

Decision No. R23-0568

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0081W

IVAN GUILLERMO VALLES,

COMPLAINANT,

V.

BAXTER WATER SERVICES, MR. BRANDON JARDON, ALSO KNOWN AS
MR. JARDON, O'NEAL WATER, AND SCOTT GREENWEL,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
AMENDING CAPTION, DISMISSING RESPONDENTS,
GRANTING COMPLAINT, IN PART,
AND CLOSING PROCEEDING**

Mailed Date: August 24, 2023

TABLE OF CONTENTS

I. STATAMENT	2
A. Procedural History	2
II. Applicable Law	3
III. Findings of Fact and Relevant Testimony	5
IV. Discussion and Conclusions	13
A. Caption Amendment	13
B. Applicable Parties	13
C. The Complaint	13
V. ORDER	18
A. It Is Ordered That:	18

I. STATAMENT

A. Procedural History

1. On February 15, 2023, Mr. Ivan Guillermo Valles filed the above-captioned Complaint (Complaint) against Baxter Water Services, a Respondent with the last name “Jardens” or “Jarden,” O’Neal Water, and Mr. Scott Greenwell.

2. On February 16, 2023, the Commission issued Interim Decision No. R23-0109-I, an Order to Satisfy Answer, and Notice of Hearing (Notice). Decision No. R23-0109-I prohibited Respondents from ceasing to provide water service to Complainant and required Complainant to pay Respondents \$132.50 by February 28, 2023 and stay current on his water bill, while this matter is pending. The Notice advised the parties that a hearing in this matter will take place on April 24, 2023, at 9:00 a.m.

3. On March 1, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

4. On March 8, 2023, Respondents Baxter Water Services and Brandon Jardon’s Written Answer to Complaint of Ivan Guillermo Valles was filed by Respondents Baxter Water Services, also known as Baxter Water & Services, and Brandon Jardon (B. Jardon) (collectively, Respondents).

5. On April 24, 2023, the evidentiary hearing was held as scheduled. Complainant appeared on his own behalf. Respondents appeared represented by legal counsel. Complainant testified on his own behalf. Robert Jardon (R. Jardon) and Brandon Jardon (B. Jardon) testified on behalf of Respondents.

6. Pursuant to § 40-6-109, C.R.S., the record and exhibits of the hearing together with a written recommended decision are transmitted to the Commission.

II. APPLICABLE LAW

7. The Commission has “very extensive and broad regulatory powers” over public utilities¹, including public utilities’ rates, services, and facilities, and ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.²

8. Rule 1500 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 provides, in part: “The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party.”

9. Pursuant to Rule 5407(d) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5:

If a utility discovers evidence that any utility-owned equipment has been tampered with or that service has been diverted, the utility shall provide the customer with written notice of the discovery. The written notice shall inform the customer of the steps the utility will take to determine whether non-registration of water consumption has or will occur and shall inform the customer that the customer may be billed for any estimated water consumption not properly registered. The utility shall mail or hand-deliver the written notice within three calendar days of making the discovery of tampering or service diversion.

10. Pursuant to Rule 5408(a) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5:

... prior to discontinuing service, a utility shall provide a customer, and any third party the customer has designated in writing or electronically, by first class mail or by hand-delivery, written notice of discontinuance of

¹ *Public Serv. Co. of Colo. v. Public Utilities Comm’n*, 350 P.2d 543, 549 (Colo. 1960) *cert. denied*, 364 U.S. 820 (1960); *see also* Colo. Const. art. XXV; §§ 40-3-102, 40-7-101, C.R.S.

² Sections 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S., (2022); *see* Colo. Const. art. XXV.

service at least 15 days in advance of any proposed discontinuance of service.

11. Pursuant to § 40-1-103(1), C.R.S., a water corporation operating for the purpose of supplying the public for domestic, mechanical, or public uses is a public utility subject to the Commission's jurisdiction, control, and regulation.

12. Section 40-3-101(1), C.R.S. provides, in part:

All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful...

13. Section 40-3-103(1), C.R.S. provides:

Under the rules prescribed by the commission, each public utility shall file with the commission, within the time and in the form designated by the commission, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced, together with all rules, regulations, contracts, privileges, and facilities that in any manner affect or relate to rates, tolls, rentals, classifications, or service.

14. Section 40-5-105(1), C.R.S. provides, in part:

The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe...

15. Rule 5104(a) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5 states:

A utility seeking authority to do any of the following shall file an application pursuant to this rule: transfer a certificate of public convenience and necessity, transfer or obtain a controlling interest in a utility, whether the transfer of control is affected by the transfer of assets, by the transfer of stock by a merger or by other form of business

combination, or transfer assets subject to the jurisdiction of the Commission outside the normal course of business. A utility cannot transfer a certificate of public convenience and necessity, transfer or obtain a controlling interest in any utility, transfer assets outside the normal course of business or transfer stock, or merge with another entity without authority from the Commission.

III. FINDINGS OF FACT AND RELEVANT TESTIMONY

16. In October 2022, Papason LLC, doing business as Baxter Water & Services (Baxter Water), before purchasing the water utility business of O'Neal Water, LLC, obtained the legal services of an attorney who opined that O'Neal Water was not a Colorado Public Utilities Commission- (PUC or Commission) regulated entity.³

17. O'Neal Water provided water services to its customers pursuant to a Schedule of Rates for Water and Regulations Rules and Regulations, effective as of July 1, 2000,⁴ as amended on March 3, 2006, and December 13, 2013 (Rules and Regulations).⁵

18. Pursuant to the Rules and Regulations:

B. Water Service Line: A 'water service line' is defined as the pipe carrying water from O'Neal's Water main at the tap connection on the main in the public street, alley way [*sic*], dedicated right-of-way, public or private easement to a building or other point of use on the customer's property. All costs of installation, maintenance, repair or replacement of the 'water services line' and associated components beyond the tap connection shall be the responsibility of the property owner.

D: Stop and Waste, Shut-Off Valves: Defined as a shut-off valve located on the parameter, or the customer's property or the nearest practical location accessible to O'Neal's service employees as well as the customer and property owner... O'Neal requires each property owner to have and maintain currently operating stop and waste valve installed in their service line.

³ See Hearing Exhibit 200.

⁴ Hearing Exhibit 201 at 3-12.

⁵ See Hearing Exhibit 201.

Compliance with The Terms Of Rules And Regulations: Every customer using water from O’Neal’s water system. Now, Baxter Waters water system shall thereby be deemed to have consented and agreed to the terms and provisions of the rules and regulations and have acknowledged the right of O’Neal to discontinue water service in the event of failure of such customer to comply with the terms and provisions of these rules and regulations, including failure to make timely payment of all rates and charges fixed and established in these rules and regulations.

Water Service Shut Off: O’Neal may shut off water service without notice for any violation of the rules or regulations or violation of any applicable ordinance of the County of Pueblo, or violation of the statutes of the State of Colorado. Delinquent accounts, however, may require proper notice of delinquency prior to any shut off as a result of improper payments to their account.

Access For Service Employees: Customers, will provide access to their property at all reasonable times for authorized employees of O’Neal. This access may be necessary for determining violations of these rules and regulations or for conducting routine inspections. Refusal of access for reasonable inspections is in direct violation of the rules and regulations. After proper notice of violation, service may be discontinued until reasonable inspection is allowed and completed.

Violation Of Use Or Diversion Of Water: Any use and/or diversion of water in violation of these rules and regulations shall be of importance as to justify immediate discontinuance of water served, with or without notice.

