

In the Matter Of:

In RE: SDCW - Compliance with Rules and Tariff

HEARING, DOCKET NO. 18-2372-01

July 18, 2019

Job Number: 515423

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Investigation of South)	Docket No.
Duchesne Culinary Water,)	18-2372-01
Inc.'s Compliance with)	
Applicable Administrative)	HEARING
Rules and Tariff)	

July 18, 2019
1:00 p.m.

Location: Public Service Commission
160 East 300 South, 4th Floor
Salt Lake City, UT 84111
(801) 530-6769

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter

Job No. 515423

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I N D E X

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1 July 16, 2019

10:02 a.m.

2 P R O C E E D I N G S

3 PRESIDING OFFICER HAMMER: Let's go on the
4 record please. Good afternoon. This is the time and
5 place noticed for hearing in the Investigation of South
6 Duchesne Culinary Water Inc.'s Compliance with
7 Applicable Administrative Rules and tariff. It's
8 Commission Docket No. 18-2372-01.

9 My name is Mike Hammer. I'm the commission's
10 designated presiding officer for this docket. Let's go
11 ahead and take appearances beginning with the company,
12 please.

13 MR. CRAPO: Good afternoon, your Honor. My
14 name is David Crapo with the law firm of Crapo Deeds,
15 and I am here to represent South Duchesne Culinary
16 Water.

17 PRESIDING OFFICER HAMMER: Thank you,
18 Mr. Crapo.

19 MS. SCHMID: Patricia Schmid with the Attorney
20 General's office on behalf of the Utah Division of
21 Public Utilities, and with me as the division's witness
22 is Shauna Benvegna-Springer.

23 PRESIDING OFFICER HAMMER: And Mr. Crapo, are
24 you alone today? Do you have someone on the phone?

25 MR. CRAPO: No, your Honor. I am solo.

1 PRESIDING OFFICER HAMMER: Okay. How would
2 the parties like to begin? Is there interest in having
3 counsel making remarks before there's any testimony?
4 And if so, who would like to go first?

5 MR. CRAPO: Your Honor, do you stay seated
6 or --

7 PRESIDING OFFICER HAMMER: You are welcome to
8 stay seated.

9 MR. CRAPO: Thank you. As you are aware, the
10 Department of Public Utilities submitted a report on May
11 30th, 2019, and under your order we are to submit a
12 response on July 1, which we did.

13 South Duchesne has opened their doors to the
14 department, had them come in. They really have no
15 disagreement with the factual findings as contained in
16 the report. We are prepared to stipulate that that
17 report could come in.

18 There are two minor little corrections, one
19 little typo and one little correction that we would
20 recommend. On page 12, where it talks about the
21 recommendation, and this is the one past developer and
22 owner charges. In the very last line, it says, "The
23 division recommends the commission order the utility to
24 pay the amount owed."

25 I believe that should say, the developer to

1 pay the amount owed, or the developer, slash, Steed to
2 pay that. So I think that was just a typo.

3 Then on page 13, where it's the water purity
4 standard heading, says, "The utility failed to provide
5 written notice to all the customers when it had the
6 major break." We don't believe that's correct. They
7 provided it to the customers. It wasn't to the
8 director.

9 So if you look at their -- at the exhibit that
10 is attached, under Exhibit 1, which is -- there is the
11 letter of April 22nd, 2019, from the Department of
12 Environmental Quality. And then you turn back a page
13 further to the notice of violation. And then you turn
14 to the third page of that violation on paragraph 11.

15 On the last sentence, it said "the system."
16 This is where they are saying what they thought the
17 notice violation was. "The system never provided the
18 Tier 1 public notice boil order required under the Utah
19 code as a result of this event to the director."

20 Just to clarify, when they had the break,
21 South Duchesne did give no boil notices to everybody.
22 And they did provide bottled water to everyone who
23 needed it, and then they hurried and tried to start
24 fixing it because it broke during the middle of the
25 night. They did not tell the director of drinking

1 water, and that's the violation.

2 So we think with that minor correction on page
3 13, the utility failed to provide written notice to the
4 director as noted on that, We believe that would be
5 accurate. Those would be the only two technical
6 changes. But otherwise, we believe the factual summary
7 is correct.

8 We agree to stipulate to the facts of this
9 report, noting that we have a different interpretation,
10 whether they are violations or not. But the factual
11 part we have no disagreement with, and that might
12 expedite this, and you don't have to have Ms. Springer
13 spend her time reviewing it.

14 MS. SCHMID: I think it would be helpful for
15 Ms. Springer to address a few issues, adopt her report
16 as her testimony, and during that process we will make
17 the corrections that you noted. The division would have
18 no objection, however, to the company proffering its
19 response filing and that being accepted in lieu of the
20 testimony of Ms. Steed, if that's acceptable to the
21 commission.

22 MR. CRAPO: That's acceptable to us, your
23 Honor.

24 PRESIDING OFFICER HAMMER: That's fine with
25 me. So shall we proceed, first of all, by accepting the

1 proffer?

2 MR. CRAPO: Yes, your Honor.

3 PRESIDING OFFICER HAMMER: All right. It is
4 considered admitted. And Ms. Schmid, would you like to
5 call your witness?

6 MS. SCHMID: Yes. I'd like to call Ms. Shauna
7 Benvegna-Springer as the division's witness. May she
8 please be sworn.

9 PRESIDING OFFICER HAMMER: Mr. Crapo, do you
10 have any objection to Ms. Springer staying seated where
11 she is?

12 MR. CRAPO: No. That's fine, your Honor.

13 PRESIDING OFFICER HAMMER: Ms. Springer, do
14 you swear to tell the truth?

15 THE WITNESS: I do.

16 PRESIDING OFFICER HAMMER: Go ahead.

17 SHAUNA BENVEGNA-SPRINGER,
18 was called as a witness, and having been first duly
19 sworn to tell the truth, the whole truth, and nothing
20 but the truth, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. SCHMID:

23 A. I just have a couple --

24 Q. Let me -- I need to make my introduction and
25 earn my keep first. Could you please state your full

1 name, title, employer and business address for the
2 record.

3 A. Shauna Benvegna-Springer. Shauna
4 Benvegna-Springer. I work for the Division of Public
5 Utilities located at 160 East 300 South.

6 Q. And your title?

7 A. My title is utility technical consultant.

8 Q. On behalf of the division, did you participate
9 in this docket?

10 A. I did.

11 Q. Did you personally participate in the audit
12 and go to the company's facilities?

13 A. I did.

14 Q. Did you prepare or cause to be prepared and
15 filed the division's memo in this docket?

16 A. I did.

17 Q. Are -- which was done on May 30th, 2019?

18 A. Correct.

19 Q. Do you have any changes or corrections to
20 that?

21 A. I do. On page 12, under violation 5, in the
22 calculation it shows that there is 110 lots for standby
23 fees that were not billed. That should be 125 lots. I
24 picked up the 110 from above, which is actually the
25 water customer count. Therefore, the calculation should

1 be \$146,250.

2 Q. Could you please repeat that slower.

3 A. Okay.

4 Q. Just the number.

5 A. The total number?

6 Q. The dollar figure.

7 A. 100 -- 1000 -- 100,046, 250 dollars.

8 Q. Thank you.

9 PRESIDING OFFICER HAMMER: For clarification,
10 146,250.

11 THE WITNESS: 250.

12 PRESIDING OFFICER HAMMER: Okay, thank you.

13 A. Going then down to the recommendation, on the
14 first line, the 128,700 should read 146, comma, 250
15 thousand dollars.

16 Q. (By Ms. Schmid) 250 dollars?

17 A. 250 dollars. 146, comma, 250.

18 Q. Okay.

19 A. Same amount as what I stated above.

20 Q. Do you have any other corrections, including
21 the ones that the company's counsel pointed out?

22 A. The first one -- let's see. Where was it?

23 Q. I think that was violation No. --

24 A. Page 12.

25 Q. -- 5 on page 12.

1 A. Yeah. Where they want to change it, the
2 order -- order the utility to pay, change it from the
3 utility to the Steeds. That's -- that should be
4 corrected.

5 MR. CRAPO: It would be developer, slash,
6 Steeds.

7 A. Developer, slash, Steeds. Okay.

8 **Q. (By Ms. Schmid) And then do you have any --**

9 A. Regarding the priority water standard
10 violation, it was my understanding that the utility only
11 provided notice to those residents currently living in
12 the subdivision, and they did not provide written notice
13 to all customers.

14 **Q. And so you believe what you have written is**
15 **correct?**

16 A. Is correct, uh-huh.

17 **Q. And you believe that it is a violation as you**
18 **recommended?**

19 A. Correct.

20 **Q. Okay. With that, have you had a chance to**
21 **update any of the figures?**

22 MS. SCHMID: And at this point the division
23 would like to move for the admission of DPU Hearing
24 Exhibit 1, and what it is is, it is a calculation of the
25 charges owed by the developer, slash, Steeds that was

1 just provided to company counsel this morning -- or this
2 afternoon, however.

3 A. The -- when the recommendation was made to the
4 commission, we did not calculate the interest on the
5 amounts that were owed. So this exhibit provides those
6 calculations on both the water charges and the standby
7 fee charges that would be owed by the developer, slash,
8 Steeds.

9 So as you go to five, point 5, the \$7,320 is
10 the normal \$40 charge per month for water. The 366
11 thousand dollar charge -- \$366 charge, would be the 2
12 dollar for anything over 10,000 water -- 10,000 gallons
13 per month.

14 **Q. (By Ms. Schmid) So an overage usage charge?**

15 A. Correct. And anything then over the 12,000
16 that they are only able to use is at 2,000 -- two
17 dollars per thousand, and so that amount is averaged
18 over the 183 month period that this would be due.

19 Now, there is a question on whether we started
20 this calculation based on their tariff, and so we
21 started on September 1st, 2003. That date could change
22 because we don't know when exactly that they took
23 occupancy of that cabin. The September 2003 date is the
24 date that they had the tariff approved, so that day
25 could change, therefore changing the numbers if they

1 have information to counter that.

2 **Q. Turning now to the second part, which is the**
 3 **standby charges, can you explain that?**

4 A. The standby charges for all of the lots, I
 5 think it's on page 7.

6 **Q. Uh-huh.**

7 A. So the Steed, slash, developer owned 125 lots,
 8 and in the tariff it does state that there's a \$15
 9 charge that's to be paid by any lot owner for access to
 10 the water system, even though they are not receiving
 11 water. So based on the way they are supposed to
 12 calculate the interest, they would be charged the same
 13 interest as if someone who didn't pay the standby fees
 14 as a customer. Because the tariff states that all lots
 15 that have access to the infrastructure would be charged
 16 the standby fee.

17 So going over to the total, there would be
 18 146,852 dollars and 19 cents in interest on the 146,000
 19 250,000.

20 **Q. And then the total would be?**

21 A. Total would be 311,102 dollars and 19 cents.

22 MS. SCHMID: With that explanation and
 23 foundation, the division would like to move for the
 24 admission of DPU hearing Exhibit 1.

25 MR. CRAPO: We would object to the admission

1 of the exhibit, your Honor. The exhibit was not timely
2 provided to us. It was provided just a minute or two
3 before this hearing began. We also believe there's
4 potentially significant errors in this exhibit. The
5 cabin was not completed under our understanding in 2003.
6 We would have to verify when that cabin was done with
7 the Steeds.

8 This was also a phased project, and projects
9 were platted and phased at different times, and we would
10 have to verify which of those 110 lots were actually
11 platted and available at that point. And we do not have
12 a spreadsheet to verify the calculations and to be able
13 to see if the sales and the calculations are consistent
14 with the tariff.

15 And to provide this exhibit only a minute
16 before the hearing when they were ordered to give this
17 30 days ahead, and at least for hearings a 10 day notice
18 of exhibits, we believe is inappropriate to admit this
19 as an exhibit at this point. We also reserve argument
20 as to explain why we do not believe this is a violation
21 anyway. But we ask that this exhibit not be allowed to
22 be submitted.

23 PRESIDING OFFICER HAMMER: Ms. Schmid?

24 MS. SCHMID: Yes. I am unfamiliar with the 30
25 day and 10 day requirement prior to hearing. I don't

1 know if that is a rule of Utah civil procedure. I don't
2 believe it was ordered in this case.

3 The division does apologize for the tardy
4 provision of this and would not object to this being
5 admitted, providing the spreadsheets to the company, and
6 giving the company a reasonable amount of time to file a
7 response to this exhibit, if the record could be held
8 open for that, if that would be acceptable to the
9 company's counsel and to the commission.

10 MR. CRAPO: It's not acceptable, your Honor.
11 The order that you issued on December 11th provided that
12 the DPU should present its report and its evidence on
13 May 30th, 2019, and that we would be allowed 30 days
14 until July 1 to respond. This information is untimely
15 and should not be allowed at this hearing.

16 If this commission determines that there is a
17 violation for water not charged for the Steed cabin or
18 for the undeveloped lots that were owned, if that is
19 determined, we would be willing to take this exhibit,
20 review it, try to find out the correct dates for when
21 lots came into existence, when the cabin came into
22 existence, and to verify the spreadsheet.

23 We believe it would be premature to be able to
24 do that at this point and would ask that it not be
25 accepted.

1 MS. SCHMID: And if I may, I apologize. I
2 forget about the December order and the timelines
3 established by that. I was not trying to mislead. I
4 had merely forgotten.

5 PRESIDING OFFICER HAMMER: I am going to
6 sustain the objection with respect to the admission of
7 the exhibit. Ms. Springer may testify as to her beliefs
8 as to whether or not interest charges are appropriate
9 and whether those -- whether the DPU's report failed to
10 include them.

11 MS. SCHMID: Thank you.

12 **Q. (By Ms. Schmid) Ms. Springer, would you like**
13 **to address the question that the hearing officer invited**
14 **you to address?**

15 A. Yes, I would. In the report -- I am just
16 looking for it right here -- we did state that interest
17 was not calculated on the amount. But I am not seeing
18 where it says that.

19 MS. SCHMID: Could we have a brief recess?

20 PRESIDING OFFICER HAMMER: Any objection,
21 Mr. Crapo?

22 MR. CRAPO: If you would like, I can point out
23 where that paragraph is, if it would help Ms. Springer.
24 On the bottom of page 12, at the recommendation, the
25 last sentence says, "The division did not calculate the

1 late charges that would have accrued on these amounts --
2 or accounts. The division recommends the commission
3 order" -- now change -- "the developer, slash, Steeds to
4 pay the amount owed."

5 I believe that's the section you are looking
6 for, is it not?

7 THE WITNESS: That's correct, yes.

8 PRESIDING OFFICER HAMMER: Do you still wish
9 to take a recess, Ms. Schmid?

10 THE WITNESS: No, that's fine.

11 MS. SCHMID: No. Thank you.

12 **Q. (By Ms. Schmid) And what is the amount that**
13 **the division said the now corrected developer, owner**
14 **owed the utility as stated in your recommendation?**

15 MR. CRAPO: Objection. Your Honor, they are
16 merely trying to put in by evidence, by oral testimony
17 what they failed to give us. The statement stated that
18 they did not calculate those charges. When we read
19 this, we assumed they are not going to impose interest.
20 They have decided not to.

