



Filing Receipt

Received - 2023-01-11 09:58:14 AM
Control Number - 53811
ItemNumber - 29

Peter M. Lake
Chairman

Will McAdams
Commissioner

Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner

Kathleen Jackson
Commissioner




Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Susan E. Goodson 
Administrative Law Judge

RE: **Docket No. 53811** – *Complaint of Arizona Traders Company Against El Paso Water Utilities Public Service Board*

DATE: January 11, 2023

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

If there are no corrections or exceptions, no response is necessary.

/lsw
q:\cadm\orders\opdm pfd\53000\53811 pfd memo.docx



DOCKET NO. 53811

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

PROPOSAL FOR DECISION

In this Proposal for Decision (PFD), the administrative law judge (ALJ) recommends that the Commission dismiss the complaint of Arizona Traders Company against El Paso Water Utilities Public Service Board alleging wrongful disconnection of water service, under 16 Texas Administrative Code (TAC) § 22.181(d)(1), for lack of jurisdiction. The ALJ recommends that the dismissal be without prejudice.

I. Findings of Fact

The ALJ makes the following findings of fact.

Parties

1. Arizona Traders is a Texas for-profit corporation registered with the Texas secretary of state under filing number 32317500.
2. Arizona Traders is a customer located within the city limits of the City of El Paso.
3. El Paso Water is a municipally-owned utility.
4. El Paso operates, maintains, and controls facilities for providing retail water service in El Paso County under certificate of convenience and necessity number 10211.

Procedural History

5. On July 11, 2022, Arizona Traders filed this formal complaint against El Paso Water alleging wrongful disconnection of water service and other wrongs.
6. On August 2, 2022, El Paso Water responded to the complaint, stating that it has original jurisdiction over all water and sewer services inside the city limits of El Paso and therefore, the Commission does not have jurisdiction over this complaint and the complaint should be dismissed for lack of jurisdiction. El Paso Water stated that it did not respond to the informal complaint because it did not receive it. El Paso Water stated that it has reviewed its determination to terminate water and sewer services to Arizona Traders, and found the

determination and process followed to be correct. Arizona Traders was informed that it could appeal the determination, along with procedures that Arizona Traders must take to request the final appeal.

7. On August 9, 2022, Commission Staff filed its statement of position, stating that Arizona Traders complied with the Commission's informal resolution requirements under 16 TAC § 22.242(c) and that the Commission lacks jurisdiction over this complaint because El Paso Water has not ceded its original jurisdiction to the Commission. Therefore, Commission Staff recommended that the complaint be dismissed without prejudice under 16 TAC § 22.242(d)(1), for lack of jurisdiction, or in the alternative that the complaint be abated until Arizona Traders has exhausted its remedies with El Paso Water, at which point the Commission would have appellate jurisdiction over the complaint.
8. In Order No. 4 filed on August 11, 2022, the administrative law judge (ALJ) abated the proceeding to allow Arizona Traders to exhaust its remedies with El Paso Water.
9. Arizona Traders filed updated information and complaints on July 19, August 5, 9, 22 and 26, September 2 and 29, November 30, and December 2 and 9, 2022.
10. In Order No. 5 filed on October 18, 2022, the ALJ lifted the abatement and granted, in part, Commission Staff's motion to dismiss under 16 TAC § 22.181(d)(1), dismissing all of Arizona Trader's allegations of illegal or criminal behavior on the part of El Paso Water or the city for lack of jurisdiction, and provided Arizona Traders an opportunity to provide a proper report on its efforts to exhaust its administrative remedies over its claim of wrongful termination of water service with the City of El Paso or El Paso Water.
11. In Order No. 6 filed on November 17, 2022, the ALJ again explained that the Commission lacks jurisdiction over the complaint of wrongful termination of water service until Arizona Traders has exhausted its remedies with regards to this complaint through the City of El Paso or El Paso Water and extended the deadline for Arizona Traders to provide a proper report on its efforts to exhaust its administrative remedies.
12. On December 6, 2022, Commission Staff filed an updated statement of position noting that Arizona Trader's responses to Order Nos. 5 and 6 were not responsive to the requirement that Arizona Traders report on its efforts to exhaust its administrative remedies though the

City of El Paso or El Paso Water to establish the Commission's jurisdiction over the proceeding. Commission Staff recommended that the complaint be dismissed under 16 TAC § 22.181(d)(6) for failure to prosecute, without prejudice.

City of El Paso's Jurisdiction over the Complaint

13. El Paso Water has not ceded original jurisdiction over utility rates, operations and services within its incorporated limits to the Commission.¹
14. The City of El Paso, by ordinance, established the El Paso Water Utilities Public Service Board and vested complete authority and control in the El Paso Water board over the management and operation of the municipal water utility on behalf of the City. Therefore, El Paso Water has original jurisdiction over all water and sewer services to customers inside the city limits of El Paso.
15. El Paso Water conducted an administrative hearing on its disconnection of Arizona Traders' water and sewer service on June 14, 2022, but El Paso Water has not issued a final decision in Arizona Traders' complaint and El Paso Water has not filed a statement that it will not consider Arizona Traders' complaint.
16. El Paso Water reviewed and determined that its termination of Arizona Traders' service was correct and informed Arizona Traders of its right to appeal El Paso Water's determination, along with procedures that Arizona Traders must take to request the final appeal.
17. Arizona Traders has failed, after multiple opportunities, to provide any proof that it filed a final appeal of El Paso Water's determination of proper termination of service, or provide reports on efforts to file, continue or complete an appeal.
18. There is no evidence that El Paso Water has issued a final order in Arizona Traders' complaint or that El Paso Water will not consider Arizona Traders' complaint.
19. No hearing was requested or held on the motions to dismiss, and no hearing is necessary, because the facts relevant to jurisdiction are undisputed.

¹ See <https://www.puc.texas.gov/consumer/complaint/cedingcities.pdf> for list of cities ceding original jurisdiction.

II. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over the formal complaint under Texas Water Code (TWC) §§ 13.041 and 13.042.
2. Under TWC § 13.041(a) the Commission may regulate and supervise the business of each water and sewer utility within its jurisdiction, and under subsection (b) may adopt and enforce rules reasonably required in the exercise of powers, including rules governing practice and procedure before the Commission.
3. Under TWC § 13.042(a), the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations and services provided by a water and sewer utility within its corporate limits.
4. Under TWC § 13.042(b), the governing body of a municipality by ordinance may elect to have the Commission exercise original jurisdiction over the utility rates, operations and services of utilities within the incorporated limits of the municipality.
5. Under 16 TAC § 22.242, any affected person may complain to the Commission setting forth any act or thing done or omitted to be done by any person under the jurisdiction of the Commission in violation or claimed violation of any law which the Commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the Commission.
6. Under 16 TAC § 22.242(e)(1), a person must present its complaint to the city before presenting the complaint to the Commission.
7. Under 16 TAC § 22.242(e)(1)(A), the person may present the complaint to the Commission after the city issues a decision on the complaint or a statement that it will not consider the complaint.
8. Under 16 TAC § 22.181(a), upon the motion of the presiding officer or the motion of a party, the presiding officer may recommend that the Commission dismiss, with or without prejudice, any proceeding for any reason specified in 16 TAC § 22.181.
9. Under 16 TAC § 22.181(c), dismissal of this case does not require a hearing because the facts necessary to support the dismissal are established as a matter of law.

10. Under 16 TAC § 22.181(d)(6), the ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for failure to prosecute.
11. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than those specified in 16 TAC § 22.181(g)(1) or (2) requires preparation of a PFD.
12. The Commission's lack of exclusive original jurisdiction warrants dismissal of this proceeding, without prejudice under 16 TAC § 22.181(d)(1).
13. This PFD was issued in accordance with Texas Government Code § 2001.062 and 16 TAC § 22.261(a).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission grants Commission Staff's motion to dismiss Arizona Traders' formal complaint, without prejudice, due to the Commission's lack of jurisdiction.
2. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 11th day of January 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE