

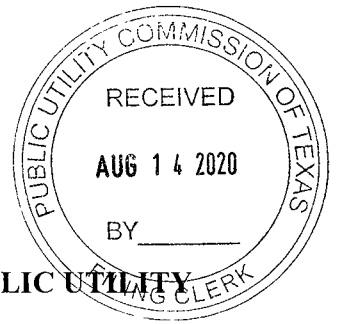


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PUC DOCKET NO. 51091

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

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BEFORE THE PUBLIC UTILITY
COMMISSION OF TEXAS

**RIO ANCHO HOMEOWNERS ASSOCIATION AND DAVID
AND DOREEN MEYERS' RESPONSE TO AQUA TEXAS, INC.'S
MOTION TO DISMISS AND RESPONSE TO FORMAL COMPLAINT**

NOW COMES Complainants, the Rio Ancho Homeowners Association and David and Doreen Meyers (“Complainants”), and file this Response to Respondent Aqua Texas, Inc.’s (“Aqua” or “Respondent”) Motion to Dismiss and Response to Formal Complaint.

I.

RESPONSE TO MOTION TO DISMISS

Aqua’s Motion to Dismiss is consistent with their approach to the deficiencies in their system in the Rio Ancho Subdivision: avoidance and misrepresentation. The Complaint concerns the inadequacy of service to the listed customers and the entire subdivision, a matter clearly within the Public Utility Commission’s (“Commission” or “PUC”) jurisdiction. The Texas Commission on Environmental Quality’s (“TCEQ”) jurisdiction is limited to matters related to drinking water quality. TCEQ’s rules and enforcement authority are focused exclusively on maintaining system facilities to avoid water quality issues; they do not address system inadequacy to provide continuous and reliable service. Indeed, PUC’s Substantive Rule § 24.205 is entitled “Adequacy of Water Utility Service” and it is this rule which Aqua has steadfastly refused to comply with, despite years of instances of low, inadequate and sometimes nonexistent water pressure. There is no dispute that Aqua’s system meets TCEQ’s minimum standards for water utility systems

statewide. Were this all that is required, Aqua would be correct. But it is not. Commission Rule § 24.205 specifically provides that:

“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.”

The Rio Ancho subdivision system is unique. One hundred percent (100%) of the connections are residential and all of the homes are on lots considerably larger than the average home site, a fact well known to Aqua. The residents’ usage is reasonable and consistent; Aqua’s service is not.

Aqua argues that the individual customers’ Formal Complaint should be dismissed because the customers failed to pursue or make informal complaints about the adequacy of service to the PUC. Contrary to Aqua’s assertions, dozens of informal complaints have been lodged with the Commission. Aqua routinely responds by claiming that unreasonable usage is the cause of the problems. Counsel for these homeowners has attempted for months to resolve these service inadequacies through counsel for Aqua. These efforts and informal complaints to the Commission have been unsuccessful and Aqua’s consistent refusal to address service inadequacies has led the homeowners to seek the only mechanism available to them to have these issues corrected: this Formal Complaint.

Aqua’s argument that this Complaint is exclusively within the jurisdiction of the TCEQ is likewise incorrect and deliberately misleading. TCEQ’s rules address maintaining drinking water quality – not quantity. Were they correct, there would be no need for Commission Rule § 24.205. Aqua’s service meets water quality standards and the minimum capacities established by the TCEQ to insure that quality. That is not the issue presented in this Complaint.

Aqua’s Motion to Dismiss should be denied.

II.

RESPONSE TO AQUA'S SUBSTANTIVE RESPONSE

Aqua's substantive response to the Complaint is similarly misleading and affirmatively misrepresents the cause of the routine service inadequacies in Aqua's system. Their response contains two basic assertions. First, they argue that the residents' use is excessive. Second, they argue that Aqua's system exceeds the minimum standards of the TCEQ, designed to insure protection of water quality. Each will be addressed in turn.

A. "Excessive" Water Use

Aqua's basic response to the Complaint is that the sole cause of the service inadequacies is excessive water usage by the residential customers. In doing so, they repeatedly claim that "The usage of many Rio Ancho customers is not reasonable" and that Complainants seek PUC relief to "accommodate unchecked outdoor watering desires." The reality is quite different. Aqua's system is inadequate to meet the routine demands of the system's customer base in the subdivision. This is so even though Aqua has routinely imposed its drought management plan restrictions during non-drought conditions to mask its system inadequacies and even though the overwhelming majority of the subdivision residents have complied with these restrictions. The evidence will show that even with drought restrictions in place and customers' compliance, the system is inadequate to meet the demand if customers water their lawns to maintain their landscaping.

Since this Complaint was filed, there have been three (3) failures of the system to maintain adequate water pressure resulting in extremely low pressure or loss of service altogether for some customers. The evidence will show that the system fails even when complete compliance with drought restrictions is achieved if customers water their landscaping sufficiently to maintain it and the value of their homes.

B. Exceeds Minimum Standards

Aqua's Response and supporting Affidavit argue that demand in the subdivision substantially exceeds their system average and the minimum requirements for system capacity. It does. Not because of unreasonable use, but because of normal usage in this unique customer base. Aqua has known this for years and steadfastly refused to address the known requirements of this not average area.

Most remarkable is the statement in the Affidavit of Scott Foltz that Aqua may have to flow restrict customers to mask its inability to meet known demands and that if customers would adhere to outdoor watering limitations, there would be "less outages and customers would have plenty of water for household needs." There would still be outages, just less of them. The system would consistently fail if customers engaged in normal, predictable landscape watering. Flow restrictions would presumably be installed so that landscape watering could not be done at all since lawn watering systems require sufficient pressure to operate effectively.

Since this Complaint was filed on July 20, 2020, there have been several instances where system pressure has dropped below minimum standards or pressure collapsed completely. This while Stage III drought restrictions have been in place in an effort to limit demand on the system, not because of drought but because Aqua's system cannot support normal neighborhood usage. Objective analysis results in the obvious conclusion that Aqua needs to invest in upgrades of its water supply.

In summary, Aqua's system is inadequate to meet the reasonable water demand of this subdivision. This violates Commission Rule § 24.205. Aqua has attempted to mask this deficiency by imposing drought restrictions when there is no drought and blaming system inadequacies and failures on excessive use. These customers have made a substantial investment in their homes and landscaping. Their outdoor water usage is both reasonable and authorized.

Aqua would prefer that Rio Ancho customers not use water for outdoor purposes so Aqua can avoid their obligation to meet known reasonable demand. Complainants 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.

Respectfully submitted,



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ATTORNEYS FOR COMPLAINANTS

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 14th day of August, 2020, as follows:

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