21 And now at the very beginning of this hearing,
22 presented this exhibit, which has not been allowed, and
23 now they are orally trying to give the words that are
24 contained in the exhibit. We believe that is
25 inappropriate and it should not be allowed to change

1 that position at this late date.

2 MS. SCHMID: With that, I would like to
3 request a recess for a few moments.

4 PRESIDING OFFICER HAMMER: We'll recess for 10
5 minutes. We'll reconvene at 1:35.

6 MS. SCHMID: Thank you.

7 (Recess from 1:21 to 1:25 p.m.)

8 MS. SCHMID: Thank you. I have a few more
9 questions for Ms. Benvegna-Springer.

10 Q. (By Ms. Schmid) Turning to violation No. 5
11 where you recently corrected the 110 lots to 125 and
12 noted the base figure then becomes 146,250, did I
13 summarize that correctly?

14 A. Yes. That's correct.

15 Q. And the 146,250 was increased from the 128,700
16 merely because of the number of lots?

17 A. Correct.

18 Q. There is no interest in that 146,250; is that
19 correct?

20 A. That's correct.

21 MS. SCHMID: With that correction and
22 explanation, the division would like to move for the
23 admission of the DPU memorandum dated May 30th, 2019.

24 MR. CRAPO: Your Honor, we believe there still
25 may be one correction, if I might be able to ask a few

1 questions or cross-examination questions --

2 MS. SCHMID: Of course.

3 MR. CRAPO: -- before the admission occurs.

4 Then maybe that would resolve any objection that we
5 would have.

6 PRESIDING OFFICER HAMMER: That's fine. Do
7 you have any additional direct questions, Ms. Schmid,
8 before we move to that?

9 MS. SCHMID: Actually I do. Just a few.

10 Q. (By Ms. Schmid) Ms. Benvegnu-Springer, are
11 you familiar with the dockets that are somewhat related
12 to this, the Olsen and Housekeeper complaints, Docket
13 No. 17-23-7201 and 17-23-7202?

14 A. I am.

15 Q. Are you familiar with the order, the
16 consolidated order on petition for rehearing that
17 suspended 70 percent of the fine originally included in
18 those dockets?

19 A. I am aware.

20 Q. Would you accept, subject to check, that the
21 amount suspended was \$14,175?

22 A. That's correct.

23 MR. CRAPO: Your Honor, if I might, I
24 apologize for interrupting. I might object to this line
25 of questioning. The document is an official record of

1 this commission, and it speaks for itself. Ms. Springer
2 did not participate in that proceeding.

3 The amounts are identified on the page. You
4 have them. I don't believe it's necessary for a witness
5 who was not there to read or to attest that that is a
6 truthful document. It is already accepted in the
7 record.

8 PRESIDING OFFICER HAMMER: Well, I intended to
9 ask the DPU as to what its position was with respect to
10 the suspended portion of the penalty anyway, and I think
11 we're just getting there.

12 MS. SCHMID: I am just laying opportunity
13 foundation for my next question for
14 Ms. Benvegna-Springer.

15 MR. CRAPO: We are fine without that
16 foundation. If they would like to ask what their
17 position is, we wouldn't object to that.

18 PRESIDING OFFICER HAMMER: Overruled.

19 MS. SCHMID: I think that --

20 PRESIDING OFFICER HAMMER: Overruled. You can
21 proceed.

22 MS. SCHMID: Thank you.

23 **Q. (By Ms. Schmid) Miss Benvegna-Springer, is it**
24 **the division's position that the order -- that your**
25 **audit found violations of statute, rule or tariff, that**

1 within the three years following the April 3rd, 2018,
2 order?

3 A. Yeah. I am aware of the suspension of the
4 fees related to those two complaints.

5 Q. And so it is clearly your testimony that
6 violations of statute, rule or tariff are presented in
7 your document and your -- supplemented by your testimony
8 today; is that correct?

9 A. Yes. Just to expand a little bit, the issues
10 that I found are somewhat different, with exception of
11 the late charge fee that's been assessed over the years.
12 That's the only violation from prior that still exists.

13 Q. But --

14 A. Besides the past-due developer charges.

15 Q. But if we refer back to the order, and I will
16 just ask the commission to take note of this order, in
17 which it said any violation of a tariff, of a statute,
18 rule or tariff. It didn't specifically limit
19 reinstating the suspended amount to the fact that they
20 had to be directly tied to the Housekeeper or Olsen
21 violations.

22 MS. SCHMID: It is my argument, since we are
23 sort of intermingling argument and testimony, that
24 because of what the division found, it is appropriate
25 for the commission to reinstate the \$175,000 that was

1 suspended.

2 PRESIDING OFFICER HAMMER: Well, I'll give
3 each of you an opportunity.

4 MS. SCHMID: Okay.

5 PRESIDING OFFICER HAMMER: Each of counsel an
6 opportunity to state something additional at the end.
7 Do you have any additional questions?

8 MS. SCHMID: Other than to ask that -- just to
9 ensure that the division's memorandum was accepted as an
10 exhibit.

11 PRESIDING OFFICER HAMMER: I think Mr. Crapo
12 had a few questions, and perhaps we can resolve his
13 objection. If not, then I'll rule on it. Go to you,
14 Mr. Crapo. Do you have any cross-examination questions
15 for Ms. Springer?

16 MR. CRAPO: Yes, I do, your Honor. Thank you.

17 CROSS-EXAMINATION

18 BY MR. CRAPO:

19 Q. Ms. Springer, good afternoon.

20 A. Good afternoon.

21 Q. Can't see her there. I'd like to have you
22 turn to page 13.

23 MS. SCHMID: I'm sorry. Could you please
24 speak up a little bit.

25 Q. (By Mr. Crapo) I'd like to have you turn to

1 page 13 please.

2 A. Okay.

3 Q. Of your memorandum dated May 30th, 2019. Do
4 you have that?

5 A. I do.

6 Q. I believe the only area that we have a
7 disagreement about was the water purity standard at the
8 bottom of that page where it says, "The utility failed
9 to provide notice to all customers." I believe we
10 recommended it would be to the director, and your belief
11 it was to all customers, correct?

12 A. Correct.

13 Q. Could I have you turn to the Exhibit 1 to your
14 memorandum, and behind the transmittal letter of that
15 exhibit from the Department of Environmental Quality is
16 a notice of violation, administrative order. Do you see
17 that?

18 A. I do.

19 Q. And could you turn to page 3 of that order?

20 A. Okay.

21 Q. And you see in paragraph 11. And could you
22 read the last sentence of that paragraph, please.

23 A. The last sentence?

24 Q. The last sentence. The system never provided.

25 A. Okay. "The system never provided the Tier 1

1 public notice boil -- slash, boil order required by Utah
2 code annotated R309-220-5 as a result of this event to
3 the director as required."

4 Q. Okay.

5 A. "By law."

6 Q. The statement that you are making in your
7 report, that there was a failure of notice, is based
8 upon the Department of Environmental Quality's
9 proceeding; is that correct?

10 A. Right. It's based upon the fact that they
11 sent a letter not approving the system for use to the
12 public.

13 Q. Right. There were two violations alleged in
14 that. One was the failure to give the director notice,
15 and the other was the pressure item, correct?

16 A. Correct.

17 Q. On a couple of cabins?

18 A. Yes.

19 Q. This No. 11 applies to the notice, correct?

20 A. Correct.

21 Q. And doesn't it say here that the failure was
22 to give notice to the director? Does it not?

23 A. It does.

24 Q. And under the code section there, Utah
25 annotated code or code annotated, or Utah administrative

1 code and the rule 309-220-5, are you familiar with that
2 notice provision?

3 A. I am for -- I am somewhat aware.

4 Q. And doesn't the notice provision require that
5 you give notice to those that are actually receiving
6 water that could need to be boiled?

7 A. It --

8 MS. SCHMID: I would object to the question on
9 that. The administrative rule speaks for itself.

10 Q. (By Mr. Crapo) Are you aware, did South
11 Duchesne --

12 PRESIDING OFFICER HAMMER: Overruled. You can
13 answer the question.

14 MR. CRAPO: Thank you.

15 Q. (By Mr. Crapo) Do you know?

16 A. I am sorry. What?

17 Q. Do you know if this code section requires that
18 the notice be given to those who are receiving water so
19 that they can boil it?

20 A. It's my understanding that that is what the
21 notice is, is they are supposed to provide notice to all
22 customers of the boil order.

23 Q. Uh-huh. All customers that are receiving
24 water so they can boil it?

25 A. All customers who have access to water,

1 correct.

2 Q. Right. So if there's a lot that does not have
3 a connection with any water yet, a standby fee, would
4 there be any water to boil?

5 A. No.

6 Q. Okay.

7 A. And so those -- those customers would not even
8 be part of the notice. It's those cust -- the 110
9 customers that are receiving water.

10 MS. SCHMID: 125?

11 THE WITNESS: 110.

12 MS. SCHMID: 110.

13 A. That are receiving water that would need to
14 receive the notice, whether they are on-site or not
15 on-site. It's my understanding that the company did
16 provide water to all of the ones who they knew were
17 living in their residence.

18 Q. (By Mr. Crapo) And provided a notice on the
19 door of every single cabin, correct?

20 A. Correct. That's correct.

21 Q. Whether they were present or not?

22 A. Provide -- well, it's my understanding that
23 they just did it to those that they knew were living
24 there. They didn't send it to all of the ones that
25 don't live there.

1 Q. Are you aware of any document where the
2 Department of Drinking Water or Environmental Quality
3 found that South Duchesne did not properly provide
4 notice to its owners other than the director?

5 A. Just from conversation that I have had with
6 the staff.

7 Q. Okay. Thank you.

8 MR. CRAPO: Your Honor, we don't have any
9 other questions in that regard. We believe it's
10 accurate to state what the Department of Environmental
11 Quality found, is that it was only to the director. Our
12 proffer is that notice was given to all who needed to
13 boil the water, and the Department of Environmental
14 Quality found under that statute that it was acceptable
15 other than to the director.

16 MS. SCHMID: And at this point I would like to
17 object to the proffer. What I agreed to was that the --
18 was that we would not object to the company's response
19 being in. And he has not moved for -- and that is in,
20 and I think it speaks for itself.

21 PRESIDING OFFICER HAMMER: So for clarity,
22 yes, that's correct. My understanding of the proceeding
23 is that the company proffered its response to the
24 report, which was dated the first of July. It was
25 admitted. There was no objection.

1 With respect to the admission -- pardon me,
 2 the division's report, which isn't -- oh, I'm sorry,
 3 dated May 30th, 2019, Ms. Schmid has moved the
 4 admission. I would note that the parties don't need to
 5 agree whether all the contents are accurate for it to be
 6 admitted. The company's objections to veracity of
 7 numerous statements are noted, but we can admit it, and
 8 we'll consider it admitted at this time.

9 MR. CRAPO: Thank you, your Honor.

10 PRESIDING OFFICER HAMMER: Do you have any
 11 additional questions, Mr. Crapo?

12 MR. CRAPO: No, Your Honor.

13 MS. SCHMID: The division has nothing further
 14 at this point.

15 PRESIDING OFFICER HAMMER: Let me ask you,
 16 Ms. Schmid, and you can answer this or your witness can.
 17 So it's the division's position that the suspended
 18 portion of the penalty from the prior proceeding should
 19 be reinstated in full?

20 MS. SCHMID: That is the division's position.
 21 Yes.

22 PRESIDING OFFICER HAMMER: Does the division
 23 has a recommendation as to whether any penalty is
 24 appropriate with respect to the -- any new violations
 25 alleged to have existed today and if so, the amount?

1 MS. SCHMID: I would request that my witness
2 be able to address that.

3 PRESIDING OFFICER HAMMER: Ms. Springer, do
4 you have a recommendation?

5 THE WITNESS: We believe that there should be
6 a fee penalty, particularly for the water purity
7 standard. And in the past the \$500 per day was small in
8 comparison to what the violations are. Yet \$2,000 a day
9 is considerably a lot for a small water company. So at
10 this point, we would --

11 MS. SCHMID: And if I may just ask her one
12 clarifying question. In addition to the water purity
13 standard, the division found that there were other
14 violations as well?

15 THE WITNESS: That's correct.

16 MS. SCHMID: So any recommended penalty
17 related to this docket specifically would not merely
18 address the water purity standard?

19 THE WITNESS: Right. It would address all six
20 of the violations that we mentioned.

21 MS. SCHMID: Would the division recommend a
22 small penalty for these, the violations in this docket?

23 THE WITNESS: Definitely it would be the
24 minimum. We would -- that we would recommend, of the
25 \$500 per day. But we would leave that to the commission

1 to determine.

2 PRESIDING OFFICER HAMMER: All right.

3 Mr. Crapo, do you have any follow-up questions given
4 that I asked the witness a question?

5 MR. CRAPO: No, just argument and position,
6 your Honor.

7 PRESIDING OFFICER HAMMER: All right. If
8 there are no objections from the parties, I'll allow
9 Mr. Crapo to argue first. Ms. Schmid, you will have an
10 opportunity to respond and then give Mr. Crapo the final
11 word. Mr. Crapo, go ahead.

12 MR. CRAPO: Thank you, your Honor. I think I
13 would like to begin by going back to the October 30th
14 memorandum or report that was prepared by the DPU. In
15 the conclusion page, page 5 --

16 MS. SCHMID: Pardon me. The October?

17 MR. CRAPO: Yes, the first report that DPU
18 did.

19 MS. SCHMID: Okay.

20 MR. CRAPO: There have been two reports, your
21 Honor. Is it okay if I say DPU or --

22 PRESIDING OFFICER HAMMER: That's fine.

23 MR. CRAPO: Thank you. The DPU has prepared
24 two reports, one dated October 30th, 2018, and one May
25 30th, 2019. In the November 30th, 2018 report, the

1 conclusion -- I am starting on page 5, the
2 recommendations at the end is, one -- and it's a bullet
3 point. Don't have ones. But a bullet.

4 Providing documentation and the calculation of
5 late charges. So they are saying South Duchesne should
6 provide those calculations. I will say we believe those
7 have been provided, and Mr. -- Mr. Schnars also provided
8 a response on November of 2018 that explained more about
9 that. So we think that issue had been resolved at that
10 point.

11 The numbers -- the second bullet is learning
12 QuickBooks and how to access reports. In the May 30th
13 report, Ms. Springer found that that, the QuickBooks
14 experience, understanding was satisfactory. So that has
15 been resolved.

16 No. 3 was billing of standby fees on developer
17 owned lots in the Steeds cabin. That was really the
18 first time this had been raised was back at that point.
19 And at that point, you will recall that the Steeds did
20 hold an auction, and they sold off everything that they
21 could.

22 And all the property was then moved on to
23 either a standby or to -- at least my understanding, as
24 reported in the report, was moved to a standby or to
25 eventually a water connection. So we believe that has

1 been resolved as of the first of the year.

2 The fourth one is the monthly reading, monthly
3 meter reading as required by the tariff. And I'll talk
4 about that in a minute. But they do read monthly unless
5 the snow is so deep that they can't open the meter box
6 on the ground.

7 And then No. 4, the filing of the 2017 report
8 and the 2017, '18 and '19 reports have all been filed.
9 So we believe all those items from the October report
10 have been remedied, taken care of and that there's no
11 violation in regard to any of those.

12 Now I will move forward to the additional
13 review, visit and the report that was prepared by the
14 DPU in the May 30th, 2019.

15 The May 30th report alleges six violations of
16 either a rule of the Public Service Commission or of a
17 tariff provision for South Duchesne Culinary Water. As
18 I noted in South Duchesne's response, we don't disagree
19 with the factual basis as reported. We just disagree
20 with the interpretation. And we do not believe that
21 there is a single violation.

22 Therefore, our recommendation ultimately is
23 that the penalty, the deferred amount from the original
24 order of the 14,000 does not need to be reimposed. Nor
25 do we believe that additional penalty should be imposed.

1 But let me take those one by one.

2 I am looking at -- if you would like to follow
3 along in some of our discussion, your Honor, you are
4 welcome to do so. I am looking at my response, and item
5 No. 1 is the unapproved fee.

6 The assertion was, by the DPU, that South
7 Duchesne was charging some unauthorized fee. South
8 Duchesne is authorized to charge a \$15 standby fee for
9 undeveloped lots and a \$40 minimum fee for those lots
10 receiving. We have never charged anything different
11 than that.

12 In the audit it was discovered that one
13 account had a billing amount of \$55. That was an owner,
14 an elderly couple, as noted in the report of
15 Ms. Springer, who has a cabin lot and an undeveloped
16 lot. They own both. They are immediately adjacent, and
17 they asked the water company, "Could you just send us
18 one bill for a \$55, 15 and 40?"

19 South Duchesne accommodated and sent a \$55
20 billing. That is not an unauthorized fee. It's a \$15
21 fee and a 40 fee. That's the authorized fee, so there's
22 no unauthorized fee there. The question is the billing
23 appropriateness. We think this is a minor issue.

24 When Ms. Springer saw it, she said, "You
25 really should send them two invoices or somehow break it

1 out." South Duchesne said, "Fine. If you believe
2 that's what we need to do, let's fix it now."

3 Ms. Chris Koford, the accountant bookkeeper
4 for the company, with Ms. Springer present, clicked the
5 box in QuickBooks to separate the invoices, and since
6 May it's been two separate billings. We don't believe
7 that's a violation, nor do we believe it merits a
8 penalty.

9 No. 2, delinquent accounts. There are a
10 number of delinquent accounts on \$15 standby fee,
11 primarily people who have bought the lots, have not
12 built cabins, and they just don't want to pay the \$15
13 fee. And they are saying, I am not going to pay it.

14 MS. SCHMID: Objection. These are facts not
15 in evidence, and so I object to their use in argument.

16 MR. CRAPO: Your Honor, I am only merely
17 stating what is in Ms. Springer's report. Maybe I have
18 added a few of my interpretations of those, and I
19 apologize. I'll try to be more careful.

20 PRESIDING OFFICER HAMMER: The commission
21 understands it's receiving argument. Mr. Crapo can
22 proceed.

23 MR. CRAPO: And I note that I am trying to
24 stay to the report. Ms. Springer noted that these
25 accounts are primarily the standby accounts. And so

1 those have -- some of those haven't been paid.

2 Ms. Springer properly noted that, hey, you
3 have got a lot of delinquent accounts. There are, and
4 South Duchesne is attempting to collect those and is
5 using their best efforts to do so. And they are making
6 efforts to do so.

7 I am unaware of any violation or any provision
8 within the administrative code or the statute that says
9 a water company cannot have a delinquent account. If a
10 water company or even an electric company or even a gas
11 company had a delinquent account and they are penalized
12 because someone does not pay their bill, that seems
13 pretty arbitrary and capricious.

14 Now, Ms. Springer does cite administrative
15 rule 74-200-7. As you're aware, that is the provision
16 that deals with terminating service for someone who has
17 water service. And there is a lengthy -- let me just
18 pull that up.

19 The provision is titled Termination of
20 Service, and there is a lengthy set of provisions that a
21 water company or another utility must follow in order to
22 terminate the water service. If you have a medical
23 reason, you can't terminate. You have to give notice.
24 You have to try to negotiate the fee, reduce the fee and
25 negotiate or enter into a deferred payment or plan. So

1 it all deals with termination.

2 South Duchesne has not attempted to terminate
3 service for anyone receiving water, and on a standby
4 fees, they haven't attempted to terminate service. And
5 what I have noted uniquely is, there's no service to
6 terminate. You couldn't go to somebody who has
7 undeveloped lot and say, "I am going to turn off the
8 water that you don't have yet." There is no connection.

9 So there's no reason for the company to give a
10 termination notice. They have merely tried to contact
11 these people, explain the tariff, explain how it's
12 proceeding, and try to collect the appropriate amount.
13 And as noted, they are making headway. But there is no
14 violation of any section that we are aware of. So we
15 believe that should be a nonissue.

16 No. 3, the meter readings. As you have heard
17 before, the meters -- this is a recreational area in
18 Duchesne, and they are cabin lots. The meters are
19 buried about a foot to three feet deep into the earth
20 with a plate over the top. When the snow is very deep,
21 it's physically impossible for Mr. Schnars and his staff
22 to go out, remove all the snow, dig down and be able to
23 read every meter.

24 Since the last proceeding, their staff has
25 read the meters monthly, every month that they can.

1 When the snow is too deep, they don't. And we
2 acknowledge that the tariff says that you should read
3 them monthly, and we are willing to amend the tariff to
4 change that to be maybe more consistent with the rule
5 that says you read monthly unless the weather is bad, or
6 change it to bimonthly or not during the winter months
7 and then make adjustments.

8 We're willing to do that. We had wanted to
9 wait until all of these issues have been gathered
10 together and make one tariff recommendation rather than
11 do piecemeal tariff amendments.

12 I did cite for you, your Honor, the
13 administrative rules R746-200-4, which deals with meter
14 reading, which is the rule of this commission, which
15 says that when weather conditions prevent regular meter
16 readings, the utility will make arrangements from the
17 customer, get meter readings at acceptable intervals.

18 That's exactly what they have done. They have
19 read them when there is no snow. As soon as the snow
20 melts, they go out and make arrangements with the owner.
21 They read it. If there is any adjustment, they make the
22 adjustment. Candidly, most of them stay under the
23 minimum of 10,000 gallons and no adjustment is needed.
24 There are a few occasionally, but rarely.

25 We do not -- what can I say? Technically that

1 may be a violation of the language of the tariff that
2 says you should read every month, but we believe with
3 the spirit of the law and with the actual commission
4 rule, which we believe to take precedent over that
5 provision of our tariff, that allows us the leeway of
6 bad weather. We do not believe it's a violation.

7 No. 4, late charges. As you will note -- I'll
8 go back in the history a little bit, your Honor. As you
9 are aware, this whole matter started with the allegation
10 of an improper late fee by South Duchesne on Ms. Olsen's
11 bill. Slapped a 10 late fee on it. The argument was,
12 there is no provision for that. And this commission
13 found there was no provision for a 10 dollar flat fee in
14 the tariff. It needed to be a 1.5 percent interest fee.

