

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

DOCKET NO. 2016-AD-220

IN RE: COMMISSION APPROVAL OF RULES, REGULATION, POLICIES AND PROCEDURES OF ARNOLD LINE WATER ASSOCIATION, INC.	ARNOLD LINE WATER ASSOCIATION, INC. (WA-020-0305-00)
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**REQUEST FOR EXCEPTION TO RECOMMENDED ORDER OF HEARING
EXAMINER**

COMES NOW, Arnold Line Water Association, Inc. (herein "ALWA") and respectfully requests an exception, in part, to the Recommended Order of Hearing Examiner. ALWA does agree to include language under the subtitle "Discontinuance of Service by the Water System" advising members of the right to file a complaint with the Public Service Commission (herein "PSC" or "Commission") if the decision by the ALWA Board is unfavorable to the consumer. ALWA does agree to remove the quotation of Miss. Code Ann. § 97-25-3 and replace it with just the citation to the code section. ALWA does *not* agree to the removing of language or signage instructing consumers to have their account number to pay their bill. ALWA does *not* agree to the Commissions requirements regarding the agreements with the City of Hattiesburg, West Over West Sewage or Lamar Park. In support of its request for exceptions, ALWA would show the following:

I. The Public Service Commission lacks Jurisdiction to require such changes.

Pursuant to Miss. Code Ann. § 77-3-5, the Commission does not have jurisdiction over the "governance, management or other internal affairs" or to regulate the rates of certain entities, like water association. When you have a nonprofit corporation or association where the consumers elect the governing body, the Commission simply lacks authority to interfere with the governance, management, internal affair, or regulation of rates. Miss. Code Ann. § 77-3-5 (c). ALWA members elect a Board of Trustees from within its own organization, pursuant to the Association's bylaws. The Board is charged with decision making as it relates to the finances of the organization and is

given authority to “prescribe, adopt, and amend, from time to time, such equitable uniform rules and regulations as, in their discretion, may be deemed essential or convenient for the conduct of the business and affairs of the corporation and the guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof.” Arnold Line Bylaws, Article IX(d).

Signage informing customers that they will need their entire bill or account number to pay their bill and the sewage agreements were all decisions that were discussed and voted on by the duly elected board members of the water association. The decision was exclusively within the authority of the ALWA Board and was made in an effort to improve customer service by reducing wait-times in the office. Prior to posting the signage, the Association’s office was looking up an estimated 1200-1400 account each month, with each individual account taking five to seven minutes to look up. Hearing Transcript p. 10. Since posting the signage, the wait times in the office have significantly decreased. The Board likewise voted to enter into agreements with the City of Hattiesburg, West Over West Sewage, and Lamar Park, some as far back as 30 years ago, and have not had any complaints regarding the agreement. When the board made the decisions to enter in such agreements, it was made in the best interest of the members of the association and within the board’s authority as the governing body.

II. Forcing ALWA to adhere to the recommended changes would be cause undue burden to the Association and its members.

The ALWA Board of Directors made the decision to post signage staying “to pay your bill, you must have your entire bill or account number” in an effort to decrease wait-times for members paying their bill and help alleviate some of the burden on the Association’s small office staff. ALWA services over two thousand members with high quality water. Typically only the Board’s secretary, and occasionally the Board’s president, attends the office where members pay their bill. Prior to the Board voting and approving the policy that members must have their entire bill or

account number to pay the bill, there was a tremendous burden on the individual or individuals staffing the office. The lines were particularly long on the last day to pay a bill before a late penalty was applied. As stated, an estimated 1200-1400 members would come to pay their bill without their bill or account number. Without this information, the Board member who was in the office would have to stop to look up the account number and how much was owed before the payment could be processed. This delay in processing payment, especially when taken into considered the sheer volume of account the office attendee would have to look up, significantly impacted the functionality of the office as well as the overall quality of customer service. The signage, as voted and approved by the Board Members, was an effort to improve this experience. The Board equated the decision to their own experience of having to provide an account number or bill for other utilities, insurance providers, cellular phone providers, mortgage lenders, or generally, any system in which an individual has an account and is required to make payments on said account.

To force ALWA to abandon a decision that was made by it's duly elected Board would come at a financial cost, inhibit the Association's customer service, and be unduly burdensome. In the recommended order, the hearing officer cites to PSC Rule 3.110 regarding customer records as well as PSC Service Rule 6.100 regarding the disclosure of such information to customers. 6.100 states that each utility shall "upon request give its customers such information and assistance as may be reasonable in order that customers may obtain efficient and reasonably adequate service." ALWA President, C.R. Dixon, testified that he does provide customer information when it's requested so long as it doesn't affect the office's overall customer service. Removing the practice and signage of having customers have their bill or account number would dramatically increase the number of members requesting such information. To meet RSC Service Rule 6.100's to provide information in order to maintain efficient and reasonably adequate service, ALWA would need to either overhaul its computer and records systems or hire additional staff to handle the volume of customers without

their information. These options would present a significant cost to the Association. Without making these expensive changes, ALWA could not follow the Recommended Order's rule change while maintaining the PSC's own standard for customer service.

