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Kenneth W. Anderson, Jr.
Commissioner
Brandy Marty Marquez
Commissioner
Brian H. Lloyd
Executive Director



Greg Abbott
Governor

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PUBLIC UTILITY COMMISSION
CLERK

Public Utility Commission of Texas

TO: Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Susan E. Goodson *SEG*
Administrative Law Judge

RE: **Open Meeting of August 31, 2017**
Docket No. 45032 – *Complaint of Marilyn Boniaby against the Remington Apartments*

DATE: July 25, 2017

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, August 31, 2017, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, August 23, 2017.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 45032

COMPLAINT OF MARILYN BONIABY	§	PUBLIC UTILITY COMMISSION
AGAINST THE REMINGTON	§	
APARTMENTS	§	OF TEXAS

PROPOSED ORDER

This Order addresses the complaint of Marilyn Boniaby against Remington Apartments regarding the failure of Remington to make water utility allocation records available for inspection consistent with Texas Water Code § 13.5031(5)¹ and 16 Texas Administrative Code § 24.122(e) (TAC) and related charges. Commission Staff recommended dismissal. The complaint is dismissed.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On December 15, 2014, Ms. Boniaby filed an informal complaint against Remington with the Commission's Consumer Protection Division (CPD), which is noted in the CPD's records as Complaint No. CP2014120513 and was concluded on January 8, 2015.
2. On June 23, 2015, Ms. Boniaby filed a second informal complaint against Remington with the CPD, which is noted in the CPD's records as Complaint No. CP2015060778 and was concluded on July 23, 2015.
3. On August 10, 2015, Ms. Boniaby filed a formal complaint against Remington, claiming that Remington failed to make water utility allocation records available for inspection and alleging that water bills did not comply with the billing requirements of 16 TAC § 24.125(f)(1).²
4. On August 11, 2015, Order No. 1 was issued, requiring Remington to respond to Ms. Boniaby's complaint and requiring Commission Staff to file a statement of position.

¹ Tex. Water Code Ann. § 13.5031(5) (West 2008 and Supp. 2016) (TWC).

² Complaint of Marilyn Boniaby against the Remington Apartments at 1-3 (Aug. 10, 2015).

5. On September 8, 2015, Commission Staff filed a statement of position, concluding that Ms. Boniaby's complaint had first been presented for informal resolution as required by 16 TAC § 22.242(c), stating that Commission Staff was unable to further comment on the complaint because Remington did not respond to Order No. 1, requesting the addition of Remington's owner, Resilient Assets, LLC, as a respondent and requesting time so that Resilient could respond to the complaint.³
6. On September 9, 2015, Order No. 2 was issued, granting Commission Staff's request, adding Resilient as a respondent, and establishing revised deadlines for responses.
7. On September 30, 2015, IMFI Remington Apartments, LLC filed a letter stating that it took ownership of Remington from Resilient in the latter part of February 2015, that it was unaware of Ms. Boniaby's original complaint at the time of purchase of Remington, and that it retained the service of a third-party vendor for the allocation of utilities to its tenants.⁴
8. On October 2, 2015, Resilient responded to Ms. Boniaby's complaint, providing a complete copy of her lease, explaining that during business hours the company kept copies of current month utility bills on display in the manager's office and further that the bills clearly illustrate how the billed amount was calculated, providing copies of 12 months of water/sewer bills from the City of Freeport and explaining how tenant bills were calculated.⁵
9. On October 9, 2015, Commission Staff filed a supplemental statement of position and motion to dismiss, concluding that there is no additional relief that can be granted because Remington's water utility bills have been corrected and are being billed correctly, and the increase in Remington's water utility bills is reasonable based on the increased rates from Freeport, and the allocation records were available in the management office on location.⁶

³ Commission Staff's Statement of Position at 1-2 (Sept. 8, 2015).

⁴ Letter Regarding Complaint of Marilyn Boniaby, at 1 (Sept. 30, 2015).

⁵ Comments at 1 (October 2, 2015).

⁶ Commission Staff's Supplemental Statement of Position and Motion to Dismiss at 3 (Oct. 9, 2015).

