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COMPLAINT OF ARIZONA	§	PUBLIC UTILITY COMMISSION
TRADERS COMPANY AGAINST EL	§	
PASO WATER UTILITIES PUBLIC	§	OF TEXAS
SERVICE BOARD	§	

COMMISSION STAFF’S STATEMENT OF POSITION AND MOTION TO DISMISS

On July 11, 2022, John C. Gilliland (Mr. Gilliland), filed a formal complaint on behalf of Arizona Traders Company (Arizona Traders) against El Paso Water Utilities Public Service Board (El Paso Water) alleging wrongful disconnection of water service. This complaint was filed under 16 Texas Administrative Code (TAC) § 22.242.

On August 2, 2022, the administrative law judge (ALJ) filed Order No. 3, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a statement of position regarding the complaint by August 9, 2022. Therefore, this pleading is timely filed.

I. COMPLIANCE WITH REQUIREMENTS FOR INFORMAL DISPOSITION

Order No. 1 directed Staff to confirm whether Mr. Gilliland has complied with the informal resolution requirements under 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 complainant may present the formal complaint to the Commission.¹

A search of the Commission’s informal complaint database found that an informal complaint involving the same parties and the same issues was closed by the Commission on July 5, 2022, under complaint no. CP2022060454. Therefore, Staff recommends that Mr. Gilliland has complied with the informal resolution requirements of 16 TAC § 22.242(c).

II. JURISDICTION

Staff recommends that Mr. Gilliland is required to satisfy the requirements of 16 TAC § 22.242(e)(1), which states:

If a person receives electric, water, or sewer utility service or has applied to receive electric, water, or sewer utility service within the limits of a city that has original jurisdiction over the

¹ 16 TAC § 22.242(e).

electric, water, or sewer utility providing service or requested to provide service, the person must present any complaint concerning the electric, water, or sewer utility to the city before presenting the complaint to the commission.

Mr. Gilliland's complaint is against El Paso Water, which is a municipally owned utility, as defined by 16 TAC § 24.3(22). Arizona Traders is a customer located within the city limits of El Paso, which has not ceded original jurisdiction to the Commission.² Therefore, 16 TAC § 22.242(e)(1) applies to Mr. Gilliland's complaint.

In El Paso Water's response to the complaint, El Paso Water states that Arizona Traders was informed that they may appeal the El Paso Water Administrative Committee's decision to discontinue water service to Arizona Traders to the Public Service Board, along with the procedures that Arizona Traders must take to request the final appeal.³ El Paso Water further states that it has not received any response from Arizona Traders regarding a request to appeal to the Public Service Board.⁴ Therefore, Mr. Gilliland has not exhausted his administrative remedies against El Paso Water.

For the reasons stated above, the Commission does not have jurisdiction over Mr. Gilliland's formal complaint under 16 TAC § 22.242(e)(1).

III. STATEMENT OF POSITION AND MOTION TO DISMISS

Because Mr. Gilliland did not comply with the requirements of 16 TAC § 22.242(e)(1), Staff contends the Commission does not have jurisdiction to consider Mr. Gilliland's formal complaint. Accordingly, Staff recommends that the formal complaint be dismissed, without prejudice, under 16 TAC § 22.181(d)(1) for lack of jurisdiction. Staff recommends that the complaint be dismissed without prejudice so that Mr. Gilliland can refile the formal complaint after he exhausts his remedies with El Paso Water. In the alternative, Staff recommends that the formal complaint be abated until Mr. Gilliland has exhausted his remedies with El Paso Water, at which point the Commission will have appellate jurisdiction over the complaint.⁵ If the formal

² See <https://www.puc.texas.gov/consumer/complaint/CedingCities.pdf> for list of Cities Ceding Original Jurisdiction.

³ El Paso Water Utilities Public Service Board's Response to the Formal Complaint at 3–4 (Aug. 2, 2022).

⁴ *Id.*

⁵ 16 TAC § 22.242(e)(1)(A).

complaint is abated, Staff recommends that Mr. Gilliland be required to file monthly status reports regarding resolution of the complaint with El Paso Water.

IV. RECOMMENDATION REGARDING RESTORING WATER SERVICE TO ARIZONA TRADERS

Because Staff recommends that the Commission does not have jurisdiction over the formal complaint, Staff also recommends that the Commission does not have jurisdiction to make a recommendation regarding restoring water service to Arizona Traders. Staff requests that it be given the opportunity to make a supplemental recommendation regarding restoring water service to Arizona Traders once Mr. Gilliland has exhausted his administrative remedies with El Paso Water and the Commission has jurisdiction over the formal complaint.

V. CONCLUSION

For the reasons stated above, Staff respectfully recommends that the formal complaint be dismissed for lack of jurisdiction, or in the alternative, be abated until Mr. Gilliland exhausts his administrative remedies with El Paso Water, because of Mr. Gilliland's failure to comply with the requirements of 16 TAC § 22.242(e)(1).

Dated: August 9, 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 August 9, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Margaux Fox
Margaux Fox