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**DOCKET NO. 51091**

**COMPLAINT OF RIO ANCHO § BEFORE THE PUBLIC UTILITY**  
**HOMEOWNERS ASSOCIATION AND §**  
**DAVID AND DOREEN MEYERS § COMMISSION OF TEXAS**  
**AGAINST AQUA TEXAS, INC. §**

**AQUA TEXAS, INC.’S LIST OF ISSUES**

COME NOW Aqua Texas, Inc. (Aqua) and files this List of Issues in response to the Commission’s Order of Referral.<sup>1</sup> In support, Aqua shows as follows.

**I. BACKGROUND**

On July 20, 2020, Rio Ancho Homeowners Association, its individual members David and Doreen Meyers, and a number of complainants included on a list attached to the complaint (Complainants) filed a “Formal Complaint” against Aqua (the Complaint).<sup>2</sup> On August 10, 2020, Aqua moved to dismiss the Complaint for lack of jurisdiction and failure to state a claim for which relief can be granted by the Commission, but, subject to its motion to dismiss, Aqua also responded to the Complaint and denied violating 16 TAC § 24.205(1) as alleged.<sup>3</sup>

Aqua has not received a ruling on its Motion to Dismiss (Motion) and hereby incorporates its Motion and response here.<sup>4</sup> Commission Staff has recommended dismissing several of the Complainants for failure to present their complaint for informal resolution before presenting the formal Complaint, but there is no ruling at this time even though none of those Complainants responded to Staff’s recommendation by the September 9, 2020 deadline.<sup>5</sup>

In the meantime, the Commission’s Order of Referral set a deadline of October 12, 2020 for Aqua, the Complainants, and Commission Staff, to file a list of issues that should or should not

<sup>1</sup> Order of Referral (Sep. 29, 2020).

<sup>2</sup> Complaint (Jul. 20, 2020).

<sup>3</sup> See Aqua Texas, Inc.’s Motion to Dismiss and Response to Formal Complaint (Aug. 10, 2020).

<sup>4</sup> See *id.*

<sup>5</sup> Commission Staff’s Statement of Position at 2 (Aug. 19, 2020); Order No. 2 Allowing Responses and Denying Attorney’s Fees (Aug 31, 2020).

be addressed in this docket, and identify any threshold legal/policy issues that should be briefed for purposes of a preliminary order.<sup>6</sup> Therefore, this pleading is timely filed.

## II. LIST OF ISSUES

For reasons stated in its Motion, Aqua submits that no Complaint issue should be referred for a contested case hearing at the State Office of Administrative Hearings (SOAH). If the Complaint is referred to SOAH despite the issues raised in Aqua's Motion, then the following issues should be addressed:

1. Has Aqua violated 16 TAC § 24.205(1)?
2. Has the Texas Commission on Environmental Quality (TCEQ) ordered Aqua to construct any of the public drinking water system facilities the Complainants allege should be added to Aqua's Rio Ancho Subdivision water system (PWS ID No. 0270141) (Rio Ancho)?
3. If a public drinking water system substantially exceeds TCEQ's 30 Texas Administrative Code, Chapter 290 standards, does that mean "reasonable local demand" is met as a matter of law?
4. Should the Commission order Aqua to construct Rio Ancho public drinking water system facilities that TCEQ has not ordered Aqua to construct?
5. What are "the reasonable local demand characteristics of the service area, including reasonable quantities of water for outdoor usage" that Complainants allege Aqua should provide to Rio Ancho customers?
6. What is the daily peak demand for the Rio Ancho system customers?
7. What is the monthly peak demand for the Rio Ancho system customers?
8. When are alleged system outages or pressure loss occurring and do those outages correspond with lawn irrigation?
9. Are the Rio Ancho customers' monthly water consumption levels collectively unreasonable?

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<sup>6</sup> Order of Referral (Sep. 29, 2020).

10. Are any of Rio Ancho customer's monthly water consumption levels individually unreasonable?
11. Are any of the Complainants' monthly water consumption levels individually unreasonable?
12. Should Aqua's Rio Ancho customers reduce their water consumption instead of the Commission ordering Aqua to build additional facilities?
13. Would it be reasonable and prudent for Aqua to build the facilities Complainants request?
14. Would it be reasonable and prudent for Aqua to build the facilities Complainants request without a Commission order to do so?
15. Are there local groundwater conservation districts that regulate Aqua Rio Ancho water system well pumping?
16. Do local groundwater conservation district regulations or permits issued to Aqua under same limit the amount of water Aqua may provide for Rio Ancho water system customers?
17. Can the Commission order Aqua to provide more water to Rio Ancho water system customers than Aqua's existing local groundwater conservation district well permits allow?
18. Can the Commission order Aqua to seek permission from local groundwater conservation districts to pump more water than Aqua's existing well permits allow?
19. Is it feasible for Aqua to develop a greater water supply for its Rio Ancho water system customers than currently exists? If so, is it economically reasonable for Aqua to develop a greater water supply for its Rio Ancho water system customers than currently exists?

### **III. ISSUES THAT SHOULD NOT BE ADDRESSED**

No issues should be addressed. The Complaint should be dismissed pursuant to Aqua's Motion. If not dismissed, recovery of Complainants' attorney's fees should not be addressed in accordance with the Commission Administrative Law Judge's ruling in Order No. 2.<sup>7</sup>

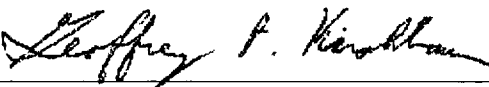
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<sup>7</sup> Order No. 2 Allowing Responses and Denying Attorney's Fees (Aug. 31, 2020).

#### IV. THRESHOLD LEGAL/POLICY ISSUES

Aqua's Motion raises threshold issues that the Commission should decide before a SOAH contested case hearing commences. Aqua offers to provide additional briefing on those issues if the Commission would find it helpful.

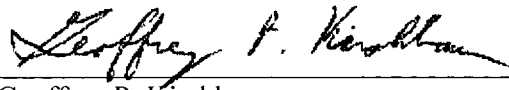
Respectfully submitted,

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ATTORNEYS FOR AQUA TEXAS, INC.

#### 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 October 8, 2020 in accordance with the Orders Suspending Rules issued in Project No. 50664.

  
Geoffrey P. Kirshbaum