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SOAH DOCKET NO. 473-21-0246.WS
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COMPLAINT OF CERTAIN	§	BEFORE THE PUBLIC UTILITY
MEMBERS OF RIO ANCHO	§	
HOMEOWNERS ASSOCIATION	§	COMMISSION OF TEXAS
AGAINST AQUA TEXAS, INC.	§	

**AQUA TEXAS, INC.'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS**

Aqua Texas, Inc. respectfully submits the following proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs pursuant to SOAH Order No. 7.

I. FINDINGS OF FACT

1. On July 20, 2020, the Rio Ancho Homeowners Association (Rio Ancho HOA), the members of Rio Ancho HOA (Francis T. Rossi, James J. Pogue, Julie Bowse, Kenneth W. Cline, Diana S. Cline, David Amador, Marshall Ault, Chester Jackson, Virginia Jackson, Eric Robinson, Bruce Brown, Sue Brown, David Meyers, Doreen Meyers, Casey Cobb, Ashlie Cobb, Rob Meyers, Daniel Winans, Andrea Winans, Samuel Cox, Jaime Torres, and Dustin Torres), and David and Doreen Meyers (collectively the complainants) filed a formal complaint against Aqua Texas, Inc. (Aqua).
2. Aqua owns and operates the Rio Ancho subdivision water system (PWS ID number 0270141) (the System), which straddles the boundary between Williamson County and Burnet County, south of State Highway 29 between Liberty Hill and Bertram and is located within certificate of convenience and necessity number 13254.
3. The Rio Ancho subdivision is comprised of approximately 168 homes on lots averaging an acre in size and is planned for 207 homes total at full build out.
4. On August 10, 2020, Aqua filed a Motion to Dismiss and Response to Formal Complaint.

5. On August 31, 2020, the Commission ALJ denied the complainants' request for attorney's fees included in their original complaint.
6. On September 29, 2020, the Commission referred the complaint to the State Office of Administrative Hearings (SOAH).
7. On November 5, 2020, the Commission issued its preliminary order which established the issues to be addressed in this docket.
8. On November 23, 2020, the SOAH Administrative Law Judge (ALJ) issued SOAH Order No. 1 Filing Description; Dismissing Certain Complainants; Revising Case Style; Setting Prehearing Conference; Procedural Requirements, which dismissed Rio Ancho HOA, Casey Cobb, Ashlie Cobb, Rob Myers, and Eric Robinson as complainants for failure to comply with the Commission's information complaint requirements.
9. On December 3, 2020, the ALJ conducted a prehearing conference. During the prehearing conference, counsel for complainants narrowed the scope of relief they requested in this case.
10. On January 22, 2021, the SOAH ALJ issued SOAH Order No. 2 Memorializing Prehearing Conference; Denying Motion to Dismiss; Requiring Filings, which denied Aqua's Motion to Dismiss and required the complainants to file an amended complaint.
11. On February 1, 2021, the remaining complainants filed a First Amended Formal Complaint.
12. On February 2, 2021, the remaining complainants filed a Second Amended Formal Complaint.
13. On March 2, 2021, a second prehearing conference was held. The ALJ concluded that the Second Amended Complaint complied with SOAH Order No. 2.

14. The amended complaint asserts that the complainants have experienced repeated instances of low water pressure and the loss of service since at least 2018.
15. The amended complaint alleges that Aqua's System facilities are inadequate to meet the reasonable requirements of the residents of the subdivision and that Aqua improperly imposed water use restrictions under its drought contingency plan to reduce consumption and avoid making necessary capital and operational improvements to its Rio Ancho facilities.
16. On March 11, 2021, SOAH Order No. 4 Memorializing Prehearing Conference; Adopting Procedural Schedule, Including Setting Hearing on the Merits, which adopted the parties' agreed procedural schedule and scheduled the hearing on the merits for September 7-8, 2021.
17. On April 16, 2021, complainants' filed their prefiled direct testimony and exhibits.
18. On April 30, 2021, Aqua filed its objections and motion to strike portions of complainants' prefiled testimony and exhibits.
19. On May 20, 2021, the presiding SOAH ALJ issued Order No. 6 overruling in part and sustaining in part Aqua's objections to portions of complainants' prefiled testimony and exhibits and granted Aqua's motion to strike same in part.
20. On May 21, 2021, Aqua filed its prefiled direct testimony and exhibits.
21. On June 28, 2021, Commission Staff filed its prefiled direct testimony and exhibits.
22. On July 21, 2021, Commission Staff filed an errata to its prefiled direct testimony and exhibits.
23. On August 6, 2021, complainants' filed their prefiled rebuttal testimony and exhibits.

24. On August 6, 2021, Aqua filed its prefiled rebuttal testimony and exhibits, and an errata to the prefiled direct testimony and exhibits of Brian R. Tolle.
25. On August 20, 2021, Aqua filed its objections and motion to strike complainants' prefiled rebuttal testimony and exhibits.
26. On September 1, 2021, the parties filed a status report requesting that the hearing on the merits proceed as scheduled.
27. On September 2, 2021, the parties filed their respective witness lists and exhibit lists.
28. On September 3, 2021, complainants filed an amended exhibit list.
29. The hearing on the merits was conducted on September 7-8, 2021 via Zoom teleconference. A court reporter transcribed the proceeding.
30. On September 7, 2021, during the hearing on the merits, the presiding SOAH ALJ sustained Aqua's objections to complainants' prefiled rebuttal testimony and exhibits and granted Aqua's motion to strike same.
31. On September 9, 2021, SOAH Order No. 7 Briefing Schedule; Record Close Date was issued, which set the deadlines for post-hearing briefs and the record close date.
32. On October, 15, 2021, the parties each filed their respective Initial Post-Hearing Briefs.
33. On November 10, 2021, the parties each filed their respective Reply Briefs. The record closed on this date.

Preliminary Order Issues No. 1 and 2: Jurisdiction and Authority

34. Conclusions regarding Preliminary Order Issue Nos. 1 and 2 were set out in SOAH Order No. 2 and incorporated by reference here.

35. Complainants' amended requested relief states complainants are not seeking specified System improvements, but complainants' sought specified System improvements through their evidentiary presentation.

Preliminary Order Issues No. 3: Compliance with Informal Complaint Process

36. Rio Ancho HOA, Ashlie Cobb, Casey Cob, Rob Meyers, and Eric Robinson did not comply with the Commission's informal-complaint process.
37. Conclusions regarding Preliminary Order Issue No. 3 were set out in SOAH Order No. 1, which, in part, dismissed those complainants, and are incorporated by reference here.

Preliminary Order Issue No. 4: Daily and Monthly Peak Demand

38. From July 20, 2018 through July 20, 2020, the peak monthly demand for System customers was 4,319,000 gallons in July 2019, equating to 1,035 gallons per day per connection.
39. From July 20, 2018 through July 20, 2020, the peak daily reading occurred in August 2019 with usage of 172,571 gallons per day, equating to 1,150 gallons per day per connection.
40. From 2018 to 2019, average daily usage per connection increased by 29% and the peak day use per connection increased by 44%.
41. For the remainder of 2020 after July 20, 2020, the peak monthly demand was 4,003,000 gallons in August 2020, equating to 872 gallons per day per connection.
42. For the remainder of 2020 after July 20, 2020, the peak daily reading was approximately 132,570 gallons per day, equating to 875 gallons per day per connection, the week of August 10-17, 2020.

Preliminary Order Issue No. 5: System Facilities/Supply

43. Aqua's System production, treatment, storage, transmission, and distribution facilities were of sufficient size and capacity to provide a continuous and adequate supply of water

to System customers for all reasonable customer uses during the relevant time period from July 20, 2018 through July 20, 2020 and remain so today.

44. Aqua's Rio Ancho system and facilities exceed the minimum capacity requirements of 30 TAC §§ 290.38 through 290.275.
45. Between July 20, 2018 through July 20, 2020, the customers of the Rio Ancho subdivision water system experienced low water pressure or loss of service as described in the testimony of Aqua expert witness Scot W. Foltz and Aqua Exhibits AT-15, AT-16, and AT-17.
46. Service outages caused by excessive outdoor watering demand were resolved after that demand dropped and the System storage tanks refilled after each event.
47. The local demand characteristics of the Rio Ancho subdivision included unreasonably high demand, including demand for unreasonable quantities of water for outside usage, under 16 TAC § 24.205(1) during the periods from April through August in 2018, 2019, and 2020.
48. A number of System customers use in excess of 50,000 gallons per month, and some have used over 100,000 gallons in a month, whereas typical residential usage is around 7,000 to 10,000 gallons per month.
49. 15,000 gallons per month might be typical for a large-lot single family residential subdivision like the Rio Ancho subdivision, but during July 2019, 50% of System customers used more than 20,000 gallons, and during August 2019, 75% of System customers used more than 20,000 gallons.
50. The average usage of System customers as measured by customer monthly readings compared to all residential systems in Aqua's Central Texas Area, West Austin Division,

was 1.8 to 1.9 times the average in that area during the 2018-2020 timeframe and was more than twice the average at various times.

