



Control Number: 51787



Item Number: 6

Addendum StartPage: 0

DOCKET NO. 51787

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

§
§
§

RECEIVED
2021 MAR -5 AM 10:03
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S 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 February 5, 2021, the administrative law judge (ALJ) filed Order No. 1, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a statement of position regarding the complaint by March 5, 2021. Therefore, this pleading is timely filed.

I. COMPLIANCE WITH REQUIREMENTS FOR INFORMAL DISPOSITION

Under 16 TAC § 22.242(c), a party filing a complaint must first present the complaint for informal resolution before presenting a formal complaint to the Commission. Nueces Bay filed an informal complaint on November 2, 2020, in Complaint No. CP2020110111. The informal complaint was resolved on November 16, 2020, via an email from the Commission's Customer Protection Division (CPD) recommending that the requirement for informal resolution be waived for good cause.¹ Therefore, Staff recommends that the requirement for informal resolution be waived.

Further, under 16 TAC § 22.242(e), a complainant receiving water utility service within the limits of a city with original jurisdiction over the utility providing the service, must present the complaint to the city before presenting the complaint to the Commission. Nueces Bay does not receive water utility service within the city limits of any municipality or city. Further, because Rincon is a water supply corporation, and a city cannot have original jurisdiction over a water supply corporation,² 16 TAC § 22.242(e) does not apply to Nueces Bay's complaint.

¹ *Complaint No. CP2020110111*, Customer Protection Division Letter to James M. Fay III (Nov. 16, 2020).

² *See* Tex. Water Code (TWC) § 13.042(a) (granting a municipality original jurisdiction "over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits."); *see also*, TWC § 13.002(23) (defining a "water and sewer utility" to exclude a water supply or sewer service corporation).

II. COMPLAINT

Nueces Bay complains that Rincon has failed to provide engineering plans that are necessary for Nueces Bay to move forward with a planned development that is located within Rincon's CCN area.³ The complaint also alleges that Rincon has delayed processing Nueces Bay's application because Rincon claims that the Nueces Bay development is within the extraterritorial jurisdiction (ETJ) of the City of Portland (Portland) and that the Nueces Bay development must satisfy all of Portland's standards for developments. Nueces Bay argues that its development was not located within Portland's ETJ at the time the development plan was filed and that the Portland regulations do not apply to the proposed development; the complaint includes a letter from Brian DeLatte, Deputy City Manager of Portland, stating the same.⁴

Nueces Bay requests the timely provision of both engineering plans.

III. RINCON'S RESPONSE

In response, Rincon states that Nueces Bay has not complied with the service extension policy set forth in its tariff and that Rincon is thus unable approve of the development project. Specifically, Rincon states that Nueces Bay's development plan does not conform with the service extension provision of its tariff. Rincon argues that Nueces Bay has not alleged a "violation of any law or any order, ordinance, rule or regulation of the Commission" that would give the Commission jurisdiction to consider the complaint.⁵ Further, Rincon argues that, because it has not violated the provisions of its tariff, the Commission has no jurisdiction over the complaint.⁶ Ultimately, Rincon argues that Nueces Bay has not complied with the requirements contained in Rincon's tariff and that Rincon is therefore under no obligation to extend service to the Nueces Bay development.⁷

³ Complaint of Nueces Bay Tracts, LLC Against Rincon Water Supply Corporation at 3-4 (Feb. 3, 2021).

⁴ *Id.* at 85.

⁵ Rincon's Response to Complaint of Nueces Bay Tracts, LLC at 2 (Feb. 26, 2021).

⁶ *Id.*

⁷ *Id.*

IV. STATEMENT OF POSITION

Staff reads Nueces Bay's complaint to allege 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."⁸ Under 16 TAC § 22.161(a), a retail public utility is required to provide service to every "qualified service applicant within its certificated area as soon as is practical after receiving a completed application;" a qualified service applicant is defined as one who "has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any service connection inspection certificates required by law."

These requirements are further refined by 16 TAC § 22.161(e), which applies specifically to a water supply corporation's extension of service to a subdivision. Under those circumstances, a water supply corporation is not required to extend service if it documents that (1) the developer of the subdivision has not complied with the service extension policies in its tariff; and (2) the service applicant purchased the property after the water supply corporation gave notice of the rules in its tariff applicable to service to subdivisions that complies with 16 TAC § 22.161(e)(2) or (e)(3). The term service applicant is defined as "a person, *other than a developer*, who applies for water or sewer utility service."⁹ Accordingly, these rules may not apply if Nueces Bay is both the developer and the service applicant. If that is the case, then Staff asserts that 16 TAC § 22.161(a) is the applicable rule provision.

The facts of this case are in dispute. Most notable, is the dispute as to whether the property for which Nueces Bay is requesting service is within Portland's ETJ. Staff also needs time to review Rincon's tariff, which contains extensive policies and procedures related to requests for service to a development, and to get more specific information from Nueces Bay regarding which of these policies or procedures it claims Rincon has violated. All of these facts are relevant to the ultimate question of whether Nueces Bay is a qualified applicant for service. Therefore, Staff requests 90 days to conduct informal discussions with Nueces Bay and Rincon and to issue formal

⁸ Staff notes that the complaint does not specifically state what, if any, statutes, rules, or tariff provisions it believes Rincon has violated.

⁹ 16 TAC § 24.161(e)(4)(B) (emphasis added).

discovery if necessary. Staff further requests that a deadline of June 3, 2021 to file a supplemental statement of position.

V. CONCLUSION

For the reasons discussed above, Staff respectfully requests that the ALJ waive the informal resolution requirements of 16 TAC § 22.242 and that Staff be given a deadline of June 3, 2021 to file a supplemental statement of position.

Dated: March 5, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Eleanor D'Ambrosio
Managing Attorney

/s/ Merritt Lander
Merritt Lander
State Bar No. 24106183
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7290
(512) 936-7268 (facsimile)
Merritt.Lander@puc.texas.gov

DOCKET 51787

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 March 5, 2021, in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander
Merritt Lander