Delinquent Accounts: ...On the first day of the following month a service discontinuance notice will be set by USMAIL to delinquent accounts, allowing (7) days prior to discontinuance of water service.⁶

19. Baxter Water was originally scheduled to purchase O’Neal’s Water’s water utility business on January 1, 2023. However, the closing for the sale of O’Neal’s Water’s water public utility business ultimately took place on January 20, 2023.⁷

⁶ Hearing Exhibit 201 at 6, 7, 9,10, and 11.

⁷ R. Jardon testified that “issues” with O’Neal Water’s business broker, forced Baxter Water to wait until January 20, 2023 to purchase O’Neal Water’s water public utility business.

20. Sometime between January 1, 2023, and January 20, 2023, Mr. Greenwell informed R. Jardon that when Mr. Greenwell purchased O’Neal Water, Mr. Greenwell sought, and received, Commission approval for the transfer of O’Neal Water business to Mr. Greenwell’s control. This information prompted Baxter Water to contact the Commission for the purposes of ascertaining the process for properly transferring of O’Neal Water’s public utility business to Baxter Water.

21. In January and February 2023, Baxter Water communicated with a PUC staff member⁸ who provided Baxter Water with information as to how to obtain Commission approval for the transfer of O’Neal Water’s utility business to Baxter Water. The staff member strongly recommended to R. Jardon to retain the services of an attorney to review Baxter Water’s documentation before the same is submitted with the Commission.

22. On January 20, 2023, Baxter Water purchased from O’Neal Water the latter’s water public utility business.

23. Following the sale of O’Neal Water’s business to Baxter Water, Baxter Water began operating as a water utility and servicing the Baxter, Colorado community, including Complainant.⁹

24. R. Jardon and B. Jardon are co-owners of Baxter Water.

25. B. Jardon is employed at Baxter Water as an Operational Manager and repair/maintenance person.

⁸ In his testimony, R. Jardon identified this PUC staff member as “Mr. Duncan.”

⁹ See Hearing Exhibit 205.

26. At all relevant times herein, Complainant resided at 130 32½ Lane, Pueblo, CO 81006 (Complainant's Home).

27. At all pertinent times herein, Baxter Water did not hold a Commission-issued Certificate of Public Convenience or Necessity (CPCN) or any other Commission approval to operate as a water public utility.

28. On December 4, 2022, Complainant made a \$375.25 payment to O'Neal Water. Complainant testified that this payment brought Complainant's water utility account balance to \$0.00¹⁰. R. Jardon testified that, following Complainant's payment of \$375.25 on December 4, 2022, a balance of \$176.25 was remained due by Complainant.¹¹

29. On or about January 17, 2023, Baxter Water notified Complainant of the sale of the utility and instructed customers how to make payments to their account as of January 20, 2023.¹²

30. Baxter Water & Services Customer History Report, dated February 20, 2023, reflects the historical account activity kept in Baxter Water's ordinary course of business.¹³

31. R. Jardon testified that on January 31, 2023, February 2, 2023, and February 10, 2023, Baxter Water mailed to Complainant, each time, via US Mail, a notice of past-due payment, request for a payment, and a disconnection notice (Disconnection Notices).¹⁴ Complainant testified that he did receive the Disconnection Notices. The ALJ was persuaded by

¹⁰ See Hearing Exhibit 101 and Hearing Exhibit 102.

¹¹ See Hearing Exhibit 204 at 4.

¹² See Hearing Exhibit 205.

¹³ See Hearing Exhibit 204.

¹⁴ See Hearing Exhibit 203. Respondents did not present the Disconnection Notices as evidence in this Proceeding. Rather, Respondents presented Hearing Exhibit 203, which shows the applicable mailing date and delivery method, and provided testimony as to the contents of each mailing instance identified in Hearing Exhibit 203.

the evidence presented by Respondents and finds that Baxter Water did, in fact, mail the Disconnection Notices to Complainant.¹⁵

32. R. Jardon testified that as of February 1, 2023, Complainant owed Baxter Water \$308.75 for water usage and late fees.¹⁶ Complainant testified that he disagreed with the same.

33. R. Jardon and B. Jardon testified that B. Jardon hung on the front yard fence of Complainant's Home a disconnection notice, notifying Complainant of Baxter Water's intent to disconnect Complainant's water service unless payment was remitted by Complainant by February 13, 2023. Complainant testified that the disconnection notice was hung on the front yard fence of Complainant's Home, for the first time, on February 13, 2023. Given R. Jardon's and B. Jardon's testimonies, the fact that the disconnection notice is dated February 6, 2023, and the fact that an apparent second disconnection notice was issued at the presence of two Deputy Sheriff officers on February 13, 2023,¹⁷ the ALJ finds that on February 6, 2023, R. Jardon hung a disconnection notice on the front yard fence of Complainant's Home.¹⁸

34. On February 13, 2023, B. Jardon, as representative of Baxter Water, arrived at Complainant's Home in a truck visibly marked with the Baxter Water's logo and name and began excavating a hole at the front yard of Complainant's Home for the purpose of shutting off Complainant's water service.¹⁹

¹⁵ The ALJ notes that Complainant admitted to having received the notice about the sale of O'Neal Water to Baxter Water (Hearing Exhibit 205). The mailing of Hearing Exhibit 205 was identified in Hearing Exhibit 203 as having been sent by Baxter Water to Complainant using the same delivery method as the Disconnection Notices.

¹⁶ See Hearing Exhibit 204 at 4.

¹⁷ See Hearing Exhibit 107. The presence of two deputy sheriff officers at the time of the issuance of the second disconnection notice on February 13, 2023 reduces the likelihood that the February 13, 2023 notice was back-dated. The ALJ concludes that the disconnection notice depicted in Hearing Exhibit 206 was issued and hung on the front yard fence of Complainant's Home on February 6, 2023.

¹⁸ See *id.* and Hearing Exhibit 206.

¹⁹ See Hearing Exhibits 103, 104, and 105.

35. Upon approaching B. Jardon at the front yard of Complainant's Home, an argument between Complainant and B. Jardon ensued. During this argument, Mr. B. Jardon accused Complainant of tampering with the water meter located at the front yard of Complainant's Home.²⁰ Complainant testified that B. Jardon told Complainant that Complainant would have to pay Baxter Water \$800 for the replacement of the water meter as well as disconnection/reconnection fees that together amount to close to \$1,000. Complainant, on the other hand, challenged B. Jardon's authority to perform the work he was performing at the front yard of Complainant's Home, demanded that B. Jardon leave the front yard of Complainant's Home, and threatened B. Jardon with criminal trespass.²¹ B. Jardon testified that he felt threatened by Complainant's demeanor and could not complete his work as a result thereof.

36. Complainant testified that on March 13, 2023, contacted the Commission to report Respondent's conduct, inquire as to whether Baxter Water was operating with Commission approval, and inquire about submitting a complaint against Respondents. A Commission staff member informed Complainant by phone that no request had been received by the Commission to transfer O'Neal Water to Baxter Water.

37. Sometime thereafter, still on March 13, 2023, Complainant and B. Jardon, each, contacted the Pueblo County Sheriff's Office, requesting it to intervene in the dispute between Complainant and B. Jardon. The officers that arrived at Complainant's Home, requested B.

²⁰ R. Jardon and B. Jardon testified that Complainant tampered with the water tap valve at the front yard of Complainant's Home by gluing the pipe cap of the valve access pipe to prevent access to the valve, and otherwise obstructing the access to the valve by placing a foreign substance in the access pipe. Respondent presented Hearing Exhibit 209 in support of such allegations. Complainant denied having glued the pipe cap or otherwise obstructing access to the valve. The evidence presented by Respondents is insufficient to substantiate Respondents' tampering allegations. As such, the AJJ makes no finding regarding whether and when Complainant may have tampered with the water tap valve, or otherwise physically obstructed the access to it.

²¹ See Hearing Exhibits 103, 104, 207 and 208.

Jardon to fill out, and place on Complainant's front yard fence, a disconnection notice.²² B. Jardon complied with this request. B. Jardon ultimately left the front yard of Complainant's Home without having shut off Complainant's water valve tap.

38. As of February 13, 2023, Complainant was aware that his water utility account was at least \$58.75 in arrears.²³

39. Complainant was assessed by O'Neal water, and is continuing to be assessed by Baxter Water, a flat rate of \$58.75, on a monthly basis, for Complainant's water usage.²⁴

40. The monthly late fee that O'Neal water was authorized to assess, and that Baxter Water has assessed for Complainant's non-payments of Complainant's water utility bill since January 2023 is \$15.²⁵

41. Complainant made a \$132.50 payment to Baxter Water for the undisputed amount owed by Complainant, in compliance with Decision No. R23-0109-I.²⁶

42. On February 13, 2023, at approximately 5:24 p.m., a Commission staff member emailed Complainant, indicating that no request to transfer O'Neal Water to Baxter Water had been received by the Commission.²⁷

²² See Hearing Exhibits 107 and 206.

²³ See Hearing Exhibit 210 at 4 and Hearing Exhibits 100, 103 and 211. In addition, B. Jardon testified that on February 13, 2023, while B. was at Complainant's Home, Complainant offered to pay B. Jardon for two months-worth of water service.

²⁴ See Hearing Exhibit 204.

²⁵ See *id.*, Hearing Exhibits 100, 201 at 5, 204, and 211.

²⁶ R. Jardon testified that Baxter Water received Complainant's \$132.50 payment approximately one month after the February 28, 2023 deadline set forth by Decision No. R23-0109. However, upon being cross-examined, R. Jardon did not provide sufficient information to enable the ALJ to determine when, in fact, Complainant made his \$132.50 payment. Neither party produced documentary evidence establishing when this payment was made. As such, the judge infers that Complainant's \$132.50 payment was compliant with Decision No. R23-0109.

²⁷ See Hearing Exhibit 106.

43. On February 14, 2023, Complainant received from Baxter Water, a bill for the period starting on February 1, 2023 that included, among other line items, a previous balance of \$235.00, a water “Tap” charge of \$800, and “Arrival to disconnect,” charges totaling \$150.²⁸

44. Complainant and Respondents presented conflicting evidence as to whether, as of February 1, 2023, Complainant had an unpaid balance of \$235.00.²⁹ The ALJ was persuaded by the evidence presented by Respondents³⁰, and finds, that the past due amount owed by Complainant as of February 2023 was \$235.00. Such past due amount equates to services rendered well in excess of 30 days.

45. R. Jardon testified that recently, following the sale of O’Neal Water’s business to Baxter Water, Baxter Water submitted with the Commission appropriate documentation for the purpose of obtaining Commission approval for the transfer of O’Neal’s Water’s public utility business to Baxter Water. R. Jardon further testified that this matter is currently pending before the Commission.³¹

46. Lastly, Complainant testified that Respondents engage in selective enforcement practices.³² The ALJ finds that Complainant presented no credible evidence in this regard.

²⁸ See Complaint at 5-6 and 8 and Hearing Exhibits 100 and 211. The invoice in question includes two “Arrival to disconnect” charges: one for a single trip fee in the amount of \$50, and the other for two trip fees in the amount of \$100.

²⁹ Compare Hearing Exhibit 100 and hearing Exhibit 211 with Hearing Exhibit 101 and Hearing Exhibit 102.

³⁰ Note specifically Hearing Exhibit 204 and R. Jardon’s testimony regarding the O’Neal Water’s and Baxter water’s accounting system.

³¹ See Proceeding No. 23A-0128W.

³² See Complaint at 6.

IV. DISCUSSION AND CONCLUSIONS

A. **Caption Amendment**

47. The Complaint identifies one of the Respondents herein as Mr. “Jarden” or “Jardens.” Based on the record, it is clear that the references to Mr. “Jarden” or “Jardens” are misspelling of the last name of B. Jardon.³³ Therefore, the caption in this Proceeding will be amended to correctly reflect the name of Respondent B. Jardon, as ordered below.

B. **Applicable Parties**

48. Because Complainant did not meet his initial burden of going forward and the burden of proof, with respect to O’Neal and Mr. Greenwell, claims against O’Neal Water and Mr. Scott Greenwell will be dismissed, with prejudice.

C. **The Complaint**

49. The Commission has authority to determine whether an entity is operating as a public utility.³⁴ Here, Baxter Water took on the business operations of O’Neal Water and began providing water utility services to the Baxter, Colorado community pursuant to the Rules and Regulations. Therefore, it is found and concluded that Baxter water was operating as a public utility subject to Commission regulation.

³³ See Complaint at 1, 3, 4, and 7, and Answer at 1.

³⁴ *Keystone, Div. of Ralston Purina Co. v. Flynn*, 769 P.2d 484, 490 (Colo. 1989).

50. As a Commission-regulated utility, Baxter water is subject to the Public Utilities Law,³⁵ including Commission rules and the Rules and Regulations as filed and amended by Baxter Water's predecessor regulated water public utility companies.³⁶

51. Once an entity is deemed a public utility within the meaning of the Public Utilities Law, the Commission may determine whether the fees it assesses for its services are just and reasonable and whether it is otherwise compliant with the Public Utilities Law.³⁷ Comparing the Rules and Regulations with the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5 (2021), several deficiencies are revealed. However, Baxter Water's relevant conduct and actions will be construed in light of the totality of facts and circumstances proven in this case.

52. Rule 5407(d) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5 proscribes procedures water utilities must follow upon discovery of evidence that utility equipment has been tampered with. There is no evidence that Respondent

³⁵ § 40-1-101, C.R.S. (providing that Articles 1 to 7 of title 40, Colorado Revised Statutes, are known as and may be cited as the Public Utilities Law).

³⁶ See Hearing Exhibit 201; *see also*, Rule 5108(a)(I) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5 (requiring utilities to keep on file with the Commission current tariffs, forms of contracts, and water service agreements).

³⁷ See Decision No. R05-0400, issued April 5, 2005, in Proceeding No. 04F-627W (in a case involving a formal complaint, after finding that the respondent company was operating as public water utility, stating that "Complainants... failed to establish by competent evidence and by the preponderance of the evidence that Respondent's service connection fee is unjust and unreasonable."); Decision No. R05-0545, issued May 10, 2005, in Proceeding No. 03F-470W (finding in a formal complaint matter that the Respondent was a public water and sewer utility, and then addressing the merits of the respondent's motion to dismiss the complaint in that proceeding. The finding that the respondent was a public utility with respect to its sewer service was reversed on rehearing, reargument, and reconsideration by Decision No. C06-0195, issued March 6, 2006); and Decision No. C01-0907, issued August 29, 2001, in Proceeding Nos. 99A-617BP and 00F-563CP, (holding that it was within the discretion of the Commission to find that the Respondent acted in reasonable and good faith under the circumstances when it provided Commission-regulated transportation services without first obtaining Commission approval).

complied with this Rule. However, the evidence shows that the reason for Baxter Water's disconnection attempt of Complainant's water service on February 13, 2023 was Complainant's non-payment of regulated water charges, and that Baxter Water did not otherwise rely on Complainant's alleged tampering to impose additional charges or obligations upon Complainant. Therefore, the ALJ need not resolve the question of whether Complainant tampered with the water valve tap located at the front yard of Complainant's home.³⁸

53. Notwithstanding the alleged tampering to the water tap valve noted herein, the ALJ finds that, per the Rules and Regulations, property owners are responsible for the cost of maintenance and repair of the "'water service line' and associated components **beyond the tap connection**" (emphasis added).³⁹ Therefore, the ALJ concludes that, under the circumstances, the cost of excavation and replacement of the water valve tap, \$800, should not to be borne by Complainant.⁴⁰

54. Rule 5408 of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5 proscribes procedures water utilities must follow prior to discontinuing service to a customer. The evidence shows that the first disconnection notice relevant herein was mailed to Complainant on January 31, 2023.⁴¹ Because Baxter Water's first disconnection notice was mailed to Complainant less than 15 days prior to Baxter Water's disconnection attempt, the ALJ concludes that Baxter Water failed to comply with Rule 5408(a).

³⁸ See also, *supra*, note 20.

³⁹ Hearing Exhibit 201 at 6.

⁴⁰ The ALJ notes that this conclusion may provide an incentive for customers to tamper with their respective water tap valves. However, the utility is not without options in such cases. The utility may pursue a customer's tampering in a court of competent jurisdiction. In addition, the utility may seek to amend its usage rules and schedule of fees on file with the Commission at any given time.

⁴¹ See Hearing Exhibit 203.

55. The Rules and Regulations allow for the charging \$50 for “Customer request Turn on/Turn off.”⁴² However, the Rules and Regulations are silent as to any ‘trip’ charges assessed in connection with a utility’s attempt to shut off a water tap due to a customer’s violation of the Rules and Regulations. The evidence presented herein shows that on February 13, 2023, Complainant did, in fact, prevent Baxter Water’s access to the front yard of Complainant’s Home, in violation of the Rules and Regulations. The ALJ concludes that, under the circumstances, \$50 of Baxter Water’s “Arrival to disconnect” charges totaling \$150, as shown in Hearing Exhibit 100 and Hearing Exhibit 211, are just and reasonable; however, the two remaining “Arrival to disconnect” charges in the amount of \$100 are not just and reasonable under the present circumstances.

56. The evidence shows that Baxter Water purchased from O’Neal Water the entirety of O’Neal water’s utility business, including accounts receivable.⁴³ Therefore, any past-due amounts due to O’Neal Water, would, following Baxter Water’s purchase of O’Neal Water’s water utility business, be due to Baxter Water. The totality of facts and circumstances proven in this case, shows that, as of as of February 1, 2023, Complainant was \$235.00 in arrears on his water utility payments. Therefore, the ALJ concludes that the \$235 charge on Complainant’s water utility bill was just and reasonable under the circumstances.

57. In the Complaint, Complainant enumerated 12 claims for relief.⁴⁴ With respect to the first claim for relief, requesting that Baxter Water be prohibited from disconnecting Complainant’s service while this matter is pending, the ALJ concludes that Respondents have complied with the same. As such, this request will be denied as moot, as ordered below. With

⁴² Hearing Exhibit 201 at 5.

⁴³ See Hearing Exhibits 100, 204, and 211.

⁴⁴ See Hearing Exhibit 210 at 8-10.

respect to the second claim for relief, requesting that Baxter Water be prohibited from disconnecting service in O’Neal Water’s service area, the ALJ concludes that, as of the date of the hearing, no client of Baxter Water was disconnected from their water service. As such, the second claim for relief will be denied as moot, as ordered below. For the same reasons, Complainant’s third claim for relief, requesting that Baxter Water be compelled to reconnect any “unlawful” water service disconnections by Respondents since January 1, 2023, will be denied as moot, as ordered below. With respect to the fourth claim for relief, requesting that Baxter Water be compelled to provide proof of Complainant’s alleged water valve tampering, the ALJ is without jurisdiction to order the same and notes that Respondents have produced the responsive evidence during the evidentiary hearing. As such, the fourth claim for relief will be denied, as ordered below. With respect to the fifth claim for relief, requesting to disallow or invalidate Baxter Water’s \$800 tap fee, consistent with the discussion herein, this request will be granted, as ordered below. With respect to the sixth claim for relief, requesting to disallow or invalidate Baxter Water’s three “Arrival to disconnect” fees, amounting to a total of \$150, consistent with the discussion herein, this request will be granted, in part, as to \$100 of the \$150 charges, as ordered below. With respect to the seventh claim for relief, requesting to disallow or invalidate Complainant’s prior balance of \$235.00, consistent with the discussion herein, this request will be denied, as ordered below. With respect to the eighth claim for relief, requesting that it be decreed that Complainant owes Baxter Water \$132.50 as of the end of February 2023, this request will be denied as moot, as the same was addressed by Decision No. R23-0109-I, and this amount was paid by Complainant and received by Baxter Water. With respect to the ninth claim for relief, requesting that Respondents be compelled to provided certified proof of mailings of the disconnection notices mailed to Complainant, Complainant failed to show that relief should

be granted. The ALJ notes that Respondents produced evidence regarding this matter during the evidentiary hearing. As such, the ninth claim for relief will be denied, as ordered below. With respect to the tenth claim for relief, requesting that Respondents be investigated for its selective enforcement practices, the ALJ finds that the evidence in this Proceeding does not support the granting of this request. As such, the tenth claim for relief request will be denied, as ordered below. With respect to the eleventh claim for relief, requesting that Baxter Water be compelled to produce water quality reports for the past five years, the ALJ finds that the evidence in this Proceeding does not support the granting of this request. The ALJ further notes that the requested reports are publicly available. As such, the eleventh claim for relief will be denied, as ordered below. With respect to the twelfth claim for relief, requesting that Baxter Water be compelled to transfer its water utility business to another “competent” public utility provider, the ALJ finds that the evidence in this Proceeding does not support the granting of this request. As such, the twelfth claim for relief will be denied, as ordered below.

V. ORDER

A. **It Is Ordered That:**

1. The name of the Respondent in this Proceeding, who is incorrectly identified in the caption of this Proceeding by the name by the name Mr. “Jarden” and Mr. “Jardens” is amended to reflect the correct name of the Respondent, Mr. Brandon Jardon. The caption in Proceeding No. 23F-0081W is amended from:

IVAN GUILLERMO VALLES,

COMPLAINANT,

V.

BAXTER WATER SERVICES, MR. JARDEN, ALSO KNOWN AS MR. JARDENS,
O'NEAL WATER, AND SCOTT GREENWELL,

RESPONDENT.

to:

IVAN GUILLERMO VALLES,

COMPLAINANT,

V.

BAXTER WATER SERVICES, MR. BRANDON JARDON, ALSO KNOWN AS
MR. JARDON, O'NEAL WATER, AND SCOTT GREENWELL,

RESPONDENT.

2. The Claims against O'Neal Water and Mr. Scott Greenwell are dismissed with prejudice.

3. Papason LLC, doing business as Baxter Water & Services (Baxter Water) is declared a public water utility subject to the jurisdiction of the Commission.

4. Consistent with the discussion above, Complainant's fifth claim for relief, requesting to disallow Baxter Water's \$800 tap fee, as the same is set forth in the above-captioned Complaint (Complaint), is granted.

5. Consistent with the discussion above, Complainant's sixth claim for relief, requesting to disallow Baxter Water's three "Arrival to disconnect" fees, amounting to a total of \$150, is granted, in part, as to \$100 of the \$150 of fees assessed by Baxter Water against Complainant.

6. All remaining claims for relief made in the Complaint are denied.

7. Within 90 days of the effective date of this Recommended Decision, Baxter Water shall come into full compliance with the provisions of §§ 40-1-103, 40-3-101, 40-3-103, 40-5-105, C.R.S., the Rules Regulating Water, and Combined Water and Sewer Utilities 4 *Code of Colorado Regulations* 723-5, and all other statutes and rules pertaining to Colorado water public utilities.⁴⁵

8. Proceeding No. 23F-0081W is closed.

9. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

10. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and

⁴⁵ It is noted that an application for approval of the transfer of O'Neal's Water's public utility business to Baxter Water is pending in Proceeding No. 23A-0128W.

the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

11. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director