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OPEN MEETING COVER SHEET

CLERK

MEETING DATE: January 11, 2018

DATE DELIVERED: January 4, 2018

AGENDA ITEM NO.: 4

CAPTION: Docket No. 47712; SOAH No. 473-18-1227
Formal Complaint of Naomi Barron Against
Longspur Crossing Apartments and
Westdale Management

ACTION REQUESTED: Discussion and possible action with respect
to Draft Preliminary Order

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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Brandy Marty Marquez
Commissioner Arthur C. D'Andrea

All Parties of Record

FROM: John Kramer *JK*
Commission Advising

RE: *Formal Complaint of Naomi Barron against Longspur Crossing Apartments and Westdale Management, Docket No. 47712, SOAH Docket No. 473-18-1227.WS, Draft Preliminary Order, 1/11/18 Open Meeting, Item No. 4.*

DATE: January 4, 2018

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 the January 11, 2018 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 January 11, 2018 open meeting.

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PUC DOCKET NO. 47712
SOAH DOCKET NO. 473-18-1227.WS

FORMAL COMPLAINT OF NAOMI	§	PUBLIC UTILITY COMMISSION
BARRON AGAINST LONGSPUR	§	
CROSSING APARTMENTS AND	§	OF TEXAS
WESTDALE MANAGEMENT	§	

DRAFT PRELIMINARY ORDER

Naomi Barron filed a formal complaint against Longspur Crossing Apartments and Westdale Management, an apartment complex and its management company in Austin, Texas. Ms. Barron alleges violations relating to her water rates and failure to make water-utility allocation records available for inspection. In particular, Ms. Barron is alleging that Longspur and Westdale overcharged her for water usage by counting a non-resident guarantor on her lease as a resident in her apartment unit. Ms. Barron further alleges that Longspur and Westdale have not been sufficiently responsive in explaining how her water bill was calculated.

In response to Ms. Barron's complaint, Longspur and Westdale state that Westdale is not a proper party to the complaint because it is not an apartment house as defined by 16 Texas Administrative Code (TAC) § 24.121(2) or an owner as defined by 16 TAC § 24.121(10).¹ Longspur and Westdale additionally allege that, even if Westdale were a proper party to the complaint, Ms. Barron failed to exhaust her administrative remedies when she did not name Westdale in her informal complaint to the Commission and as a result Westdale should be dismissed from this proceeding.² However, as noted by Commission Staff in its statement of position, the Commission was directed to address its questions regarding its informal investigation into this matter to Westdale.³

Additionally, Longspur and Westdale contend that, because Ms. Barron's guarantor's name appeared on her original lease, the guarantor had the right to reside in her apartment unit and

¹ Response of Longspur Crossing Apartments and Westdale Management at 1 (Nov. 8, 2017).

² *Id.*

³ Commission Staff Statement of Position at 5 (Nov. 15, 2017).

therefore it was reasonable for Longspur and Westdale to factor in there being two occupants in the unit when determining Ms. Barron's water bill.⁴

On December 4, 2017, the Commission issued an order of referral to the State Office of Administrative Hearings (SOAH). This order directed Ms. Barron, Longspur, and Westdale to file lists of issues, and the Commission Staff and other interested parties could file lists of issues by December 15, 2017. On December 13, Commission Staff timely filed a list of issues. Neither Ms. Barron, nor Longspur or Westdale, filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the SOAH.⁵ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did Longspur and Westdale (collectively, respondents) comply with 16 TAC § 24.123 with respect to Longspur's rental agreement with Ms. Barron?
2. Did the respondents comply with 16 TAC § 24.124 regarding water-service charges?
3. Did the respondents comply with 16 TAC § 24.125 with respect to the respondents' billing practices and billing-dispute process?
4. If the respondents did not comply with Commission rules, what is the appropriate remedy?
5. If Ms. Barron has been billed improperly, is she owed a refund? If so, what is the amount of the refund?
6. Are the respondents using a sub-metering system to bill its tenants for water service? Have the respondents used a sub-metering system in the past?
7. If the respondents are not using a sub-metering system during the period of Ms. Barron's tenancy, how are they allocating water-service charges among their tenants? Have the

⁴ Response of Longspur Crossing Apartments and Westdale Management at 3.

⁵ Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

respondents changed their allocation method for water-service charges since the inception of Ms. Barron's lease in June 2015?

8. Have the respondents made their allocation formula for water service available to Ms. Barron, and if so, when?
9. What information appears on the water bills that the respondents send their tenants? Have the respondents added or subtracted information that appears on its water bills since June 2015? If so, what information was added or subtracted and when did this occur?
10. What information appeared on Ms. Barron's lease agreements with the respondents regarding respondents' billing for water service?
11. What water-service billing records have the respondents made available to Ms. Barron and when were they made available?
12. Did the respondents charge Ms. Barron for a second adult occupant in allocating her water-service charges during Ms. Barron's first lease? If so, was this consistent with the allocation formula the respondents were using during this time to determine resident charges for water service?
13. How did the respondents determine the number of occupants used to calculate Ms. Barron's bill for water service? How and when, if at all, did the respondents notify Ms. Barron of the number of occupants used to calculate her bill for water service?
14. If the respondents notified Ms. Barron that her allocation of water service would be based, in part, on there being two occupants in her unit, did Ms. Barron object?
15. Did the respondents continue to charge Ms. Barron for a second adult occupant in allocating her water-service charges during Ms. Barron's second lease?

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 Ann. § 2003.049(e).

II. 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 January 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

BRANDY MARTY MARQUEZ, COMMISSIONER

ARTHUR C. D'ANDREA, COMMISSIONER