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DOCKET NO. 48056

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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  
FILING CLERK  
OF TEXAS

### 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. 46908<sup>1</sup> 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

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<sup>1</sup> *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. The rental agreement does not contain an allocation formula for billing water or wastewater utility service.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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).

22. 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.
23. Sunny Quest fully cooperated with Commission Staff's investigation.
24. Sunny Quest participated in one or more settlement discussions with Commission Staff to resolve this matter.
25. Sunny Quest and Commission Staff entered into the settlement agreement that was executed on February 7 and 12, 2018.
26. Sunny Quest acknowledged that it committed the violations detailed in this Order.
27. Sunny Quest acknowledged that it has made changes to prevent future violations of the same nature.
28. Sunny Quest asserted that none of the violations detailed in the settlement agreement were committed intentionally.
29. 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.
30. 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.
31. 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.<sup>2</sup>

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<sup>2</sup> 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 that it will not seek reimbursement from tenants who were underbilled because of Sunny Quest's billing miscalculations.
33. Sunny Quest agreed to treat any unclaimed refunds in accordance with Title 6 of the Texas Property Code related to unclaimed property.
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 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 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.

9. 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.
10. 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.
11. 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.
12. 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).
13. 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.
14. Under 16 TAC § 24.125(k), Sunny Quest may not seek reimbursement for undercharges over six months old.
15. The settlement agreement is a report of a settlement to the Commission in accordance with 16 TAC § 22.246(h).
16. 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).
17. 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.
18. 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).
19. This docket was processed in accordance with applicable statutes and Commission rules.

20. 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 must discontinue billing tenants for water and wastewater utilities immediately.
6. Sunny Quest must not seek reimbursement from tenants who were underbilled because of Sunny Quest's billing miscalculations.
7. Sunny Quest must send notice by U.S. mail or hand-delivery to tenants in accordance with the settlement agreement. 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.
8. 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 7.
9. Sunny Quest is subject to additional action or penalties for violations that are not raised in the settlement agreement or addressed in this Order.
10. 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

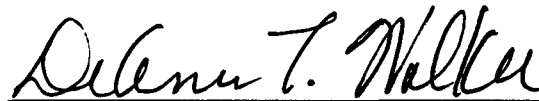


regarded as precedential as to the appropriateness of any principle or methodology underlying the settlement agreement.

11. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 17<sup>th</sup> day of September 2018.

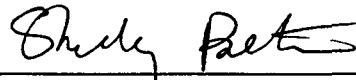
**PUBLIC UTILITY COMMISSION OF TEXAS**



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