10. On October 14, 2015, Order No. 3 was issued, requiring Ms. Boniaby to reply to the responses filed by Resilient and IMFI as well as Commission Staff's supplemental statement of position and motion to dismiss.
11. On November 10, 2015, Ms. Boniaby clarified that the purpose of her complaint was to obtain the water allocation records from the previous and current owners of Remington during the time she was a tenant.⁷
12. On November 12, 2015, Order No. 4 was issued, requiring Commission Staff to respond to Ms. Boniaby.
13. On December 1, 2015, Commission Staff recommended that IMFI be required to provide the allocation records for the current year and the previous calendar year for the months in which Ms. Boniaby was a tenant, either by making the records available for inspection at the on - site manager's office, by mailing them to Ms. Boniaby or by filing them in this docket, and further recommended that if some of the records are still in Resilient's possession, that Resilient be ordered to provide those records to IMFI.⁸
14. On December 2, 2015, IMFI filed a confidential letter and utility reports.
15. On December 4, 2015, Order No. 5 was issued, setting a deadline for IMFI to provide the allocation records to Ms. Boniaby, a deadline for Resilient to provide any records still in its possession to IMFI, and a deadline for Ms. Boniaby to review the records and provide a response to the Commission regarding whether her dispute was resolved.
16. On February 4, 2016, Ms. Boniaby confidentially filed a letter and copy of a bill.
17. On July 20, 2016, Commission Staff stated that only the April 2015 records had been provided to Ms. Boniaby and recommended that IMFI and Resilient be ordered to provide allocation records by a date certain, as required in Order No. 5, and absent production, Commission Staff will recommend referral to the Commission's Oversight & Enforcement Division (O&E).

⁷ Protest Letter at 1 (Nov. 10, 2015).

⁸ Commission Staff's Response to Order No. 4 at 2 (Dec. 1, 2015).

18. On July 21, 2016, Order No. 6 was issued, establishing deadlines for Resilient to provide the records remaining in its possession to IMFI and for IMFI to provide the records to Ms. Boniaby.
19. On April 20, 2017, Order No. 7 was issued, requiring a Commission Staff status report on this complaint, including whether the complaint has been or is being referred to O&E.
20. On May 11, 2017, Commission Staff provided a status report indicating that only the records for April 2015 have been provided to Ms. Boniaby, that Resilient has indicated that the allocation records from its time of ownership would be filed soon, that IMFI is clarifying when Ms. Boniaby left Remington, that Commission Staff did not recommend referral to O&E, and finally, that a deadline should be established for an additional status report.
21. On May 11, 2017, Resilient confidentially filed documents used to calculate and show utility bills that were made available to tenants.
22. On May 12, 2017, Order No. 8 was issued, establishing a deadline for Commission Staff file a status report or recommendation regarding this docket.
23. On May 25, 2017, Commission Staff reported that Resilient provided records for January 2014 through January 2015, including the water bill from Freeport, the allocation calculation of the charge per resident and the Rent Roll that included the number of occupants per apartment, and even though a short period of time remains for which records have not been provided (February and March of 2015) concluded that the information provided by Resilient and IMFI substantially satisfied the request of Ms. Boniaby and absent anything further, recommended the complaint be closed.
24. On June 7, 2017, Order No. 9 was issued, setting a July 6, 2017 deadline for Ms. Boniaby to indicate whether the information provided satisfied her complaint, and if so, requesting that she withdraw her complaint.
25. Ms. Boniaby did not respond to Order No. 9.
26. Commission Staff, IMFI, Resilient and Ms. Boniaby are the only parties to this complaint.
27. There are no outstanding issues of fact, therefore no hearing is necessary.

III. Conclusions of Law

1. The Commission has jurisdiction over Ms. Boniaby's complaint under TWC § 13.5031(5) and 16 TAC § 24.122(e).
2. This docket was processed in accordance with the requirements of the TWC and Commission rules.
3. In providing allocation records to Ms. Boniaby for all but two months of the period in question, Resilient and IMFI have substantially satisfied the records requirements in TWC § 13.5031(5) and 16 TAC § 24.122(e).
4. Dismissal of this proceeding, under 16 TAC §§ 22.181(d)(6) and (d)(8) is appropriate because Ms. Boniaby failed to prosecute her complaint and because no actionable grievances exist upon which a remedy can be given to Ms. Boniaby.
5. The 20-day notice requirement in 16 TAC § 22.35 has been met in this proceeding.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Ms. Boniaby's complaint is dismissed.
2. All other motions, requests for entry of specific finds of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the _____ day of August 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER