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RECEIVED

COMPLAINT OF MONICA BRIEGER §  
AGAINST SWWC UTILITIES, INC. §  
D/B/A HORNSBY BEND UTILITY §

PUBLIC UTILITY COMMISSION  
OF TEXAS

2016 SEP 23 PM 1:31

PUBLIC UTILITY COMMISSION  
FILING CLERK

**ORDER**

This Order addresses the complaint by Ms. Monica Brieger against SWWC Utilities, Inc. d/b/a Hornsby Bend Utility (Hornsby) regarding water billing practices and related charges. Public Utility Commission of Texas (Commission) Staff found no actionable grievances upon which a remedy could be provided to Ms. Brieger and did not recommend any additional action be taken against Hornsby because service to Ms. Brieger was restored and she is currently on a deferred payment plan. For the reasons discussed in this Order, the complaint is dismissed.

**I. Background**

**A. Ms. Brieger’s Complaint**

On February 22, 2016, Ms. Brieger filed a complaint against Hornsby regarding water billing practices and related charges.<sup>1</sup> Ms. Brieger stated that she is a disabled person living on Social Security Disability Insurance (SSDI), a fixed income.<sup>2</sup> She complained that (1) she has had to pay late fees every month for the past 14 years because her SSDI check arrives on the third of each month, and her water bill is normally due on the 29<sup>th</sup> of the prior month; therefore, her check does not arrive until four or five days after her water bill is due, which results in a 10% late fee and a disconnect notice each month,<sup>3</sup> (2) she asked Hornsby in 2009 if the utility could change her billing cycle and due date so that she could pay the bill on time and was told no,<sup>4</sup> (3) a payment made on her behalf by a church for her bill due on November 29, 2015, for which Hornsby received a “pledge letter” from the church on December 10, 2015, and cashed the check on

<sup>1</sup> Complaint of Monica Brieger against SWWC Utilities, Inc. d/b/a Hornsby Bend Utility (Feb. 22, 2016) (Complaint).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

December 16, 2015, was not correctly applied to her account until January 8, 2016,<sup>5</sup> (4) Hornsby lost a credit balance from her account and improperly showed that she owed \$118.33 and \$126.72, two months of billing, on January 29, 2016,<sup>6</sup> (5) she has had to call Hornsby's Alabama headquarters to get a phone number for their customer service and billing division to call for help,<sup>7</sup> (6) she instructed Hornsby not to put an extension of time to pay on her bill in February 2016, but Hornsby did anyway,<sup>8</sup> (7) Hornsby never offered her a deferred payment plan and never offered her an application for their one-time-a-year catastrophic assistance program (CAP),<sup>9</sup> (8) Hornsby denied her March 2015 application for their CAP without explanation or notification and has not responded to her second application for their CAP, mailed on February 21, 2016,<sup>10</sup> (9) when she calls Hornsby and asks to speak to a supervisor, she is continuously told that no supervisor is available, but that due to her privacy concerns she does not have her phone number posted on her account with Hornsby and therefore leaving her number is not an option,<sup>11</sup> (10) Hornsby must have equipment that detects her phone number because she has received a local callback, but that she does not give her utilities her phone number,<sup>12</sup> and (11) her base rates, before actual usage is added, are too high at a cost of \$88.47 for water and sewer service.<sup>13</sup>

Ms. Brieger stated that Hornsby should have customer service supervisors or managers available for customers on request.<sup>14</sup> Ms. Brieger requested a response from Hornsby about her CAP applications, that Hornsby be more transparent with phone numbers for company employees and departments to contact in the event of disputes other than customer service, that Hornsby be required to have a customer resolution department and have billing cycle dates consistent with the public's pay periods, that Hornsby be required to have a late fees of \$5.00, rather than a 10% late

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> Complaint at 3.

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3 and 4.

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> Complaint at 4.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> *Id.* at 4.

charge.<sup>15</sup> Finally, Ms. Brieger asked that Hornsby be required to comply with the Commission's rules.<sup>16</sup>

### B. Hornsby's Response

On March 16, 2016, Hornsby responded to Ms. Brieger's complaint.<sup>17</sup> Hornsby stated that Ms. Brieger receives retail water and wastewater service from Hornsby.<sup>18</sup> Hornsby stated that company representatives have spent hours on the phone explaining to Ms. Brieger that she was not current with her bill in January 2016 as she believed, but was in fact a month behind.<sup>19</sup> Hornsby stated that with regard to the misapplied payment received in December 2015, there was no account number on the check and it was incorrectly deposited by Hornsby's third party processor.<sup>20</sup> Hornsby stated that once notified of the issue, the payment was researched and located and the funds were moved to Ms. Brieger's account on January 4, 2016.<sup>21</sup>

Hornsby stated that its CAP is company funded and that the program is intended to provide assistance to customers who have a one-time devastating life event that severely but temporarily affects their ability to pay their bill.<sup>22</sup> Hornsby stated that the reasons given by Ms. Brieger in her requests for the CAP did not meet these criteria.<sup>23</sup> Hornsby stated that escalation calls are handled as they come in to ensure that all customer concerns are treated fairly and efficiently.<sup>24</sup> Hornsby stated that when a call back was offered to Ms. Brieger, it was rejected because she had instructed the company not to store any contact information.<sup>25</sup> Finally, Hornsby stated that its rates, 10% late fees and due dates are in accordance with its approved tariff and Commission rules.<sup>26</sup>

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<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> SWWC Utilities, Inc. Response to Order No. 1 (Mar. 16, 2016) (Response).

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Response at 2

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* at 2-3.

Hornsby stated that Ms. Brieger has only been disconnected once in this whole process, on February 24, 2016.<sup>27</sup> Hornsby claimed that prior to February 24, 2016, the company did not know that Ms. Brieger was disputing her billing, stated that it did not respond to Ms. Brieger's informal complaint because notice was not sent to the correct email address and further, that once aware of this formal complaint, also on February 24, 2016, the company immediately reconnected service and waived any reconnection fee and deposit requirement.<sup>28</sup> Hornsby stated that it believes it has complied with its tariffs and the Commission's rules.<sup>29</sup> Hornsby stated that there is no record of Ms. Brieger requesting a changed due date in 2009.<sup>30</sup> Hornsby stated that on March 3, 2016, Ms. Brieger entered into a six-month payment arrangement for the amount of \$118.33, and stated that if the plan is broken, it will be removed from Ms. Brieger's account and the normal rules of payment and discontinuance will apply.<sup>31</sup> Hornsby stated that it believes it has done everything within the scope of its responsibilities to address Ms. Brieger's concerns.<sup>32</sup>

### C. Commission Staff's Statement of Position

On March 23, 2016, Commission Staff filed a position statement in this proceeding.<sup>33</sup> Commission Staff verified that prior to filing her formal complaint against Hornsby, Ms. Brieger presented an informal complaint to the Commission's Customer Protection Division.<sup>34</sup> The investigation was concluded on February 12, 2016, due to lack of response from Hornsby.<sup>35</sup> Commission Staff determined that Ms. Brieger has complied with the requirements for informal resolution.

Commission Staff stated that Hornsby's billing and due dates are consistent with 16 Tex. Admin. Code § 24.87(b) (TAC),<sup>36</sup> that Ms. Brieger was able to apply for a payment assistance

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<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.*

<sup>29</sup> Response at 3

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 4.

<sup>33</sup> Commission Staff's Statement of Position (Mar. 23, 2016) (Staff SoP).

<sup>34</sup> *Id.* at 1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 3.

program and Ms. Brieger is now on an alternate payment plan consistent with 16 TAC § 24.87(m),<sup>37</sup> that the Commission's rules do not show a violation, that payments made on Ms. Brieger's behalf are currently recorded and that an unpaid amount for October 2015 is subject to a payment plan, and finally that Hornsby's rates are being charged and the type of late payment fee issued is in accordance with Hornsby's latest tariff.<sup>38</sup>

#### D. Ms. Brieger's Supplement to Complaint

On March 23, 2016, Ms. Brieger supplemented her complaint.<sup>39</sup> Ms. Brieger stated that Hornsby disconnected her service while fully aware that her bill was in dispute, in violation of the Commission's rules.<sup>40</sup> Ms. Brieger stated that when her service was disconnected, she immediately called the Commission, was given a new informal complaint number, and the name and contact number for the Commission's attorney on her formal complaint, Alexander Petak.<sup>41</sup> Ms. Brieger stated that she left Mr. Petak a message regarding her service disconnection and asked for a return call, and that she then called Hornsby and left two voice messages.<sup>42</sup> Ms. Brieger said she never heard from Hornsby, but she called Mr. Petak again and explained her situation to him, including Hornsby's failure to respond to her informal complaint.<sup>43</sup> Ms. Brieger stated that Mr. Petak contacted Hornsby, and only after that call did Hornsby reconnect her service and offer her a deferred payment plan.<sup>44</sup> Ms. Brieger stated that Hornsby did offer to waive her reconnect fees, but still did not offer her payment assistance under its CAP.<sup>45</sup> Ms. Brieger said that Hornsby never offered her an application for its CAP, but that she knew about the program through a friend who once worked for Hornsby.<sup>46</sup> She stated that even though she did not have a devastating life

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<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> Supplement to Complaint of Monica Brieger against SWWC Utilities, Inc. d/b/a Hornsby Bend (Mar. 23, 2016) (Supplement).

<sup>40</sup> *Id.* at 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 1-2.

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.*

<sup>45</sup> Supplement at 3.

<sup>46</sup> *Id.*

event consistent with Hornsby's interpretation, her fixed income and the monthly bill that she cannot pay on time causes her a hardship and is a catastrophic event for her.<sup>47</sup> Ms. Brieger stated that as a disabled person, having her service disconnected was a catastrophic event and an emergency.<sup>48</sup> Ms. Brieger continues to challenge the accuracy of her bill, insisting that she is not behind the amount that is now subject to a payment plan.<sup>49</sup>

Ms. Brieger indicated that Hornsby instructed her to call after she made her March 3, 2016 payment to complete the deferred payment contract, and that Hornsby would then put a block on her account for termination notices and would allow her to make her payments on the third of each month for the six months of that contract.<sup>50</sup> Ms. Brieger then stated that her April 2016 bill was due on the first, not the third as agreed, and that it includes her current charges and an amount for the arrearage, which constitutes a catastrophic event for her.<sup>51</sup> Ms. Brieger questions the current bill because another church payment on her behalf, in the amount of \$100, has been paid, which should have eliminated most of her arrearage.<sup>52</sup> She does not understand why her bill continues to show past due charges at 10%.<sup>53</sup>

Ms. Brieger complained that Hornsby does not maintain a local office, therefore, she must pay her bills at a convenience store pay station, and that it is more than 20 miles for her to drive to that location.<sup>54</sup> Ms. Brieger asked the Commission to penalize Hornsby for each violation in her complaint.<sup>55</sup> She requested that Hornsby be required to produce evidence of a letter denying her CAP and to clarify the requirements for its CAP and why she does not qualify.<sup>56</sup> Ms. Brieger stated that the application form does not identify Hornsby and again states that it is perfectly reasonable to her that a fixed income and the inability to pay for water service should constitute

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<sup>47</sup> *Id.* 3 and 4, and 5-6.

<sup>48</sup> *Id.* at 6.

<sup>49</sup> *Id.* at 3-4.

<sup>50</sup> *Id.* at 4.

<sup>51</sup> Supplement at 4.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 5.

<sup>55</sup> *Id.*

<sup>56</sup> Supplement at 5.

an emergency.<sup>57</sup> Ms. Brieger then discusses the 10-day extension to pay that was placed on her bill in early February 2016 without her consent or agreement.<sup>58</sup> Ms. Brieger stated that it does not appear that Hornsby's representatives have knowledge of the Commission's rules, and it took a call from Mr. Petak to inform the company.<sup>59</sup>

Ms. Brieger requested flexible due dates for her and other customers, at least 16 days from bill issuance to the due date, and reduced late fees.<sup>60</sup> Ms. Brieger stated that she does not have a computer and prefers to receive her bills by mail; that her address and phone number are private.<sup>61</sup> She again stated that Hornsby must have equipment that identifies her phone number because she has not given it to them and they must document her information in their permanent record without consent.<sup>62</sup> She stated that Hornsby has violated her privacy<sup>63</sup> and asked the Commission to blot out her private information in all filings.<sup>64</sup> Finally, Ms. Brieger complained again about not being able to reach a manager at Hornsby.<sup>65</sup>

#### **E. Hornsby's Response to Supplement to Complaint**

On March 30, 2016, Hornsby replied to Ms. Brieger's supplemental complaint filing.<sup>66</sup> Hornsby stated that once informed of the January 2016 inquiry from the Commission in Ms. Brieger's informal complaint, the company immediately reconnected Ms. Brieger's service and waived the reconnect fees and deposit requirements associated with the disconnect.<sup>67</sup> The company stated that until Mr. Petak called, it was not aware of any particular charge in dispute,

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<sup>57</sup> *Id.* at 6.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 7.

<sup>61</sup> *Id.* at 8.

<sup>62</sup> Supplement at 8

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 9.

<sup>65</sup> *Id.*

<sup>66</sup> Hornsby Bend's Response to Order No. 2 (Mar. 30, 2016) (2<sup>nd</sup> Response).

<sup>67</sup> *Id.* at 1.

therefore a disconnect notice had been sent to Ms. Brieger on February 8, 2016, with the payment due February 20, 2016.<sup>68</sup>

Hornsby stated that a January call to its call center was returned to Ms. Brieger, but that the February 24, 2016 calls came in after discussions between the company and Commission Staff had already begun.<sup>69</sup> Further, Hornsby stated that Ms. Brieger's service had already been reconnected before her calls came in that day and a deferred agreement was in process, so there were no outstanding items in dispute.<sup>70</sup>

Hornsby apologized again for the mix-up on the email address used by Commission Staff to provide notice of the informal complaint.<sup>71</sup> The company said it had no record of receiving an email from the Commission.<sup>72</sup> The company insured that the correct email address was being used.<sup>73</sup>

Hornsby stated again that when it disconnected Ms. Brieger on February 24, 2016, the company was not aware of a billing dispute on her account and that it reconnected her service immediately upon receiving notice of the dispute.<sup>74</sup> The company stated that when Ms. Brieger inquired of alternative payment programs and assistance, information on the company's CAP was sent to her and as has been demonstrated, she was aware of other local assistance programs.<sup>75</sup>

Hornsby stated that all rates and fees charged to Ms. Brieger have been from its tariff.<sup>76</sup> Hornsby acknowledged that there could be confusion about its CAP program process and requirements, so it is updating the application form and will incorporate an acceptance/denial letter into its program.<sup>77</sup> Hornsby stated again that Ms. Brieger does not meet the requirements for its

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 2.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> 2<sup>nd</sup> Response at 2.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 3.

CAP.<sup>78</sup> Hornsby stated that the past due amount Ms. Brieger disputes is shown on her disconnection notice, that the company has verbally agreed not to take action on her account while her installment plan is in effect if her payment is received by the third each month, and explained that her installment payments are due at the same time as her regular bill.<sup>79</sup>

Hornsby stated that is has not received a pledge or payment from a church for \$100 in March 2016 as reported by Ms. Brieger.<sup>80</sup> Hornsby provided the location for its Travis County office in Pflugerville, but stated that there were several payment options for Ms. Brieger that are closer to her.<sup>81</sup>

Hornsby acknowledged placing a 10-day extension on Ms. Brieger's account in February without her consent and stated that it will refrain from giving her additional time to pay her bill without her consent in the future.<sup>82</sup> Hornsby stated that because the past due portion of Ms. Brieger's bill was not more than three times her average monthly bill, the company was not obligated to offer her a deferred payment plan, but that the company will train its call center representatives to better recognize when one should be offered.<sup>83</sup> Additionally, the topic of a deferred payment plan did not come up until after the involvement of Commission Staff because Ms. Brieger would not admit to owing a past due amount.<sup>84</sup> Once Ms. Brieger agreed to pay the past due bill, a deferred payment plan agreement was reached.<sup>85</sup>

Hornsby again stated that its rates, fees and due dates are consistent with its tariff.<sup>86</sup> Additionally, the company has verified once again that her personal information has been removed

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<sup>78</sup> 2<sup>nd</sup> Response at 2-3.

<sup>79</sup> *Id.* at 3.

<sup>80</sup> *Id.* at 3.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 3-4.

<sup>84</sup> 2<sup>nd</sup> Response at at 3.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 4.

from her account.<sup>87</sup> Hornsby stated that it believes it has not violated the water code and that it has done everything within the scope of its responsibilities to address Ms. Brieger's issues.<sup>88</sup>

#### F. Commission Staff's Record Correction

On March 30, 2016, Commission Staff filed a record correction.<sup>89</sup> Commission Staff made a clerical correction to its statement of position then noted that Hornsby's response to the complaint was being redacted to remove Ms. Brieger's private information and recommended that further submissions of this type of evidence should be filed confidentially.<sup>90</sup>

#### G. Ms. Brieger's Second Supplement to Complaint

In her second supplement to this complaint,<sup>91</sup> Ms. Brieger re-asserted that Hornsby knew that her bill was in dispute prior to disconnecting her service on February 24, 2016.<sup>92</sup> Ms. Brieger stated that in its response to this complaint, Hornsby demonstrated that it knew Ms. Brieger was disputing her bill on January 19, 2016.<sup>93</sup> Ms. Brieger pointed out that portions of her call center discussion were not included in the referenced notes, such as the fact that a representative had agreed to waive her \$10.69 late fee and that on January 21, 2016 she left messages for a Ms. Tycker.<sup>94</sup> Ms. Brieger stated that she went in person to the Commission to file her informal complaint.<sup>95</sup> Ms. Brieger stated that the Commission's rules don't require notice to the utility, and that the Commission did try to notify Hornsby, to no avail.<sup>96</sup> Ms. Brieger then discussed again the \$118.33 bill that she still disputes that she owes and complains that Hornsby did not return her calls, specifically that she left more than one message for Ms. Tycker that were not returned by Ms. Tycker but instead that only Deborah spoke with her and she did not know about the

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Commission Staff's Record Correction (Mar. 30, 2016).

<sup>90</sup> *Id.*

<sup>91</sup> Supplement II (Apr. 5, 2016).

<sup>92</sup> *Id.* at 1.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 2.

<sup>96</sup> *Id.*

Commission's rules, and had no knowledge of a deferred payment plan to begin on March 3, 2016.<sup>97</sup> Ms. Brieger says she made her normal payment on March 3, 2016, and signed the deferred payment agreement on March 14, 2016.<sup>98</sup> Ms. Brieger alleged that Hornsby's statements are misleading, then discussed the improperly allocated payment from December, and how that amount was not corrected properly and that she is not a month past due.<sup>99</sup>

Ms. Brieger then explained that on March 31, 2016, Westover Church of Christ notified Hornsby that it had mailed \$100 on Ms. Brieger's behalf on March 21, 2016, but that the location to which the payment was mailed was closed. So, the church sent another pledge letter to Hornsby by fax and mailed a second check on March 31, 2016.<sup>100</sup> Ms. Brieger complained that another 30-day hold was placed on her account because Hornsby had not received the payment.<sup>101</sup> Finally, Ms. Brieger again complained that Hornsby did not maintain an office within 20 miles of her location and the company has not requested a waiver of this requirement.<sup>102</sup> Ms. Brieger complained that Hornsby doesn't keep a copy of the Commission's rules and its tariffs at any of the convenience or grocery stores on the map that was provided by Hornsby.<sup>103</sup> Ms. Brieger asked that Hornsby be punished for every violation identified in her complaint.<sup>104</sup>

#### **H. Commission Staff's Supplemental Statement of Position**

On April 20, 2016, Commission Staff filed a supplemental statement of position.<sup>105</sup> Commission Staff noted that pursuant to 16 TAC § 24.87, even if Hornsby had been notified that Ms. Brieger was disputing her bill, a payment equal to the customer's regular monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service.<sup>106</sup> Commission Staff did not find any evidence of a

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<sup>97</sup> Supplement II (at 2.

<sup>98</sup> *Id.* at 3.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 4.

<sup>103</sup> Supplement II at 4.

<sup>104</sup> *Id.* at 4.

<sup>105</sup> Commission Staff's Supplemental Statement of Position (Apr. 20, 2016).

<sup>106</sup> *Id.* at 1-2.

payment made to Hornsby equal to Ms. Brieger's average monthly usage at current rates prior to the disconnect.<sup>107</sup> Additionally, Commission Staff has spoken with Hornsby, Ms. Brieger's service was restored, she is on a deferred payment plan, and the company insists it did not receive notice of the informal complaint.<sup>108</sup> Commission Staff still did not recommend any additional action be taken against Hornsby because service to Ms. Brieger was restored and she is currently on a deferred payment plan.<sup>109</sup>

### I. Conclusion

Ultimately, the Commission agrees with Commission Staff. A review of Ms. Brieger's bills from Hornsby demonstrates Ms. Brieger receives both retail water and wastewater service from Hornsby and that she did have an unpaid \$118.33 balance on her account with Hornsby for the time frame at issue, and for which she entered a deferred payment plan in March 2016. Although \$118.33 was not the billed amount on Ms. Brieger's bill from Hornsby that was due on November 29, 2015 or her bill that was due on December 30, 2015, it is the amount from those two bills that remained unpaid on Mr. Brieger's account after Hornsby corrected, transferred and credited the amount of \$131.56 to Ms. Brieger's account on January 4, 2016, and removed all late payment fees.

Further, between November 6, 2015, when \$139.39 was credited to Ms. Brieger's account in full payment of her Hornsby bill that was due October 29, 2015, and the January 4, 2016 transfer, no other payment was credited to Ms. Brieger's account in November or December 2015. Therefore, only one payment, the transfer payment, was credited to Ms. Brieger's account for two months of billing. As a result and as of January 4, 2016, Ms. Brieger was past due with Hornsby in the amount of \$118.33. This amount remained unpaid through February 2016.

Additionally, Ms. Brieger is not correct that she had a credit balance on her Hornsby account as her bill that was due November 29, 2015 appears to indicate. On her Hornsby bill for the prior month, which was due October 29, 2015, Ms. Brieger owed \$126.72 if that bill was paid on time. She owed \$139.39 if the bill was paid after October 29, 2015. Ms. Brieger paid that

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<sup>107</sup> *Id.* at 2.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

bill late, on November 6, 2015, and she paid it in full, in the amount of \$139.39. Therefore, as of November 6, 2015, Ms. Brieger's account with Hornsby was current, but she did not have a credit balance.

However, the manner in which Hornsby reflected Ms. Brieger's late but full payment on her next bill, might have caused confusion. Ms. Brieger's Hornsby bill that was due November 29, 2015 shows a credit for \$12.67, the difference between her \$139.39 late and full payment of her Hornsby bill that had been due on October 29, 2015 and the \$126.72 timely payment amount for that bill. However, the bill due November 29, 2015 also assesses her a late fee of \$12.67 for the prior month. Therefore, what appears to be a credit is cancelled out by the late fee assessed. Ms. Brieger did not have a credit balance.

As explained, it is clear that Ms. Brieger was past due in the amount of \$118.33 to Hornsby in February 2016, and Hornsby did not remove a credit balance from her account. Therefore, Ms. Brieger is incorrect with regard to these issues. Additionally, Commission Staff recommends that Hornsby has not violated other Commission rules about which Ms. Brieger complains, and instead recommended that Hornsby is not guilty of any actionable grievances for which the Commission can order relief. Commission Staff stated that Ms. Brieger was not more than three months behind during the time frame at issue, therefore Hornsby was not obligated to offer her a deferred payment plan when she called to tell the company she was having trouble paying her bill, and Hornsby is authorized to decide that Ms. Brieger does not qualify for its CAP. Finally, Commission Staff noted that Ms. Brieger's service has been restored and she is on a deferred payment plan for past due billing on her account. For all these reasons, the Commission Staff recommended and the Commission concludes that this case should be dismissed. For the stated reasons, Ms. Brieger has failed to state a claim for which the Commission can order relief and this complaint is dismissed.

The Commission adopts the following findings of fact and conclusions of law:

## **II. Findings of Fact**

### **Procedural History**

1. On February 22, 2016, Ms. Brieger filed a complaint against Hornsby regarding water billing practices and related charges.

2. On February 24, 2016, Order No. 1 was issued, requiring Hornsby to respond to Ms. Brieger's complaint and requiring Commission Staff to file a statement of position.
3. On March 16, 2016, Hornsby responded to Ms. Brieger's complaint.
4. On March 23, 2016, Commission Staff found no actionable grievances upon which a remedy could be given to Ms. Brieger.
5. On March 23, 2016, Ms. Brieger filed a supplement to her complaint.
6. On March 30, 2016, Hornsby replied to Ms. Brieger's supplemental complaint filing.
7. On March 30, 2016, Commission Staff filed a correction to the record.
8. On April 5, 2016, Ms. Brieger filed a second supplement to her complaint.
9. On April 20, 2016, Commission Staff filed a supplemental statement of position, but did not recommend any additional action be taken.

### Complaint

10. Ms. Brieger receives water and wastewater service from Hornsby.
11. On January 4, 2016, after Hornsby transferred the previously incorrectly deposited \$131.56 payment made on Ms. Brieger's behalf and credited this amount to Ms. Brieger, and removed all late fees, Ms. Brieger remained \$118.33 in arrears.
12. On February 8, 2016, Hornsby sent Ms. Brieger a termination notice due to her past due billing.
13. Ms. Brieger's water service was disconnected on February 24, 2016 for nonpayment.
14. Prior to February 24, 2016, Hornsby was not aware that Ms. Brieger had filed an informal complaint or this formal complaint.
15. On February 24, 2016, Hornsby was notified of this complaint and that Ms. Brieger disputed her bill. Hornsby reconnected her service that same day and waived any reconnection fee.
16. On March 9, 2016, Ms. Brieger entered a six-month payment arrangement with Hornsby for the past due amount of \$118.33 that remained unpaid on her account.

17. Hornsby was entitled to determine that Ms. Brieger did not qualify for its CAP.
18. Hornsby's rates, late fees, and due dates are consistent with its approved tariff and the Commission's rules.

### **III. Conclusions of Law**

1. The Commission has jurisdiction over Ms. Brieger's complaint under TWC § 13.041(a).
2. Hornsby is a retail water and sewer utility under TWC § 13.002(23), and a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(58).
3. This docket was processed in accordance with the requirements of the Texas Water Code and Commission rules.
4. Hornsby's billing and due dates are consistent with 16 TAC § 24.87(b).
5. Hornsby's reasons for denial of Ms. Brieger's applications for the company's CAP were consistent with 16 TAC § 24.87(m).
6. Hornsby is entitled to dismissal of this proceeding, having demonstrated that the company did not violate the Commission's rules or its tariffs in its billing for Ms. Brieger during the time frame at issue.
7. Dismissal of this proceeding, pursuant to 16 TAC § 22.181(a)(1)(G), is appropriate because no actionable grievances exist upon which a remedy can be given to Ms. Brieger.
8. The 20-day notice requirement in 16 TAC § 22.35 has been met in this proceeding.

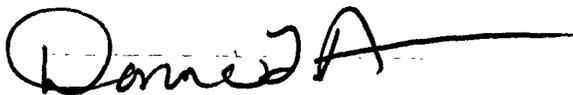
### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

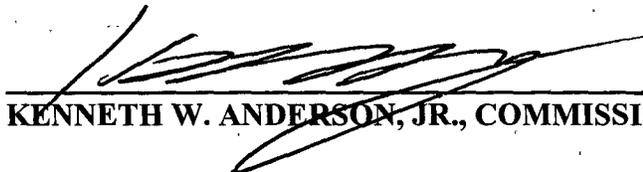
1. Ms. Brieger's complaint against Hornsby is dismissed, pursuant to 16 TAC § 22.181(a)(1)(G), because a claim does not exist for which relief can be granted.
2. All other motions, requests for entry of specific finds of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 23<sup>rd</sup> day of September 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**DONNA L. NELSON, CHAIRMAN**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



**BRANDY MARTY MARQUEZ, COMMISSIONER**