



Control Number: 48056



Item Number: 12

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DOCKET NO. 48056

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PUBLIC UTILITY COMMISSION
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**AGREED SETTLEMENT AND §
REPORT TO COMMISSION §
RELATING TO COMMISSION §
STAFF'S INVESTIGATION OF §
SUNNY QUEST, LLC DBA §
SHALIMAR APARTMENTS' §
REGARDING 16 TAC §§ 24.122, §
24.123, 24.124, AND 24.125 §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

RESPONSE TO ORDER NO. 1, REQUESTING COMMISSION STAFF RESPONSE

Public Utility Commission of Texas (Commission) Staff files this Response to Order No. 1, Requesting Commission Staff Response. Docket Management established June 1, 2018, as the deadline for filing a Response to Order No. 1, Requesting Commission Staff Response, as remanded to Docket Management at the April 27, 2018 Open Meeting. Commission Staff files its Revised Proposed Order as Attachment No. 1, to accompany its Response to Order No. 1, Requesting Commission Staff Response. The changes made to the original Proposed Order are reflected in the redlined version of the Revised Proposed Order, included as Attachment No. 2.

On April 25, 2018, Chairman DeAnn T. Walker sent a memorandum to Commissioner Arthur C. D’Andrea, which was subsequently sent to All Parties of Record on April 26, 2018, detailing the Chairman’s reasons for not adopting the proposed order in the docket. The Chairman explained that “there are critical facts missing that are necessary for the Commission to properly apply the law.” The Chairman recommended that the Commission remand the docket, so that the Commission can receive additional information on the issues of: (1) The services at issue in this docket, (2) Suspension and discontinuance of billing, and (3) Common-area usage.

Staff’s explanations for the Chairman’s concerns are detailed below, in the format of a response to each of the Chairman’s questions, as listed in the Chairman’s memo:

1. The Services at issue in this docket

a. What services were discussed in the three complaints that prompted Commission Staff’s investigation of Sunny Quest’s billing practices?

- The three informal complaints that prompted Oversight and Enforcement (O&E) Commission Staff’s investigation of Sunny

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Quest's billing practices at the Shalimar Apartments concerned only water, wastewater, gas, and trash utility billing practices. While one of the three complainants complained of "utility bills" generally, the complaint concerned only water, wastewater, gas, and trash utility billing practices. Sunny Quest does not bill for electric utilities at the Shalimar Apartment. Tenants are billed directly by the City of Austin for electric utility services.

b. Should the order only address water service?

- Yes. Commission Staff only addressed water and wastewater utility services in its investigation and settlement. Sunny Quest does not bill for electric utilities at the Shalimar Apartments. Tenants are billed directly by the City of Austin for electric utility services.

c. Are there any violations related to sewer service that should be addressed in this docket?

- Yes. Violations related to wastewater utility billing services were included in the settlement, but were referred to, collectively with water, as "water" utility services. Commission Staff has distinguished all instances of wastewater billing violations in the Revised Proposed Order.

d. Are there any violations related to electric service that should be addressed in this docket?

- No. Sunny Quest does not bill for electric utilities at the Shalimar Apartments. Tenants are billed directly by the City of Austin for electric utility services.

2. Suspension and discontinuance of billing

a. For which services did Sunny Quest suspend billing? Water? Sewer? Electric?

- Sunny Quest suspended and ultimately decided to discontinue billing for water and wastewater utility services. Sunny Quest does not bill for electric utilities at the Shalimar Apartments. Tenants are billed directly by the City of Austin for electric utility services.

b. On what date did Sunny Quest suspend billing of each applicable service?

- Sunny Quest issued its final water and wastewater utility bills in July 2017. Sunny Quest did not issue a water and wastewater utility bill in August 2017, or in any month following August 2017. Sunny Quest initially suspended water and wastewater billing temporarily, intending to resume billing under an approved method as a result of Commission Staff's investigation and settlement. However, Sunny Quest ultimately decided to permanently discontinue billing water and wastewater utilities, as allowed by 16 Texas Administrative Code (TAC) § 24.124(f)(3), rather than bill using an approved method. Sunny Quest relinquished its water and wastewater billing registration on April 4, 2018.

c. What is Sunny Quest's legal authority for suspending billing?

- Under 16 TAC § 24.124(f), an owner using an allocation formula other than those approved in 16 TAC § 24.124(e) shall immediately provide notice as required under § 24.123(c) and either: (a) adopt one of the methods in § 24.124(e); or (b) install submeters and begin billing on a submetered basis; or (c) discontinue billing for utility services. Sunny Quest was using an allocation formula, other than those approved in 16 TAC § 24.124(e), and chose to "discontinue billing for utility services." Sunny Quest relinquished its water and wastewater billing registration on April 4, 2018.

d. Does Sunny Quest propose to collect amounts owed from the time period when billing was suspended before billing is discontinued? If so, what is Sunny Quest's legal authority for doing so?

- No. Sunny Quest has indicated to Commission Staff that it will not collect amounts owed from the time period when billing was suspended before billing was discontinued. Pursuant to 16 TAC § 24.125(k) an apartment house may calculate an adjustment for bills issued in the previous six months. Because Sunny Quest was

registered with the Commission from August 4, 2017 to April 4, 2018, Sunny Quest could bill tenants pursuant to its registered billing method for charges in the previous six months, up until April 4, 2018. However, as previously mentioned, Sunny Quest has informed Commission Staff that it will not be billing undercharged tenants.

- If Sunny Quest were to bill tenants pursuant to 16 TAC § 24.125(k), Commission Staff would review Sunny Quest's billings to ensure its compliance with the Commission rules.

e. On what date will Sunny Quest or did Sunny Quest discontinue billing?

- Sunny Quest relinquished its registration to bill water and wastewater utility services on April 4, 2018 for the Shalimar Apartments. Sunny Quest issued its final water and wastewater utility bills in July 2017. Sunny Quest did not issue a water and wastewater utility bill in August 2017, or in any month following August 2017.

f. Is discontinuing billing a change in the method by which a tenant is billed?

- Commission Staff has determined that discontinuing billing is a change in the method by which a tenant is billed.

g. If discontinuing billing is a change in the method by which a tenant is billed, is there good cause in this docket for an exception to 16 Texas Administrative Code § 24.123(c), so that there is not further delay for Sunny Quest to discontinue billing for water service?

- O&E Commission Staff has determined that there is good cause in this docket for an exception to 16 TAC § 24.123(c), and requests the Commission order such exception in the ordering paragraphs of the Revised Proposed Order.

h. If Sunny Quest discontinues billing for water service, by what means does Sunny Quest intend to recover its future costs for water service?

- Commission rules do not designate how an Apartment House may recover costs for water service if it chooses to not submeter or allocate water and wastewater bills. Commission rules only specify that discontinuing billing for water and wastewater utility services is an option in 16 TAC § 24.123(c). Commission rules on water define “Incident of tenancy” as “Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.” The definition of “Incident of tenancy” is only used in another definition in the water rules, for “Water and sewer utility,” exempting from the definition any “person or corporation not otherwise a public utility 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 or used by others.” This would seem to exempt Apartments that provide water and wastewater as an incident of tenancy from rules applicable to water and wastewater utilities.
- Subchapter H of the Commission rules applies to “apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis.” Therefore, when an apartment house recovers water and wastewater utility costs through “incident of tenancy,” it is not “billing for water and wastewater utility service on a submetered or allocated basis,” and therefore not subject to the rules in Subchapter H.
- Without a showing of any other section that would bring an apartment house that is billing through incident of tenancy within the Commission’s jurisdiction, Commission Staff has determined that the Commission would not have jurisdiction over the apartment house’s rent.

3. Common-area usage

a. Numbered paragraph 19 of the settlement agreement states that “[Commission] Staff understands that there is a common area in the form of a laundry room.” Is there a common area, or not?

- While Sunny Quest claimed to not have common areas, Commission Staff determined through online resources and discussions with Sunny Quest that there is a common area in the form of an onsite laundry room for use by the tenants.
- No factual determination was made by an Administrative Law Judge, however, Sunny Quest agreed with Commission Staff’s determination in the settlement agreement.

b. If there is a common area, has the deduction for common-area usage of at least 5% been included in the recalculation of tenants’ bills in this docket?

- Yes. When Commission Staff determined the amount of the overcharge from implementing the unapproved method, Commission Staff accounted for the 5% deduction in the recalculation of tenants’ bills.

Respectfully Submitted,



W. Patrick Dinnin

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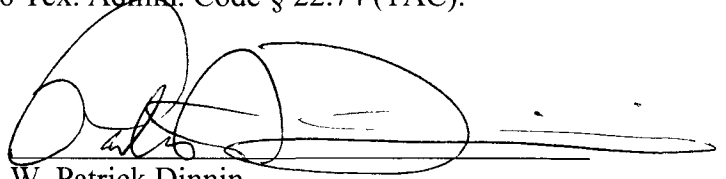
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 30th day of May, 2018, in accordance with 16 Tex. Admin. Code § 22.74 (TAC).



W. Patrick Dinnin

Attachment 1

DOCKET NO. 48056

AGREED SETTLEMENT AND	§	PUBLIC UTILITY COMMISSION
REPORT TO COMMISSION	§	
RELATING TO COMMISSION	§	OF TEXAS
STAFF'S INVESTIGATION OF SUNNY	§	
QUEST, LLC DBA SHALIMAR	§	
APARTMENTS' REGARDING 16 TAC	§	
§§ 24.122, 24.123, 24.124, AND 24.125	§	

PROPOSED ORDER

This Order approves the settlement agreement and report to Commission between Commission Staff and Sunny Quest, LLC d/b/a Shalimar Apartments regarding Commission Staff's investigation of Shalimar for violations of 16 Texas Administrative Code (TAC) §§ 24.122, 24.123, 24.124, and 24.125. The agreement resolves all issues between the parties to this proceeding. Commission Staff recommended a refund to tenants of \$1,090.31. Shalimar agreed to issue the refund. The agreement is approved.

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

I. Findings of Fact

1. Shalimar has 17 dwelling units that it can lease to tenants.
2. Shalimar has a total of 21 occupants, with 13 dwelling units that have one occupant and four dwelling units that have two occupants.
3. From May 17, 2017 through May 24, 2017 the Commission's Customer Protection Division received three complaints from tenants disputing Shalimar's water and wastewater utility billing practices.
4. Tenants pay the City of Austin directly for their electric utility services.
5. Shalimar registered with the Commission on August 4, 2017, in Docket No. 46908¹ to bill for water and wastewater utilities using the occupancy method.

¹ Control Number Request Form: Submetered or Allocated for 2017, Project No. 46908, AIS Item 478 (Aug. 4, 2017).

6. Before August 4, 2017, Shalimar was charging tenants for allocated water and wastewater utility service without having first registered with the Commission.
7. Shalimar suspended billing tenants for water and wastewater utilities in August 2017. Shalimar initially suspended water and wastewater billing with the intent for the suspension to be temporary, intending to resume billing under an approved method as a result of Commission Staff's investigation and settlement. However, Shalimar ultimately decided to permanently discontinue billing water and wastewater utilities, as allowed by 16 TAC § 24.124(f)(3), rather than bill using an approved method.
8. On April 4, 2018, Shalimar relinquished its registered billing method that it had filed on August 4, 2017 in Docket No. 46908.
9. Because Shalimar has decided to change its water and wastewater billing method to discontinue billing for water and wastewater utility services it is required to notice its tenants at least 35 days prior to implementing the new method.
10. Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved water and wastewater billing method that Shalimar implemented from January 1, 2017 to July 31, 2017 and (b) the actual occupancy water and wastewater allocation method specified in 16 TAC § 24.124(e)(2)(A)(i). The difference in these totals also takes into account a 5% deduction for common area water and wastewater usage.
11. Shalimar indicated on its allocated water and wastewater billing registration with the Commission that there are no common areas or irrigation systems; however, Commission Staff has determined through online resources and discussions with Shalimar that there is a common area in the form of a laundry room. Based on this newly-identified common area, Commission Staff has determined that Shalimar has failed to deduct at least 5% of the retail public utility's water and wastewater bill before allocating the bill to tenants.
12. Commission Staff has determined that Shalimar has divided the amount established in 16 TAC § 24.124(e)(1) by the total number of dwelling units, which is not one of the approved methods listed in 16 TAC § 24.124(e)(2)(A). For the majority of Shalimar's tenants, billing

