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Filing Date - 2024-07-24 02:56:36 PM

Control Number - 55635

Item Number - 33

DOCKET NO. 55635

**COMPLAINT OF ERIC ELLIS
AGAINST WESTLAKE GARDEN
APARTMENTS**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**COMMISSION STAFF'S SUPPLEMENTAL STATEMENT OF POSITION AND
MOTION FOR SUMMARY DECISION**

On October 3, 2023, Eric Ellis (Complainant) filed a complaint against Westlake Garden Apartments (Westlake) for its alleged refusal to disclose its utility allocation methods to the Complainant, which induced him into a transaction he would not have entered into had the information been disclosed, and for overbilling. This complaint was filed under 16 Texas Administrative Code (TAC) § 22.242.

On June 27, 2024, the ALJ issued Order No. 9, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental statement of position regarding the complaint and propose a procedural schedule by July 25, 2024. Therefore, this pleading is timely filed.

I. STAFF'S MOTION FOR SUMMARY DECISION

Under 16 TAC § 22.182, "Any party to a proceeding may move for summary decision on any or all of the issues ... before the close of the hearing of the merits or before the issuance of a proposal for decision or proposed order if no hearing is held..." Summary decision is proper when the pleadings or evidence show "... that there is no genuine issue as to any material fact and the moving party is entitled to a decision in its favor, as a matter of law..."¹ Staff moves for summary decision on all issues as the evidence shows that Westlake properly allocated water and sewer service charges to its tenants, including the Complainant, but failed to comply with Commission rules regarding lease disclosures and billing.

Staff has reviewed the complaint and recommends that the water and sewer charges by Westlake were properly calculated in accordance with 16 TAC § 24.281(e)(1)(B)(ii), 24.281(e)(2)(A)(i), and 24.281(e)(2)(A)(iv). Staff's recommendation is based on the attached memorandum and worksheet from Ethan Blanchard of the Rate Regulation Division, who confirmed that Westlake's allocation of water and sewer charges were properly calculated, and

¹ 16 TAC § 22.182(a).

that the Complainant was not billed more for water or sewer service than other tenants with the same square footage and occupancy. Therefore, Staff recommends that the issue of Westlake's overbilling of the Complainant and other tenants for allocated water and sewer service be dismissed.

Staff has reviewed the copy of the Complainant's lease filed by Westlake and recommends that Westlake be found to have violated Commission rules regarding lease disclosures and billing practices. Under 16 TAC § 24.279(a)(4) and (5), rental agreements shall clearly state in writing the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period, and clearly state in writing a description of the apartment's allocation formula. The copy of the Complainant's rental agreement filed by Westlake does not comply with the requirements of 16 TAC § 24.279(a)(4) and (5) because the sections of the rental agreement denoting the allocation method and the average, low, and high bills were left blank.² Staff recommends that Westlake be ordered to properly complete these sections on all future rental agreements and to provide its current tenants with corrected water and sewer allocation addenda.

Additionally, under 16 TAC § 24.283(j), unless the tenant clearly indicates otherwise, payments made by the tenant must first be applied to rent and then to utilities, unless utility bills are paid to a third-party billing company on behalf of the owner. The copy of the Complainant's rental agreement filed by Westlake contains a clause stating that, "Any monies paid will be applied to utilities first then rent."³ This statement clearly violates the requirements of 16 TAC § 24.283(j). Staff recommends that Westlake be ordered to remove the above-mentioned clause from all its current and future rental agreements.

II. PROCEDURAL SCHEDULE

In light of Staff's motion for summary decision, Staff does not provide a proposed procedural schedule at this time.

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests Staff respectfully requests the entry of an order granting Staff's motion for summary decision.

² Documents Requested at 40 and 61 (Nov. 22, 2023).

³ Documents Requested at 18 (Nov. 22, 2023).

Dated: July 24, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on July 24, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Johann Rupp
Johann Rupp

Public Utility Commission of Texas

Memorandum

TO: Johann Rupp
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: July 24, 2024

RE: Docket No. 55635 *Complaint of Eric Ellis Against Westlake Garden Apartments*

On October 3, 2023, Eric Ellis filed a formal complaint against Westlake Garden Apartments (Westlake). Mr. Ellis believes that Westlake is not properly allocating water and wastewater charges and that Westlake is collecting more from tenants than Westlake is being charged by its retail public utility—the City of White Settlement (City).

I have reviewed the ten bills provided by Westlake that were sent from the City to Westlake for service between January 20, 2023 and December 20, 2023 and the billing ledgers used by Westlake to allocate charges to tenants in 2023.¹ For each of the months I reviewed, Westlake—which does not meter landscape irrigation or common area usage—properly deducts 25% from the master meter bill per 16 Texas Administrative Code (TAC) § 24.281(e)(1)(B)(ii). Westlake then allocates half of the reduced master meter bill to residents based on the square footage per tenant—per 16 TAC § 24.281(e)(2)(A)(iv)—and allocates the other half based on the number of occupants in the tenant’s apartment—per 16 TAC § 24.281(e)(2)(A)(i). The rates derived therefrom were appropriately applied to Mr. Ellis based on the occupancy and square footage of his apartment for each of the months in this period. I have also confirmed that Mr. Ellis paid the same charges as every other tenant with the same square footage and occupancy as Mr. Ellis during this period.²

Additionally, Westlake prorates bills for tenants who move in or out during the period—in accordance with 16 TAC § 24.281(e)(3)—and thereby collects, each month, less than 75% of the master meter bill.

¹ Water bills for 2022 and 2023, AIS item no. 15 (Feb. 2, 2024); Utility Billing ledgers for 2023 Demonstration of Methodology, AIS item no. 32 (Jul. 11, 2024).

² *Cf.* Attachment EB-1.

The following files are not convertible:

55635 Attachment EB-1.xlsx

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