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 ARIZONA CORPORATION COMMISSION  
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Arizona Corporation Commission  
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 MAY 18 2009

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE FORMAL  
 COMPLAINT OF CHARLES J. DAINS  
 AGAINST RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**RIGBY WATER COMPANY'S  
 REPLY IN SUPPORT OF MOTION  
 TO DISMISS**

Rigby Water Company ("Rigby") hereby replies to Complainant's Response to Answer and Motion to Dismiss ("Response") dated May 5, 2009. As detailed in Rigby's Motion to Dismiss, this tribunal should dismiss the Formal Complaint ("Complaint") filed on behalf of Mr. Charles Dains ("Mr. Dains") as it is time barred under the statute relied upon by Mr. Dains, fails to provide any basis for Commission jurisdiction or action over what is essentially a private contractual matter, and fails to state a claim under the cited Commission rules upon which relief can be granted.

**ARGUMENT**

**A. The Response Demonstrates That the Complaint is Barred Under A.R.S. § 40-248 and its Limitation Period.**

The Response argues that Mr. Dains is not seeking relief with respect to an excessive or discriminatory charge and, therefore, the two year statute of limitations found in A.R.S. § 40-248 does not apply to his Complaint. To the extent that Mr. Dains is not complaining of an excessive or discriminatory charge, however, A.R.S. § 40-248 does not provide any

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1 basis for relief. That statute authorizes an individual to file a complaint with the  
2 Commission related to “any rate, fare, toll, rental or charge made by any public service  
3 corporation ...” If the Commissions finds “after investigation, that the [public service]  
4 corporation has made an excessive or discriminatory charge, the commission may order that  
5 the corporation make reparation to the complainant ...” *Id.* Inasmuch as the Response  
6 admits that Mr. Dains is not seeking reparations for an excessive or discriminatory charge,  
7 the Complaint’s request for relief pursuant to A.R.S. § 40-248 must be dismissed.

8  
9 Alternatively, the Complaint should be dismissed pursuant to the two year limitations  
10 in the statute as the Response does not demonstrate that Mr. Dains’ alleged cause of action  
11 accrued within two years of the filing of the Complaint or was otherwise tolled. Under  
12 Arizona law, a statute of limitations begins to run “whenever one person may sue another.”  
13 Cheatham v. Sahuaro Collection Svc., Inc., 118 Ariz. 452, 454, 577 P.2d 738, 740 (App.  
14 1978); see also Gust, Rosenfeld & Henderson v. Prudential Ins. Co., 182 Ariz. 586, 588,  
15 898 P.2d 964, 966 (1995) (general rule is that “the period of limitations begins to run when  
16 the act upon which the legal action is based took place ...”). The fact that the term of the  
17 contract has not yet expired is irrelevant to that analysis.

18 It is undisputed that the acts underlying Mr. Dains’ Complaint occurred no later than  
19 1999, the year Mr. Dains executed the mainline extension agreement. Mr. Dains actually  
20 filed an informal complaint against Rigby based on the same facts in 2006, nearly three  
21 years ago. Clearly, the statute of limitations on Mr. Dains’ claims began to run years ago.  
22 Consequently, Mr. Dains’ Complaint must be dismissed as untimely pursuant to A.R.S.  
23 § 40-248.

24 **B. The Response Does not Provide the Missing Basis of Jurisdiction.**

25 Similarly, the Response provides no basis for jurisdiction before the Commission.  
26 As noted above, the Response expressly repudiates any claim relating to overcharging or  
27 unreasonable rates. Accordingly, A.R.S. § 40-248 presents no statutory basis for  
28 Commission action. Instead, Mr. Dains focuses on the alleged failure of the parties to file a

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1 mainline extension agreement with staff and claims that this provides jurisdiction to the  
2 Commission to adjudicate a private contractual matter. In taking this position, Mr. Dains  
3 ignores the fact that he actually filed the mainline extension agreement between Rigby and  
4 Mr. Dains with the Commission in 2006 as part of his informal complaint. [See Exh. A  
5 (letter docketed with Utilities Division on October 13, 2006, attaching mainline extension  
6 agreement).] Rigby further provided a copy to the staff investigator at that time. As a  
7 result, Mr. Dains' asserted basis for jurisdiction no longer exists.

8 Moreover, Mr. Dains' reliance on Commission rule for jurisdiction ignores the fact  
9 that no such jurisdiction would allegedly exist but for his own breach of contract. As noted  
10 in Rigby's Answer to the Complaint, Mr. Dains was obligated to provide all of the  
11 information necessary to seek approval of the parties' mainline extension agreement from  
12 the Commission. [Answer at 2.] Mr. Dains did not do so. [Id.] The Response does not,  
13 because it cannot, deny this failure by Mr. Dains. Mr. Dains would have the Commission  
14 assume jurisdiction over his attempt to raid Rigby's assets, to which he is not contractually  
15 entitled, based solely on his own admitted malfeasance. Such circular reasoning cannot  
16 provide a basis for Commission jurisdiction over what is essentially a private contractual  
17 matter seeking civil damages.

18 Finally, despite the mainline extension agreement having previously been provided to  
19 Staff, Rigby has concurrently docketed the mainline extension agreement in this open  
20 proceeding. [See Rigby's Notice of Filing Mainline Extension Agreement, dated May 18,  
21 2009 (filed in this docket).] Commission rules do not contain any timeline for filing of a  
22 mainline extension agreement with the Commission. Rule R14-2-406(M). Given that the  
23 agreement has been filed with the Commission on at least two occasions, Mr. Dains'  
24 Complaint asserted basis for jurisdiction is now moot. Rigby, therefore, requests that this  
25 matter be dismissed for lack of jurisdiction.  
26  
27  
28



1 COPY of the foregoing mailed  
2 this 18th day of May, 2009, to:

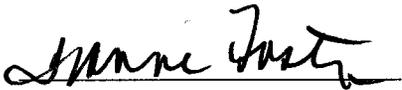
3 Lyn Farmer, Esq.  
4 Chief Hearing Officer  
5 Arizona Corporation Commission  
6 1200 W. Washington  
7 Phoenix, AZ 85007

8 Mr. Ernest Johnson  
9 Director, Utilities Division  
10 Arizona Corporation Commission  
11 1200 W. Washington  
12 Phoenix, AZ 85007-2927

13 Janice Alward, Esq.  
14 Chief Legal Counsel  
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20 Craig A. Marks, Esq.  
21 Craig A. Marks, PLC  
22 10645 North Tatum Boulevard  
23 Suite 200-676  
24 Phoenix, Arizona 85028

25  
26  
27  
28  


**EXHIBIT A**

October 11, 2006

Mr. Ernest Johnson  
Director - Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ. 85007

*Vrefi*  
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OCT 13 2006

AZ CORP COMM  
Director Utilities

**RE: Terra Mobile Ranchettes Estates and the Rigby Water Company**

Dear Director Johnson:

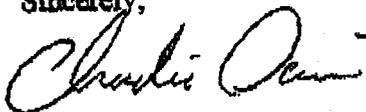
The attached packet of material relates to a dispute we are currently having with the Rigby Water Company. A demand has been made for both an accounting of water delivered to the Terra Mobile Ranchettes Estates development for the last four years and return of capital for the water system that was constructed in accordance with a Main Extension Agreement.

Indications are that the Utilities Division and the ACC itself never approved this agreement. Research indicates that no agreement is on file going back to 1988.

Before anyone thinks that this is a matter of some "greedy developer" attempting to get out of a bad business deal, I want the Commission and the Utilities Division to understand that Rigby's own representatives significantly overstated water usage to my father, who is now 86 years old, who had no background or experience in utility matters. Several times, we tried to obtain usage information and an explanation as to the basis for the original estimates. The only thing we received back was a threatening letter from an attorney, who did not address our concerns.

This letter is part of our notification to the ACC that demands have been formally made. We appreciate your time in allowing us the opportunity to bring this matter to your attention, and would ask that if this item needs to be forwarded to either your legal department or to the Docket Control office, please take whatever action you deem appropriate. Again, my thanks.

Sincerely,



Charlie Dains (for the family)  
4439 W. Glendale Avenue  
Glendale, AZ. 85301

Attachments - Main Extension Agreement, letters, etc.

Cc: Almost identical letters have also been sent to the ACC Commissioners