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

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BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**RINCON WATER SUPPLY CORPORATION'S RESPONSE TO FIRST  
AMENDED COMPLAINT OF NUECES BAY TRACTS, LLC**

Respondent Rincon Water Supply Corporation ("Rincon") files this Response to the First Amended Complaint filed on May 26, 2021 (the "Amended Complaint") by Nueces Bay Tracts, LLC ("NBT").

**I. Introduction**

Rincon is a domestic non-profit water supply corporation registered with the Texas Secretary of State under corporation Charter No. 0038068201. Under its water certificate of convenience and necessity ("CCN") No. 11440, Rincon is authorized to provide retail water service in San Patricio County. Rincon currently provides water service to approximately 1,418 connections through its public water system registered under PWS No. TX2050078.

The Amended Complaint makes certain inaccurate factual assertions in the section of the Amended Complaint titled "Background". The Amended Complaint then identifies five Rincon tariff provisions which NBT alleges were violated by Rincon. This response addresses the inaccurate assertions contained in the Background section of the Amended Complaint and the specific tariff violations alleged by NBT.

**II. General Response**

Rincon disagrees that it has done anything to warrant the filing of the Amended Complaint or the Commission's ordering of any remedial action. As described in Rincon's specific responses to the allegations of the Amended Complaint set out below, Rincon's actions to date with respect to NBT's proposed project have been entirely reasonable and in compliance with the requirements of its tariff concerning providing service to new subdivision projects. NBT's actions have

displayed a disturbing pattern of NBT purporting to act as Rincon's agent and trying to usurp the proper role of Rincon's engineer in designing, permitting and contracting for installation of the water infrastructure needed for NBT's project. The delays and disagreements complained of by NBT generally arise out of several changes to the project by NBT which necessitated further engineering review and design work by Rincon.

### **III. Specific Responses to NBT Assertions in "Background" Section of Amended Complaint**

Rincon responds as follows to the statements of NBT as numbered in the Background section of the Amended Complaint.

#### NBT Assertion:

1. On March 6, 2015, NBT filed a Notice and Agreement of Proposed Public Utility Pipeline and/or Main Activity within San Patricio County Right of Way, the first regulatory step in securing water for 90 acres of undeveloped farmland intended for residential development outside the corporate boundaries of the City of Portland and, as of May 6, 2019, inside the extraterritorial jurisdiction ("ETJ") of the City of Portland (hereinafter the "NBT site").

#### Rincon Response:

There is no regulatory requirement to obtain a public roadway easement from San Patricio County. Rincon informed NBT that under Rincon's tariff, private easements were required rather than public right-of-way easements. But apparently because NBT did not want to deal with two property owners, Kimberley Hunt (now deceased) and Atlee ray Dubose, to secure private easements, NBT made the decision to seek public roadway easements from San Patricio County.

#### NBT Assertion:

2. On December 31, 2015, Rincon Water Supply Corporation ("Rincon") filed an application with TxDOT to bore under FM 893 to extend water service to the NBT site, which approval was granted February 7, 2017.

#### Rincon Response:

Rincon did not file the application for a roadway bore permit at TxDOT. NBT purported to act on behalf of Rincon in seeking this TxDOT permit without Rincon's knowledge or consent. NBT made direct contact by phone and in-person with David Brinks of TxDOT to file applications for road crossing permits. In doing so, NBT infringed on the proper role of Rincon's engineer as the authorized agent of Rincon in obtaining the TxDOT permit. Rincon informed NBT from the start that any required permit filing would be handled only by Rincon's engineer and not by NBT as the project developer.

#### NBT Assertion:

3. On July 11, 2016, NBT delivered a check for \$26,000 for the purchase of pipe ordered by Rincon's general manager so its waterline could be extended to the NBT site. The check was

cash, this money has not been returned, and the pipe remains sitting unused at the NBT site.

Rincon Response:

Rincon purchased the pipe and fittings using the \$26,000 in funds advanced by NBT and Rincon then sold and delivered the pipe and fittings to NBT. Rincon acquiesced to NBT's request for handling of this purchase in this manner in an effort to help reduce the costs associated with the construction of NBT's development.

NBT Assertion:

4. On February 19, 2017, NBT paid a \$1,625 fee to Rincon to reserve taps for 13 connections within the NBT site. On July 17, 2017, \$1,300 was refunded to NBT since the original \$1,625 included a non-refundable portion of the fee.

Rincon Response:

NBT was informed at the time of the deposit of funds of the requirement to complete a service application for each desired connection and the time frame in which such applications were to be submitted to Rincon. At NBT's request, Rincon allowed additional time to submit the applications, but NBT still failed to submit the required applications claiming that the applications each required a service address, but since the development had not been properly platted at the time no addresses existed. Because the service applications were not submitted by NBT, Rincon refunded the refundable portions of the application fees.

NBT Assertion:

5. On December 8, 2017, NBT paid Rincon \$21,000 for engineering costs, none of which has been refunded or reimbursed.

Rincon Response:

The funds were appropriately utilized for payment of engineering and associated costs to obtain the CCN amendment and to design water facilities for NBT's original 14-lot development. As those costs were all appropriately incurred by Rincon, NBT is not entitled to refund or reimbursement of the \$21,000.

NBT Assertion:

9. Between May and August 2019, final plans for the water line were completed and approved by Rincon and the project to extend water service to NBT was advertised for bid, which bid approval was tabled by the Rincon Board of Directors on November 19, 2019.

Rincon Response:

At the Rincon Board meeting on August 20, 2019, the Board was scheduled on its agenda to consider the completed water line engineering plans for NBT's originally proposed 14-large lot development, but just prior to the Board meeting, NBT requested that the Board table that agenda item. At this point in time, Rincon engineer's design work for 4-inch water lines to the NBT development had been completed and placed out for bids. NBT appeared at the Rincon Board of Directors meeting in November 2019 and presented a new, drastically revised plat for 128 smaller-sized lots. Because of such a drastic change in NBT's project plans, the Board had

no choice but to table the request because of the need for new water facilities feasibility and engineering work to be done by Rincon's engineer for the revised project.

NBT Assertion:

10. On May 13, 2020, Rincon informed NBT for the first time that it would be subject to City of Portland design standards (i.e., fire flow) after inclusion within the Portland ETJ on May 6, 2019.

Rincon Response:

Under an agreement between the City of Portland and Rincon, Rincon is required to comply with the Portland's water utility construction requirements for projects within Portland's ETJ. Rincon understood at that time that Portland's water utility construction requirements applied to the NBT project since Portland had extended its ETJ to include the NBT project area.

NBT Assertion:

11. On May 19, 2020, City of Portland City Manager Brian DeLatte, P.E stated that City approval was not needed for the NBT-Rincon water line project since the development process began before the City's ETJ was extended to include the NBT site.

Rincon Response:

In a May 22, 2020 Email to Mr. Fay, Mr. Delatte also stated: *"As I mentioned on the phone, the City of Portland and Rincon are currently negotiating for the expansion of Rincon's Certificate of Convenience and Necessity (CCN) with the Public Utilities Commission. In the event that an agreement is reached, projects within Rincon's service area that are in Portland's ETJ may be required to be constructed to Portland's standards. **It is unclear whether your project could be "grandfathered" under such an arrangement.**"* (emphasis added). At the Rincon Board meeting on September 15, 2020, NBT again revised its project, this time from 128 lots to a 22-lot subdivision, with 84 to 100 additional lots to be developed at an unspecified later date. It was not until May 26, 2021 that Rincon was able to get verification from Portland as to the "grandfathered" status of NBT's current proposed Phase 1 development and that fire protection water supply will not be required for the project, but it will be required to utilize C-900 pipe for construction purposes.

NBT Assertion:

13. On February 3, 2021, NBT filed a formal complaint against Rincon with the Commission for refusal to provide it water service.

Rincon Response:

As described in this response, almost all of the problems and delays complained of by NBT were the result of its own changes in project plans and NBT's misconception that it has the right to design, contract for and install the needed water infrastructure. Rincon stands ready to provide water to NBT's development and has presented a fair and reasonable approach for paying for the construction of needed upgrades to the water distribution and pumping systems.

NBT Assertion:

17. On April 14, 2021, NBT paid a \$2,425 fee to Rincon to reserve taps for 22 connections within the NBT site.

Rincon Response:

Rincon did not require NBT to pay the \$25 per connection non-refundable fee for the original 13 connection requests. NBT completed the required service application forms, including legal addresses for each of the 22 lots within the phase 1 project. The design work by Rincon's engineer is under way and should be completed shortly. However, Rincon has advised NBT that it needs CAD drawings of NBT's phase 1 subdivision plat so that Rincon's engineer can complete the design work, but to date NBT has not provided the CAD drawings, nor even advised Rincon of who it has engaged as its engineer for the Phase 1 project.

#### **IV. Specific Responses to Alleged Violations of Rincon's Tariff**

##### **A. Rincon Tariff, Section 3.06(iv).**

NBT alleges that Rincon failed to notify NBT within five days of the date Rincon's general manager determined that NBT "failed to timely comply with a prior written statement or commitment" as required by Section 3.06(iv) of Rincon's tariff when Rincon refunded the refundable portions of the 13 service application fees paid for by NBT on February 19, 2017. To the contrary however, this is not a violation of Section 3.06(iv) because (1) there is no showing or even allegation as to the date that Rincon's general manager made the determination to reject the service applications; and (2) rejecting NBT's service applications for failure to be properly completed with all required information is a mere administrative action by Rincon, not a non-compliance with a "prior written statement or commitment" of NBT. For the same reasons, the tariff provision allowing for a 10-day opportunity to cure is not applicable. Regarding NBT's payment of \$2,425 in reservation fees for its current 22-lot development, there is no alleged non-compliance with a "prior written statement or commitment" of NBT. Rincon fully intends to provide water service to NBT's current phase 1 project and has advised NBT in writing of all actions necessary under its tariff to provide the service. At this point, "the ball is in NBT's court" as Rincon is waiting on NBT to provide Rincon's engineer with CAD drawings of NBT's phase 1 project.

##### **B. Rincon Tariff, Section 3.07(a)(iv)(j)(ii).**

NBT alleges that Rincon failed to open and publicly read aloud the bid for water line construction that was to be considered by the Rincon Board at its August 20, 2019 meeting. To

the contrary however, the bids for NBT's originally proposed 14-lot subdivision were scheduled to be opened and read in public at the August 20, 2019 Board meeting, but just prior to the Board meeting, NBT itself requested that the Board table that agenda item due to NBT's stated intent to revise its development project.

**C. Rincon Tariff, Section 3.08(a).**

NBT alleges that Rincon inappropriately required NBT to comply with the City of Portland's development standards requiring 6-inch water lines for fire protection purposes. To the contrary however, as stated above, the Email of May 22, 2020 from Brian Delatte states that under Portland's agreement with Rincon, development projects within Rincon's service area that are in Portland's ETJ may be required to be constructed to Portland's standards and that it is unclear whether NBT's project could be grandfathered under such an arrangement. Now that Rincon has confirmed with Portland that NBT's project is grandfathered, Rincon is not requiring NBT to comply with Portland's water facility standards. Nevertheless, under TCEQ's public water system rules at 30 TAC § 290.44(c), Rincon's licensed professional engineer has determined that a minimum line size of 6 inches is required in this case in light of NBT's proposed Phase 2 project and other factors as described in § 290.44(c).

**D. Rincon Tariff, Section 3.06(a)(vii).**

NBT alleges that Rincon required NBT to obtain private water line easements from two property owners (Hunt and Debose) when such easements were unnecessary due to there being an existing water line easement on those two properties. NBT asserts that Rincon's requiring new private water line easements for NBT's project constitutes a refusal of service.

The facts are that Kimberley Hunt (now deceased) stated that she did not want a water line along the western boundary of her property and that when the original easement was granted, it was only for a single water line along the southern boundary of her property. Atlee Ray Dubose also objected because the existing easement on his property was only for a single 3-inch water line along the CR 2202 public roadway. In fact, Mr. Dubose apparently felt so strongly about this that he took the further step of intervening in Rincon's CCN amendment application in Docket No. 48104 (see Interchange Item Nos. 13 and 14). Because the existing water line easements on the Hunt and Debose properties were not adequate to allow for installation of the water lines needed

to serve NBT's project as then-proposed, Rincon's requiring NBT to obtain such easements is entirely appropriate under Rincon's tariff and cannot constitute a refusal to serve.

**E. Rincon Tariff, Section 3.06(iv).**

NBT alleges that Rincon failed to notify NBT within five days of the date Rincon's general manager determined that NBT "failed to timely comply with a prior written statement or commitment" as required by Section 3.06(iv) of Rincon's tariff when Rincon determined that pumping station capacity upgrades would be necessary to serve NBT's latest revised project proposal. To the contrary however, the need for pumping capacity improvements to serve NBT's revised project after a significant lapse of time due to NBT's own repeated project changes is not a violation of Section 3.06(iv) as there is no non-compliance with a "prior written statement or commitment" of NBT. Rincon has acted with all appropriate diligence in responding to NBT's repeated changes in its project and has promptly responded to NBT identifying all actions needed to be taken by NBT to move its project forward. On May 27, 2021, Rincon sent a letter to NBT containing all estimated costs and steps needed to move the project forward and Rincon's engineer is working on the design of the needed waterline and pumping improvements, but that work cannot proceed until Rincon receives CAD drawings of NBT's current subdivision plat. After requesting NBT on June 8, 2021 to simply identify its engineer so Rincon's engineer can obtain the CAD drawings, NBT has still not provided the CAD drawings nor even advised Rincon that NBT has engaged an engineer.

**V. Conclusion and Request for Relief**

Based on the above facts, the Amended Complaint has not stated adequate grounds for the Commission to determine that Rincon has "refused service" to NBT. Rincon has at all times treated NBT professionally and reasonably, with due diligence, and in accordance with Rincon's tariff, especially given the various project changes made by NBT. Accordingly, NBT's Amended Complaint should be summarily dismissed, and no remedial action should be ordered by the Commission. Nevertheless, Rincon stands ready to discuss this matter with NBT and Rincon will do whatever it can, subject to the terms and conditions of its tariff, to accommodate the needs of NBT for its project in as expeditious a time frame as possible.



Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies 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 24, 2021 in accordance with the Order Suspending Rules issued in Project No. 50664.



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Stephen C. Dickman