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COMPLAINT OF LILI AND THOMAS § PUBLIC UTILITY COMMISSION
MCDEVITT AGAINST LEVI WATER §
SUPPLY CORPORATION § OF TEXAS

COMMISSION STAFF’S STATEMENT OF POSITION

On December 2, 2021, Lili and Thomas McDevitt (Complainants) filed a formal complaint against Levi Water Supply Corporation (Levi WSC) related to Levi WSC’s refusal to provide Complainants water service to their newly renovated barn.¹ The complaint was filed under 16 Texas Administrative Code (TAC) § 22.242. Levi WSC filed a response on January 7, 2022.²

On December 20, 2021, the administrative law judge (ALJ) filed Order No. 2, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a statement of position no later than January 21, 2022. Therefore, this pleading is timely filed.

I. COMPLIANCE WITH INFORMAL RESOLUTION REQUIREMENTS

Order No. 2 directed Staff to confirm whether the Complainants complied with all of the requirements for informal resolution in accordance with 16 TAC § 22.242(c), which states: “A person must present a complaint to the commission for informal resolution before presenting the complaint to the commission.” If informal resolution fails, the Complainants may present a formal complaint to the Commission.³

Staff has reviewed CPD records and found that informal complaint number CP2021100559 matches the parties and subject matter of this formal complaint. The CPD informal complaint file

¹ Complaint of Lili and Thomas McDevitt Against Levi Water Supply Corporation (Dec. 2, 2021) (Complaint).

² Levi Water Supply Corporation’s Response to Complaint (Jan. 7, 2022) (Response).

³ 16 TAC § 22.242(e).

was closed on October 26, 2021. At this time, Staff recommends that the Complainants have complied with the informal resolution requirements pursuant to 16 TAC § 22.242(c).

II. JURISDICTION

Under 16 TAC § 22.242(e)(1), if the person making a complaint receives utility service, or has applied to receive utility service within a municipality that has original jurisdiction over the utility providing the service, then the complaint must be presented to the municipality before it is presented to the Commission. The complaint may be presented to the Commission after: (i) the city issues a decision on the complaint; or (ii) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.⁴ If the city does not act on the complaint within 30 days, the Commission may send the city a letter requesting that the city act on the complaint.⁵ If the city does not respond or act within 30 days from the date of the letter, the complaint shall be deemed denied by the city and the Commission shall consider the complaint.⁶

In this instance, because Levi WSC is a water supply corporation and a city cannot have original jurisdiction over a water supply corporation, Staff recommends that the requirements of 16 TAC § 22.242(e) do not apply to this complaint.

III. COMPLAINT

Complainants assert that Levi WSC refused to provide water service to their newly renovated barn.⁷ They allege that they filed a formal application for a new water meter with Levi WSC in April of 2021 and were informed in May of 2021 that they would be denied a water meter and subsequent water service to their barn.⁸ Complainants claim that they were denied a water

⁴ 16 TAC § 22.242(e)(1)(A).

⁵ 16 TAC § 22.242(e)(1)(B).

⁶ *Id.*

⁷ Complaint at 2.

⁸ *Id.*

meter to their barn because Levi's WSC's feared that additional meters would exceed permitted usage allocation.⁹ Complainants renewed their request for a new water meter a second time, but this request was denied at the Levi WSC monthly meeting held on November 12, 2021.¹⁰

IV. RESPONSE FROM LEVI WATER SUPPLY CORPORATION

Levi WSC responded to the Complaints, asserting that the company refused to provide water service to the Complainants for good cause.¹¹ Specifically, Levi WSC asserts that the company is not able to provide a new water meter for Complainants' barn because capacity modeling forecasted that providing more than three new meters to the community would lead to exceeding the permitted pumping allowance which could cause permit violations and other consequences.¹² Levi WSC states that Complainants must apply for a meter per Levi WSC's tariff given the fact that the newly renovated barn was second residence known as a "barndominium".¹³ Levi WSC states it is currently looking for other sources of water that will be able to accommodate the increased need for water in their area.¹⁴

V. STATEMENT OF POSITION

Under 16 TAC § 24.161(a), a retail public utility is required to provide service to every "qualified service applicant within its certificated area as soon as is practical after receiving a completed application;" a qualified service applicant is defined as one who "has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ Response at 6.

¹² *Id.* at 8.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 7-8.

regulations for extension of service including the delivery to the retail public utility of any service connection inspection certificates required by law.”

The facts of this case are in dispute. Most notable is the dispute over the forecasted water capacity that Levi WSC relied on to limit its new water meter allocation. Staff also needs time to review Levi WSC’s tariff, which contains extensive policies and procedures related to requests for new water meters with relation to residential and nonresidential buildings. All of these facts are relevant to the ultimate question of whether Levi WSC has good cause to deny the Complainants’ application for a new water meter. Therefore, Staff requests 45 days to conduct informal discussions with Levi WSC and Complainants, and to issue formal discovery if necessary. Staff further requests that a deadline of March 7, 2022 be established for Staff to file a supplemental statement of position.

VI. CONCLUSION

Staff respectfully requests that a deadline of March 7, 2022 be established for Staff to file a supplemental statement of position after submission of discovery requests to Levi WSC and Complainants and a review of responses by Staff to the same.

Dated: January 21, 2022

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 21, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Andy Aus
Andy Aus