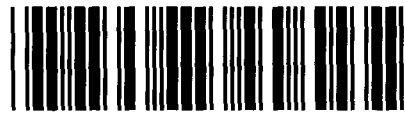


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FORMAL COMPLAINT OF NAOMI BARRON AGAINST LONGSPUR CROSSING APARTMENTS AND WESTDALE MANAGEMENT	§ § § § §	2017 NOV 15 AM 9:33 PUBLIC UTILITY COMMISSION, <small>PUBLIC UTILITY COMMISSION,</small> FILING CLERK OF TEXAS
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COMMISSION STAFF’S STATEMENT OF POSITION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 1, Staff’s Statement of Position. Staff recommends that this docket be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits. In support thereof, Staff shows the following:

I. BACKGROUND

On October 17, 2017, Naomi Barron (Complainant) filed a complaint against Longspur Crossing Apartments (Longspur) and Westdale Management (Westdale) (collectively, Respondents) regarding alleged violations relating to her water rates and failure to make water utility allocation records available for inspection under Tex. Water Code § 13.5031(5) (TWC) and 16 Tex. Admin. Code § 24.122 (TAC). This complaint was filed under 16 TAC § 22.242.

On October 19, 2017, the administrative law judge (ALJ) in Order No. 1 ordered Respondents to file a response to the complaint by November 8, 2017. Respondents filed a response on November 8, 2017. Order No. 1 also required Staff to file a statement of position by November 15, 2017. Therefore, this pleading is timely filed.

II. COMPLIANCE WITH INFORMAL RESOLUTION REQUIREMENTS

In Order No. 1, the ALJ directed Staff to confirm whether the Complainant has complied with all of the requirements for informal resolution pursuant to 16 TAC § 22.242(c), 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.”

Before filing this complaint, Complainant filed an informal complaint on August 13, 2017, referenced in Customer Protection Division (CPD) Records as CP2017808523. The informal complaint asserted that, from June 19, 2015 to September 25, 2016, Longspur based its allocation calculations of her water bill on two tenants residing her unit, not one. When the Complainant renewed her lease, she had taken the guarantor off of the lease. As a result, she expected her water bills to decrease, but they did not.

During the investigation, the CPD was directed to contact Westdale for more information regarding the dispute, but it was unable to resolve the informal complaint because Respondents failed to respond in a timely manner. The informal complaint was closed on September 9, 2017. Therefore, Staff has confirmed that the Complainant has complied with the requirements for informal resolution.

III. JURISDICTION

In the complaint, the Complainant listed the address of the premises at issue as 701 W. Longspur Blvd., Unit #2022, Austin, Texas 78753.¹ Staff verified that the address is located within the corporate boundaries of the City of Austin. Pursuant to Tex. Water Code § 13.042(a) (TWC), “[E]ach municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.” The TWC further defines a “water and sewer utility,” “public utility,” or “utility” to mean any person or corporation “owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public”² This definition excludes any person or corporation “that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.”³

Staff reviewed Commission records and determined that the City of Austin has not ceded its original jurisdiction over water and wastewater utility services under TWC § 13.042(b). Thus, Austin has original jurisdiction over rates, operations, and services provided by a water utility

¹ *Complaint of Naomi Barron Against Longspur Crossing Apartments and Westdale Management* at 1 (October 17, 2017) (Complaint).

² Tex. Water Code § 13.002(23).

³ *Id.*

within Austin’s city limits. However, that original jurisdiction does not extend to the context of a lessor passing water utility billing on to their tenants. Accordingly, the City of Austin does not have original jurisdiction over the water billing issues in this case, and Complainant was not required to present her complaint to the City of Austin first. Therefore, the Commission has jurisdiction to consider this complaint.

IV. COMPLAINT

Complainant asserts in her formal complaint that she is being overcharged for water utility service by her apartment complex, Longspur, and that Respondents will not provide her with adequate information or documentation to determine the amount that she is being billed for water service.⁴ She states that she was “wrongfully charged for more tenants than are assigned” to her lease.⁵ From September 2015 through July 2017, her water bills ranged from \$58.68 to \$95.54.⁶

Complainant states that, during the first year in her unit, she was charged for two adults living her unit, herself and the guarantor on her lease.⁷ She indicates that the guarantor was not living in the unit, nor did he “apply as a resident of the building,” but that the Respondents refused to change her records to reflect the number of tenants residing in the unit.⁸

Complainant states that she has approached Westdale “multiple times” and was informed that the calculations it used for her water bill were correct.⁹ However, she contends that she has not been shown the formula or the process used to calculate her allocated portion of the water bill.¹⁰

V. RESPONDENT’S RESPONSE

Respondents filed a response to Complainant’s complaint on November 8, 2017, acknowledging that the Commission has jurisdiction over this proceeding.¹¹ However, Respondents assert that the Commission does not have jurisdiction over Westdale because it is

⁴ *See generally* Complaint.

⁵ *Id.* at 1.

⁶ *Id.* at 7-12.

⁷ *Id.* at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Longspur Crossing Apartments and Westdale Management’s Response to Order No. 1 Requiring Responses* at 1 (November 8, 2017) (Respondent’s Response).

neither an “apartment house” nor an “owner” under 16 TAC § 24.121(c)(10).¹² Additionally, Respondents argue that even if Westdale were a proper party, Complainant failed to exhaust her administrative remedies by not specifically naming Westdale in the informal complaint.

With respect to Complainant’s allegations, Respondents argue that they properly billed Complainant for water utility services. They use the calculation method for allocated utility service outlined in 16 TAC § 24.124(e)(2)(A)(iv), which accounts for the number of occupants in the unit and the square footage of the apartment.¹³ Respondents state that, during the first year residing in the apartment, Complainant had a guarantor, Arthur Whitman (Whitman), on her lease, which also permitted him to reside in that unit.¹⁴ Respondents relied upon this information in calculating her water bill.¹⁵ When Complainant renewed her lease, she did not include Whitman as a guarantor or another tenant; however, she now had an infant residing in her unit.¹⁶ After she renewed her lease, Respondents adjusted the calculation for Ms. Barron’s water bills to reflect that only one tenant lived in the unit.¹⁷

On October 26, 2017, Respondents credited \$100 to Ms. Barron in an attempt to “address any minor issues with her water bill.”¹⁸

VI. STATEMENT OF POSITION

16 TAC § 24.121(c) lists the definitions of words and terms used in that particular subchapter, which applies to “Water Utility Submeter and Allocation.” Although Respondents are correct that Westdale is not an “owner” of an “apartment house” as defined in the rule, it does not preclude the Commission from having jurisdiction over Westdale in this matter. In fact, 16 TAC § 24.122 imposes duties upon property managers in 16 TAC § 24.122, relating to owner registration and records, signaling the Commission’s authority over property managers within the scope of the subject matter of the subchapter. Thus, the Commission has jurisdiction over Westdale for purposes of this complaint.

¹² *Id.*

¹³ *Id.* at 2 and 3.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 4.

Respondents also argue that, even if the Commission does have jurisdiction over Westdale in this matter, it was not named as a proper party in the informal complaint, concluding that the Complainant failed to exhaust her administrative remedies and precluding the inclusion of Westdale as a party in the formal complaint. Although the Complainant failed to specifically name Westdale in her initial informal complaint, CPD was directed to address its questions regarding its investigation to Westdale, and it complied with the request. Even though Westdale was not initially named in the informal complaint, it was given notice of the complaint and failed to respond to CPD in a timely manner. Thus, Staff respectfully requests that the Commission deny Respondents' request to dismiss Westdale from the proceeding.

Based on the filings of both parties, the parties dispute whether Complainant was overcharged for water utility service by Respondents.¹⁹ The facts are clearly in dispute and an evidentiary record needs to be developed. Accordingly, Staff recommends that this docket be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

VII. CONCLUSION

Staff confirmed that the Complainant has complied with the requirements for informal resolution and agrees with the Respondents that the Commission has jurisdiction over the complaint. For the reasons stated above, Staff respectfully recommends that this docket be referred to the State Office of Administrative Hearings for a hearing on the merits.

Dated: November 15, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

¹⁹ Compare Complaint; with Respondent's Response.

Stephen Mack
Managing Attorney

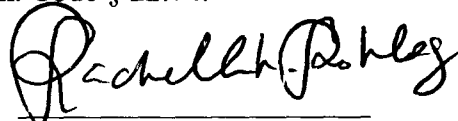


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P.U.C. DOCKET NO. 47712

CERTIFICATE OF SERVICE

I, Rachelle N. Robles, staff attorney for the Public Utility Commission of Texas, certify that a copy of this document was served on all parties of record on November 15, 2017, in accordance with the requirements of 16 Tex. Admin. Code § 22.74.



Rachelle N. Robles