

Decision No. R24-0033

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0556W

ORIANNA ARMSTRONG,

COMPLAINANT,

V.

BAXTER WATER SERVICES,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
SUSTAINING COMPLAINT,
GRANTING COMPLAINANT RELIEF, AND
VACATING HEARING**

Mailed Date: January 17, 2024

I. STATEMENT AND PROCEDURAL BACKGROUND

A. Background

1. On November 7, 2023, Complainant Orianna Armstrong (Armstrong or Complainant) filed the above-captioned Formal Complaint against Baxter Water Services (Baxter Water or Respondent). Armstrong asserts that “multiple water outages for repairs to be made to the water lines” have occurred since Baxter Water came under new ownership. She further alleges that water outages occurred “without notice and without response” from Baxter Water’s owner. Formal Complaint of Orianna Armstrong, filed Nov. 7, 2023, ¶ 1.

2. On November 14, 2023, the Commission issued an Order to Satisfy or Answer advising Respondent of the Complaint filed against it. The Order to Satisfy or Answer ordered Baxter Water “to answer the complaint in writing within 20 days from service upon you of this order.” The Order to Satisfy or Answer was mailed to Baxter Water at its listed business address, 239 Circle Lane, Pueblo, Colorado, 81006.

3. Also on November 14, 2023, the Commission issued a second Order setting a hearing in this matter for January 22, 2024, at 9:00 a.m., and advised the parties of the same.

4. On November 22, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

5. To date, Respondent has made no filings in this Proceeding. The deadline by which Respondent was to answer the Formal Complaint in writing — December 4, 2023 — has now elapsed.

II. FINDINGS OF FACT

6. Because Respondent did not file proof that it had satisfied the Complaint or filed an answer to the Formal Complaint by the required deadline (December 4, 2023), the Complaint’s allegations are deemed admitted and are accepted as true. *See* Rule 1308(f) of the Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1. The following factual findings outline the relevant, and now admitted, facts from the Formal Complaint.

7. Baxter Water provides residential water services to an area including parts of Pueblo, Colorado. Its stated business address is 239 Circle Lane, Pueblo, Colorado, 81006.

8. Baxter Water came under new ownership sometime before November 2023.

9. Since new owners took over Baxter Water, multiple water outages have occurred to repair water lines.

10. Baxter Water has “rarely” notified its customers in advance of these planned outages, if at all. “Multiple outages” have occurred without any notice.

11. Baxter Water has also failed to respond to customers’ inquiries regarding the outages and their duration. Customers are not informed when water service will resume after an outage.

12. A noticed outage began on November 6, 2023, at 7:00 a.m. and was planned to continue for an unspecified length of time. Customers reported still being without running water 24 hours after the outage began.

13. Complainant instituted this Formal Complaint on November 7, 2023, after the water outage had continued in excess of 24 hours, seeking relief from the Commission.

III. RELEVANT LAW, FINDINGS, ANALYSIS AND CONCLUSIONS

14. A water utility “shall inform its customers of any change proposed or made in any term or condition of its service if that change or proposed change will affect the quality of the service provided.” Rule 5405(a), 4 CCR 723-5.

15. In addition to information concerning billing and rates, upon request a water utility is required to provide its customers with “any other information and assistance as may be reasonably necessary to enable the customer to secure safe and efficient service.” Rule 5405(c)(V), 4 CCR 723-5.

16. A respondent answering a Formal Complaint “shall file a response within 20 days of being served with an order to satisfy or to answer the complaint.” Rule 1308(d), 4 CCR 723-1.

A respondent may either answer the allegations asserted in the complaint or move to dismiss the complaint. Rules 1308(d), (e), 4 CCR 723-1.

17. If a respondent “fails to file timely a responsive pleading, to admit or deny an allegation in a complaint, or to raise an affirmative defense, the Commission may deem the party to have admitted such allegation or to have waived such affirmative defense and *may grant any or all of the relief requested.*” Rule 1308(f), 4 CCR 723-1 (emphasis added).

18. A copy of Complainant Armstrong’s Formal Complaint, along with the Order Setting Hearing and Notice of Hearing, as well as the Order to Satisfy or Answer were served on Baxter Water by mail addressed to Baxter Water at its last known business address — 239 Circle Lane, Pueblo, Colorado, 81006 — on November 14, 2023. There is no record of the mail being returned as undeliverable and it is therefore found that the Formal Complaint, Notice of Hearing, and Order to Satisfy or Answer were received by Baxter Water within the normal course of mail delivery.

19. The Order to Satisfy or Answer ordered Baxter Water, in capital letters, to respond to Armstrong’s Formal Complaint “WITHIN 20 DAYS FROM SERVICE UPON YOU OF THIS ORDER AND COPY OF THE ATTACHED COMPLAINT.” Twenty days from the date on which the Commission mailed the Order and Complaint to Baxter Water elapsed on December 4, 2023. Baxter Water should have filed a responsive pleading by that date.

20. Moreover, even allowing one week for the Complaint to have been delivered to and received by Respondent, Baxter Water should have received the Complaint, Notice, and Order on or by November 21, 2023.

21. At the very latest, then, Baxter Water's responsive pleading therefore should have been filed on or before December 11, 2023. That time period has now long since expired.

22. To date, Baxter Water has not filed a responsive pleading of any kind to the Formal Complaint, nor has anyone entered an appearance on Baxter Water's behalf.

23. The ALJ therefore deems the allegations of the Formal Complaint as admitted by Baxter Water. *See* Rule 1308(f), 4 CCR 723-1.

24. Here, the service Baxter Water purported to offer was repeatedly disrupted without proper notice to its customers. The change in service — imposing a water outage to repair water lines — clearly and detrimentally affected “the quality of the service provided.” Yet, as the Formal Complaint makes clear, on several occasions, Baxter Water did not notify its customers of the service interruption. The ALJ finds and concludes that Baxter Water's failure to notify its customers of impending service disruptions violated Commission Rule 5405(a).

25. Likewise, the ALJ finds and concludes that Baxter Water's failure to respond to customers' inquiries about the status of their service and disruptions thereto, including inquiries posed by Complainant Armstrong, violated Commission Rule 5405(c)(V).

26. Based on the above statutory and Rule violations, the ALJ will sustain the Formal Complaint, and grant the Complainant relief.

27. However, the Complainant has not specified what relief she seeks. Rather, she indicated the Commission should grant her “whatever relief the Commission deems legally appropriate.” *See* Formal Complaint, ¶ 6, p. 2.

28. The Respondent will be ordered to notify its customers at least 48 hours in advance of water service disruptions caused by repair work to water lines.

29. If Complainant seeks other relief, she is instructed to submit a written statement detailing the relief she seeks within 14 days of service of the Decision or present an oral statement detailing any additional relief she seeks at a hearing before the undersigned ALJ at the date and time set forth below.

IV. HEARING VACATED AND RE-SET

30. In light the undersigned ALJ's Decision sustaining the Formal Complaint, the evidentiary hearing scheduled for January 22, 2024, will be vacated.

31. A fully remote hearing will be set for Tuesday, February 6, 2024, at 10:30 a.m. for the sole purpose of considering any additional relief Complainant seeks. This fully remote hearing will likewise be vacated if Complainant Armstrong submits a written request detailing the relief she seeks within 14 days of service of this Decision or indicates that she does not desire other relief.

V. ORDER

A. It Is Ordered That:

1. The Complaint in this Proceeding is sustained.
2. Respondent, Baxter Water Services, is ordered to notify its customers at least 48 hours in advance of any water service disruptions caused by water line repairs.
3. Respondent, Baxter Water Services, is ordered to immediately cease and desist from engaging in any statutory violations or violations of the Commission's Rules and Regulations.
4. The evidentiary hearing scheduled for Monday, January 22, 2024, is vacated.

5. A fully remote hearing in this Proceeding for the sole purpose of ascertaining the any additional relief to be granted Complainant Armstrong is scheduled as follows:

DATE: Tuesday, February 6, 2024

TIME: 10:30 a.m.

PLACE: Join by videoconference using Zoom

6. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

7. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

8. This Decision shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director