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FORMAL COMPLAINT OF	§	BEFORE THE STATE OFFICE
RIO ANCHO HOMEOWNERS	§	
ASSOCIATION and DAVID AND	§	OF
DOREEN MEYERS AGAINST	§	
AQUA TEXAS, INC.	§	ADMINISTRATIVE HEARINGS

COMPLAINANTS' REPLY BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Complainants' Rio Ancho Homeowners Association and David and Doreen Meyers ("Complainants") file this Reply Brief and respectfully show as follows:

I. INTRODUCTION

It is undisputed that the water system operated by Aqua Texas, Inc. ("Aqua") in the Rio Ancho Subdivision has repeatedly failed to provide continuous and reliable service to its customers. The evidence further establishes that Aqua has subjected customers in the Rio Ancho Subdivision to restrictions in water use under its drought contingency plan to avoid making needed improvements and minimize system failures to supply continuous and reliable service due to inadequate facilities. Aqua's only defense to these complaints is that customers in the Rio Ancho Subdivision use unreasonable amounts of water. The record establishes that these customers' use, while higher than in other systems operated by Aqua, is not only reasonable and a recognized beneficial use of water, the system's history of use has been consistent and predictable.

Aqua points to comparisons between its other systems' per connection water usage and water usage per connection in the Rio Ancho Subdivision as proof that customers' water usage within Rio Ancho is unreasonable. Aqua ignores the fact that the Rio Ancho customer base is

composed exclusively of large lot homeowner customers, many of whom have landscape watering systems, resulting in higher peak demand than any other system operated by Aqua.

The water utility system operated by Aqua has consistently and repeatedly failed to meet the reasonable and historical local demand of the customers of the Rio Ancho Subdivision. The evidence in this proceeding is undisputed that the system is inadequate to meet reasonable local demand in the absence of restrictions or limitations on water usage. To avoid having to make necessary system improvements, Aqua has improperly continuously implemented its drought contingency plan to limit outdoor water usage to limited hours one day per week. Aqua's own expert witness acknowledged that only if water use restrictions are imposed will the system be capable of meeting customer demand.

II. ADEQUACY OF WATER UTILITY SERVICE

The record in this proceeding is abundantly clear that the water system operated by Aqua serving the Rio Ancho Subdivision is incapable of providing continuous and adequate water service to meet the reasonable local demands of the homeowner customers. The very straightforward calculations of Complainant David Meyers contained in Complainants Exhibit 18 show that the system will fail to meet reasonable demand.

Aqua's only argument is that customer demand in the Rio Ancho Subdivision is unreasonable. There is no evidence in the record that water usage by Rio Ancho Subdivision customers was wasteful or excessive. Rather, the evidence demonstrates predictable, peak demands far exceeding the Aqua system's ability to meet the standard of providing continuous and reliable service. It is not unreasonable to use water for outdoor landscape watering purposes. The system chronically fails to meet reasonably anticipated actual demand. Aqua's own expert

acknowledged as much in his testimony that Aqua's system is adequate if, and only if, water usage is restricted.

Customers of a water system should not be required to restrict their water usage absent the existence of temporary circumstances outlined in approved drought contingency plans. The fact that Aqua has drafted its drought contingency plan to authorize imposition of drought restrictions when system capacity is exceeded does not excuse Aqua from the responsibility of constructing facilities necessary to meet the reasonably anticipated demand.

III. IMPOSITION OF DROUGHT CONTINGENCY PLAN

Aqua argues that it is justified in implementing its drought contingency plan to reduce peak demand because of "excessive" water usage. The "excessive" water usage complained of by Aqua is, was and will be the actual reasonable demand of these customers. Drought contingency plan restrictions are intended to be used to address climactic conditions, shortages or declines in water supply or equipment failures, and are intended to be temporary. Aqua has permanently implemented restrictions on water use without regard to any of these criteria. Aqua's own expert and staff witnesses tacitly acknowledged that the system is inadequate to meet the actual requirements of its customers in the Rio Ancho Subdivision and therefore it is justified in restricting water use under its drought contingency plan. Use of drought contingency plan restrictions for this purpose is not authorized, nor should it be condoned by the Commission. Ruling that drought contingency plan restrictions can be imposed to avoid making improvements necessary to meet actual demand would set a dangerous precedent that utilities can refuse to make the system improvements necessary to meet the requirement to provide continuous and adequate service by simply restricting use under its drought contingency plan.

IV. CONCLUSION


The customers of Aqua, Inc. in the Rio Ancho Subdivision have endured chronic deficiencies in water service with chronic low water pressure and periodic complete loss of service. Aqua is not meeting the fundamental requirement to provide continuous and adequate service for the reasonably anticipated demands of its customers in Rio Ancho. Aqua made some system improvements, completed in the spring of 2020 to attempt to address these deficiencies. Once online, Aqua reduced the drought restrictions, from Stage 3 to Stage 1. The system immediately began to experience loss of service and inadequate pressure even with some restrictions still in place. Three (3) months after the restrictions were loosened, Aqua re-imposed the most severe restrictions on water use authorized under its drought contingency plan in order to attempt to prevent further interruptions in service. Despite these restrictions, the system still occasionally fails.

The Commission should not allow Aqua to avoid making required system improvements to meet reasonably anticipated customer demand by implementing drought contingency plan restrictions. Allowing Aqua to avoid the obligation to construct and operate a system capable of meeting existing demand sets a precedent. If allowed, utilities can avoid making system improvements by continuously implementing restrictions under a drought contingency plan designed to address temporary circumstances affecting the ability to meet otherwise reasonable and anticipated demand. Worse, Aqua will have to permanently impose drought restrictions, since it confirmed it has no intention of making necessary system improvements, even though the customer base will increase and system deficiencies will be magnified.

The residents of the Rio Ancho Subdivision have a right to expect that the water utility system serving them can meet reasonably anticipated demand. Aqua's system has not, cannot and will not meet this requirement.

The Commission should order Aqua to make improvements to its system necessary to meet the actual reasonable demand placed on the system by these customers. The Commission should further order Aqua to discontinue use of its drought contingency plan to reduce customer demand and avoid making necessary improvements, and only implement its plan when temporary circumstances justify restrictions on otherwise reasonable demand.

Respectfully submitted,



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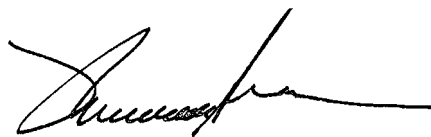
ATTORNEYS FOR COMPLAINANTS
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ET AL.

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 10th day of November 2021, as follows:

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