



Control Number: 48056



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

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Public Utility Commission of Texas

PUBLIC UTILITY COMMISSION
REG CLERK

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Office of Policy & Docket Management

RE: **Open Meeting of September 14, 2018**
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*

DATE: August 24, 2018

Enclosed is a copy of the Revised Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Friday, September 14, 2018, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Revised Proposed Order on or before Thursday, September 6, 2018.

If there are no corrections or exceptions, no response is necessary.

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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	§	

REVISED PROPOSED ORDER

This Order approves the settlement agreement between Commission Staff and Sunny Quest, LLC regarding Commission Staff's investigation of Sunny Quest for violations of 16 Texas Administrative Code (TAC) §§ 24.122 through 24.125. The settlement agreement also serves as a report to the Commission under 16 TAC § 22.246(h). The settlement agreement resolves all issues between the parties to this proceeding. Commission Staff recommended a refund to tenants of \$1,090.31. Sunny Quest agreed to issue the refund. The Commission approves the settlement agreement.

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

I. Findings of Fact

1. Sunny Quest owns an apartment house that has 17 dwelling units that it can lease to tenants.
2. Sunny Quest's apartment house has a total of 21 occupants, with 13 dwelling units that have 1 occupant and 4 dwelling units that have 2 occupants.
3. Sunny Quest purports to operate under the assumed name of Shalimar Apartments.
4. There is no certificate of assumed name on file with the Texas Secretary of State by Sunny Quest for the assumed name of Shalimar Apartments.
5. Sunny Quest's tenants pay the City of Austin directly for their electric utility services.
6. From May 17, 2017 through May 24, 2017, the Commission's Customer Protection Division received three complaints from tenants disputing Sunny Quest's billing practices for water and wastewater utility service.

7. Sunny Quest registered with the Commission on August 4, 2017, in Docket No. 46908¹ to bill for water and wastewater utility service using the occupancy method.
8. Commission Staff determined that, before August 4, 2017, Sunny Quest was charging tenants for allocated water and wastewater utility service without having first registered with the Commission.
9. Sunny Quest suspended billing tenants for water and wastewater utilities in August 2017. Sunny Quest initially suspended billing with the intent that the suspension would be temporary and billing would resume under an approved method as a result of Commission Staff's investigation and the settlement. However, Sunny Quest ultimately decided to permanently discontinue billing for water and wastewater utility service.
10. On April 4, 2018, Sunny Quest relinquished the registered billing method that it had filed on August 4, 2017 in Docket No. 46908.
11. Commission Staff determined that Sunny Quest divided the amount of the master-meter bill by the total number of dwelling units instead of the number of occupants. For the majority of Sunny Quest's tenants, the incorrect calculation resulted in higher bills for water and wastewater utility service.
12. Sunny Quest indicated on its registration form for allocated water and wastewater utility service, which was filed with the Commission, that there are no common areas or irrigation systems; however, Commission Staff determined through online resources and discussions with Sunny Quest that there is a common area in the form of a laundry room. Based on this common area, Commission Staff determined that Sunny Quest failed to deduct at least 5% of the retail public utility's master-meter bill before allocating the bill to tenants.
13. Commission Staff determined that, because Sunny Quest divided the master-meter 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

¹ *Submeter and Allocation Registration Requests - 2017*, Project No. 46908, Registration of Submetered or Allocated Utility Service – The Shalimar Apartments (Aug. 4, 2017).

January 1, 2017 to July 31, 2017. This total amount includes a 5% deduction for water and wastewater in a common area.

14. Commission Staff determined that the rental agreement provided to tenants by Sunny Quest only indicated that the tenant will pay utility costs and must keep the utilities on. Commission Staff determined that Sunny Quest did not provide any of the information required to be in its rental agreements under 16 TAC § 24.123(a).
15. Commission Staff determined that Sunny Quest charged its tenants for the City of Austin's drainage service each month, which is associated with the drainage of storm water from the apartment house.
16. Commission Staff determined that Sunny Quest did not separate the drainage-service charge from the mathematical calculations in determining tenants' bills for water and wastewater utility service.
17. Commission Staff determined that Sunny Quest did not separate the charge for trash or gas services from the charge for allocated water and wastewater utility service. Commission Staff determined that, from the information provided by Sunny Quest, tenants do not have the ability to distinguish or calculate their water or wastewater utility service costs from one month to another.
18. Commission Staff determined that Sunny Quest provided bills for water and wastewater utility service to the tenants by text message. The text messages listed (a) the total of the combined charges for water, wastewater, gas, and trash, (b) the billing-cycle month, and (c) a due date, which was eight days after the date of the text message.
19. Commission Staff determined that Sunny Quest required tenants to pay the charges for water and wastewater utility service eight days after Sunny Quest sent the text messages.
20. Commission Staff determined that, because bills are not being mailed or hand-delivered and the text messages lack all of the information required by 16 TAC § 24.125(f), Sunny Quest violated 16 TAC §§ 24.125(f)(1), (2), (5), (6), (7), and (8).
21. Commission Staff determined that, after Sunny Quest received a written request, Sunny Quest did not provide the records specified in 16 TAC § 24.122(e) at the tenant's dwelling

or by mail, but instead offered to provide the records offsite or through a picture of the records sent via a text message.

22. Sunny Quest fully cooperated with Commission Staff's investigation.
23. Sunny Quest participated in one or more settlement discussions with Commission Staff to resolve this matter.
24. Sunny Quest and Commission Staff entered into the settlement agreement that was executed on February 7 and 12, 2018.
25. Sunny Quest acknowledged that it committed the violations detailed in this Order.
26. Sunny Quest acknowledged that it has made changes to prevent future violations of the same nature.
27. Sunny Quest asserted that none of the violations detailed in the settlement agreement were committed intentionally.
28. Under the settlement agreement, Sunny Quest 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.
29. Sunny Quest agreed that the refunds to current and former tenants reflect the difference between the amounts charged under the unapproved method of billing for water and wastewater utility service that Sunny Quest implemented from January 1, 2017 to July 31, 2017 and the amounts that should have been charged under the actual-occupancy allocation method, which is specified in 16 TAC § 24.124(e)(2)(A)(i). Sunny Quest also agreed that the refunds will include a 5% reduction for water and wastewater usage in a common area.
30. Sunny Quest agreed that each tenant living in a single-occupant dwelling from January 1, 2017 to July 31, 2017 will receive a total refund of \$83.87 by check, according to the spreadsheet included as attachment 2 to the settlement agreement.²
31. Sunny Quest agreed that it will not seek reimbursement from tenants who were underbilled because of Sunny Quest's billing miscalculations.

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

32. Sunny Quest agreed to treat any unclaimed refunds in accordance with Title 6 of the Texas Property Code related to unclaimed property.
33. Because Sunny Quest decided to change its billing method to discontinue billing for water and wastewater utility service, it is required to notice its tenants at least 35 days before implementing the new method.
34. Sunny Quest agreed that it will send a letter to tenants explaining that the refund is being issued because Sunny Quest used an unapproved allocation method. Sunny Quest also agreed that the letter will reference this investigation and the settlement.
35. The letter to tenants will serve as the notice required by 16 TAC § 24.123(c).
36. For expediency, both parties requested a good-cause exception under 16 TAC § 24.2(b) from the requirement in 16 TAC § 24.123(c) that Sunny Quest must wait 35 days before implementing its new method of discontinuing billing.
37. The settlement agreement provides for a reasonable resolution of this matter.

II. Conclusions of Law

1. Sunny Quest owns an apartment house as that term is 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.
2. Sunny Quest is an owner of an apartment house as that term is defined by former 16 TAC § 24.121(c)(10), now 16 TAC § 24.121(c)(12), for the purposes of 16 TAC §§ 24.122 through 24.125.
3. The Commission has jurisdiction over this matter under TWC § 13.041.
4. Although the City of Austin does not prohibit the drainage-service charge from being passed through to the tenants, under 16 TAC § 24.124(a), the charge may not be included in Sunny Quest's calculation of the charges for water and wastewater utility service that are billed to tenants.
5. Sunny Quest violated 16 TAC § 24.122(a) by billing tenants for allocated water and wastewater utility service without registering first with the Commission.

6. Sunny Quest violated 16 TAC § 24.122(e) and (g) by failing to make the records listed in subsection (e) available for inspection in accordance with subsections (e) and (g).
7. Sunny Quest violated 16 TAC § 24.123(a) by failing to include in its rental agreements any of the information required under that subsection.
8. Sunny Quest did not provide notice to its tenants under 16 TAC § 24.123(c) at least 35 days before implementing a new method of billing for water and wastewater utility service.
9. Sunny Quest violated 16 TAC §§ 24.124(a) by including a drainage-service charge in the calculation of charges billed to tenants for water and wastewater utility service.
10. Sunny Quest violated 16 TAC § 24.124(e)(1)(B)(iv) by failing to deduct at least 5% from the master-meter bill for common-area usage before determining the amount to bill tenants.
11. Sunny Quest violated 16 TAC § 24.124(e)(2) by using an unapproved allocation method to calculate tenants' bills for water and wastewater utility service.
12. Sunny Quest violated 16 TAC § 24.125(e) by failing to separate other charges on tenants' bills from charges for allocated water and wastewater utility service.
13. Sunny Quest violated 16 TAC § 24.125(f) by failing to clearly state on tenants' bills for water and wastewater utility service that such services were allocated and by failing to include on the bills all of the information listed in 16 TAC § 24.125(f).
14. Sunny Quest violated 16 TAC § 24.125(h) by text-messaging bills for water or wastewater utility service to tenants rather than mailing or hand-delivering the bills and by requiring tenants to pay their bills for water and wastewater utility service within eight days of the text message.
15. Under 16 TAC § 24.125(k), Sunny Quest may not seek reimbursement for undercharges over six months old.
16. Sunny Quest 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.
17. The settlement agreement is a report of a settlement to the Commission in accordance with 16 TAC § 22.246(h).

18. This docket was processed in accordance with applicable statutes and Commission rules.
19. 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 Commission approves the settlement agreement.
2. Sunny Quest must comply with the terms of the settlement agreement and this Order.
3. Sunny Quest must issue a total of \$1,090.31 in refunds to tenants in the form of checks. Sunny Quest must send the checks by U.S. mail or hand-delivery no later than 30 calendar days after the date this Order is signed.
4. No later than 30 calendar days after the checks are mailed or hand-delivered to the tenants, Sunny Quest must file an affidavit in which Sunny Quest attests to compliance with ordering paragraph 3.
5. Sunny Quest may discontinue billing tenants for water and wastewater utilities immediately.
6. Sunny Quest must send notice by U.S. mail or hand-delivery to tenants in the form prescribed by 16 TAC § 24.123(c). However, there is good cause to issue an exception to the requirement that Sunny Quest must wait 35 days before implementing its new method of billing, i.e., discontinuing billing.
7. No later than 30 calendar days after notice is mailed or hand-delivered to the affected tenants, Sunny Quest must file an affidavit in which Sunny Quest attests to compliance with ordering paragraph 6.
8. Sunny Quest is subject to additional action or penalties for violations that are not raised in the settlement agreement or addressed in this Order.
9. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the settlement agreement and must not be

regarded as precedential as to the appropriateness of any principle or methodology underlying the settlement agreement.

10. 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 September 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER