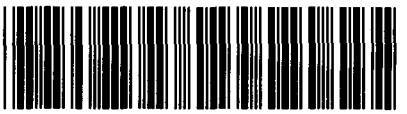

Control Number: 48454

Item Number: 30

Addendum StartPage: 0

OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

MEETING DATE: September 26, 2019

DATE DELIVERED: September 25, 2019

AGENDA ITEM NO.: 1

CAPTION: **Docket No. 48454; SOAH Docket No. 473-19-6762.WS –** Complaint of Nzinga Hughes Against the Trails at Dominion Park, AB-GO Trails at Dominion Park Propco, LLC, NWP Services Corporation, Harris County Municipal Utility District No. 215, and Goldoller Real Estate Investments

DESCRIPTION: Memorandum by Commissioner D'Andrea

Distribution List:
Commissioners' Offices (6)
Journeay, Stephen
Urban, John Paul
Corona, Connie
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30

Public Utility Commission of Texas

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

All Parties of Record (*via electronic transmission*)

FROM: Mark Hovenkamp
Commission Advising

RE: *Complaint of Nzinga Hughes Against The Trails at Dominion Park, AB-GO Trails at Dominion Park Propco, LLC, NWP Services Corporation, Harris County Municipal Utility District No. 215, and Goldoller Real Estate Investments,* Docket No. 48454; SOAH Docket No. 473-19-6762.WS, Preliminary Order, September 26, 2019 Open Meeting, Item No. 1

DATE: September 25, 2019

Please find enclosed a memorandum by Commissioner D'Andrea regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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Public Utility Commission of Texas

Memorandum

TO: Chairman DeAnn T. Walker
Commissioner Shelly Botkin

FROM: Commissioner Arthur C. D'Andrea AD w/permission

DATE: September 25, 2019

RE: Open Meeting of September 26, 2019 – Agenda Item No. 1
Docket No. 48454, *Complaint of Nzinga Hughes Against The Trail at Dominion Park, Ab-Go Trails at Dominion Park Propco, LLC, NWP Services Corporation, Harris County Municipal Utility District No. 215, and Goldoller Real Estate Investments*

I recommend that the Commission modify the draft preliminary order in this proceeding, as reflected in the attached red-lined version.

I also propose delegating to Commission Advising 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, grammas, punctuation, style, correction of numbering and readability.

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

PUC DOCKET NO. 48454
SOAH DOCKET NO. 473-19-6762.WS

COMPLAINT OF NZINGA HUGHES AGAINST THE TRAIL AT DOMINION PARK, AB-GO TRAILS AT DOMINION PARK PROPCO, LLC, NWP SERVICES CORPORATION, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 215, AND GOLDOLLER REAL ESTATE INVESTMENTS	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

DRAFT PRELIMINARY ORDER

Nzinga Hughes filed a complaint against The Trails at Dominion Park, Ab-Go Trails at Dominion Park Propco, LLC, NWP Service Corporation, Harris County Municipal Utility District No. 215 (the district), and Goldoller Real Estate Investments ~~(respondents)~~ to recover restitution from respondents for water and wastewater service overcharges under Texas Water Code (TWC) § 13.505(c).[1] This preliminary order identifies the issues that must be addressed and the issues that shall not be addressed.

~~Ms. Hughes filed a formal complaint against respondents on June 11, 2018, and the Commission referred the complaint to the State Office of Administrative Hearings (SOAH) on August 16, 2019. The applicant alleges the following violations of the provisions of 16 Texas Administrative Code (TAC) § 24:~~

~~(a) Respondents failed to make records concerning applicant's utility service available for inspection at the apartment house's on-site manager's office during normal business hours.[2]~~

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[1] Tex. Water Code Ann. § 13.505(c) (West 2015) (TWC); Complaint of Nzinga Hughes Against the Trails at Dominion Park, Ab-Go Trails at Dominion Park Propco, LLC, NWP Services Corporation, Harris County Municipal Utility District No. 215, and Goldoller Real Estate Investments (Jun. 11, 2019) (Complaint).

~~[2] 16 Tex. Admin. Code § 24.277(e) (2018) (TAC); Complaint at 1; *see also* Response to Staff's First Request for Information at 8 (Nov. 12, 2018) (Respondents' Response to First RFI) (stating respondents process for making the records available requires residence to call a customer service line to obtain information concerning their utility service bills); Response to Staff's Second Request for Information at 9 (Dec. 12, 2018) (Respondents' Response to Second RFI) (admitting "all records that are required to be made available for inspection by the tenant under § 24.122(e) (sic) are not routinely maintained at the on-site manager[']s office.").~~

(b) Respondents' rental agreement with applicant contains an insufficient description of the billing methodology of the apartment house's utility service;[3]

(c) Respondents altered applicant's utility-service billing methodology without her authorization and failed to provide notice of the change in utility-service billing methodology;[4]

(d) Respondents' utility-service bill includes a fee billed to the owner of the apartment house by a retail public utility, which is impermissible under the Commission's substantive rules;[5]

(e) Respondents inappropriately billed applicant for dwelling-unit-base charges applicable to unoccupied dwelling units.[6]

(f) Respondents improperly calculated applicant's monthly allocated water and sewer utility-service bill;[7]

(g) Respondents failed to provide a sufficiently clear description of applicant's utility service on her monthly bill;[8]

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[3] 16 TAC § 24.279(a); *see* Complaint (implying applicant's rental agreement has an insufficient description of owner's utility-service billing methodology).

[4] 16 TAC § 24.279(e); Complaint at 1.

[5] 16 TAC § 24.281(a); Complaint at 1; Respondents' Response to Second RFI (alleging the existence of a "hidden" base charge in respondents' invoices from Harris County Municipal Utility District No. 215 that respondents passed on to tenants like applicant); *see also* Respondents' Response to Second RFI, Exhibit 2-28 (describing in detail how tenants' utility-service bills are calculated).

[6] 16 TAC § 24.281(b); Rebuttal to Respondent RealPage Utility Management, Inc. (fka Service Corporation) at 2 (Jul. 13, 2013) (Rebuttal); *see also* Respondents' Response to First RFI at 7 (providing a vague description of how a line item on applicant's utility-service bill is calculated by including vacant units in the calculation); Respondents' Response to Second RFI (describing how vacant units affect "a portion of [tenant utility-service bill] calculation using [square feet]" and "the per unit calculation" of tenants' utility-service bills); *id.*, Exhibit 2-28 (providing a detailed explanation of how respondents calculated a "Fluctuating Flat Fee – Assum[ing] Vacants Occupied.").

[7] 16 TAC § 24.281(e); Complaint at 1.

[8] 16 TAC § 24.283(f); Complaint at 1.

~~(h) Respondents levied late fees greater than the 5% limit on administrative fees on the late payment of utility service charges.[9]~~

~~The administrative law judge (ALJ) dismissed the district from this case for lack of subject matter jurisdiction on July 2, 2018.[10]~~On June 11, 2018, Nzinga Hughes filed a complaint against the Trails at Dominion Park Propco, LLC, NWP Services Corporation, Goldoller Real Estate Investments (collectively, respondents), and Harris County Municipal Utility District No. 215 (the district). Ms. Hughes alleged violations of the Commission's water and wastewater allocation and submetering rules concerning record keeping, utility-service billing methodology, notice of utility service billing methodology, and late fees.[11] Respondents and the district deny all allegations asserted by Ms. Hughes.[12]

In Order No. 1 issued on June 12, 2018, the ALJ ordered respondents and the district to respond to the complaint.[13] On July 2, 2018, the district file a response and motion to dismiss requesting dismissal from the case for lack of subject matter jurisdiction.[14] On July 3, 2018, RealPage Utility Management, Inc. filed a response denying all allegations asserted by Ms. Hughes but not specifying if it represented any of the other respondents.[15] In Order No. 2 issued on September 24, 2018, the ALJ granted the district's motion to dismiss and ordered RealPage to clarify its relationship with the Trails at Dominion Park, Ab-Go Trails at Dominion Park Propco, NWP Services Corporation, and Goldoller Real Estate Investments.[16] RealPage did not file a

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~~[9] 16 TAC § 24.283(m); Rebuttal at 4. *Compare* Rebuttal, Section: 3 (showing a utility service charge of $85.99 for the 10/24/2017 – 11/22/2017 billing period) *with* Respondents' Response to Second RFI, Exhibit 2-28 at 18 (showing a utility service charge of $66.38 for the 10/24/2017 – 11/22/2017 billing period).~~

~~[10] *Dismissing Harris County MUD No. 215 and Requiring Responses*, Docket No. 48454, Order No. 2 (Jul. 2, 2018).~~

[11] *See* Complaint at 2–4.

[12] Response to Complaint (Jul. 3, 2018) (RealPage's Response); Response to Complaint and Motion to Dismiss (Jul. 2, 2018) (District's Response).

[13] Order No. 1 (Jun. 12, 2018).

[14] District's Response.

[15] RealPage's Response.

[16] Order No. 2 (Sep. 24, 2018).

response to Order No. 2. On August 16, 2019, the ALJ referred the docket to the State Office of Administrative Hearings (SOAH).[17]

Ms. Hughes and remaining respondents were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by September 5, 2019. Commission Staff timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.[18] After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

~~***Record Keeping***~~

1. Who is the owner of the apartment house referred to in this proceeding as The Trails at Dominion Park as defined under 16 TAC § 24.275(12)? In answering this question, please address the following:
   a. What is the name of the legal titleholder of the apartment house?
   b. What is the name of the landlord of the apartment house?
   c. What is the name of the manager of the apartment house?
   d. Is the manager expressly identified as the landlord in the lease?
2. Did the owner violate 16 TAC §§ 24.277(e), (f), and (g) with respect to its water or wastewater billing calculations?
   a. Is ~~respondents'~~ the owner's current practice of requiring tenants to call a customer service hotline to obtain information about their utility-service bills compliant with the record keeping requirements of 16 TAC §§ 24.277(e) through (g)?

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[17] Order of Referral (Aug. 16, 2019).

