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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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DAVID BURWEN, an individual, SUSAN BURWEN, an individual, and VENTURE DEVELOPMENT GROUP, LLC, a Utah limited liability company,

Applicants/Complainants,

v.

PINEVIEW WEST WATER COMPANY, a Utah public water utility,

Respondent.

**REPLY IN SUPPORT OF FORMAL COMPLAINT AND REQUEST FOR AGENCY ACTION**

Docket No. 22-2438-01

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Applicants/Complainants David Burwen, Susan Burwen, and Venture Development Group, LLC (collectively, “**Snowberry Inn**”), by and through their undersigned counsel, respectfully submit this Reply in Support of Formal Complaint and Request for Agency Action.

**INTRODUCTION**

Notwithstanding the many arguments and objections of Respondent Pineview West Water Company (“**PWWC**”) in its “**Response**” to the Snowberry Inn’s Formal Complaint and Request

for Agency Action (“**Complaint**”), all such arguments and objections sidestep—and ultimately fail to address—the dispositive issue presented to the Utah Public Service Commission (“**Commission**”) by the Complaint: **The protection of the legal rights and status of the Snowberry Inn as an existing customer of PWWC in light of PWWC’s threats to improperly terminate culinary water service to the Snowberry Inn, contrary to Utah Administrative Code R746-200-7(C)(1).**<sup>1</sup> The fundamental argument asserted by the Response is that PWWC “has neither the **duty** nor the **capacity** to serve the water needs of [the Snowberry Inn].”<sup>2</sup> Both are false.

PWWC’s “no duty” and “no capacity” arguments are directly contradicted by Utah law and the facts found in the record (“**Record**”). Indeed, such authority and materials amply demonstrate, contrary to PWWC’s assertions: (a) the Snowberry Inn is legally entitled to continued culinary water service from PWWC; and (b) PWWC has sufficient water capacity to continue serving the Snowberry Inn as it has since 2007.<sup>3</sup>

#### **CLARIFICATIONS AND CORRECTIONS TO PWWC’S RESPONSE TO FACTS IN THE COMPLAINT**

The Snowberry Inn provides the following clarifications and corrections to PWWC’s responses to the material facts:

**Fact #13:** “Neither Regulation F nor Utah Administrative Code R746-200-7(C) allows PWWC to terminate water service to an existing customer for reasons other than those listed therein. (*See* Ex.’s B and C.)”

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<sup>1</sup> *See* Response at pages 11 and 20, ¶¶ 1 and 64 (admitting that the Snowberry Inn is an existing customer of PWWC and that PWWC has renewed its threat to disconnect the Snowberry Inn from PWWC’s culinary water system).

<sup>2</sup> *See id.* at page 4 (emphasis added).

<sup>3</sup> Conclusions that the Utah Division of Public Utilities independently made. *See* Comments from the Division of Public Utilities, available at <https://pscdocs.utah.gov/water/22docs/22243801/322928DPUCmnts3-11-2022.pdf>.

**PWWC Response:** “The allegations of paragraph 13 are denied.”

**Reply:** The only permitted “reasons” allowing PWWC as a Commission-regulated utility to terminate service to an existing customer under Utah Administrative Code R746-200-7 are the very same reasons, listed verbatim, in Regulation F of PWWC’s current Tariff (“**Tariff No. 3**”). (Compare Utah AC R746-200-7(C)(1) and (F), attached hereto and incorporated by reference as **Exhibit A**, with Tariff No. 3, Regulation F4(a) and F7, attached hereto and incorporated by reference as **Exhibit B**.)

Neither PWWC’s Tariff No. 3 nor Utah’s laws and regulations allow for any other “reasons” or permitted grounds for termination of PWWC’s culinary water service to the Snowberry Inn. Thus, pursuant to both the Commission’s Rules and Tariff No. 3, PWWC has an independent legal duty preventing it from terminating culinary water service to an existing customer at whim. Stated differently, PWWC’s power to terminate culinary water service to an existing customer is strictly confined to the permitted reasons or grounds listed under (a) Utah Administrative Code R746-200-7(C)(1) and (F), and (b) Regulation F of Tariff No. 3. (See Ex.’s A and B.)

None of the reasons stated under Utah Administrative Code R746-200-7(C)(1) and (F) or Tariff No. 3 exist or could be invoked to terminate the Snowberry Inn’s service. (See, e.g., PWWC Response to Paragraph 52 of Complaint (admitting that the Snowberry Inn “has paid the invoices for culinary water service” from PWWC).)

**Fact #17:** “Despite providing Culinary Water Service to areas outside of the Subdivisions, which service has continued for more than a decade, PWWC has never updated its Certificated Service Area map to match the true area PWWC currently serves and all customers it serves—including customers outside of the Subdivisions—even though PWWC has updated its Tariff twice since it began serving customers outside of the Subdivisions.”

**PWWC Response:** *“The allegations of paragraph 17 are denied. [PWWC] affirmatively alleges that, because of the Commission’s November 16, 2009 Order of Stay, even though [PWWC] acted as though Tariff No.2 was in place, compliance with Tariff No. 2 was indefinitely stayed and further updates were not required until Tariff No. 3, at which time the map of [PWWC’s] service area was updated.”*

**Reply:** Despite PWWC’s response, both PWWC and the Utah Division of Public Utilities (“**Division**”) treated Tariff No. 2 as binding. (See Testimony of John Durig, Vice President of Pineview West Water Company, before the Commission, Docket No. 19-2438-01, May 21, 2020 (“Our most recent rate increase was in 2009.”);<sup>4</sup> Direct Testimony of Mark Long, Utah Division of Public Utilities, Docket No. 19-2438-01, October 16, 2020 (“The Commission issued its Report and Order on July 15, 2009, to increase rates on July 1, 2009. . . . The Division is providing a new Tariff that, in addition to the changes to the Rules and Regulations, includes the new rates and updated fees that it is recommending being adopted by the Company. This tariff is the third revision of [PWWC’s] tariff since it became regulated by the Commission.”);<sup>5</sup> Settlement Stipulation, executed on November 16, 2020 between PWWC and the Division (“The rates, fees, and charges for Tariff No. 2 were approved with an effective date of July 1, 2009, see order in the Matter of the Request of Pineview West Water Company for Approval of a Rate Increase, Docket No. 09-2438-01 (July 15, 2009).”);<sup>6</sup> Testimony of Peter Turner, President of Pineview West Water Company, before the Commission, Docket No. 19-2438-01, December 15, 2020 (“[O]ur current rates were set in 2009.”).<sup>7</sup>

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<sup>4</sup> Available at <https://pscdocs.utah.gov/water/19docs/19243801/314135TestJohnDurigPWWC6-4-2020.pdf>.

<sup>5</sup> Available at <https://pscdocs.utah.gov/water/19docs/19243801/315967DirTestmMarkLongDPU10-16-2020.pdf>.

<sup>6</sup> Available at <https://pscdocs.utah.gov/water/19docs/19243801/316477DPUAtt1StlmntStpltn11-20-2020.pdf>.

<sup>7</sup> Available at <https://pscdocs.utah.gov/water/19docs/19243801/316964RprtrTrnscrptDec1520201-12-2021.pdf>.

