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DOCKET NO. 45032

COMPLAINT OF MARILYN  
BONIABY AGAINST THE  
REMINGTON APARTMENTS

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PUBLIC UTILITY COMMISSION  
OF TEXAS

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**COMMISSION STAFF'S SUPPLEMENTAL STATEMENT OF POSITION AND  
MOTION TO DISMISS**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Supplemental Statement of Position and Motion to Dismiss and would show the following:

**I. BACKGROUND**

On August 10, 2015, Marylin Boniaby (Complainant) filed a formal complaint against Remington Apartments (Remington) regarding the failure of Remington to make water utility allocation records available for inspection consistent with Tex. Water Code § 13.5031(5) and 16 Tex. Admin. Code § 24.122(e) (TAC) and related charges.<sup>1</sup> Order No. 1, issued on August 11, 2015, required Staff to file a statement of position no later than September 7, 2015. Because no response to the complaint was filed by Remington, Staff, in its statement of position, was unable to recommend a course of action. Order No. 3, issued September 9, 2015, added a possible owner to the service list and again requested a response from Remington no later than October 2, 2015 and a supplemental statement of position from Staff no later than October 9, 2015. IMFI Remington Apartments, LLC filed a letter with the Commission on September 28, 2015, explaining that it was the current owner of Remington but that the complaint was based on the actions of the previous owner, Resilient Assets, LLC. Resilient Assets, LLC filed a letter with the Commission on October 2, 2015 detailing that it is no longer the owner of Remington and submitted additional items in defense of the complaint. Complainant has told Staff that she no longer resides at Remington.

**II. COMMENTS**

<sup>1</sup> *Complaint of Marylin Boniaby Against The Remington Apartments*, Docket No. 45032, Complaint of Marylin Boniaby at 3 (August 10, 2015).

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Complainant has identified two issues in her complaint and in telephonic discussions with Staff. The first issue is that the water bills did not comply with the billing requirements of 16 TAC § 24.125(f). The second issue is the failure to make the water utility allocation records available for inspection.

In regards to the billing issue, the Customer Protection Division found on January 8, 2015 that Complainant's water bills did not list the allocated water services separate from garbage services in accordance with 16 TAC § 24.125(f)(1).<sup>2</sup> The current owner of Remington, IMFI Remington Apartments, LLC retains a third party vendor to allocate utilities to tenants, Hocutt, Inc. The water bills submitted by Complainant in March and April of 2015 list the allocated water services separate from the sewer and garbage services in accordance with 16 TAC § 24.125(f)(1), and comply with the remainder of section (f) by listing the total amount due for wastewater, the name of the retail public utility and a statement that the bill is not from the retail public utility, the name and address of the tenant to whom the bill is applicable, the name of the firm rendering the bill, and the name, address and telephone number of the party to whom payment is to be made. Staff finds that the current bills are in accordance with 16 TAC § 24.125(f).

Complainant's second issue was that Remington failed to make the water utility allocation records available for inspection, in accordance with TWC § 13.5031(5) and 16 TAC § 24.122(e). These rules require the owner to maintain all necessary records concerning utility allocations, including the retail public utility's bills and make them available for inspection by tenants.<sup>3</sup> For allocated billing, the owner shall make records available to tenants of the total number of occupants or equivalent occupants if an equivalency factor is used under 16 TAC § 24.124(e)(2). The lease agreement provided by the previous owner shows that the allocation method used is by actual occupancy.<sup>4</sup> In addition, the previous owner represented that they kept a copy of each bill at their office on location with a brief calculation on how an occupant's bill is determined, in accordance with 16 TAC 24.124(e). The previous owner also submitted copies of the bills from the retail public water utility showing the increased rates by the City of Freeport.<sup>5</sup>

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<sup>2</sup> CPD # 2014120513.

<sup>3</sup> TWC § 13.5031(5)

<sup>4</sup> *Complaint of Marilyn Boniaby Against The Remington Apartments*, Docket No. 45032, Comments of Resilient Assets, LLC at 13 (October 2, 2015).

<sup>5</sup>*Id.* at 5-8, 15-16.

The increase in the rates from the City of Freeport reasonably account for the increase in complainant's water bill, and Staff finds that Remington's representation that the water allocations records are available in the offices on location is sufficient due to the fact that the tenant no longer resides at the complex.

### III. MOTION TO DISMISS

Staff recommends this complaint be dismissed for failure to state a claim for which relief can be granted pursuant to 16 TAC § 22.181(a)(1)(G). The water utility bills have been corrected by an independent third party vendor, and the increase in the water utility bills is reasonable based on the increased rates from the City of Freeport, the allocation of which was represented as being available in the management office on location. There is no additional relief that can be granted by the Commission, and therefore dismissal is appropriate.

### III. CONCLUSION

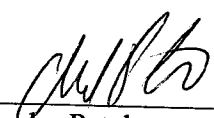
Staff respectfully recommends that an order be issued consistent with this recommendation and that this complaint be dismissed, with prejudice.

Dated: October 9, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 9, 2015 in accordance with 16 TAC § 22.74.



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Alexander Petak