

PUC DOCKET NO. 41987
SOAH DOCKET NO. 473-14-1298

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COMPLAINT OF MULTIPLE RV
TENANTS OF LIVE OAK RESORT,
INC. AGAINST LIVE OAK RESORT,
INC.

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the complaint of multiple RV tenants of Live Oak Resort, Inc. against Live Oak Resort Inc. On October 9, 2014, the State Office of Administrative Hearings' administrative law judge issued a proposal for decision in this matter, in which the ALJ generally found that the complaint of multiple RV tenants had merit, including a finding that refunds of overcharges were due all current and former tenants affected by the ALJ's findings. The ALJ declined to apply interest to the amounts to be refunded. With the exception of the issue discussed below, the Commission adopts the PFD.

The Commission finds it appropriate to apply interest to all refunds to be made by Live Oak Resort, Inc. as a result of the holdings in this Order. The rate of interest shall be the Commission-approved rate of interest for the years at issue. Accordingly, to reflect its finding regarding the application of interest to refunded amounts, the Commission deletes findings of fact 29 and 30, and replaces them with findings of fact 29A and 30A, respectively.

In all other respects, the Commission adopts the PFD, including all findings of fact and conclusions of law not specified above.

The Public Utility Commission of Texas adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On November 4, 2013, Multiple RV Tenants of Live Oak Resort, Inc. (Complainants) filed a formal complaint with the Public Utility Commission of Texas (PUC or Commission) against Live Oak Resort, Inc. (Live Oak) alleging that Live Oak improperly

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- calculated electricity consumption charges and collected unlawful submetering surcharges.
2. On November 26, 2013, Live Oak filed a response denying that it had improperly calculated the Complainants' charge for electricity consumption and contending that the submetering surcharges were permissible administrative surcharges.
 3. On December 10, 2013, the Commission referred this matter to the State Office of Administrative Hearings (SOAH).
 4. On January 27, 2014, the Commission issued a Preliminary Order identifying the issues to be addressed in this proceeding.
 5. On June 26, 2014, Administrative Law Judge (ALJ) Penny A. Wilkov convened the hearing on the merits with Complainants appearing through attorney Christopher L. Brewster, Live Oak appearing through Attorney Miguel A. Huerta, and PUC Staff appearing through Legal and Enforcement Division attorney Thomas L. Tynes. The hearing concluded that same day. The parties filed post-hearing briefs on July 31, 2014, and reply briefs on August 13, 2014, at which time the record closed.
 6. The ALJ adopted an additional issue for consideration in Order No. 6: are the findings and remedies in this case applicable to all lot holders in the permanent recreational vehicle (RV) section of Live Oak, or only to those explicitly named in Attachment A of Tenants' Exhibit A?
 7. Live Oak is a resort located in Washington County, Texas, with cabins, recreational areas, and accommodations for mobile homes, permanent and temporary RVs, and pop-up campers and vans. The location at issue in this case was the permanent RV section of the resort.
 8. There were 11 primary meters that supplied electricity to all 60 lots in the permanent RV section.
 9. Electrical service to the 11 primary meters was provided by Bluebonnet Electric Cooperative, Inc. (Bluebonnet), who billed Live Oak monthly for the 11 primary meters.

Live Oak had installed submeters for each of the 60 permanent RV lots from the 11 primary meters.

10. The RV tenants received a monthly statement from Live Oak for each tenant's electrical usage along with an additional meter surcharge, labeled from September 2008 until May 2010 as "Bluebonnet Electric Meter Surcharge," from May 2010 until August 2013 as an "electric meter surcharge," and from August 2013 until present as an "administrative overhead service fee," (collectively, meter surcharge).
11. The meter surcharge began at \$15 monthly in September 2008, increased to \$22.50 monthly in May 2010, increased to \$24.19 monthly in January 2013, and continues to the present.
12. Bluebonnet never assessed or collected a meter surcharge at any time from Live Oak.
13. Complainants acknowledge that the vehicles parked at Live Oak in the permanent RV section are RVs and not mobile homes or manufactured homes.
14. The RVs parked in the permanent RV section of Live Oak are roadworthy, have a one-year lease (which can be extended yearly) for a reserved parking space, can leave and return at-will during the lease period, but have no permanent access to the resort.
15. Live Oak improperly calculated charges for Complainants' and other permanent RV tenants' electrical consumption.
16. To calculate submetered electric charges, Live Oak is required to divide the amount charged by Bluebonnet for the preceding fiscal year by the total number of per kilowatt hours (kWh) consumed by the occupants visiting the park in the preceding fiscal year and round the quotient to the nearest cent.
17. Live Oak failed to use a consistent fiscal year in its calculations for all years: it used a September-August fiscal year for the visitor calculation and a calendar year for the Bluebonnet cent/kWh calculation.

In 2008, the kWh billed to the permanent RV tenants exceeded the kWh billed by Bluebonnet. The total invoiced amount for 2008 to the tenants was 276,652 kWh, which

exceeded Bluebonnet's actual metered kWh of 253,614 kWh, or 23,038 additional kWh charged to tenants but not billed by Bluebonnet.

18. The total billed to the tenants in 2008 should have also excluded electricity for the common areas, which is the responsibility of the landlord.
19. In 2009, Live Oak's submetered kWh was 85% of Bluebonnet's metered kWh quantity; in 2010, 93%; in 2011, 94%; in 2012, 95%; and in 2013, 84%. An average of these amounts was 90%, or the average Live Oak submetered kWh as a percentage of the Bluebonnet billed kWh for the common area for the past five years.
20. Live Oak billed the tenants for 276,652 kWh when it should have billed 228,253 kWh, which is a difference of 48,400 in overbilled kWh or \$3,888.90 in overcharges.
21. Live Oak invoiced the permanent RV tenants a rate of \$0.08035 per kWh until April 2010, and then increased its rates to \$ 0.1029 per kWh thereafter.
22. Live Oak should have rounded Bluebonnet's 2012 and 2013 submeter rate of 0.1029 kWh to the nearest cent or 10 cents per kWh. Instead, Live Oak overcharged 0.29 cents more than the allowable rate, or \$886.49 in 2012 and \$313.21 in 2013.
23. Even if Live Oak failed to charge what it claimed it could have charged, *i.e.* \$0.11 per kWh beginning in September 2010, Live Oak did not refund any overcharges. Instead, Live Oak exercised its discretion not to recoup any under collection, which does not amount to an informal refund.
24. The meter surcharge was not cost-based, and Live Oak provided no justification for a meter surcharge.
25. Live Oak over collected the following amounts in monthly surcharges from its permanent RV tenants:

2013	\$ 15,110
2012	\$ 14,625
2011	\$ 14,715
2010	\$ 13,320
2009	\$ 8,715
2008	\$ 2,865
TOTAL	\$ 69,350

26. The total meter surcharge charged all Live Oak submetered tenants, from 2008 until 2013, was \$69,350, and continues to the present.
27. Live Oak misled the tenants by indicating that the landlord was billing the tenants for an electric utility surcharge paid by the owner.
28. Live Oak should not retain fees knowingly mislabeled as administrative charges.
29. Deleted.
- 29A. A refund of overcharges to all permanent RV tenants who were charged a meter surcharge is necessary to ensure that Live Oak was not, and is not currently, an unlawful electric utility. All refund amounts are subject to interest at the Commission-approved interest rate.
30. Deleted.
- 30A. Live Oak should also be required to refund to all permanent RV tenants who were overcharged the miscalculated per/kWh charges the following: for fiscal year 2011-2012, the amount of \$886.49; for fiscal year 2012-2013, the amount of \$313.21; and for fiscal year 2008-2009, the amount of \$3,889. All refund amounts are subject to interest at the Commission-approved interest rate.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Texas Utilities Code (Code) §§ 11.002, 11.008, 14.001, 15.023-.024, 15.027, 15.052, 32.001, and 184.032-.035.
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, pursuant to Texas Government Code § 2003.049 and Code § 14.053.
3. Notice of the prehearing conference and hearing on the merits complied with Subchapter D of the Commission's Procedural Rules and with Texas Government Code § 2001.052.

