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Governor

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Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Austin Spraez
Commission Advising

RE: *Complaint of Brad White Against Arledge Ridge Water Supply Corporation*,
Docket No. 52493, Draft Preliminary Order, February 10, 2022 Open Meeting,
Item No. 6.

DATE: February 2, 2022

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the February 10, 2022 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the February 10, 2022 open meeting.

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DOCKET NO. 52493

COMPLAINT OF BRAD WHITE	§	PUBLIC UTILITY COMMISSION
AGAINST ARLEDGE RIDGE WATER	§	
SUPPLY CORPORATION	§	OF TEXAS

DRAFT PRELIMINARY ORDER

Brad White filed a complaint against Arledge Ridge Water Supply Corporation on September 1, 2021. This preliminary order identifies the issues that must be addressed.

Mr. White alleges that Arledge Ridge WSC refused to provide water service to his residence that is located within the service area of Arledge Ridge WSC's certificate of convenience and necessity number 10175. Mr. White asserts that Arledge Ridge WSC informed him that the 2.5-inch water supply line that would serve Mr. White's residence currently serves 70 people and lacks the capacity to provide service to any additional customers.¹ Mr. White further stated that Arledge Ridge WSC acknowledged that it was working on a two-year plan to upgrade the service line supplying the area but that it lacked the capacity to serve Mr. White at this time.² Mr. White asserted that Arledge Ridge WSC informed him that if he wants water service for his residence within a shorter time period he would be required to pay \$100,000 to upgrade the line.³ Mr. White asserts that but-for the fact that the current water service line is at capacity and upgrades are necessary for additional meters, his service request would be treated as a standard request. Mr. White further asserts that only entertaining an application for non-standard service is itself a prospective rejection of any application for standard service.⁴ Mr. White makes an additional argument that Arledge Ridge has violated 16 TAC § 24.163 regarding cost allocation between utilities and service applicants.⁵

Arledge Ridge WSC filed a response to the formal complaint and asserts that it has not refused service to Mr. White because he has not applied for service as required under Arledge

¹ Complaint of Brad White against Arledge Ridge Water Supply Corporation at 1–2 (Sep. 1, 2021).

² *Id.* at 2.

³ *Id.* at 2.

⁴ Brad White's Reply to Arledge Ridge WSC's Response at 4, 6 (Oct. 11, 2021).

⁵ *Id.* at 6–8.

Ridge WSC's tariff, because he is not a member of Arledge Ridge WSC, and because Arledge Ridge WSC is both willing and able to provide service to Mr. White.⁶ Arledge Ridge WSC stated that based on the information it has received from Mr. White, it believes that he would require non-standard service because Arledge Ridge WSC's supply, storage, or distribution system requires additions to serve him. Arledge Ridge WSC further stated that it must expand a distribution system to maintain adequate water pressure throughout its system to avoid service interruptions, possible contamination, and the issuance of boil water notices. Arledge Ridge estimates that to serve Mr. White's property, approximately 1,000 linear feet of the 2.5-inch line that is at capacity must be replaced with a 6-inch water line to ensure adequate water service to its customers and Mr. White and the estimated construction fees are \$73,450.⁷

Mr. White filed his formal complaint on September 1, 2021. Arledge Ridge WSC filed its response on October 4, 2021. On January 10, 2022, Commission Staff filed its supplemental statement of position and requested referral to the State Office of Administrative Hearings (SOAH).

Mr. White and Arledge Ridge WSC were directed, and Commission Staff and other interested persons were allowed, to file by January 24, 2022 a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. Commission Staff, Mr. White, and Arledge Ridge WSC each timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁸ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is Arledge Ridge WSC a *water and sewer utility, utility, or public utility* as defined in 16 Texas Administrative Code (TAC) § 24.3(39)?

⁶ Arledge Ridge WSC's Response at 2–7 (Oct. 5, 2021).

⁷ *Id.* at 4–5, 65.

⁸ Tex. Gov't Code § 2003.049(e).

2. Is Arledge Ridge WSC a *water supply or sewer service corporation* as defined in 16 TAC § 24.3(40)?
3. Has Arledge Ridge WSC operated in a manner that fails to comply with the requirements for classification as a nonprofit water supply or sewer service corporation as prescribed by Texas Water Code (TWC) §§ 13.002(11) and (24), and 13.004(a)?

Issues Pertaining to an Appeal of the Cost to Obtain Service Other than Regular Membership or Tap Fees

4. Does the Commission have jurisdiction over this dispute under TWC § 13.043(g)?
 - a. Did Mr. White apply for service from Arledge Ridge WSC?
 - b. Was a decision made by Arledge Ridge WSC that affects the amount to be paid by Mr. White to obtain service, other than the regular membership or tap fees?
 - c. If so, was Mr. White's appeal initiated within 90 days after the date that written notice of the decision was provided to Mr. White, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)?
5. What is the total amount Mr. White would have to pay to obtain service from Arledge Ridge WSC, other than regular membership or tap fees? What services, acts, equipment, facilities, pipe, or other materials would that payment cover?
6. What amount, if any, has Mr. White already paid to Arledge Ridge WSC to obtain service? What services, acts, equipment, facilities, pipe, or other materials do any such payments cover?
7. Is the amount that Arledge Ridge WSC proposes to charge Mr. White to provide service to his property consistent with Arledge Ridge WSC's tariff, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
 - a. For Arledge Ridge WSC to provide service to Mr. White's property, does it require standard or non-standard service? Does it require an upgrade to the existing service lines?
8. Is the amount that Arledge Ridge WSC proposes to charge Mr. White to provide service to his property reasonably related to the cost of installing on-site and off-site facilities to provide service to Mr. White under TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?

9. Is the amount that Arledge Ridge WSC proposes to charge Mr. White to obtain water service clearly unreasonable under TWC § 13.043(g) and 16 TAC § 24.101(g)(1)?
 10. Does the amount to obtain service that Arledge Ridge WSC proposes to charge Mr. White comply with TWC § 13.043(j)?⁹
 - a. Is the amount Arledge Ridge WSC proposes to charge Mr. White to provide service to his property just and reasonable?
 - b. Is the amount Arledge Ridge WSC proposes to charge Mr. White to provide service to his property unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the amount Arledge Ridge WSC proposes to charge Mr. White to provide service to his property sufficient, equitable, and consistent in application to each class of customers?
 - i. Will future customers benefit from the upgrade that Arledge Ridge WSC indicates is required to provide service to Mr. White's property?
 11. Are the amounts Arledge Ridge WSC proposes to charge Mr. White to obtain water service part of a distribution-system upgrade that should be reflected in rates?
 12. If the amount that Arledge Ridge WSC proposes to charge Mr. White for the cost to obtain service does meet the requirements of TWC § 13.043(j), must this appeal be dismissed?
- If the amount that Arledge Ridge WSC proposes to charge Mr. White for the cost to obtain service does not meet the requirements of TWC § 13.043(j), address the following issues.***
13. If the amount that Arledge Ridge WSC proposes to charge Mr. White to obtain water service does not meet the requirements of TWC § 13.043(g) or (j), what amount that preserves the financial integrity of Arledge Ridge WSC should the Commission establish be paid by Mr. White?
 14. If Arledge Ridge WSC owes Mr. White a refund for any portion of the charges paid by Mr. White that exceeds the fee to be paid in the Commission's order, what interest rate should be applied to the refund?

⁹ See TWC § 13.043(g), (j).

Issues Pertaining to the Response to Request for Service

15. Is Mr. White a *qualified service applicant* of Arledge Ridge WSC under 16 TAC § 24.161(a)?
If not, what specific tariff provisions, service policies, or regulations have not been met and what rates or fees (if any) have not been paid for Mr. White to become a qualified service applicant?
16. If Mr. White is a qualified service applicant of Arledge Ridge WSC under 16 TAC § 24.161(a), has Arledge Ridge WSC complied with all requirements of 16 TAC § 24.161 in addressing Mr. White's request for water service?
- a. Has Arledge Ridge WSC made a service application available to Mr. White upon his request?
 - b. Has Arledge Ridge WSC accepted a completed application for water service from Mr. White?
17. Did Arledge Ridge WSC fail to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from Mr. White?
18. Did Arledge Ridge WSC fail to provide Mr. White with construction cost options such as the possibility of sharing construction costs between other Arledge Ride WSC customers and Mr. White as required under 16 TAC § 24.161(c)?
19. Did Arledge Ridge WSC require easements as allowed under 16 TAC § 24.161(d)(3)?
20. If applicable, has Arledge Ridge WSC complied with the requirements of 16 TAC § 24.161(e)(1)?
21. If Arledge Ridge WSC charged an amount paid or to be paid inconsistent with its tariff under TWC § 13.043(g) or is in violation of any Commission rule or TWC statute related to Mr. White's request for service, what remedy is appropriate?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER