
Investigation of South Duchesne Culinary
Water, Inc.'s Compliance with Applicable
Administrative Rules and Tariff

DOCKET NO. 18-2372-01

ORDER

ISSUED: September 4, 2019

1. PROCEDURAL HISTORY

a. The Complaint Dockets and Suspended Penalty

This docket arises out of two customer complaints the Public Service Commission (PSC) previously adjudicated, *Formal Complaint of Tanya and Nick Olsen*, Docket No. 17-2372-01 and *Formal Complaint of Shane Houskeeper*, Docket No. 17-2372-02 (collectively, the “Complaint Dockets”).

On February 13, 2018, the PSC issued a Consolidated Order in the Complaint Dockets (“Original Order”), finding SDCW had violated numerous regulations and provisions of its tariff including but not limited to the following: (1) charging excessive late fees; (2) overbilling; (3) refusing to allow a customer to take “standby service” as allowed in the tariff; (4) requiring a customer to pay on unlawful billing cycles; (5) failing to allow a customer 20 days to pay her bill as required under applicable rule; (6) improper termination of service; and (7) termination of service without required notice. Consequently, the PSC directed SDCW to remedy these violations, imposed a total penalty of \$20,250.00, and directed the Division of Public Utilities (DPU) to conduct a review in six months to ensure SDCW had complied with the order and adopted billing procedures consistent with applicable regulations and its tariff.

SDCW subsequently filed a Petition for Redetermination. The PSC issued a Consolidated Order on Petition for Redetermination on April 3, 2018 (“Order on Review”). There, the PSC

determined “nothing in the Petition [gave] the PSC cause to reconsider any finding or conclusion in [the Original Order].” (Order on Review at 2.) However, “on further consideration, the PSC conclude[d] SDCW’s customers [would] be best served if the penalty mechanism incentivize[d], to the fullest extent possible, SDCW to promptly and thoroughly remedy its unlawful business practices.” (*Id.*) Accordingly, the PSC suspended 70 percent of the penalty it imposed in the Original Order. However, the PSC ordered that “[i]f the PSC finds, in an order following an adjudicative process, an additional violation in [the next three years], the PSC [would] lift the penalty’s partial suspension and impose the full penalty in addition to any penalty associated with the new violation.” (*Id.* at 2-3.)

On October 30, 2018, the DPU filed a report (“DPU’s First Report”) consistent with the PSC’s instruction to conduct a six-month review in the Original Order.¹ The DPU’s First Report explained SDCW had made progress resolving some problems but identified numerous issues that persisted. Consequently, the PSC initiated the instant docket and set the matter for a scheduling conference to investigate the new and continuing problems the DPU identified in its First Report.

b. The Investigation Docket

On December 4, 2018, the PSC held a scheduling conference in the instant docket. At the conference, the parties agreed the DPU would conduct a “Follow-Up Audit” to further examine the unresolved issues, SDCW would have an opportunity to file comments in response to the

¹ The DPU sought and obtained a 30-day extension to file the report.

Follow-Up Audit, and the PSC would hold a hearing to consider any issues raised in it on July 18, 2019.

On May 30, 2019, the DPU filed a memorandum detailing the results of its Follow-Up Audit (“Audit Report”). In it, the DPU identified six violations (“Additional Violations”) it alleged needed correction as follows:

- (1) An unapproved fee not on the tariff;
- (2) A very large amount of uncollected delinquent accounts;
- (3) Failure to read meters each month;
- (4) Incorrect calculation of a late charge;
- (5) Failure to charge or collect fees from the developer and utility owner; and
- (6) Failure to meet the Division of Drinking Water’s water purity standards.

On July 1, 2019, SDCW filed a response to the DPU’s Audit Report (“Response”), generally either denying the violations exist or arguing they are *de minimis*. On July 18, 2019, the PSC held a hearing with respect to the alleged Additional Violations during which the DPU presented argument and testimony. SDCW appeared through counsel and offered argument, but no testimony, in its defense.

2. ANALYSIS, FINDINGS, AND CONCLUSIONS

For clarity, we separately examine each of the alleged Additional Violations.

a. Unapproved Fee and Incorrectly Calculated Late Charge

In the Audit Report and testimony at hearing, the DPU explained that SDCW has been charging one customer “a \$55 per month [fee] ... [but] [t]here is not a \$55 fee in the tariff.” (Audit Report at 6.) The DPU further explained the customer owns two lots, one developed and

the other undeveloped, and requested SDCW issue a single invoice for both lots. “Hence the water fee and the standby fee were combined to bill one charge instead of itemizing the charges.” (*Id.*) In its Response and in argument at hearing, SDCW emphasized it combined the bills at the customer’s request, SDCW billed the correct amount (i.e., the \$15 standby fee for one lot and the \$40 usage charge for the other lot correctly sum to the \$55 SDCW jointly billed), and that “[u]pon notice of this item from the DPU, SDCW immediately changed the invoices in its [accounting system]” in the presence of DPU’s auditor. (Response at 2.)