15 And so after that original proceeding, South
16 Duchesne went and met with its accountant and staff, and
17 they took their QuickBooks. And they input and went to
18 the tariff paragraph 13 and input the formula into the
19 tariff which puts a 1.5 percent fee, late fee if you pay
20 late after the first 30 days. That was properly put
21 into the QuickBooks.

22 If you will look at the -- Ms. Springer's
23 memorandum from the division, on page 9. When South
24 Duchesne put the formula into QuickBooks, the tariff
25 says that you can impose the penal -- impose the late

1 fee on "the outstanding balance" are the words.

2 Because South Duchesne was worried and did not
3 want to receive another penalty, they interpreted that
4 and said, that means simple interest. Just charge the
5 rate on the amount of the water charge. Don't do
6 compound interest, which would be the water charge plus
7 any prior interest from prior billings.

8 And with that information that's been
9 provided, Ms. Springer noticed that that was the way it
10 was being done. Ms. Springer disagreed with that
11 interpretation and said, no, I think you should charge a
12 higher interest fee. You should be charging interest on
13 the interest, or in other words, a compound interest
14 rate.

15 We do not disagree with that. We believe our
16 interpretation was correct to charge it only on the
17 water fee, rather than water plus interest compound
18 interest. But if the division wants us to do it that
19 way and charge a higher fee to our customers for
20 interest, we are happy to do so. In fact, Ms. Springer
21 changed that calculation when she was present at the
22 site so that it would charge it as a compound basis
23 rather than a simple basis.

24 We do not believe this is a violation of our
25 tariff to charge less interest than authorized. We

1 believe our interpretation was reasonable, and we
2 believe that giving a benefit to our customers of less
3 interest should be encouraged by this commission, not
4 penalized by this commission. So we do not believe
5 there is any violation for late interest charges as
6 outlined on item 4.

7 Item 5, dealer, slash, owner charges. As
8 expressed in Ms. Springer's memorandum and as expressed
9 in our argument, this development was a development of
10 recreational property that also needed water. There
11 were two companies that were formed, a development
12 company, Duchesne Lands LLC, that was to start to
13 develop the property to be able to be sold to build
14 cabins. But it needed water. So a water company, South
15 Duchesne Culinary Water, was formed.

16 Both of those were owned by the Steeds
17 ultimately, either as an LLC for the one, or as
18 shareholders for the water company. For -- one of the
19 initial steps was to go get a permit and to be able to
20 get water and to start that process in 2003, as noted.
21 Permission was granted by the PSC for a tariff and
22 development started.

23 During the early years no fees were charged.
24 No water fees were charged in 2003 for any connections
25 because there weren't any, and no water fees were

1 charged by standby fees. In fact, as noted in
2 Ms. Springer's, no standby fees were charged to unsold
3 lots. Well, to any lot -- were not charged to any lot
4 until 2012 because they just wanted to make sure they
5 had sold a sufficient amount of lots.

6 So during that time from 2003 to 2012, in
7 essence, the developer, Duchesne Land and the Steeds,
8 paid for all construction, all development, all
9 operations of the water company. There were little or
10 no revenues. There were a few lots that sold and
11 connected water fees, and those began to pay the \$40.
12 So there was a little bit of that, but nothing major.

13 In 2012 they felt that enough lots had been
14 sold and cabins were being built that it was time to say
15 everyone will pay their fair share, and that was what
16 was done, with the exception of unsold lots, which were
17 said, these haven't been sold yet. Once they are sold,
18 we will move them on to the water system. That's the
19 way it was handled.

20 We are unaware of anything that would prevent
21 the water company from negotiating with the developer to
22 say, you don't have to pay the \$15 a month, or we
23 consider it covered by the fees that you have already
24 paid on behalf of our water company. We are unaware of
25 anything that would allow that type of a quid pro quo to

1 go on.

2 This issue was first raised in the October
3 review, and upon that review, as you are aware, the
4 developer and Steeds were trying to wind up this
5 facility and shut down all their operations. And they
6 entered into an auction and sold basically all of the
7 remaining lots. 110. There's discussion of the 125,
8 110. It's about 110, I think, were sold. 10 or 15, I
9 believe Ms. Springer noted that weren't sold at the
10 auction.

11 All of those properties, it is our
12 understanding, as confirmed by Ms. Springer, have been
13 moved over. So we believe this issue is resolved in
14 that regard.

15 Now, there's two other items. What could
16 happen? I guess if you wanted to say, well, the
17 developers should pay, even though the quid pro quo
18 wouldn't be accepted of your hundreds of thousands of
19 dollars for distribution lines, tanks and operating the
20 facility for us isn't acceptable.

21 I guess you could have Ms. Steed, who is sole
22 owner of Duchesne Lands now, since her husband passed
23 away, write a check for the 146,000 to South Duchesne
24 Culinary Water. And then she can take that money out as
25 the shareholder of South Duchesne Culinary Water, put it

1 back into whichever bank account she deems appropriate
2 for her.

3 Of course, she has to maintain a proper
4 balance at South Duchesne Culinary Water so it has
5 proper cash flow, which there's never been an allegation
6 that it hasn't. And Steeds have always supplemented and
7 kept this water company going if they needed to.

8 The other thing I note and primarily probably
9 in footnote 5, on page 5, footnote 2, that DPU cites
10 rule R746-330-6 but doesn't really explain why that
11 section is cited. And so I may have to respond to
12 whatever comments Ms. Schmid has.

13 But that section is titled rate-based
14 treatment of developer-owned water and sewer company
15 assets and presumption of recovery. That section deals
16 with when you are setting rates to charge for water, you
17 shouldn't add in an amount in the rate base or in the
18 rate charge for developer donated facilities if they
19 have been recovered through the sale of the development
20 of the lots or whatever was there.

21 The \$40 was originally set and the 15 because
22 that was believed to be the accurate amount to pay for
23 the water and to pay for the operation of the facility.
24 There's no indication that that includes anything for
25 development. Nor is there that allegation. So we

1 believe citation to this rule is inapposite. It just is
2 meaningless to this particular situation.

3 If for some reason it was applicable, we
4 believe that the facts that are in public record really
5 document that the profitability wasn't here because, as
6 you are aware, there was an action that froze the assets
7 in 2008, resulted in the Supreme Court decision that's
8 cited here. The operations were shut down, and that's
9 why ultimately the lots had to be auctioned off.

10 But we don't believe you have to get to that
11 point. We believe there's no violation of any rule. We
12 are unaware of any rule that -- or tariff really that
13 would prevent South Duchesne from having that
14 arrangement of a quid pro quo for services rendered by
15 the developers in exchange for their fees.

16 No. 6. No. 6 is a water purity standard. I
17 am not exactly sure from the memorandum where DPU is
18 going with this. They do cite rule 746-330-2. That
19 provision states that water companies shall furnish, and
20 it says water furnished by utilities for culinary
21 purposes should be agree able to sight and smell and be
22 free from disease-producing organisms. And it says the
23 standard for what's clean and pure is under the water
24 criteria of the drinking board, which ties to rule 309.

25 South Duchesne has never had a violation for

1 providing anything but pure water. They provide their
2 water testing on time. They provide it when needed, and
3 it's always come back clean. In the reports that are
4 attached as exhibits here to Ms. Springer's report, you
5 can see the DPU summary over the past number of years.
6 There's never been a single violation or note of
7 impurity of water. So there is simply no violation of
8 that rule.

