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DOCKET NO. 49060

RECEIVED

COMPLAINT OF DEBORAH LOWE §
AGAINST SADDLEBROOK §
COMMUNITY AND SUN §
COMMUNITIES, INC. §

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PUBLIC UTILITY COMMISSION
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FILING CLERK
OF TEXAS

COMMISSION STAFF'S SUPPLEMENTAL STATEMENT OF POSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Staff's Statement of Position. In support thereof, Staff shows the following:

I. BACKGROUND

On January 2, 2019, Deborah Lowe (complainant or Ms. Lowe) filed a complaint against Saddlebrook Community and Sun Communities, Inc. (respondent or Sun) regarding water and drainage fee charges. This complaint was filed pursuant to 16 Tex. Admin. Code § 22.242 (TAC). Sun filed its response to the complaint on January 28, 2019.

On February 25, 2019, the Administrative Law Judge (ALJ) issued Order No. 3, which required Staff to file a supplemental statement of position by March 29, 2019. Therefore, this pleading is timely filed.

II. COMPLIANCE WITH INFORMAL RESOLUTION REQUIREMENTS

As stated in the first Statement of Position, Staff has confirmed that Complainant has complied with the requirements for informal resolution.

III. JURISDICTION

As stated in the first Statement of Position, the Commission has jurisdiction to consider the allegations related to non-direct water and sewer utility service billing in this complaint.

In her supplements to her complaint filed on February 19, 2019 and February 20, 2019, Ms. Lowe raises several landlord/tenant issues including being billed for lawn care, the presence of mold in her residence and not receiving her security deposit back at the conclusion of her lease. These issues fall outside the jurisdiction of the Commission and should not be addressed.

IV. COMPLAINT

Ms. Lowe raises two issues for which the Commission can provide relief. The complainant asserts in her complaint and supplements that the charges in her water bills were incorrectly calculated and that the bills that she received were not correct. Ms. Lowe asserts that Sun acknowledged that she was overcharged by \$2.45 and that her bill would be adjusted by that amount but it never was adjusted.¹ Ms. Lowe also asserts that her water meters were improperly reading her water usage and were overstating her water usage.²

V. RESPONDENTS' RESPONSE

Order No. 1 required Sun to file a response to the complaint no later than January 25, 2019. Specifically, the ALJ required Sun to address (1) the Commission's jurisdiction over this proceeding; (2) allegations raised in the complaint; (3) applicable statutes, rules, orders, and tariff provisions; (4) copies of any rates or tariffs that are the subject of this complaint; and (5) any other matters relevant to the complaint.

Sun filed its response on January 28, 2019, and did not address jurisdiction or applicable statutes, rules, orders, and tariff provisions. The response did acknowledge an error in billing that had occurred to Ms. Lowe's account; however, Sun asserts that her account was credited \$2.45 to resolve the error.³

VI. STATEMENT OF POSITION

As established above, the Commission has jurisdiction over the water and sewer billing complaints in this case to the extent that such utility services billing went through an intermediate, i.e. the lessor or another third-party, to the tenant. Ms. Lowe alleges that Sun overcharged her on her water bills and that she is still owed a credit of \$2.45. Sun's response shows that Ms. Lowe was credited \$2.45 on November 2, 2018.

On February 25, 2019, the Administrative Law Judge (ALJ) issued Order No. 3, which directed Staff to state whether it agrees or disagrees with the analysis and conclusions of the Customer Protection Division (CPD) letter and to also quantify (if possible) the monetary difference between: (1) the amounts actually billed by Sun to Ms. Lowe for water use for the

¹ Complaint at 1.

² Letter to PUC at 1 (February 20, 2019).

³ Response to Order No.1 at 1 (January 28, 2019).

period November 7, 2017 through December 1, 2018; and (2) the amounts that would have been billed by Sun to Ms. Lowe for the same period if the bills had been calculated in compliance with the Commission's rules.

Staff has reviewed the application, and as supported by the attached memorandum of Kathryn Eiland of the Commission's Water Utility Regulation Division, Staff has reviewed and agrees in part, and disagrees in part, with the analysis and conclusions reached in the October 16, 2018 letter from CPD. Staff disagrees with CPD's determination, in part, because 16 TAC § 24.281(d) allows the method used by Sun. Sun billed Ms. Lowe a base charge and the volumetric rate charged by the utilities. This conclusion is based on additional information provided in response to discovery conducted by Staff, which responses were not previously available to CPD. However, in applying the method allowed in 16 TAC § 24.281, Staff's calculations do not match the amounts billed by Sun either. After performing the charge calculations, Staff has determined that Ms. Lowe was overcharged \$23.91 for water service and undercharged \$46.04 for sewer service, for a net undercharge of \$22.13. It is Staff's position that Ms. Lowe should never have been credited \$2.45 by Sun and that instead Ms. Lowe owes Sun \$22.13.

In its response to Staff's Second Request for Information, Sun provided a ledger of all the credits and debits to Ms. Lowe's account. In it, the ledger shows that Ms. Lowe was credited \$2.45 for the amount which Sun was told by CPD that it had over billed her.⁴ It is Staff's position that to the extent that there is controversy regarding whether Ms. Lowe received a credit in the amount of \$2.45, Staff believes that the ledger provided by Sun shows that Ms. Lowe has been credited this amount.

In its response to Staff's Second Request for Information, Sun provided documentation related to the removed meter and the replacement meter. Sun says that the old meter was removed at Ms. Lowe's request,⁵ but that "the removed meter was replaced in 'good faith' as the removed meter did not have any actual issues at the time."⁶ The removed meter was tested by BluTower, Sun's water meter vendor, and no faults were found.⁷ BluTower tested for signal

⁴ Saddlebrook Community and Sun Communities, Inc. Responses to Commission Staff's Second Request for Information - Staff 2-1 through Staff 2-26 at 46 (March 22, 2019).

⁵ *Id.* at 3.

⁶ *Id.* at 7.

⁷ *Id.* at 30.

strength, increments, read, water intrusion and programming.⁸ In addition, Sun stated it “performed a ‘Five-Gallon Test’ of the new meter on March 20, 2019. [...] The results of the test indicated that the new meter was properly calibrated and accurate.”⁹ Based on the responses to discovery, it appears that the meter readings on both the old meter and new meter accurately reflected Ms. Lowe’s actual water usage.

VII. CONCLUSION

Staff has confirmed that the requirements for informal resolution have been met and that the Commission has jurisdiction. Staff respectfully requests an order consistent with these findings.

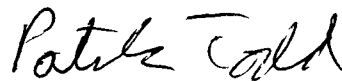
Dated: March 28, 2019

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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⁸ Saddlebrook Community and Sun Communities, Inc. Responses to Commission Staff’s Second Request for Information - Staff 2-1 through Staff 2-26 at 30 (March 22, 2019).

⁹ *Id.* at 8 and 32.

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 28, 2019 in accordance with 16 TAC § 22.74.

A handwritten signature in black ink, appearing to read "Patrick Todd", written over a horizontal line.

Patrick D. Todd

PUC Interoffice Memorandum

To: Patrick Todd, Attorney
Legal Division

Thru: Debi Loockerman, Manager
Water Utility Regulation Division

From: Kathryn Eiland, Financial Examiner
Water Utility Regulation Division

Date: March 28, 2019

Subject: **Docket No. 49060;** *Complaint of Deborah Lowe against Saddlebrook Community and Sun Communities, Inc.*

On January 2, 2019, Deborah Lowe (Ms. Lowe) filed a complaint against Saddlebrook Communities and Sun Communities, Inc. (Sun) regarding water charges. Staff was asked to file a response stating whether it agrees or disagrees with the analysis and conclusions reached in the October 16, 2018 letter from the Customer Protection Division (CPD). If Staff agrees with the analysis and conclusions of the letter, Staff must quantify (if possible) the monetary difference between: (1) the amounts actually billed by Sun to Ms. Lowe for water use for the period November 7, 2017 through December 1, 2018; and (2) the amounts that would have been billed by Sun to Ms. Lowe for the same period if the bills had been calculated in compliance with the Commission's rules.

CPD determined that Sun failed to act consistently with Substantive Rule §24.281 Charges and Calculations subsection (d). CPD recommended that Sun abide by the formula in place for submetered water/wastewater service if they wished to provide submetered billing for their tenants. Ms. Lowe's manufactured home rental community is billed for water service by Maxwell Water Supply Corporation (Maxwell) and for sewer service by the City of San Marcos (City). Sun then used Maxwell's minimum monthly charge and gallonge rate to calculate Ms. Lowe's submetered water charges and the City's gallonage rate to calculate the sewer charges. Sun also multiplied the water and sewer charges by 9% to obtain the surcharge amount.

Staff disagrees with CPD's determination, in part, because Substantive Rule §24.281 Charges and Calculations subsection (d) allows the method used by Sun. Sun billed Ms. Lowe a base charge and the volumetric rate charged by the utilities. This conclusion is based on additional information provided in response to Staff requests for information which CPD did not have. However, in applying the method allowed, Staff's calculations do not match the amounts billed by Sun, therefore, with regard to the implementation of calculations, Staff agrees with CPD that the amounts billed were incorrect.

Although the order indicated the calculations were to begin on November 7, 2017, Staff reviewed Ms. Lowe's lease and confirmed that her move-in date was actually November 29, 2017 and her lease term was December 1, 2017 through November 30, 2018. The lease included a prorated amount for November 29 and 30. Therefore, Staff's calculations are based on the November 29, 2017 date rather than November 7, 2017 reflected in the order.

Effective May 1, 2018, Maxwell's rate structure included a \$30 minimum monthly charge and block gallonage charges of \$7.25 per 1,000 gallons for 0-5,000 gallons, \$7.50 per 1,000 gallons for 5,001 to 10,000 gallons, \$7.75 per 1,000 gallons for 10,001-15,000 gallons and \$8.00 per 1,000 gallons for 15,001 gallons and over. Prior to this change, Maxwell's rate structure included a \$27.50 minimum monthly charge and a \$7.00 gallonage charge per 1,000 gallons. Staff calculated water charges from November 29, 2017 through April 9, 2018 using Maxwell's prior rate structure and water charges from April 9, 2018 through December 1, 2018 using their new rate structure. Staff found that Sun overcharged Ms. Lowe by \$23.91 from November 29, 2017 through December 1, 2018.¹ It appears that Sun charged Ms. Lowe for thirty two days when they should charged her for ten days. The billing period ended on December 8, 2017.

Effective October 1, 2018, the City's sewer rate structure included a \$163.02 charge for a 2 inch meter inside the city limits for the first 13,000 gallons and a gallonage charge of \$7.36 per gallon over 13,000 gallons. Prior to this change, the City's rate structure included a \$159.82 charge for a 2 inch meter inside the city limits for the first 13,000 gallons and a \$7.21 gallonage charge per gallon over 13,000 gallons. Staff calculated the sewer base charge from November 29, 2017 through October 2, 2018 using the City's prior base charge and from October 2, 2018 through December 1, 2018 using the City's new base charge. Staff found that Sun undercharged Ms. Lowe \$4.31 from November 29, 2017 through December 1, 2018.

Staff calculated the sewer charges from November 29, 2017 through October 2, 2018 using the City's gallonage rate and sewer charges from October 2, 2018 through December 1, 2018 using their new gallonage rate. Although Staff found that Sun overcharged Ms. Lowe by charging her for thirty two days instead of ten days, she was undercharged from December 8, 2017 through April 8, 2018. This resulted in a net undercharge of \$3.75 from November 29, 2017 through December 1, 2018.²

Staff calculated the 9% service charge using the Ms. Lowe's water and sewer charges from November 29, 2017 through December 1, 2018. Staff found that Sun undercharged the Ms. Lowe \$37.98 for the fee during this time. The \$0.67 overcharge from her first billing period is incorporated in this amount.³

The following summarizes the differences between the amounts billed by Sun and Staff's calculations.

Over/(under) charge	Service
23.91	Water
(4.31)	Sewer base charge
(3.75)	Sewer
(37.98)	Service charge (9%)
(22.13)	Total

1. November 29, 2017 through December 1, 2018

Staff's work papers are available upon request.

¹ Attachment Deborah Lowe Formal Complaint Calculations

² *Id.*

³ *Id.*