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

**BRAD WHITE’S REPLY TO ARLEDGE RIDGE WATER SUPPLY CORPORATION’S
RESPONSE TO HIS FORMAL COMPLAINT**

Brad White files this Reply to Arledge Ridge Water Supply Corporation’s (Arledge Ridge) Response to and Motion to Dismiss his Formal Complaint, and would show the following:

I. PROCEDURAL BACKGROUND

On July 8, 2021, Brad White filed an informal complaint against Arledge Ridge with the Public Utility Commission of Texas’s (Commission) Consumer Protection Division (CPD) alleging Arledge Ridge refused to provide standard water service to his residence unless he first paid for extensive upgrades to the water system in violation of Texas law and Commission rules. CPD determined that Arledge Ridge must provide Mr. White residential water service and encouraged him to file a formal complaint against Arledge Ridge to force compliance. On September 1, 2021, Mr. White filed a Formal Complaint against Arledge Ridge under 16 Texas Administrative Code (TAC) § 22.242 reiterating his allegation that Arledge Ridge refused to provide standard water service to his residence unless he first paid the construction costs for water system upgrades. Order No. 1, issued by the Administrative Law Judge on September 2, 2021, established a deadline of October 4, 2021, for Arledge Ridge to file a response to the Formal Complaint. Arledge Ridge filed a timely response on October 4, 2021, responding to the allegations and requesting that the Commission dismiss Mr. White’s Formal Complaint. Order No. 1 also established a deadline of October 11, 2021, for Staff to file a Statement of Position and address whether Mr. White complied with the Commission’s requirements for informal resolution.

16 TAC § 22.78(a) provides that “[u]nless otherwise specified by statute, by this chapter, or by order of the presiding officer, a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made. Responsive pleadings shall state the date of receipt of the pleading to which response is made.” Mr. White

received Arledge Ridge's Response to his Formal Complaint on October 4, 2021, and files this timely Reply to that Response.

II. COMMISSION'S JURISDICTION

Arledge Ridge is a water supply corporation operating under Chapter 67 of the Texas Water Code (TWC). Arledge Ridge holds CCN No. 10175. Mr. White owns property within the certificated service area of Arledge Ridge's CCN. The Commission has jurisdiction over this matter.

III. APPLICABLE STATUTES, RULES, AND OTHER PROVISIONS

Chapters 13 and 67 of the TWC, 16 TAC Chapters 22 and 24, and Arledge Ridge's Tariff¹ apply to this proceeding.

IV. REPLY

Arledge Ridge has violated Commission rules by refusing to consider Mr. White's request for standard water service, and instead insists that it should be considered a request for non-standard service. Arledge Ridge further demands that Mr. White to pay for over \$73,000 in system upgrades without providing any justification for that allocation, in violation of Commission rules. Further, Arledge Ridge's refusal to consider Mr. White's application for standard water service constitutes a denial of that application.

A. Arledge Ridge has not yet made available any additional documents purportedly required to complete Mr. White's request.

Mr. White included copies of the documents he has submitted to Arledge Ridge as Attachment A of his Formal Complaint. The "Membership Signup" and "Service Agreement" were the only documents available at the time on Arledge Ridge's website under "All Forms and Reports"² that appeared to pertain to standard service applications. The Membership Signup Sheet included the following statement: "I agree to grant an easement of right-of-way on my property to the Corporation for the purpose of installing, maintaining, and operating such pipelines, meters,

¹ Arledge Ridge Water Supply Corporation Tariff, approved by the Board on March 8, 2001 and filed with the Commission on January 15, 2015 in Docket No. 44225. (Tariff)

² <https://www.arledgeridgewsc.myruralwater.com/all-forms-and-reports>.

valves and any other equipment which may be deemed necessary for the Corporation.” Mr. White also included a letter explaining that, per Section G of the Tariff, he would submit fees in the amount of \$3,000 after his application was approved. However, in its Response, Arledge Ridge alleged that Mr. White has not completed all required documents, and insisted that, instead of utilizing the standard request for service process, he must follow the lengthy and expensive process to request non-standard service.

Mr. White’s counsel contacted Arledge Ridge’s counsel on Tuesday, October 5, 2021 for clarification regarding what documents are still outstanding. At Arledge Ridge’s counsel’s instruction, Mr. White’s counsel also contacted the utility’s engineer, Jacob Dupuis, on Thursday, October 7, 2021, for more information regarding Mr. White’s service request and additional documents he must complete. Mr. White’s counsel followed up with an email to Arledge Ridge’s counsel on Thursday, October 7, 2021. Mr. White’s counsel received additional documents via email from Arledge Ridge’s counsel on Monday, October 11, 2021, immediately prior to filing this Reply. As of this filing, Mr. White’s counsel has not received a response from Mr. Dupuis.

Mr. White and his counsel understand from the Response that Arledge Ridge requests that he submit (1) a notarized right of way easement and (2) proof of ownership of the property. These documents are forthcoming. Mr. White will complete any additional documents necessary to apply for standard water service as soon as reasonably possible after they are provided.

B. Mr. White’s residential service request is a standard service request under Commission Rules and Arledge Ridge’s Tariff.

Arledge Ridge’s Tariff defines “standard service” as “service on an existing pipeline where pipeline or service facility extensions are not required and special design and/or engineering considerations are not necessary. Typically, this would include 5/8” X 3/4” or 3/4” sized water meter services set on existing pipelines.” This is the type of standard service that Mr. White has requested. As Arledge Ridge’s system map shows, pipeline extensions are not necessary because Mr. White’s property abuts an already-existing 3” pipeline which currently serves his neighbors on either side.³ Further, Mr. White is not requesting unique or non-standard water service—simply the amount of water necessary for standard residential use.

³ Arledge Ridge Water Supply Corporation’s Response to Complaint at 67. (Response)

However, Arledge Ridge claimed in its Response that, even though Mr. White's property abuts a 3" pipeline, his request constitutes non-standard service under the Tariff because the pipeline is at capacity and adding a meter to this pipeline will result in a pressure drop on the line.⁴ In its Response, Arledge Ridge pointed to language in Section E of the Tariff which defines non-standard service as "any service request which requires a larger meter service, service to a Master Metered Account (see E. 2. c. (4) of this section), or an addition to the supply, storage and/or distribution system."⁵ Arledge Ridge incorrectly interpreted this clause to mean that because the current pipeline is at capacity and the water supply corporation "must expand a portion of its water distribution system so adequate water pressure will be maintain throughout the system,"⁶ Mr. White's request meets the Tariff's definition of non-standard service. Arledge Ridge did not, however, allege that there is anything excessive or unusual about Mr. White's service request. Indeed, Arledge Ridge's argument suggests that Mr. White's service request would have been treated as a request for standard service *but for* the fact that the current pipeline is at capacity and upgrades are necessary for any additional meters on the pipeline. This interpretation violates Commission rules, and, therefore, the Tariff itself.⁷

While Commission rules do not explicitly define standard and non-standard service, they do suggest that the Commission takes a broad view of standard service when it comes to residential water service. For example, § 24.163(d)(4) states that a "service applicant requesting a one-inch meter for a lawn sprinkler system to service a residential lot is not considered non-standard service." Commission rules, then, focus on the terms of the applicant's service request—the applicant's location, anticipated water needs, and the burden those needs place on the system—when determining whether the request is standard or non-standard, not, as Arledge Ridge argued, whether or not the customer's request strains the system simply because the water utility failed to adequately plan for future need.

⁴ *Id.* at 4-5.

⁵ Tariff at Section E, 2.b.

⁶ Response at 4-5.

⁷ Interpreting the Tariff in a way that violates Commission rules constitutes a violation of the Tariff itself. Section A of Arledge Ridge's Tariff states that: "Rules and regulations of state or federal agencies having jurisdiction shall supersede any terms of this policy." Arledge Ridge acknowledges in its Response that it is under the Commission's jurisdiction. Therefore, to the extent the language or interpretation of the Tariff contravene Commission rules, Commission rules govern.

Further, the Commission's rules for cost allocation, discussed in more detail below, emphasize that the water utility, not the residential applicant, is responsible for ensuring the system has adequate capacity to serve the applicant and other customers. For example, § 24.163(c)(1) states that "[c]ontributions in aid of construction shall not be required of individual residential service applicants for production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system." Similarly, § 24.163(d)(2) states that "[a] residential service applicant may be charged the remaining costs of extending service to his property; provided, however, that the residential service applicant may only be required to pay the cost equivalent to the cost of extending the nearest water main or wastewater collection line, *whether or not that line has adequate capacity to serve that residential service applicant.*" (emphasis added) These rules directly conflict with Arledge Ridge's interpretation of its Tariff to mean that, simply because the pipeline is at capacity and upgrades will be necessary to provide Mr. White residential water service, the request is therefore a non-standard request for service.

Arledge Ridge's insistence that Mr. White's service request is non-standard hinges on its own failure to execute an adequate long-term capacity plan for the water system. Long-term capacity planning is the responsibility of a retail water utility and part of its responsibility to provide continuous and adequate service. Indeed, permitting retail water utilities to delay system upgrades until they are at capacity and then charge subsequent residential water service applicants to pay for system upgrades before obtaining service strongly discourages these utilities from engaging in long-term planning and violates the underlying principle of utility cost allocation to fairly distribute system costs, maintenance, and upgrades across all system beneficiaries. Arledge Ridge's current interpretation—that because the water system is currently at capacity and any request for service must be treated as non-standard because it will threaten the integrity of the system—contravenes Commission rules. Instead, Arledge Ridge must evaluate Mr. White's request on its own merits. Because Mr. White has not requested anything beyond typical, residential service, Arledge Ridge must treat his request as one for standard service.

C. Arledge Ridge's refusal to consider Mr. White's standard service request constitutes a denial of service.

Arledge Ridge insisted in its Response that Mr. White's request for service is a non-standard request and, to date, has refused to consider the standard service request documents he

has submitted to obtain residential water service. Instead, Arledge Ridge maintained that, in order to obtain service, Mr. White must engage in a lengthy and expensive non-standard request process and ultimately pay construction fees of over \$73,000 in order to receive service.⁸ These estimates violate Commission rules regarding cost allocation for pipeline extensions, as discussed below.

Arledge Ridge's refusal to consider Mr. White's application for standard service and its insistence in its Response that it will only entertain an application for non-standard service is itself a prospective rejection of any application for standard service he submits. Further, Arledge Ridge's assertion that Mr. White must bear the construction costs to upgrade the water system before he can receive service indicate that pursuing Arledge Ridge's grievance process would be fruitless and would only serve to delay his service further.

D. Arledge Ridge's construction cost estimate violates Commission rules and the Tariff.

Even if Mr. White's request for water service were a non-standard request, Arledge Ridge's requirement that Mr. White pay construction costs estimated at \$73,450 to upgrade 1000 linear feet of 2.5-inch waterline to 6-inch waterline prior to receiving service violates Commission cost allocation rules.⁹ Specifically, § 24.163(c) outlines appropriate fees for line extensions and construction charges, and § 24.163(d) summarizes the permissible cost allocation between utilities and service applicants.

Section 24.163(c) requires a retail water utility to file its pipeline extension policy with the Commission as part of its tariff. The rule requires the policy to be "consistent and nondiscriminatory" and prohibits the retail water utility from requiring any service applicant to pay for construction except as provided for in the policy. Section 24.163(c)(1) prohibits a retail water utility from requiring individual residential service applicants to contribute to the costs of construction "for production, storage, treatment, or transmission facilities *unless that residential customer places unique, non-standard service demands upon the system*, in which case, the customer may be charged the additional cost of extending service to and throughout his property, including the cost of all necessary collection or transmission facilities necessary to meet the service demands anticipated to be created by that property." (emphasis added). Section 24.163(c)(2)

⁸ See Response at p. 5 and Attachment D to Arledge Ridge's Response.

⁹ *Id.*

outlines when a retail water utility may require developers to contribute to the cost of construction. However, Mr. White is not (and Arledge Ridge does not allege that he is) a developer.¹⁰

Section 24.163(d) addresses cost allocation between retail water utilities and service applicants, and places significant restrictions on how much of the cost the utility may pass on to a water service applicant. Section 24.163(d)(1) requires the utility to “bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential service applicant within a platted subdivision” unless the utility documents certain facts. Section 24.163(d)(2) permits a utility to charge a residential service applicant the costs of extending service to the applicant’s property, but specifies that the applicant “may only be required to pay the cost equivalent to the cost of extending the nearest water main or wastewater collection line.” The rule states that that limit applies “whether or not that line has adequate capacity to serve that residential service applicant.”¹¹ The rule further prohibits the utility from requiring the applicant to “pay for costs of main extensions greater than two inches in diameter for water distribution and pressure wastewater collection lines.”¹²

To the extent that Arledge Ridge’s Tariff contains a pipeline extension policy, the policy fails to delineate how and when construction costs are equitably allocated to an applicant. Instead, the Tariff appears to allocate all costs associated with any upgrade to the applicant regardless of circumstance or applicant type (i.e., residential or commercial).¹³ This blanket requirement violates Commission rules. Arledge Ridge stated in its Response the Mr. White must pay estimated construction fees of over \$73,000 before he can receive water service because “Arledge Ridge’s supply, storage and/or distribution system requires additions to serve him.”¹⁴ As noted above, Commission rules prohibit construction cost allocation to individual residential service applicants for “production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system” unless the customer places unique,

¹⁰ Section 24.163(c)(3) states that “For purposes of this subsection, a developer is one who subdivides or requests more than two water service connections or sewer service connections on a single contiguous tract of land.”

¹¹ 16 TAC § 24.163(d)(2).

¹² 16 TAC § 24.163(d)(2)(A). The rule permits Commission-granted exceptions, but there is no indication the Commission has granted an exception.

¹³ Tariff at Section F, 7. “Pre-Payment For Construction And Service.. After the Applicant has executed the Service Agreement, the Applicant shall pay to the Corporation all costs necessary for completion of the project prior to construction and in accordance with the terms of the Service Contract.”

¹⁴ Response at 5.

non-standard service demands on the system. Even in those cases the retail water utility is limited to costs necessary to meet the service demands anticipated to be created by that property.

Finally, even if Arledge Ridge had determined that Mr. White's request would place excessive or unusual demands on the water system and if its tariff included an appropriate extension policy, Commission rules prohibit a retail water utility from requiring a residential applicant to pay costs for pipeline extensions greater than two inches in diameter.¹⁵ The cost estimate provided by Mr. Dupuis states that Mr. White would be responsible for a system upgrade from a 2.5-inch line to a 6-inch water line.

It is impermissible for Arledge Ridge to charge Mr. White for estimated construction costs associated with system upgrades because (1) Arledge Ridge's Tariff does not provide details regarding construction cost allocation to applicants, (2) Arledge Ridge did not assert that Mr. White's residential use will place any unique or non-standard service demands on the system, (3) Mr. White's water service request does not place any unique or non-standard service demands on the system, (4) Mr. White's property abuts the closest pipeline, and (5) the proposed pipeline extension is greater than two inches in diameter.

V. CONCLUSION

Dismissal of the Formal Complaint is unwarranted because Arledge Ridge refuses to consider Mr. White's request for service as a standard service request. Instead, Arledge Ridge maintained in its Response that, in order to obtain service, Mr. White must engage in a lengthy and expensive non-standard request process and ultimately pay for extensive upgrades to Arledge Ridge's water system in violation of the Tariff and Commission rules. Arledge Ridge's refusal to consider Mr. White's application for standard service, its failure to promptly respond to counsel's requests for clarification regarding documents necessary to complete the application, and its insistence that it will only entertain an application for non-standard service constitute a prospective rejection of any application for standard service and further suggest that any pursuit of Arledge Ridge's grievance process would be fruitless and would only serve to delay his service further.

¹⁵ 16 TAC § 24.163(d)(2)(A).

VI. PRAYER

Mr. White respectfully requests that the Commission order Arledge Ridge to provide him standard water service in accordance with the Tariff and Commission rules. In the event that Arledge Ridge believes that there are any outstanding documents related to Mr. White's application for standard water service, Mr. White further respectfully requests that the Commission order Arledge Ridge to provide these documents immediately and promptly consider his application for standard water service.

Dated: October 11, 2021

Respectfully submitted,



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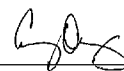
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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2021, notice of the filing of this document was provided to Arledge Ridge WSC and all parties of record, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and the Texas Rules of Civil Procedure, via electronic mail and/or U.S. mail as follows:

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