III. The costs of compliance to the recommended rules would constitute a rate change, and the PSC is barred from regulated rates of water associations.

The Mississippi Supreme Court recently held that the Public Service Commission lacks statutory authority to adopt any rule regulating the rates of nonprofit water utility associations and corporations. *Mississippi Rural Water Association, Inc. v. Mississippi Public Commission*, No. 2015-CC-01249-SCT (2017). The definition of "rate" is broadly defined by Miss. Code Ann. § 77-3-3(e) to not only bar the Commission from regulating "the amounts charged by nonprofit public utilities for their services, but also the formula used to calculate that amount and any rules or regulations related to this process." *Id.* ¶ 11. ALWA would argue that the requirements set forth in the PSC's Recommended Order could constitute as a "rate" as defined by the Supreme Court. As discussed, removing the policy of members presenting their bill or account number to pay their bill would result in a significant cost for ALWA to maintain efficient and reasonably adequate service to its customers. ALWA would essentially have to overhaul their entire billing and record keeping system as well as their internal operations to keep its commitment to customer service and be compliant with the PSC's recommendation. Further, the agreements with City of Hattiesburg, West Over West, and Lamar Park sewage include monthly payments from the entities to ALWA. Therefore, the adoption of recommended changes would likely result in the costs of overhauling ALWA's internal operations and systems as well as the reduction in revenue from the sewage agreements. This combination would need to be incorporated into the rate formula and ultimately could result in rate changes charged to the consumer. Miss. Code Ann. § 77-3-5, as affirmed by the Mississippi Supreme Court, states that the Public Service Commission lacks the authority to do so.

IV. There is no PSC Rule regulating cross-utility agreements.

Part of the PSC's Recommend Order requires ALWA to file three joint petitions seeking PSC approval of the existing agreements that ALWA has had for years, some decades, with local sewage entities. While the PSC cites to Service Rule 8.125.2, which disallows utilities from discontinuing service for failure to pay the utility for non-utility services or products, it acknowledges that certain water/sewer arrangements are common given the "the close connection and interdependence of the services." Service Rule 8.125.5 does not directly address the issue or cross-utility arrangements. Further, the requirement that a water association should file a petition for approval of a cutoff arrangement and requiring ALWA to do so within twenty (20) days of a final order is not spelled out in any rule promulgated by the Commission.

To establish such a rule, the PSC would need to comply with its one Rule 26 as well as Miss. Code Ann. § 25-43-1.101 et seq., Mississippi Administrative Procedure Act, Miss. Code Ann. § 77-3-45. At minimum, the law requires notice setting forth the terms or description of the subjects and issues involved that is published in a newspaper of general circulation of the state, filed with the Secretary of State, and copies mailed to affected utilities. Any public utility may request a copy and any interested party shall have the right to petition the commission for issuance, amendment, or repeal. Further, proposed rules or regulations are not effective without a hearing. To require ALWA to follow the steps for cross-utility agreements as dictated in the Recommended Order, that is without a current rule, would be to allow the PSC to circumvent their own rule as well as several state laws pertaining to Rule-Making. As such, it is inappropriate for the PSC to make such a requirement of ALWA without first taking the necessary steps to establish such a rule.

WHEREFORE, PREMISES CONSIDERED, Arnold Line Water Association respectfully ask that the Mississippi Public Service Commission grants the above requested exceptions to the Recommended Order issued on March 21, namely the recommendation regarding

customers providing their bill or account number and the recommendation regarding the cross-utility agreements. Arnold Line Water Association would further ask, pursuant to Miss. Code Ann. § 77-3-40, for time to file additional briefs in support and supplemental information as needed, and would request an opportunity to present oral arguments before the Commission.

This the 4 day of April, 2017.



ANNA K. RUSH
FOR ARNOLD LINE WATER
ASSOCIATION, INC.

PREPARED BY:

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Certificate of Service

I, Anna K. Rush, Attorney for Arnold Line Water Association, Inc. do hereby certify that I have this day mailed an electronic copy and caused to be hand delivered a true and correct copy of above and foregoing Request For Exception To Recommended Order Of Hearing Examiner to: Katherine Collier, Executive Secretary, Mississippi Public Service Commission, 501 North West, Suite 201a, Jackson, MS 39201.

This the 4 Day of April, 2017.



ANNA K. RUSH