4. Code Chapter 184, Subchapter B, provides a framework for calculating electricity consumed by occupants of an apartment house (which by definition includes residential condominiums) or a “dwelling unit.”
5. A “dwelling unit” includes a mobile home in a mobile home park, but does not include a RV as defined by Section 522.004(b), Texas Transportation Code. Code § 184.011(2)(A)(ii) and (B).
6. Code Subchapter B §§ 184.011-014 and P.U.C. SUBST. R. 25.142, which implements section 184.014, are not applicable to this case.
7. Metering in RV parks is regulated by Code Chapter 184, Subchapter C.
8. As defined, an RV is a motor vehicle primarily designed as temporary living quarters for recreational camping or travel use and includes a travel trailer, camping trailer, truck camper, and motor home. Code § 184.031(1), Texas Transportation Code § 522.004(b).
9. In order to not be providing electric service for compensation, an RV owner must not recover from RV occupants through metered charges more than the supplying utility charges the owner for electricity that is submetered. Code § 184.033
10. Texas Utilities Code § 184.034 requires an RV park owner to calculate the per kWh rate for submetered electricity charges on a one-year lag by dividing the amount charged the owner by the supplying utility for the preceding fiscal year by the total number of kilowatt hours consumed by occupants visiting the park in the preceding fiscal year and round the quotient to the nearest cent.
11. Live Oak collected through metered charges more than the amount charged by Bluebonnet in fiscal years 2008-2009, 2011-2012, and 2012-2013.
12. Live Oak collected more than the amount charged by Bluebonnet in 2008, 2009, 2010, 2011, 2012, 2013, and 2014, until present, when it charged its RV tenants an administrative surcharge for submetering.
13. An RV park owner who determines at the end of a fiscal year that he has collected more than the amount charged by the supplying utility shall refund the excess amount to occupants visiting the park in the succeeding year. Code § 184.035.

14. The Commission has authority to order a refund to all permanent RV tenants who were overcharged. *Petition of Central Power and Light Company for the Fixing of Refunds, with Interest, of Fuel Cost Overrecoveries*, Docket No. 6072, 11 P.U.C. Bulletin 308 (1985).

III. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Public Utility Commission of Texas issues the following Order:

1. Multiple RV Tenants of Live Oak Resort, Inc.'s request for relief against Live Oak Resort, Inc. is granted in part.
2. Within 90 days of this Order, Live Oak Resort Inc. is ordered to refund \$5,088.70 for metered over collections. All refund amounts are subject to interest at the Commission-approved interest rate.
3. Within 30 days of this Order, Live Oak Resort, Inc. is ordered to refund \$6,248.02 (plus any additional amount collected for the metered surcharge, to date) to the Complainants in Attachment A of Tenants' Exhibit A. All refund amounts are subject to interest at the Commission-approved interest rate.
4. Within 90 days of this Order, Live Oak Resort, Inc. is ordered to refund the remainder of the meter surcharge collected, to date, to all remaining unidentified tenants/RV occupants who made meter surcharge payments. All refund amounts are subject to interest at the Commission-approved interest rate.
5. Within 30 days of effectuating all ordered refunds, Live Oak shall file proof of such with the Commission in Project No. 43803, *Live Oak Resort, Inc. 's Proof of Refunds in Compliance with Docket No. 41987*.

6. All other motions, requests for entry of specific findings of fact and conclusions of law, and other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 24th day of November 2014.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER