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

PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER

This Order addresses the complaint of Arizona Traders Company against El Paso Water Utilities Public Service Board alleging wrongful disconnection of water service. The administrative law judge (ALJ) recommended that the Commission dismiss without prejudice the complaint under 16 Texas Administrative Code (TAC) § 22.181(d)(1) for lack of jurisdiction.

The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order. Conclusions of law 1 and 8 should be modified for clarity and to apply the law to the facts of this case. Conclusions of law 2, 3, 4, 5, and 10 should be deleted because they are unnecessary to support the order. Conclusion of law 9 should be modified for accuracy.

The Commission also makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I. Findings of Fact

The Commission adopts 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 located within the city limits of the city of El Paso and is a customer of El Paso Water.
3. El Paso Water is a municipally owned utility.
4. The city of El Paso operates, maintains, and controls facilities for providing retail water service in El Paso County under certificate of convenience and necessity number 10211.

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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 alternatively 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) however the Commission lacks jurisdiction over this complaint because the city of El Paso 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 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 Traders' 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 Traders' 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 through 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 public service 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.

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

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.

II. Conclusions of Law

The Commission adopts the following conclusions of law.

1. The Commission's authority over Arizona Traders' formal complaint against a utility owned and operated by a municipality within its corporate limits is limited to appellate review by Texas Water Code (TWC) § 13.042.
2. DELETED.
3. DELETED.
4. DELETED.
5. DELETED.
6. Under 16 TAC § 22.242(e)(1), Arizona Traders must present its complaint to the city before presenting the complaint to the Commission.
7. Under 16 TAC § 22.242(e)(1)(A), Arizona Traders 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), Commission Staff was allowed to seek dismissal, with or without prejudice 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 uncontested or are established as a matter of law.
10. DELETED.

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 proposal for decision.
12. The Commission's lack of jurisdiction warrants dismissal of this proceeding, without prejudice under 16 TAC § 22.181(d)(1).
13. The proposal for decision was issued in accordance with Texas Government Code § 2001.062 and 16 TAC § 22.261(a).

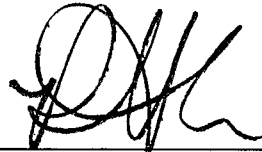
III. Ordering Paragraphs

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

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

Signed at Austin, Texas the 9th day of March 2023.

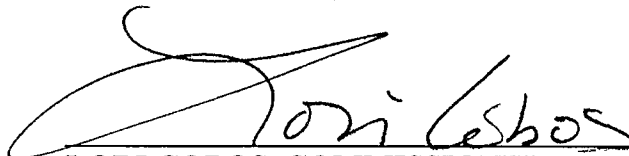
PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



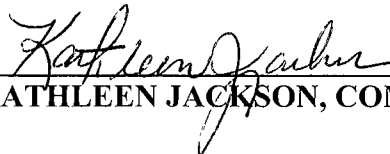
WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER