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DOCKET NO. 48454

**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 §**

**2018 JUN -2 PM 2:14
BEFORE THE**

PUBLIC UTILITY COMMISSION

OF TEXAS

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 215'S RESPONSE TO
COMPLAINT AND MOTION TO DISMISS**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, Harris County Municipal Utility District No. 215 (the "District"), by and through its undersigned attorneys of record, and hereby files this response to the complaint ("Complaint") of Nzinga Hughes ("Complainant") and Motion to Dismiss in the above-referenced matter (the "Response"). Pursuant to Order No. 1 in this matter, the District is required to file this brief with the Public Utility Commission ("Commission") by July 2, 2018. Thus, this Response is timely filed.

The District respectfully asks that the Commission remove it from this proceeding, as the Complainant has not alleged any facts that would subject the District to the Commission's jurisdiction in this matter. In support thereof, the District shows the following:

I. BACKGROUND

On June 11, 2018, Complainant filed her Complaint at the Commission, asserting utility service issues concerning the water and wastewater billing methods and related charges implemented by her landlord's management company, GoldOller Real Estate Investments ("GoldOller"), and GoldOller's utility billing service provider, NWP Services Corporation ("NWP"). Complainant alleges that she is a resident of the Trails at Dominion Park apartment

complex (the “Trails”), which is owned by Ab-Go Trails at Dominion Park Propco, LLC (“Ab-Go”), and is managed by GoldOller. The District is a conservation and reclamation district, created under Section 59, Article XVI of the Texas Constitution, and operating under Chapter 54 of the Texas Water Code, which provides water and sewer utility services to the Dominion Park subdivision lying within the extraterritorial jurisdiction of the City of Houston. The Trails is located within the District’s above-described service area, and, therefore, receives water and sewer utility services from the District. Ab-Go is the District’s customer, and the District’s utility service costs for the Trails are measured by one master meter. The District bills Ab-Go directly. GoldOller, as agent for Ab-Go, passes such costs through to residents of the Trails under individual lease agreements, and based upon a square footage and ratio occupancy allocation method. NWP provides utility billing services to residents of the Trails on Ab-Go’s behalf. The District does not have a contract, either written or implied, with Complainant, and Complainant is not a customer of the District.

II. DISTRICT’S RESPONSE

The District should be removed from this proceeding because Complainant has not alleged any facts in this matter that would subject the District to the Commission’s jurisdiction. While the Commission has jurisdiction over this proceeding pursuant to 16 Texas Administrative Code (“TAC”) §§ 22.242 and 24.126, the District is not subject to such jurisdiction because it has no direct relationship with Complainant. In fact, the allegations raised in the Complaint are insufficient to evidence either the privity of estate necessary to subject the District to the Commission’s jurisdiction under 16 TAC 24.126, or the privity of contract necessary for Complainant to have standing to challenge the District’s rates under Texas Water Code (“TWC”) § 13.043.

A. The Commission lacks Jurisdiction over the District under 16 TAC § 24.126.

It is the District's position, based upon the facts alleged in this matter, that the Commission's rules regarding water utility submetering and allocation, as set forth in 16 TAC Chapter 24, Subchapter H, control in this matter. Among other things, those rules provide that "[i]f an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a [C]ommission rule regarding utility costs, the person claiming the violation may file a complaint with the [C]ommission and may appear remotely for a hearing."¹ The rule quoted above, 16 TAC § 24.126, emphasizes the limited applicability of Subchapter H. Pursuant thereto, complaints may only be filed against "an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner." Here, the District is not the "owner" or "manager" of the Trails as set forth in 16 TAC § 24.121(c)(12).² Thus, there is no relationship between the District and Complainant, and the Commission's jurisdiction in this matter does not extend to the District.

B. Complainant Lacks Standing to Challenge the District's rates.

Complainant also lacks standing to challenge the District's water and sewer rates under Texas Water Code ("TWC") § 13.043 as she has no privity of contract with the District. The Legislature has only granted the Commission appellate jurisdiction over a district's retail water and/or sewer rates as provided below:

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

...

¹ 16 Tex. Admin. Code § 24.126(b) (West, Westlaw through 43 Tex.Reg. No. 3666, dated June 1, 2018).

² *Id.* at § 24.121(c)(12) (West, Westlaw through 43 Tex.Reg. No. 3666, dated June 1, 2018) ("owner" refers to "[t]he legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.").

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users;³

Much to the detriment of her Complaint against the District, however, Complainant is not a ratepayer of the District. In fact, Complainant has no direct relationship with the District whatsoever. The District does not have a service agreement with Complainant; the District does not issue monthly invoices to Complainant; and Complainant does not remit monthly payments to the District. Rather, Complainant receives monthly retail water and sewer service bills from NWP, and remits monthly payments to NWP, under her lease with GoldOller (as agent for Ab-Go).⁴ On the other hand, the District bills Ab-Go directly for water and sewer usage at the Trails,⁵ and Ab-Go remits payment to the District for such utility service costs. As such, Ab-Go is a ratepayer of the District, while residents of the Trails are not.

Simply put, there is no statute in TWC, Chapter 13, and no regulation in the Commission's rules in 16 TAC, Chapter 24 that enables the tenant of an apartment complex to challenge the water and/or sewer rates charged to the apartment complex itself. As a result, Complainant lacks standing to challenge the rates charged by the District to Ab-Go. Instead, if Complainant desires to protest the retail water and sewer rates she is charged by NWP, GoldOller, and/or Ab-Go, she may do so under 16 TAC § 24.126. Those entities, not the District, set the rates charged to residents of the Trails, and the District has no jurisdiction or control thereover.

³ Tex. Water Code Ann. § 13.043(b)(4).

⁴ Complaint at page 100-110.

⁵ See e.g., *id.* at page 68-99 (bills from the District to Ab-Go).

III. CONCLUSION AND PRAYER

NOW THEREFORE, for the reasons provided herein, Harris County Municipal Utility District No. 215 further requests that the Commission remove the District from this proceeding and provide it with all other relief to which it is justly entitled.

Respectfully submitted,

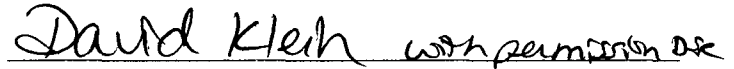
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**ATTORNEYS FOR HARRIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 215**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 2nd day of July, 2018 to the parties of record, in accordance with 16 Tex. Admin. Code § 22.74.

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David J. Klein