



## **Filing Receipt**

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Commissioner

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Commissioner



**Greg Abbott**  
Governor

**Connie Corona**  
Executive Director

## *Public Utility Commission of Texas*

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TO: Shelah Cisneros  
Commission Counsel

All Parties of Record

FROM: Isaac Ta *I. T.*  
Administrative Law Judge

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

DATE: May 9, 2025

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

**If there are no corrections or exceptions, no response is necessary.**

/s/eg  
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**DOCKET NO. 55635**

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

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**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

**PROPOSAL FOR DECISION**

In this proceeding, Eric Ellis filed a complaint against his landlord, AV Brickell Pointe, Ltd. (the Westlake Gardens Apartments), alleging that Westlake Gardens Apartments overbilled for water and sewer service, failed to properly bill, and failed to properly disclose information. In this Proposal for Decision (PFD), the administrative law judge (ALJ) recommends that the Commission deny Mr. Ellis’s complaint in part and grant Mr. Ellis’s complaint in part.

Although there are disputed issues in this proceeding, no hearing was requested, and no hearing has been held.

**I. Background**

**A. Mr. Ellis’s Complaint**

From June 4, 2022, through March 31, 2024, Mr. Ellis resided in an apartment at the Westlake Gardens Apartments, which is owned by AV Brickell Pointe, Ltd.

On October 3, 2023, Mr. Ellis filed the complaint at issue in this proceeding. In his complaint, Mr. Ellis alleges that, from January 20 through December 20, 2023, Westlake Gardens Apartments failed to render allocated water and sewer bills in accordance with Texas law and unlawfully billed tenants for utility charges separate from rent. Mr. Ellis specifically asserts that Westlake Gardens Apartments: (1) failed to set a legal due date for his payment of water and sewer utility bills from the apartment complex, (2) failed to explain the fees it charged associated with water and sewer service and applied improper fees associated with water and sewer service, (3) did not provide notice of the total water and sewer utility costs for the complex each month, (4) failed to state in writing how utilities are allocated to tenants, and (5) failed to state how often the complex would bill tenants for water and sewer utilities.

In his December 11, 2023 statement of position, Mr. Ellis additionally complained that Westlake Gardens Apartments violated 16 Texas Administrative Code (TAC) § 24.283(h) by requiring payment for water and sewer utility service in fewer than 16 days from when a bill was

provided to tenants. He also complained that Westlake Gardens Apartments violated 16 TAC § 24.283(j) by including the following provision in his rental agreement: “[A]ny monies paid will be applied to utilities first then rent.” Mr. Ellis alleges that because Westlake Gardens Apartments improperly applied his payments to his utilities first, his rent was paid out of order, and thus, never legally paid. He also asserted that because of the order in which Westlake Gardens Apartments applied his payments, there were unlawful additional charges assessed to him that exceeded the actual charges imposed to Westlake Gardens Apartments for utility consumption by the apartment complex.

In his December 14, 2023 supplemental statement of position, Mr. Ellis stated, among other things, that he is entitled to a refund of all amounts paid to Westlake Gardens Apartments, with interest.

**B. Westlake Gardens Apartments’ Response**

On November 22, 2023, Westlake Gardens Apartments filed its response to Commission Staff’s first requests for information in which it stated the following: (1) Mr. Ellis’s rental agreement was from June 4, 2022 through March 31, 2024; (2) there was no correspondence between itself and Mr. Ellis regarding the subject of his complaint; (3) Mr. Ellis never requested the average monthly water or sewer bill for all dwelling units or the highest and lowest bill for the previous calendar year; nevertheless, the complex provided this information to Mr. Ellis; and (4) during the relevant time period, the allocation methodology for calculating tenants’ water and sewer bills was based on the number of occupants and square footage.

On February 2, 2024, Westlake Gardens Apartments filed copies of its water and sewer bills for 2022 and 2023 from its water and sewer service provider, the City of White Settlement, in response to Commission Staff’s second requests for information.

On April 11, 2024, Westlake Gardens Apartments filed its response to Commission Staff’s third requests for information in which it stated the following: (1) Westlake Gardens Apartments has eight separate accounts with White Settlement for water and utility service provided by White Settlement and it filed copies of bills from White Settlement for each account that is associated with one of the eight buildings making up the apartment complex; (2) Mr. Ellis’s meter number was 14-100816-01, (3) Westlake Gardens Apartments allocated water charges with all eight accounts consolidated together and then allocated to all tenants, (4) the usage for common areas –

such as irrigation and pools – was not metered, and (5) no deductions were made from the master bill from White Settlement before charges were allocated to tenants. Westlake Gardens Apartments also provided copies of its billing for the period from February 20 to March 20, 2024, to demonstrate the use of occupancy and square footage for allocating to all tenants,

On July 11, 2024, Westlake Gardens Apartments filed digital copies of its billing ledger for the period from December 2022 through December 2023 in response to Commission Staff's fourth requests for information.

**C. Commission Staff's Statement of Position**

On July 24, 2024, Commission Staff filed a statement of position. Commission Staff asserted that the pleadings and evidence show that Westlake Gardens Apartments, during the relevant time period, properly allocated the water and sewer service charges to its tenants. Specifically, Commission Staff concluded that Westlake Gardens Apartments properly deducted 25% from the master meter bills for landscape irrigation and common area usage as authorized by 16 TAC § 24.281(e)(1)(B)(ii), then allocated half of the reduced master meter bill based on the square footage per apartment, under 16 TAC § 24.281(e)(2)(A)(iv), and allocated the other half based on the number of occupants in each apartment, under 16 TAC § 24.281(e)(2)(A)(i). Commission Staff states Mr. Ellis's rates for water and sewer utility service were properly calculated and billed by Westlake Gardens Apartments to him for each of the months at issue in Mr. Ellis's complaint. Commission Staff also concluded that Westlake Gardens Apartments prorated bills for tenants who moved in or out during a billing period, in accordance with 16 TAC § 24.281(e)(3), and thereby collected less than 75% of the master meter bill each month.

However, Commission Staff also recommended that Westlake Gardens Apartments be found to have violated 16 TAC § 24.279(a)(4) and (5), which require rental agreements to clearly state in writing the apartment's allocation formula and the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period. Commission Staff recommended that Westlake Gardens Apartments' rental agreement violates these rules because the sections of Westlake Gardens Apartments' rental agreement regarding utility allocation method and the average, low, and high bills were left blank.

Commission Staff additionally recommended that Westlake Gardens Apartments be found to have violated 16 TAC § 24.283(j), which requires payments made by a tenant to first be applied to rent and then to utilities, unless utility bills are paid by a third-party billing company on behalf of the owner or unless otherwise specified by the tenant. Commission Staff recommended that Westlake Gardens Apartments' rental agreement violates the Commission's rules because it contains a clause stating that, "[A]ny monies paid will be applied to utilities first then rent."

Commission Staff recommended that Westlake Gardens Apartments be ordered to take the following actions: (1) properly complete the sections of its rental agreement regarding utility allocation method and the average, low, and high bills on all future rental agreements and provide its current tenants with corrected water and sewer allocation addenda; and (2) remove the clause that states payments would be applied to utilities first, then rent, from all its current and future rental agreements and ensure that monies paid by tenants are applied to rent first, then utilities.

**D. Motion for Sanctions**

In Order No. 1 filed on October 18, 2023, the ALJ ordered Westlake Gardens Apartments to file a response to the complaint, as required by 16 TAC § 22.78, by October 25, 2023. Westlake Gardens Apartments did not file a response to Order No. 1.

In Order No. 2 filed on November 7, 2023, the ALJ ordered Westlake Gardens Apartments to file a response to the complaint, as required by 16 TAC § 22.78, by November 21, 2023. Westlake Gardens Apartments late-filed its response to the complaint on November 22, 2023.

On April 23, 2024, Commission Staff served upon Westlake Gardens Apartments its fourth requests for information (RFIs). The deadline to respond to Commission Staff's fourth RFIs was May 13, 2024. Westlake Gardens Apartments did not file a response by the deadline.

On May 30, 2024, Commission Staff filed a motion to compel a response to its fourth RFIs.

In Order No. 8 filed on May 31, 2024, the ALJ granted Commission Staff's motion to compel and ordered Westlake Gardens Apartments to file a response to Commission Staff's fourth RFIs by June 24, 2024. Westlake Gardens Apartments did not file a response to Commission Staff's fourth RFIs or otherwise respond to Order No. 8.

In Order No. 9 filed on June 27, 2024, the ALJ ordered Westlake Gardens Apartments to file a response to Commission Staff's fourth RFIs by July 11, 2024. Westlake Gardens Apartments filed its response to Commission Staff's fourth RFIs on July 11, 2024.

On November 18, 2024, Commission Staff served upon WGA its fifth RFIs. The deadline to file a response to Commission Staff's fifth RFIs was December 9, 2024. Westlake Gardens Apartments did not file a response by the deadline.

In Order No. 14 filed on December 18, 2024, the ALJ ordered Westlake Gardens Apartments to file a response to Commission Staff's fifth RFIs by January 14, 2025. Westlake Gardens Apartments did not file a response to Commission Staff's fifth RFIs or otherwise respond to Order No. 14.

On February 11, 2025, Commission Staff moved for the imposition of sanctions against Westlake Gardens Apartments.

In Order No. 16 filed on February 24, 2025, the ALJ set March 7, 2025, as the deadline for any party to request a hearing on the motion for sanctions. No party requested a hearing on sanctions and, no hearing on sanctions was held.

In Order No. 17 filed on April 22, 2025, the ALJ granted Commission Staff's motion for sanctions and deemed the following facts admitted for the purpose of this proceeding:

- a. For the period from June 4, 2022, through March 31, 2024, Westlake Gardens Apartments failed to include the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period in its rental agreement;
- b. For the period from June 4, 2022, through March 31, 2024, Westlake Gardens Apartments failed to include a description of the company's allocation formula in its rental agreement;
- c. For the period from June 4, 2022, through March 31, 2024, the due dates for utility bills by Westlake Gardens Apartments were fewer than 16 days after the bill was mailed or hand delivered to the tenant; and
- d. For the period from June 4, 2022, through March 31, 2024, Westlake Gardens Apartments applied monies paid by tenants to utilities first, and then rent.

## II. Findings of Fact

The ALJ makes the following findings of fact.

### Parties

1. AV Brickell Pointe Ltd. is a Texas limited partnership registered with the Texas secretary of state under file number 6417110.
2. AV Brickell owns an apartment house called Westlake Gardens Apartments in Fort Worth, Texas.
3. Mr. Ellis is an individual who entered into a rental agreement with AV Brickell to reside at the Westlake Gardens Apartments.
4. Mr. Ellis lived at the Westlake Gardens Apartments from June 4, 2022 through March 31, 2024.

### The Complaint

5. On October 3, 2023, Mr. Ellis filed the formal complaint at issue in this proceeding alleging that from January 20 through December 20, 2023, Westlake Gardens Apartments failed to render allocated bills in accordance with Texas law and is unlawfully billing tenants for utility charges separate from rent.
6. In his formal complaint, Mr. Ellis alleges that Westlake Gardens Apartments:
  - a. failed to bill tenants such that tenant utility charges were separate from rent;
  - b. failed to provide tenants notice of the total utility costs for the complex each month;
  - c. failed to state in writing how the complex allocated the total utility bills and how often tenants were billed for water and sewer utilities; and
  - d. included an unlawful provision in the rental agreement stating “[A]ny monies paid will be applied to utilities first then rent.”
7. Mr. Ellis seeks a refund of any overcharges and for Westlake Gardens Apartments to be ordered to correct its rental agreement.
8. On November 22, 2023, Westlake Gardens Apartments responded to Commission Staff’s first RFIs and provided the following:



- a. copies of water rental agreements, including addendum, and an explanation of how it allocated usage;
  - b. copies of bills to Mr. Ellis; and
  - c. the average monthly water and sewer bill for all dwelling units and the highest and lowest bill for the previous calendar year.
9. On December 11, 2023, Mr. Ellis alleged that Westlake Gardens Apartments violated 16 TAC § 24.283 by not allowing at least 16 days between when a water or sewer bill was mailed or hand delivered to the tenant and when the bill was due. Mr. Ellis requested interest be applied to any overbilling.
10. On December 14, 2023, Mr. Ellis argued that because Westlake Gardens Apartments did not apply tenant payments to rent before utilities, all monies paid by tenants should be refunded, with interest.
11. On February 2, 2024, Westlake Gardens Apartments responded to Commission Staff's second RFIs, providing copies of utility bills to the Westlake Gardens Apartments by its water and sewer utility service provider, the City of White Settlement.
12. On April 11, 2024, Westlake Gardens Apartments responded to Commission Staff's third RFIs, answering questions and providing copies of an example month of billing to tenants.
13. On July 11, 2024, Westlake Gardens Apartments responded to Commission Staff's fourth RFIs, confidentially providing copies of utility billing ledgers for 2023 and documents demonstrating its allocation methodology.
14. On July 24, 2024, Commission Staff recommended the following:
  - a. during the period that Mr. Ellis complains of, the water and sewer charges by Westlake Gardens Apartments were properly calculated;
  - b. during the period that Mr. Ellis complains of, Westlake Gardens Apartments violated the Commission's rules regarding rental agreement disclosure and billing practices because those sections of Westlake Gardens Apartments' rental agreements were left blank; and

- c. during the period that Mr. Ellis complains of, Westlake Gardens Apartments violated the Commission's rules regarding the order in which payments are applied to rent and utilities and by improperly including the statement "Any monies paid will be applied to utilities first then rent" in its rental agreement because payments are made directly to AV Brickell, not a third party, and tenants did not designate this billing choice.
15. Also on July 24, 2024, Commission Staff filed a motion for summary decision, stating that there is no genuine issue of material fact and that the evidence shows that Westlake Gardens Apartments properly allocated water and sewer service charges to tenants, including complainant, but failed to comply with the Commission's rules regarding lease disclosures and billing.
16. In Order No. 11 filed on October 8, 2024, the ALJ set October 22, 2024, as the deadline for any party to request a hearing.
17. In Order No. 12 filed on October 22, 2024, the ALJ denied Commission Staff's motion for summary decision.

**Sanctions**

18. On February 11, 2025, Commission Staff filed a motion for sanctions.
19. No party requested a hearing on Commission Staff's motion for sanctions and no hearing was held on the motion for sanctions.
20. In Order No. 17 filed on April 11, 2025, the ALJ deemed certain facts to be true. For the period from June 4, 2022, through March 31, 2024, Westlake Gardens Apartments failed to include the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period in its rental agreement.
21. For the period from June 4, 2022, through March 31, 2024, Westlake Gardens Apartments failed to include a description of the company's allocation formula in its rental agreement. For the period from June 4, 2022, through March 31, 2024, the due dates for utility bills by Westlake Gardens Apartments were fewer than 16 days after the bill was mailed or hand delivered to the tenant. For the period from June 4, 2022, through March 31, 2024,

Westlake Gardens Apartments applied monies paid by tenants to utilities first, and then rent.

22. Although a factual dispute still exists, no party requested a hearing, and no hearing has been held.

### **III. Conclusions of Law**

The ALJ makes the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code (TWC) § 13.505.
2. Westlake Gardens Apartments is an apartment house as defined in TWC § 13.501(1).
3. AV Brickell Pointe, Ltd. is the owner of an apartment house as defined in TWC § 13.501(5).
4. At all times relevant to this proceeding, Mr. Ellis was a tenant as defined in TWC § 13.501(6).
5. Mr. Ellis is entitled to bring his complaint under 16 TAC § 22.242(a).
6. As the complainant, Mr. Ellis has the burden of proving the issues raised in his complaint by a preponderance of the evidence under 16 TAC § 24.12.
7. Mr. Ellis did not prove by a preponderance of the evidence that, during the period from January 20 through December 20, 2023, Westlake Gardens Apartments failed to calculate tenant water and sewer charges in accordance with 16 TAC § 24.281(e)(1)(B)(ii), 24.281(e)(2)(A)(i) and (iv).
8. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.279(a)(4) by failing to include the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period in its rental agreement.
9. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.279(a)(5) by failing to include a description of the apartment's allocation formula in its rental agreement.

10. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.283(h) by setting due dates for utility bills fewer than 16 days after a bill was mailed or hand delivered.
11. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.283(j) by applying Mr. Ellis's payments to water and sewer utilities first then rent, and by including a clause in the rental agreement that stated, "Any monies paid will be applied to utilities first then rent," without the proper authority to do so.
12. The Commission processed Mr. Ellis's complaint in accordance with the requirements of the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission rules.
13. This PFD was issued in accordance with the Texas Government Code § 2001.062 and 16 TAC § 22.261(a).

#### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the ALJ recommends the following ordering paragraphs.

1. The Commission denies Mr. Ellis's complaint with respect to his claim that he was overbilled for water or sewer utility service while a resident at Westlake Gardens Apartments for the period from January 20, 2022 through December 30, 2023.
2. The Commission grants Mr. Ellis's complaint with respect to Westlake Gardens Apartments' disclosures of its billing practices and with respect to Westlake Gardens Apartments' billing practices.
3. The Commission finds that Westlake Gardens Apartments failed to include the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period in its rental agreement, in violation of 16 TAC § 24.279(a)(4).

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<sup>1</sup> Tex. Gov't Code § 2001.001–.903.

4. The Commission finds that Westlake Gardens Apartments failed to include a description of the apartment's allocation formula in its rental agreement, in violation of 16 TAC § 24.279(a)(5)
5. The Commission finds that Westlake Gardens Apartments failed to provide proper disclosures of its billing practices in its rental agreement with Mr. Ellis during the period from June 4, 2022 through March 31, 2024, in violation of 16 TAC § 24.279(a)(4) and (5).
6. The Commission finds that Westlake Gardens Apartments improperly applied Mr. Ellis's payments to water and sewer utilities first then rent, and improperly included a clause in the rental agreement that stated, "Any monies paid will be applied to utilities first then rent," without the proper authority to do so during the period from June 4, 2022 through March 31, 2024, in violation of 16 TAC § 24.283(j).
7. Within 30 days of the date of this Order, Westlake Gardens Apartments must:
  - a. correct its rental agreement with respect to proper disclosures and billing practices as discussed in this Order, and provide corrected water and sewer addenda to current tenants; and
  - b. cease applying tenant payments to utilities first then rent, remove the clause from its rental agreement that states, "[A]ny monies paid will be applied to utilities first then rent," and provide a copy of the corrected pages of the rental agreement to current tenants.
8. Within 45 days of the date of this Order, Westlake Gardens Apartments must file a copy of its corrected rental agreement in Docket No. 57243, *Compliance Filing for Docket No. 55635 (Complaint of Eric Ellis Against Westlake Gardens Apartments)*, and file proof that all required corrected addenda and corrected rental agreement pages have been provided to existing tenants.
9. 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 on the 9th day of May 2025.

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read 'Isaac TA', written over a horizontal line.

**ISAAC TA**

**ADMINISTRATIVE LAW JUDGE**

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