

FILED

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

MAR 21 2017

DOCKET NO. 2016-AD-220

MISS. PUBLIC SERVICE
COMMISSION

IN RE: COMMISSION APPROVAL OF *RULES, REGULATIONS, POLICIES AND PROCEDURES OF ARNOLD LINE WATER ASSOCIATION, INC.*

ARNOLD LINE WATER
ASSOCIATION, INC.
(WA-020-0305-00)

RECOMMENDED ORDER OF HEARING EXAMINER

THIS DAY, there came on for consideration before the Mississippi Public Service Commission ("Commission") certain changes to the *Rules, Regulations, Policies and Procedures of Arnold Line Water Association, Inc* ("Arnold Line Service Rules") which the Commission finds should be made before approval thereof. On November 1, 2016, the Commission opened this docket, on its own motion, and referred the matter to the undersigned Hearing Examiner as authorized by Miss. Code Ann. § 77-3-40. A duly-appointed hearing examiner is granted "all the rights, duties, powers, and jurisdiction conferred . . . on the commission."¹ The Hearing Examiner, thus, has authority to enter this Order and does hereby find and order as follows:

PROCEDURAL BACKDROP

1. By letter dated November 2, 2016, the Commission requests Arnold Line Water Association ("Arnold Line") make certain changes to its service rules. Specifically, the letter highlights four (4) changes to the Arnold Line Service

¹ See *Miss. Code Ann.* §77-3-40(2).

Rules the Commission deems necessary to bring the Arnold Line Service Rules into compliance with the Commission's *Rules and Regulations Governing Public Utility Service* ("Commission Service Rules"). These proposed changes are listed below.

- Arnold Line must delete the requirement that customers must present their "entire bill or account number" in order to make payment.²
- Arnold Line must add language under the subtitle "Discontinuance of Service by the Water System" which advises the consumer of his right to file a complaint with the Commission if the decision by the board of directors is unfavorable to the consumer.³
- Arnold Line must delete Subpart E of *Arnold Line Water Association, Inc. Water Users Agreement* ("Arnold Line Users Agreement"), which states, "Arnold Line has the right to cut off your water for nonpayment of sewer for the City of Hattiesburg, West Over West Sewage or Lamar Park."⁴
- Arnold Line must either amend the quotation of an older version of *Miss. Code Ann.* § 97-25-3, or delete the outdated statutory language entirely and replace it with a simple citation to the code section.⁵

² Arnold Line Service Rules, p. 4.5, item 9.

³ Arnold Line Service Rules, p. 6.

⁴ See Arnold Line Service Rules, p. 2.5, item E.

⁵ See Arnold Line Service Rules, pp. 7-8.

2. The Commission's letter requires a response from Arnold Line within seven (7) business days following receipt of the letter.
3. The Board of Directors declined to make the proposed changes in a handwritten note dated November 11, 2016, penned by C. R. Dixon, which was entered in the docket.
4. In accordance with Commission Service Rule 15.105, the Hearing Examiner noticed a show cause hearing to allow Arnold Line to be heard upon the proposed changes.
5. Due and proper notice of the hearing was given to the public and all interested parties as required by Mississippi law and Commission Rules.
6. The Commission issued subpoenas to C. R. Dixon⁶ and James H. Bennett,⁷ commanding their appearance and testimony at the hearing. The Commission also issued a subpoena to Joan Abercrombie,⁸ commanding her appearance at the hearing and her production of the minutes from the Board meeting wherein the Board members discussed the Commission's changes to the Arnold Line Service Rules. Upon notice from Arnold Line that Ms. Abercrombie's appearance would create a hardship, the Hearing Examiner permitted the production of the minutes with accompanying affidavit of authenticity in lieu of her appearance.

⁶ Mr. Dixon is the President of the Board of Directors for Arnold Line.

⁷ Mr. Bennett is Vice-President of the Board of Directors for Arnold Line.

⁸ Ms. Abercrombie is the Office Manager and Secretary of the Board of Directors for Arnold Line.

