



Control Number: 49370



Item Number: 22

Addendum StartPage: 0

Public Utility Commission of Texas


Commissioner Memorandum

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PUBLIC UTILITY COMMISSION
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TO: Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker 

DATE: June 10, 2020

RE: June 12, 2020 Open Meeting – Item No. 11

Docket No. 49370; SOAH Docket No. 473-20-3121.WS – *Complaint of Cassandra Denis Harris against The Landings at Willowbrook and RealPage Utility Management*

I recommend that the Commission adopt the recommendation in the proposal for decision (PFD) in this proceeding to dismiss the complaint for failure to prosecute under 16 Texas Administrative Code (TAC) § 22.181(d)(6). However, I propose that the Commission modify the order to change the dismissal from with prejudice to without prejudice. In addition, I recommend additional changes to the order as set forth below.

First, a dismissal with prejudice acts as an adjudication of the merits as if a case has been tried and decided.¹ In this proceeding, the merits of the complaint were not adjudicated, and the PFD did not address the merits of the complaint. Therefore, I believe that dismissal with prejudice is not appropriate in this proceeding. Second, 16 TAC § 22.181(a) provides discretion to the presiding officer to dismiss a proceeding with or without prejudice, for any reason specified in subsection (d). It is my belief that for cases filed by pro se complainants, dismissals for failure to prosecute should be without prejudice, absent extenuating circumstances to justify dismissal with prejudice. Pro se complainants may fail to prosecute a complaint simply because they do not understand how to participate in a contested case. In this proceeding, there was no demonstration of extenuating circumstances that merit dismissal with prejudice.

Findings of fact 1 and 15 should be modified for accuracy and clarity.

1. On March 25, 2019, Cassandra Denis Harris filed a complaint pro se against The Landings at Willowbrook and RealPage Utility Management, Inc. (collectively, RealPage) with the Commission.
15. As of the date of this PFD, Ms. Harris has not filed a response ~~responded~~ to SOAH Order No. 2, an exception to the proposal for decision, or any pleading opposing dismissal.

¹ *Complaint of Silverleaf Resorts, Inc. Against Liberty Utilities (Silverleaf Water) LLC, F/K/A Algonquin Water Resources of Texas, LLC, Docket No. 46642, Order at Conclusion of Law 8 (Jun. 18, 2018).*

Finding of fact 6 should be deleted because it is unnecessary to support the order.

6. ~~DELETED. Prior to and after October 1, 2019, RealPage responded to data requests filed by Commission Staff.~~

Conclusion of law 2 should be modified to delete the reference to the Texas Utilities Code, which is not applicable to water proceedings.

2. SOAH has jurisdiction over matters related to the hearing of this proceeding, including the preparation of a PFD with findings of fact and conclusions of law, ~~underpursuant to~~ Texas Government Code § 2003.049, and Texas Water Code § 13.041(c-1), ~~and Texas Utilities Code § 14.053.~~

Conclusion of law 4 should be modified to conform with the Commission's order writing format.

4. The ALJ must prepare a proposal for decision when recommending dismissal of a case. ~~When the presiding officer recommends dismissal of a case for failure to prosecute, he or she must prepare a PFD.~~ The Commission must then shall consider the proposal for decision ~~PFD recommending dismissal for failure to prosecute~~ as soon as ~~is~~ practicable: under 16 TAC § 22.181(f)(2).

As discussed above, conclusion of law 5 and ordering paragraph 1 should be modified to dismiss the complaint without prejudice. Ordering paragraph 1 should also be revised to dismiss the complaint instead of the associated docket number.

5. Ms. Harris's failure to participate in this case, including her failure to appear at the telephonic prehearing conference convened on April 8, 2020, and failure to file a response to SOAH Order No. 2, justifies dismissal without prejudice for failure to prosecute.
1. The Commission dismisses this complaint ~~Docket No. 49370 is DISMISSED~~ without prejudice for failure to prosecute.

Finally, I propose delegating to the Office of Policy and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.