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**SOAH DOCKET NO. 473-21-0246.WS
PUC DOCKET NO. 51091**

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COMPLAINT OF CERTAIN MEMBERS OF RIO ANCHO HOMEOWNERS ASSOCIATION AGAINST AQUA TEXAS, INC.	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**SOAH ORDER NO. 2
MEMORIALIZING PREHEARING CONFERENCE;
DENYING MOTION TO DISMISS; REQUIRING FILINGS**

On July 20, 2020, certain customers receiving retail water service from Aqua Texas, Inc. (Aqua) in the Rio Ancho subdivision (Subdivision) filed a Formal Complaint (Complaint) at the Public Utility Commission of Texas (Commission or PUC). The Complaint involves alleged instances of low water pressure and loss of water service in the Subdivision since at least 2018. On August 11, 2020, Aqua moved to dismiss the case on the ground the Texas Commission on Environmental Quality (TCEQ), not the PUC, has jurisdiction over it (Motion to Dismiss). Responses to the Motion to Dismiss were filed by the complainants on August 14, 2020, and by Commission staff (Staff) on August 19, 2020.

On September 29, 2020, the Commission referred the case to the State Office of Administrative Hearings (SOAH) to conduct a hearing and prepare a proposal for decision, if necessary. On November 5, 2020, the Commission issued its Preliminary Order identifying issues to be addressed and not to be addressed in this case. On November 23, 2020, the Administrative Law Judge (ALJ) granted a motion to dismiss five customers as complainants, thus ruling on Preliminary Order Issue No. 3.¹

¹ SOAH Order No. 1 (Nov. 23, 2020). The remaining complainants are Francis T. Rossi, James Justin Pogue, Julie Bowse, Kenneth W. Cline, Diana S. Cline, David Amador, Marshall Ault, Chester Jackson, Virginia Jackson, Bruce Brown, Sue Brown, David Meyers, Doreen Meyers, Rob Meyers, Daniel Winans, Andrea Winans, Samuel Cox, Jaime Torres, and Dustin Torres (Complainants). Because one dismissed complainant—Rio Ancho Homeowners Association—was named in the case style, the order also restyled this case as *Complaint of Certain Members of Rio Ancho Homeowners Association Against Aqua Texas, Inc.*

I. MEMORIALIZING PREHEARING CONFERENCE; REQUIRING FILING

On December 3, 2020, the ALJ conducted a prehearing conference via the Zoom videoconference platform (Zoom). Complainants, Aqua, and Staff appeared through their attorneys. The parties agreed Complainants have the burden of proof.

The parties further agreed that a procedural schedule should not be set until after disposition of the Motion to Dismiss. For reasons discussed in this order, the Motion to Dismiss is **DENIED**. Accordingly, the parties **SHALL** file by **14 days after the date of this order** an agreed procedural schedule and any agreed procedures or, absent agreement, alternative proposed schedules and procedures or a request for prehearing conference. That deadline **SHALL** instead be **14 days after Commission action on the appeal becomes final** under 16 Texas Administrative Code (TAC) § 22.123 if a party appeals this order to the Commission.

The parties expect to stipulate to some issues. Any proposed procedural schedule should include a date to file stipulations (which will not preclude the parties from filing additional stipulations they reach later). The schedule should also include the expected length of the hearing; alternative hearing dates, in three different weeks, on which all parties are available; and deadlines for post-hearing briefs and reply briefs. Due to COVID-19, the parties should assume the hearing will be held via Zoom, and include in the schedule deadlines to file exhibit lists and to submit all exhibits a party expects to offer, including on cross-examination, in advance of the hearing.

The parties agreed not to address whether to refer the case to mediation until after disposition of the Motion to Dismiss. The parties may jointly request referral to mediation at any time. Such a request may, but is not required to, request abatement until the mediation concludes.

II. DENYING MOTION TO DISMISS; REQUIRING FILING

A. Procedural Background and Amendment of the Complaint

Preliminary Order Issue Nos. 1 and 2, which are issues raised in the Motion to Dismiss, are quoted and ruled on at the end of this order. At the prehearing conference, the parties presented brief additional argument on the Motion to Dismiss and agreed the motion and Issue Nos. 1 and 2 are ripe for ruling.

As the Preliminary Order indicates, the Complaint, under “Relief Requested,” asked the Commission to order Aqua: (1) to make all improvements recommended in a report that had been prepared by a professional engineer hired by Complainants, within as rapid a period of time as can be accomplished; (2) to remove drought contingency plan (DCP) restrictions when no drought has been declared or recognized; and (3) to implement such restrictions in future only when drought conditions have been declared.² At the prehearing conference, counsel for Complainants narrowed the scope of relief they request in this case. Counsel stated that which specific improvements to make is an engineering question beyond the scope of this proceeding. Complainants now seek only a Commission order ruling that Aqua’s system as currently constructed and operated is inadequate to meet the Subdivision’s known reasonable demand. According to Complainants, once that finding is made, Aqua must decide which specific improvements are necessary to address the shortcomings in their system found in the Commission’s order. Complainants would like the Commission to recommend improvements in the system, but are not asking the Commission to order specific improvements. Counsel for Complainants noted there probably are improvements that could address the problems, other than those outlined in the report by Complainants’ engineer.

No party objected to Complainants narrowing the scope of their requested relief as described above. **No later than seven days after the date of this order**, Complainants **SHALL**

² Preliminary Order at 2.

file an amended “Relief Requested” section of their Complaint that is consistent with their attorney’s clarifications at the prehearing conference described above.

B. Law Relating to Relevant Jurisdiction of the PUC and TCEQ

It is undisputed that (1) Aqua is an investor-owned retail public utility and holds a certificate of convenience and necessity (CCN) to provide retail water utility service to the Subdivision;³ and (2) Aqua’s DCP is part of the water utility tariff under which it serves the Subdivision.⁴ This order describes below law relating to relevant jurisdiction of the PUC and TCEQ in general, over safe drinking water, over reasonable and adequate service by a certificated retail water utility, and over DCPs.

1. Jurisdiction of the PUC and TCEQ, in General

The Texas Water Code (TWC) defines “retail public utility” as “any person, corporation, public utility . . . operating, maintaining, or controlling in this state facilities for providing potable water service . . . for compensation.”⁵ “Retail water . . . utility service’ means potable water service . . . provided by a retail public utility to the ultimate consumer for compensation.”⁶

TWC § 13.041(a) states:

³ See, e.g., Preliminary Order (Nov. 5, 2020) at 1 (stating that Aqua is the potable water service provider for the Subdivision, which is located within Aqua’s CCN No. 13254); PUC directory of water utilities (listing Aqua as a certificated investor-owned water utility), <https://www.puc.texas.gov/industry/water/directories/Default.aspx>.

⁴ See Motion to Dismiss, Exh. A, Affidavit of Scot Foltz at 4 (“Aqua has a DCP which is part of Aqua’s water utility tariff application to Rio Ancho. Specific applicable triggers within Aqua’s drought contingency plan are contained in [DCP] Section 7, Drought, Demand & Critical System Capacity Stage Triggers.”). See also Motion to Dismiss, Exh. B, Aqua’s water tariff for CCN No. 13254, issued in *Application of Aqua Utilities, Inc., Aqua Development, Inc., and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera, Bastrop, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Kimble, Live Oak, Llano, Medina, Nueces, Travis, Williamson, and Wilson Counties*, PUC Docket No. 48769, Notice of Approval (Jul. 21, 2020). Exh. B includes copies of Aqua’s DCPs dated September 3, 2015, and March 6, 2020.

⁵ Tex. Water Code (TWC) § 13.002(19).

⁶ TWC § 13.002(20).

