



## Filing Receipt

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

**COMMISSION STAFF’S SUPPLEMENTAL STATEMENT OF POSITION AND  
MOTION TO DISMISS**

**I. INTRODUCTION**

On July 11, 2022, Arizona Traders Company (Arizona Traders) filed a formal complaint 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. Arizona Traders filed supplemental information on July 19, 2022, August 5, August 9, August 12, August 16, August 22, and August 26, 2022, September 2, September 29, 2022, November 30, 2022, and December 2, 2022.

On November 17, 2022, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental statement of position and if appropriate, a motion to dismiss or for summary decision by December 6, 2022. Therefore, this pleading is timely filed.

**II. SUPPLEMENTAL STATEMENT OF POSITION**

Staff has reviewed Arizona Traders’ responses to Order Nos. 5 and 6, and Staff recommends that they are not responsive to Order Nos. 5 or 6, which required Arizona Traders to report on its efforts to exhaust its administrative remedies with the City of El Paso or El Paso Water by November 29, 2022. On November 30, 2022, Arizona Traders filed its seventh complaint against Nancy Nye, Sonia Wyatt, and El Paso Water. There was no information contained in the filing regarding Arizona Traders’ efforts to exhaust its administrative remedies with the City of El Paso or El Paso Water. Arizona Traders reiterated that El Paso Water manufactured some of Arizona Traders’ violations and that Arizona Traders is not discharging heavy metals as El Paso Water claims.<sup>1</sup>

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<sup>1</sup> Arizona Traders’ Request for 7<sup>th</sup> Formal Complaint at 1 (Nov. 30, 2022).

On December 2, 2022, Arizona Traders filed copies of its requests to the Public Service Board of El Paso Water to reinstate its water services and its wastewater permit. Arizona Traders received a response from El Paso Water, dated August 24, 2022, stating that the application could not be processed because of Arizona Traders' unresolved notices of violation.<sup>2</sup> The response also stated that the violations must be resolved before water and sewer services can be restored to Arizona Traders and that Arizona Traders can appeal the decision with El Paso Water. Arizona Traders provided no information regarding its efforts to remedy the outstanding violations or appeal the decision to El Paso Water. Despite Arizona Traders' arguments that it does not have outstanding violations with El Paso Water, the Commission does not have jurisdiction over this complaint until Arizona Traders exhausts all of its administrative remedies with the City of El Paso and El Paso Water. Therefore, Staff is unable to formulate a statement position at this time.

### **III. MOTION TO DISMISS**

Order Nos. 5 and 6 stated that until Arizona Traders reports that it has exhausted its administrative remedies with the City of El Paso or El Paso Water, the Commission has no jurisdiction over this complaint. Order No. 6 also stated that Arizona Traders' failure to report on its efforts to finalize this complaint with the City of El Paso or El Paso Water by November 29, 2022 could result in dismissal of the remainder of this proceeding. Arizona Traders filed responses to Order Nos. 5 and 6 on November 30, 2022 and December 2, 2022. The responses did not demonstrate that Arizona Traders has exhausted all of its available administrative remedies with the City of El Paso and El Paso Water. Further, Staff has given Arizona Traders several opportunities to provide an update on the status of exhausting its administrative remedies with the City of El Paso and El Paso Water. Arizona Traders has not provided the above information, as required by Order Nos. 5 and 6. Therefore, Staff recommends that this complaint be dismissed for failure to prosecute in accordance with 16 TAC § 22.181(d)(6). Staff recommends that this complaint be dismissed without prejudice so that Arizona Traders can refile the complaint after it has exhausted its administrative remedies with the City of El Paso and El Paso Water.

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<sup>2</sup> Arizona Traders' Request to Reinstate Water Service at 2 (Dec. 2, 2022).

#### **IV. CONCLUSION**

For the reasons stated above, Staff respectfully requests that this complaint be dismissed without prejudice for failure to prosecute and for an entry of an order consistent with this pleading.

Dated: December 6, 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 December 6, 2022 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Margaux Fox  
Margaux Fox