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

ORDER NO. 5
LIFTING ABATEMENT, PROVIDING CLARIFICATION,
DISMISSING COMPLAINT, IN PART, AND ESTABLISHING DEADLINES

This Order lifts the abatement of the formal complaint of John C. Gilliland, on behalf of Arizona Traders Company, against El Paso Water Utilities Public Service Board, dismisses the complaint, in part, provides clarification and establishes deadlines.

I. Background

On July 11, 2022, Arizona Traders filed this formal complaint against El Paso Water for terminating its water service. In addition, in the complaint and additional filings, Arizona Traders requested that the Commission open a criminal investigation into El Paso Water employees Nancy Nye and Sonia Wyatt for various violations, including wrongful termination of water service and other violations allegedly committed against Arizona Traders.

On August 2, 2022, El Paso Water Utilities – Public Service Board responded to Arizona Traders’ complaint and moved to dismiss. El Paso Water is a municipally-owned utility. The governing body of a municipality has exclusive original jurisdiction over all water and sewer rates, operations, and services within its corporate limits. The City of El Paso established the El Paso Water Utilities Public Service Board and vested it with complete control of all services provided by El Paso Water within the city limits of El Paso.

The Public Service Board stated that on July 14, 2022, its administrative committee issued a determination that Arizona Traders was in violation of El Paso Water’s rules and regulations, stated that a letter indicating discontinuance was sent before services were terminated, and provided a list of conditions that Arizona Traders must meet before El Paso Water will reinstate Arizona Traders’ water service. Arizona Traders was informed that it could appeal the administrative committee’s determination to the Board, along with procedures on how to do so.

No appeal has been filed. The Public Service Board stated that this complaint should therefore be dismissed.

On August 9, 2022, Commission Staff filed a statement of position and motion to dismiss, or alternatively, a request that the proceeding be abated to allow Arizona Traders to exhaust all remedies with El Paso Water regarding the restoration of water service. Commission Staff also recommended that Arizona Traders be required to file monthly reports regarding the status of its complaint with El Paso Water.

In Order No. 4 filed on August 11, 2022, the administrative law judge (ALJ) abated the proceeding to enable Arizona Traders to exhaust all administrative remedies with El Paso Water and required monthly status reports during the abatement period. To date, Arizona Traders has not filed a report regarding the status of its complaint with El Paso Water as required.

On October 13, 2022, Commission Staff filed a supplemental statement of position, advising that, other than Arizona Traders' allegation of wrongful termination of water service, the Commission is without authority to prosecute criminal matters or to litigate civil complaints, even those that are alleged to have been committed by a utility otherwise regulated by the Commission.

Therefore, Commission Staff recommends dismissal under 16 Texas Administrative Code (TAC) § 22.181(d)(1) and 16 TAC § 22.181(d)(8) is appropriate for Arizona Traders' criminal and civil violation allegations, even those that are alleged to have been committed by a utility otherwise regulated by the Commission.

II. Lifting Abatement

In light of Arizona Traders' failure to provide monthly reports as required by Order No. 4, the ALJ lifts the abatement of this proceeding for continued processing.

III. Providing Clarification and Dismissing Complaint, in Part

With regards to Arizona Traders' allegations of illegal or criminal behavior by El Paso Water, Arizona Traders has been told such allegations cannot be considered in this customer complaint proceeding before an administrative entity. Illegal and criminal complaints must be taken to a civil or criminal court of law, not an administrative entity. The Commission does not have jurisdiction over complaints of illegal or criminal behavior and such allegations are not relevant to any matter over which the Commission has jurisdiction in this proceeding, regardless

of how egregious Arizona Traders believes the behavior to be. Any further filings by Arizona Traders regarding alleged illegal or criminal behavior by El Paso Water will not be considered and only clutter the record in this proceeding.

Therefore, those portions of Arizona Traders' complaint involving criminal or civil allegations are dismissed from this proceeding in accordance with 16 TAC § 22.181(d)(1). Arizona Traders is asked to cease cluttering the records with these allegations because they cannot and will not be considered in this proceeding.

IV. Discussing Jurisdiction and Establishing Deadlines

Arizona Traders has been repeatedly told that until it has proven that it has exhausted its administrative remedies with the El Paso Water Public Service Board over the complaint of wrongful termination of water service, the Commission does not have jurisdiction over this complaint, at all. As explained above, the City of El Paso has original jurisdiction over water service customer complaints for customers within its city limits, not the Commission. This means the City, or here the El Paso Water Public Service Board, must hear Arizona Trader's complaint of wrongful termination of water service before it can be appealed to the Commission, much like lower courts and appeals courts.

Although Arizona Traders initiated and has partly prosecuted a complaint with the Public Service Board's administrative committee, it has not appealed the committee's determination to the Board. Therefore, Arizona Traders is reminded that until, and only if, Arizona Traders provides proof to the Commission that Arizona Traders has completed the complaint processes available to it through the El Paso Water Utilities Public Service Board, including all appeals, this complaint cannot be considered or processed by the Commission because it does not have jurisdiction. This complaint was abated to give Arizona Traders time to provide such proof, but it has not done so.

Arizona Traders is reminded that its allegations of illegal or criminal behavior were dismissed from this complaint earlier in this Order. Even if Arizona Traders proves that it has exhausted its administrative remedies with the Public Service Board over its wrongful water termination complaint, the Commission will not have jurisdiction over allegations of illegal or

criminal behavior. Arizona Traders is reminded that those allegations must go to a civil or criminal court of law and are not proper in this complaint.


Finally, if Arizona Traders wishes to avoid dismissal of the wrongful termination of water service portion of this complaint, for lack of jurisdiction, on or before October 25, 2022, Arizona Traders must file a report regarding the status of its complaint with the Public Service Board. To be clear, the only thing due from Arizona Traders on October 25, 2022, is a proper report on its efforts to exhaust its administrative remedies with the City of El Paso or its El Paso Water Utilities Public Service Board, and nothing more.

V. Summary

In summary, Arizona Traders' allegations of illegal or criminal behavior in this complaint are dismissed in this Order, for lack of jurisdiction, and will not be further considered or addressed. If Arizona Traders fails to provide by October 25, 2022 a proper report on its efforts to exhaust its administrative remedies with the City of El Paso or the El Paso Water Utilities Public Service Board, such failure will result in the issuance of an order dismissing the remainder of the proceeding, for lack of jurisdiction. Commission Staff must file a supplemental statement of position by November 14, 2022.

Signed at Austin, Texas the 18th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE