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Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Austin Spraetz
Commission Advising

RE: *Complaint of Nueces Bay Tracts, LLC against Rincon Water Supply Corporation*, Docket No. 51787, Draft Preliminary Order, August 19, 2021 Open Meeting, Item No. 30.

DATE: August 12, 2021

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at August 19, 2021 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the August 19 open meeting.

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PUC DOCKET NO. 51787

COMPLAINT OF NUECES BAY TRACTS, LLC AGAINST RINCON WATER SUPPLY CORPORATION	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

DRAFT PRELIMINARY ORDER

Nueces Bay Tracts, LLC filed a formal complaint against Rincon Water Supply Corporation related to Rincon's refusal to provide Nueces Bay water service. This preliminary order identifies the issues that must be addressed.

I. Complaint

Nueces Bay asserts that Rincon has refused a water service request regarding extension of water service to a proposed subdivision. In general, Nueces Bay states that Rincon has effectively refused to provide service by failing to timely act on Nueces Bay's requests for service. Nueces Bay states that it is waiting on two engineering plans in order to progress with its proposed subdivision. Additionally, Nueces Bay also asserts in the course of requesting water service that Rincon has committed multiple violations of its tariff including failure to provide proper notice; failure to advertise or accept bids for construction; requiring excessive development standards; and requiring Nueces Bay to acquire new easements for water lines. Nueces Bay requests the Commission direct Rincon to provide water service in accordance with its CCN without further delay.

Rincon filed a response to Nueces Bay denying its assertions and stating its actions have been reasonable and in compliance with its tariff. Rincon asserts Nueces Bay has changed multiple project elements related to its proposed subdivision requiring additional review and approval of Rincon's engineering plans. Finally, Rincon asserts that the project approval standards Nueces Bay seeks Rincon to follow are not in compliance with its tariff. Importantly, Nueces Bay disputes Rincon's determination that minimum safety standards for Nueces Bay's proposed subdivision require 6-inch water lines for fire protection.

II. Procedural History

On February 3, 2021, Nueces Bay filed a formal complaint with the Commission. Commission Staff filed a statement of position on March 5, 2021, recommending that the requirement for informal resolution under 16 TAC § 22.242(c) be waived. Commission Staff noted Nueces Bay filed an informal complaint on November 2, 2020, that was resolved on November 16, 2020, by the Commission's Customer Protection Division recommending the requirement for informal resolution be waived for good cause.[1] On March 10, 2021, the Commission administrative law judge (ALJ) waived the requirements for informal resolution and requested a supplemental statement of position from Commission Staff. Commission Staff filed its supplemental statement of position on June 1, 2021, and recommended this proceeding be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

Nueces Bay and Rincon were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by August 5, 2021. Nueces Bay, Rincon, and Commission Staff timely filed a list of issues.

III. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.[2] After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is Rincon a "water and sewer utility, utility, or public utility" as defined in 16 TAC § 24.3(39)?
2. Is Rincon a "water supply or sewer service corporation" as defined in 16 TAC § 24.3(40)?
3. Is Nueces Bay a "customer" of Rincon as defined in 16 TAC § 24.3(11) If so, on what date did Nueces Bay become a customer?
4. What is the date of Nueces Bay's initial application for service?

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[1] Complaint at 4 (Feb. 3, 2021).

[2] Tex. Gov't Code § 2003.049(e).

a. On what dates, if any, did Nueces Bay amend its application? For any amendment date please summarize the requested service changes including the number of proposed connections and other relevant information.

b. What are the dates and requested service connections for any subsequent applications for service by Nueces Bay?

5. What fees and amounts, if any, has Nueces Bay paid to Rincon in relation to its requests for service?
   a. What services have been provided by Rincon to Nueces Bay?
   b. Are Rincon's charges and estimates for the cost of extending service to Nueces Bay's proposed subdivision reasonable?
6. What is the effective date(s) of Rincon's tariff applicable to Nueces Bay's complaint?
7. What provisions of Rincon's tariff(s) identified in issue 6 apply to this proceeding?
   a. Does Nueces Bay's application for service comply with the terms of Rincon's tariff?
   b. Has Rincon complied with all applicable tariff provisions in addressing Nueces Bay's request for water service?
8. Has Rincon complied with all requirements of 16 TAC § 24.161 in addressing Nueces Bay's request for water service?
   a. Is Nueces Bay a "developer" under 16 TAC § 24.161?
   b. Is Nueces Bay a "qualified service applicant" of Rincon as defined under 16 TAC § 24.161(a)? If not, what specific tariff provisions, service policies, or regulations have not been met and what rates or fees (if any) have not been paid in order for the complainants to become a qualified service applicant?
   c. Has Rincon ever made available and received a completed application for water service from Nueces Bay?
   d. Has Rincon ever accepted a completed application for water service from Nueces Bay?

e. Has Rincon refused service to Nueces Bay by failing to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from Rincon?

f. If Rincon contends it has never received, or has received but never accepted a completed application from Nueces Bay, in what manner has Nueces Bay failed to provide a completed application?

g. Were there easements as allowed by law under 16 TAC § 24.161(d)(3) or permanently recorded easements under TWC § 49.218(d) required by Rincon as a condition for service to Nueces Bay that Nueces Bay has not provided to Rincon ?

h. Do the requirements of 16 TAC § 24.161(e) apply to this proceeding? If so,

   i. Has Rincon complied with the requirements of 16 TAC § 24.161(e)(1)?

   ii. Has Nueces Bay failed to comply with the subdivision extension policy set forth in Rincon's tariff?

9. Did Texas Water Code (TWC) § 13.2502 and 16 TAC § 24.161(e) allow Rincon to deny extending retail water service to Nueces Bay? If so, what did Rincon document that Nueces Bay failed to comply with its subdivision service extension policy?

10. Has Rincon complied with 16 TAC § 24.247(a) by providing continuous and adequate service?

11. Has Rincon complied with all Commission rules and tariff provisions in addressing Nueces Bay's request for water service?

12. What tariff provisions or Commission rules, if any, has Rincon violated? If the Commission determines Rincon has committed any tariff or rule violations what relief should be granted to Nueces Bay?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code § 2003.049(e).

IV. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

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PETER M. LAKE, CHAIRMAN

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WILL MCADAMS, COMMISSIONER

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LORI COBOS, COMMISSIONER

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JIMMY GLOTFELTY, COMMISSIONER

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