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DOCKET NO. 49060

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

2019 JAN 31 PM 1:18
PUBLIC UTILITY COMMISSION
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FILING CLERK
OF TEXAS

COMMISSION STAFF'S 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 January 7, 2019, the Administrative Law Judge (ALJ) issued Order No. 1, which required Staff to file a statement of position by February 1, 2019. Therefore, this pleading is timely filed.

II. COMPLIANCE WITH INFORMAL RESOLUTION REQUIREMENTS

Staff has confirmed that complainant has complied with all of the requirements for informal resolution pursuant to 16 TAC § 22.242. Subsection (c) states, "A person must present a complaint to the commission for informal resolution before presenting the complaint to the commission." Before filing this complaint, complainant filed an informal complaint on September 24, 2018, referenced in Customer Protection Division (CPD) Records as CP2018090929. The CPD was unable to resolve the complaint. The informal complaint was closed on October 16, 2018. Therefore, Staff has confirmed that Complainant has complied with the requirements for informal resolution.

III. JURISDICTION

In the complaint, Ms. Lowe listed the address of the premises at issue as 463 Bridlewood Drive, San Marcos, Texas, 78666, i.e. Saddlebrook.¹ Staff has verified that the address is located within the corporate boundaries of the San Marcos. Pursuant to Texas Water Code (TWC) § 13.042(a), “[E]ach municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.” The Texas Water Code further defines a “water and sewer utility,” “public utility,” or “utility” to mean any person or corporation “owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public...”² This definition excludes any person or corporation “that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.”³

Staff reviewed Commission records and determined that the San Marcos has not ceded its original jurisdiction over water or wastewater utility services under TWC § 13.042(b).⁴ However, that original jurisdiction does not extend to the context of a lessor passing water or sewer utility billing onto the lessor’s tenants. Accordingly, the City of San Marcos does not have original jurisdiction over the water or sewer billing issues in this case, and Ms. Lowe was not required to present his complaint to the City first. Therefore, the Commission has jurisdiction to consider the allegations related to non-direct water and sewer utility service billing in this complaint.

IV. COMPLAINT

The complainant asserts in her complaint that the charges in her water bills were incorrectly calculated and that the bills that she received were not correct. Ms. Lowe asserts that

¹ Complaint of Deborah Lowe against Saddlebrook Community and Sun Communities, Inc. at 1 (January 2, 2019). (Complaint).

² Tex. Water Code § 13.002(23) (TWC).

³ *Id.*

⁴ See <http://puc.texas.gov/consumer/complaint/cedingCities.pdf> (list of municipalities that have ceded original jurisdiction to the Commission; the City of San Marcos is not included on this list).

Sun acknowledged that she was overcharged by \$2.32 and that her bill would be adjusted by that amount but never was.⁵

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.⁶

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 \$2.32. Sun's response shows that Ms. Lowe was credited \$2.45 on November 2, 2018. Staff is unable to determine from Ms. Lowe's pleading whether the matter has been resolved, or if there is an additional complaint. Therefore, Staff recommends that Ms. Lowe be required to respond to Sun's latest filing and state with specificity her complaint or if the matter has been settled.

VII. CONCLUSION

Staff has confirmed that the requirements for informal resolution have been met and that the Commission has jurisdiction. For the reasons stated above, Staff respectfully requests a response to Sun's January 28, 2019 filing be required from Ms. Lowe and she state with specificity her complaint.

⁵ Complaint at 1.

⁶ Response to Order No.1 at 1 (January 28, 2019).

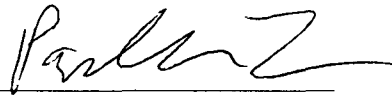
Dated: January 31, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

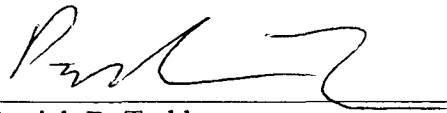


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 31, 2019 in accordance with 16 TAC § 22.74.



Patrick D. Todd