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

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AQUA TEXAS, INC.’S INITIAL POST-HEARING BRIEF

COMES NOW Aqua Texas, Inc. (Aqua or Respondent) and files this Initial Post-Hearing Brief. In support, Aqua shows as follows.

I. INTRODUCTION

On July 20, 2020, Rio Ancho Homeowners Association (HOA), its members David and Doreen Meyers, and other individuals included on a list attached to the complaint (Complainants) filed a “Formal Complaint” with the Public Utility Commission of Texas (PUC or Commission) against Aqua (the Complaint) about Aqua’s Rio Ancho Subdivision water system (PWS ID No. 0270141) (System).¹ Certain Complainants, such as HOA, had not filed informal complaints against Aqua as required and were dismissed as parties.² The remaining Complainants allege Aqua has failed to construct adequate System facilities to meet water consumption demands in the Rio Ancho Subdivision and improperly used its TCEQ-required drought contingency plan (DCP) to reduce local demand, in violation, *inter alia*, of 16 TAC §24.205, which requires that water providers provide *reasonable* quantities of water for *reasonable* uses to meet *reasonable* local demand characteristics. Throughout this proceeding, both the Complainants and Commission Staff (Staff) have ignored the key term in that rule: *reasonable*. Aqua’s System facilities are adequate to meet *reasonable* local demand characteristics and Aqua has properly used its drought

¹ Complaint (Jul. 20, 2020).

² SOAH Order No. 1 at 1-2 (Nov. 23, 2020).

contingency plan (DCP) to try minimizing *unreasonable* local demand. The Commission should take no action here.

As stated above, 16 TAC §24.205 sets forth the applicable PUC standard for adequacy of water utility service. Retail public utilities are required to provide water service facilities “of sufficient size and capacity to provide a continuous and adequate supply of water for all *reasonable* consumer uses.”³ 16 TAC § 24.205(1) states that the Texas Commission on Environmental Quality (TCEQ) water system quantity and quality standards shall be the minimum standards for determining system adequacy, but “[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. . .”⁴ Additionally, in the circumstances identified in 16 TAC § 24.205(2) or a utility’s “approved drought contingency plan. . .restrictions may be instituted to limit water usage in accordance with” its DCP, but may not be used “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. . .”⁵

Neither the Complainants nor Staff contend Aqua’s System facilities do not meet the TCEQ minimum requirements or that TCEQ has directed Aqua to add facilities beyond those in place today. Thus, the issues for the Commission to decide here are whether the System facilities are adequate to meet *reasonable* local demand characteristics and consumer uses, and, if not, whether Aqua has used its DCP to limit water usage in lieu of providing System facilities to meet such *reasonable* local demand characteristics and consumer uses during normal use periods. Actual local demand and *reasonable* local demand are not necessarily the same. If Aqua’s facilities are

³ 16 TAC § 24.205 (emphasis added).

⁴ 16 TAC § 24.205(1) (emphasis added).

⁵ 16 TAC § 24.205(2) (emphasis added).

already adequate to meet *reasonable* local demand, it is impossible for Aqua to be using its DCP in lieu of providing facilities to meet that demand.

The preponderance of the evidence shows: (1) Aqua’s System facilities *are* adequate to meet *reasonable* local demand characteristics and consumer uses; and (2) Aqua *has not* used its DCP in lieu of providing System facilities adequate to meet *reasonable* local demand characteristics. The preponderance of the evidence also shows the System service interruption and low-pressure events on the Aqua System side of customer meters that prompted the Complaint were caused by *unreasonable* local demand characteristics within the control of Rio Ancho Subdivision customers and not nearly as prevalent as the Complainants have characterized. Therefore, the Commission need not take any action or order Aqua to take any action in response to the Complaint.

II. ARGUMENTS AND AUTHORITIES

The Parties do not disagree on the applicable statutes and rules relevant to this proceeding. They are well-summarized in SOAH Order No. 2, which set forth rulings on Preliminary Order Issue Nos. 1 and 2 that should be reconsidered for reasons discussed later in this brief.⁶ SOAH Order No. 1 properly resolved Preliminary Order Issue No. 3 by dismissing initial complainants who did not file an informal complaint as PUC rules require, including the Rio Ancho HOA.⁷ Now, resolution of Preliminary Order Issue Nos. 4-8 primarily requires consideration of 16 TAC § 24.205 and, particularly, 16 TAC § 24.205(1) and (2).⁸ As the “moving part[ies]” here,

⁶ SOAH Order No. 2, Memorializing Prehearing Conference; Denying Motion to Dismiss; Requiring Filings (Jan. 22, 2021).

⁷ SOAH Order No. 1, Filing Description, Dismissing Certain Complainants; Revising Case Style; Setting Prehearing Conference; Procedural Requirements (Nov. 23, 2020).

⁸ Preliminary Order at 5-7 (Nov. 5, 2020) (setting forth referred Issue Nos. 4-8).

Complainants have the burden of proof to show Aqua has not complied with those rules.⁹ As discussed previously, 16 TAC § 24.205 sets forth the applicable PUC standard for adequacy of water utility service and reasonableness is key. The 16 TAC § 24.205 standards were carried over from TCEQ which still includes them in its rules today and has for many years.¹⁰

The Complainants' arguments can be reduced to criticisms over the reasonableness and continuity of Aqua's service. But what constitutes "reasonable" local demand is undefined in either the PUC or TCEQ rules. Complainants say "reasonable" local demand is "in the eye of the beholder."¹¹ Staff agrees "reasonable" local demand is subjective in the absence of a quantifiable standard in the PUC rules but refused to provide any objective standard or quantifiable limit here.¹² Without such an objective standard, the argument proffered by Staff and Complainants appears to be that reasonable public utility service can be dictated by the caprices of a homeowners association and its members, untethered to hydrogeological realities or the State of Texas's interests in promoting groundwater conservation.

The Complainants and Staff also miss the fact that a remedy already exists where a utility is not deemed to be providing reasonable service. The TCEQ Executive Director has authority to require "additional supply, storage, service pumping, and pressure maintenance facilities" if 35 pounds per square inch (psi) cannot be maintained or "if the system's maximum daily demand exceeds its total production and treatment capacity," and "may establish additional capacity requirements . . . if there are repeated customer complaints regarding inadequate pressure or" if

⁹ 16 TAC § 24.12 (stating, "In any other matters or proceedings [except those specifically described in 16 TAC § 24.12], the burden of proof is on the moving party.") Here, the Complainants are the parties moving for relief based on a Chapter 24 rule; *see also* 1 TAC § 155.427.

¹⁰ 30 TAC § 291.93.

¹¹ Tr. at 65:6-7 (Rauschuber Cross) (Sept. 7, 2021).

¹² Tr. at 233-4-238:1 (Graham Cross) (Sept. 7, 2021); *see also* Tr. 175:11-25 and 176:11-25 (Foltz Cross and Redirect) (Sept. 7, 2021).

customers request the TCEQ Executive Director perform a “capacity evaluation.”¹³ But the evidence shows the TCEQ Executive Director has not required additional System facilities or capacity for the Rio Ancho Subdivision.¹⁴

Continuity of water utility service is addressed in 16 TAC §24.171. Preventing all service interruptions “during any hour of any day for 365 days a year” is a sound goal but is not the standard for compliance.¹⁵ Rather, utilities must “make all *reasonable* efforts to prevent interruptions of service.”¹⁶ Moreover, “[w]hen interruptions occur, the utility shall reestablish service within the shortest possible time.”¹⁷ Thus, interruptions are anticipated to occur from time to time and reasonableness of prevention measures is the key consideration. What that means for any particular public drinking water system is not specified in the TCEQ or PUC rules.

DCPs are prepared by retail public utilities in accordance with TCEQ requirements found in 30 TAC § 288.20, which was adopted pursuant to Texas Water Code (TWC) § 11.1272(a).¹⁸ DCPs are considered part of a water utility’s service tariff.¹⁹ However, PUC has no authority to dictate the content of a DCP. That is the purview of TCEQ. TCEQ personnel have found Aqua’s DCP compliant with its rules.²⁰ Water conservation more generally, however, is a statewide policy encouraged through various statutes and rules applicable to both PUC and TCEQ.²¹ In addition to the requirement for water utility systems included on a consolidated tariff to be “substantially

¹³ 30 TAC § 290.45(a)(2)-(3).

¹⁴ Aqua Ex. AT-3 at 22:10-16; Aqua Ex. AT-29, at 5:14-7:2; Tr. at 212:19-213:25 (Graham Cross).

¹⁵ Compare 16 TAC § 24.171(a), with Tr. at 64:17-20 (Rauschuber Cross) (Sept. 7, 2021).

¹⁶ 16 TAC § 24.171(a)(1).

¹⁷ 16 TAC § 24.171(a)(1).

¹⁸ TWC § 11.1272(a); 30 TAC § 288.20.

¹⁹ 16 TAC § 24.25(c)(7); see also 16 TAC § 24.205(2)(A).

²⁰ Aqua Ex. AT-3 at 22:10-16; Aqua Ex. AT-29, at 5:14-7:2.

²¹ See, e.g., TWC §1.003 (setting forth State of Texas policy of conserving natural resources), § 5.012 (giving TCEQ responsibility for conservation of natural resources); TWC § 13.145(a) and 16 TAC § 24.25(k)(2) (requiring rates that “promote water conservation for single-family residences and landscape irrigation” for consolidated water system tariffs); § 13.184(b) (promoting resource conservation efforts through rate of return factors); TWC § 36.0015(b) (related to groundwater conservation districts); 16 TAC § 24.43(b) (PUC rule allowing for conservation rates).

similar in terms of facilities, quality of service, and cost of service,” the rates included in such tariffs must “*promote water conservation* for single-family residences *and landscape irrigation*.”²²

Aqua has not identified any court or administrative decision where the specific issues referred in this case have been ruled upon by either the PUC or TCEQ. Staff witness, Heidi Graham, was not aware of any instance during her time as a TCEQ staff member reviewing water system plans and specifications (from 2006 to 2014) or otherwise where the TCEQ has required a public drinking water system to provide additional facilities beyond the Chapter 290 rule minimum requirements to accommodate outdoor water usage.²³ Nor has Ms. Graham ever testified on the issues referred here in any prior PUC or TCEQ case.²⁴ PUC has apparently not even considered the issue before. Thus, this appears to be a case of first impression. Aqua is concerned about the precedent the decision in this case could set for other Aqua systems and the Texas water utility industry generally if the PUC were to decide that an unquantified subjective standard beyond TCEQ minimums now applies to the design and operation of public drinking water system facilities.²⁵ PUC should decline to do so.

III. ISSUE NOS. 1 AND 2: PUC JURISDICTION AND AUTHORITY

SOAH Order No. 2 decided Preliminary Order Issue Nos. 1 and 2 regarding the Commission’s jurisdiction over the Complaint and the Commission’s authority to grant relief sought in the Complaint.²⁶ The presiding Honorable Administrative Law Judge (ALJ) should revisit those decisions about the PUC’s jurisdiction and authority because the Complainants

²² TWC § 13.145(a) and 16 TAC § 24.25(k) (emphasis added).

²³ Tr. at 206:5-208:15 (Graham Cross) (Sept. 7, 2021); *see also* Aqua Ex. AT-34 at 14:25-15:12 (Deposition Transcript of Heidi Graham).

²⁴ Aqua Ex. AT-34 at 11:7-14 (Deposition Transcript of Heidi Graham).

²⁵ Aqua Ex. AT-1 at 5:15-18; Aqua Ex. AT-29 at 6:15-7:16; Aqua Ex. AT-31 at 7:5-18.

²⁶ SOAH Order No. 2, Memorializing Prehearing Conference; Denying Motion to Dismiss; Requiring Filings (Jan. 22, 2021).

previously represented they were no longer requesting “that the Commission order Aqua to make Complainants’ requested improvements or any specific improvements to Aqua’s System facilities.”²⁷ Yet, Complainants proceeded to present testimony in support of a Commission finding that Aqua “needs to design and construct a combination of water supply, water storage and water pressurization improvements, that uses a minimum factor of 2.0 times each respective TCEQ minimum requirement.”²⁸ Similarly, Staff recommends the Commission “order Aqua to . . . [e]xpand its capacity to meet the demand characteristics of the Rio Ancho Subdivision, with a deadline of 12 months from the Commission’s order for the expansion to be operation.”²⁹

The evidence presented is inconsistent with Complainants’ representations to the prior presiding ALJ about the relief sought. Respectfully, Staff does not have the requisite expertise to assess the adequacy of the System facilities and cannot express an opinion on specifically what capacity standards System components should be expanded to meet.³⁰ These technical issues are more appropriately decided by the agency with responsibility for reviewing and approving public drinking water system plans and specifications and enforcing the 30 TAC, Chapter 290 public drinking water standards. That agency is the TCEQ, and the Complaint issues should be decided there.

IV. ISSUE NOS. 4 AND 5: RIO ANCHO SYSTEM WATER SUPPLY

The competent record evidence shows that the capacities of Aqua’s System facilities are more than adequate to meet both the minimum TCEQ System requirements and reasonable local demand characteristics for the Rio Ancho Subdivision, including reasonable outdoor watering

²⁷ *Id.*

²⁸ Direct Testimony of Donald G. Rauschuber, P.E., Complainants’ Ex. 24 at 26:18-20.

²⁹ Direct Testimony of Heidi Graham, Staff Ex. 1 at 12.

³⁰ *Id.*; *see also* Staff Ex. 1 at HG-1 and Tr. at 233:4-238:1 (Graham Cross) (Sept. 7, 2021).

usage. No additional improvements are needed. Aqua responds to Preliminary Order Issue Nos. 4 and 5 as follows.³¹

A. Preliminary Order Issue No. 4: What is the daily and monthly peak demand for the Rio Ancho system customers?

Historical system water production from 2018 through 2020 is shown in Aqua Ex. AT-25 and discussed in the testimonies of Aqua expert witnesses Scot W. Foltz and William Peña, P.E..³² During the period from July 20, 2018 through July 20, 2020, the peak monthly demand was 4,319,000 gallons in July 2019, equating to 1,035 gallons per day (gpd) per connection, and the peak daily reading occurred in August 2019 with usage of 172,571 gpd, equating to 1,150 gpd per connection.³³ There was a relatively large increase in usage after 2018 when, from 2018 to 2019, the average usage per connection increased by 29% and the peak day use per connection increased by 44%.³⁴ For the remainder of 2020, the peak monthly demand was 4,003,000 gallons in August 2020, equating to 872 gpd per connection, and the peak daily reading was approximately 132,570 gpd, equating to 875 gpd per connection, the week of August 10-17, 2020.³⁵

B. Preliminary Order Issue No. 5: Was Aqua Texas’s production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water to the customers of the Rio Ancho Subdivision water system (PWS ID number 0270141) for all reasonable customer uses?

The answer to this question is “yes.”

5.a. Between July 20, 2018 through July 20, 2020, did the customers of the Rio Ancho subdivision water system ever experience low water pressure or loss of water service? If so, provide a description of each instance and the date and duration of each instance.

³¹ Preliminary Order (Nov. 5, 2020).

³² Aqua Ex. AT-3 at 8:18-9:11; Aqua Ex. AT-22 at 8:9-9:6; Aqua Ex. 25 (Rio Ancho Water System Historical Water Production).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* Note: Mr. Foltz’s testimony suggests the 132,570 gpd figure provided in Mr. Peña’s testimony is 135,270 gpd. The correct figure is 132,570 gpd. Aqua has confirmed the figure in Mr. Foltz’s testimony contains a typo and the two figures were intended to be the same.

The answer to this question is “yes.” Aqua has confirmed that the System experienced certain low pressure events, defined as below 35 psi, during 2018, 2019, and 2020 as described in Mr. Foltz’s testimony.³⁶ Mr. Foltz’s testimony and Aqua Exhibits AT-15, AT-16, and AT-17 list those events and provide a description of each.³⁷ Some, but not all, of those events resulted from excessive demand on the System.³⁸ During the events caused by excessive demand, the System booster pump low tank level safety was engaged, which indicates the tanks were drained even though all three wells were running.³⁹ That is a safety feature that protects the pumps from damage due to extremely low water levels in the tanks.⁴⁰ Basically, when the demand during peak days is high enough to outpace what the System wells can produce (*i.e.*, approximately 125 gallons per minute (gpm)), there is no opportunity for Aqua’s storage tanks to be refilled until demand drops off again.⁴¹ Aqua contends based on its experts’ testimony that this has led to some of the low pressure or outage events that prompted customer complaints.⁴² However, other customer complaints were likely prompted by System pressure dropping lower than is typical while staying above the required 35 psi level, but leading customers to experience problems with irrigation systems that require higher pressure to operate properly.⁴³ Irrigation systems on the customer side of System meters are customers’ responsibility and not Aqua’s.⁴⁴ Thus, Complainants’ evidence

³⁶ Aqua Ex. AT-3 at 11:8-13:4; *see also* Aqua Ex. AT-15 (Rio Ancho compliance correspondence with TCEQ); Aqua Ex. AT-16 (Rio Ancho – Complaint Investigation (Pressure/Outage) – Confirmed Issues); Aqua Ex. AT-17 (Boil Order Listing).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Tr. at 271:9-273:21 (Peña Cross) (Sept. 8, 2021).

⁴² Aqua Ex. AT-3 at 11:8-13:4; *see also* Tr. at 271:9-273:21 (Peña Cross) and Tr. at 333:11-335:24 (Peña responding to ALJ questions and discussing how draining storage tanks can lead to lack of System pressure) (Sept. 8, 2021).

⁴³ Aqua Ex. AT-3 at 11:8-17; *compare also* Aqua Ex. AT-15 (Rio Ancho compliance correspondence with TCEQ), Aqua Ex. AT-16 (Rio Ancho – Complaint Investigation (Pressure/Outage) – Confirmed Issues), and Aqua Ex. AT-17 (Boil Order Listing), *with* Complainants Ex. 8, 9, and 10.

⁴⁴ 16 TAC § 24.163(a)(2)(B).

concerning the number of complaint events is misleading. The existence of these events does not mean Aqua's service was not continuous and adequate given Aqua's reasonable attempts to prevent them through actions such as adding facilities and trying to curb usage through its DCP and other customer communications.⁴⁵

5.b. What were the reasonable local demand characteristics of the service area of the Rio Ancho subdivision water system, including reasonable quantities of water for outside usage and livestock, under 16 TAC § 24.205(1)?

Whether local demand characteristics are reasonable requires consideration of the nature of the system TCEQ approved, local aquifer characteristics, climate, groundwater conservation district usage restrictions, and actual lawn watering needs among other factors. Reasonable local demand is not necessarily the same as actual local demand.

The Rio Ancho Subdivision customer demand has been unreasonably high as measured both monthly and daily, particularly in the drier summer months when outdoor watering is more common than during the rest of the year. Historical system water production from 2018 through 2020, including daily and monthly peak demand, is discussed above in response to Preliminary Issue No. 4. The average usage of System customers as measured by customer monthly readings compared to other residential systems in Aqua Texas' Central Texas Area, West Austin Division, was 1.8 to 1.9 times the average during the 2018-2020 timeframe.⁴⁶ System customer consumption was more than twice the average for Aqua systems within the region in April through August 2018, April through August 2019, May through July 2020, and again in October 2020.⁴⁷ Usage was predominantly for irrigation and tended to occur a few hours overnight and in the early morning, which compounded the effect and results in low pressure.⁴⁸ The rate of seasonal water

⁴⁵ 16 TAC § 24.171(a)(1); Aqua Ex. AT-3 at 13:6-16 and 26:1-12.

⁴⁶ Aqua Ex. AT-3 at 10:10-13 and 19:7-20:10; Aqua Ex. AT-11 (Comparison of Rio Ancho System usage to Aqua's SW Region, West Austin Division usage).

⁴⁷ *Id.*

⁴⁸ *Id.*

consumption increase for the System was much higher than average and began earlier in the year than other Aqua Texas systems in the region.⁴⁹

Aqua also performed a statewide comparison and found that Rio Ancho Subdivision customers' average consumption during the 2018-2020 time period was 465 gpd/connection compared to 204 gpd/connection statewide during 2018 and 2019.⁵⁰ Aqua presented evidence that shows a number of System customers are using in excess of 50,000 gallons per month at times, and some have even used over 100,000 gallons in a month, whereas typical residential usage is around 7,000 to 10,000 gallons per month.⁵¹ Complainants' expert witness, Donald G. Rauschuber, P.E., has opined that the typical monthly average water use for a "large-lot-single family, affluent residential subdivision like Rio Ancho" is slightly higher and around 15,000 gallons per month.⁵² He also acknowledged that during July 2019, 50% of Rio Ancho customers used more than 20,000 gallons, and during August 2019, 75% of Rio Ancho Subdivision customers used more than 20,000 gallons.⁵³

Mr. Peña testified that responsible and reasonable outdoor use is relative to the area and capacity of the source water; in general, he considers reasonable water use to be that which does not exceed the pro-rata capacity of the source (or what is mandated by the regulatory agency) and is used in a responsible and non-wasteful manner so that the source is maintained.⁵⁴ He also testified that the amount of System water used in the summers of 2019 and 2020 was at or above levels he has seen for more urban systems with a surface water source (lake) that is substantially

⁴⁹ *Id.*

⁵⁰ Aqua Ex. AT-3 at 19:7-20:10; *see also* Draft 2022 State Water Plan, Texas Water Development Board at p. D-132. Available at: <http://www.twdb.texas.gov/waterplanning/swp/2022/index.asp> (last checked October 15, 2021).

⁵¹ Aqua Ex. AT-11 (Comparison of Rio Ancho System usage to Aqua's SW Region, West Austin Division usage); Aqua Ex. AT-14 (Rio Ancho Meter Read and Consumption Data 2018-2020); *see also* Aqua Ex. AT-3 at 26:18-20; Tr. at 102:17-103:14 and 122:12-14, and 123:12-16 (Foltz Cross) (Sept. 7, 2021).

⁵² Direct Testimony of Donald G. Rauschuber, P.E., Complainants' Ex. 24 at 21:21-26.

⁵³ Complainants' Ex. 24 at 22:16-27; *see also* Complainants' Ex. 12.

⁵⁴ Aqua Ex. 22 at 9:12-16.

less limited than the groundwater source for the System area, including Travis County WCID No. 17.⁵⁵ Over the previous 5-years, that system has seen an average daily water use of 364 gpd/connection and a peak day of 820 gpd/connection compared to the System average of 529 gpd/connection in 2019 and 510 gpd/connection in 2020, with a peak day use of 1,150 gpd/connection in 2019 and 967 gpd/connection in 2020.⁵⁶

Aqua has tried to no avail to get System customers to comply with twice per week watering restrictions which would serve to lower peak demand.⁵⁷ Such water-use restrictions are common in Central Texas.⁵⁸ Aqua is reluctant to implement the most severe DCP enforcement measures.⁵⁹ But when Aqua ramped up monitoring and enforcement of DCP restrictions in August 2020, System problems caused by excessive demand subsided until very recently in August 2021.⁶⁰

Complainants contend that all System customer consumption at any time is reasonable so long as water is not running wastefully onto their lawns and out into the streets.⁶¹ Similarly, Staff apparently believes that local outdoor lawn watering demand levels will always be reasonable if customers believe that is what is necessary to keep lawns “well maintained” in accordance with deed restrictions requiring “well maintained yards.”⁶² As the testimony of Aqua’s experts shows, what constitutes “reasonable local demand” requires a more complex analysis. Neither Complainants nor Staff have presented any evidence of such analysis in this case.

⁵⁵ Aqua Ex. 22 at 9:17-10:3; Aqua Ex. AT-27 (Travis County WCID 17 Water Capital Recovery Fee Study 2018 Update (Historical Water Use Excerpt); Aqua Ex. AT-25 (Rio Ancho Water System Historical Water Production).

⁵⁶ *Id.*

⁵⁷ Aqua Ex. AT-3 at 23:19-27:10; Aqua Ex. AT-19 at 8:1-9:14.

⁵⁸ Aqua Ex. AT-22 at 24:5-13 (*e.g.*, City of Austin only allows watering once per week); Tr. at 56:17-58:15 (Rauschuber Cross) (Sept. 7, 2021).

⁵⁹ Aqua Ex. AT-3 at 23:19-27:10; Aqua Ex. AT-19 at 8:1-9:14.

⁶⁰ *Id.*; Tr. at 194:25-195:8 (Tolle Cross) (Sept. 7, 2021).

⁶¹ Tr. at 46:13-23 and 58:16-65:12 (Rauschuber Cross) (Sept. 7, 2021).

⁶² Tr. at 214:1-218:11 (Graham Cross) (Sept. 7, 2021); Staff Ex. HG-3 at 23 (Declaration of Covenants, Conditions, Easements & Restrictions, Rio Ancho Subdivision, Section 1); *see also* Aqua AT-Ex. 35 (Declaration of Covenants, Conditions, Easements & Restrictions, Rio Ancho Subdivision, Section 1) (official copy). Aqua notes that the deed restrictions do not elaborate on what exactly “well maintained” means.

5.c. Did the facilities of the Rio Ancho subdivision water system provide sufficient capacity to meet the reasonable local demand characteristics of the service area under 16 TAC § 24.205(1)? In answering this issue, please address the following:

- i. For the period between July 20, 2018 and July 20, 2020, what was the capacity needed to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock, for Aqua Texas’s customers in the Rio Ancho subdivision?**
- ii. For the period between July 20, 2018 and July 20, 2020, did Aqua have the capacity needed to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock, for Aqua Texas’s customers in the Rio Ancho subdivision?**

The answer to Issue 5.c is “yes.” The System provides retail public water utility service to approximately 168 connections in the Rio Ancho Subdivision as of May 2021, but that number fluctuated during the relevant time period specified in the Preliminary Order (*i.e.*, July 20, 2018 to July 20, 2020).⁶³ At full buildout, the System will serve 207 connections.⁶⁴ The System is comprised of three water supply wells capable of supplying approximately 125 gpm, two ground storage tanks each having capacity of 42,000 gallons, three booster pumps capable of producing over 600 gpm, and two hydropneumatic tanks with a total volume of 6,000 gallons.⁶⁵ Most of those facilities provide System service capacity that is over double the TCEQ minimum requirements or close to it. The System hydropneumatic tanks’ capacity exceeds the TCEQ minimum requirement by 1.76 times (6,000 gallons supplied compared to 3,400 gallons required).⁶⁶ The ground storage tanks are nearly 2.5 times the minimum required (84,000 gallons

⁶³ Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁶⁴ *Id.*

⁶⁵ Direct Testimony of Scot W. Foltz, Aqua Ex. AT-3 at 6:13-17; Direct Testimony of Brian R. Tolle, Aqua Ex. AT-19 at 5:11-6:3; *see also* Ex. AT-5 (Rio Ancho System Facility Schematic); Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁶⁶ Aqua Ex. AT-3 at 7:2-5; Ex. AT-5 (Rio Ancho System Facility Schematic); Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

supplied compared to 34,000 gallons required).⁶⁷ The booster pumps can deliver 1.76 times the minimum required flow (600 gpm supplied compared to 340 gpm required).⁶⁸ Aqua retained a professional engineer to testify in this case who confirmed the sizes of Aqua's facilities during his site visit on May 5, 2021 and reviewed the TCEQ approval documents for those facilities.⁶⁹ Aqua's experts provided summary exhibits comparing System facilities with the TCEQ minimum requirements that show System facilities more than meet those requirements.⁷⁰ Notably, it was revealed at trial that Complainant witness Rauschuber had not inspected the System facilities since an inspection he performed on December 10, 2019 nearly two years ago.⁷¹

Aqua's System well capacity is more limited, but still meets the TCEQ minimum requirements and would continue to do so at full buildout.⁷² Those wells have historically produced on average about 40-45 gpm each, but production varies slightly based on aquifer conditions and customer demand.⁷³ Each System well is at an approximate depth of 400 feet and draws water from the Trinity Aquifer.⁷⁴ The System wells' combined total rated capacity is 125 gpm, and Aqua operators report the actual total pumping capacity of those wells has ranged

Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁶⁷ Aqua Ex. AT-3 at 7:5-7; Ex. AT-5 (Rio Ancho System Facility Schematic); Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁶⁸ Aqua Ex. AT-3 at 7:7-8; Ex. AT-5 (Rio Ancho System Facility Schematic); Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁶⁹ Direct Testimony of William Peña, P.E., Aqua Ex. AT-22 at 7:4-15; *see also* Aqua Ex. AT-18 (TCEQ Approvals of Rio Ancho System Facilities).

⁷⁰ Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁷¹ Complainants' Ex. 24 at 15:7-12; Tr. at 47:21-48:1 (Rauschuber Cross) (Sept. 7, 2021).

⁷² *Id.*

⁷³ Aqua Ex. AT-3 at 7:16-18.

⁷⁴ Aqua Ex. AT-22 at 7:19-20.

from 121-128 gpm.⁷⁵ Prudent management calls for maintaining a cushion of instantaneous well production capability to meet System demand.⁷⁶

Two of the System water supply wells are located in Burnet County and regulated by the Central Texas Groundwater Conservation District (CTGCD).⁷⁷ The System's Burnet County wells are permitted by CTGCD to pump a total of 81.65 acre feet (26,605,730 gallons) annually.⁷⁸ This represents ½ acre foot of production per acre of controlled area which is the maximum allowable by the CTGCD Regulations.⁷⁹ Aqua is subject to periodic CTGCD curtailment mandates and has discussed the possibility of expanding its Burnet County well permits with CTGCD, but CTGCD representatives have told Aqua that is not possible under CTGCD regulations.⁸⁰ Aqua has not exceeded its annual CTGCD permit limitations,⁸¹ but prudent management calls for maintaining a cushion of water availability under Aqua's CTGCD permit so that does not occur.⁸² The third System well is located in Williamson County, and that well is not regulated by the CTGCD.⁸³ However, that well pulls water from the same aquifer and has similar hydrogeologic limitations.⁸⁴

Complainants say Aqua should be required to expand its System capacity for all components to double, triple, quadruple, or quintuple the TCEQ minimum requirements, or whatever level is needed to keep up with the actual consumption levels of Rio Ancho Subdivision

⁷⁵ Aqua Ex. AT-22 at 7:20-8:3; *see also* Aqua Ex. AT-24 (Rio Ancho Water System Summary).

⁷⁶ Tr. at 337:7-338:4 (Peña Redirect) (Sept. 8, 2021).

⁷⁷ Aqua Ex. AT-3 at 7:18-20; Aqua Ex. AT-7 (Central Texas Groundwater Conservation District Permit); *see also* Rebuttal Testimony of Scot W. Foltz, Aqua Ex. AT-29 at 3:15-4:14; Aqua Ex. AT-30 (Central Texas Groundwater Conservation District Extension of Operating Permit No. OP-130242403).

⁷⁸ Aqua Ex. AT-3 at 7:16-18; Aqua Ex. AT-29 at 3:16-18.

⁷⁹ Aqua Ex. AT-3 at 7:21-8:4; Aqua Ex. AT-8 at 45 (Aqua 000170) (Current Rules of the Central Texas Groundwater Conservation District).

⁸⁰ Tr. at 177:14-178:8 (Foltz Redirect) (Sept. 7, 2021); Aqua Ex. AT-3 at 8:14-16.

⁸¹ Aqua Ex. AT-3 at 8:8-12; *see also* Aqua Ex. BT-2 (Aqua's CTGCD Annual Groundwater Production Reports for Permitted Wells).

⁸² Tr. at 337:7-338:1 (Peña Redirect) (Sept. 8, 2021).

⁸³ Aqua Ex. AT-3 at 7:15-16 and 8:4-6; Aqua Ex. 22 at 8:6-7.

⁸⁴ *Id.*

customers.⁸⁵ Aqua respectfully disagrees. The proper analysis is more complex. Multiple factors must be considered when it comes to capital improvement decisions, such as regional cost/rate impact, natural resource conservation, physical/regulatory limitations in the System area, and what level of lawn watering is actually reasonable in a particular area.⁸⁶ Aqua must be cognizant of how such decisions will be viewed in a future rate case since it faces potential challenges from its regulators and other regional customers as to its capital improvement decisions.⁸⁷ Aqua would also not want extraordinary System costs leading to a finding the System must be unconsolidated from Aqua's other Southwest Region systems because it has become not substantially similar.⁸⁸

Customer satisfaction is extremely important to Aqua. Aqua wants to sell as much water as is reasonably possible to its customers, and Aqua does not want to see low pressure or outage situations in any Aqua system.⁸⁹ Aqua takes such situations very seriously and works to prevent them.⁹⁰ But, importantly, Aqua's expert witness, William Peña, P.E., has calculated that if System customers follow Aqua's prescribed twice weekly outdoor watering schedule and keep outdoor water usage to 1,523 gpd per lot per irrigation day, Aqua's current facilities are adequate to meet that local demand level which he considers reasonable.⁹¹ If Aqua is ordered to add facilities along the lines of what Mr. Rauschuber has recommended, the cost would be substantial (probably over \$700,000), Aqua would have to locate a suitable site, and Aqua would have to negotiate a deal for the real property needed because as an investor-owned water utility Aqua does not have eminent

⁸⁵ Tr. at 58:16-65:12 (Rauschuber Cross) (Sept. 7, 2021).

⁸⁶ Aqua Ex. AT-1 at 4:17-7:2; Tr. at 94:20-96:14 (Laughman Direct) (Sept. 7, 2021); Tr. at 104:3-9 (Laughman Cross) (Sept. 7, 2021); Tr. at 133:22-134:9 (Laughman Redirect) (Sept. 7, 2021); Aqua Ex. AT-22 at 12:12-22:12; Aqua Ex. AT-29 at 7:4-16; Rebuttal Testimony of William Peña, P.E., Aqua Ex. AT-31 at 4:5-4-10:18 and 13:2-11.

⁸⁷ *Id.*

⁸⁸ *Id.*; TWC § 13.145(a) and 16 TAC § 24.25(k) (emphasis added).

⁸⁹ Aqua Ex. AT-1 at 4:17-7:2; Tr. at 94:20-96:14 (Laughman Direct) (Sept. 7, 2021); Tr. at 133:22-134:9 (Laughman Redirect) (Sept. 7, 2021); Aqua Ex. AT-22 at 12:12-22:12; Aqua Ex. AT-29 at 7:4-16; Rebuttal Testimony of William Peña, P.E., Aqua Ex. AT-31 at 4:5-4-10:18 and 13:2-11.

⁹⁰ *Id.*

⁹¹ Aqua Ex. AT-22 at 12:12-22:12 and 26:2-12; Aqua Ex. AT-31 at 4:5-4-10:18 and 13:2-11.

domain authority to take property from landowners through the condemnation process allowed for other types of retail public utilities.⁹²

Summary of Issue Nos. 5.b. and 5.c.

Aqua has presented uncontroverted evidence the Commission should consider when deciding what is “reasonable” local demand and whether Aqua has met it. In contrast, the Complainants and Staff presented no evidence of reasonableness. They would have the Commission put aside all such information and only decide whether Aqua is meeting the actual demand Rio Ancho Subdivision customers have chosen to place on the System for outdoor watering uses at any level and at any time. That is the wrong analysis under the applicable law. If accepted, that policy would also undermine the state’s interest in promoting water conservation and protecting its natural resources. The correct analysis would lead the Commission to take no action in response to the Complaint.

5.d. If the facilities of the Rio Ancho subdivision water system were not adequate to provide a continuous and adequate supply of water to the customers of the water system for all reasonable customer uses from July 20, 2018 through July 20, 2020, what relief should be granted?

The competent record evidence shows Aqua’s System facilities were adequate to provide a continuous and adequate supply of water to the customers of the water system for all reasonable customer uses from July 20, 2018 through July 20, 2020 and remain so today. System problems have been caused by *unreasonable* customer uses. Complainants have presented no evidence to the contrary and did not present any analysis of reasonableness in their direct case. Staff’s analysis of reasonableness in its direct case was improper and lacks credibility. The Commission should take no action in response to the Complaint and grant no relief.

⁹² Aqua Ex. AT-3 at 14:1-21; Aqua Ex. AT-22:19-20:2; Tr. at 338:10-339:3 (Peña Redirect) (Sept. 8, 2021).

V. ISSUE NOS. 6, 7, AND 8: WATER USE RESTRICTIONS

A. Preliminary Order Issue No. 6: Did Aqua Texas impose water-use restrictions on water usage in the Rio Ancho subdivision between July 20, 2018 through July 20, 2020?

The answer to this question is “yes.”

6.a. Were the bases for the restrictions either drought, periods of abnormally high usage, 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?

The answer to this question is “yes.” Aqua imposed various stages of its drought contingency plan (DCP) at different times during the relevant time period (*i.e.*, July 20, 2018 through July 20, 2020) to address multiple factors identified in its DCP by implementing it during periods of unreasonably and abnormally high usage, to comply with CTGCD conservation requirements and orders, and because of drought conditions.

Aqua DCP documents were prepared in accordance with TCEQ requirements and applicable law and its current DCP was last updated in March 2020.⁹³ Thus, two different DCP documents applied during the relevant time period (*i.e.*, July 20, 2018 through July 20, 2020) and Aqua’s 2020 DCP applies today.⁹⁴ Both include this language:

*Aqua Texas, Inc. (Aqua Texas) has developed this User Drought Contingency Plan (UDCP) to enable it to manage its water systems and water resources during drought conditions, **periods of abnormally high usage**, system contamination, and extended reduction in ability to supply water due to equipment failure **or other emergencies** in a conscientious, fair, and appropriate manner. It is not designed to punish, stigmatize, or criticize anyone about their usage of water. Its sole intent is to maintain an adequate supply of water during the various stages of drought conditions **or other water supply emergencies**, which may occur from time to time[,] and to enable Aqua Texas to comply with the requirements of a court, government agency, ground water district, wholesale provider or other authority.*

⁹³ Aqua Ex. AT-3 at 15:2-17:2; Aqua Ex. AT-9 (Aqua’s 2105 Drought Contingency Plan) and Aqua Ex. AT-10 (Aqua’s 2020 Drought Contingency Plan).

⁹⁴ *Id.*

Aqua Texas believes that significant reductions in water usage can be achieved through voluntary efforts by customers. Implementation of voluntary water conservation measures and conscientious water use practices are encouraged at all times; however, additional water use restrictions are required in cases of extreme drought, periods of abnormally high usage, system contamination, or extended reduction in ability to supply water due to equipment failure.⁹⁵

Additionally, the DCPs say:

In order to maintain supply, storage, and pressure or to comply with regulatory requirements, temporary restrictions may be necessary to limit non-essential water usage.⁹⁶

Thus, declared “drought” is not the only event or condition that can prompt water use restrictions under Aqua’s DCP. In fact, there are several others. Aqua imposed water use restrictions pursuant to its DCP during the relevant time period.

Aqua implemented Stage 2 (July 2017 – August 2019), Stage 3 (August 2019 – May 2020), Stage 1 (May 2020 – July 2020), and Stage 3 (July 2020-current) DCP water use restrictions during the relevant time period.⁹⁷ There were several reasons for Aqua implementing those DCP water use restrictions stages.⁹⁸ CTGCD-initiated drought stages required voluntary reductions.⁹⁹ But, as previously discussed, the System was affected by excessive use of water by some System customers for lawn watering, particularly during hotter and drier months.¹⁰⁰ This created a period of reported low pressure or low level lock out of the System booster pumps, a trigger for water-use restrictions according to Aqua’s DCP.¹⁰¹ There were several periods of abnormally high Rio Ancho Subdivision customer usage during the relevant time period.¹⁰² Additionally, according to

⁹⁵ Aqua Ex. AT-9 at 1 (Aqua’s 2105 Drought Contingency Plan) and Aqua Ex. AT-10 at 1 (Aqua’s 2020 Drought Contingency Plan) (emphasis added).

⁹⁶ *Id.*

⁹⁷ Aqua Ex. AT-3 at 17:8-13; Aqua Ex. AT-12 (Aqua’s Restriction Notices to Customers).

⁹⁸ Aqua Ex. AT-3 at 17:15-18:7; Aqua Ex. AT-12 (Aqua’s Restriction Notices to Customers).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Aqua Ex. AT-3 at 19:7-20:10; Aqua Ex. AT-11 (Comparison of Rio Ancho System usage to Aqua’s SW Region, West Austin Division usage).

the U.S. Drought Monitor, Texas, including the Rio Ancho Subdivision area, experienced drought conditions during much of the relevant time period.¹⁰³ The notices provided to customers with implementation of each DCP water-use restriction stage more specifically describe what prompted each stage.¹⁰⁴ TCEQ personnel reviewed Aqua's DCP practices and confirmed it was an acceptable means to reduce peak demand.¹⁰⁵

Aqua has tried unsuccessfully to get System customers to comply with twice per week watering restrictions.¹⁰⁶ Such water-use restrictions are common in Central Texas.¹⁰⁷ Aqua prefers to work collaboratively with its customers rather than implement the most severe DCP enforcement measures.¹⁰⁸ However, when Aqua ramped up monitoring and enforcement of DCP restrictions in August 2020, System problems caused by excessive demand were reduced to a single event in August 2021.¹⁰⁹ The System went nearly a whole year without such an event caused by excessive System demand before then.

6.b. On each occasion or period that Aqua Texas imposed restrictions, did Aqua comply with the notice requirements of its applicable user drought contingency plan?

The answer to this question is “yes.” Mr. Foltz testified about the process Aqua uses to implement its DCP and that Aqua followed that process with implementation of each DCP stage discussed above and in his testimony.¹¹⁰ The notices provided to customers are included in Aqua Ex. AT-12.¹¹¹

¹⁰³ Aqua Ex. AT-3 at 18:9-19:5; *see also* <https://droughtmonitor.unl.edu/DmData/TimeSeries.aspx> (last checked October 15, 2021).

¹⁰⁴ Aqua Ex. AT-3 at 20:16-22:16; Aqua Ex. AT-12 (Aqua's Restriction Notices to Customers).

¹⁰⁵ *Id.*

¹⁰⁶ Aqua Ex. AT-3 at 23:19-27:10; Aqua Ex. AT-19 at 8:1-9:14.

¹⁰⁷ Aqua Ex. AT-22 at 24:5-13 (*e.g.*, City of Austin only allows watering once per week); Tr. at 56:17-58:15 (Rauschuber Cross) (Sept. 7, 2021).

¹⁰⁸ Aqua Ex. AT-3 at 23:19-27:10; Aqua Ex. AT-19 at 8:1-9:14.

¹⁰⁹ *Id.*; Tr. at 194:25-195:8 (Tolle Cross) (Sept. 7, 2021).

¹¹⁰ *Id.*

¹¹¹ *Id.*

The Complainants' issues do not appear related to the process Aqua followed in notifying customers when implementing its DCP water use restrictions. Complainants presented no evidence that Aqua implemented that process improperly. Rather, the Complainants' take issue with Aqua implementing its DCP to impose water use restrictions at all.

6.c. On each occasion or period that Aqua Texas imposed restrictions, what was the basis for Aqua Texas imposing the restrictions?

6.c.i. If the triggering event for Aqua Texas's imposition of water use restrictions was drought, what was the name of the entity making or changing its drought declaration? n each occasion or period that Aqua Texas imposed restrictions, what was the basis for Aqua Texas imposing the restrictions?

6.d. On each occasion or period that Aqua Texas imposed restrictions, what stage of restriction did Aqua Texas apply?

The answers to Preliminary Order Issue Nos. 6.c., 6.c.i., and 6.d. are discussed in response to Preliminary Order Issue No. 6.a. above.

6.e. On each occasion or period that Aqua Texas imposed restrictions, did Aqua enforce any penalty or consequence on any customer in Rio Ancho? If the answer to this issue is yes, what penalties or consequences were enforced?

No penalties or consequence to any residential customer was imposed when Aqua's DCP water use restrictions were in place.¹¹² Aqua did issue several notices of water schedule or restriction violations in 2020.¹¹³ Generally, individuals were not found to be violating the restrictions following the first violation notice, and no further action was necessary.¹¹⁴ The HOA entrance fountain was turned off on or about August 7, 2020 until the HOA could separate the plumbing of the fountain and the entrance irrigation.¹¹⁵ At that time, fountain and outdoor water features using System water were not permitted.¹¹⁶ Aqua has more severe enforcement tools

¹¹² Aqua Ex. AT-3 at 23:19-25:19; Aqua Ex. AT-13 (Listing of Aqua's violation notices sent to customers) Aqua Ex. AT-19 at 8:1-9:14.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

available under its DCP, but prefers to encourage voluntary compliance.¹¹⁷ Neither Complainants nor Staff have presented evidence controverting these facts.

6.f. If Aqua Texas has not imposed water-usage restrictions in accordance with its approved drought contingency plan under 16 TAC § 24.205, what is the appropriate remedy?

Aqua has imposed water use restrictions in accordance with its DCP. Neither Complainants nor Staff have presented evidence controverting these facts. Therefore, no remedial Commission action is appropriate.

B. Preliminary Order Issue No. 7: Has Aqua Texas used water-usage restrictions in lieu of providing facilities which meet the minimum capacity requirements of 30 TAC § 290.38 through 290.275, or reasonable local demand characteristics during normal use periods, or when Aqua Texas is not making all immediate and necessary efforts to repair or replace malfunctioning equipment under 16 TAC § 24.205(2)? If not, what is the appropriate remedy?

For reasons discussed in response to Preliminary Issue Order Nos. 5 and 6, the competent record evidence shows that Aqua’s System facilities meet the minimum capacity requirements of 30 TAC § 290.38 through 290.75 and reasonable local demand characteristics during normal use periods. Aqua has upgraded the Rio Ancho System facilities as the subdivision has grown and System facilities exceed the TCEQ minimum requirements and are more than sufficient to meet “reasonable” local demand during both normal and excess demand periods.¹¹⁸ However, there is a limit on what Aqua’s System facilities can do.¹¹⁹ Aqua’s water use restrictions are used for those situations and not in lieu of what is needed to meet the minimum requirements or “reasonable local demand characteristics during normal use periods.”¹²⁰ Further, Aqua has made all immediate and necessary repairs and replacements as needed.¹²¹

¹¹⁷ *Id.*

¹¹⁸ Aqua Ex. AT-3 at 27:12-28:12.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

Neither Complainants nor Staff have presented evidence controverting these facts. No remedial Commission action is necessary.

C. Preliminary Order Issue No. 8: Has Aqua Texas directly or indirectly demanded, charged, or collected any rate or charge, or imposed any classification, practices, rules, or regulations different from those prescribed in its approved tariff filed with the Commission under 16 TAC § 24.25(a)? If so, what is the appropriate remedy?

The only tariff issue raised by Complainants in this case is whether Aqua has properly implemented its DCP, which is considered part of its tariff. Aqua has properly followed the rules and regulations applicable to the Rio Ancho Subdivision, Aqua’s tariff, and Aqua’s DCP within the tariff.¹²² TCEQ has investigated low pressure and outage complaints and conducted regular compliance inspections for the System during the 2018-2020 period and issued no violations for Aqua’s DCP use or implementation of DCP water use restrictions.¹²³

Neither Complainants nor Staff have presented evidence controverting these facts. No remedial Commission action is necessary.

VI. ADDITIONAL ISSUE: SUBSTANTIAL SIMILARITY

During the hearing on the merits, the presiding ALJ requested the parties address concerns about ramifications the decision in this case could have on substantial similarity of the System to others included on the same Aqua rate tariff.¹²⁴ The context for that issue is that the Texas Water Code and PUC rules require water utility systems included on a consolidated tariff to be “substantially similar in terms of facilities, quality of service, and cost of service,” and the rates included in such tariffs must “*promote water conservation* for single-family residences *and landscape irrigation*.”¹²⁵

¹²² Aqua Ex. AT-3 at 28:14-29:7.

¹²³ *Id.*; Aqua Ex. AT-15 (Rio Ancho Compliance Correspondence with TCEQ).

¹²⁴ Tr. at 9:16-12 and 349:10-17 (Sept. 7 and 8, 2021) (ALJ discussion about substantial similarity issue and requesting it be addressed in briefing).

¹²⁵ TWC § 13.145(a) and 16 TAC § 24.25(k) (emphasis added).

The System is located within Aqua's geographic Southwest Region and consolidated with other Aqua water systems on its approved water rate tariff for that region.¹²⁶ Regionalization and consolidated rate tariffs are very important to Aqua and beneficial to its customers because it enables more efficient service utilizing economies of scale.¹²⁷ Also, in Aqua's statewide rate case, the TCEQ held there is a strong policy in the Texas Water Code favoring regionalization and regional consolidated system tariffs:

Chapter 13 of the Water Code expresses a strong legislative preference for regionalization in the form of a *mandate* to the Commission to develop policies promoting the consolidation of systems under regional tariffs. TEX. WATER CODE §§ 13.182(d), 13.183(c), and 13.241(d).¹²⁸

Thus, the Texas Legislature recognizes the value of regionalized and consolidated utility systems.

Aqua has concerns about extraordinary System costs leading to a finding the System must be unconsolidated from Aqua's other Southwest Region systems because it is no longer substantially similar.¹²⁹ The System was consolidated with other Aqua Southwest Region systems based on the substantially similar state of its facilities and cost of service during Aqua's last Southwest Region base water rate case approximately ten years ago decided by the TCEQ.¹³⁰ If costs for the System increase dramatically for the System beyond what is typical for other Aqua systems in the region because of specially mandated design requirements that exceed what TCEQ

¹²⁶ Tr. at 9:24-25 (Sept. 7, 2021) (Aqua counsel discussing status of System tariff with presiding ALJ); Direct Testimony of Robert L. Laughman, Aqua Ex. AT-1 at 5:5-14; Tr. at 94:20-96:14 (Laughman Direct) (Sept. 7, 2021); Tr. at 133:22-134:9 (Laughman Redirect) (Sept. 7, 2021); *see also Application of Aqua Texas, Inc. for 2020 True-up Report and Pass-through Gallonage Charge for its Southwest Region*, Tariff Control No. 51833, Agreed Supplemental Motion to Admit Evidence and Proposed Amended Notice of Approval, Water Utility Tariff for Aqua Texas, Inc. (Southwest Region), at Table B (May 28, 2021) and Amended Notice of Approval (Jun. 1, 2021).

¹²⁷ *Id.*

¹²⁸ *Application of Aqua Utilities, Inc. and Aqua Development Company, Inc. d/b/a Aqua Texas, Inc. to Change Water and Sewer Rates*, SOAH Docket No. 582-05-2770 and 582-05-2771, Final Order, at Finding of Fact 13 (Sep. 23, 2008).

¹²⁹ Tr. at 94:20-96:14 (Laughman Direct) (Sept. 7, 2021); Tr. at 104:3-9 (Laughman Cross) (Sept. 7, 2021); Tr. at 133:22-134:9 (Laughman Redirect) (Sept. 7, 2021); TWC § 13.145(a) and 16 TAC § 24.25(k) (emphasis added).

¹³⁰ *Application of Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc., Harper Water Company, Inc., and Kerrville Southern Water Company, Inc., dba Aqua Texas for Southwest Region Water Rate/Tariff Change*, SOAH Docket No. 582-12-6658, Final Order (June 3, 2013).


has required, the System's substantially similar status would likely be scrutinized. Aqua is proud of its prudent planning capability that has allowed it to refrain from filing a rate case for the last 10 years, has no plans to file one, understands the burden of rate cases on Aqua, its customers, and the Commission, and would not want a decision in this case to drive any future rate case decisions by Aqua or its regulators.¹³¹ Aqua would like to keep the System consolidated with other Southwest Region water systems for rate/tariff purposes for the foreseeable future.

VII. CONCLUSION

Respectfully, for the reasons set forth herein, Aqua requests the Commission deny all relief sought by the Complainants and take no action in response to the Complaint. Aqua also requests all other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

By: _____



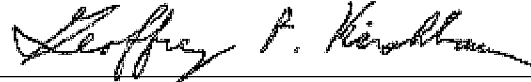
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¹³¹ Tr. at 109:21-110:10 (Laughman Cross) (Sept. 7, 2021)

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 October 15, 2021 in accordance with the Orders Suspending Rules issued in Project No. 50664.



Geoffrey P. Kirshbaum