9 Now, the DPU cites -- does notice that there
10 was a letter issued on April 22nd, 2019, from the
11 Department of Environmental Quality, and there were two
12 concerns as noted in those attachments. The first one
13 was, there was a break in the line right by the tank,
14 the largest tank, on January 8th. And there was what is
15 called a dewatering event.

16 And any time you have a dewatering event, you
17 have to give notice, and the department -- as we have
18 talked about this. You have to give a no boil notice to
19 those who could be affected, and you are supposed to
20 notify the division of -- Department of Environmental
21 Quality and Drinking Water.

22 South Duchesne did give the proper notice to
23 those who receive water. In its speed and hurry to
24 repair the leak and get things back operating, they did
25 not within the 24 hour period contact the Division of

1 Environmental Quality. And so that was a citation.

2 Under the department's rules, they -- for a
3 non -- for a community-based system, you can have what
4 are up to 150 points and still be viewed as in an
5 approved status. If you get more than 150 points, then
6 you move to a not-approved status, and then you have to
7 make revisions and changes to negotiate and make cures
8 to get back into approved status.

9 So the first one was that notice, and 50
10 points were allocated as noted in the attachment to
11 South Duchesne Culinary Water. It was also noted at
12 that time that prior to the death of Mr. Steed, back in
13 2012 and '13, there was concern that there were two
14 cabins, and they are noted in the report, that were
15 close to the elevation of the tank and that their
16 pressure for those two cabins was less than a 20 pounds
17 per square inch that was required.

18

19 And they were issued a correction order.
20 South Duchesne believed they corrected that order by
21 attaching a pump magnification to those two cabins to
22 get it up. When this break occurred, the department --
23 the Division of Environmental Quality said, "Wait a
24 second. Just fixing those two cabins is insufficient.
25 You have got a line that comes around and serves more

1 lots or potentially will serve more lots in the future.
2 And so you need to re -- have some sort of remediation
3 that will ensure that not only does the pounds per
4 square inch stay for those cabins, but for anything that
5 will be built there, and you have got to do it now."

6 And so that was the second violation that was
7 issued, and they were issued a hundred points for that.
8 That caused them to go above the point total for the DDW
9 or Department of Drinking Water. And so the Department
10 of Drinking Water issued that proceeding notice to them
11 and said, you have to give Tier 2 notice that you are
12 not approved to all of your owners, and then you need to
13 give us a plan on how you are going to remediate that
14 pounds per square inch on that upper section.

15 South Duchesne did that. They gave their
16 notice, and they also have been working with an
17 engineering company, as noted in Ms. Springer's report,
18 to develop what would be the proper remediation. And
19 they have been working with the DDW on that. They did
20 not file an appeal or a protest to that proceeding or
21 that notice. They have just been working with the DDW
22 to remediate that line.

23 While that's an issue that South Duchesne is
24 working on, and they will get it worked out, they are
25 still operating. They are in the not-approved status,

1 which means they have got to get that remediation plan
2 completed, fixed and then they will move back. Points
3 will be taken off. They will move back to approved
4 status.

5 That's still underway, but that's not a
6 violation of the PSC rules. That is an issue that the
7 DDW is working with South Duchesne. DDW has not
8 asserted that there is any violation of providing of
9 pure water. They are concerned that there could be a
10 risk if this remediation doesn't occur in the future, so
11 that's why we are working with them. So item No. 6 we
12 don't believe is a violation of any DPU provision.

13 So your Honor, with that summary of those six
14 items, we believe everything has been properly handled.
15 I will say South Duchesne says it received the order
16 from the PSC giving it the benefit of suspending the
17 \$14,000 penalty previously. You will recall in that
18 order -- let me find that.

19 We fully read the language too. If there's
20 any violation, that can cause it to be back. But before
21 that, the PSC makes the statement that we think it's
22 best for South Duchesne's customers or they will be best
23 served if the penalty mechanism will incentivize them to
24 the full extent to remedy and take care of everything.

25 South Duchesne has been trying diligently to

1 cure every possible nit, every possible issue, and make
2 sure that they are operating a hundred percent in
3 compliance. We believe we have been.

4 We believe a number of the items in this
5 memorandum are quite trivial, and we believe that none
6 of them are a violation of the rule or tariff and would
7 ask that this matter -- that a ruling be entered that we
8 have complied, that no penalty needs to be unsuspended,
9 no additional penalty needs to be imposed.

10 If for any reason the DPU feels they want to
11 continue to monitor and come out, you know, every five
12 to six months or whatever they need to do to review,
13 we're happy to do that. We're happy for their input.
14 We're happy to be able to make remediations if they see
15 anything. I think South Duchesne's been appreciative of
16 those type of moving-forward comments and assistance.
17 And with that, we would ask that that type of a ruling
18 be entered, your Honor.

19 PRESIDING OFFICER HAMMER: Thank you,
20 Mr. Crapo. Ms. Schmid?

21 MS. SCHMID: Thank you. South Duchesne is a
22 regulated public utility. As part of the privilege of
23 being allowed to be a regulated utility, public utility,
24 South Duchesne has certain obligations. Those
25 obligations include, but are not limited to, to act as a

1 reasonable and prudent public utility, to provide
2 adequate safe service, which includes providing an
3 approved water system and clean water.

4 Also, the public utility is not permitted to
5 act in an unduly discriminatory manner. The public
6 utility is bound to follow the statutes, rules and its
7 tariff. South Duchesne has not done so. South Duchesne
8 was found that it did not do so in the past and was
9 assessed a penalty of over \$20,000.

10 In an effort to induce the company to remedy
11 its situation, part of that penalty, indeed the majority
12 of that penalty, was suspended, contingent upon South
13 Duchesne not being found to violate any statute, rule or
14 tariff in the three years following the commission's
15 order.

16 It is the obligation of the utility to act
17 correctly. When the division went to the utility, the
18 division found things it considered violations. The
19 division provided the support for that in its memo. The
20 company's interpretation of its tariff seems to be
21 unreasonable in part and inconsistent with its duties as
22 a public utility.

23 For example, the company argued that they
24 didn't see anything wrong with charging a lesser
25 interest rate. Well, if the tariff says they should

1 charge interest this way, they need to do that. If the
2 tariff says that all customers will be charged X, all
3 customers will be charged X, and it is not fair to
4 consider that some customers won't be charged that
5 because the premise of a public utility is that everyone
6 will be treated on an equal basis and they will receive
7 appropriate service and the utility will act reasonably
8 and prudently.

9 The arguments made that these are small things
10 and they shouldn't really count as violations and the
11 company said, "Well, we don't argue with the facts. We
12 argue with the interpretation." Well, the facts are
13 clear that violations occurred.

14 The fact that the Steed, slash, developer
15 didn't pay the appropriate land -- sorry, didn't pay the
16 appropriate charges and standby fees, that is not a
17 trivial matter. That is an undue preference. It is not
18 acceptable for a regulated public utility to act that
19 way.

20 The fact that the Steeds have tried to remedy
21 the situation is acknowledged with the facts that
22 Ms. Shauna Benvegna-Springer presented in her
23 memorandum. The fact that they didn't is critical. The
24 fact that they didn't shows that they are engaging in a
25 pattern of disregarding appropriate regulations and

1 failing to act as a reasonable regulated public utility.

2 The division believes it is appropriate and
3 indeed necessary under the commission's order in the
4 Housekeeper and Olsen docket for the commission to
5 reinstate the entire suspended penalty. The division
6 believes that the facts in this case, rule, statute and
7 tariff, support finding the violations set forth in the
8 division's memorandum.

9 The arguments about the Steeds contributing
10 money and how that should be a quid pro quo and how they
11 should not be subject to the same charges is
12 unsupportable. With that, the division urges the
13 commission to find violations have occurred, that the
14 suspended penalty should therefore be reinstated, and
15 that an appropriate penalty be assessed for these new
16 violations. Thank you.

17 PRESIDING OFFICER HAMMER: Thank you,
18 Ms. Schmid. If you will permit me one question.

19 MS. SCHMID: Of course.

20 PRESIDING OFFICER HAMMER: There was some
21 discussion earlier. With respect to the Steeds having
22 not been charged by the utility in the past for their
23 undeveloped and developed lot, what form of remedy
24 outside the penalty sphere does the DPU recommend the
25 PSC issue? In other words, should we compel the utility

1 to attempt to collect that money?

2 MS. SCHMID: I would suggest, yes, indeed
3 because a reasonable and prudent utility would have
4 collected it in the past. A reasonable utility would
5 not have allowed certain customers to go on for years
6 not paying. A reasonable utility would treat everyone
7 fairly. That's what a public utility is, and that's
8 what they failed to do.

9 PRESIDING OFFICER HAMMER: I only ask for
10 clarification because when Mr. Crapo was reviewing the
11 division's May 30th report, there was some discussion
12 about page 12 where Ms. Springer wrote at the end of the
13 second paragraph, "The division recommends the
14 commission order the utility to pay the amount owed."

15 I believe Mr. Crapo argued that instead of
16 utility, that sentence should read "developer to pay the
17 amount owed." And I thought I heard the DPU agree with
18 that. So I just want to make sure everyone's on the
19 same page.

20 MS. SCHMID: Yes, that is correct. The
21 utility -- the commission should find that the tariff
22 was applied improperly, that the rates were charged
23 improperly, and that the utility make the Steeds, the
24 developer, owner, the alter ego in many respects of the
25 utility, pay that.

1 PRESIDING OFFICER HAMMER: All right. Thank
2 you, Ms. Schmid.

3 MS. SCHMID: Thank you.

4 PRESIDING OFFICER HAMMER: Mr. Crapo, I'll
5 give you the last word.

6 MR. CRAPO: Thank you. Just a couple of
7 items. One of the first statements that Ms. Schmid made
8 is that there's new violations. There are no new
9 violations, none, and the second statement she made is
10 the Steeds have a pattern of disregard for the rules and
11 regulations.

12 I am going to take exception with that. There
13 is no record that shows that in this matter. I don't
14 know what has happened that has offended individuals at
15 the DPU to feel that they need to act this way towards
16 this utility, but I believe that the record shows that
17 South Duchesne is moving forward and is making every
18 effort to comply.

19 In addition, they have treated people fairly.
20 Ms. Schmid said, what about the late charges? If the
21 late charges says what it is, it has to be charged. You
22 can't treat some one way or the other. You have to do
23 it. No, South Duchesne has treated every single one of
24 its customers the exact same way.

25 On paragraph 13 of its tariff, it says, "After

1 30 days a late charge of 15 percent of the past-due
2 balance will be assessed." The utility interpreted the
3 past-due balance as the balance owing for the water, and
4 they charged interest on that. They didn't charge any
5 other interest or any less interest to anybody else.
6 They charged every single customer the same, treated
7 everybody fairly and uniformly.

8 The division believes the interpretation of
9 that language should be, balanced means compound
10 interest, interest on interest, not just interest on the
11 water charge. Now, if that's the interpretation they
12 want, fine. But South Duchesne has made a good faith
13 effort to interpret that correctly.

14 And if it's changed, which it has been, to be
15 compound, then compound interest will be treated to
16 every single customer. It will be uniform. It will be
17 equal. All will be treated the same. So to say we are
18 treating people differently on the interest charge is
19 absolutely incorrect.

20 Now, it says we need to be responsible. We
21 need to be prudent. We need to not be discriminatory.
22 South Duchesne has been reasonable. It has an elderly
23 couple who calls in and says, "Will you send me one bill
24 for my two water charges?"

25 What is unreasonable with that? They found

1 one account, and they claim that as a penalty. They
2 have separated it out now, and now that customer says,
3 "I have a hard time writing you two checks. I can't
4 figure this out." We are treating and working
5 reasonably and treating everyone fairly.

6 If you go back to the six points, the
7 unapproved fee, we never charged unapproved fee. It was
8 just a combination. Delinquent accounts, that's not a
9 violation. Meter reading, we believe the rule that says
10 that there's weather conditions, you can have an
11 exception, governs. Number 4 -- and there's no
12 violation.

13 No. 4 we talked about late charges. We're
14 consistent with our tariff. We're living with our
15 tariff. If you want to interpret it differently, we'll
16 interpret it differently, and we'll treat everybody the
17 same as I have mentioned.

18 No. 6 -- I am going to jump because I am going
19 to finish with five. No. 6, water purity. There's been
20 no allegation, no proof that we have ever provided
21 anything but pure water. There's no violation of the
22 PSC's provision there.

23 So what's left? Number 5, the undeveloped
24 lots. And the undeveloped lots were mentioned in the
25 October report. These undeveloped lots are not

1 receiving, were not charged. That was part of the last
2 hearing when the penalty was impressed. If there was to
3 be a penalty imposed for not charging lots, it should
4 have been back in October of 2018.

5 And they say there's new allegations, there's
6 new violations. The exact opposite occurred here, your
7 Honor. It was raised back in October before the first
8 hearing and penalty phase. Hey, you have got these
9 lots. So what did South Duchesne do? They said, we
10 disagree because this how we have treated it, but we'll
11 remedy it.

12 And before the end of the year, what did they
13 do? They sold all the lots. They moved everything over
14 on to the tariff. What more could this company have
15 done? That is not a new violation. None of these are
16 new violations.

17 We ask you, your Honor, to enter an order
18 finding no violation, and if it's appropriate to
19 continue to have monitoring, which we believe it is, we
20 will gladly accept it. But to continue to have these
21 types of proceedings and arguments for \$15 and \$40 and
22 for violations that were discussed before and are not
23 new, which we don't think are violations, we don't
24 believe is appropriate.

25 We would ask you to enter judgment in favor of

1 South Duchesne on this matter at this point, and I am
2 open to any questions if you have any, your Honor.

3 PRESIDING OFFICER HAMMER: I don't.

4 MR. CRAPO: Okay. Thank you.

5 PRESIDING OFFICER HAMMER: Thank you,
6 everyone. Have a nice afternoon. We're adjourned.

7 MS. SCHMID: Thank you.

8 (The hearing concluded at 2:21 p.m.)

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1 C E R T I F I C A T E

2 STATE OF UTAH)

3 COUNTY OF SALT LAKE)

4 THIS IS TO CERTIFY that the foregoing proceedings
5 were taken before me, Teri Hansen Cronenwett, Certified
6 Realtime Reporter, Registered Merit Reporter and Notary
7 Public in and for the State of Utah.

8 That the proceedings were reported by me in
9 Stenotype, and thereafter transcribed by computer under
10 my supervision, and that a full, true, and correct
11 transcription is set forth in the foregoing pages,
12 numbered 3 through 55 inclusive.

13 I further certify that I am not of kin or otherwise
14 associated with any of the parties to said cause of
15 action, and that I am not interested in the event
16 thereof.

17 WITNESS MY HAND and official seal at Salt Lake
18 City, Utah, this 27th day of July, 2019.

19 
20
21 Teri Hansen Cronenwett, CRR, RMR
License No. 91-109812-7801

22 My commission expires:
23 January 19, 2023
24
25

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