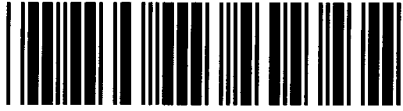




Control Number: 44716



Item Number: 1

Addendum StartPage: 0

Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott
Governor

2015 MAY 5 PM 2:44

Public Utility Commission of Texas

May 5, 2015

VIA CERTIFIED MAIL
AND ELECTRONIC MAIL (info@liveoakresort.com)

Mr. Larry Hildebrand
Live Oak Resort
9751 Lone Star Road
Washington, Texas 77880

44716

Re: PUC Docket No. _____; Notice of Violation by Live Oak Resort, Inc. of the Commission's final order issued in Docket No. 41987, and recommendation for enforcement and administrative penalties pursuant to PURA §§ 15.021(a)(2) and 15.023(a).

Dear Mr. Hildebrand:

The purpose of this Notice of Violation (NOV) is to notify you pursuant to P.U.C. PROC. R. 22.246 that the Oversight and Enforcement Division (O&E) of the Public Utility Commission of Texas (Commission) is recommending assessment of administrative penalties against Live Oak Resort, Inc. (Live Oak). The NOV is based on Live Oak's failure to comply with a Commission order issued in Docket No. 41987, which requires Live Oak to issue refunds to its tenants and to file proof of such refunds in Project No. 43803. The violations alleged herein are Class A violations. See P.U.C. SUBST. R. 26.9(b).

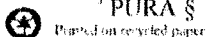
I. Introduction

The Commission may impose an administrative penalty against a person regulated by it who violates PURA¹ or a rule or order adopted pursuant to PURA.² The penalty for a violation may be in an amount not to exceed \$25,000, but each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Section 15.023 of PURA lists several factors upon which the penalty must be based, including the seriousness of the violation, economic harm, history of violations, amount necessary to deter future violations, efforts to correct the violation, and any other matter that justice may require.³

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

² PURA § 15.023(a).

³ PURA § 15.023(c).



An Equal Opportunity Employer

II. Summary of the Alleged or Continuing Violation

As discussed in the attached Report on Violations (Attachment 1), Live Oak is alleged to have violated the final order issued in Docket No. 41987 because Live Oak has failed to provide all refunds to its tenants or to file proof of such refunds as required by the order.

III. Statement of the Amount of the Recommended Penalty

Pursuant to the attached Report on Violations, I am recommending that the Commission 1) assess an administrative penalty against Live Oak in the amount of \$20,000, and 2) request that the attorney general apply in the name of the Commission for a court order under PURA § 15.021 to require compliance with the final order. This recommendation is based upon consideration of each of the factors set forth in PURA § 15.023 and P.U.C. PROC. R. 22.246.

IV. Statement Relating to Texas Hearing's Rights

Persons alleged to have committed a violation or continuing violation have a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty. Options available pursuant to Commission rule to resolve this matter include paying the penalty, requesting a settlement conference, and requesting a contested case hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.⁴ A copy of P.U.C. PROC. R. 22.246 is attached (Attachment 2).

If you have any questions about the issues raised in this NOV, please do not hesitate to contact Jennifer Littlefield, Attorney, Oversight and Enforcement, (512) 936-7285.

Sincerely,


Brian H. Lloyd
Executive Director
Public Utility Commission of Texas

⁴ P.U.C. PROC. R. 22.246.

ATTACHMENT # 1
REPORT ON VIOLATIONS

Public Utility Commission of Texas

Memorandum

To: Brian H. Lloyd
Executive Director

From: Neal Frederick
Enforcement Analyst
Oversight and Enforcement Division

Date: April 30, 2015

Re: **Report on Violations** by Live Oak Resort, Inc. for violation of the Commission's final order issued in Docket No. 41987, and recommendation for enforcement and administrative penalties pursuant to PURA §§ 15.021(a)(2) and 15.023(a).

I. NOTICE OF VIOLATION SUMMARY

Commission Staff (Staff) has determined that Live Oak Resort, Inc. (Live Oak) failed to comply with the requirements of a Public Utility Commission of Texas (Commission) order. Pursuant to Public Utility Regulatory Act¹ (PURA) § 15.023(a), the Commission may impose an administrative penalty against a person regulated under PURA who violates PURA or a rule or order adopted under PURA. Additionally, the Commission may request that the attorney general apply for a court order in the name of the Commission to enjoin or require compliance with a commission order in accordance with PURA § 15.021.

On November 4, 2013, Multiple RV Tenants of Live Oak (Complainants) filed a formal complaint with the Commission alleging that Live Oak improperly calculated electricity charges and collected unlawful sub-metering charges. On November 24, 2014, the Commission issued a final order in Docket No. 41987 granting relief, in part, to Complainants (hereafter, "final order").² The Commission ordered Live Oak to perform the following actions:

- 1) within 30 days of the final order (by December 24, 2014), refund \$6,248.02, plus any additional amount collected for improper sub-metering surcharges collected to date, to Complainants;

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

² *Complaint of Multiple RV Tenants of Live Oak Resort, Inc. against Live Oak Resort, Inc.*, Docket No. 41987, Final Order (November 24, 2014).

- 2) within 90 days of the final order (by February 23, 2015), refund \$5,088.70 for sub-metered usage over-collections to all permanent RV tenants who were overcharged; and
- 3) within 90 days of the final order (by February 23, 2015), refund the remainder of the improper sub-metering surcharges collected to date to all remaining unidentified RV tenants who made such sub-metering surcharge payments.³

Additionally, the Commission found that all refund amounts are subject to interest at the Commission-approved interest rate. Within 30 days of effectuating all ordered refunds,⁴ Live Oak was required to file proof of such refunds in Project No. 43803.^{5 6}

Live Oak failed to timely file the proof of refunds required by the Commission. On April 21, 2015 Live Oak filed documentation pertaining to refunds in Project No. 43803.⁷ The filing was received by the Commission more than two months after the 90-day deadline set by the Commission, and more than four months after the 30-day deadline set by the Commission.

Live Oak's April 21, 2015 filing in Project No. 43803 shows that Live Oak failed to timely refund all of the improper sub-metering surcharges and sub-metered usage over-collections as required by the final order. As of April 8, 2015, Live Oak refunded \$21,732.51 of the \$85,435.96 combined refund total calculated by Live Oak.

The violations alleged herein are all Class A violations.⁸ Staff recommends that the Commission issue an order with the following provisions:

- 1) Live Oak failed to comply with the requirements of a Commission order;
- 2) Live Oak shall, without further delay, refund all of the sub-metered usage over-collections and improper sub-metering surcharges to RV tenants as required by the final order in Docket No. 41987;
- 3) Live Oak shall file proof that all ordered refunds have been refunded in Project No. 43803; and
- 4) Live Oak shall pay an administrative penalty of \$20,000 for the violations described herein.

Additionally, and concurrent with this notice of violation, Staff recommends that the Commission request that the attorney general apply in the name of the Commission for a court order under PURA § 15.021 to require Live Oak to comply with the final order.

³ Final Order at 7.

⁴ The deadline for filing ordered proof of refunds is January 23, 2015 for refunds with a 30-day deadline, and March 25, 2015 for refunds with a 90-day deadline.

⁵ *Live Oak Resort, Inc.'s Proof of Refunds in Compliance with Docket No. 41987*, Project No. 43803, Refunds of Multiple RV Tenants (April 21, 2015).

⁶ Final Order at 7.

⁷ Project No. 43803, Refunds of Multiple RV Tenants (April 21, 2015).

⁸ See P.U.C. SUBST. R. 25.8(b).

II. APPLICABLE LAW

PURA § 15.021(a) states that if the Commission determines that a public utility or other person is:

- 1) engaging or about to engage in an act that violates PURA or an order or rule of the Commission entered or adopted under PURA, or
- 2) failing to comply with the requirements of PURA or a rule or order of the Commission,

the Commission may request that the attorney general apply, and the attorney general shall apply, in the name of the Commission for a court order. Pursuant to PURA § 15.021(b), a court order in action under § 15.021 may:

- 1) prohibit the commencement or continuation of an act that violates PURA or an order or rule of the Commission entered or adopted under PURA, or
- 2) require compliance with a provision of PURA or an order or rule of the Commission.

The remedy provided by PURA § 15.021 is in addition to any other remedy provided under PURA.⁹

Pursuant to PURA § 15.022, the Commission may file a court action for contempt against a person who fails to comply with a lawful order of the Commission.

PURA § 15.023 provides that the Commission may impose an administrative penalty against a person regulated under PURA for a violation of PURA or a Commission rule or order adopted under PURA. The penalty amount may not exceed \$25,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Penalties for Class A violations may not exceed \$25,000 per violation per day.¹⁰ Class A violations include violations related to fraudulent, unfair, misleading, deceptive, or anticompetitive business practices; or a violation that creates an economic benefit to the violator in excess of \$5,000.¹¹

III. STATEMENT OF FACTS

The Commission ordered Live Oak to refund \$6,248.02 plus interest and any additional amount collected for improper sub-metering surcharges to date to Complainants. The Commission provided 30 days from the date of the final order (by December 24, 2014) to refund the improper sub-metering surcharges.

The Commission ordered Live Oak to refund \$5,088.70 plus interest for sub-metered usage over-collections to all permanent RV tenants who were overcharged. The Commission provided 90 days from the date of the final order (by February 23, 2015) to refund the sub-metered usage over-collections.

The Commission ordered Live Oak to refund the remainder of the improper sub-metering surcharges collected to date plus interest to all remaining unidentified RV tenants who made

⁹ PURA § 15.021(c).

¹⁰ P.U.C. SUBST. R. 25.8(3)(A).

¹¹ P.U.C. SUBST. R. 25.8(3)(B).

such sub-metering surcharge payments. The Commission provided 90 days from the date of the final order (by February 23, 2015) to refund the remainder of the improper sub-metering surcharges.

Live Oak was required to file proof of refunds in Project No. 43803 within 30 days of effectuating the refunds.

In summary, Live Oak was required to comply with the following deadlines:

December 24, 2014	Deadline to refund \$6,248.02 plus interest and any additional amount collected for improper sub-metering charges to Complainants.
January 23, 2015	Deadline to file proof of above-described refunds.
February 23, 2015	Deadline to refund \$5,088.70 plus interest for sub-metered usage and over-collections to all permanent RV tenants who were overcharged, and to refund all improper sub-metering surcharges to remaining unidentified RV tenants.
March 25, 2015	Deadline to file proof of above-described refunds.

Live Oak has not filed proof of all refunds in Project No. 43803. Live Oak is in violation of the final order for failing to file proof of all refunds.

Live Oak has not refunded all of the amounts required by the final order.

IV. RELIEF SOUGHT

Staff recommends that the Commission issue an order with the following provisions:

- 1) Live Oak failed to comply with the requirements of a Commission order;
- 2) Live Oak shall, without further delay, refund the sub-metered usage over-collections and improper sub-metering surcharges to RV tenants as required by the final order in Docket No. 41987;
- 3) Live Oak shall file proof that all ordered refunds have been refunded in Project No. 43803; and
- 4) Live Oak shall pay an administrative penalty of \$20,000 for the violations described herein.

Additionally, and concurrent with this notice of violation, Staff recommends that the Commission request that the attorney general apply in the name of the Commission for a court order under PURA § 15.021 to require Live Oak to comply with the final order.

V. ADMINISTRATIVE PENALTIES

PURA § 15.023 provides that a penalty for a violation of PURA or Commission rule or order may be imposed in an amount not to exceed \$25,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. P.U.C. SUBST. R. 25.8 provides that a penalty for Class A violations may not exceed \$25,000 per violation per day, a penalty for Class B violations may not exceed \$5,000 per violation per day, and a penalty for Class C violations may not exceed \$1,000 per violation per day. The violations noted herein are all Class A violations.

Penalty Determination

Staff is recommending an administrative penalty of \$20,000.

1. Seriousness of the violations

Live Oak's failure to comply with a Commission order is a serious violation. In failing to comply with the final order, Live Oak undermines the statutory authority of the Commission and fails to provide the specific economic relief for rate-payers that was ordered by the Commission. Live Oak's continuing failure to comply with a Commission order expands and prolongs the economic harm caused by its actions that resulted in a Commission order directing Live Oak to issue refunds.

2. Economic harm to property or environment caused by the violations

Failing to comply with the final order does not result in economic harm specific to property or the environment, but such failure to comply has delayed refunds due and owing to rate-payers.

3. History of previous violations

Regarding Live Oak, Staff is not aware of any other violations of PURA or Commission rules other than the violations discussed herein and the matters that have been adjudicated in Docket No. 41987.

4. Amount necessary to deter future violations

Live Oak's failure to comply with a Commission order is continuing in nature because Live Oak remains out of compliance with the final order. Staff believes that the administrative penalty should be set at an amount that is sufficient to compel Live Oak to comply with the final order immediately.

5. Efforts to correct the violations

The only effort to correct the violation that could be considered is an effort that results in compliance with the final order. To that end, Live Oak has not provided proof of all refunds

in Project No. 43803. Additionally, Live Oak has not refunded all of the improper sub-metering surcharges and sub-metered usage over-collections as required by the final order.

6. Other matters that justice may require

Staff believes that it is necessary and appropriate to engage the attorney general in the name of the Commission to apply for a court order under PURA § 15.021 to require Live Oak to comply with the final order.

VI. CONCLUSION

Live Oak failed to comply with a Commission order and remains out of compliance with a Commission order. Live Oak is subject to administrative penalties under PURA § 15.023. Staff recommends that the Commission impose an administrative penalty of \$20,000 and require Live Oak to refund improper sub-metering surcharges and sub-metered usage over-collections to RV tenants as directed in the final order. Additionally and concurrently with this action, Staff recommends that the Commission request that the attorney general apply in the name of the Commission for a court order under PURA § 15.021 to require Live Oak to comply with the final order.

ATTACHMENT # 2

P.U.C. PROC. R. 22.246

§22.246. Administrative Penalties.

- (a) **Scope.** This section is intended to address enforcement actions related to administrative penalties only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) **Executive director** — The executive director of the commission or the executive director's designee.
 - (2) **Person** — Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.
 - (3) **Violation** — Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.
 - (4) **Continuing violation** — Except for a violation of PURA Chapter 17, 55, or 64, and commission rules or commission orders pursuant to those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.
- (c) **Amount of penalty.**
- (1) Each day a violation continues or occurs is a separate violation for which a penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
 - (2) The penalty for each separate violation may be in an amount not to exceed \$25,000 per day, provided that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.
 - (3) The amount of the penalty shall be based on:
 - (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
 - (B) the economic harm to property or the environment caused by the violation;
 - (C) the history of previous violations;
 - (D) the amount necessary to deter future violations;
 - (E) efforts to correct the violation; and
 - (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.
- (d) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.
- (e) **Report of violation or continuing violation.** If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.
- (1) **Contents of the report.** The report shall state the facts on which the determination is based and a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.
 - (2) **Notice of report.** Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is

§22.246(e)(2) continued

alleged to have committed the violation or continuing violation which is the subject of the report. The notice must include:

- (A) a brief summary of the alleged violation or continuing violation;
- (B) a statement of the amount of the recommended penalty;
- (C) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty;
- (D) a copy of the report issued to the commission pursuant to this subsection; and
- (E) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(f) **Options for response to notice of violation or continuing violation.**

(1) **Opportunity to remedy.**

- (A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters.
- (B) Within 40 days of the date of receipt of a notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.
- (C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no penalty will be assessed against the person who is alleged to have committed the violation.
- (D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.
- (E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.

(2) **Payment of penalty.** Within 30 days after the date the person receives the notice set out in subsection (e)(2) of this section, the person may accept the determination and recommended penalty through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended penalty.

(3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty.

(g) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the

§22.246(g) continued

Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

- (1) If a settlement is reached:
 - (A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;
 - (B) the executive director shall issue the report of settlement to the commission; and
 - (C) the commission by written order will approve the settlement.
 - (2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.
- (h) **Hearing.** If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.
- (1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.
 - (2) The hearing shall be conducted in accordance with the provisions of this chapter.
 - (3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:
 - (A) the occurrence of the alleged violation or continuing violation;
 - (B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters; and
 - (C) the amount of the proposed penalty.
 - (4) Based on the SOAH administrative law judge's proposal for decision, the commission may:
 - (A) determine that a violation or continuing violation has occurred and impose a penalty;
 - (B) determine that a violation occurred but that, pursuant to subsection (f)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no penalty will be imposed; or
 - (C) determine that no violation or continuing violation has occurred.
 - (5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.