



Filing Receipt

Received - 2022-08-02 10:32:28 AM
Control Number - 53811
ItemNumber - 8

DOCKET NO. 53811

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

**THE EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD’S RESPONSE TO
ARIZONA TRADERS COMPLAINT AND MOTION TO DISMISS**

COMES NOW, the El Paso Water Utilities Public Service Board on behalf of the City of El Paso, Texas (“EPWater” or “PSB”) and files this Response to Arizona Traders Complaint and Motion to Dismiss and would respectfully show the following:

I. BACKGROUND

On June 11, 2022, Arizona Traders Company (“Arizona Traders”) filed a Complaint with the Public Utility Commission of Texas (“PUC or Commission”) alleging wrongful disconnection of water service. On July 13, 2022, the Administrative Law Judge (ALJ) in this matter issued Order No. 1 directing EPWater to file a response to the Complaint by August 2, 2022. This Response and Motion is timely filed.

II. MOTION TO DISMISS FOR LACK OF JURISDICTION

EPWater respectfully requests that Arizona Trader’s Complaint under 16 Texas Administrative Code (TAC) Sec. 22.242 be dismissed. The Commission does not have jurisdiction over Arizona Traders’ Complaint. EPWater is a municipally owned utility as defined by 16 TAC §24.3(22). Additionally, in accordance with §13.042(a) of the Water Code, 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. In 1952, the City of El Paso, Texas established the El Paso Water Utilities Public Service Board under

Ordinance 752 and vested complete authority and control in the PSB over the management and operation of the municipal water utility on behalf of the City. EPWater has original jurisdiction over all water and sewer services provided to customers inside the city limits. Arizona Traders Company is a customer located inside the city limits of El Paso. Therefore, the Commission does not have jurisdiction over Arizona Traders' Complaint and such matter should be dismissed.

III. RESPONSE TO COMPLAINT

Without waiving its Motion to Dismiss for Lack of Jurisdiction, EPWater responds to the complaint as follows. On April 19, 2022, EPWater discontinued services for Arizona Traders Company, located at 1104 E. San Antonio, El Paso, Texas 79901. The termination of service was the result of Arizona Traders' ongoing and continued noncompliance with the discharge requirements under the PSB's Rules and Regulations and more specifically, EPWater's Industrial Pretreatment Program. Under El Paso City Code 15.12.010, the Public Service Board is authorized to promulgate rules and regulations on all subjects relevant to the operation of the city's water and sewer systems, which rules and regulations shall have like effect as if adopted by ordinance. Numerous Notices of Violations were issued to Arizona Traders between April 2021 through March 2022. Arizona Traders further failed to provide EPWater a plan to come into compliance, as well as perform any of the required pollution prevention actions required after each Notice of Violation was issued by EPWater. On March 9, 2022, EPWater issued a Notice of Violation letter to Arizona Traders informing them of EPWater's termination of service at Arizona Traders based on Arizona Traders failure to comply with requirements under EPWater's Pretreatment Program. The March 9, 2022 Notice of Violation letter which included the notice of termination for Arizona Traders was delivered to Arizona Traders well over a month before EPWater terminated Arizona Traders' services on April 19, 2022.

On April 22, 2022, EPWater issued correspondence to Arizona Traders wherein Arizona Traders was informed of an opportunity to administratively appeal the termination of services. Arizona Traders soon after obtained legal counsel to represent it in the matter. On May 13, 2022, EPWater sent correspondence to Arizona Traders' attorney, Robert Skipworth, informing him that Arizona Traders would either need to start complying as stated in a Compliance Agreement attached to the correspondence or request an Administrative Appeal pursuant to the PSB's Rules and Regulations No. 8.

On June 14, 2022, in accordance with EPWater's Rules and Regulations No. 8, an Administrative Hearing was conducted where Robert Skipworth appeared before the Administrative Committee on behalf of Arizona Traders. John Gilliland, owner of Arizona Traders, was not present at the Administrative Committee due to an emergency, according to Mr. Skipworth.

On June 30, 2022, John Gilliland sent EPWater an email stating that Robert Skipworth was no longer representing Arizona Traders in its administrative appeal and that Arizona Traders would handle this matter without their attorney. In response to Mr. Gilliland's email, EPWater sent a list of information, which was provided to Mr. Skipworth at the June 14, 2022 Administrative Appeal Hearing, necessary from Arizona Traders for the Administrative Committee's review and consideration for their determination on the matter. To date, EPWater has not received the information requested from Arizona Traders.

On July 5, 2022, EPWater received correspondence from Isabel Ford, Investigator with the Customer Protection Division of the PUC, to Mr. John Gilliland stating that the informal complaint Mr. Gilliland had filed against EPWater had been forwarded to EPWater on June 13, 2022, and review of their records indicated that EPWater failed to provide a response within the time period

provided for by Substantive Rule Section 24.153. EPWater did not receive the informal complaint correspondence referenced in Ms. Ford's correspondence. On July 18, 2022, EPWater sent Ms. Ford correspondence indicating that the PSB had not received the informal complaint filed by Arizona Traders. The PSB also informed Ms. Ford that EPWater was currently reviewing an administrative appeal determination regarding Arizona Traders termination of services.

On July 14, 2022, the Administrative Committee issued a determination pursuant to EPWater's Rules and Regulations No. 8 and affirmed that Arizona Traders had violated EPWater's Rules and Regulations. The Committee further found that Arizona Traders was sent a notice of violation letter indicating discontinuation of services prior to Arizona Traders services being terminated. The Committee listed several conditions that must be met by Arizona Traders before EPWater reinstates services to Arizona Traders. Furthermore, Arizona Traders was informed that they may appeal the Committee's determination to the Public Service Board ("PSB"), along with the procedures that Arizona Traders must take to request the final appeal. EPWater has not received any response from Arizona Traders regarding a request to appeal to the PSB.

EPWater denies each and every allegation and complaint made by Arizona Traders in its Complaint including but not limited to the request for an investigation of Nancy Nye.

IV. PRAYER

For the reasons provided herein, the PSB respectfully requests that the Commission dismiss Arizona Traders Complaint due to lack of jurisdiction.

Respectfully submitted,

**THE CITY OF EL PASO and
EL PASO WATER UTILITIES**

1154 Hawkins Blvd., 4th Floor
El Paso, Texas 79925



PATRICIA M. BORSCHOW

Assistant General Counsel
El Paso Water Utilities Public Service Board
Texas Bar No. 24069612
Phone: (915) 594-5615
Fax No: (915) 594-5699
Email: pmborschow@epwater.org

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 regular mail or electronic mail on August 2, 2022 in accordance with the Order Suspending Rules, issued in Project No. 50664.



PATRICIA MARIA BORSCHOW