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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 REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION

COMES NOW Aqua Texas, Inc. (Aqua or Respondent) and files this reply to the Exceptions to Proposal for Decision filed by Commission Staff (Staff) and Complainants. In support, Aqua shows as follows.

Neither Staff nor Complainants offer any new arguments that were not fully considered by the presiding Honorable Administrative Law Judge (ALJ) in his proposal for decision (PFD).¹ In fact, Complainants do not even point to any specific “evidence [or] law relied upon. . .with particularity” in making their arguments as Commission rules require.² Complainants instead have decided to test the credulity of the Commission by equating brief, infrequent, local service interruption events in the Rio Ancho Subdivision with the disastrous circumstances and events surrounding Winter Storm Uri last year that affected millions of Texans.³ Equating a historic storm with localized service interruptions that were shown by a preponderance of the evidence to be within Complainants’ control—had Complainants adhered to reasonable watering schedules and use—does not render Complainants’ water usage reasonable or negate the logic of the ALJ’s PFD. Aqua hopes that the Commission will not be swayed by attempts to sensationalize the straightforward facts of this case or detract from the ALJ’s correct PFD determinations based on the competent record evidence and the law. Using the proper analysis, the ALJ correctly found

¹ Proposal for Decision (Jan. 7, 2022) (Interchange Item No. 76) (PFD).

² See 16 TAC § 22.261(d)(2).

³ See Complainants’ Exceptions to Proposal for Decision at 3 and 8 (Feb. 15, 2022).

that the Complainants failed to meet their burden of proof and the Commission should take no action against Aqua here.⁴

In reply to Staff's exceptions, Aqua submits that the ALJ's PFD analysis is correct. Staff opines that the ALJ's determinations on key issues are wrong, and Staff affirms its prior positions expressed in earlier briefing.⁵ But the PFD demonstrates that Staff's positions lack any factual underpinning. Throughout this proceeding, Staff has not attempted to analyze the reasonableness of Rio Ancho Subdivision local demand characteristics in conjunction with other local characteristics important to that analysis in a meaningful, technical way.⁶ The applicable Commission rules use the term "reasonable" in multiple places for a reason.⁷ Not all water use can be presumed "reasonable" at any level or in any manner. If that were the case, the term would not be in the Commission's rules. Moreover, such an interpretation completely disregards water conservation efforts promoted by the Commission and other agencies, such as the Texas Commission on Environmental Quality (TCEQ), Texas Water Development Board, and the Central Texas Groundwater Conservation District (CTGCD), the GCD with jurisdiction over most of the Rio Ancho Subdivision. Aqua's experts presented the correct analysis of reasonableness and Aqua's drought contingency plan (DCP) use, and the ALJ agreed.⁸

Complainants' exceptions are wrong for similar reasons. Throughout this case, Complainants have consistently attempted to place the blame for certain service interruption events on Aqua and wrongfully accused Aqua of "limiting outdoor use to avoid making improvements needed to meet normal, unrestricted historic peak demand."⁹ Complainants believe that because

⁴ PFD at 1 and 27.

⁵ Commission Staff's Exceptions to the Proposal for Decision (Feb. 15, 2022).

⁶ PFD at 21.

⁷ 16 TAC § 24.205(1)-(2).

⁸ PFD at 20-23.

⁹ Complainants' Exceptions to Proposal for Decision at 2 (Feb. 15, 2022).

they “own large homes on very large lots with required landscaping, many with irrigation systems and pools” they have the right to use as much water as they want for outdoor irrigation whenever they want.¹⁰ However, the *ability* to consume abnormally high volumes of water does not necessarily render such demand reasonable for a semi-arid area like Central Texas. Complainants’ philosophy would require Aqua to design systems to accommodate excessive water consumption, directly conflicting with Aqua’s statutory charge to promote the opposite.¹¹

Complainants have advocated for unlimited outdoor use without regard for what is “reasonable” in the Rio Ancho Subdivision.¹² As the ALJ highlights, Complainants’ expert opined that the only limitation to reasonableness “is waste – water running off the lot and down the street.”¹³ Aqua’s Rio Ancho water system facilities already exceed the TCEQ minimum for various key system capacity requirements, such as those established for well capacity, storage tanks, booster pumps, and hydropneumatics tanks.¹⁴ But Complainants’ witness testified that even if it takes Aqua building system capacity that exceeds the TCEQ minimum requirements by a factor of 5 or more, Aqua is required to do that to accommodate the Rio Ancho customers’ *actual* demand characteristics without limitation despite what may be *reasonable*.¹⁵ That position is inconsistent with the applicable Commission rules.¹⁶ The ALJ has correctly analyzed the issue of “reasonableness” in his PFD.¹⁷

Complainants would have the Commission ignore the cost/rate impact of an Aqua capital improvement decision to meet all Rio Ancho Subdivision customers’ actual demand regardless of

¹⁰ Complainants’ Exceptions to Proposal for Decision at 2 (Feb. 15, 2022).

¹¹ PFD at 22-23 (discussing state’s water conservation policy and Central Texas GCD regulations) and 24 discussing TWC § 13.145(a)(2) requirement to promote conservation in consolidated water rates).

¹² Complainants’ Exceptions to Proposal for Decision at 2-3 (Feb. 15, 2022).

¹³ PFD at 16 (citing Tr. at 54, 60 (Rauschuber Cross)).

¹⁴ PFD at 10-11 (discussing Aqua evidence comparing Aqua system facilities with TCEQ Chapter 290 requirements).

¹⁵ PFD at 16 (citing Tr. at 63-64 (Rauschuber Cross)).

¹⁶ 16 TAC § 24.205(1)-(2).

¹⁷ PFD at 20-23.

reasonableness.¹⁸ As the PFD highlights, Aqua’s evidence shows how its management has good cause to be concerned about how its capital decisions affect all customers within a rate region and how those decisions might be viewed by customers outside the Rio Ancho Subdivision *or even by the Commission* in a future rate case with no assurance of recovery.¹⁹

Complainants have also accused Aqua of using its DCP to avoid making improvements.²⁰ The evidence simply does not support this conclusion, nor does the ALJ’s analysis in his PFD.²¹ Aqua properly used its DCP throughout the relevant period. As stated throughout this proceeding, Aqua has no incentive to restrict customers unnecessarily. Aqua wants to sell Rio Ancho customers as much water as is reasonable and prudent and will do so as local conditions allow. But the type of improvements Complainants seek are unwarranted and limitless.²² Complainants attempt to minimize the cost/rate impact of such improvements, but perhaps other Aqua customers would feel differently.²³ Improvement decisions require consideration of multiple factors and the interests of all utility customers because the regionalized rates favored by the Commission factor in capital improvements made on a regional basis—not on a per neighborhood basis.²⁴

Finally, Aqua disagrees with Complainants’ characterization of precedents that a Commission decision adopting the PFD would set.²⁵ The Commission would simply be applying its rules in a reasonable fashion based on the record evidence without penalizing water utilities for making rational decisions when trying to comply with both TCEQ and PUC mandates. The

¹⁸ PFD at 25-27.

¹⁹ *Id.*; see also Staff Ex. 1 at 12:1-3 (Graham Dir.) (“Q: Are you addressing how Aqua should recover reasonable and necessary costs to supply water to the Rio Ancho Subdivision? A: No. That issue will be addressed in a future rate case.”)

²⁰ Complainants’ Exceptions to Proposal for Decision at 3-5 (Feb. 15, 2022).

²¹ PFD at 23-24.

²² PFD at 25-27.

²³ Complainants’ Exceptions to Proposal for Decision at 7 (Feb. 15, 2022).

²⁴ PFD at 7 and 25-27 (citing Aqua Ex. 1 (Laughman Dir.)).

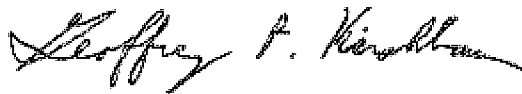
²⁵ Complainants’ Exceptions to Proposal for Decision at 5-6 (Feb. 15, 2022).

prospect advocated by Staff and Complainants of finding Aqua out of compliance with Commission rules for not making improvements that are unspecified and limitless is unjust and unworkable, in addition to anti-water conservation.²⁶ If adopted by the Commission, Staff's position would allow homeowners associations to set State water policies.²⁷ In addition to being unsupported by the record, rejecting the PFD would be bad public policy for Texas.

CONCLUSION

The Commission should reject Staff's and Complainants' exceptions to the PFD. The ALJ's PFD properly considers the evidence and the law, and the PFD's proposed findings of fact, conclusions of law, and ordering paragraphs are sound. The PFD is correct in all respects, and Aqua respectfully requests that the Commission adopt it.

Respectfully submitted,

By: 

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ATTORNEYS FOR AQUA TEXAS, INC.

²⁶ PFD at 25-27.

²⁷ PFD at 22.

CERTIFICATE OF SERVICE

I hereby 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 23, 2022, in accordance with the Orders Suspending Rules issued in Project No. 50664.

A handwritten signature in black ink, reading "Geoffrey P. Kirshbaum". The signature is written in a cursive, flowing style.

Geoffrey P. Kirshbaum