



Control Number: 48454



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

<b>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</b>	<b>§ § § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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PUBLIC UTILITY COMMISSION  
FILING CLERK

**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 to recover restitution from respondents for water and wastewater service overcharges under Texas Water Code (TWC) § 13.505(c).<sup>1</sup> This preliminary order identifies the issues that must be addressed and the issues that shall not be addressed.

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. 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.<sup>2</sup> Respondents and the district deny all allegations asserted by Ms. Hughes.<sup>3</sup>

In Order No. 1 issued on June 12, 2018, the ALJ ordered respondents and the district to respond to the complaint.<sup>4</sup> On July 2, 2018, the district filed a response and motion to dismiss

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<sup>1</sup> 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).

<sup>2</sup> See Complaint at 2–4.

<sup>3</sup> Response to Complaint (Jul. 3, 2018) (RealPage's Response); Response to Complaint and Motion to Dismiss (Jul. 2, 2018) (District's Response).

<sup>4</sup> Order No. 1 (Jun. 12, 2018).

requesting dismissal from the case for lack of subject matter jurisdiction.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> RealPage did not file a response to Order No. 2. On August 16, 2019, the ALJ referred the docket to the State Office of Administrative Hearings (SOAH).<sup>8</sup>

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.<sup>9</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

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?

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<sup>5</sup> District's Response.

<sup>6</sup> RealPage's Response.

<sup>7</sup> Order No. 2 (Sep. 24, 2018).

<sup>8</sup> Order of Referral (Aug. 16, 2019).

<sup>9</sup> Tex. Gov't Code Ann. § 2003.049(e) (Vernon 2000).

- 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 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)?
  - b. Is 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)?
3. Is the district the retail public utility that provides water or wastewater service to the owner?
4. Are charges billed to Ms. Hughes by the owner only for water or wastewater utility-service from a retail public utility?
  - a. If so, does the owner allocate such charges to its tenants according to the requirements of 16 TAC § 24.281(a)?
5. Is the owner allowed to bill regional water authority fees to Ms. Hughes under 16 TAC § 24.281(a)?
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 Ms. Hughes by the 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 Ms. Hughes by the owner to cover customer-service charges paid by owner to the district? If so, are the fees calculated according to the requirements of 16 TAC § 24.281(c)?
7. Are Ms. Hughes' utility-service bills calculated using submetering, allocation, or some other methodology?

- a. If the owner calculates Ms. Hughes' utility-service bills using submetering or allocation, are the bills calculated in compliance with 16 TAC § 24.281(d) if the owner uses submetering or 16 TAC § 24.281(e) if the owner uses allocation?
- b. If the respondents calculate Ms. Hughes' utility-service bills using some other methodology, how do respondents calculate Ms. Hughes' utility-service bills? If so, is it a method approved by the Commission?
8. Does the rental agreement between Ms. Hughes and the owner, including any addendums to such rental agreement, clearly state all the information required by 16 TAC § 24.279(a)?
  - a. Was Ms. Hughes provided a copy of the Commission's rules at the time her lease was discussed?
9. Did the owner change the method by which it billed Ms. Hughes for water or wastewater without proper notice in violation of 16 TAC § 24.279(c)?
  - a. If so, did Ms. Hughes 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 owner to Ms. Hughes clearly state all the utility information required by 16 TAC § 24.283(f)?
  - a. If not, which provisions did the owner violate?
11. Did the owner assess late fees on Ms. Hughes in excess of the 5% penalty that an owner may apply to delinquent accounts under 16 TAC § 24.283(m)?
12. Did the owner overcharge Ms. Hughes for water or wastewater service?
  - a. If so, what is the amount of the overcharge and what is the appropriate remedy?
  - b. If so, should a penalty be assessed under 16 TAC § 13.451?
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.<sup>10</sup> 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.

## **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.

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<sup>10</sup> Complaint at 2-4.

SIGNED AT AUSTIN, TEXAS the 27<sup>th</sup> day of September 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

  
DEANN T. WALKER, CHAIRMAN

  
ARTHUR C. D'ANDREA, COMMISSIONER

  
SHELLY BOTKIN, COMMISSIONER

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