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Received - 2021-08-20 02:30:47 PM
Control Number - 51091
ItemNumber - 54

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

COMPLAINT OF CERTAIN	§	BEFORE THE PUBLIC UTILITY
MEMBERS OF RIO ANCHO	§	
HOMEOWNERS ASSOCIATION	§	COMMISSION OF TEXAS
AGAINST AQUA TEXAS, INC.	§	

**AQUA TEXAS, INC.'S OBJECTIONS AND MOTION TO STRIKE
COMPLAINANTS' PREFILED REBUTTAL TESTIMONY AND EXHIBITS**

COMES NOW, Aqua, Texas, Inc. (Aqua) and files the following objections to and moves to strike the following prefiled rebuttal testimony and exhibits of certain members of the Rio Ancho homeowners association (Complainants) as further set out below.

I. BACKGROUND

Complainants filed the prefiled direct rebuttal testimony and exhibits of Patrick Schmidt on August 6, 2021. SOAH Order No. 4, issued on March 11, 2021, establishes a deadline of August 20, 2021, for filing objections to and motions to strike prefiled evidence. Therefore, these Objections and Motion to Strike are timely filed.

II. OBJECTIONS TO PREFILED TESTIMONY AND EXHIBITS

Aqua requests that the Honorable ALJ strike the entirety of or, alternatively, certain portions of the testimony and exhibits of Patrick Schmidt for reasons discussed herein. If admitted, the identified testimony and exhibits will prejudice Aqua's case. Based on the foregoing, Aqua is compelled to seek the relief described herein.

Aqua objects to the entirety of Patrick Schmidt's testimony because the Complainants' responses to Aqua's First Request for Information have never been supplemented or amended to disclose Patrick Schmidt as a witness or even a possible witness in this proceeding despite

receiving requests for information from Aqua seeking that information.¹ Such disclosure was incumbent on Complainants pursuant to the Commission's discovery rules, which state, in pertinent part:

A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party shall amend its prior response within five working days of acquiring the information.²

At the latest, Complainants should have amended their prior discovery responses within five working days after filing Mr. Schmidt's testimony, but likely knew of their intent to use him as a witness earlier.³ Aqua has no way to know for certain. Regardless, no discovery supplementation or amendment has occurred. The rebuttal testimony of Patrick Schmidt operates as a surprise to Aqua and should be stricken as prejudicial to Aqua's case.

Alternatively, if Mr. Schmidt's testimony is allowed over Aqua's objection above, Aqua objects to and requests that the following testimony and exhibits of Patrick Schmidt be stricken.

Obj.	Testimony and Exhibits	Specific Passage	Objections and Basis to Strike
1	Page 3, Line 6 through Line 9	Q: "When did you become aware of issues . . . ?" A: "I was informed . . . subdivision."	Question is leading, lacks foundation, and is prejudicial. TEX. R. EVID. 401-403. Responsive testimony is inadmissible hearsay. TEX. R. EVID. 801 and 802.
2	Page 3, Line 10 through Line 18	Exhibit DGR-7 and discussion of same.	Complainants first offered Exhibit DGR-7 in April 2021 before Mr. Schmidt was serving in his current capacity related to the Rio Ancho Subdivision homeowners association which he testifies began on July

¹ See **Attachment A** - Excerpts from Complainants' Responses to Aqua Texas, Inc.'s First Requests for Information (Apr. 29, 2021).

² 16 TAC § 22.144(i).

³ *Id.*

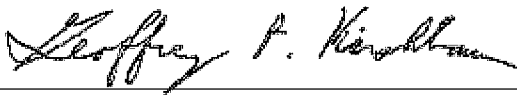
Obj.	Testimony and Exhibits	Specific Passage	Objections and Basis to Strike
	Exhibit DGR-7		<p>9, 2021. Aqua previously objected to Exhibit DGR-7 on grounds that document is comprised of alleged out of court reports from customers and was offered to prove the truth of each matter asserted. Thus, the document is comprised of inadmissible hearsay, lacks foundation, and the witness offering Exhibit DGR-7, Complainants' witness Mr. Donald G. Rauschuber, lacks personal knowledge of its contents. TEX. R. EVID. 602, 801 and 802. Aqua also objected to the discussion of that document in direct testimony by Mr. Rauschuber and other witnesses, which also included hearsay, lacked foundation, and was irrelevant and prejudicial, and the witnesses lacked personal knowledge to discuss the document's contents. TEX. R. EVID. 602, 801-802, and 401-403. The presiding SOAH Administrative Law Judge sustained Aqua's objections in part in SOAH Order No. 6. Aqua asserts those same objections here to the renewed effort to discuss Exhibit DGR-7 through rebuttal testimony by a new witness. Mr. Schmidt lacks personal knowledge of how DGR-7 was created and maintained (he testifies it was maintained by a previous community manager) in addition to having no personal knowledge concerning its entries, which are all hearsay.</p>
3	Page 3, Line 22 through Line 23	"Yes, residents reported . . . community manager."	<p>Testimony about unspecified business records not in evidence has no probative value, is irrelevant, and is prejudicial. TEX. R. EVID. 401-403. Testimony shows witness has no personal knowledge of the subject testimony and foundation for testimony is not established. TEX. R. EVID. 602. Testimony about reported event is</p>

Obj.	Testimony and Exhibits	Specific Passage	Objections and Basis to Strike
			hearsay, lacks foundation, and is irrelevant and prejudicial, and the witness lacks personal knowledge to discuss the event. TEX. R. EVID. 602, 801-802, and 401-403. Alleged May 10, 2021 event is also irrelevant since it is outside the scope of the referred issues for this proceeding which set the relevant time period as July 20, 2018 through July 20, 2020. <i>See</i> Preliminary Order at 5 (Nov. 5, 2020). If testimony is admitted over Aqua's objections, Aqua should be permitted to address alleged May 10, 2021 event with supplemental testimony or other evidence.
4	Page 4, Line 4 through Line 6	"Business records maintained . . . under these restrictions."	Testimony about unspecified business records has no probative value, is irrelevant, and is prejudicial. TEX. R. EVID. 401-403. Testimony shows witness has no personal knowledge of the subject testimony and foundation for testimony is not established. TEX. R. EVID. 602.
5	Page 4, Line 9 through Line 10	"They should . . . community."	Testimony about unspecified notice requirements has no probative value, is irrelevant, and is prejudicial. TEX. R. EVID. 401-403. Testimony shows witness has no personal knowledge of the subject testimony and foundation for testimony is not established. TEX. R. EVID. 602.

III. CONCLUSION

For the reasons set out above, Aqua Texas, Inc. requests that the Honorable ALJ strike the portions of Complainants' rebuttal testimony and exhibits specified in these Objections and Motion to Strike. Should the ALJ admit any of the specified testimony or exhibits subject to these Objections, Aqua requests that the ALJ accord such testimony and exhibits the appropriate weight.

Respectfully submitted,

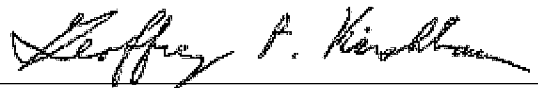
By: 

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ATTORNEYS FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby CERTIFY that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 20, 2021 in accordance with the Orders Suspending Rules issued in Project No. 50664.


Geoffrey P. Kirshbaum

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

**FORMAL COMPLAINT OF
RIO ANCHO HOMEOWNERS
ASSOCIATION and DAVID AND
DOREEN MEYERS AGAINST
AQUA TEXAS, INC.**

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§
§
§

**PUBLIC UTILITY COMMISSION

OF TEXAS**

**COMPLAINANTS' RESPONSES TO AQUA TEXAS,
INC.'S FIRST REQUESTS FOR INFORMATION**

TO: Aqua Texas, Inc., c/o Geoffrey P. Kirshbaum, Terrill & Waldrop, 810 W. 10th Street,
Austin, Texas 78701

Complainants Francis T. Rossi, James Justin Pogue, Julie Browse, Kenneth W. Cline, Diana S. Cline, David Amador, Marshall Ault, Chester Jackson, Virginia Jackson, Eric Robinson, Bruce Brown, Sue Brow, David Meyers, Doreen Meyers, Rob Myers, Casey Cobb, Ashlie Cobb, Daniel Winans, Andrea Winans, Samuel Cox, Jaime Torres and Dustin Torres (“Complainants”) timely submit these responses to Aqua Texas, Inc.’s (“Aqua Texas”) First Requests for Information (“RFI”). Complainants received Aqua Texas’s First RFI by email on April 9, 2021. Complainants stipulate that all parties may treat these answers as if they were filed under oath. Complainants reserve the right to object at the time of hearing to the admissibility of the information produced. Pursuant to SOAH Order No. 1 and the Commission’s “Second Order Suspending Rules” in Docket No. 50812, these responses are being filed on the PUC Interchange and served by email.

Respectfully submitted,



Russell S. Johnson
State Bar No. 10790550
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Austin, Texas 78701
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ATTORNEYS FOR COMPLAINANTS
RIO ANCHO HOMEOWNERS ASSOCIATION
AND THE INDIVIDUAL CUSTOMERS LISTED
IN EXHIBIT 1 TO COMPLAINT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on counsel for Aqua Texas, Inc., as required by order or in accordance with 16 TEX. ADMIN. CODE § 22.74, on this 29th day of April 2021, as follows:

Phillip Lehmann
Public Utility Commission of Texas
Legal Division
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Austin, Texas 78711-3326
phillip.lehmann@puc.texas.gov

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Terrill & Waldrop
810 W. 10th Street
Austin, Texas 78701
gkirshbaum@terrillwaldrop.com



Russell S. Johnson

Aqua RFI 1-2

Please provide the name, address, and telephone number of persons having knowledge of relevant facts and a brief statement of each identified person's connection with the case.

RESPONSE:

See the pre-filed direct testimony of Donald Rauschuber, David Meyers, Don Kevin Hay and Denise Johnston. All residents of the Rio Ancho subdivision have direct knowledge of the chronic low water pressure and loss of service issues experienced on the Aqua Texas water system over the last three years. Aqua Texas's records should reflect the names and addresses of all customers receiving water service from Aqua Texas.

Mr. Rauschuber's knowledge relates directly to the adequacy of the system to meet known demand.

Mr. Meyers and Mr. Hay are residents of the subdivision and customers of Aqua Texas. They will testify concerning service issues and imposed drought restrictions.

Ms. Johnston was the Community Manager hired by the homeowners association and had knowledge related to the issues related to unreliable water service and drought restrictions imposed by Aqua Texas.

Preparer: Russell S. Johnson
Sponsor: Donald G. Rauschuber, P.E.
Don Kevin Hay
Denise Johnston
David Meyers

Aqua RFI 1-4

Please provide the name, and if, not previously provided, the address, and telephone number of each witness you may present at trial other than solely for impeachment-separately identifying those you expect to present and those you may call if the need arises.

RESPONSE:

See the Complainants' pre-filed direct testimony and exhibits.

Preparer: Russell S. Johnson
Sponsor: Donald G. Rauschuber, P.E.
Don Kevin Hay
Denise Johnston
David Meyers

Aqua RFI 1-6

For any testifying expert, please provide the following:

- a. The expert's name, address, and telephone number.
- b. The subject matter on which the expert will testify.
- c. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to your control, documents reflecting such information.
- d. If the expert is retained by, employed by, or otherwise subject to your control:
 - i. All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;
 - ii. The expert's current resume and bibliography;
 - iii. The expert's qualifications, including a list of all publications authored in the previous 10 years;
 - iv. Except when the expert is your attorney and is testifying to attorney fees, a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and
 - v. A statement of the compensation to be paid for the expert's study and testimony in the case.

RESPONSE:

See pre-filed direct testimony of Donald Rauschuber and exhibits attached thereto, as well as the pre-filed direct testimony and exhibits of Denise Johnston, Kevin Hay and David Meyers.

Preparer: Russell S. Johnson
Sponsor: Donald G. Rauschuber, P.E.