**Fact #33:** “Well #4 is located approximately 1200 feet from the Araves’ own well (which well was shared by the Araves and Southwick) (‘Arave Well’) and approximately 550 feet from the Snowberry Well, and both the Arave Well and the Snowberry Well are hydrologically connected and located within Well #4’s cone of depression.”

**PWWC Response:** “*In response to the allegations of paragraph 33, [PWWC] admits the description of the location of the wells, and that there is some hydrological connection between them, and denies all other allegations of paragraph 33.*”

**Reply:** Notably, Paragraphs 12 and 18 of the Utah Supreme Court’s decision in *Arave v Pineview West Water Company*, 2020 UT 67, 477 P.3d 1239, corroborate the Snowberry Inn’s allegation and PWWC’s admission regarding a hydrological connection between the Arave Well and the Snowberry Well:

Nevertheless, [PWWC] later began regularly pumping Well 4 during irrigation season, from early July until September. When Well 4 was operating, the Arave Well was once again unable to produce water. **Eventually, the Snowberry Well had trouble as well.** It had traditionally been able to fill its cistern within fifteen minutes. But with Well 4 operating, the Snowberry Well struggled for hours to complete the same task. . . .

The district court found that the Arave Well is **hydrologically connected** to the Snowberry Well. When Well 4 operates, it immediately draws down the water level of the Arave Well. When the elevation of the Arave Well head falls below that of the Snowberry Well, water is drawn away from the Snowberry Well. As a result, the Snowberry Well “struggles to produce even a minimal yield.”

*Arave*, 2020 UT 67 at ¶¶ 12 and 18 (emphasis added).

**Fact: #38:** “Based on PWWC agreement and representation that it would provide water to the Snowberry Inn, the Burwens hired and paid a contractor \$7,704.00 to hook up (‘Hook-Up Cost’) the Snowberry Inn to PWWC’s water distribution system.”

**PWWC Response:** “[PWWC] admits that Venture was allowed to connect with [PWWC’s] system pending resolution of Venture’s claim of interference, provided Venture pay the cost of the connection, but denies that it ever committed to provide water to Snowberry on a permanent basis.”

**Reply:** PWWC’s claim that it never committed to provide water to the Snowberry Inn on a permanent basis is flatly contradicted by the April 14, 2011 draft Water Right Lease and Water

Service Agreement (“**Proposed Water Service Agreement**”) that PWWC submitted to the Snowberry Inn. (A copy of the Proposed Water Service Agreement is attached hereto and incorporated by reference as **Exhibit C.**) Notably, the Proposed Water Service Agreement included a **term of indefinite duration**: “**Term of Agreement.** This Agreement **shall remain in force and effect** until terminated as provided below.” (See Ex. C at Section C(1) (emphasis added)). Such term of indefinite duration is directly contrary to PWWC’s claim that PWWC service to the Snowberry Inn was intended to be merely temporary in duration—especially given the fact that formal litigation against PWWC on the Snowberry Inn’s interference claim did not commence until approximately six years after PWWC began serving the Snowberry Inn.

The Proposed Water Service Agreement’s recital of facts likewise indicate that PWWC’s agreement to provide culinary water service to the Snowberry Inn was not intended to be merely temporary in duration:

[I]n order to avoid a dispute between the Parties over the question of well interference, [the] Snowberry [Inn] is willing to lease the Snowberry right to [PWWC] and [PWWC is] willing to lease the Snowberry Right from [the] Snowberry [Inn] and provide culinary water service to Snowberry through the [PWWC] System, subject to and in conformance with the terms and provisions of this Agreement.

(See *id.* at “Recitals” Section.)

Additionally, the Utah Supreme Court’s *Arave* opinion makes no specific mention or implied suggestion of any intent on the part of PWWC to provide service to the Snowberry Inn on a temporary basis. Rather, the *Arave* Court’s recitation of material facts suggests the opposite:

In the beginning, the parties resolved this problem amongst themselves. **[PWWC] agreed to connect the Plaintiffs [including the Snowberry Inn] to its water supply and provide them with culinary water for a flat rate of \$20 per month.** Once the Araves and Southwick began using [PWWC’s] water, the Araves removed the pump from the Arave Well **and no longer used it to obtain water.**

Instead, they used it as a monitoring well to gather data regarding the impact of Well 4 on the water level.

**Several years later**, [PWWC] sought to increase the Plaintiffs' fees **to match those paid by its other water users**. The parties **tried to reach an agreement regarding new fees**, but those negotiations broke down and this suit followed.

*Arave*, 2020 UT 67 at ¶¶ 13 and 14 (emphasis added).

**Fact #48:** “Despite the lawsuit, which was focused solely on prosecuting claims of interference, negligence, and nuisance against PWWC’s operation of Well #4 relative to the Snowberry and Arave Wells, the Commission nonetheless has exclusive jurisdiction over the matters raised in this Complaint as they concern PWWC’s ability to terminate service to a customer of a public utility.”

**PWWC Response:** “*The allegations of paragraph 48 are denied.*”

**Reply:** This denial by PWWC is clearly incorrect. *See* Utah Code Ann. §54-4-1 (“The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.”).

**Fact #50:** “PWWC appealed the Judgment to the Utah Supreme Court, which ultimately resulted in an opinion entitled *Arave v Pineview West Water Company*, 2020 UT 67, 477 P.3d 1239 (Utah 2020).”

**PWWC Response:** “*The allegations of paragraph 50 are admitted, and [PWWC] affirmatively alleges that the Utah Supreme Court reversed the District Court’s finding that [PWWC’s] Well No. 4 interfered with Snowberry’s ability to divert its 1960 water right from the Snowberry Well. Venture attached to the Complaint copies of the trial court rulings that favored it but, for some reason, failed to attach a copy of the Supreme Court opinion that reversed the trial court’s interference ruling. As noted in footnote 12, above, [PWWC] has attached a copy of that opinion as Exhibit B.*”

**Reply:** Although the Utah Supreme Court reversed the Snowberry Inn’s interference claim, the *Arave* Court nevertheless remanded the Snowberry Inn’s negligence claim against PWWC for reconsideration and further fact finding:

Accordingly, we decline to reverse the district court's negligence ruling. However, in light of our reversal of the district court's interference determinations, we remand this claim for reconsideration and further factfinding, if necessary. This is because the district court's negligence determination flows from its finding of interference. The district court concluded that [PWWC] had breached a duty of care to the Plaintiffs when it "located, drilled, and used [Well 4] in a manner that interferes with plaintiffs' wells." (Emphasis added.) It is not clear how our reversal of the Plaintiffs' interference claims impacts the district court's negligence ruling. Accordingly, we remand for the district court to consider that question and make any additional findings of fact that it deems necessary.

*Id.* at ¶ 63. The negligence claim is currently pending before the Second District Court.

**Fact #52:** "Throughout the entire litigation, PWWC continued to provide Culinary Water Service to the Snowberry Inn, the Araves, and Southwick. During this entire period, the Burwens have fully paid each and every invoice received from PWWC for Culinary Water Service and stand ready to continue to do so."

**PWWC Response:** "In response to the allegations of paragraph 52, [PWWC] admits that Venture has paid the invoices for culinary water service, even though it asked the trial court to require [PWWC] to refund all of the money it paid to [PWWC] for water that it admittedly used, including water in excess of its water rights but necessary for commercial operations of the Snowberry Inn and during times when [PWWC] Well No. 4 was not in operation."