- under this method results in higher water and wastewater utility bills than if Shalimar had divided this total by the number of occupants under 16 TAC § 24.124(e)(2)(A)(i).
13. Due to Shalimar dividing the water and wastewater utility bill by the number of dwelling units instead of the number of occupants, each single occupant dwelling was charged \$83.87 more than they would have been charged under the actual occupancy allocation method, for a cumulative total of \$1,090.31 from January 1, 2017 to July 31, 2017. This amount to be refunded also accounts for the 5% common area water and wastewater deduction.
 14. Shalimar has agreed that each tenant in a single tenant dwelling from January 1, 2017 to July 31, 2017 will receive a total refund of \$83.87, according to the spreadsheet included as Attachment 2 to the agreement,² in the form of a check.
 15. Shalimar has agreed that it will not seek reimbursement from tenants who were under-billed due to Shalimar's billing miscalculations and 16 TAC § 24.125(k) precludes Shalimar from seeking reimbursement for undercharges over six months old.
 16. Shalimar has agreed to treat any unclaimed refunds consistent with Title 6 of the Texas Property Code related to unclaimed property.
 17. Shalimar has agreed that it will include a letter to tenants explaining that the refund is being issued due to Shalimar's use of an unapproved allocation method, and a reference to this investigation and settlement. This letter will serve as the notice required by 16 TAC § 24.123(c). However, for expediency, both parties request a good cause exception under 16 TAC § 24.2(b) from the requirement in 16 TAC § 24.123(c) that Shalimar must wait 35 days before implementing its new method of discontinuing billing.
 18. The rental agreement provided to tenants by Shalimar only indicates that the tenant will pay utility costs and must keep the utilities on. Commission Staff has found that Shalimar has not provided any of the necessary information required to be in its rental agreements under 16 TAC § 24.123(a).

² Attachment 2 to the agreement was inadvertently omitted from the Application and Settlement Agreement filed on February 12, 2018, but was filed on March 16, 2018.

19. O&E Staff has found that Shalimar is charging its tenants for the City of Austin's "drainage service" each month, which is associated with the drainage of storm water for the apartment house.
20. Shalimar has not separated the drainage fee out of the mathematical calculations in determining tenants' water and wastewater utility bills.
21. O&E Staff has found that Shalimar does not separate the charge for trash or gas services from its allocated water and wastewater utility service charge. Tenants do not have the ability to distinguish their water or wastewater utility service costs from one month to another, nor are they able to calculate their portion of the bill from the information provided by Shalimar.
22. O&E Staff has found that Shalimar provides water and wastewater utility bills by simply text messaging billing information to the tenants. The text messages list (1) the total of the combined water, gas, and trash charges, (2) the billing cycle month, and (3) a due date, eight days after the date of the text. Because bills are not being mailed or hand-delivered, and the text messages lack all of the required information required by 16 TAC § 24.125(f), O&E Staff finds Shalimar in violation of § 24.125(f)(1, 2, 5, 6, 7, and 8).
23. O&E Staff has determined that Shalimar requires tenants to pay the water and wastewater utility charges eight days after Shalimar sends the text messages.
24. Shalimar has neither been providing the required records at the tenants dwelling, nor by mail once a written request has been received by Shalimar. Instead, Shalimar has been offering to provide the records offsite or via a picture of the records sent via a text message.
25. Shalimar fully cooperated with Commission Staff's investigation.
26. Shalimar acknowledges the violations detailed in this Order.
27. Shalimar participated in one or more settlement discussions with Commission Staff to resolve this matter.
28. Shalimar has acknowledged that it has made changes to prevent future violations of the same nature from happening going forward.

29. Shalimar asserts that none of the violations detailed in this agreement were intentionally committed.
30. On February 6, 2018 the Parties entered into the agreement resolving the violations. Commission Staff recommended, and Shalimar has agreed to pay, a refund to tenants totaling \$1,090.31 for overcharges due to billing violations of 16 TAC §§ 24.122 and 24.124.
31. The agreement provides for a reasonable resolution of this matter.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter under TWC § 13.041.
2. Shalimar is an apartment house as defined by Texas Water Code (TWC) § 13.501(1) and 16 TAC § 24.121(c)(2) for the purposes of TWC § 13.5031 and 16 TAC § 24.123.
3. Shalimar is an owner of an apartment house as defined by 16 TAC § 24.121(c)(10) for the purposes of 16 TAC §§ 24.122, 24.123, 24.124, and 24.125.
4. Under TWC § 13.5031, the Commission is required to adopt rules and standards governing billing systems or methods used by apartment house owners for prorating or allocating among tenants nonsubmetered master metered water and wastewater utility service costs.
5. Under TWC § 13.5031(1), the Commission must adopt rules that require the rental agreement to contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the apartment house.
6. Under 16 TAC § 24.122(a), an owner who intends to bill tenants for submetered or allocated water and wastewater utility service or who changes the method used to bill tenants for water or wastewater utility service is required to register with the Commission on a form prescribed by the Commission.
7. Under 16 TAC § 24.124(f), an owner using an allocation formula other than those approved in 16 TAC § 24.124(e) shall immediately provide notice as required under § 24.123(c) and either:
 - a. adopt one of the methods in § 24.124(e); or
 - b. install submeters and begin billing on a submetered basis; or

- c. discontinue billing for utility services.
8. Under 16 TAC § 24.123(c), the owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.
9. Under 16 TAC § 24.124(e)(1)(B)(iv), an owner must deduct the common area usage from the retail public utility's master meter bill before allocating the water or wastewater utility bill to tenants. If the common areas that are served through the master meter that provides water to the dwellings are not separately metered or submetered and there is no installed landscape irrigation system, the owner must deduct at least five percent of the retail public utility's master meter bill.
10. Under § 24.124(e)(2)(A)(i), in order to calculate a tenant's bill under the "occupancy" method, the owner shall multiply the amount established in 16 TAC § 24.124(e)(1) by the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered.
11. In 16 TAC §§ 24.123(a)(1-9), a list of items that the written rental agreement between the owner and tenant must disclose in writing is provided. Additionally, 16 TAC § 24.123(b) requires the owner, at the time the rental agreement is discussed, to provide the tenant with a copy of Title 16, Chapter 24, Subchapter H of the TAC.
12. Under 16 TAC § 24.124(a), charges for allocated water and wastewater utilities may only include bills for water or wastewater from the retail public utility and must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.
13. Although the City of Austin does not prohibit the drainage service charge to be passed through to the tenants, the charge is not permitted under 16 TAC § 24.124(a) to be included in Shalimar's calculation of the water and wastewater utility service charges billed to tenants.
14. Under 16 TAC § 24.125(e), if issued on a multi-item bill, charges for submetered or allocated water and wastewater utility service must be separate and distinct from any other charges on the bill.

15. Under 16 TAC § 24.125(f), the bill must clearly state that the water and wastewater utility service is submetered or allocated, as applicable, and must include all of the information listed in 16 TAC §§ 24.125(f)(1-8).
16. Under 16 TAC § 24.125(h), the due date on the bill may not be less than 16 days after it is mailed or hand-delivered to the tenant.
17. Under 16 TAC § 24.122(e), the owner shall make records³ available for inspection by the tenant or the Commission or Commission Staff at the on-site manager's office during normal business hours in accordance with 16 TAC § 24.122(g).
18. Under 16 TAC §§ 24.122(g)(1-4), if the required records are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant. If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant. Such copies may be provided by mail if postmarked by the 30th day.
19. Under 16 TAC § 24.122(f), records must be maintained for the current year and the previous calendar year.
20. Shalimar was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
21. The agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(h).
22. This docket was processed in accordance with applicable statutes and Commission rules.
23. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

³ The records that the owner shall make available are listed in 16 TAC § 24.122(e)(1-10).

1. The agreement, provided with this Order as Attachment 1, is approved and the parties shall be bound by its terms.
2. Shalimar shall issue a total of \$1,090.31 in refunds to tenants in the form of checks. Shalimar shall remit payment of the full amount of the refund on or by 30 calendar days after the date this Order is signed.
3. Shalimar shall file an affidavit of refund payments in this docket no later than 30 calendar days after checks are mailed or delivered to the affected tenants.
4. Shalimar shall issue notice to tenants, in the form prescribed by 16 TAC § 24.123(c). However, the Commission finds that there is good cause to issue an exception to the requirement that Shalimar must wait 35 days before implementing its new method of discontinuing billing.
5. Shalimar may discontinue billing tenants for water and wastewater utilities immediately.
6. Shalimar shall file an affidavit of notice in this docket no later than 30 calendar days after notice is mailed or delivered to the affected tenants.
7. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
8. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the agreement.
9. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the _____ day of May 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

Attachment 2

DOCKET NO. 48056

AGREED SETTLEMENT AND REPORT TO COMMISSION RELATING TO COMMISSION STAFF'S INVESTIGATION OF SUNNY QUEST, LLC DBA SHALIMAR APARTMENTS' REGARDING 16 TAC §§ 24.122, 24.123, 24.124, AND 24.125 § **PUBLIC UTILITY COMMISSION OF TEXAS** §