[The PUC] may regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. [TCEQ] may regulate water and sewer utilities within its jurisdiction *to ensure safe drinking water and environmental protection*. [The PUC] and [TCEQ] may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction. . . .⁷

Section 13.041(b) provides that the PUC and TCEQ “shall adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency”

2. Jurisdiction over Safe Drinking Water

Texas Health and Safety Code (THSC) chapter 341 is entitled “Minimum Standards of Sanitation and Health Protection Measures,” of which subchapter C is entitled “Sanitary Standards of Drinking Water; Protection of Public Water Supplies and Bodies of Water.” THSC § 341.0315(a)-(b) require that public drinking water systems supply safe drinking water in adequate quantities, be financially stable and technically sound, and encourage and promote the development and use of regional and area wide drinking water supply systems. Section 341.0315(c) requires that each public drinking water supply system provide an adequate and safe drinking water supply and meet the requirements of § 341.031 and rules adopted under it.

31 TAC § 354.3 sets forth a Memorandum of Understanding between the Texas Water Development Board and the Texas Natural Resource Conservation Commission (TNRCC) (which is now TCEQ). Section 354.3(c) states that TNRCC is responsible for implementing the drinking water regulatory scheme established by the Safe Drinking Water Act and enforcing the national drinking water standards set by the United States Environmental Protection Agency (EPA). The

⁷ Italics added. See also TWC § 13.041(d)(1) (authorizing the PUC to issue an emergency order “to compel a retail public utility that has obtained . . . a certificate of public convenience and necessity *to provide continuous and adequate water service . . . if the discontinuance of the service is imminent or has occurred because of the retail public utility’s actions or failure to act. . . .*”) and (h)(1) (authorizing TCEQ to issue an emergency order “to compel a retail public utility that has obtained a certificate of public convenience and necessity *to provide water . . . service . . . that complies with all statutory and regulatory requirements of [TCEQ] if necessary to ensure safe drinking water or environmental protection*”). Italics added.

subsection further provides that TNRCC is charged with administration of THSC chapter 341, subchapter C “to ensure safe and adequate sources of drinking water from public water systems.”

TCEQ rules implementing THSC chapter 341, subchapter C are set forth in 30 TAC chapter 290, entitled Public Drinking Water. 30 TAC § 290.39(a) describes the statute as requiring TCEQ to ensure that public water systems supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for contemplated public water systems. Section 290.39(b) states that the TCEQ rules are intended to ensure full consideration of regionalization and area-wide options, inclusion of all data essential for comprehensive consideration of projects, and establishment of “minimum standardized public health design criteria.” It further provides that “minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.” Section 290.45(a)(1) states that the “capacities specified in this section are minimum requirements only” Section 290.45(a)(2) provides that the TCEQ “executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, or if the system’s maximum daily demand exceeds its total production and treatment capacity. . . .”

PUC rules regarding water utilities are set forth in 16 TAC chapter 24. 16 TAC § 24.205(4) states: “Each retail public utility which possesses . . . a certificate of convenience and necessity shall furnish safe water which meets TCEQ’s minimum quality criteria for drinking water.”

3. Jurisdiction over Continuous and Adequate Utility Service

Under TWC § 13.241(a) the PUC has authority to grant or amend a retail water utility’s CCN. With exceptions not relevant here, § 13.250(a) requires that “any retail public utility that possesses . . . a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.”

Section 13.250(c) states that “[a]ny . . . impairment of service . . . shall be in conformity with and subject to conditions, restrictions, and limitations that [the PUC] prescribes.” Section 13.253(a) authorizes the PUC to order any retail public utility that possesses a CCN to “provide specified improvements in its service in a defined area if service in that area is inadequate” and to “develop, implement, and follow financial, managerial, and technical practices that are acceptable to [the PUC] to ensure that continuous and adequate service is provided in any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas”⁸

16 TAC § 24.247(a) requires that a retail water utility provide continuous and adequate service to every customer and qualified applicant within the utility’s certificated area. The rule further states that a utility may not discontinue, reduce, or impair utility service except for nonpayment, nonuse, or other similar reasons in the usual course of business without conforming to conditions, restrictions, and limitations prescribed by the PUC.

16 TAC § 24.247(b) provides that the PUC may order a certificated retail water utility to provide reasonable specified improvements in its service in a defined area if service there is inadequate under 16 TAC § 24.205 or is substantially inferior to service in a comparable area. Under the rule, the PUC may also order the utility to develop, implement, and follow financial, managerial, and technical practices acceptable to the PUC to ensure that continuous and adequate service is provided to any portion of the utility’s certificated area if the utility has not provided continuous and adequate service there.

16 TAC § 24.205 states:

Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution *facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.*

⁸ The PUC also has authority to revoke or amend any CCN upon finding that the certificate holder has failed to provide continuous and adequate service in the area, or part of the area, covered by the CCN. TWC § 13.254.

- (1) The water system quantity and quality requirements of the TCEQ shall be the *minimum* standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage. *Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.*⁹

4. Jurisdiction over DCPs

TWC § 11.1272(a) requires TCEQ by rule to “require . . . retail public water suppliers . . . to develop drought contingency plans consistent with the appropriate approved regional plan to be implemented during periods of water shortages and drought.” 30 TAC § 288.20(a)(2) states that privately-owned water utilities shall prepare a DCP in accordance with § 288.20. Section 288.20(a) specifies minimum elements the DCP must include. Section 288.30(5) requires that retail public water suppliers submit to the TCEQ Executive Director a DCP that complies with TCEQ’s rules.

30 TAC § 288.20(a)(2) also requires that a privately-owned water utility incorporate the DCP into the utility’s tariff. The TWC addresses PUC authority over water utility tariffs and rules and regulations affecting utility service.

TWC § 13.135 provides that a utility may not “impose any rule or regulation other than as provided in” TWC chapter 13. Section 13.181(a) states that, to ensure compliance with utilities’ obligations under that chapter, the PUC “has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter” and “may fix and regulate rates of utilities.” Section 13.002(17) defines “Rate” to include “every . . . tariff . . . and any rules, regulations, practices, or contracts affecting that . . . tariff . . .” Section 13.136(a) requires that a utility file with the PUC a tariff including all rules and regulations relating to or affecting its utility service. Section 13.139(b) authorizes the PUC to “ascertain and fix just and reasonable standards,

⁹ Italics added.

classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished.”

Regarding DCPs, a PUC rule, 16 TAC § 24.205(2), provides:

In cases of drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, to comply with a state agency or court order on conservation or other reasons identified in the utility’s approved drought contingency plan required by 30 TAC §288.20 (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers), restrictions may be instituted to limit water usage in accordance with the utility’s approved drought contingency plan. For utilities, these temporary restrictions must be in accordance with an approved drought contingency plan. Unless specifically authorized by TCEQ, retail public utilities may not use water use restrictions in lieu of providing facilities which meet the minimum capacity requirements of 30 TAC Chapter 290 (relating to Public Drinking Water), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.¹⁰

C. Aqua’s Position

Aqua requests that this case be dismissed for lack of jurisdiction or failure to state a claim for which relief can be granted.¹¹ Aqua asserts that its system is in full compliance with TCEQ’s technical requirements for public drinking water systems and that the PUC lacks jurisdiction to order more water system capacity than TCEQ has required. Citing legal authorities discussed in Section II.B above, Aqua argues that TCEQ, not the PUC:

- Is tasked with deciding the types of and technical standards for facilities that public drinking water systems must build to serve their customer connections;
- Is responsible for implementing the drinking water regulatory scheme established by the Safe Drinking Water Act and enforcing the national drinking water standards set by EPA;

¹⁰ Italics added.

¹¹ 16 TAC §§ 22.181(d)(1), (8).

- Is charged with the administration of THSC chapter 341, subchapter C to ensure safe and adequate sources of drinking water from public water systems; and
- Is tasked with protecting public water supplies and ensuring that public drinking water supply systems supply drinking water in adequate quantities and are technically sound.

Aqua observes that the PUC has no quantifiable public drinking water system standard for how much capacity a water system must have for normal household uses and outdoor usage combined, such as landscape irrigation. Aqua urges that setting such standards is a technical decision TCEQ, not the PUC, must make. Aqua contends 16 TAC § 24.205(1) indicates deference to TCEQ on such issues, in that it states, “The water system quantity and quality requirements of the TCEQ shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of water supplied for household usage.” Aqua also argues that the PUC lacks jurisdiction to decide when a retail public water supplier should implement or not implement usage restrictions pursuant to its DCP developed according to TCEQ requirements, because DCPs are regulated by TCEQ.

Exhibit A to Aqua’s Motion to Dismiss is an affidavit by Aqua’s Environmental Compliance Manager, Scot Foltz. The affidavit addresses the merits of issues such as Aqua’s contentions that its system that serves the Subdivision meets TCEQ requirements, is consistent with its approved DCP, and is more than sufficient for reasonable local demand, including reasonable outdoor water usage.

D. Complainants’ and Staff’s Positions

Complainants clarify that they are not disputing that Aqua’s system meets TCEQ’s *minimum* standards for water utility systems statewide. Complainants assert Aqua does not provide continuous and reliable service to the Subdivision, including reasonable quantities of water for outside usage. Complainants allege that Aqua has routinely imposed its DCP restrictions during non-drought conditions to mask its system inadequacies.

Complainants and Staff oppose dismissal. Citing legal authorities discussed above, they argue that TCEQ's jurisdiction is limited to maintaining system facilities to avoid water quality issues; the PUC, not TCEQ, regulates whether a retail water utility's system is inadequate to provide continuous and reliable service. For example, they cite 16 TAC § 24.205(1), which describes TCEQ's water quantity requirements as the *minimum* standards for determining the sufficiency of water supply facilities and states that "[a]dditional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock." Complainants and Staff also contend that under 16 TAC § 24.205(2), the PUC has jurisdiction over whether a retail public utility's temporary imposition of drought restrictions accords with its approved DCP. Staff notes that the rule prohibits a retail public utility from using water-use restrictions in lieu of providing facilities that meet the reasonable local demand characteristics during normal use periods.

E. ALJ's Analysis

Based on the legal authorities discussed in Section II.B above, the ALJ concludes the Commission has jurisdiction over the Complaint as amended by Complainants' counsel at the prehearing conference. Accordingly, the ALJ denies the Motion to Dismiss. The express language of the statutes and TCEQ and PUC rules indicates that:

- TCEQ has jurisdiction over *minimum* standards to ensure *safe drinking water and environmental protection*.¹²
- TCEQ has jurisdiction to require retail public water suppliers to develop DCPs consistent with the appropriate approved regional plan to be implemented during periods of water shortages and drought.¹³

¹² TWC § 13.041(a)-(b); Tex. Health and Safety Code (THSC) § 341.0315(a)-(c); 30 TAC §§ 290.39(a)-(b), .45(a)(1); 31 TAC § 354.3(c).

¹³ TWC §§ 11.1272(a), 13.041(a)-(b); 30 TAC §§ 288.20, .30.

- The PUC has authority to impose additional requirements necessary to accomplish its regulatory duties regarding a certificated retail water utility, such as Aqua.¹⁴
- The PUC has authority to determine whether Aqua is complying with its DCP, which is part of its utility tariff, and with TWC and PUC rule requirements to render continuous and adequate service within its certificated service area, including additional quantities needed to supply reasonable quantities of water for outside usage and livestock. If the PUC finds Aqua is not complying with such requirements, the PUC may order Aqua to take actions necessary to achieve compliance, including facility improvements not required by TCEQ.¹⁵

The ALJ's conclusions regarding Preliminary Order Issue Nos. 1 and 2 are set out below:

1. Does the Commission have jurisdiction over any portion of this complaint? **Yes.** If so, please state the statutes and Commission rules under which the Commission has jurisdiction over the following:
 - a. Whether Aqua Texas needs to construct any additional facilities to serve the Rio Ancho subdivision. ***TWC §§ 13.041(a)-(b), .250(a), (c), .253(a); 16 TAC §§ 24.205, .247.***
 - b. Whether Aqua Texas has properly implemented its water-usage restrictions in the Rio Ancho subdivision according to its drought contingency plan. ***TWC §§ 13.002(17), .041(a)-(b), .135, .139(b), .181(a), .250(a), (c), .253(a); 16 TAC § 24.205(2), .247(a), (b)(2).***
2. Does the Commission have authority to grant any relief to the complainants with respect to their complaint in this proceeding? **Yes.** If so, please address whether the Commission has authority to grant the following relief:
 - a. To order Aqua Texas to make the complainants' requested improvements if necessary to render adequate and continuous service within the Rio Ancho subdivision as required by Texas Water Code § 13.250 and 16 Texas Administrative Code (TAC) § 24.247. ***Complainants no longer request that the Commission order Aqua to make Complainants' requested improvements or any specific improvements to its facilities. The Commission has authority: (1) to find whether Aqua has failed to render adequate and continuous service within the Subdivision as required by TWC***

¹⁴ TWC §§ 13.041(a)-(b), .250(a), (c), .253(a); 16 TAC §§ 24.205, .247.

¹⁵ TWC §§ 13.002(17), .041(a)-(b), .135, .136(a), .139(b), .181(a), .250(a), (c), .253(a); 16 TAC §§ 24.205, .247; 30 TAC § 288.20(a)(2).

§ 13.250 and 16 TAC § 24.247 and the reasons for such failure, if any; and (2) to impose requirements necessary to address any such failure, including ordering Aqua to identify and make improvements to its facilities that are necessary to provide such service.¹⁶

- b. To order Aqua Texas to remove existing drought-contingency-plan restrictions and to refrain from implementing its drought contingency plan in the future except in compliance with 16 TAC § 24.205(2). ***The Commission has authority to determine whether Aqua is limiting service in a manner not authorized by the DCP included in its tariff, or is implementing the DCP in a manner that violates 16 TAC § 24.205(2), which prohibits a retail public utility from using water-use restrictions in lieu of providing facilities that meet reasonable local demand characteristics during normal use periods.***¹⁷

Regarding Issue 2.b above, the ALJ does not conclude that the PUC has authority to order Aqua to *remove restrictions in its existing DCP* or that this complaint case would be the proper proceeding in which to issue such an order. Reasons include that TCEQ might consider such restrictions necessary to accomplish its regulatory purposes, and changes to the DCP, which is part of Aqua's tariff, could affect many customers who are not parties to this case. As the ALJ understands it, however, Complainants are not asking the PUC to order Aqua to remove restrictions in the existing DCP. For example, Complainants state that they "seek a Commission order requiring Aqua to make necessary system improvements and an order prohibiting Aqua's use of drought restrictions when no drought is occurring."¹⁸ The ALJ interprets Complainants' requests as seeking a PUC order that Aqua (1) identify and make improvements to its facilities needed to meet reasonable local demand characteristics during normal use periods; and (2) impose

¹⁶ TWC §§ 13.041(a)-(b), .250(a), (c), .253(a); 16 TAC §§ 24.205, .247.


¹⁷ TWC §§ 13.002(17), .041(a)-(b), .135, .136(a), .139(b), .181(a), .250(a), (c), .253(a); 16 TAC §§ 24.205, .247; 30 TAC § 288.20(a)(2).

¹⁸ Rio Ancho Homeowners Association and David and Doreen Meyers' Response to Aqua Texas, Inc.'s Motion to Dismiss and Response to Formal Complaint (Aug. 14, 2020) at 4.

drought plan restrictions only when authorized in the DCP. The PUC has authority to grant such requests if necessary to remedy a failure by Aqua to meet its utility service obligations.¹⁹

As Staff points out, there are facts in dispute relating to the adequacy of Aqua's facilities and whether its imposition of drought restrictions accords with its approved DCP and utility service requirements. This order addresses jurisdiction, not the merits of any such contested factual allegations, on which evidence will be taken at the hearing.

SIGNED January 22, 2021.



ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹⁹ TWC §§ 13.002(17), .041(a)-(b), .135, .136(a), .139(b), .181(a), .250(a), (c), .253(a); 16 TAC §§ 24.205, .247; 30 TAC § 288.20(a)(2).