**Reply:** It should be noted by the Commission that PWWC **did not deny** the fact that PWWC has provided culinary water service to the Snowberry Inn throughout the entire litigation process. Even now, PWWC continues to serve to the Snowberry Inn.

**Fact #55:** "Modifying the Certificated Service Area was certainly necessary given the fact that PWWC had never updated its service area map ('Service Area Map') to accurately reflect PWWC's expanded service to customers like the Snowberry Inn who reside outside of the Subdivisions."

**PWWC Response:** "The allegations of paragraph 55 are denied."

**Reply:** Notably, the Service Area Map included with Tariff No. 3 does not include the current PWWC customers who reside outside of the Subdivisions.<sup>8</sup> In fact, PWWC has never

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<sup>8</sup> See Tariff No. 3, available at <https://pscdocs.utah.gov/water/19docs/19243801/316478DPUAtt2RvsdTariiffClean11-20-2020.pdf>.



produced any Service Area Map embracing all customers served by PWWC.<sup>9</sup> Yet another violation by PWWC.

**Fact #57:** “On November 20, 2020, a Settlement Stipulation was filed in Docket No. 19-2438-01. However, nothing in the attached Settlement Stipulation or the attached Revised [PWWC] Tariff mentioned any change to the Certificated Service Area, other than an attached Service Area Map that excluded certain customers of PWWC, including the Snowberry Inn, the Araves, Southwick, and the Yacht Club.”

***PWWC Response:** “In response to the allegations of paragraph 57, [PWWC] affirmatively alleges that, after working with the Department of Public Utilities to complete the 2019 rate request and agreeing on the treatment of the pending litigation on the rate case, on November 20, 2020 the Division filed an Unopposed Motion to Approve Settlement Agreement to Hold Hearings as Scheduled which included three Exhibits: 1) Settlement Stipulation; 2) A clean version of DPU’s recommend Tariff No. 3 for PWWC; and 3) A redline document comparing Tariff No. 2 and Tariff No. 3. Importantly, the Redline document removed the reference to ‘Non-Shareholder Contract Rates’ removing a distinction between contract water and shareholder water. The Redline Tariff also provides a Service Area Map that excludes the area where the Snowberry Inn is located. These references, all made after the Supreme Court ruled against Venture’s interference claim, provided ‘notice’ of the change in the [PWWC] service area.”*

**Reply:** The Service Area Map also excludes the Araves, Southwick, and the Yacht Club, which PWWC has and continues to serve. To put it charitably the Map is inaccurate and incomplete. Notwithstanding the removal of any reference to “non-shareholder” contract rates in Tariff No. 3, the Commission’s Hearing Officer Yvonne Hogle made specific reference to both “shareholders” and other “users” in her questioning of PWWC President Peter Turner during the December 15, 2020 Public Hearing for Docket No. 19-2438-01:

And so really the basis for having so many tiers is to encourage people to conserve given their past behavior where apparently \$5 a tiered rate for 1,000 gallons hasn't been nearly sufficient enough to sort of curb that behavior in terms of water conservation. And so it's becoming very expensive for [PWWC] to purchase water through Ogden. I suppose my question is before you brought this forth to the Public Service Commission, did you indicate to **your shareholders** and **your users** that

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<sup>9</sup> See Tariff No. 2, available at <https://pscdocs.utah.gov/water/19docs/19243801/313369PWWCExh13RatesSchedulesRulesRegulationsTarif24-24-2020.pdf>.

this was going to change to this considerable – considerably changed structure as it appears to me it seems you know going from 1 tier to 5 tiers and having it be exponentially more expensive, is this something that I would assume that you announced to **your shareholders** and **your users**; is that correct?<sup>10</sup>

The reference to “shareholders” and “users” clearly indicates that some customers under the new rate schedule (Tariff No. 3) are not shareholders, which is in fact true.

**Fact #60:** “No new infrastructure is needed for PWWC to continue serving the Snowberry Inn, as such infrastructure was already installed when PWWC initially began providing Culinary Water Service to the Snowberry Inn over a decade ago.”

***PWWC Response:** “The allegations of paragraph 68 are denied and [PWWC] affirmatively alleges that Snowberry has its own well and water rights which, if reasonably used, will satisfy the needs of that commercial establishment.”*

**Reply:** This denial by PWWC is factually inaccurate. Given that PWWC has been providing culinary water service to the Snowberry Inn for nearly 15 years (since 2007), no additional infrastructure is needed for PWWC to continue serving the Snowberry Inn.

**Fact #71 :** “No other water utilities, public or private, exist nearby to provide Culinary Water Service to the Snowberry Inn.”

***PWWC Response:** “The allegations of paragraph 71 are denied, and [PWWC] affirmatively alleges that Snowberry has water rights sufficient to supply its own needs.”*

**Reply:** The Division’s March 11, 2022 Action Request Response corroborates the absence of any other nearby water utility, public or private, that could serve the Snowberry Inn: “No other water company has nearby facilities that would facilitate an efficient connection.”<sup>11</sup>

**Fact #91:** “Importantly, Vice President Durig failed to explicitly disclose to the Commission that PWWC was in fact seeking to change its recognized Expanded Service Area by excluding customers, like the Snowberry Inn, from the proposed Service Area Map under Tariff No. 3. (See

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<sup>10</sup> See Transcript of December 15, 2020 Public Hearing at page 18, available at <https://pscdocs.utah.gov/water/19docs/19243801/316964RprtrTrnsrptDec1520201-12-2021.pdf> (emphasis added).

<sup>11</sup> See Comments from the Division of Public Utilities, available at <https://pscdocs.utah.gov/water/22docs/22243801/322928DPUCmnts3-11-2022.pdf>.

Ex. W.) As the [PWWC's] Response [to the Snowberry Inn's informal complaint] candidly notes: 'In anticipation of that ruling, PWWC included with Tariff No. 3 a map of its service area no longer including [the Snowberry Inn], effectively restoring the service area in that respect to the area described before it was extended' to include customers outside of the Subdivisions."

**PWWC Response:** "In response to the allegations of paragraph 91, [PWWC] denies there was a failure of disclosure but agrees that the map for Tariff No. 3 did effectively restore its service area to that served before Venture raised its interference claim."

**Reply:** This denial by PWWC is directly contradicted by the following statements by the Division: "If the Complainants and other customers outside the claimed service territory were once within that territory, is it reasonable that they could be carved out of PWWC's service territory by the inclusion in a rate case of exhibits doing so, despite no mention of the change in the rate case filing's narrative? Should the Division have more closely scrutinized PWWC's filing and raised for specific consideration the question of whether PWWC was attempting to change its service territory?"<sup>12</sup>

#### **REPLY TO PWWC'S OBJECTION TO DIVISION ACTION REQUEST RESPONSE**

**PWWC Objection:** "As of this writing, [PWWC] has been served by the Division of Public Utilities with document dated March 11, 2022 and entitled Action Request Response. [PWWC] objects to this **late filing**." (See Response at page 2, footnote 1 (emphasis added).)

**Reply:** Contrary to PWWC's objection, the Division's March 11, 2022 Action Request Response was timely filed. The Commission's February 9, 2022 Action Request specifically lists "March 11, 2022" as the "due" date for the Division to provide "analysis, evaluation results, and the basis for conclusions and recommendations regarding" the Complaint and whether the Division "has a Recommendation."<sup>13</sup> The Commission's February 11, 2022 Notice of Filing and Comment

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<sup>12</sup> See *id.*

<sup>13</sup> See Action Request, available at <https://psdocs.utah.gov/water/22docs/22243801/322309ActnRqstMar112022-9-2022.pdf>.

Period did not modify the Division's March 11, 2022 response deadline.<sup>14</sup> Furthermore, the Docket page for the matter (Docket No. 22-2438-01) also indicates that the Division's Action Request Response was posted by the Commission on March 11, 2022.<sup>15</sup> Thus, PWWC's objection lacks merit.

#### ARGUMENT

#### **I. Under Utah Administrative Code R746-200-7(C)(1) and (F), the Snowberry Inn is Protected Against Termination of Culinary Water Service from PWWC.**

As noted above, PWWC has an independent legal duty to avoid improperly terminating culinary water service to an existing customer. Such duty devolves upon PWWC by virtue of Utah Administrative Code R746-200-7(C)(1) and (F). Tariff No. 3 codifies verbatim subsections (C)(1) and (F) of R746-200-7. Thus, given (a) the Snowberry Inn's status as an existing customer of PWWC and (b) the prior recognition of the Snowberry Inn as being included within PWWC's service area, the Snowberry Inn is entitled to protection against improper termination of culinary water service from PWWC prohibited by both Commission Rule and Tariff #3.

#### **A. The Record establishes that the Snowberry Inn is an existing customer of PWWC entitled to the protection of law under the Commission's regulations.**

The Record clearly demonstrates PWWC's recognition of the Snowberry Inn's status as an existing customer of PWWC. In the Complaint, the Snowberry Inn provided the following fact: "The Burwens are customers of Pineview West Water Company, which serves the Snowberry

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<sup>14</sup> See Notice of Filing and Comment Period, available at <https://pscdocs.utah.gov/water/22docs/22243801/32232422243801nofacp2-11-2022.pdf>.

<sup>15</sup> See <https://psc.utah.gov/2022/02/10/docket-no-22-2438-01/>.

Inn.” (See Complaint at ¶ 1.) PWWC responded unequivocally in the affirmative: “The allegations of paragraph 1 **are admitted.**”<sup>16</sup>

Similarly, when PWWC President Peter Turner filed a request to the Commission to increase PWWC’s rates, he acknowledged the existence of “non-shareholder customers” such as the Snowberry Inn. (“I still need to talk to **our non-shareholder customers** to discuss proposed rates with them.”)<sup>17</sup> The Complaint specifically declares that “such ‘non-shareholder customers’ included the Snowberry Inn.” (See Complaint at ¶ 23.) Again, PWWC responded unequivocally in the affirmative on this point: “The allegations of paragraph 23 **are admitted.**”<sup>18</sup>

The Commission itself has likewise formally recognized the Snowberry Inn’s status as a customer of PWWC. In its July 15, 2009 order approving PWWC’s Tariff No. 2, the Commission noted that PWWC “serves . . . Snowberry Inn.”<sup>19</sup> Given such recognition by the Commission, the Snowberry Inn is legally entitled to protection against improper termination of culinary water service in contravention of the Commission’s adopted Rules.

**B. The Record establishes that the Snowberry Inn has been previously recognized as being included within PWWC’s service area.**

The Record clearly demonstrates that the Snowberry Inn has been previously recognized on multiple occasions as being included within PWWC’s service area. As early as January 15, 2009, the Division formally recognized that the Snowberry Inn was part of PWWC’s service area:

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<sup>16</sup> See Response at page 11, ¶ 1 (emphasis added).

<sup>17</sup> See Proposed Tariff No. 2, available at <https://pscdocs.utah.gov/water/09docs/09243801/062909Filingrequest.pdf> (emphasis added).

<sup>18</sup> See Response at page 13, ¶ 23 (emphasis added).

<sup>19</sup> See Report and Order, available at <https://pscdocs.utah.gov/water/09docs/09243801/09243801ROcn.pdf>.

“[PWWC’s] operations are in Weber County, near Ogden City, Utah, and include 58-metered customers. **The service area includes** Pineview West, Radford Hills, Araves, Southwick, **Snowberry Inn**, the Pineview Yacht Club, HOA clubhouse and related landscaping, and Crimson Ridge.”<sup>20</sup> Six months later, the Division again formally recognized the Snowberry Inn as being part of PWWC’s service area: “[PWWC’s] operations are in Weber County, near Ogden City, Utah, and include 58-metered customers with an additional 54 standby customers. **The service area includes** Pineview West, Radford Hills, Arave, Southwick, **Snowberry Inn**, the Pineview Yacht Club, HOA clubhouse and related landscaping, and Crimson Ridge.”<sup>21</sup> Significantly, PWWC never objected to the Division’s formal acknowledgement of the Snowberry Inn being part of PWWC’s service area.<sup>22</sup>

Tariff No. 2 likewise demonstrates Snowberry Inn is within PWWC’s service area. The rate schedule states: “Applicable **in entire service area** to water service for culinary purpose at one point of delivery.”<sup>23</sup> The rate schedule also contains a description for “Non-shareholder contract rates.”<sup>24</sup> Notably, the “Applicable in entire service area” language does not indicate that the service area excludes non-shareholder customers. Rather, PWWC’s service area **covers all**

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<sup>20</sup> See Comments from DPU, available at <https://pscdocs.utah.gov/water/08docs/08243801/60453CommDPU.pdf> (emphasis added).

<sup>21</sup> See Comments from DPU, available at <https://pscdocs.utah.gov/water/09docs/09243801/62716CommDPU.pdf> (emphasis added).

<sup>22</sup> See <https://psc.utah.gov/2016/07/08/docket-no-08-2438-01/>; <https://psc.utah.gov/2016/07/08/docket-no-09-2438-01/>.

<sup>23</sup> See Tariff No. 2, available at <https://pscdocs.utah.gov/water/19docs/19243801/313369PWWCExh13RatesSchedulesRulesRegulationsTarif24-24-2020.pdf> (emphasis added).

<sup>24</sup> See *id.*

**customers subject to the rate schedule.** As the Division aptly noted in its March 11, 2022 Action Request Response: “If the Complainants were never within PWWC’s service territory, by what authority did PWWC serve them?”<sup>25</sup> Accordingly, the Record provides ample support for recognizing the Snowberry Inn as being part of PWWC’s service area.

**II. PWWC Has Sufficient Capacity to Continue Serving the Snowberry Inn as it Has for Nearly 15 Years.**

Contrary to the claims now made by PWWC’s in its Response, the Record and history show that PWWC has sufficient water capacity to continue serving the Snowberry Inn. This fact is reasonably apparent from the Proposed Water Service Agreement’s stated term of indefinite duration: “**Term of Agreement.** This Agreement **shall remain in force and effect** until terminated as provided below.” (See Ex. C at Section C(1) (emphasis added).) Moreover, the Proposed Water Service Agreement was prepared prior to the commencement of the COVID-19 pandemic, when, as PWWC now tries to argue is relevant, demand for water at the Snowberry Inn decreased.

