



Control Number: 53179



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However, FirstKey asserted that it is discontinuing this practice and all residents of its properties must now individually contract for their own electric service.⁷ FirstKey asserted that Mr. Araguz agreed to this arrangement during his tenancy through October 31, 2021,⁸ after which Mr. Araguz changed providers to receive electric service from Champion Energy Service.⁹

II. Procedural History

Mr. Araguz filed a formal complaint on February 2, 2022. FirstKey filed a response on March 2, 2022. On March 9, 2022, Commission Staff filed a statement of position and requested that this proceeding be referred to the State Office of Administrative Hearings (SOAH).

Mr. Araguz and FirstKey were directed, and Commission Staff and other interested persons were allowed, to file by September 16, 2022 a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. FirstKey and Commission Staff each timely filed a list of issues. Mr. Araguz did not file a list of issues.

III. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.¹⁰ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did Mr. Araguz comply with the informal complaint process under 16 Texas Administrative Code (TAC) § 22.242(c)?
2. Did Mr. Araguz meet all of the requirements to bring his formal complaint under 16 TAC § 22.242(e)?
3. For each asserted violation of the Commission's rules, what was the relevant time period of each of the alleged violations?

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Tex. Gov't Code § 2003.049(e).

Jurisdiction

4. Does the Commission have jurisdiction over this complaint?
5. During the time period at issue, who was the account holder for electric service provided to Mr. Araguz?
6. During the time period at issue, how was Mr. Araguz's electric energy consumption measured?
7. Did FirstKey bill Mr. Araguz for separately metered electric service as defined by 16 TAC § 25.5(120)?
 - a. Did an individual meter measure Mr. Araguz's electric energy consumption?
 - b. Was Mr. Araguz directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility?
 - c. Is FirstKey a retail electric provider as defined by 16 TAC § 25.5(114)? If not, do the requirements applicable to retail electric providers under 16 TAC § 25.479 concerning electric service bills also apply to FirstKey?

Complaint and Remedies

8. Did Mr. Araguz reside in an area where customer choice as defined by 16 TAC § 25.5(22) was in effect during the time period of the alleged violations, and is Mr. Araguz's residence separately metered? If so, did FirstKey's actions or inactions interfere with Mr. Araguz's freedom to choose a retail electric provider, an electric cooperative offering customer choice, or a municipally owned utility offering customer choice? PURA¹¹ § 39.107(c) and 16 TAC § 25.5(22).
9. In billing Mr. Araguz for his electric utility usage, did FirstKey charge Mr. Araguz in excess of the actual charge imposed on FirstKey for that electricity?
10. If FirstKey did not comply with Commission rules or PURA, what is the appropriate remedy?

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 Section IV of this Order, by the ALJ, or by the Commission in future orders issued in

¹¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001 -66.016.

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).

IV. Issues Not to be Addressed

The Commission identifies the following issues that need not be addressed in this proceeding for the reasons stated.

I. Is Mr. Araguz entitled to monetary damages or waivers of rental payments and fees?

As a creature of statute, the Commission's powers and duties are limited to those that the Legislature expressly conferred on it through statute and the implied powers that are reasonably necessary to accomplish the Commission's express responsibilities.¹² Although the Commission has been expressly delegated authority to grant some remedies (such as ordering charges or refunds to resolve billing disputes), the Commission does not have authority to order some forms of relief available in courts of law, such as awarding attorney's fees, court costs, or damages. Those types of relief must be sought before a court of competent jurisdiction.

The Commission has jurisdiction over this complaint to make determinations within the administrative framework provided by PURA and the Commission's rules. Complaints presented to the Commission regarding matters within the administrative framework can only be resolved as a regulatory matter. In this docket, the Commission may make determinations regarding alleged violations of PURA, the Texas Water Code, and Commission rules. Once the Commission issues a final order in this complaint docket, a court may use the regulatory determinations made by the Commission under its exclusive jurisdiction to adjudicate claims that are within the court's jurisdiction.

V. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding

¹² *Complaint of Giovanni Homes Corporation Against Oncor Electric Delivery Company LLC*, Docket No 45854, Preliminary Order at 4 (Aug. 25, 2016); see also *Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192–93 (Tex. 2007) (quoting *Pub. Util. Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 315 (Tex. 2001)); *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 216 (Tex. 2002) (citing *State v. Pub. Util. Comm'n*, 883 S.W.2d 190, 194 (Tex. 1994)).

issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, 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 the non-dispositive rulings of 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 20th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER