



Control Number: 48056



Item Number: 16

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION  
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# OPEN MEETING COVER SHEET

## COMMISSIONER MEMORANDUM

**MEETING DATE:** September 14, 2018

**DATE DELIVERED:** September 13, 2018

**AGENDA ITEM NO.:** 15

**CAPTION:** *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*

**ACTION REQUESTED:** Discussion and possible action with respect to Chairman Walker's Memo

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16

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Chairman

**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

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

All Parties of Record (*via electronic transmission*)

FROM: David Hrcir   
Commission Advising

RE: *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, Docket No. 48056, September 14, 2018 Open Meeting, Item No. 15*

DATE: September 13, 2018

Please find enclosed a memorandum by Chairman Walker regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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# Public Utility Commission of Texas

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## Memorandum

**TO:** Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

**FROM:** Chairman DeAnn T. Walker 

**DATE:** September 13, 2018

**RE:** Open Meeting of September 14, 2018 – Agenda Item No. 15  
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*

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I recommend making the changes described below to the proposed order in this docket.

The Commission's rules at 16 Texas Administrative Code (TAC) § 24.123(a) require that a rental agreement clearly state the method of billing for water and wastewater utility service, whether it is via submeters or allocation, and, if via allocation, the allocation formula. Based on the settlement agreement, Sunny Quest's rental agreement does not state that tenants will be billed for water and wastewater utility service. However, Sunny Quest was using a specific allocation method to bill customers. By discontinuing billing, Sunny Quest has not changed its billing method from one method to another under 16 TAC § 24.123(c); rather, it ceased to separately bill for water and wastewater utility service altogether in accordance with its rental agreement. By doing so, Sunny Quest is coming into compliance with its rental agreement and with 16 TAC § 24.123(a), and not changing its method of billing for water and wastewater utility service.

The Commission's rules at 16 TAC § 24.124(f) require that an owner using an unapproved billing method "shall immediately provide notice as required under 16 TAC § 24.123(c) . . . ." However, as mentioned above, § 24.123(c) requires notice only when an owner changes the method by which a tenant is billed. Because Sunny Quest is ceasing to separately bill for water and wastewater utility service altogether to come into compliance with its rental agreement, it is not changing from one method of billing to another. Thus, the 35-day notice requirements of § 24.123(c) do not apply in this case.

I believe this reading of our rules is the only sensible application to the facts in this docket. The apartment owner was billing under a method that is not specified in the rental agreement and has now ceased that action and come into compliance with the rental agreement and the Commission's rules at 16 TAC § 24.123(a). It would be nonsensical to require the owner to obtain written consent from the tenants to stop billing contrary to the rental agreement and provide 35-day notice before charging customers in accordance with its rental agreement. Such a delay cannot be in the public interest under these circumstances.

Accordingly, proposed findings of fact 33, 35, and 36 should be deleted, because I believe that the findings are not consistent with the statute and Commission rules.

~~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.~~

~~35. The letter to tenants will serve as the notice required by 16 TAC § 24.123(e).~~

~~36. For expediency, both parties requested a good cause exception under 16 TAC § 24.2(b) from the requirement in 16 TAC § 24.123(e) that Sunny Quest must wait 35 days before implementing its new method of discontinuing billing.~~

I would not, however, delete finding of fact 34. Sunny Quest has agreed to provide notice to its tenants of this investigation and settlement and to inform them that the basis of the refund is that Sunny Quest used an unapproved allocation method. In addition, notwithstanding any other authority to require notice, the Commission may require such notice in relation to an investigation, such as this one, and especially as part of a settlement. However, ordering paragraph 6 should be modified, as follows:

6. Sunny Quest must send notice by U.S. mail or hand-delivery to tenants in accordance with the settlement agreement, the form prescribed by 16 TAC § 24.123(e). 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. The notice must reference this investigation and the settlement and explain that the refund is being issued because Sunny Quest used an unapproved allocation method.

In addition, I recommend adding the following finding of fact.

XX The rental agreement does not contain an allocation formula for billing water or wastewater utility service.

I also recommend adding the following new conclusions of law:

XX Sunny Quest may not charge for water or wastewater utility service using an allocation formula, because no such method is specified in its rental agreement, as is required under 16 TAC § 24.123(a).

XX Requiring the owner of an apartment house to cease billing in a manner that is not specified in the rental agreement and to come into compliance with its rental agreement and the Commission's rules at 16 TAC § 24.123(a) is not, under 16 TAC § 24.123(c), a change in the method by which a tenant is billed. It is the cessation of separate billing for water and wastewater utility service altogether.

XX Because there is no change in billing method under 16 TAC § 24.123(c), Sunny Quest is not required to provide notice under 16 TAC §§ 24.123(c) and 24.124(f).

Further, I recommend deleting conclusion of law 16, because it does not make a legal conclusion and is unnecessary.

~~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.~~

I also recommend modifying ordering paragraph 5 to state the determination definitively.

5. Sunny Quest ~~must~~ may discontinue billing tenants for water and wastewater utilities immediately.

In addition, I recommend adding an ordering paragraph that, in accordance with the agreement, prohibits Sunny Quest from seeking reimbursement from underbilled tenants.

XX Sunny Quest must not seek reimbursement from tenants who were underbilled because of Sunny Quest's billing miscalculations.

Finally, I propose delegating to Commission Advising and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.