The Division also stressed PWWC’s capacity to continue serving the Snowberry Inn: “Here, service appears readily available from an entity that has already provided it.”<sup>26</sup> Corroborating this conclusion is the fact that PWWC has access to Ogden City water in addition to its wells. As PWWC Vice President John During pointed out in his testimony before the Commission in May 2020, “Our most recent rate increase was in 2009. Since then, [PWWC has]

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<sup>25</sup> See Comments from the Division of Public Utilities, available at <https://pscdocs.utah.gov/water/22docs/22243801/322928DPUCmnts3-11-2022.pdf>.

<sup>26</sup> See *id.*

**purchased water from Ogden City.**<sup>27</sup> This is another reason why PWWC has sufficient capacity to continue serving the Snowberry Inn.

Thus, PWWC's actions speak louder and more accurately than its words. PWWC's service since 2007 demonstrates its more than sufficient capacity to continue serving the Snowberry Inn without adverse impact to PWWC's other customers or system capacity.

### **III. Continuation of PWWC Culinary Water Service to the Snowberry Inn Furthers the Public Interest.**

Lastly, the Division has concluded that continuation of PWWC culinary water service to the Snowberry Inn furthers the public interest: "In this case, the public interest is served by including contiguous, previously served customers in the utility's service territory. Doing otherwise would be inefficient. . . . It is the efficient result that will enable more of the state's residents to be served by its natural resources."<sup>28</sup>

The Commission should not lose sight of this important consideration. Utah case law affirms that the public interest is the regulatory lodestar by which the Commission operates: "The Public Service Commission has been charged with the responsibility of regulating utilities **in the public interest** and has been endowed with 'considerable latitude of discretion' to carry out that responsibility." *Empire Elec. Ass'n, Inc. v. Public Service Commission*, 604 P.2d 930, 933 (Utah 1979) (emphasis added); *see also White River Shale Oil Corp. v. Public Service Com'n of Utah*, 700 P.2d 1088, 1091, 1093 (Utah 1985) ("It is undisputed that the PSC has been charged with the

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<sup>27</sup> Testimony of John Durig, Vice President of Pineview West Water Company, before the Commission, Docket No. 19-2438-01, May 21, 2020, available at <https://pscdocs.utah.gov/water/19docs/19243801/314135TestJohnDurigPWWC6-4-2020.pdf>.

<sup>28</sup> *See* Comments from the Division of Public Utilities, available at <https://pscdocs.utah.gov/water/22docs/22243801/322928DPUCmnts3-11-2022.pdf>.



responsibility of regulating utilities in the public interest and that it has the necessary expertise to do so. . . . It is **important to note** here that the PSC has **considerable latitude of discretion** to enable it to regulate utilities in the public interest.”) (emphasis added).

#### **IV. The Shareholder Status of the Snowberry Inn is Irrelevant.**

PWWC devotes a significant portion of its Response trying to create a distinction between shareholders and non-shareholders.<sup>29</sup> Such argument is the proverbial distinction without a difference. None of the laws governing or the rules adopted by the Commission allow or even address a regulated “water company” and “public utility” such as PWWC being allowed to differentiate between customers based on shareholder status. All customers are entitled to the same protections and rights under the law and the Commission’s rules. Also, nothing in PWWC’s Tariff No. 3, a document prepared and submitted by PWWC, differentiates between shareholders and non-shareholders. Indeed, the only mention of shareholder in Tariff No. 3 is on the cover sheet where it states: “a Shareholder Owned Non-Profit Corporation.”<sup>30</sup>

Also, PWWC’s historic and ongoing practice of serving non-shareholders such as the Araves, Southwick, the Yacht Club, and the Snowberry Inn under the same rates and rules as shareholders, further undermines any attempt to distinguish between shareholders and non-shareholders. (A distinction that is entirely within PWWC’s control.) Whether the Snowberry Inn is a shareholder, or not, plays no role in resolving this Complaint.

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<sup>29</sup> See Response at pages 1-2, 4-7, 11.

<sup>30</sup> See Complaint at Exhibit B.

**V. Snowberry’s Water Use Fits within the Second Lowest of Five Tiers of Service in PWWC’s Tariff No. 3.**

Another false distinction PWWC attempts to make is its reference to the Snowberry Inn as a “commercial operation.”<sup>31</sup> Again, this distinction is meaningless. The Snowberry Inn’s water use fits neatly within the second lowest of the five tiers of water service offered in PWWC’s Tariff No. 3: A tier that requires only an additional \$6.50 monthly payment above the base rate of \$70.00 per month.<sup>32</sup> The service to the Snowberry Inn has and will be well within the level of service to other customers. Finally, it is also notable that the Ogden Pineview Yacht Club, another customer of PWWC, is also a commercial enterprise with a large Clubhouse on ten acres, with irrigated vegetation, a Marina, and an RV Park with water service for 19 RV’s.<sup>33</sup>

**CONCLUSION**

Based on the foregoing, the Commission should: (a) reject and deny all requests for agency action asserted by PWWC in its Response; and (b) affirm and grant all requests for agency action asserted by the Snowberry Inn in its Complaint.

RESPECTFULLY SUBMITTED this 28th day of March 2022.

**SMITH HARTVIGSEN, PLLC**

*/s/ J. Craig Smith*  
\_\_\_\_\_  
J. Craig Smith  
Kathryn J. Steffey  
Donald N. Lundwall  
*Attorneys for Applicants/Complainants*

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<sup>31</sup> See *id.* at pages 4, 10, and 28.

<sup>32</sup> See Complaint at Exhibit B.

<sup>33</sup> See *id.* at Exhibit D.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2022, I caused a true and correct copy of the foregoing

**REPLY IN SUPPORT OF FORMAL COMPLAINT AND REQUEST FOR AGENCY**

**ACTION** to be served upon the following via email:

Edwin C. Barnes  
ecb@clydesnow.com  
Emily E. Lewis  
eel@clydesnow.com  
CLYDE SNOW & SESSIONS  
201 South Main Street, #2200  
Salt Lake City, Utah 84111-2216  
*Attorneys for Pineview West Water Company*

**SMITH HARTVIGSEN, PLLC**

*/s/ Donald N. Lundwall*  
Donald N. Lundwall

# EXHIBIT A

Utah Administrative Code R746-200-  
7(C)(1) and (F)

Utah Administrative Code

Public Service Commission (Titles R746-R747)

Title R746. Administration.

Rule R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.

U.A.C. R746-200-7

Formerly cited as UT ADC R746-200

R746-200-7. Termination of Service.

Currentness

A. Definitions. As used in this section (R746-200-7):

1. “Licensed medical provider” means a medical provider:

- a. who holds a current and active medical license under Utah Code Title 58; and
- b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule.

2. “Life-supporting equipment” means life-supporting medical equipment:

- a. with normal operation that requires continuation of public utility service; and
- b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. “Life-supporting equipment statement” means a written statement:

- a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and
- b. including:
  - i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;
  - ii. the account holder's name and address;

iii. name of resident using life-supporting equipment and relationship to account holder, if different than account holder;

iv. the health infirmity and expected duration;

v. identification of the life-support equipment that requires the utility's service;

vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and

vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment,

4. "Serious illness or infirmity statement" means a written statement:

a. signed by a licensed medical provider;

b. written on:

i. a form obtained from the public utility; or

ii. the licensed medical provider's letterhead stationary;

c. legibly describing:

i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and

ii. the anticipated duration of the diagnosed medical condition.

