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COMPLAINT OF CASSANDRA DENIS § PUBLIC UTILITY COMMISSION  
HARRIS AGAINST THE LANDINGS AT §  
WILLOWBROOK AND REALPAGE § OF TEXAS  
UTILITY MANAGEMENT §

### PRELIMINARY ORDER

Cassandra Harris filed a formal complaint against The Landings at Willowbrook apartment complex. This preliminary order identifies the issues that must be addressed.

Ms. Harris asserted that her allocated water and wastewater bill increased from \$36.62 for the October 11 through October 23, 2018 billing period to \$81.18 for the October 24 through November 23, 2018 billing period.<sup>1</sup> Ms. Harris disputes the November bill.

In Order No. 1 filed on March 26, 2019, the Commission administrative law judge (ALJ) characterized the formal complaint as being filed against both The Landings at Willowbrook and RealPage Utility Management, Inc. and directed both entities to file a response no later than April 15, 2019. In their joint response filed on April 15, The Landings at Willowbrook and RealPage asserted that they reviewed the billing records at issue and concluded there is no violation of any statute or rule. The Landings at Willowbrook and RealPage further asserted that Ms. Harris's lease began in mid-October, so the October bill charged for only a partial month.<sup>2</sup> The respondents attributed the increase in the subsequent bill to the longer duration of that billing period.<sup>3</sup>

In its statement of position, Commission Staff asserted that Ms. Harris complied with the requirement of 16 Texas Administrative Code (TAC) § 22.242(c) to present the complaint to the Commission for informal resolution prior to filing a formal complaint. However, Commission Staff further asserted that Ms. Harris did not comply with the requirement of 16 TAC § 22.242(e)(1). This rule provision states that a person who receives water or sewer utility service

<sup>1</sup> Complaint (Mar. 25, 2019).

<sup>2</sup> Response at 2 (Apr. 15, 2019).

<sup>3</sup> *Id.*

within the limits of a city that has original jurisdiction over water or sewer service must first present a complaint to the city before filing a formal complaint with the Commission. Commission Staff recommended dismissal of the complaint without prejudice because Ms. Harris did not comply with the requirements of 16 TAC § 22.242(e)(1), and Commission Staff recommended that Ms. Harris be allowed to re-file her formal complaint when she meets the requirements of 16 TAC § 22.242(e)(1).

In Order No. 2, the Commission ALJ denied Commission Staff's motion to dismiss the complaint, concluding that the respondents are not utilities within the meaning of 16 TAC § 24.242(e)(1). The ALJ concluded that because an apartment complex does not provide water to the general public, provides water only for the use of its tenants as an incident of tenancy, and does not provide water for resale or redistribution, it does not fit the definition of a "water or sewer utility," "public utility," or "utility" under Texas Water Code (TWC) § 13.002(23). The ALJ further concluded that, for the same reason, the respondents are not water and sewer utilities within the meaning of TWC § 13.042. Consequently, the subject matter of the complaint does not fall within the original jurisdiction of a municipality. The complaint concerns the allocation of water and wastewater service costs among apartment tenants and falls within the exclusive jurisdiction of the Commission under TWC § 13.505(b) and 16 TAC § 24.285.

In Order No. 3, the Commission ALJ established a procedural schedule and required Ms. Harris and RealPage by August 15, 2019 to contact Commission Staff with availability for a settlement conference. On September 27, 2019, Commission Staff stated that neither party provided this information, and Commission Staff recommended that the docket be referred to the State Office of Administrative Hearings (SOAH) because the facts of the complaint were in dispute.

The Commission referred the matter to SOAH on March 20, 2020. The Commission directed Ms. Harris, The Landings at Willowbrook, and RealPage and allowed Commission Staff and other interested persons to file a list of issues to be addressed, issues not to be addressed, and any threshold legal or policy issues that should be addressed in the docket. RealPage and The Landings at Willowbrook filed a response but did not include a list of issues. Ms. Harris and Commission Staff did not file 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>4</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did Ms. Harris file the formal complaint solely against The Landings at the Willowbrook? If so, should this proceeding be restyled to reflect the single entity at issue in this formal complaint?
2. Who is the owner in this proceeding, as defined by 16 TAC § 24.275(c)(12) and TWC § 13.501(5)?
3. Did the owner comply with 16 TAC § 24.277(a) relating to registration requirements for owners that intend to bill tenants for submetered or allocated utility service or who change the method used to bill tenants for utility service?
4. Did Ms. Harris meet all the requirements to bring her formal complaint under 16 TAC § 22.242? If not, should she be permitted to cure any deficiencies?
5. Did Ms. Harris request any records from the owner that are addressed in 16 TAC § 24.277(e)? If so, did the owner make records available in accordance with 16 TAC § 24.277(e) and (g)?
6. Did the rental agreement between the owner and Ms. Harris include all of the information required under 16 TAC § 24.279, including written statements explaining the owner's billing for water and wastewater services? Was Ms. Harris provided a copy of the pertinent Commission rules at the time the lease was discussed in accordance with 16 TAC § 24.279(b)?
7. How does the owner allocate utility-service charges among its tenants?
8. Has the owner changed its allocation method for utility-service charges since the inception of Ms. Harris's lease? If so, did the owner acquire Ms. Harris's agreement and provide notice as required by 16 TAC § 24.279(c)?

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<sup>4</sup> Tex. Gov't Code § 2003.049(e).

9. Did the owner comply with all applicable requirements of 16 TAC § 24.281 with respect to its water and wastewater billing calculations? If not, which provisions of 16 TAC § 24.281 did the owner violate?
10. Did the owner comply with all requirements of 16 TAC § 24.283 with respect to rendering bills to tenants? If not, which provisions did the owner violate? In addressing this question, evaluate the following:
  - a. Were the bills timely rendered and delivered in compliance with 16 TAC § 24.283(b) through (d) and (h) with a due date not less than 16 days after they are mailed or hand delivered to the tenant unless the due date falls on a federal holiday or weekend?
  - b. Do the bills that the owner issued to Ms. Harris clearly state that the utility service is submetered or allocated, as applicable, and provide the appropriate information as required by 16 TAC § 24.283(f)(1) through (4)?
  - c. Do the bills clearly state the name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute as required by 16 TAC § 24.283(f)(7)?
  - d. Do the bills clearly state the name, address, and telephone number of the party to whom payment is to be made as required by 16 TAC § 24.283(f)(8)?
11. Did Ms. Harris dispute the bills at issue with the owner? If so, did the owner conduct a timely investigation of any bills disputed by Ms. Harris and report the results to her in accordance with 16 TAC § 24.283(l)?
12. What is the time period at issue in this complaint?
13. Did the owner incorrectly bill Ms. Harris for the time period at issue? In addressing this question, evaluate whether the owner complied with 16 TAC § 24.283(k) with respect to any underbilling or overbilling to Ms. Harris.
14. If the overbilling or underbilling at issue affects all tenants, did the owner comply with the requirement to calculate adjustments for all tenants' bills in accordance with 16 TAC § 24.283(k)?

15. If Ms. Harris was overbilled, what is the amount of the refund owed to her as required by 16 TAC § 24.283(k) and TWC § 13.505?

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 § 2003.049(e).

## **II. Effect of Preliminary Order**

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 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 17<sup>th</sup> day of April 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**DEANN T. WALKER, CHAIRMAN**

  
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**ARTHUR C. D'ANDREA, COMMISSIONER**

  
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**SHELLY BOTKIN, COMMISSIONER**

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