51. Rio Ancho subdivision customers' consumption during 2018-2020 was 465 gallons per day per connection compared to 204 gallons per day per connection statewide during 2018 and 2019.
52. 1,523 gallons per day per lot per irrigation day is a reasonable demand level for outdoor watering in the Rio Ancho Subdivision.
53. Neither complainants nor Staff presented an expert opinion for what would constitute a reasonable local demand level for outdoor watering or other water usage in the Rio Ancho subdivision other than actual historic demand.
54. Rio Ancho subdivision customers do not consistently adhere to twice per week water-use restrictions imposed by Aqua pursuant to its Texas Commission on Environmental Quality (TCEQ) compliant drought contingency plan (DCP).
55. Regional cost/rate impact, natural resource conservation, physical/regulatory limitations, and actual lawn watering needs are proper factors to consider in making capital improvement decisions for public drinking water system facilities, such as the System, and reasonableness of local demand characteristics; here, those factors show Aqua should not make improvements as requested by the Complainants and Staff and that local demand characteristics have been unreasonable.
56. As of May 2021, all System facilities of the Rio Ancho subdivision water system exceeded the minimum TCEQ capacity requirements and provided sufficient additional capacity to meet the reasonable local demand characteristics of the service area, including reasonable

quantities of water for outside usage, for approximately 168 current connections and could do so for the 207 connections planned at full buildout.¹

- 57. Water conservation is an important State of Texas policy priority.
- 58. Aqua's System facilities were adequate to provide a continuous and adequate supply of water to System customers from July 20, 2018 through July 20, 2020 and remain so today.
- 59. Aqua does not need to construct any additional System facilities to serve the reasonable local demand levels of the Rio Ancho subdivision.
- 60. No relief from the Commission is necessary in response to the complaint in terms of System facility capacity or improvements.

Preliminary Order Issue No. 6, 7, and 8: Water-Use Restrictions

- 61. Aqua properly imposed water-use restrictions on System customers between July 20, 2018 through July 20, 2020 pursuant to its TCEQ compliant DCP.
- 62. The bases for each period of water-use restrictions Aqua imposed on customers between July 20, 2018 through July 20, 2020 were drought, drought stages declared by the Central Texas Groundwater Conservation District calling for periods of water-use reductions, periods of abnormally high usage, or a combination of these conditions as authorized in Aqua's DCP.
- 63. Aqua complied with the notice requirements of its applicable DCP each time it imposed System water-use restrictions between July 20, 2018 through July 20, 2020.
- 64. Aqua encouraged voluntary customer compliance with Aqua's water-use restrictions between July 20, 2018 through July 20, 2020, but Aqua did not enforce any penalty or

¹ Aqua Ex. AT-6 (Chart - Required Capacities v. Supplied Capacities); Aqua Ex. AT-24 (Rio Ancho Water System Summary).

consequence for violation of water-use restrictions on any System customer in the Rio Ancho subdivision during that time.

65. Aqua has not used its DCP in lieu 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 is not making all immediate necessary efforts to repair or replace malfunctioning equipment under 16 TAC § 24.205(2).
66. Aqua has not directly or indirectly demanded, charged, or collected any rate or charge, or imposed any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the Commission under 16 TAC § 24.25(a).
67. No Commission relief is warranted with respect to Aqua's DCP implementation.

Substantial Similarity

68. The System was previously determined by the TCEQ to be substantially similar to other Aqua Southwest Region water systems in terms of facilities, quality of service, and cost of service.
69. Ordering the specific system improvements complainants request could potentially result in a regulatory authority finding that the System is no longer substantially similar to other Aqua Southwest Region water systems.
70. The Commission seeks to promote regional and consolidated rates and services.
71. Ordering the specific system improvements complainants request could discourage regional and consolidated rates and services.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over and authority to decide this matter under Texas Water Code chapter 13, but the technical issues raised by complainants also fall within the TCEQ's jurisdiction.²
2. SOAH has jurisdiction over the hearing in this matter under Texas Government Code chapter 2003.³
3. The System facilities have provided sufficient capacity to meet the reasonable local demand characteristics of the Rio Ancho subdivision water service area under 16 TAC § 24.205(1).
4. Aqua's usage and implementation of its DCP within the Rio Ancho subdivision water service area has complied with 16 TAC § 24.205(2).
5. No System facility improvements are necessary to render adequate and continuous water service within the Rio Ancho subdivision as required by Texas Water Code § 13.250 and 16 TAC § 24.247 and Aqua is providing such service.
6. Aqua has not violated its DCP requirements or approved water utility tariff provisions.

III. ORDERING PARAGRAPHS

1. The Commission adopts the proposal for decision, including of finding of facts and conclusions of law, to the extent provided in this Order
2. The Commission declines to grant complainants any relief requested in the Complaint as amended.
3. The Commission declines to order Aqua to take any action in response to the Complaint.

² Tex. Water Code Ann. Chapter 13 (West 2008 & Supp. 2017) (TWC).

³ Tex. Gov't Code Ann. Chapter 2003 (West 2016).

4. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.
5. This complaint matter is closed.