On the subject of billing, the DPU also alleges SDCW continued to charge incorrect late fees after the PSC issued its Consolidated Order in the Complaint Dockets. Specifically, the DPU explains SDCW’s tariff provides “[l]ate charges will be assessed at 18% per annum on all past due amounts until the account is brought current.” (Audit Report at 8.) However, the DPU protests that SDCW has failed to charge interest on accrued interest charges, i.e. SDCW has charged simple interest instead of compound interest. The DPU represents SDCW updated its billing software to charge compound interest after the DPU brought this issue to SDCW’s attention. SDCW agrees it has changed its calculation of late fees as the DPU requested, but SDCW emphasizes its simple interest practice resulted in lesser late charges for customers and was consistent with the tariff. (Response at 4.)

The PSC concludes neither of these allegations warrant holding SDCW in violation of its tariff. The instance of combined billing does not reflect best accounting or business practice, and the PSC expects SDCW to respect and abide by the billing terms outlined in its tariff. However, because SDCW issued the combined bill at the customer’s request and billed a sum that was accurate and reflective of the amount the customer owed, the PSC concludes it would be

counterproductive and unduly punitive to penalize SDCW with respect to this *de minimis* occurrence. With respect to the simple interest SDCW charged on delinquent accounts, the PSC finds SDCW's interpretation of its tariff was not unreasonable and that SDCW's practice of charging simple interest, to the extent it was a mistake, favored customers. In light of its prior issues with fairness and accuracy in billing, the PSC is encouraged that SDCW erred on the side of being less punitive to its customers and will not answer that effort by finding SDCW in violation of its tariff and imposing a penalty.

b. Uncollected Delinquent Accounts

The DPU explains “[n]early 45% of [SDCW’s] accounts as of February 28, 2019 were delinquent [sic] were overdue 90 days.” (Audit Report at 6.) The DPU further represents “[t]he outstanding balance represents more than a year[’s] worth of revenue.” (*Id.*) The DPU notes “[m]any of the delinquent accounts are for standby fees” and that SDCW “is pursuing a contract with a collection agency to either collect or write off the amounts that are not collectable.” (*Id.* at 7.) In its Audit Report, the DPU invokes Utah Admin. Code R746-200-7, which is titled “Termination of Service,” but does not indicate which particular provision it believes SDCW has violated with respect to its delinquent accounts.

SDCW explained in its Response and at hearing that most of the delinquent accounts are standby accounts, which “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” but “[f]or a standby customer, there is no service to be disconnected.” (Response at 2-3.) SDCW represents it is taking steps to recover the delinquent standby accounts, “has helped more than twenty-five Standby Accounts become

current” during the past year, and “is pursuing a contract with a collection agency to assist it in trying to collect and/or write off delinquent accounts.” (*Id.* at 3.) SDCW states, however, it “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.” (*Id.*)

We have identified no specific provision of tariff, rule, statute, or order that SDCW’s failure to recover on its delinquent accounts violates. We share the DPU’s concern that SDCW employ reasonable collection efforts and recover or write-off delinquent accounts in a manner consistent with responsible accounting practices. We also recognize that SDCW’s standby accounts are unique insofar as these accounts do not receive service from SDCW and, therefore, are not incented to avoid termination as most utility customers are. We direct SDCW to continue and complete its efforts to address the significant number of delinquent accounts, but we find and conclude SDCW has committed no violation of statute, rule, tariff, or prior PSC order with respect to this issue. Additionally, we direct SDCW to file a report during the month of **September 2020**, apprising the PSC of the status of its delinquent accounts.

c. Failure to Read Meters Each Month

The DPU quotes SDCW’s tariff, which reads “All meters shall be read by the Utility monthly and charges shall be based upon meter readings” (Audit Report at 8.) The DPU represents that, nevertheless, SDCW failed to read meters in January, February, and March 2019 “due to heavy snow covering meters.” (*Id.* at 7.) The DPU recommends the tariff be amended to contain language “identifying how bills are to be estimated and rendered when meters cannot be read” in the winter. (*Id.* at 8.)

In response, SDCW explains the meters could not be read in January, February, and March “due to the heavy snow covering the meters.” (Response at 3.) SDCW cites Utah Admin. Code R746-200-4, which 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.” (*Id.*) SDCW explained “[w]hen meters cannot be read, SDCW only bills the minimum rate of \$40 consistent with ... its Tariff, and then makes appropriate adjustments once the meter can be read again.” (*Id.*) SDCW represents it “has also been exploring the possibility of using transponder equipment that could allow automated meter reading even through heavy snows” and that it is “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.” (*Id.* at 3-4.)

While SDCW’s tariff fails to contemplate weather conditions preventing timely meter readings, the Utah Administrative Code expressly recognizes such a possibility. No allegation exists that SDCW failed to read the meters for any reason other than the prohibitive weather. Therefore, the PSC concludes SDCW did not commit a violation by failing to read the meters when they were submerged in snow.

Given that inclement weather in the region is likely to render the meters unreadable in future winters, the PSC directs SDCW to submit proposed tariff revisions putting customers on notice of this possibility and explaining the process SDCW will consistently employ to address it (e.g., applying an adjustment as soon as possible after the meters become accessible).

d. Division of Drinking Water Purity Standards

Utah Admin. Code R746-330-2 provides: “Water furnished by utilities for culinary purposes shall be agreeable to sight and smell and be free from disease-producing organisms and injurious chemical or physical substances.” The rule further states “[t]he standards to be applied in meeting these criteria shall be those of the [Utah Drinking Water Board].”

The DPU attached an administrative order and letter from the Department of Environmental Quality, Division of Drinking Water (“DDW”) to its Audit Report, revealing that DDW has designated SDCW’s water system “Not Approved.” The “Not Approved” status stems from two issues. First, in February 2009, DDW put SDCW on notice of a “significant deficiency” for failure to provide 20 psi to all connections. Consequently, SDCW entered into a Corrective Action Plan (CAP) with DDW in April 2013. The DDW subsequently issued several notices to SDCW relating to its failure to maintain adequate pressure and thereby fully comply with the CAP. Second, on January 8, 2019, a major break caused SDCW’s storage tank to drain and dewatered a large portion of SDCW’s system. SDCW temporarily hauled in water as an emergency remedy but it failed to provide what the DDW refers to as a “Tier 1 Public Notice/boil order,” as Utah Admin. Code R309-220-5 apparently requires. The DDW concluded that SDCW’s “repeated failures to correct the significant deficiency, identified since 2009, of not being able to provide adequate pressure ... together with the recent incident that resulted in dewatering a portion of the distribution system, constitute a significant threat to public health and drinking water quality.” (Audit Report at Ex. 1.) The DDW’s order provides a process for SDCW to remedy the issues and to potentially negotiate a Compliance Agreement/Enforcement Order.

In response, SDCW maintains “[a]t all times during the pendency of this matter, the sampling and testing of the SDCW water has met the purity standards required by the [S]tate, and SDCW has not violated Rule R746-330-2.” (Response at 6.) SDCW characterizes the issue with DDW as a “pressure issue” that does not constitute a violation of the PSC’s rule governing water quality. (*See id.*) SDCW represents it “is working with the DDW to properly resolve the pressure issue.” (*Id.*)

The PSC is not well poised to interpret or apply regulations within the purview of the DDW. On our review, the requirement to maintain 20 psi appears to stem from Utah Admin. Code R309-105-9, subtitled “Minimum Water Pressure,” and a subsection of the “General Responsibilities of Public Water Systems.” A different section of the Utah Administrative Code, R309-200, titled “Monitoring and Water Quality: Drinking Water Standards,” contains detailed requirements concerning water purity, maximum allowable volumes of various contaminants, etc.

Certainly, SDCW’s issues with DDW are significant and must be redressed to the DDW’s satisfaction. We see, however, little to be gained through the PSC’s duplicative enforcement of matters within the DDW’s purview. The PSC’s administrative rule relates exclusively to water quality and adopts the standards set forth by the Utah Drinking Water Board. The PSC concludes that DDW’s enforcement actions, while certainly serious, do not raise allegations that SDCW’s water is disagreeable to “sight and smell” or contains “disease-producing organisms” or other “injurious chemical or physical substances” as Utah Admin. Code R746-330-2 contemplates.

Accordingly, on the basis of the DPU's Audit Report and the attached documents from DDW, the PSC cannot find SDCW has violated Utah Admin. Code R746-330-2.

e. Failure to Charge Owner and Developer Fees

“[A] public utility may not ... as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person” Utah Code Ann. § 54-3-8; *see also* Utah Code Ann. § 54-4-4 (empowering the PSC to act to rectify discriminatory or preferential rates). As a general matter, therefore, a public utility may not charge its stockholders or other form of owner lower rates than it charges similarly situated customers.

The DPU explains that, prior to January 1, 2019, the developer Duchesne Land, LLC (owned and operated by the Steed family) owned 125 lots but SDCW did not charge Duchesne Land the \$15/month standby fee any other similarly situated owner would have been required to pay. (Audit Report at 11.) The DPU also notes SDCW's owners, the Steeds, own and utilize a cabin that receives service from SDCW, and SDCW did not charge SDCW's owners for water prior to January 2019. (*Id.*)

More specifically, from the period July 2012 to December 2018, DPU represents SDCW should have charged and collected \$146,250 from the developer in standby fees, exclusive of interest. (Hr'g Tr. at 8:25-9:1.) Similarly, based on the owners' relatively high water usage, DPU believes SDCW should have billed and collected \$15,121 from its owners with respect to the water service provided to their cabin from the period August 2003 to December 2018.

In response, SDCW asserts 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.” (Response at 4-5.) “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.” (*Id.* at 5.) Finally, SDCW represents 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.” (*Id.*) SDCW represents “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.” (*Id.*) SDCW represents the 15 lots that remain in the control of the developer or the Steeds were “transitioned to standby paying status before January 1, 2019.” (*Id.*)

SDCW argued at hearing it is “unaware of anything that would prevent the water company from negotiating with the developer to say, you don’t have to pay the \$15 a month, or we consider it covered by the fees that you have already paid on behalf of our water company.” (Hr’g Tr. at 40:20-24.) “We are unaware of anything that would [not] allow that type of a quid pro quo to go on.” (*Id.* at 40:20-41:1.)

The PSC need not reach here whether and in what context a utility might negotiate the provision of free service in exchange for capital investment because, even assuming such an arrangement were otherwise lawful, here SDCW presented no documentation nor accounting to support such an arrangement.

On the facts presented, strong reasons exist to conclude SDCW has been, for many years, offering its owners and their development company preferential, discriminatory service in violation of Utah Code Ann. § 54-3-8. However, before making findings and conclusions with respect to this probable violation, the PSC would like to review additional evidence and hear

more from the DPU and SDCW on the matter. Specifically, the PSC is concerned with understanding (1) whether the preferential treatment SDCW has granted to its owners and their development company impacted the rates of SDCW's paying customers at any time and the extent of any such impact; and (2) whether SDCW is adequately capitalized and how SDCW's failure to charge its owners and their development company has affected SDCW's capitalization.

3. ORDER

As discussed above, the PSC finds and concludes SDCW has committed no violations of statute, rule, or tariff with respect to any allegations raised in the Audit Report save for SDCW's failure to charge its owners and their development company the rates and fees the utility charged similarly situated customers. On this issue, the PSC will reserve making final findings and conclusions pending additional information from SDCW and the DPU. Additionally, the PSC wishes to receive an update on the status of SDCW's delinquent accounts in one year.

Accordingly, the PSC orders as follows:

- (1) SDCW shall, during the month of **September 2020**, file a report with the PSC apprising it of the status of SDCW's delinquent accounts, explaining how many accounts are more than 90 days overdue in payment, the amount each such account owes, and SDCW's plan to recover or write-off any such outstanding balances.
- (2) SDCW shall, on or before **Friday, November 1, 2019**, file a report with the PSC answering the following questions:
 - a. Did SDCW's failure to charge its owners and its development company affect the rates SDCW charged its paying customers, and if so, what was the impact on

those customers? The report must include an explanation of the utility's revenue requirement and how SDCW structured its rates to meet the requirement.

- b. Is SDCW adequately capitalized, and what effect, if any, has SDCW's failure to charge its owners and their development company had on SDCW's finances? The report must include the underlying financial data to support its conclusion.

The DPU may file a response to SDCW's report on or before **Friday, December 6, 2019**.

In its response, the DPU should discuss what, if any, remedy it recommends the PSC institute to address any issues associated with SDCW's failure to charge its owners and their development company. If the PSC believes additional comments or process, including a hearing, is necessary, it will provide notice to the parties after any such response is filed. If the DPU or SDCW believes additional process or a hearing is appropriate, they must notify the PSC on or before **Friday, December 20, 2019**.

DATED at Salt Lake City, Utah, September 4, 2019.

/s/ Michael J. Hammer
Presiding Officer

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Approved and Confirmed September 4, 2019, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#309928

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on September 4, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

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