



Control Number: 46439



Item Number: 7

Addendum StartPage: 0

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COMPLAINT OF WES ANDERSON, ET. §
AL. AGAINST QUADVEST L.P., §
QUADVEST, INC., RANCH UTILITIES §
CORP., AND RANCH UTILITIES, L.P. §

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

COMMISSION STAFF'S STATEMENT OF POSITION

Comes now the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files its Statement of Position in response to Order No. 1. In support thereof, Staff would show the following:

I. Background

On October 14, 2016, Wes Anderson, et.al. (collectively, the Complainants) filed a complaint against Quadvest, L.P., Quadvest, Inc., Ranch Utilities Corp., and Ranch Utilities, L.P. (collectively, Quadvest) alleging inaccurate increased water usage and related billing as a result of smart meter installation. Complainants request that the Commission waive jurisdiction and allow this matter to move forward a class action in district court, or in the alternative, require Quadvest to correct and modify all smart meters installed, refund all of the alleged overcharges and pass-through fees, and award actual damages, reasonable attorney's fees, and punitive damages.

In Order No. 1, issued October 17, 2016, the Administrative Law Judge (ALJ) ordered Staff to file a statement of position by November 14, 2016. Therefore, this pleading is timely filed.

II. Compliance with Requirements for Informal Resolution

Complainants claim that they have filed informal complaints with the Commission, but Quadvest asserts that only Complainant Stephen J. Jones filed an informal complaint. Complainants must comply with the requirements for informal resolution under 16 Tex. Admin. Code § 22.242(c) (TAC), which states: "A person who is aggrieved by the conduct of an electric utility or telecommunications utility or other person must present a complaint to the commission for informal resolution before presenting the complaint to the commission." The Commission's complaint database shows that Stephen J. Jones is the only one of the Complainants to have complied with this requirement. Before filing this complaint, Jones filed an informal complaint

7

that is noted in Customer Protection Division (“CPD”) records as Complaint No. CP2016081095. On September 19, 2016, CPD issued a letter notifying Jones that CPD had concluded the informal complaint process. The remaining Complainants, Wes Anderson, Bradley K. Baker, Ethel Barrett, Gail Stephens Acebo, Mary Erato, Priscilla A. Ferguson, Gladys H. Floyd, Randolph R. Hansen, Robert Hardoin, Darin Reeser, Victoria Risinger, Allyn Watkins, Jill Westbrook, Jennifer L. Wike, Fang Yiu, Ashley Sanders, Jamie Taylor, Stephanie Taylor, George H. Krug III, Margie C. Krug, Mark Lejsekon, and M’Ral Lejsekon have not completed the informal resolution process as required by 16 TAC § 22.242 prior to filing the current formal complaint, and should be dismissed from this proceeding. In the alternative, Staff recommends that the proceeding be abated to allow the Complainants other than Jones an opportunity to intervene.

Complainants appear to style this docket as a class action; however, the Commission does not certify class actions. Class actions are permitted in state district court under Texas Rule of Civil Procedure 42.

III. No Waiver of Jurisdiction

There is no dispute among Complainants and Quadvest that the Commission has jurisdiction over complaints regarding the accuracy of water meters, related billing, and pass-through charges. Complainants, however, request that the Commission waive jurisdiction over these issues. The Commission cannot waive jurisdiction as requested by Complainants. To waive jurisdiction in this proceeding would be contrary to the direction of the Texas Second Court of Appeals: “If an agency has exclusive jurisdiction, a party must exhaust all administrative remedies before seeking review of the agency’s action. Until the party has exhausted all administrative remedies, the trial court lacks subject matter jurisdiction and must dismiss any claim within the agency’s exclusive jurisdiction.”¹

The Commission does not have jurisdiction to hear common law torts and Texas DTPA claims. Rather, the Commission has jurisdiction over the complaints regarding meter accuracy and the related amounts billed to ratepayers.

¹ *Oncor Electric Delivery Company LLC v. Giovanni Homes Corporation*, 438 S.W.3d 644, 648 (Tex. App.—Ft. Worth 2014, pet. Denied) (citing *In re Entergy Corp.*, 142 S.W.3d 316, 321-22 (Tex. 2004)).

IV. Statement Concerning Complainant, Stephen Jones

Facts regarding whether the water meter of Complainant Stephen Jones accurately captured his water usage and whether he was properly billed for that usage are in dispute, and this warrants the development of an evidentiary record. Staff requests that Quadvest's request that the complaint be dismissed as to Jones remain pending until such time as the status of the other parties is determined.

III. Conclusion

For the reasons outlined above, Staff respectfully requests that the Complainants other than Stephen Jones be dismissed or, in the alternative, that the Complainants other than Jones, have an opportunity to comply with the requirements for informal resolution or to intervene. In either case, Staff recommends that the Commission deny Complainant's request to waive jurisdiction and, once the status of the other parties is determined, refer this case to the State Office of Administrative Hearings for the development of an evidentiary record.

Dated: November 14, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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 November 14, 2016, in accordance with 16 TAC § 22.74.



Michael Crnich