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**FORMAL 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**

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**COMPLAINANTS' EXCEPTIONS TO PROPOSAL FOR DECISION**

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TO THE HONORABLE COMMISSIONERS:

NOW COME Complainants, Rio Ancho Homeowners Association and David and Doreen Meyers ("Complainants"), and file their Exceptions to the Proposal for Decision ("PFD") recommended by SOAH Administrative Law Judge Christiaan Siano ("ALJ") on January 7, 2022, in the above-captioned matter and would respectfully show the following:

**I.  
SUMMARY OF EXCEPTIONS**

Complainants' file these Exceptions to the Proposal for Decision because it does not properly apply applicable law or Commission Rules and establishes precedents that are contrary to public policy, applicable law and Rules of the Commission. For the reasons presented below, Complainants request that the Commission find that the ALJ did not properly apply the law and rules applicable to standards of service by water utilities and found it proper for Respondent Aqua Texas, Inc. ("Aqua") to impose its drought management plan permanently to avoid making improvements necessary to meet normal reasonable demand. The Commission should reject the Proposal for Decision recommended by the ALJ and adopt the Findings of Fact, Conclusions of Law and recommended orders jointly presented by Complainants and PUC Staff. This action is appropriate under PUC Procedural Rule § 22.262(a)(1) for the reasons outlined below.

Complainants, after years of chronic water utility service inadequacies and loss of service while subject to continuous restrictions on use under the utility's drought management plan, filed their Formal Complaint alleging two violations of the law and PUC Rules by Aqua. Complainants' first and primary complaint is that Aqua has failed to provide facilities necessary to provide

continuous and reliable service to meet the normal, reasonable demands of their customers in the Rio Ancho Subdivision causing chronic service interruptions. The second violation is that Aqua has imposed permanent restrictions on water use under its approved drought management plan to reduce otherwise normal demand to avoid the cost of improvements needed to meet the normal and reasonable demand of its customers. Drought management plan restrictions, by rule, are intended for temporary conditions affecting supply or delivery, not as a permanent restriction.

## **II. UNDISPUTED FACTS**

The facts are, as the ALJ noted, not disputed. Between July 20, 2018 and July 20, 2020, Aqua's customers in the Rio Ancho Subdivision experienced either water pressure lower than the minimum required or loss of service on twenty-one (21) separate occasions. All but three (3) of these failures in service and Aqua's duty to provide continuous and reliable service were caused by the inability of Aqua's system to meet the known, predictable and reasonable water demand of these customers. During all relevant times, Aqua imposed restrictions on use under its drought management plan, limiting outdoor use to avoid making improvements needed to meet normal, unrestricted historic peak demand. The undisputed facts also establish that customer usage in the Rio Ancho Subdivision is higher than in other systems operated by Aqua in this area of Texas. For reasons clearly established in the record, the amounts of water used by Rio Ancho customers were reasonable, given the unique customer base: all customers own large homes on very large lots with required landscaping, many with irrigation systems and pools.

## **III. REASONABLENESS OF USE**

Aqua argues, and the ALJ apparently agreed, that this higher than average use establishes that these customers' usage is unreasonable. The record shows that, unlike all of these other systems operated by Aqua, the only customers served in the Rio Ancho Subdivision are homeowners with very large lots, landscape irrigation systems, swimming pools and homeowners' association covenants requiring well maintained landscaping. All the other systems used in the ALJ's comparison have a diversity of customers and, even in those serving primarily residences, the houses are on smaller lots; they do not have an average lot size of an acre. High demand, based upon identifiable reasons for the higher usage, does not establish that the amounts used are unreasonable.

Even with usage restrictions continuously in place, Aqua's system failed to meet even the restricted demands of these customers. Aqua imposed the most restrictive drought stage, intended for the most severe temporary conditions, for the entire period subject to this review with the exception of less than four (4) months in 2020, when restrictions were lessened to allow lawn watering twice a week. During these four months, the system failed to meet pressure minimums or failed altogether on six (6) separate occasions despite Aqua imposing Stage 1 usage restrictions.

Blaming customers for loss of service because of high demand is like blaming the catastrophic loss of electric service during the extreme cold of February 2020 on customer's high demand. Water utilities must be prepared to meet legitimate and reasonable peak demands, even if that demand is the result of outdoor water use.

The ALJ erroneously disagrees with the requirement that reasonableness of use be determined by the very factors that affect amounts used in the system being reviewed: lot size, amount of landscaping required by deed restrictions, size of homes and pools. Comparisons to other systems or statewide averages is not an appropriate comparison since other systems will, because of these factors, have lower demand. Concluding that amounts used by the Rio Ancho customers are excessive based on these comparisons fails to recognize the undisputed differences between Rio Ancho customers and those of other systems operated by Aqua. Most systems have a variety of customers with varied demand characteristics, with a small percentage of those customers using substantially more than the system average. In the Rio Ancho Subdivisions, all of the customers have large landscaped and irrigated lots and many have pools. Their usage is neither excessive nor unreasonable. PUC Staff, after reviewing all relevant information, concluded that water usage by Rio Ancho homeowners was reasonable and that deficiencies in service were caused when normal, anticipated and historic demand exceeded the system's ability to provide continuous service. PUC Staff correctly recognized that chronic low water pressure and loss of service incidents, while subject to perpetual limitations of use under Aqua's drought management plan, were the direct result of inadequacies in the Aqua system.

#### **IV. USING DROUGHT PLAN TO MASK SYSTEM INADEQUACY**

The ALJ's second fundamental error in applying the rules applicable to water utilities was determining that the full time, continuous and most restrictive drought limits on water use can be imposed permanently by a utility to avoid making improvements needed to meet historic and

anticipated peak demand. This is an entirely inappropriate use of a drought plan and is inconsistent with the intent stated in Aqua's own plan and quoted by the ALJ:

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

The record establishes that no restrictions have been imposed on Aqua's supply from its groundwater wells and that usage has not caused Aqua to exceed or even approach regulatory limits. Restrictions were not imposed by Aqua because of limits on the supply of water available to Aqua to meet demand. They have been imposed to restrict reasonable and beneficial use of the water, reduce peak demand, and prevent otherwise predictable loss of service caused by the system's inadequacies. The ALJ incorrectly states that: “Restrictions were used to ensure compliance with groundwater district's rules ....” The record is undisputed that Aqua was never in danger of violating the district's permit limits, nor was its well production restricted. As important, it owns a third well not subject to any permitting limits or restrictions. That leaves only the second reason cited by the ALJ, “... to prevent low pressure during periods of excessive demand and drought conditions.” Aqua's restrictions bear no relationship to drought – they have been imposed permanently, even when rainfall has been normal or even above average. The “excessive” use is not excessive – it is the normal, historic, predictable and reasonable demand of this customer base during the hotter months.

Both the ALJ and Aqua emphasize that other Central Texas utilities impose outdoor water use restrictions on a full time basis. First, these utilities must either have governmental power to implement such restrictions and must apply them to all of their customers or they need to be included in their approved tariff. Aqua has not included these restrictions in its tariff and has not imposed its drought management plan restrictions on a permanent basis in any other system it operates. Aqua is attempting to avoid making system improvements by full time imposition of measures which must, to comply with the requirements of the PUC Rules, only be implemented on a temporary basis to deal with temporary circumstances.

The ALJ, on page 12 of the PFD, cites the purpose of a drought contingency plan as: “To maintain an adequate supply during the various stages of drought conditions or other water supply emergencies.” The record affirmatively establishes that drought management plan restrictions were not imposed due to drought or other “emergencies” or “to comply with the requirement of a court, governmental agency, groundwater district, wholesale provider or other authority.” No such

limitations were ever imposed by the groundwater district and the groundwater supply was never restricted. Aqua's decision to impose usage restrictions was solely to limit known and reasonable peak usage to prevent their inadequate system from failing to meet the obligation to provide continuous and reliable service.

PUC Staff correctly concluded, as proven in the record, that Aqua was using its drought management plan on a fulltime basis to reduce anticipated peak demand and avoid making system improvements. The ALJ makes the statement that, "Aqua imposed restrictions in response to district curtailments and drought." The undisputed evidence establishes the exact opposite. Drought management plan restrictions have been imposed continuously without regard to drought and there were no "district curtailments" at all. Worse, the ALJ concluded that it is acceptable for a utility to use its drought management plan as "... an acceptable method of curtailing peak demand." The ALJ's proposal sanctions fulltime, permanent drought plan restrictions to avoid making clearly needed system improvements.

## **V. PRECEDENTS CONTRARY TO LAW, RULES AND POLICY**

The ALJ's Proposal for Decision, if adopted, would set two precedents that are contrary to the law, PUC Rules and public policy, would allow utilities to avoid making system improvements to meet expected demand, and would allow water utilities to use their drought plans to permanently restrict water use to avoid making improvements needed to meet the normal, reasonable needs of its customers. As the ALJ correctly noted, the two issues raised by this Complaint are matters of first impression. This is not surprising since, statewide, all utilities construct their systems to meet historic and anticipated peak demand and would, if peak demand exceeded capacity on a predictable basis, make system improvements. This Complaint became necessary to correct Aqua's refusal to do what is required by law and regulation. No utility has apparently ever attempted to avoid the obligation to make system improvements after chronic failures to provide continuous and reliable service. These two precedents are so fundamentally contrary to the intent of the law, PUC Rules and the public interest that their importance cannot be over-emphasized.

Using this decision as precedent, utilities can now blame failures to provide continuous and reliable service on what they deem is "unreasonable" demand. Second, they can impose what are intended to be temporary restrictions on water usage on a fulltime basis to avoid making improvements necessary to meet otherwise normal demand. Both precedents would abdicate the

Public Utility Commission's ("PUC") responsibility to ensure water utilities provide continuous and reliable service to the customers of their systems.

These precedents will authorize utilities to avoid making needed improvements based only on the utilities' conclusion that demand is "too high." System failures will be blamed on excessive use. It will also allow utilities to impose drought management plan restrictions as an "acceptable method of curtailing peak demand," as found by the examiner (PFD p. 23, ¶ 2), not because of temporary conditions, but permanently. Drought management plan restrictions should only be imposed when necessary due to temporary conditions such as drought or limitations on supply, not because the system's facilities are incapable of meeting demand. The ALJ even concedes that water use restrictions should be temporary – but then approves Aqua's permanent imposition of drought restrictions.

Remarkably, the ALJ correctly cites the applicable regulatory requirements applicable to continuity of service (16 TAC §24.205(l)) and the PUC's authority to order a retail utility to provide facilities necessary to meet anticipated demand. The ALJ also correctly cites the provision of this section requiring utilities to provide additional capacity above minimum standards to meet reasonable local demand.

The ALJ then proceeds to justify not invoking these provisions and recommending an order directing improvements to be made based solely on his comparisons of other systems' usage to Rio Ancho customers' usage – not the actual local demand in the Rio Ancho Subdivision.

The ALJ makes the same baffling error in citing Aqua's drought management plan's own statement of purpose: "To maintain an adequate supply of water during various stages of drought conditions or other water supply emergencies" and to "comply with the requirements of a court, government agency, groundwater district, wholesale provider or other authority," and then finding it appropriate to implement its drought restrictions in the Rio Ancho Subdivision for none of those reasons.

Authorizing and excusing system failures based on the utilities' conclusion that demand is excessive and allowing utilities to impose drought management plan restrictions permanently to avoid making system improvements are contrary to law, PUC Rules and the stated goal of utility regulation – insuring the public has a continuous and reliable water supply.

## **VI. IMPACT ON RATES**

The ALJ's concern about rate impact is completely misplaced. The record shows that Rio Ancho customers pay much higher bills than in any other Aqua System. The record shows that Aqua's capital budget for the regional systems it operates is \$70,000,000. It does not include any improvements to the Rio Ancho system. Thus, Rio Ancho customers will be paying for a portion of this cost in their water bills and will receive no benefit. Accepting the inflated estimate, by Aqua, of cost of improvements needed to meet known peak demand at \$700,000 would represent a one (1%) percent increase in their capital budget. Impact on system-wide rates would necessarily be insignificant.

## **VII. FINDINGS, CONCLUSIONS AND RECOMMENDED ORDER BASED UPON ERRONEOUS FINDING THAT USAGE IS UNREASONABLE**

All of the ALJ's Findings and Conclusions are based on his conclusion that the amounts of water used by the customers in the Rio Ancho Subdivision is unreasonable. From this conclusion, the ALJ then excuses the chronic loss of service and below minimum pressure failures, and the imposition of the most restrictive drought management limits on water use under threat of penalties. But the record establishes that the system fails as the result of normal, predictable and reasonable use without waste. The system cannot provide continuous and reliable service to these customers unless this normal and reasonable use is severely limited by drought management plan restrictions. Both Aqua and the ALJ concede that the system cannot meet peak demand unless usage is severely restricted. Even with these restrictions in place, the system has repeatedly failed. Water use in the subdivision is higher than in other systems operated by Aqua and statewide averages because the customers have normal, reasonable usage that is higher than average residential demand – not because unreasonable amounts of water are being used.

Loss of service from a water utility can be caused by one of three situations: (1) equipment failure, malfunction or repair; (2) diminished supply; or (3) inadequate capacity to meet demand. The chronic, inadequate service and loss of service in the Rio Ancho system were caused, with limited exceptions, by inadequate capacity to meet historic, predictable and reasonable demand, not equipment or supply issues. The typical utility response to loss of service caused by peak demand is to improve their system to insure that the system can meet what is then known as normal



and anticipated peak demand. More than one such failure should prompt urgent improvements. Not so with Aqua.

Despite at least eighteen (18) instances of water pressure lower than required by regulation or loss of service that were not caused by equipment issues, Aqua blames “excessive” use as the cause, even though the record establishes that the “excessive” demand is for a recognized beneficial use, is not wasted and is consistent, routine and predictable.. The ALJ’s Proposal for Decision allows Aqua to avoid responsibility for these violations based upon his conclusion that Rio Ancho customers are using “more” water than is reasonable. Worse, the ALJ finds use of Aqua’s drought restrictions on a full time basis appropriate to reduce peak demand, not because of constraints in supply or other temporary conditions, but to restrict authorized beneficial use which exceeds their system’s capacity. That is the equivalent to the PUC excusing the electricity blackouts last winter based upon excessive demand. Instead, the PUC correctly insisted that electric utilities make improvements to prevent a repeat of this loss of service caused by the high demand during the winter storm. Just as it was appropriate to insist on these improvements based upon this one event, the appropriate order from the PUC in this proceeding, given the repeated failures, is to order Aqua to make the improvements necessary to meet that demand and cease inappropriate implementation of its drought management plan on a permanent basis.

## **VIII. CONCLUSION**

The ALJ’s conclusion that chronic violations of a water utility’s duty to provide continuous and reliable water service are excusable because the amounts of water used by the Rio Ancho customers are unreasonable is contrary to the PUC Rules and Commission policy. Usage within the subdivision is higher than “average” use because these customers’ reasonable usage is not average. Higher demand by a residential customer is typically directly related to the size of the homes and residential lots. What is different from all other systems used by the ALJ to determine reasonableness is that all of the customers in Rio Ancho have reasonable needs greater than average demand. The record establishes that this usage is consistent with reasonable requirements of homes with the characteristics of the homes in the Rio Ancho Subdivision.

The ALJ’s decision is based upon the ALJ’s opinion that usage within the subdivision is “too high.” This conclusion ignores the basic reasons why usage is higher than average in Rio Ancho. Large landscaped lots with irrigation systems use more water than average – and that

anticipated demand must be met by a system constructed to meet that predictable, reasonable demand.

The Commission would be setting precedents which, if adopted, would be contrary to the requirements of the law and PUC Rules. Utilities could excuse system failures based upon their opinion that usage was “too high” and therefore not reasonable and that utilities can impose drought management plan restrictions on customers on a permanent basis to avoid making needed improvements to meet known customer usage, which is beneficial and reasonable.

The Commission should adopt the Findings of Fact, Conclusions of Law and Ordering Provisions submitted jointly by Complainants and the PUC Staff. Adopting the ALJ’s recommendations will doom Rio Ancho homeowners to perpetual, chronic failures of service and authorize permanent restriction on use reserved for the most severe temporary conditions affecting supply. Adopting the ALJ’s Proposal for Decision would set two precedents that are directly contrary to the legal and regulatory requirements applicable to public water systems and are contrary to the goal of the PUC – protect the utility customers of systems subject to PUC’s jurisdiction.

Complainants, for the reasons outlined, urge the Commission to reject the ALJ’s Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs and adopt the Findings of Fact, Conclusions of Law and Ordering provisions submitted jointly by Complainants and PUC Staff.

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 15<sup>th</sup> day of February, 2022, as follows:

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