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

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the complaint of Cassandra Denis Harris against The Landings at Willowbrook and RealPage Utility Management, Inc. regarding allocated water and wastewater services and related charges. On April 13, 2020, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) on his own motion recommended that the proceeding be dismissed with prejudice for failure to prosecute and failure to state a claim upon which relief can be granted. Ms. Harris did not file a response to the motion to dismiss. On May 11, 2020, the SOAH ALJ filed a proposal for decision to dismiss the complaint with prejudice for failure to prosecute. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.

The Commission makes the following modifications to the proposal for decision. The Commission modifies findings of fact 1 and 15 for accuracy and clarity. The Commission deletes finding of fact 6 because it is unnecessary to support this Order. The Commission modifies conclusion of law 2 to delete the reference to the Texas Utilities Code, which is not applicable to water proceedings. The Commission modifies conclusion of law 4 to conform with the Commission's order writing format. The Commission modifies conclusion of law 5 to dismiss the complaint without prejudice rather than with prejudice, consistent with Commission precedent on dismissals for failure to prosecute under 16 TAC § 22.181(d)(6).

Finally, the Commission makes other non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I. Findings of Fact

The Commission adopts the following findings of fact.

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.
2. In Order No. 3 filed on July 15, 2019, the Commission ALJ required Ms. Harris and RealPage to contact Commission Staff to schedule a settlement conference.
3. In Order No. 3 filed on July 15, 2019, the Commission ALJ also directed Commission Staff to file an agreed settlement or request a referral to SOAH, or Ms. Harris to withdraw her complaint, by October 1, 2019.
4. On September 27, 2019, Commission Staff filed a request for referral to SOAH stating that it had not been contacted by either Ms. Harris or RealPage to schedule a settlement conference.
5. As of October 1, 2019, Ms. Harris had not filed a notice of withdrawal of her complaint.
6. DELETED.
7. On March 20, 2020, the Commission referred this case to SOAH and directed Ms. Harris and RealPage to file proposed lists of issues by March 26, 2020.
8. On March 26, 2020, RealPage filed a proposed list of issues. Ms. Harris did not file a proposed list of issues as required by the referring order.
9. In SOAH Order No. 1 filed on April 3, 2020, the SOAH ALJ scheduled a prehearing conference to be convened telephonically on April 8, 2020.
10. On April 8, 2020, Commission Staff and RealPage appeared at the prehearing conference; Ms. Harris did not appear.
11. As of April 8, 2020, Ms. Harris had not contacted Commission Staff or RealPage since filing her complaint.
12. In SOAH Order No. 2 filed on April 13, 2020, the SOAH ALJ, on his own motion, moved to dismiss the complaint for failure to prosecute and directed that Ms. Harris had 20 days

- from the date of receipt of SOAH Order No. 2 to respond to the order in accordance with 16 Texas Administrative Code (TAC) § 22.181(e)(3).
13. In SOAH Order No. 2 filed on April 13, 2020, the SOAH ALJ also stated that if Ms. Harris did not respond or withdraw her complaint within 20 days, the SOAH ALJ would prepare a proposal for decision recommending that the Commission dismiss this case in accordance with 16 TAC § 22.181(d)(6).
 14. On April 17, 2020, the Commission filed a preliminary order identifying the issues that were to be addressed.
 15. As of the date of this proposal for decision, Ms. Harris has not filed a response to SOAH Order No. 2, an exception to the proposal for decision, or any pleading opposing dismissal.
 16. Because a procedural schedule was not set at SOAH, a date for a hearing on the merits was not established.

II. Conclusions of Law

The Commission adopts the following conclusions of law.

1. The Commission has jurisdiction over this matter under Texas Water Code (TWC) §§ 13.505(b) and 13.041(b) and (c).
2. SOAH has jurisdiction over matters related to the hearing of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under Texas Government Code § 2003.049 and TWC § 13.041(c-1).
3. Under 16 TAC § 22.181(a) and (d)(6), the ALJ may recommend to the Commission that it dismiss the proceeding with or without prejudice for failure to prosecute.
4. The ALJ must prepare a proposal for decision when recommending dismissal of a case. The Commission must then consider the proposal for decision as soon as practicable under 16 TAC § 22.181(f)(2).
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.

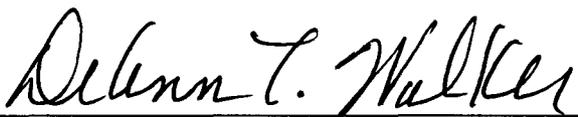
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.
2. The Commission dismisses this complaint, without prejudice, for failure to prosecute.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 12th day of June 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER