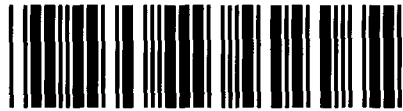


Control Number: 48056



Item Number: 5

Addendum StartPage: 0

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 §

2018 APR -4 PM 2:32
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

Notice of Corrections

Public Utility Commission of Texas (Commission) Staff files this Notice of Corrections. Docket Management established April 4, 2018, as the deadline for filing exceptions to the Proposed Order, issued on March 16, 2018, in the above-styled proceeding. Before Commission Staff filed its Application for Approval of Settlement, it made changes in the settlement agreement that were not subsequently reflected in Commission Staff's original Proposed Order. Commission Staff and Shalimar have agreed on recommending the following changes and exceptions to the Proposed Order:¹

1. Finding of Fact no. 5 is currently written: "Before June 6, 2017...." Due to the corrected date in Finding of Fact no. 4, the date in Finding of Fact no. 5 should now read "Before August 4, 2017...."
2. Finding of Fact no. 6 is currently written: "Because Shalimar has agreed to change its billing method from an unauthorized method to the actual occupancy allocated method, it is required...." It should now read: "Because Shalimar has agreed to change its billing method to discontinue billing for utility services, and due to this change, it is required...."
3. Finding of Fact no. 7 is currently written: "Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved method that Shalimar implemented before June 6, 2017 and (b) the actual occupancy allocation method specified in 16 TAC § 24.124(e)(2)(A)(i). Staff of the Oversight and Enforcement Division (O&E) determined, and Shalimar agreed, that

¹ Commission Staff's changes are also reflected in the redlined version of the Proposed Order, included as attachment 1.

the actual occupancy method should be used for the purpose of the refund because it is the method in which Shalimar has subsequently chosen as its billing method and which Shalimar stated it would have chosen to implement had it been aware of its options.” Commission Staff proposes that it should now read: “Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved method that Shalimar implemented from January 1, 2017 to July 31, 2017 and (b) the actual occupancy allocation method specified in 16 TAC § 24.124(e)(2)(A)(i).”

4. Finding of Fact no. 8 currently includes the wording: “O&E Staff has determined that Shalimar has failed to deduct at least 5%...” Commission Staff proposes that it should now read: “Based on this newly-identified common area, Staff of the Oversight and Enforcement Division (O&E) has determined that Shalimar has failed to deduct at least 5%...”
5. Finding of Fact no. 12 is currently written: “...in the form of a credit on the tenant’s next utility invoice, or in the form of a check for tenants who have moved.” Commission Staff proposes that it should now read: “...in the form of a check.”
6. Finding of Fact no. 21, in the final sentence reads: “...O&E Staff finds Shalimar in violation of almost every requirement of §§ 24.125(f)(1-2) and (5-8).” Commission Staff proposes that it should now read: “O&E Staff finds Shalimar in violation of § 24.125(f)(1, 2, 5, 6, 7, and 8).”
7. Commission Staff proposes that Finding of Fact no. 23 should be removed.
8. Finding of Fact no. 24 is currently written: “Shalimar has not been providing the required records at the tenants dwelling, or by mail once a written request has been received by Shalimar.” Commission Staff proposes that it should now read: “Shalimar has neither been providing the required records at the tenants dwelling, nor by mail once a written request has been received by Shalimar.”
9. Finding of Fact no. 14 is currently written: “Because Shalimar suspended billing tenants for utility services since July 2017...” Commission Staff proposes that it


should now read: “Because Shalimar suspended billing tenants for utility services since August 2017....”

10. Conclusion of Law no. 2 is currently written: “Shalimar is an apartment house as defined by Texas Water Code (TWC) § 13.501(1) and 16 TAC § 24.121(2)....” Commission Staff proposes that it should now read: “Shalimar is an apartment house as defined by Texas Water Code (TWC) § 13.501(1) and 16 TAC § 24.121(c)(2)....”
11. Conclusion of Law no. 3 is currently written: “Shalimar is an owner of an apartment house as defined by 16 TAC § 24.121(10)....” Commission Staff proposes that it should now read: “Shalimar is an owner of an apartment house as defined by 16 TAC § 24.121(c)(10)....”
12. Conclusion of Law no. 16 is currently written: “...16 days after it is mailed or hand delivered to the tenant.” Commission Staff proposes that it should now read: “...16 days after it is mailed or hand-delivered to the tenant.”
13. Ordering Paragraph no. 2 currently includes the wording: “Shalimar shall remit payment of the full amount of the refund on or 30 calendar days after the date this Order is signed.” Commission Staff proposes that it should now read: “Shalimar shall remit payment of the full amount of the refund on or by 30 calendar days after the date this Order is signed.”
14. Ordering Paragraph no. 3 is currently written: “Shalimar shall file an affidavit of refund payments in this docket no later than 5 calendar days after checks are mailed to the affected tenants.” Commission Staff proposes that it should now read: “Shalimar shall file an affidavit of refund payments in this docket no later than 5 calendar days after checks are mailed or delivered to the affected tenants.”

DATE: April 4, 2018

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

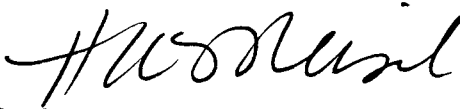
for 

Patrick Dinnin
Attorney-Oversight and Enforcement Division
State Bar No. 24087844
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(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. 48056

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 4th day of April, 2018, in accordance with 16 TAC § 22.74.


for 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 billing practices.
4. Shalimar registered with the Commission on August 4, 2017, in Docket No. 46908¹ to bill for water utilities using the occupancy method.
5. Before ~~June 6~~ August 4, 2017, Shalimar was charging tenants for allocated utility service without having first registered with the Commission.

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

6. ~~Because Shalimar has agreed to change its billing method from an unauthorized method to the actual occupancy allocated method to discontinue billing for utility services, and due to this change, it is required to notice its tenants at least 35 days prior to implementing the new method.~~
7. ~~Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved method that Shalimar implemented from January 1, 2017 to July 31, 2017 and (b) the actual occupancy allocation method specified in 16 TAC § 24.124(e)(2)(A)(i). Shalimar has agreed to issue refunds to current and former tenants to reflect the difference between (a) the unapproved method that Shalimar implemented before June 6, 2017 and (b) the actual occupancy allocation method specified in 16 TAC § 24.124(e)(2)(A)(i). Staff of the Oversight and Enforcement Division (O&E) determined, and Shalimar agreed, that the actual occupancy method should be used for the purpose of the refund because it is the method in which Shalimar has subsequently chosen as its billing method and which Shalimar stated it would have chosen to implement had it been aware of its options.~~
8. Shalimar indicates on its allocated billing registration with the Commission that there are no common areas or irrigation systems; however, Staff understands 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) Staff has determined that Shalimar has failed to deduct at least 5% of the retail public utility's bill before allocating the bill to tenants.
9. O&E 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 majority of Shalimar's tenants, billing under this method results in higher water 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. Due to Shalimar dividing the water 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.

12. 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 ~~credit on the tenant's next utility invoice, or in the form of a check for tenants who have moved.~~check.
13. Shalimar has agreed that it will not seek reimbursement from tenants who were under-billed due to Shalimar's billing miscalculations.
14. Because Shalimar suspended billing tenants for utility services since ~~July~~ 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. Shalimar has agreed to treat any unclaimed refunds consistent with Title 6 of the Texas Property Code related to unclaimed property.
16. 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).
17. 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. 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. Shalimar has not separated the drainage fee out of the mathematical calculations in determining tenants' water utility bills.

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

20. O&E Staff has found that Shalimar does not separate the charge for trash or electric services from its allocated water utility service charge. Tenants do not have the ability to distinguish their water 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. O&E Staff has found that Shalimar provides utility bills by simply text messaging billing information to the tenants. The text messages list (1) the total of the combined water, electric, 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 ~~almost every requirement of §§ 24.125(f)(1, 2, 3) and (5, 6, 7, and -8).~~
22. O&E Staff has determined that Shalimar requires tenants to pay the water utility service charges eight days after Shalimar sends the text messages.
- ~~23. Shalimar has agreed to send tenants written bills in compliance with 16 TAC §§ 24.124 related to charges and calculations, and 16 TAC § 24.125 related to billing.~~
- ~~24, 23.~~ Shalimar has ~~not~~ 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.
- ~~25-24.~~ Shalimar fully cooperated with Commission Staff's investigation.
- ~~26-25.~~ Shalimar acknowledges the violations detailed in this Order.
- ~~27-26.~~ Shalimar participated in one or more settlement discussions with Commission Staff to resolve this matter.
- ~~28-27.~~ Shalimar has acknowledged that it has made changes to prevent future violations of the same nature from happening going forward.
- ~~29-28.~~ Shalimar asserts that none of the violations detailed in this agreement were intentionally committed.
- ~~30-29.~~ 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.

~~31.30.~~ 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 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 utility service or who changes the method used to bill tenants for 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 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 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 Shahmar's calculation of the water 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 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 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:

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

3. Shalimar shall file an affidavit of refund payments in this docket no later than 5 calendar days after checks are mailed or delivered to the affected tenants.
4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
5. 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. 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 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

BRANDY MARTY MARQUEZ, COMMISSIONER

ARTHUR C. D'ANDREA, COMMISSIONER