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DOCKET NO. 51787

**COMPLAINT OF NUECES BAY
TRACTS, LLC AGAINST RINCON
WATER SUPPLY CORPORATION**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S SUPPLEMENTAL STATEMENT OF POSITION

On February 3, 2021, Nueces Bay Tracts, LLC (Nueces Bay) filed a formal complaint against Rincon Water Supply Corporation (Rincon) regarding the extension of water service to a proposed subdivision. This complaint was filed under 16 Texas Administrative Code (TAC) § 22.242. On May 26, 2021, Nueces Bay amended its complaint, stating that Rincon had effectively refused service and violated multiple tariff provisions.

On March 10, 2021, the administrative law judge (ALJ) filed Order No. 2, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental statement of position regarding the complaint by June 3, 2021. Therefore, this pleading is timely filed.

I. NUECES BAY'S AMENDED COMPLAINT

Nueces Bay complains that Rincon has effectively refused service to Nueces Bay “by failing to act on [Nueces Bay]’s requests for service and/or not acting on the requests timely.”¹ The amended complaint also alleges that Rincon has violated a minimum of five distinct tariff provisions.² Nueces Bay states that, on two separate occasions, it did not receive proper notice, as required by the tariff, of a failure to comply with a prior written statement or commitment. Nueces Bay also complains that, after it paid the necessary fees, Rincon, in violation of its tariff, did not advertise or accept bids for construction of the water system.³ Nueces Bay further alleges that, in requiring Nueces Bay to comply with the City of Portland’s codes and ordinances, while the Deputy City Manager of City of Portland has stated the Nueces Bay development is not subject to the City of Portland requirements, violates Rincon’s tariff, which states that “[d]esign and

¹ First Amended Complaint of Nueces Bay Tracts, LLC Against Rincon Water Supply Corporation at 6 (May 26, 2021).

² *Id.* at 6-9.

³ *Id.* at 7.

construction of developments are under the authority of the City.”⁴ Additionally, Nueces Bay argues that Rincon has violated its tariff by requiring Nueces Bay to acquire new easements for the water line where Rincon already has existing, perpetual easements.⁵

Nueces Bay requests that the Commission direct Rincon to provide water service to Nueces Bay in accordance with its CCN without further delay.

II. RINCON’S RESPONSE

Staff discussed Rincon’s response to the original complaint in its statement of position filed on March 5, 2021. As of the date of this filing, Rincon has not filed a response to Nueces Bay’s amended complaint.

III. STATEMENT OF POSITION

The facts are in dispute as to whether Rincon has committed any violations of its tariff or a violation of 16 TAC § 22.247(a), which requires a retail public utility to “provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area.” Therefore, Staff recommends that this proceeding be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits. Accordingly, Staff does not propose a procedural schedule at this time. Should the Commission refer this proceeding to SOAH, Staff anticipates working with the Nueces Bay and Rincon to reach an agreed-upon procedural schedule prior to a prehearing conference.

IV. CONCLUSION

For the reasons discussed above, Staff respectfully requests that this docket be referred to SOAH for a hearing.

⁴ *Id.* at 7.

⁵ *Id.* at 8.

Dated: June 1, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

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 June 1, 2021, in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander
Merritt Lander