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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attention:
Chairman Lake
Commissioner McAdams
Commissioner Cobos
Commissioner Glotfelty

February 16, 2022

RE: *Complaint of Certain Members of Rio Ancho Homeowners Association Against Aqua Texas, Inc.*, SOAH Docket No. 473-21-0246, PUC Docket No. 51091

Dear Commissioners,

Texas Association of Water Companies, Inc. (TAWC) is a Texas non-profit corporation established by Texas investor-owned water and sewer utilities to be the Texas chapter of the National Association of Water Companies (NAWC). TAWC currently has 11 members who operate water and sewer utilities throughout Texas. Aqua Texas, Inc. (Aqua) is one of our members, and our organization has been monitoring the proceedings in the above-referenced case involving a complaint filed against Aqua. This case has policy implications that affect all TAWC members. TAWC files this letter in support of the proposal for decision (PFD) and proposed order issued by the presiding Honorable Administrative Law Judge (ALJ) in the proceeding. TAWC respectfully requests that the Commission adopt the PFD and proposed order in full.

The primary issues in this case are: (1) whether Aqua is required to supply water capacity to meet abnormally high water demand, largely attributed to outdoor residential irrigation; and (2) whether the water use restrictions and schedules in a utility's drought contingency plan may be used to alleviate some of that demand even if implemented outside of a declared drought. The



ALJ's analysis of these issues is correct in all respects. As the Commission considers its final decision in this matter, TAWC highlights the following concerns for its members.

Reasonable Demand has Limits

Water utilities should not be *required* to design systems to meet unreasonable consumer demands. While a utility may choose to accommodate such demands if local characteristics permit that to occur, the parties opposite Aqua in this case would have Aqua found *out of compliance* for not fully meeting their demands at any level without irrigation schedule restrictions. That is very concerning to TAWC. Texas law recognizes that water utilities are constrained by local characteristics in their design and construction of water systems. 16 TAC §24.205 requires that water providers provide *reasonable* quantities of water for *reasonable* uses to meet *reasonable* local demand characteristics. The design of water systems above the TCEQ's general minimum of .6 gallons per minute (30 TAC §290.45) will be dictated to a large extent by regional characteristics that vary widely across Texas. What is reasonable local demand in southeastern Texas may not be reasonable in a more arid part of the state with stricter conservation requirements. Factors such as resource conservation, physical constraints, and regulatory limitations in a system area must be factored into a determination of whether water provision is reasonable. The record in this case shows Aqua presented evidence attempting to define those limits while other parties did not. Further, the record shows the TCEQ did not require Aqua to install additional capacity even though Aqua in fact added capacity well above minimum requirements for certain system components. Generally, however, reasonable demand must have *some* definition or water utilities will never be able to comply.

Water Utility Deference is Warranted

Water utilities have innate credibility when deciding to reduce the volume of water provided or restrict its use because most, if not all, have a rate structure with a volumetric component that incentivizes them to provide customers with as much water as is reasonably and prudently possible. Water utilities have no rational basis to artificially lower the supply they provide to their customers. For this reason, regulators should generally defer to a water utility's



determination that a customer or customer group has exceeded reasonable usage or develop objective design standards that can be applied. However, doing the latter would have to consider varying water source availability and other local characteristics.

Drought Contingency Plans are Important Tool

Water utilities must not be constrained in their ability to lawfully implement drought contingency plans (DCPs) in order to promote water conservation *and* ensure a safe and adequate water supply. DCPs are an essential tool in a utility's tool kit to react to both declared droughts and other emergency conditions that require temporary water use restrictions. As the ALJ in *Rio Ancho* stated, temporary restrictions may be the result of excessive customer usage. In such an instance, a utility should not be faulted for enacting measures that are a direct result of unreasonable usage.

PUC/TCEQ Overlapping Regulation

The Commission should consider whether some of the issues raised in this case are more within the purview for assessment by technical staff at TCEQ. TCEQ has rules that address minimum public water system standards, authorize the TCEQ to direct a public water system to add capacity, and specify what is required or allowed as part of a DCP. TCEQ also has staff trained to implement those rules.

TAWC hopes that these comments will serve to better inform the Commission's policy decisions in this matter. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ashley M.', with a stylized flourish at the end.

Ashley Myers
TAWC, Executive Director