developed by Duchesne Land, LLC ("Developer") which was wholly owned by Mr. & Mrs. Steed. SDCW was established to design, construct and operate a water utility that would be able to provide the culinary water needs for the lots in UMR. SDCW was also wholly owned by Mr. & Mrs. Steed. The Developer and the Steeds made significant capital expenditures on behalf of SDCW to construct the water system and to subsidize the monthly operations of SDCW for many years until a sufficient number of lots were sold so that SDCW could begin generating sufficient revenues to

operate on its own.<sup>1</sup> Consequently, SDCW did not charge the Standby Fee against any lot in UMR until that lot was sold or charge a water fee against the Steed cabin lot. SDCW believes that the payments the Developer and the Steeds made for its benefit greatly exceeded what the monthly \$15 Standby Fees for the lots, or the water fees on the Steed cabin, would have been.

The first time SDCW was informed that there was any concern about this arrangement was while the DPU was conducting its first audit review in the summer and fall of 2018. SDCW believes it appropriately handled the water fees during the developmental phase of the subdivision and the water company. Nevertheless, the Developer and Mrs. Steed conducted an auction in October 2018 where at it sold approximately 100 of the remaining undeveloped lots and the Steed cabin. All of these lots and the former Steed cabin lot were transitioned to standby paying lots or water service paying lots before January 1, 2019. Approximately 15 lots were not sold at the auction and remain in the control of the Developer or Mrs. Steed. These 15 lots were also transitioned to standby paying status before January 1, 2019.<sup>2</sup>

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<sup>1</sup> The Developer and Mr. & Mrs. Steed invested more than \$900,000 in capital expenditures to construct the original plant for the water system. In addition, Mr. Steed contributed a significant amount of his own time and equipment in construction services and expertise to physically construct the distribution system for SDCW. Because he lived on site, until his death in 2014, Mr. Steed also contributed significant on-call operating services for the benefit of SDCW without remuneration from SDCW.

<sup>2</sup> Without explanation, the DPU cites Rule R746-330-6 which states that “there is a rebuttable presumption that the value of the original utility plant and assets has been recovered in the sale of the lots in a development to be served by a developer-owned water or sewer system.” It is uncertain, why this provision has been cited. However, this section is titled “Ratebase Treatment of Developer- owned Water or Sewer Company Assets – Presumption of Recovery.” Apparently, this provision indicates that the rates charged for water should not include an amount for the recovery of the original plant unless the utility can show that the sale of the lots in the development were inadequate to pay for the original plant. This provision does not appear to be applicable here. First, the \$40 monthly water fee is a market rate for water and basic operating costs. This fee has not increased for almost 16 years and there is no indication that this \$40 fee is covering anything other than operating costs of the utility. Second, the Developer did not earn sufficient funds from the sale

## **Item # 6 – Water Purity Standard**

The DPU asserts that SDCW “violated the Commission rule for a period of time.”

Audit Report p. 13. This assertion is not correct.

Apparently the DPU believes that SDCW violated Rule R746-330-2 which requires that “Water furnished by utilities for culinary purposes shall be agreeable to sight and smell and be free from disease-producing organisms.” At all times during the pendency of this matter, the sampling and testing of the SDCW water has met the purity standards required by the state, and SDCW has not violated Rule R746-330-2.

While the DPU does not explain when it believes SDCW violated the Commission’s Rule by not providing pure water, the DPU does refer to a current matter SDCW has with the Division of Drinking Water (“DDW”) of the Department of Environmental Quality. On April 22, 2019, the DDW issued a letter and Administrative Order downgrading the status of SDCW to “Not Approved.” That Order required SDCW to provide a Tier II Notice of the downgrade to its customers and to work with the DDW to resolve certain water pressure issues and negotiate a compliance agreement that would restore the system to approved status. On May 22, 2019, SDCW timely provided the Tier II Notice to its customers and the proposed remediation plan to the DDW. SDCW is working with the DDW to properly resolve the pressure issue and does not believe there is or has been any violation of the

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of the lots in UMR to recover the original plant. In 2008, the Utah State Tax Commission initiated a tax action against Mr. & Mrs. Steed and froze the bank accounts of the Developer, Duchesne Lands LLC. Without being able to access its operating capital, the Developer was forced to close its operations and dismiss its employees. Mr. & Mrs. Steed were ultimately acquitted in the tax action in 2014, but by then the Developer was not able to recover and operate as before. *See Utah v. Steed*, 2014 UT 16. Approximately, 100 lots and undeveloped acreage remained unsold from the 2008 date through the end of 2018. In October 2018, the Developer held an auction to try and liquidate the remaining lots and undeveloped acreage. The lots and undeveloped acreages sold at auction were deeply discounted and did not generate a full recovery of the original plant associated with the water system.

Commission's rules in relation to the water quality.

RESPECTFULLY SUBMITTED this 1st day of July 2019.

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 1st day of July, 2019, a true and correct copy of the foregoing  
**SOUTH DUCHESNE CULINARY WATER, INC'S RESPONSE TO THE UTAH  
DIVISION OF PUBLIC UTILITIES' MAY 30, 2019 AUDIT REPORT** was served in the  
manner and upon the recipients named below:

BY EMAIL:

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))

Justin Jetter ([jjetter@agutah.gov](mailto:jjetter@agutah.gov))

Division of Public Utilities ([dpudatarequest@utah.gov](mailto:dpudatarequest@utah.gov))

CRAPO | DEEDS PLLC

/s/ Katie McDowell  
KATIE MCDOWELL