#### B. Delinquent Account--

1. A residential utility service bill that has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

- a. A statement that the account is a delinquent account and should be paid promptly;
- b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if the account holder has a question concerning the account;
- c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

### C. Reasons for Termination of Service--

#### 1. Residential utility service may be terminated for the following reasons:

- a. Nonpayment of a delinquent account;
- b. Nonpayment of a deposit when required;
- c. Failure to comply with the terms of a deferred payment agreement or Commission order;
- d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;
- e. Subterfuge or deliberately furnishing false information; or
- f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

- a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;
- b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;
- c. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;
- d. Failure to pay an amount in bona fide dispute before the Commission;
- e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service--Medical Reasons--

1. Serious Illness or Infirmary. If a public utility receives a serious illness or infirmity statement:

- a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;
- b. the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and
- c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

- a. After receiving a life-supporting equipment statement, the public utility:
  - i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;



ii. may not terminate service to the residence unless the public utility has complied with this Subsection (R746-200-7.D.2); and

iii. may request annual verification from the licensed medical provider of the life-supporting equipment.

b. A public utility may terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification, if:

i. the account is in default;

ii. the public utility has:

AA. followed R746-200-5 on offering a deferred payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months;

iii. after complying with R746-200-7.D.2.b.ii, the public utility has provided to the customer a written notice of proposed termination of service that:

AA. clearly and plainly informs the customer of the customer's rights under R746-200-7.D.2 and of the customer's right to an expedited complaint hearing under R746-200-8.E.; and

BB. complies with R746-200-7.G.1;

iv. the public utility has provided to the customer a 48 hour notice of termination of utility service that complies with R746-200-7.G.2; and

v. the public utility has complied with all other applicable provisions of R746-200-7.

c. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program--Suppliers may not discontinue utility service to a low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

**F. Termination of Service Without Notice--**Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

**G. Notice of Proposed Termination of Service--**

1. At least 10 calendar days before a proposed termination of residential utility service, or at least 30 calendar days before a proposed termination if the residential utility service customer has provided to the public utility a life-supporting equipment statement, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day or 30-day time period is computed from the date the notice is postmarked or the date it is electronically sent to customers eligible for electronic delivery. The notice shall be given by first class mail or delivery to the premises unless the customer has voluntarily enrolled in a paperless electronic billing program in which case the notice may be sent by electronic mail. The notice shall contain a summary of the following information:

- a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;
- b. the Commission-approved policy on termination of service for that utility;
- c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;
- d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address, website, and telephone number;
- e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;
- f. the date on which payment arrangements must be made to avoid termination of service; and
- g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence.

Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. a. i. A public utility that issues a 30-day notice of termination of service to a customer who has provided the public utility with a life-supporting equipment statement shall provide to the Division an electronic copy of the notice at or before the time the public utility issues the notice to the customer.

ii. Within two business days after receiving the electronic notice described in this Subsection (G)(3)(a)(i), the Division shall provide a letter to the account holder by regular mail:

AA. informing the account holder that the public utility has issued a notice of termination;

BB. noting the method and deadline by which the account holder may request an expedited hearing from the Commission; and

CC. directing the account holder to contact the public utility for additional information.

b. A public utility shall send duplicate copies of 10-day or 30-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service--Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service--

1. A customer shall advise a public utility at least three days in advance of the day on which the customer wants service disconnected to the customer's residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which the customer wants service disconnected and sign an affidavit that the customer is not requesting termination of service as a means of evicting the customer's tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices--A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Disabled--The state recognizes that the elderly and disabled may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and disabled due to communication barriers that may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and disabled persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities--

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

KEY: public utilities, rules, utility service shutoff

**Credits**

Date of Enactment or Last Substantive Amendment: May 15, 2017

Notice of Continuation: November 6, 2017

Authorizing, Implemented, or Interpreted Law: 54-4-1; 54-4-7; 54-7-9; 54-7-25

Current through rules published in the Utah State Bulletin Number 2022-01, January 1, 2022. Some sections may be more current, see credits for details.

Utah Admin. R746-200-7, UT ADC R746-200-7

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End of Document

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# EXHIBIT B

Regulation F(4)(a) and F(7) of PWWC  
Tariff No. 3

## REGULATION F

### TERMINATION OF RESIDENTIAL SERVICE

- F1. **Delinquent Account:** A delinquent account is a water service bill which has remained unpaid beyond the statement due date.
- F2. **Notice:** When an account is a delinquent account, the Company, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. See F8 below for the information that must be provided to the account holder.
- F3. **Investigation and Negotiation:** When the customer responds to a late notice or reminder notice the Company will investigate disputed issues and try to resolve the issues by negotiation. During this investigation and negotiation, no other action shall be taken to disconnect the residential utility service if the customer pays the undisputed portion of the account.
- F4. **Reasons for Termination of Service:**
- a. Residential utility service may be terminated for the following reasons:
    - i. Non-payment of a delinquent account;
    - ii. Non-payment of a deposit when required;
    - iii. Failure to comply with the terms of a deferred payment agreement or a Utah Public Service Commission order;
    - iv. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;
    - v. Subterfuge or deliberately furnishing false information; or
    - vi. Failure to provide access to the meter during the regular route visit to the premises following proper notification and an opportunity to make arrangements.
  - b. The following shall be insufficient grounds for termination of service:
    - i. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;
    - ii. The cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the Company's service, whether the service was received at the current account holder's present address or another address;
    - iii. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;
    - iv. Failure to pay an amount in bona fide dispute before the Commission;
    - v. Payment delinquency for third party services billed by the Company, unless prior approval is obtained from the Utah Public Service Commission; and
    - vi. Complaints filed with either or both the Company or regulatory agencies.

F5. **Restrictions upon Termination of Service During Serious Illness:**

If a public utility receives a serious illness or infirmity statement:

- a. The public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;
- b. The public utility is not required to provide the continuation or restoration more than two times to an individual customer or residence during the same calendar year; and
- c. The account holder is liable for the cost of residential utility service during the period of continued or restored service.

F6. **Restrictions upon Termination of Service to Residences with Life-Supporting Equipment:**

- a. After receiving a life-supporting equipment statement, the public utility:
  - i. Shall mark and identify applicable meter boxes where the life-supporting equipment is used;
  - ii. May not terminate service to the residence unless the public utility has complied with (R746-200- 7.D.2); and
  - iii. May request annual verification from the licensed medical provider of the life-supporting equipment.
- b. A public utility may terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification, if:
  - i. The account is in default;
  - ii. The public utility has offered a deferred payment agreement; or allow the customer one month to enter into a deferred payment agreement that may last up to 12 months;
  - iii. After complying with R746-200-7.D.2.b.ii, the public utility has provided to the customer a written notice of proposed termination of service that:
    - A. Clearly and plainly informs the customer of the customer's rights under R746-200-7.D.2 and of the customer's right to an expedited complaint hearing under R746-200-8.E and
    - B. Complies with R746-200-7.G.1
  - iv. The public utility has provided to the customer a 48 hour notice of termination of utility service that complies with R746-200-7.G.2; and
  - v. The public utility has complied with all other applicable provisions of R746-200-7.
- c. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.



- F7. **Termination of Service without Notice:** The Company may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the Company. The Company shall immediately try to notify the customer of the termination of service and the reasons therefor.
- F8. **Notice of Proposed Termination of Service:** At least ten calendar days before a proposed termination of residential utility service, the Company shall give written notice of disconnection for non-payment to the customer. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:
- a. Statement of customer Rights and Responsibilities under existing state law and Utah Public Service Commission rules;
  - b. The Utah Public Service Commission-approved policy on termination of service for the Company;
  - c. The availability of deferred payment agreements and sources of possible financial assistance, including but not limited to State and Federal energy assistance programs;
  - d. Informal and formal procedures to dispute bills and to appeal adverse decisions, including the Utah Public Service Commission's address and telephone number;
  - e. Specific steps, printed in a conspicuous fashion that may be taken by the customer to avoid termination of service;
  - f. The date on which payment arrangements must be made to avoid termination of service; and
  - g. A conspicuous statement, in Spanish, that the notice is a termination of service notice and that the Company has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.
- F9. **Personal Notification:** At least 48 hours before termination of service is scheduled, the Company will make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone, or by a personal visit to the residence. If personal notification has not been made either directly by the Company or by the customer in response to a mailed notice, the Company will leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service. If termination of service is not accomplished within fifteen business days following the 48-hour notice, the Company will follow the same procedures for another 48-hour notice.

- F10. **Third-Party Notification:** The Company will send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs if the third party resides within its service area. The Company shall inform its customers of the third-party notification procedure at the time of application for service and at least once each year.
- F11. **Rental Property:** In rental property situations where the tenant is not the account holder, and that fact is known to the Company, the Company will post a notice of proposed termination of service on the premises in a conspicuous place and will make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice will contain the information specified above. This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If non-payment is the basis for the termination of service, the Company will also advise the tenants that they may continue to receive utility service for an additional thirty days by paying the charges due for the 30-day period just past.
- F12. **Termination Hours:** Upon expiration of the notice of proposed termination of service, the Company may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the Company's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.
- F13. **Customer-Requested Termination of Service:** The customer shall advise the Company at least three days in advance of the day on which they want service disconnected to their residence. The Company will disconnect the service within four working days of the requested disconnect date. The customer will not be liable for the services rendered to or at the address or location after the four days unless access to the meter has been delayed by the customer.
- F14. **Non-Occupants:** A customer who is not an occupant at the residence for which termination of service is requested shall advise the Company at least 10 days in advance of the day on which they want service disconnected and sign an affidavit that they are not requesting termination of service as a means of evicting his/her tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon, the disconnection may occur within four days of the requested disconnection date.
- F15. **Restrictions upon Termination of Service Practices:** The Company will not use termination of service practices other than those set forth in the rules (R746-200) by the Public Service Commission. The Company shall have the right to use or pursue legal methods to ensure collections of obligations due to it.

- F16. **Reconnection of Discontinued Service:** The Company will have personnel available 24 hours each day to re-connect utility service. Service will be re-connected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service, which may include payment of reconnection charges and compliance with deferred payment agreement terms.

*These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.*

*Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.*

# EXHIBIT C

April 14, 2011 Draft Water Right Lease  
and Water Service Agreement

**WATER RIGHT LEASE AND WATER SERVICE AGREEMENT**  
**By and Between**  
**Pineview West Water Company and Snowberry Inn**

**THIS WATER RIGHT LEASE AND WATER SERVICE AGREEMENT**

(“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between **Pineview West Water Company**, a Utah corporation (“Pineview West”), and **Snowberry Inn**, a Utah \_\_\_\_\_ (“Snowberry”). The parties to this Agreement are hereinafter sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, Snowberry is the owner of a certain groundwater right of record at the Utah Division of Water Rights, identified as Water Right No. 35-1220 (the “Snowberry Right”), pursuant to which Snowberry is entitled to divert and utilize water from a certain culinary water well as described in the Water Right (the “Snowberry Well”), for the domestic use of one family as defined in the Water Rights; and

WHEREAS, Pineview West has been duly organized for the purpose of owning, operating, maintaining and administering a culinary water distribution system, including Water Right No. 35-7263 and certain wells, pipelines and related facilities and equipment (the “Pineview System”), for the purpose of providing culinary water service to its shareholders and customers, subject to regulation by the Public Service Commission of Utah (“PSC”); and

WHEREAS, subsequent to the development of the Snowberry Well, Pineview West drilled a certain culinary water well identified as Well No. 4 (“Well No. 4”), in the general proximity of the Snowberry Well, and it is the position of Snowberry that the diversion and use of water by Pineview West from Well No. 4 potentially adversely interferes with the Snowberry Well and Snowberry’s ability to divert and use water therefrom; and

WHEREAS, Pineview West does not admit that there is any interference between the Snowberry Well and Well No. 4; however, in order to avoid a dispute between the Parties over the question of well interference, Snowberry is willing to lease the Snowberry right to Pineview West and Pineview West willing to lease the Snowberry Right from Snowberry and provide culinary water service to Snowberry through the Pineview System, subject to and in conformance with the terms and provisions of this Agreement.

NOW THEREFORE, and in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**A. WATER RIGHT LEASE**

**1. Lease of Snowberry Right.** Snowberry hereby leases the Snowberry Right to Pineview West, it being the understanding and agreement of the Parties that water under the Snowberry Right shall be diverted by Pineview West from any one or combination of culinary water wells within the Pineview System, including Well No. 4. Title to the underlying

Snowberry Right shall remain vested in Snowberry subject to the terms and provisions of this Agreement.

**2. Condition Precedent to the Lease.** The Parties hereby acknowledge that as of the date of execution of this Agreement, in order for water under the Snowberry Right to be diverted from the Pineview West wells and utilized within the Pineview System for distribution to Snowberry as provided herein, that a permanent change application (the “Change Application”) may need to be filed with the Division of Water Rights and be approved by the State Engineer to authorize such use of water under the Snowberry Right. In connection with the Change Application:

(a) Snowberry shall be responsible for preparing, filing and pursuing the final approval of the Change Application as necessary, including the defense of any appeal of the State Engineer’s memorandum decision regarding the same. Snowberry shall pay all costs and expenses, including attorney’s fees, engineering fees, expert witness fees and other consultant’s fees and charges, incurred by Snowberry in connection with the preparation and filing of the Change Application and those incurred in connection with all administrative proceedings involving the State Engineer’s consideration of the Change Application, including proceedings relating to any request for reconsideration and any appeal of the State Engineer’s decision approving or rejecting the Change Application. Snowberry shall have the absolute and sole discretion to determine whether and to what extent it shall pursue or defend any request for reconsideration, or any appeal.

(b) Snowberry shall fully cooperate in connection with all administrative, judicial and other proceedings involving the Change Application.

(c) Snowberry shall provide Pineview West with copies of any Change Application, and all non-privileged correspondence, pleadings, and other documents generated in connection with any proceedings relating to a Change Application, and Snowberry shall keep Pineview West fully advised with respect to all matters involving the Change Application.

**3. Consideration for the Lease.** As consideration for the lease of the Snowberry Right hereunder, Pineview West shall pay Snowberry a lease payment in the amount of \$35.00 per month (the “Lease Payment”), due and payable as billed by Pineview West. Payment of the Lease Payment by Pineview West to Snowberry shall be expressly subject to current payment by Snowberry to Pineview West of all amounts due and owing for water service provided by Pineview West to Snowberry as provided in Section B. 2. herein.

## **B. WATER SERVICE**

**1. Water Service.** For the price and on the terms and conditions hereinafter set forth, Pineview West shall provide culinary water service to Snowberry.

(a) The water delivered to Snowberry hereunder shall be used by Snowberry only in connection with the water use requirements of the Snowberry Inn.

(b) Snowberry shall have no right to sell, rent or otherwise dispose of the water delivered for Snowberry’s use by Pineview West hereunder.

(c) No water right in favor of the Snowberry is created by this Agreement. The rights acquired by the Snowberry hereunder are contractual in nature, and are expressly subject to the terms hereof.

**2. Water Rates.**

(a) Metered Usage; Quarterly Readings. All water usage by Snowberry will be metered and billed quarterly, based upon the average monthly meter readings over the quarter.

(b) Billing Plans. Water billings shall be based upon the following usage plans:

(1) Standard Water Usage Plan. Snowberry shall be obligated to pay for water service provided by Pineview West at the following rates currently approved by the PSC:

Current Base Rate: \$55.00/month for the first 7,500 gallons per month

Current Overage Rate: \$5.00 per 1,000 gallons over and above 7,500 gallons per month

(c) Payment. All payments shall be due and payable, as billed, payable to Pineview West Water Company, at its office currently located at 787 N Highway 162, Eden UT 84310, or as indicated on invoices.

(d) Rate Adjustments. Water rates charged for water service may be adjusted from time-to-time by Pineview West subject to prior application to and approval by the PSC. In the event a rate adjustment is approved by the PSC, the rates set forth in Standard Water Usage Plan and the Secondary Water Usage Plan set forth above, will be renegotiated between the Parties and the current rates set forth herein shall apply unless and until the new terms are agreed-upon by the Parties.

(e) Special Assessments. Special assessments which may be levied from time-to-time against Pineview West shareholders shall not apply as to Snowberry, except and only to the extent that the special assessment covers any part of the Pineview System infrastructure that directly supplies water to Snowberry, which shall include, generally, Well No. 3 and Pineview West's upper reservoir.

(f) Remedies in the Event of Non-payment. In the event Snowberry shall fail to make any payment hereunder when due, Pineview West may, at its sole discretion, pursue cumulatively or separately any of the following remedies:

(1) charge interest at the rate of eighteen percent (18%) per annum, or as approved by the PSC, from the date of delinquency until the delinquent amount is paid in full;

(2) refuse the delivery of water hereunder until the principal payment, together with accrued interest as provided herein, is made;

(3) charge disconnect and reconnect fees as approved by the PSC to refuse and allow water delivery in the event of non-payment in the same manner as other shareholders and contract water users of Pineview West;

(4) exercise any and all other remedies available to it at law or in equity, to enforce collection of the payment due, including, without limitation, an action for specific performance.

**3. Delivery of Water.** Water shall be delivered by Pineview West to the Snowberry at the existing point of connection with the Pineview System through the existing Snowberry service line.

**4. Use of the Snowberry Well.** Snowberry shall have the express right, at its sole discretion, at any time and from time-to-time during the term hereof, to divert and use water from the Snowberry Well as a means of supplementing and/or replacing the water to be served by Pineview West, without payment of any disconnect or reconnect fees, and Pineview West's obligation to provide water service hereunder shall be correspondingly reduced and/or alleviated during any such period. Snowberry shall make written or email notification to the President and Treasurer of the period of non-use of Pineview West water prior to the event so billing can be adjusted accordingly.

**5. Works and Facilities.**

(a) Snowberry, at its sole cost and expense, shall be obligated to provide, construct and install all works and facilities of any type or kind extending from the point of connection with the Pineview System to the Snowberry Inn, as shall be necessary to receive delivery of water service from Pineview West hereunder and to accommodate the use of Pineview West water in connection with the Snowberry Inn. Pineview West shall have no obligation, whatsoever, to provide any such works and facilities.

(b) Pineview West, at its sole cost and expense, shall be obligated to provide, construct and install all works and facilities of any type or kind, as necessary to provide water service up to the point of delivery to Snowberry, and Snowberry shall have no obligation, whatsoever, to provide any such works and facilities.

**6. Availability of Water.**

(a) The obligation of the Pineview West to provide water service hereunder shall at all times be and remain subject to shortage resulting from drought, hostile diversion, prior superior claims, any order or directive of the State Engineer or other local, state or federal agency, acts of God, and all other such conditions, events and causes beyond the control of the Pineview West. Snowberry acknowledges and agrees that in the event of a water shortage resulting from conditions, events and causes beyond the control of the Pineview West, Pineview West's Board of Directors shall have the right to allocate the available water supply among all of Pineview West's shareholders and contract holders, including Snowberry. Pineview West will give preference in allocating the available water supply to domestic and municipal supply requirements.

(b) No liability shall accrue against the Pineview West, or any of its officers, employees, agents or consultants, for any loss, damage or claim, of whatsoever kind or nature, whether direct or indirect, resulting from or arising out of the conditions, events and causes described in Section 6(a) herein.

**C. GENERAL PROVISIONS**

**1. Term of Agreement.** This Agreement shall remain in force and effect until terminated as provided below.



**2. Termination.**

(a) This Agreement shall automatically terminate, without notice, at the sole discretion of Pineview West, in the event of the following:

(1) If Snowberry files any claim involving Pineview West, of whatsoever kind or nature, pertaining to Pineview West's ownership and operation of Well No. 4;

(2) If there is any change in current use of the Snowberry Inn;

(3) If any officer, representative or agent of Snowberry, without prior authorization from Pineview West, tampers with any facility in connection with the Pineview System, including, without limitation, the water meter serving Snowberry.

(4) If there is any event of non-payment as provided in Section B. 2. (f);

(5) If Pineview West decides, in its sole discretion, not to operate Well No. 4 for a full calendar year, subject to the obligation of Pineview West to provide at least 30 days' advance written notice of its intent to terminate use of said well and the planned termination date.

(b) Snowberry may terminate this Agreement, at any time, without cause, subject to 30 days' prior written notice to Pineview West, but only if Snowberry is then current in all payments due and owing to Pineview West.

**3. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**4. Attorney's Fees.** In the event that this Agreement or any provision hereof shall be enforced by an attorney retained by a Party hereto, whether by suit or otherwise, the fees and costs of such attorney shall be paid by the Party who breaches or defaults hereunder, including fees and costs incurred upon appeal or in bankruptcy court.

**5. Severability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

**6. Entire Agreement.** This Agreement constitutes the entire understanding and agreement by and between the Parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

**7. Assignment.** This Agreement runs personally to Snowberry and shall not be deemed to run with the land owned by Snowberry. Neither this Agreement nor any interest herein shall be assignable by Snowberry to any third party without the express, prior written consent of Pineview West.

**8. Rules and Regulations.** Snowberry shall be subject to all rules and regulations now existing or hereinafter promulgated by Pineview West which are determined by Pineview West to be applicable to the Snowberry's use of water pursuant to this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Lease to be executed as of the day and year first above written.

**PINEVIEW WEST WATER COMPANY**

By: \_\_\_\_\_  
Its: President

**SNOWBERRY INN**

By: \_\_\_\_\_  
Its: