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Addendum StartPage: 0

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PUC DOCKET NO. 46439

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COMPLAINT OF WES ANDERSON, ET. § BEFORE THE STATE OFFICE  
AL. AGAINST QUADVEST L.P., § PUBLIC UTILITY COMMISSION  
QUADVEST, INC., RANCH UTILITIES § OF FILING CLERK  
CORP., AND RANCH UTILITIES, L.P § ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-17-5772.WS  
PUC DOCKET NO. 47279

COMPLAINT OF WES ANDERSON, ET. § BEFORE THE STATE OFFICE  
AL. AGAINST QUADVEST L.P., § OF  
QUADVEST, INC., RANCH UTILITIES §  
CORP., AND RANCH UTILITIES, L.P § ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S STATEMENT OF POSITION

Comes now the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files its Statement of Position. In support thereof, Staff would show the following:

I. Background

On October 14, 2016, Wes Anderson, et.al. (collectively, the Complainants) filed a complaint, Docket 46439, against Quadvest, L.P., Quadvest, Inc., Ranch Utilities Corp., and Ranch Utilities, L.P. (collectively, Quadvest) alleging inaccurate increased water usage and related billing as a result of smart meter installation. All Complainants, except Stephen Jones, were dismissed without prejudice from Docket 46439 in Order No. 3, issued December 2, 2016. A similar complaint was filed in Docket 47279, which added Ethel Barrett, Gail Stephens Acebo, Mary Erato, Gladys Floyd, Randolph Hansen, Allyn Watkins, Jill Westbrook, Fang Yiu, Ashley Sanders, Paul Gardaphe, Richard Deming, and Martin Leo as Complainants. SOAH Order No. 4, issued on September 5, 2017, consolidated these dockets.

## II. Position of Complainants

Stephen Jones states in his direct testimony that he set up water service with Quadvest in June of 2016, but did not receive notice that Quadvest would be changing out the water meters.<sup>1</sup> After his meter was installed, Stephen Jones alleges that his white clothing that was being washed was ruined due to the iron in water that broke loose during the meter change.<sup>2</sup> He also argues that his first bill alleging the use of 99,000 gallons was inaccurate, and the later replacement of that meter without notice again stained his clothing.

Gail Stephens Acebo<sup>3</sup>, Ethel Berrett<sup>4</sup>, Mary Erato<sup>5</sup>, Gladys Floyd<sup>6</sup>, Paul Gardaphe<sup>7</sup>, Randolph Hanson,<sup>8</sup> Martin Leo<sup>9</sup>, and Jill Westbrook<sup>10</sup> state that their bill increased dramatically after the installation of the smart meters. Gail Stephens Acebo<sup>11</sup>, Randolph Hansen<sup>12</sup>, and Jill Westbrook<sup>13</sup> state that they were not given notice of the installation of the new water meters. Gail Stephens Acebo states that Quadvest overcharged her.<sup>14</sup>

No direct testimony was filed for Allyn Watkins, Fang Yiu, Ashley Sanders, and Richard Deming.

In the original formal complaint filed on October 14, 2016 for Docket No. 46439, and again in the original formal complaint filed on June 12, 2017 for Docket No. 47279, Complainants ask the Commission to require Quadvest to correct and modify all of the smart meters it installed,

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<sup>1</sup> Complainants Initial Testimony at 19-20 (As the initial testimony of Stephen Jones filed on June 17, 2017 in Docket 46439 is identical to the direct testimony filed in conjunction with the other Complainants on Nov. 20, 2017, Staff will be referring to the later filing, which includes all of the Complainants' direct testimony).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 11.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.* at 15.

<sup>10</sup> *Id.* at 17.

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *Id.* at 13.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.* at 3-4.

refund the overcharged amounts related to the alleged inflated water usage, refund all overcharged pass-through fees, award actual damages, award all reasonable attorney's fees, and award punitive damage.<sup>15</sup> Complainants acknowledge that the awarding of money damages, attorney fees, and other relief may exceed the Commission's jurisdiction.<sup>16</sup>

### **III. Position of Quadvest**

Quadvest states that, even though it is not a Commission requirement, it sent out notice by email to all customers on May 11, 2016 regarding the installation of the new meters, as well as a bill insert.<sup>17</sup> Quadvest states that Complainants' meter accuracy was tested and within the proper standards prior to installation.<sup>18</sup> After the complaint was filed, Quadvest tested Stephen Jones' meter and found it to be outside of the acceptable boundaries by 0.1%.<sup>19</sup> Quadvest subsequently adjusted Stephen Jones' billings back to the date of meter installation and issued a credit for the amount over 100% accuracy.<sup>20</sup> On October 2017, the remainder of Complainants' meters were tested.<sup>21</sup> All but one meter were reported to be within the American Water Works Association standards.<sup>22</sup> Paul Gardaphe's meter was tested to be underreporting usage by 25%, and has since been replaced.<sup>23</sup> Quadvest alleges that the billed amount is consistent with irrigation usage and weather patterns.<sup>24</sup> Quadvest also confirms that it was charging its Commission approved pass-through fee.<sup>25</sup>

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<sup>15</sup> Plaintiff's Complaint at 9-10 (As the two initial formal complaints assert the same facts and damages, Staff will be referring to the latest filing on June 12, 2017).

<sup>16</sup> *Id.*

<sup>17</sup> Direct Testimony of Jeffrey Eastman at 8 (Dec. 11, 2017).

<sup>18</sup> *Id.* at 8-9.

<sup>19</sup> Direct Testimony of Jeffrey Eastman at 4-5 (Aug. 4, 2017).

<sup>20</sup> *Id.* at 5.

<sup>21</sup> Direct Testimony of Jeffrey Eastman at 9 (Dec. 11, 2017).

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 10-11.

<sup>25</sup> *Id.* at 11-12.

#### IV. Staff Position

Staff will address the issues as set out in the Preliminary Order.

*Did Quadvest test complainants' meters after installation? If so, what was the result?*

Quadvest tested Stephen Jones' meter on January 30, 2017 and found that it was reading at 101.6%.<sup>26</sup> Quadvest acknowledged that this was outside of the American Water Works Association (AWWA) accuracy standards of 98.5% - 101.5%.<sup>27</sup> If any meter is found to be outside of the accuracy standards established by the AWWA, proper correction of the previous readings for the period of six months immediately preceding the removal of the meter from service for the test shall be rendered.<sup>28</sup> Quadvest replaced the meter and issued a refund for the overcharged amount for the time period from when the meter was installed to when it was replaced.<sup>29</sup> Quadvest tested the other Complainants' meters and found only one other to be outside of the AWWA standards, belonging to Paul Gardaphe.<sup>30</sup> Because the meters at issue have been replaced and Quadvest used a refund for any amount overcharged, Staff recommends that this corrective action meets the requirements of the Commission Rules.

*Are the complainants' meters properly reading his water usage?*

After reviewing the data provided by Quadvest and the usage reports for past months<sup>31</sup>, Staff can find no reason to doubt the accuracy of the readings from Complainants' meters. While there does appear to be a spike in usage during the summer of 2016, there was a similar spike in the summers of 2015 and 2014.<sup>32</sup>

Staff notes that the usage data for Stephen Jones after the spike in July and August of 2016 has not reached similar levels again. Stephen Jones has only alleged that the July and August 2016

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<sup>26</sup> Direct Testimony of Jeffrey Eastman at 29, Exhibit H (Aug. 4, 2017).

<sup>27</sup> *Id.* at 4.

<sup>28</sup> 16 Tex. Admin. Code § 24.89(g) (TAC).

<sup>29</sup> Direct Testimony of Jeffrey Eastman at 5 (Aug. 4, 2017).

<sup>30</sup> Direct Testimony of Jeffrey Eastman at 10 (Dec. 11, 2017); Quadvests' Responses to Staff RFI 4-4 and 4-5 (Oct. 13, 2017).

<sup>31</sup> Quadvests' Response to Staff RFI 4-1.

<sup>32</sup> *Id.*

readings are inaccurate<sup>33</sup> and acknowledges that the meter has been reading accurately since September of 2016.<sup>34</sup> He has had the same meter from July 2016 until it was tested and replaced at the end of January 2017, and is contending that the meter, or Quadvest's system, had incorrect readings for two months, then corrected itself without a change of meter. Because there is no indication of a reason for a change in the meter's accuracy from August 2016 to September 2016, the conclusion has to be that the meter was operating consistently throughout its installed life. Although the meter was later tested to be slightly inaccurate, that would not account for the high spikes in water usage shown in July and August of 2016. Therefore, either Stephen Jones actually used the amount of water billed, or there was a problem elsewhere in the reading system outside of the actual meters themselves.

*Did the tests performed by the manufacturer establish the accuracy of the complainants' meters prior to installation in accordance with 16 TAC § 24.89(f)? What were the results of any tests conducted by the manufacturer on the smart meter installed at complainants' residences?*

Quadvest has provided the smart meter testing information from Master Meter done prior to installation that shows the meter tested within the AWWA standards for meter accuracy.<sup>35</sup>

*If the complainants' meters are not properly reading usage, what is the proper bill adjustment to be made, including any appropriate refund, in accordance with 16 TAC § 24.89(g)?*

Quadvest has already performed a bill adjustment to reflect Stephen Jones' meter reading slightly outside of the AWWA acceptable standards. This adjustment is shown in the bill for February 2017.<sup>36</sup> Although the meter of Paul Guardaphe was found to be underreporting, Quadvest has elected not to make any adjustments to the bill.<sup>37</sup> Staff finds no further bill adjustments are necessary.

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<sup>33</sup> Stephen Jones' Response to Quadvest First RFIs, answer to RFI 1-15 (Aug 28, 2017).

<sup>34</sup> *Id.*

<sup>35</sup> Direct Testimony of Jeffrey Eastman at 18, Exhibit E (Aug. 4, 2017); Direct Testimony of Jeffrey Eastman at 65-77, Exhibit G (Dec. 11, 2017).

<sup>36</sup> Quadvest's Response to Staff's Third RFIs at 19 (Aug. 3, 2017).

<sup>37</sup> Direct Testimony of Jeffrey Eastman at 10 (Dec. 11, 2017).

*What is the Commission-approved pass-through fee under Quadvest's tariff? Is Quadvest correctly billing complainants for its Commission-approved pass-through fee? If Quadvest is not correctly billing complainants for its Commission-approved pass-through fee, what is the proper bill adjustment to be made, including any appropriate refund, in accordance with 16 TAC § 24.87(h)?*

For the time period at issue starting in July of 2017, the pass-through fee of Quadvest was set in Docket 45884 at \$2.60 per 1,000 gallons.<sup>38</sup> The water bills for the service periods in July and August of 2016<sup>39</sup> show pass-through charges of \$257.40 for 99,000 gallons in July, and charges of \$111.80 for 43,000 gallons in August. Both of these bills show a pass-through fee actually being charged at \$2.60 per 1,000 gallons. Staff therefore recommends that Quadvest be found to have charged its Commission approved pass-through fee for this time period.

#### *Other Issues*

Regarding notice, Quadvest contends that notice was sent to Stephen Jones' residence in May of 2016, before Stephen Jones had established service with Quadvest.<sup>40</sup> Quadvest also states it provided notice by email and by bill insert before the new meters were installed to Complainants.<sup>41</sup> There is no statute or Commission Rule that requires notice to have been sent to Complainants regarding the installation of smart meters.

Complainants requested that the Commission award actual damages, award all reasonable attorney's fees, and award punitive damages. A state agency's powers are limited to only those expressly conferred by the Legislature and those implied powers that are reasonably necessary to carry out the express responsibilities.<sup>42</sup> Complainants have cited to no statute or Commission rule allowing for the awarding of actual damages, attorney's fees, and punitive damages for this complaint, and awarding them are outside the jurisdiction of the Commission.

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<sup>38</sup> *Application of Quadvest, L.P. to Implement a Pass-Through Rate Change*, Tariff Control No. 45548 (Feb. 24, 2016).

<sup>39</sup> Quadvest's Response to Staff's Third RFIs at 25-26.

<sup>40</sup> Direct Testimony of Jeffrey Eastman at 3 (Aug. 4, 2017).

<sup>41</sup> Direct Testimony of Jeffrey Eastman at 8 (Dec. 11, 2017).

<sup>42</sup> *Texas Mun. Power Agency v. Pub. Util. Comm'n of Texas*, 253 S.W.3d 184, 192 (Tex. 2007).

## **V. Conclusion**

Staff finds no violation of the Texas Water Code or Commission Rules in Quadvest's actions. Staff finds no unusual water usage for any Complainant except for Stephen Jones. While the amount of water used during the months at issue is large for Stephen Jones in comparison to the usage in his other months, there appears to be no reasonable explanation for it other than usage.

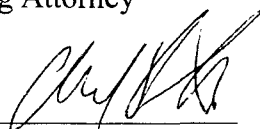
Dated: January 26, 2017

Respectfully Submitted,

### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on January 26, 2018, in accordance with 16 TAC § 22.74.



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Alexander Petak