[18] Tex. Gov't Code Ann. § 2003.049(e) (Vernon 2000).

b. Is ~~respondents'~~ the owner's recently implemented practice of requiring tenants to submit written requests for the information, after which the tenant will receive the information within 15 days compliant with Section 24.227(e) through (g)?

~~2.~~3. Is the district the retail public utility that provides water or wastewater service to the owner?

~~Utility-Service Billing Methodology~~

4. Are charges billed to applicant by the owner only for water or wastewater utility-service from a retail public utility?

a. If so, does the owner allocate such ~~fees~~charges to its tenants according to the requirements of ~~-~~16 TAC § 24.281(a)?

~~3.~~5. ~~Are the water-base fees, sewer-base fees, or regional water authority fees (fees) that first appeared on the applicant's January 2018 utility-service bill allocated from bills for water or wastewater utility service from a retail public utility – here, the district – paid by the owners of the apartment house – here, respondents – according to the requirements of 16 TAC § 24.281(a)?~~Is the owner allowed to bill regional water authority fees to the applicant under 16 TAC § 24.281(a)?

~~4.~~6. Does the district's rate structure include dwelling-unit-base charges or customer-service charges as defined by 16 TAC § 24.275(c)(4) and (6)?

a. If the rate structure includes unit-base charges, are any of the fees billed to the applicant by the ~~respondents~~ owner to pay the district's dwelling-unit-base charges as required by 16 TAC § ~~-~~24.281(b)? If so, are the fees calculated correctly?

b. If the rate structure includes customer-service charges, are any of the fees billed to the applicant by the ~~respondents~~ owner to cover customer-service charges paid by ~~respondents~~ owner to the district? If so, are the fees calculated according to the requirements of 16 TAC § 24.281(c)?

~~5.~~7. Are the applicant's utility-service bills calculated using submetering, allocation, or some other methodology?

a. If the ~~respondents~~ owner calculates the applicant's utility-service bills using submetering or allocation, are the bills calculated in compliance with 16 TAC § 24.281(d) if ~~respondents~~

the owner uses submetering or 16 TAC § 24.281(e) if the owner ~~respondents~~ uses allocation?

b. If the respondents calculate the applicant's utility-service bills using some other methodology, how do respondents calculate the applicant's utility-service bills? If so, is it a method approved by the Commission?

~~***Notice of Utility-Service Billing Methodology***~~

8. Does the rental agreement between the applicant and the ~~respondents~~owner, including any addendums to such rental agreement, clearly state all the information required by 16 TAC § 24.279(a)?

~~c.~~a. Was Ms. Hughes provided a copy of the Commission's rules at the time her lease was discussed?

~~6.~~9. ~~Did the addition of the fees to the applicant's January 2018 utility-service bill constitute~~ "Did the owner change the method by which it billed the applicant for water or wastewater without proper notice in violation~~a change in the method by which a tenant is billed" for the purposes~~ of 16 TAC § 24.279(c)?

a. If so, did the applicant agree to the change by signing a lease or other written agreement explaining the change?

b. If so, did the respondents provide notice of the proposed change at least 35 days prior to implementation of the new method?

10. Do the utility-service billing statements issued by the ~~respondents~~ owner to the applicant clearly state all the utility information required by 16 TAC § 24.283(f)?

~~c.~~a. If not, which provisions did the owner violate?

~~***Late Fees***~~

~~7.~~11. ~~Is the apparent billing discrepancy of $19.61 present on applicant's December 1, 2017 utility-service bill the result of a late fee?~~Did the owner assess late fees on the applicant in excess of the 5% penalty that an owner may apply to delinquent accounts under 16 TAC § 24.283(m)?

~~a. If it was, did the fee exceed the 5% penalty that respondents may apply to delinquent accounts under 16 TAC § 24.283(m)?~~

~~b. If the billing discrepancy was not the result of a late fee, what was the cause of the billing discrepancy?~~

~~***Remedies***~~

~~8.~~12. ~~Regardless of the propriety of the respondents' method of utility-service billing, have respondents overcharged the applicant for utility-service?~~Did the owner overcharge the applicant for water or wastewater service?

a. If so, what ~~amount of money do respondents owe the applicant?~~ is the amount of the overcharge and what is the appropriate remedy?

~~a.~~b. If so, should a penalty be assessed under 16 TAC 13.451?

~~9.~~13. If respondents have otherwise violated the Commission's rules, what remedies are appropriate?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Issue Not to be Addressed

The Commission takes the position that the following issue need not be addressed in this proceeding for the reason stated.

1. Whether respondents retaliated against Ms. Hughes for disputing her utility charges.

Ms. Hughes' complaint asserts that respondents took several actions against her following her filing of informal complaints against them.[19] However, the Commission does not have jurisdiction over retaliatory actions, even if true, taken by landlord against a tenant who files suit against them. Nor does the Commission have the authority to award tort damages. Therefore, these allegations will not be addressed during this proceeding.

[19] Complaint at 2–4.

III. Effect of Preliminary Order

The Commission's discussion and conclusions in this order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of September 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

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DEANN T. WALKER, CHAIRMAN

_____

ARTHUR C. D'ANDREA, COMMISSIONER

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SHELLY BOTKIN, COMMISSIONER

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