7. All pleadings, documentation, and notices provided in this docket comply with applicable Mississippi statutes and Commission Rules.
8. The show cause hearing was held on January 19, 2017, at 10:00 a.m., in the Hearing Room of the Commission located on the 1st Floor of the Woolfolk State Office Building in Jackson, Mississippi. At such hearing, Frank Farmer appeared on behalf of the Commission and Anna Rush appeared on behalf of Arnold Line. Mr. Dixon and Mr. Bennett offered testimony and were subject to cross-examination. As agreed, Arnold Line produced a true and correct copy of the minutes from the relevant Board meeting with Ms. Abercrombie's supporting affidavit. At the conclusion of the hearing, the Hearing Examiner took this matter under advisement until such time as she could issue her Recommended Order.

LEGAL ANALYSIS

Now, being fully apprised of the premises and having considered the documents, testimony, and record before her, as authorized by law and Commission Rules, the Hearing Examiner makes the following findings of fact and conclusions of law:⁹

Jurisdiction

1. This matter is properly before the Commission for consideration. Arnold Line is a public utility within the meaning of the Miss. Code Ann. § 77-3-3(d)(iv).

⁹ The Hearing Examiner separately sets forth her findings of fact and conclusions of law in accordance with Miss. Code Ann. §77-3-40(4).

Broadly, the Commission has “exclusive original jurisdiction over the intrastate business and property of public utilities.”¹⁰ The Commission’s jurisdiction over non-profit water associations, however, does not include jurisdiction over “rates for the sales . . . of water . . .”¹¹ The Commission Service Rules apply “to every public utility, as that term is defined in Section 77-3-3, Mississippi Code of 1972, as amended, *over which the Commission is given any jurisdiction and to the extent of such jurisdiction.*” (Emphasis added.) Pursuant to Commission Service Rule 15.105, a public utility’s rules and regulations are subject to the approval of the Commission. Considered together, Mississippi Code Ann. § 77-3-5 does not present a stumbling block to the Commission’s jurisdiction over Arnold Line’s service rules, absent a relationship between the service rule and rate-making. Thus, the subject matter of the this docket falls within the Commission’s jurisdiction since the service rules at issue do not pertain to rate-making.¹²

Arnold Line Service Rules

2. Arnold Line’s “requirement” that the customer produce his entire bill or provide his account number prior to the utility’s acceptance of payment should be deleted from the Arnold Line Service Rules and removed from any signage

¹⁰ Miss. Code Ann. § 77-3-5.

¹¹ Miss. Code Ann. § 77-3-5(c).

¹² See *Miss. Code Ann.* § 49-17-751, § 77-3-23, and Rule 8 of the *Public Utilities Rules of Practice and Procedure*.

located at the payment center or elsewhere,¹³ since this Arnold Line Service Rule violates Commission Service Rules. Pursuant to Commission Service Rule 3.100, a utility must “establish and maintain a system of accounts in accordance with the orders of the Commission.” Rule 3.110 requires the utility to “keep a customer’s ledger or other records from which can be determined the revenues derived from each customer.” Since Arnold Line must maintain a customer ledger in order to comply with Rule 3.110, basic account balance information should be readily accessible to the utility and a customer’s request for such information is not unduly burdensome to the utility. In fact, Mr. Dixon testified that, in practice, he does not strictly enforce the policy and can locate account information if a customer does not have his bill or account number.¹⁴ At the hearing, Mr. Dixon testified the intent of the policy is to keep the office running efficiently by placing the burden of information on the customer.¹⁵ Requiring a customer to present his bill or provide his account number before payment is processed, however, impermissibly shifts the burden of disclosure/support set out in Commission Service Rule 6.100 from the utility to the customer. Per Commission Service Rule 6.100, a utility is charged with “[giving] its customers such information and assistance as may be reasonable.”¹⁶ To facilitate payment and prevent interrupted service, a

¹³ At the hearing, Mr. Dixon testified that, in addition to the service rule, signage is posted at the water association that the customer must present his bill or account number to make payment. Transcript, p.7, ln. 3-11.

¹⁴ Transcript, p. 8, ln. 6-10; p. 13, ln.9-11.

¹⁵ Transcript, p. 7, ln. 22-29; p.8, ln. 1-12; p. 13, ln. 12-14.

¹⁶ See Commission Service Rule 6.100.

utility must provide basic account information to the account holder. Lastly, this provision in the Arnold Line Service Rules is incongruous with Commission Service Rule 8.100, which requires a utility to exercise “due diligence” prior to discontinuance of service.¹⁷ The Commission is not satisfied that a utility has performed its “due diligence” or that a customer has been given a “reasonable opportunity . . . to pay his bill” if a utility refuses to provide a customer with his outstanding account balance at any time when the customer indicates a desire to make payment on his account.¹⁸ The Hearing Examiner, therefore, finds Arnold Line’s service rule which places the burden of providing account information on the customer violates Commission Service Rules. The Hearing Examiner further finds that this requirement must be deleted from the Arnold Line Service Rules and removed from signage at any location where the requirement has been posted.¹⁹

3. Arnold Line, through the testimony offered by Mr. Dixon at the hearing, has agreed to add language under the subtitle “Discontinuance of Service by the Water System” which would instruct the consumer of his right to file a complaint with the Commission in the event of a dispute concerning refusal of service.²⁰ Commission Service Rule 7.120 requires a utility to inform the

¹⁷ Commission Service Rule 8.100.1 forbids discontinuance of service to any customer for violation of its rules and regulations or for non-payment of bills without first having used due diligence to give the customer notice of such violation or delinquency and reasonable opportunity to comply with its rules and regulations or to pay his bills.

¹⁸ See Commission Service Rule 8.100.1.

¹⁹ To be clear, neither the Commission Service Rules nor this Order prohibits Arnold Line from encouraging, as opposed to mandating, its customers to produce account information at the time of payment in order to expedite the payment process.

²⁰ Transcript, p.35, ln. 21-24; p.36, ln. 1-9; p. 43, ln. 5-18.

customer that he may file a complaint with the Commission concerning a refusal of service. Upon closer examination of the Arnold Line Service Rules, the Hearing Examiner finds that the additional language should be included under "Complaints Regarding Service"²¹ rather than under the heading "Discontinuance of Service by the Water System." The Hearing Examiner proposes and recommends the use of the following language in the Arnold Line Service Rules under the heading, "Complaints Regarding Service":²²

In any case of a dispute concerning refusal of service, the customer may, if he so chooses, file a complaint concerning the matter with the Mississippi Public Service Commission located in the Woolfolk State Office Building at 501 N. West Street in the City of Jackson, State of Mississippi.

The Hearing Examiner, therefore, finds that Arnold Line has agreed to include language (either the proposed language included in this Order or its own language) which will provide notice to customers of their right to complain to the Commission in the event of a dispute concerning refusal of service.

4. The cross-utility cutoff arrangements in the Arnold Line Users Agreement must be approved by the Commission. Commission Service Rule 8.125.2 prohibits a utility from discontinuing service to any customer for failure to pay for a different utility's service. The Commission, nevertheless, routinely approves cutoff arrangements between water and sewer utilities. The Commission has excepted certain water/sewer arrangements from its service

²¹ See the Arnold Line Service Rules, p. 5.

²² Arnold Line is not required to use the proposed language and may craft its own language if it so chooses.

rule given the close connection and interdependence of the services. An Arnold Line customer, in order to receive water service, must sign the user's agreement, which gives Arnold Line the right to cuff off the customer's water for nonpayment of sewer for the City of Hattiesburg, West Over West Sewage, or Lamar Park.²³ Mr. Dixon testified Arnold Line has not sought approval from the Commission for its cutoff arrangement with the sewer utilities listed in the Arnold Line Users Agreement.²⁴ According to Mr. Dixon's testimony, this arrangement with the City of Hattiesburg began approximately two (2) years ago in an effort to collect approximately ninety thousand and no/100 dollars (\$90,000) in past due sewer accounts.²⁵ In keeping with current practice, the Hearing Examiner finds, as follows:

- With regard to the arrangement between Arnold Line and City of Hattiesburg, Arnold Line should file a petition for approval of the cross-utility cutoff arrangement and provide a letter from the City of Hattiesburg which indicates the City's approval of this arrangement and its continued desire for this arrangement to be a part of the Arnold Line Users Agreement.
- With regard to the arrangement between Arnold Line and West Over West Sewage, both parties should jointly file before the Commission a petition for approval of the cross-utility cutoff arrangement.

²³ See Arnold Line Service Rules, p. 2.5, Item E.

²⁴ See Transcript, p. 22, ln. 2-5.

²⁵ See Transcript, p. 20, ln. 12-26. The record is unclear as to how long this cutoff arrangement has been in place for West Over West Sewage and Lamar Park.

- With regard to the arrangement between Arnold Line and Lamar Park, both parties should jointly file before the Commission a petition for approval of the cross-utility cutoff arrangement.
5. Finally, with regard to the outdated version of *Miss. Code Ann.* § 97-25-3 in the Arnold Line Service Rules, Arnold Line, through its attorney, has agreed to amend its service rules, removing the outdated language of the code of the section and replacing the language with a simple statutory citation.²⁶ The Hearing Examiner, therefore, finds the quotation of the outdated version of *Miss. Code Ann.* § 97-25-3 in the Arnold Line Service Rules should be deleted and replaced with a simple citation to *Miss. Code Ann.* § 97-25-3.
 6. The Hearing Examiner finds the aforementioned changes should be made to the Arnold Line Service Rules in order to bring the Arnold Line Service Rules into compliance with the Commission Service Rules:

IT IS, THEREFORE, ORDERED that:

- A. Arnold Line shall delete from its service rules the requirement that a customer must provide his bill or account number in order to make payment.
- B. Arnold Line shall remove, effective immediately, any signage from any location which states that a customer must have his bill or account number in order to make payment.

²⁶ See Transcript, p. 24, ln. 5-15.

- C. Arnold Line shall draft language (or use the language proposed in this Order) to be included under "Complaints Regarding Service" in the Arnold Line Service Rules which is sufficient to provide notice to its customers of their right to file a complaint with the Commission in the event of a dispute concerning refusal of service.
- D. Arnold Line shall file a petition with the Commission within twenty (20) days following the entry of this Order which seek approval from the Commission of its cross-utility cutoff arrangement with the City of Hattiesburg. The petition shall include evidence sufficient to establish the City of Hattiesburg's approval of this arrangement and the City's desire for Arnold Line to continue to incorporate Section E in its users' agreement. If Arnold Line shall fail to file its petition for approval within the prescribed twenty (20) days or otherwise fail to obtain an extension from the Commission, Arnold Line shall delete its right to cut off water for nonpayment of sewer to the City of Hattiesburg from Section E of the Arnold Line Users Agreement without requiring further order from the Commission.
- E. Arnold Line and West Over West Sewage shall file a joint petition with the Commission within twenty (20) days following the entry of this Order, requesting approval of its cross-utility cutoff arrangement. If such petition is not filed within the prescriptive period and an extension is not otherwise granted, Arnold Line shall delete its right to cut off


water for nonpayment of sewer to West Over West Sewage from Section E of the Arnold Line Users Agreement without requiring further order from the Commission.

- F. Arnold Line and Lamar Park shall file a joint petition with the Commission within twenty (20) days following the entry of this Order, requesting approval of its cross-utility cutoff arrangement. If such petition is not filed within the prescriptive period and an extension is not otherwise granted, Arnold Line shall delete its right to cut off water for nonpayment of sewer to Lamar Park from Section E of the Arnold Line Users Agreement without requiring further order from the Commission.
- G. In the Arnold Line Service Rules, the language which is cited as the statutory language of *Miss. Code Ann. § 97-25-3* (but which is actually a prior version of the statute) shall be deleted and, instead, replaced with a reference to the code section only and not the actual language itself.
- H. Arnold Line shall submit to the Commission for approval its *Rules, Regulations, Policies and Procedures of Arnold Line Water Association, Inc.*, which have been revised in accordance with this Order, within forty-five (45) days following the entry of this Order.
- I. This Order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of the Commission, who shall note the service date in the file of this docket.

J. The parties may, within fifteen (15) days from the date of entry, file exceptions to the Recommended Order for the review of the full Commission in accordance with Miss. Code Ann. §77-3-40. If no exceptions are filed, the Recommended Order shall become the Order of the Commission and shall take effect immediately unless the Order is stayed or postponed by the Commission.

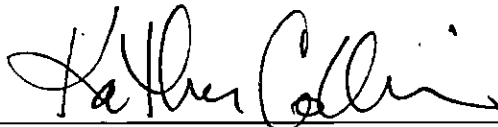
SO ORDERED on this the 21st day of March, 2017.

MISSISSIPPI PUBLIC SERVICE COMMISSION



STEPHANIE TAYLOR, Hearing Examiner

ATTEST: A True Copy



KATHERINE COLLIER, Executive Secretary

This Order is effective the 21st day of March, 2017.

