



## Filing Receipt

**Received - 2022-02-15 11:44:19 AM**

**Control Number - 51091**

**ItemNumber - 79**

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

<b>COMPLAINT OF CERTAIN MEMBERS OF RIO ANCHO HOMEOWNERS ASSOCIATION AGAINST AQUA TEXAS, INC.</b>	§ § § § §	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
--	-----------------------	---

**COMMISSION STAFF’S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Staff (Staff) of the Public Utility Commission of Texas (Commission) has reviewed the Proposal for Decision (PFD) and memorandum filed on January 7, 2022, and files these exceptions to the PFD. On January 19, 2022, the Office of Policy and Docket Management (OPDM) filed a memorandum establishing a deadline of February 15, 2022, for parties to file exceptions to the PFD. Therefore, this pleading is timely filed.

**EXCEPTIONS**

In the PFD, the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) included Ordering Paragraph No. 2, which reads as follows:

“Complainants’ requested relief is denied.”<sup>1</sup>

Staff respectfully disagrees with the SOAH ALJ’s decision.

The substance of the complaint in this docket is a case of first impression pertaining to three key provisions of Commission rules:

- 1. Did Aqua Texas, Inc. (Aqua) provide the Rio Ancho subdivision a continuous and adequate supply of water for all reasonable customer uses as 16 Texas Administrative Code (TAC) § 24.205 requires?**

16 TAC § 24.205 states: “Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for

---

<sup>1</sup> *Complaint of Certain Members of Rio Ancho Homeowners Association against Aqua Texas, Inc.*, Docket No. 51091, Proposal for Decision at Order Paragraph No. 2 (Jan. 7, 2022) (Proposal for Decision).

all reasonable consumer uses.”<sup>2</sup> The SOAH ALJ found that Aqua is providing a continuous and adequate supply of water for all reasonable customer uses as required by 16 TAC § 24.205.<sup>3</sup> As further outlined in briefing, Staff reaffirms its position that Aqua has not provided a continuous and adequate supply of water for all reasonable customer uses as required by 16 TAC § 24.205.

**2. Are the water usage amounts of the Rio Ancho subdivision in accordance with the reasonable local demand characteristics of the service area as 16 TAC § 24.205(1) requires?**

Under 16 TAC § 24.205(1), “[T]he water system quantity and quality requirements of the TCEQ shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage.<sup>4</sup> *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* [emphasis added].<sup>5</sup> The SOAH ALJ found that the water usage amounts of the Rio Ancho subdivision are not in accordance with the reasonable local demand characteristics of the service area as 16 TAC § 24.205(1) requires.<sup>6</sup> As further outlined in briefing, Staff reaffirms its position that the water usage amounts of the Rio Ancho subdivision are high but not unreasonable under the same provision.

**3. Did Aqua implement its drought contingency plan in lieu of providing facilities which meet the reasonable local demand characteristics of the Rio Ancho subdivision in contravention of 16 TAC § 24.205(2)(b)?**

16 TAC § 24.205(2)(b) provides several conditions for which retail public utilities may implement their approved drought contingency plans.<sup>7</sup> However, it also states that “unless

---

<sup>2</sup> 16 TAC § 24.205.

<sup>3</sup> Proposal for Decision at Conclusion of Law 14.

<sup>4</sup> 16 TAC § 24.205(1).

<sup>5</sup> *Id.*

<sup>6</sup> Proposal for Decision at Finding of Fact 55, 64.

<sup>7</sup> 16 TAC § 24.205(2)(b).

specifically authorized by TCEQ, retail public utilities may not use water use restrictions 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* [emphasis added], or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.”<sup>8</sup> The SOAH ALJ found that Aqua did not implement its drought contingency plan in lieu of providing facilities which meet the reasonable local demand characteristics of the Rio Ancho subdivision in part because the SOAH ALJ found that the amount of water being used by the Complainants was not reasonable.<sup>9</sup> As further outlined in briefing, Staff reaffirms its position that, because Staff argues that the usage amounts are not unreasonable, Aqua did improperly implement its drought contingency plan in lieu of providing facilities which meet the reasonable local demand characteristics of the Rio Ancho subdivision.

The Commission’s ultimate decision hinges upon its interpretation of these three key provisions. Staff respectfully reaffirms its position as detailed in its Initial and Reply Briefs. Furthermore, Staff sincerely thanks the SOAH ALJ for his careful consideration of the issues.

---

<sup>8</sup> *Id.*

<sup>9</sup> Proposal for Decision at Finding of Fact 83.

Dated: February 15, 2022

Respectfully submitted,  
**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Rustin Tawater  
Managing Attorney

/s/ Phillip Lehmann  
Phillip Lehmann  
State Bar No. 24100140  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7385  
(512) 936-7268 (facsimile)  
phillip.lehmann@puc.texas.gov

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

I 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 February 15, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Phillip Lehmann  
Phillip Lehmann