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COMPLAINT OF JEFF CONORS § PUBLIC UTILITY COMMISSION
AGAINST THE GALLERY §
APARTMENTS, ROSCOE PROPERTY § OF TEXAS
MANAGEMENT, AND CONSERVICE §

**THE GALLERY APARTMENTS AND ROSCOE PROPERTY MANAGEMENT'S
REBUTTAL POSITION STATEMENT AND DIRECT TESTIMONY**

The Gallery Apartments and Roscoe Property Management ("RPM") (collectively, the "Respondent") respectfully submit this rebuttal position statement and Direct Testimony.

REBUTTAL POSITION STATEMENT

1. Mr. Connors claims he was overbilled \$85.06. PUC Direct Testimony claims Mr. Connors was overbilled \$74.47. PUC and Mr. Connors both claim he has not been provided with the "total amount billed to all tenants" as required by 16 TAC § 24.277(e)(8).

2. **Overbilling** – PUC Direct testimony concludes that the Respondents allocated customer service charges to its tenants and, without explaining their calculation, conclude that this resulted in Mr. Connors being overbilled by \$74.47. This is demonstrably false.

Total Consumption in Gallons		258900
City of Austin Water - Multi-Family		
Customer Charge	.....	\$75.10
Fixed Charge	.....	\$292.00
258,900 Gallons at \$4.53 per 1,000 - Off Peak	.....	\$1,172.82
258,900 Gallons at \$0.15 per 1,000 - Water Community Benefit Charge	.....	\$38.84
258,900 Gallons at \$0.05 per 1,000 - Reserve Fund Surcharge	.....	\$12.95
Private Hydrant Fee 2 @ \$2.50 ea	.....	\$5.00
TOTAL CURRENT CHARGES	.....	\$1,596.71

A 25% common area deduction is subtracted from the total water charge for your building to calculate the amount that will be allocated to residents.

\$1224.61 - \$306.15 = \$918.46

As you can see, in this example, a total of \$1,224.61 was allocated to tenants. This NEVER included service charges, fixed charges, or hydrant charges. It was strictly water and

wastewater suage. The same is true on each and every bill. The assertion that customer service charges were included in the amounts allocated to tenants is simply false.

1) The PUC's overbilling calculation of \$74.47 is based on the false premise that customer service charges were billed to Mr. Conners. The interest calculation on that amount is equally invalid.

2) Notwithstanding the fact that this overbilling allegation is inaccurate, to avoid needless waste of public and private resources, Respondent paid Mr. Conners' \$85.06. What is even left to decide here?

3. **"Total amount billed to all tenants"** – The other issue in this case is that Mr. Conners was not provided with the "total amount billed to all tenants" as required by 16 TAC § 24.277(e)(8). In fact, this was repeated in the PUC Direct Testimony. **But, this is also not true. This issue is just as moot as the issue of overpayment.**

1) The "total amount billed to all tenants" as required by Section 24.277(e)(8) was provided to Conners on January 5, 2021. Over two years ago!

2) It was provided to him again when it was filed into this court on October 4, 2021. Over 15 months ago!

3) **It is located on pages bates labeled RPM000139 – 170. It looks like this:**

A 25% common area deduction is subtracted from the total water charge for your building to calculate the amount that will be allocated to residents.	$\$1873.08 - \$468.27 = \$1404.81$
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4. Given that this information was provided to Mr. Conners over 2 years ago and then again over 15 months ago, what are we doing here?

5. Some of the other statements made in the PUC Direct testimony are also not true.

- 1) The bills sent by Conservice were timely allocated to the tenants. For example, a bill paid by the owner in the month of December was allocated to residents the very next month of January. How could it be any faster? Was the owner expected to require the tenants to pay for the utilities prior to the owner even paying for them?
- 2) The bills sent by Conservice did clearly explain the water was allocated. So did the lease. There was no confusion about this.

DIRECT TESTIMONY OF JAMIE HEARN

Q: Please state your name?

A. Jaime Hearn

Q: How are you employed?

A. Regional VP of Roscoe Properties.

Q: What is the purpose of your testimony here today?

A. The purpose of my testimony is to support my position that the Respondents complied with its requirements under applicable law. My purpose is also to rebut the direct testimony which has been provided by other parties in this proceeding.

Q: On pp. 5-7 of the Direct Testimony of the Public Utility Commission, she states that the Respondents complied with their registration requirements of 16 TAC § 24.281. Do you agree that the Respondents complied with their registration obligations?

A. YES. The Respondents complied with their registration requirements. The Respondents retain Conservice, who calls themselves “The Utility Experts,” to handle their registration and utility billing and to ensure that they are compliant with applicable laws and regulations.

Q: On p. 9, lines 9-13, of the Direct Testimony of the Public Utility Commission, she states that the Respondents failed to provide to Mr. Connors the total amount billed to the residents each month of the requested period. Do you agree with this assessment?

A. No. Section 24.277(e)(8) states that a tenant is entitled to review records which include “the total amount billed to all tenants each month.” This information HAS BEEN provided to Mr. Connors, several times.

The requested period was from October 2019 to December 2020.

The “total amount billed to all tenants” is located on the right side of the top row of each page labeled RPM000139 – 170, as found in Item No. 32 in the record of this case. It looks like this:

A 25% common area deduction is subtracted from the total water charge for your building to calculate the amount that will be allocated to residents.	$\$1873.08 - \$468.27 = \$1404.81$
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This information was provided to Mr. Conners at least two occasions:

Disclosure #1 – January 5, 2021. According to Mr. Conners, this information was provided to him on January 5, 2021.

Disclosure #2 – October 4, 2021. This information was disclosed again over a year ago. See RPM000139 – 170.

Q: On p. 11, lines 19-29, of the Direct Testimony of the Public Utility Commission, she states that the Respondents failed to deduct customer service charges before the water and wastewater charges were allocated to the tenants. Is this true?

A. No. This is NOT true. The documents on file in this case clearly show that the customer service charges *were deducted* from the charges allocated to the tenants. To illustrate this point, we must do math and refer to the bills received from the City, the bills sent to the residents, and the explanation of charges. For example:

- **RPM000135** is a bill from the City dated November 15, 2019 which was not due until December 2, 2019.
- On page 2 (**RPM000136**¹) you can see a breakdown of water and wastewater charges.
 - **Water** - You can see a customer service charge of \$75.00, a fixed charge of \$292.00, and a hydrant charge of \$5.00.
 - **Wastewater**. You can see a customer service charge of \$10.00.
 - Contrary to the claims made by Conners and the PUC, NONE of these charges were included in the amount allocated to the tenants. You can see:
 - water usage charges totaling **\$1,224.61** and
 - wastewater usage charges of **\$987.00**.
 - Then, if you look to **RPM000145**, this is the **water** bill that posted to the tenants in January 2020.
 - On the right-hand column, top row, you can see that a total of **\$1,224.61** was allocated to tenants².
 - Again, this does NOT include the customer service charge of \$75.00, the fixed charge of \$292.00, or the hydrant charge of \$5.00. To say otherwise, or to say that evidence has not been provided is inaccurate.

¹ see also, p. C21 of Item No. 71 filed by Complainant.

² see also, p. C22 of Item No. 71 filed by complainant.

- Then, if you look to **RPM000146**, this is the **wastewater** bill that posted to the tenants on January 2020.
 - On the right-hand column, top row, you can see that a total of **\$987.00** was allocated to tenants.
 - Again, this does NOT include the customer service charge of \$10.00. To say otherwise, or to say that evidence has not been provided is inaccurate.
- Note, because the bill in this example was due December 2, 2019, it could not post to the tenants until the following month. It is **simply impossible** to post it to the tenants prior to the date that it is due to the City.
- Please also refer to C25-C44 provided by Complainant in Item No. 71 for verification that each month, the allocated amount did NOT include the customer service charges.

Q: On p. 11, lines 31-31, of the Direct Testimony of the Public Utility Commission, she concludes that the Complainant was overbilled due to the fact that service charges were included in the allocated amount.

A. No. As demonstrated conclusively above, the bills from Conservice show that the customer service charges were NOT included in the amount allocated to tenants. *Respondents do not agree with the addition of interest upon non-existent charges.*

Q: On pp. 11-12, lines 34-37, of the Direct Testimony of the Public Utility Commission, she calculated, without explaining how, an overbilling of \$74.47 (see p. 12, ln 37). Do you agree with this?

A. No. This is NOT true. As demonstrated conclusively above, the bills from Conservice show that the customer service charges were NOT included in the amount allocated to tenants. Although the calculation is not explained, based upon the previous answers, this appears to be the aggregate amount of customer service charges that were supposedly allocated to Mr. Connors.

Q: On pp. 12-13 of the Direct Testimony of the Public Utility Commission, the PUC adds interest to the aggregate amount of customer service charges that were supposedly allocated to Mr. Connors. Do you agree with this?

A. No. As demonstrated conclusively above, the bills from Conservice show that the customer service charges were NOT included in the amount allocated to tenants. *Respondents do not agree with the addition of interest upon non-existent charges.*

Q: On p. 14, lines 17-23, of the Direct Testimony of the Public Utility Commission, she stated that Respondents failed to timely provide bills to Mr. Connors. Calculated. Do you agree with this?

A. No. This is NOT true. In the example mentioned above, the water bill from the City of Austin was due and paid on **December 2, 2019**. This bill is sent to Conservice who posted it to the tenant's account on **January 1, 2020**. This is timely.

It would defy logic and is **flat out impossible** for it to be posted to the tenant's count any sooner than that.

Consider this - How could a bill that is paid by the owner on December 2, 2019 be allocated and applied to a tenants' account on December 1, 2019? That would certainly be a severe violation to allocate a bill that hasn't even been paid yet.

Q: On p. 15, lines 12-14, of the Direct Testimony of Kathryn Eiland of the Public Utility Commission, she states that the bills sent to Complainant did not indicate that his utility services were allocated. Do you agree with this?

A. No. This is not true. The bills from Conservice DO indicate that the utilities were allocated. As demonstrated conclusively above, the customer service charges were NOT included in the amount allocated to tenants.

See RPM000062 – 69. These bills from Conservice state, “Water [and sewer] service is provided by City of Austin TX. Service provider issues bill, property management pays a portion to cover common area usage. Remaining amount **is allocated to residents using a multiplier based on the number of bedrooms in the unit. Your multiplier is 1.6.**”

Water

Water service is provided by City of Austin TX. Service provider issues bill, property management pays a portion to cover common area usage. Remaining amount is allocated to residents using a multiplier based on the number of bedrooms in the unit. Your multiplier is 1.6.

See RPM000070 – 81. These bills from Conservice describe the allocation method in compliance with 16 TAC § 24.283(f).

Q: On p. 17, in conclusion, of the Direct Testimony of Kathryn Eiland of the Public Utility Commission, she recommends that you pay Mr. Connors \$76.90 based upon her calculation of erroneously charged customer service charges plus interest. She also recommends a compliance review of your practices and a report on how to correct deficiencies. Do you agree with this?

A. No. As demonstrated conclusively above, the bills from Conservice show that the customer service charges were NOT included in the amount allocated to tenants. *Respondents do not agree with the addition of interest upon non-existent charges.*

Also, most of the infractions identified are not true. If any are true, it is my understanding that they were prior to the Respondents management of the property and/or that Conservice has already cleared up some of the billing disclosure issues.

Finally, we sent Mr. Conners a check for \$85.06 in order to avoid this futile exercise. This is a waste of public and private resources.

Q: Is there anything else you'd like to say?

A. As stated above, and in Respondents Amended Motion to Dismiss, Mr. Conners has no live claims.

Mr. Conners received all the information he is entitled to. The information he was allegedly missing was the "total amount billed to all tenants" per 16 TAC § 24.277(e)(8). This was provided to him on January 5, 2021 and October 4, 2021. Over 2 years ago!!!!

Mr. Conners has been made whole according to his own calculations and the calculations of the PUC, both of which Respondents disagree with.

There is absolutely no reason to be still administratively litigating this case.

CONCLUSION

The methods used by Conservice for water allocations are in compliance with PUC rules and guidelines. Respondents are substantially in compliance with Complainant's amended request for records because the "total amount billed" for each requested month has already been provided. Likewise, the monetary relief requested has also been provided. Respondent respectfully requests that the Commission Staff makes the same determination as Investigator Isabel Ford with the Consumer Protection Division and finds that Respondents acted consistent with the PUC Substantive Rule §24.281.

Respectfully submitted,

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