PROPOSED ORDER

This Order approves the settlement agreement and report to Commission between Commission Staff and Sunny Quest, LLC d/b/a Shalimar Apartments regarding Commission Staff's investigation of Shalimar for violations of 16 Texas Administrative Code (TAC) §§ 24.122, 24.123, 24.124, and 24.125. The agreement resolves all issues between the parties to this proceeding. Commission Staff recommended a refund to tenants of \$1,090.31. Shalimar agreed to issue the refund. The agreement is approved.

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

I. Findings of Fact

1. Shalimar has 17 dwelling units that it can lease to tenants.
2. Shalimar has a total of 21 occupants, with 13 dwelling units that have one occupant and four dwelling units that have two occupants.
3. From May 17, 2017 through May 24, 2017 the Commission's Customer Protection Division received three complaints from tenants disputing Shalimar's water and wastewater utility billing practices.
4. Tenants pay the City of Austin directly for their electric utility services.
- 4.5. Shalimar registered with the Commission on August 4, 2017, in Docket No. 46908¹ to bill for water and wastewater utilities using the occupancy method.

¹ Control Number Request Form: Submetered or Allocated for 2017. Project No 46908, AIS Item 478 (Aug. 4, 2017).*

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- 5-6. Before August 4, 2017, Shalimar was charging tenants for allocated water and wastewater utility service without having first registered with the Commission.
7. Shalimar has agreed to change its billing method to discontinue billing for utility services, and due to this change, Shalimar suspended billing tenants for water and wastewater utilities in August 2017. Shalimar initially suspended water and wastewater billing with the intent for the suspension to be temporary, intending to resume billing under an approved method as a result of Commission Staff's investigation and settlement. However, Shalimar ultimately decided to permanently discontinue billing water and wastewater utilities, as allowed by 16 TAC § 24.124(f)(3), rather than bill using an approved method.
8. On April 4, 2018, Shalimar relinquished its registered billing method that it had filed on August 4, 2017 in Docket No. 46908.
- 6-9. Because Shalimar has decided to change its water and wastewater billing method to discontinue billing for water and wastewater utility services it is required to notice its tenants at least 35 days prior to implementing the new method.
- 7-10. Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved water and wastewater billing method that Shalimar implemented from January 1, 2017 to July 31, 2017 and (b) the actual occupancy water and wastewater allocation method specified in 16 TAC § 24.124(e)(2)(A)(i). The difference in these totals also takes into account a 5% deduction for common area water and wastewater usage.
- 8-11. Shalimar ~~indicates~~ indicated on its allocated water and wastewater billing registration with the Commission that there are no common areas or irrigation systems; however, Staff ~~understands~~ Commission Staff has determined through online resources and discussions with Shalimar that there is a common area in the form of a laundry room. Based on this newly-identified common area, Staff of the Oversight and Enforcement Division (O&E) Commission Staff has determined that Shalimar has failed to deduct at least 5% of the retail public utility's water and wastewater bill before allocating the bill to tenants.
- 9-12. O&E Commission Staff has determined that Shalimar has divided the amount established in 16 TAC § 24.124(e)(1) by the total number of dwelling units, which is not one of the

approved methods listed in 16 TAC § 24.124(e)(2)(A). For a the majority of Shalimar's tenants, billing under this method results in higher water and wastewater utility bills than if Shalimar had divided this total by the number of occupants under 16 TAC § 24.124(e)(2)(A)(i).

~~10. Going forward, Shalimar has agreed to discontinue billing for water utility services.~~

~~11-13. Due to Shalimar dividing the water and wastewater utility bill by the number of dwelling units instead of the number of occupants, each single occupant dwelling was charged \$83.87 more than they would have been charged under the actual occupancy allocation method, for a cumulative total of \$1,090.31 from January 1, 2017 to July 31, 2017. This amount to be refunded also accounts for the 5% common area water and wastewater deduction.~~

~~12-14. Shalimar has agreed that each tenant in a single tenant dwelling from January 1, 2017 to July 31, 2017 will receive a total refund of \$83.87, according to the spreadsheet included as Attachment 2 to the agreement,² in the form of a check.~~

~~13-15. Shalimar has agreed that it will not seek reimbursement from tenants who were under-billed due to Shalimar's billing miscalculations and 16 TAC § 24.125(k) precludes Shalimar from seeking reimbursement for undercharges over six months old.~~

~~14. Because Shalimar suspended billing tenants for utility services since August 2017, the refund may be reduced by the amount owed to Shalimar for the suspended billing for the previous six months under 16 TAC § 24.125(k).~~

~~15-16. Shalimar has agreed to treat any unclaimed refunds consistent with Title 6 of the Texas Property Code related to unclaimed property.~~

~~16-17. Shalimar has agreed that it will include a letter to tenants explaining that the refund is being issued due to Shalimar's use of an unapproved allocation method, and a reference to this investigation and settlement. This letter will serve as the notice required by 16 TAC § 24.123(c). However, for expediency, both parties request a good cause exception under~~

² Attachment 2 to the agreement was inadvertently omitted from the Application and Settlement Agreement filed on February 12, 2018, but was filed on March 16, 2018

~~16~~ TAC ~~§ 24.2(b)~~ from the requirement in 16 TAC ~~§ 24.123(c)~~ that Shalimar must wait 35 days before implementing its new method of discontinuing billing.

~~17-18~~ The rental agreement provided to tenants by Shalimar only indicates that the tenant will pay utility costs and must keep the utilities on. Commission Staff has found that Shalimar has not provided any of the necessary information required to be in its rental agreements under 16 TAC § 24.123(a).

~~18-19~~ O&E Staff has found that Shalimar is charging its tenants for the City of Austin's "drainage service" each month, which is associated with the drainage of storm water for the apartment house.

~~19-20~~ Shalimar has not separated the drainage fee out of the mathematical calculations in determining tenants' water and wastewater utility bills.

~~20-21~~ O&E Staff has found that Shalimar does not separate the charge for trash or electric gas services from its allocated water and wastewater utility service charge. Tenants do not have the ability to distinguish their water or wastewater utility service costs from one month to another, nor are they able to calculate their portion of the bill from the information provided by Shalimar.

~~21-22~~ O&E Staff has found that Shalimar provides water and wastewater utility bills by simply text messaging billing information to the tenants. The text messages list (1) the total of the combined water, electric gas, and trash charges, (2) the billing cycle month, and (3) a due date, eight days after the date of the text. Because bills are not being mailed or hand-delivered, and the text messages lack all of the required information required by 16 TAC § 24.125(f), O&E Staff finds Shalimar in violation of § 24.125(f)(1, 2, 5, 6, 7, and 8).

~~22-23~~ O&E Staff has determined that Shalimar requires tenants to pay the water and wastewater utility service charges eight days after Shalimar sends the text messages.

~~23-24~~ Shalimar has neither been providing the required records at the tenants dwelling, nor by mail once a written request has been received by Shalimar. Instead, Shalimar has been offering to provide the records offsite or via a picture of the records sent via a text message.

~~24-25~~ Shalimar fully cooperated with Commission Staff's investigation.

~~25-26~~ Shalimar acknowledges the violations detailed in this Order.

~~26.27.~~ Shalimar participated in one or more settlement discussions with Commission Staff to resolve this matter.

~~27.28.~~ Shalimar has acknowledged that it has made changes to prevent future violations of the same nature from happening going forward.

~~28.29.~~ Shalimar asserts that none of the violations detailed in this agreement were intentionally committed.

~~29.30.~~ On February 6, 2018 the Parties entered into the agreement resolving the violations. Commission Staff recommended, and Shalimar has agreed to pay, a refund to tenants totaling \$1,090.31 for overcharges due to billing violations of 16 TAC §§ 24.122 and 24.124.

~~30.31.~~ The agreement provides for a reasonable resolution of this matter.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter under TWC § 13.041.
2. Shalimar is an apartment house as defined by Texas Water Code (TWC) § 13.501(1) and 16 TAC § 24.121(c)(2) for the purposes of TWC § 13.5031 and 16 TAC § 24.123.
3. Shalimar is an owner of an apartment house as defined by 16 TAC § 24.121(c)(10) for the purposes of 16 TAC §§ 24.122, 24.123, 24.124, and 24.125.
4. Under TWC § 13.5031, the Commission is required to adopt rules and standards governing billing systems or methods used by apartment house owners for prorating or allocating among tenants nonsubmetered master metered water and wastewater utility service costs.
5. Under TWC § 13.5031(1), the Commission must adopt rules that require the rental agreement to contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the apartment house.
6. Under 16 TAC § 24.122(a), an owner who intends to bill tenants for submetered or allocated water and wastewater utility service or who changes the method used to bill tenants for water or wastewater utility service is required to register with the Commission on a form prescribed by the Commission.

7. Under 16 TAC § 24.124(f), an owner using an allocation formula other than those approved in 16 TAC § 24.124(e) shall immediately provide notice as required under § 24.123(c) and either:
 - a. adopt one of the methods in § 24.124(e); or
 - b. install submeters and begin billing on a submetered basis; or
 - c. discontinue billing for utility services.
8. Under 16 TAC § 24.123(c), the owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.
9. Under 16 TAC § 24.124(e)(1)(B)(iv), an owner must deduct the common area usage from the retail public utility's master meter bill before allocating the water or wastewater utility bill to tenants. If the common areas that are served through the master meter that provides water to the dwellings are not separately metered or submetered and there is no installed landscape irrigation system, the owner must deduct at least five percent of the retail public utility's master meter bill.
10. Under § 24.124(e)(2)(A)(i), in order to calculate a tenant's bill under the "occupancy" method, the owner shall multiply the amount established in 16 TAC § 24.124(e)(1) by the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered.
11. In 16 TAC §§ 24.123(a)(1-9), a list of items that the written rental agreement between the owner and tenant must disclose in writing is provided. Additionally, 16 TAC § 24.123(b) requires the owner, at the time the rental agreement is discussed, to provide the tenant with a copy of Title 16, Chapter 24, Subchapter H of the TAC.
12. Under 16 TAC § 24.124(a), charges for allocated water ~~utility service~~ and wastewater utilities may only include bills for water or wastewater from the retail public utility and must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.
13. Although the City of Austin does not prohibit the drainage service charge to be passed through to the tenants, the charge is not permitted under 16 TAC § 24.124(a) to be included

- in Shalimar's calculation of the water and wastewater utility service charges billed to tenants.
14. Under 16 TAC § 24.125(e), if issued on a multi-item bill, charges for submetered or allocated water and wastewater utility service must be separate and distinct from any other charges on the bill.
 15. Under 16 TAC § 24.125(f), the bill must clearly state that the water and wastewater utility service is submetered or allocated, as applicable, and must include all of the information listed in _____ 16 TAC §§ 24.125(f)(1-8).
 16. Under 16 TAC § 24.125(h), the due date on the bill may not be less than 16 days after it is mailed or hand-delivered to the tenant.
 17. Under 16 TAC § 24.122(e), the owner shall make records³ available for inspection by the tenant or the Commission or Commission Staff at the on-site manager's office during normal business hours in accordance with 16 TAC § 24.122(g).
 18. Under 16 TAC §§ 24.122(g)(1-4), if the required records are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant. If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant. Such copies may be provided by mail if postmarked by the 30th day.
 19. Under 16 TAC § 24.122(f), records must be maintained for the current year and the previous calendar year.
 20. Shalimar was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
 21. The agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(h).
 22. This docket was processed in accordance with applicable statutes and Commission rules.

³ The records that the owner shall make available are listed in 16 TAC § 24.122(e)(1-10).

23. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

1. The agreement, provided with this Order as Attachment 1, is approved and the parties shall be bound by its terms.
2. Shalimar shall issue a total of \$1,090.31 in refunds to tenants in the form of checks. Shalimar shall remit payment of the full amount of the refund on or by 30 calendar days after the date this Order is signed.
3. Shalimar shall file an affidavit of refund payments in this docket no later than 30 calendar days after checks are mailed or delivered to the affected tenants.
4. Shalimar shall issue notice to tenants, in the form prescribed by 16 TAC § 24.123(c). However, the Commission finds that there is good cause to issue an exception to the requirement that Shalimar must wait 35 days before implementing its new method of discontinuing billing.
5. Shalimar may discontinue billing tenants for water and wastewater utilities immediately.
- 3-6. Shalimar shall file an affidavit of notice in this docket no later than 30 calendar days after notice is mailed or delivered to the affected tenants.
- 4-7. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
- 5-8. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the agreement.
- 6-9. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the _____ day of ~~April~~ May 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER