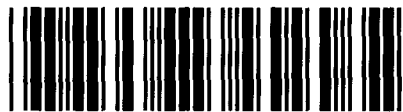




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DOCKET NO. 50629

**COMPLAINT OF CARBAJAL
AGAINST CSC NORTH AUSTIN
REALITY, LLC**

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§

PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S STATEMENT OF POSITION

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

I. BACKGROUND

On March 6, 2020, Emma Carbajal filed a complaint against CSC North Austin Reality, LLC (CSC) under 16 Texas Administrative Code (TAC) § 22.242. Specifically, Ms. Carbajal's complaint alleges that CSC, as the owner of Creeks Edge Apartments (Creeks Edge) in Austin, Texas, violated the Commission's rules on non-submetered billing allocation during Ms. Carbajal's 2018-2019 lease. Ms. Carbajal requests a refund for the amount she was over-billed during the 2018-2019 lease, as well as the imposition of additional penalties for CSC's alleged continued violation of laws governing water and wastewater cost allocations.

On April 8, 2020, Order No. 2 in this proceeding was issued, requiring Staff to file its statement of position regarding the complaint by May 1, 2020. Therefore, this pleading is timely filed.

II. JURISDICTION

Jurisdiction in this matter is governed by TWC §§ 13.505(b)-(c) and 16 TAC §§ 24.285(a)-(b), both of which confer the Commission with exclusive jurisdiction over complaints alleging a rental property owner's violation of rules regarding utility costs. Here, Ms. Carbajal's complaint alleges that Creeks Edge violated rules set forth under 16 TAC §§ 24.279, 24.281, and 24.285, each of which concern the billing of utility costs to tenants under rental agreements.¹ Therefore, Staff recommends that the Commission has jurisdiction over this complaint under TWC § 13.505(b) and 16 TAC § 24.285(a).

¹ Complaint at 1-2.

III. INFORMAL RESOLUTION REQUIREMENT

As detailed under 16 TAC § 22.242(c), a person who seeks to file a formal complaint with the Commission must first present the complaint to the Commission for informal resolution. Upon receipt of an informal resolution request, 16 TAC § 22.242(d) establishes a 35-day window in which Commission staff may attempt to resolve the dispute to the complainant's satisfaction. If the dispute is not resolved to the complainant's satisfaction within 35 days, 16 TAC § 22.242(e) provides that a formal complaint may then be filed.

Here, Ms. Carbajal's formal complaint establishes that her request for informal resolution of the dispute was received by the Commission on December 30, 2019 as Complaint No. CP2019120546.² Additionally, the formal complaint was filed on March 6, 2020, after the close of the 35-day informal resolution window. Therefore, Staff recommends that Ms. Carbajal has complied with the informal resolution requirement and that the formal complaint was properly filed under 16 TAC § 22.242(e).

IV. CARBAJAL'S POSITION

Ms. Carbajal has been a tenant of the Creeks Edge apartment complex since August 3, 2018.³ During that time, Ms. Carbajal's tenancy has been subject to two leases.⁴ The initial lease began on August 3, 2018 and ended on October 31, 2019 (2018-2019 Lease).⁵ The second lease began on November 1, 2019 and will end on January 31, 2021 (2019-2021 Lease).⁶

Under the terms of the 2018-2019 Lease, Ms. Carbajal was charged a flat fee of \$129 per month for gas, water, sewer, and trash services at her apartment.⁷ During her tenancy under the 2018-2019 Lease, Ms. Carbajal discovered that tenants in other similarly sized units were charged a lower fee of \$75 per month for the same utility services.⁸ Ms. Carbajal claims that she disputed these charges with Creeks Edge in May 2019, at which time Creeks Edge stated that she was being

² See Complaint at *Exhibit C*. As dated, the informal complaint form was filed online with the Commission after close of business on Friday, December 20, 2019. Commission offices were closed from Monday, December 22, 2019 through Friday, December 27, 2019. The next day the Commission was open for business was Monday, December 30, 2019. See also Complaint at *Exhibit F*, confirming that the informal complaint was received by the Commission on Monday, December 30, 2019.

³ Complaint at *Exhibit A*.

⁴ Complaint at *Exhibit A* and *Exhibit B*.

⁵ Complaint at *Exhibit A*.

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⁷ Complaint at 1; see also *Exhibit A*.

⁸ Complaint at 1.

“undercharged” based on her actual usage.⁹ Ms. Carbajal claims that Creeks Edge provided no documentation to support its allocation method at that time.¹⁰ Because Creeks Edge continued to charge \$129 per month for utility services for the duration of the 2018-2019 Lease, Ms. Carbajal asserts that she is entitled to a refund of any over-billed water or wastewater charges during that time.¹¹

Ms. Carbajal’s 2019-2021 Lease with Creeks Edge began on November 1, 2019.¹² Under the terms of this lease, Ms. Carbajal is charged a flat rate of \$70 per month for water, sewer, and gas utilities, with an additional \$13 per month for trash services.¹³ Though Ms. Carbajal is now charged a lower rate, she claims that the flat rate methodology still does not calculate the monthly amount owed under 16 TAC § 24.281.¹⁴

Ms. Carbajal submitted a request for informal resolution of the dispute on December 30, 2019.¹⁵ Creeks Edge failed to timely respond to the informal complaint as required by Commission rules.¹⁶ On January 14, 2020, Creeks Edge emailed Ms. Carbajal a response to the formal complaint but did not provide new information to support the disputed charges or explain calculation methodologies.¹⁷ On January 17, 2020, a letter from the Commission’s Customer Protection Division (CPD) urged Creeks Edge to resolve the issues identified in the formal complaint and provide CPD with documentation demonstrating any actions made to resolve the complaint.¹⁸ On January 23, 2020, CPD sent Ms. Carbajal a letter stating that Creeks Edge has not acted consistently with the Commission’s substantive rules found in 16 TAC §§ 24.279, 24.281, and 24.283, governing the rental agreement, charges and calculations, and billing, respectively.¹⁹

As a result of the dispute, Ms. Carbajal requests a finding that CSC, as owner of Creeks Edge, violated substantive rules under 16 TAC §§ 24.279, 24.281, and 24.283 during both the 2018-2019 Lease and her current 2019-2021 Lease.²⁰ Additionally, Ms. Carbajal also requests that

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complaint at 1-2.

¹² Complaint at *Exhibit B*.

¹³ *Id.*

¹⁴ Complaint at 1.

¹⁵ Complaint at *Exhibit C*.

¹⁶ Complaint at *Exhibit D*.

¹⁷ Complaint at 2; *see also Exhibit E*.

¹⁸ Complaint at *Exhibit D*.

¹⁹ Complaint at *Exhibit F*.

²⁰ Complaint at 2.

the Commission impose penalties against CSC under TWC § 13.4151 in response to the continued violation of substantive rules.²¹

V. CSC'S POSITION

On March 10, 2020, Order No. 1 in this proceeding required CSC to file a response to the complaint no later than March 27, 2020. CSC failed to meet the March 27, 2020 deadline and has not otherwise participated in the docket.

VI. STAFF'S POSITION

Because CSC has failed to respond to the complaint as required, Staff cannot make a full and complete statement of its position with regard to the complaint at this time. Staff recommends that CSC be given until May 15, 2020 to respond to the complaint and that Staff be given until May 29, 2020 to file a supplemental statement of position.

VII. CONCLUSION

Staff respectfully requests that an order be issued requiring CSC to respond to the complaint by May 30, 2020 and requiring Staff to file a supplemental statement of position by June 15, 2020.

²¹ *Id.*

Dated: May 1, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Heath D. Armstrong
Managing Attorney

/s/Courtney Dean
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DOCKET NO. 50629

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 1, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean
Courtney N. Dean

DOCKET NO. 50629

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AGAINST CSC NORTH AUSTIN	§	
REALITY, LLC	§	OF TEXAS

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VII. CONCLUSION

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²¹ *Id.*

Dated: May 1, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

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Managing Attorney

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DOCKET NO. 50629

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 1, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean
Courtney N. Dean