



## Filing Receipt

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**SOAH DOCKET NO. 473-22-2652**  
**PUC DOCKET NO. 51619**

<b>COMPLAINT OF JEFF CONNORS</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>AGAINST THE GALLERY</b>	<b>§</b>	<b>OF</b>
<b>APARTMENTS, ROSCOE PROPERTY</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>MANAGEMENT, AND CONSERVICE</b>	<b>§</b>	

**COMMISSION STAFF’S OBJECTIONS**

**I. BACKGROUND**

On December 14, 2020, Jeff Connors (Complainant) filed a formal complaint against the Gallery Apartments (the Gallery), Roscoe Property Management (RPM), and Conservice (together, Respondents) regarding improper billing practices. This complaint was filed under 16 Texas Administrative Code (TAC) § 22.242.

On February 6, 2023, the administrative law judge (ALJ) for the State Office of Administrative Hearings (SOAH) presided via Zoom over the hearing on the merits. At the conclusion of the hearing, she ordered the parties, including the Staff (Staff) of the Public Utility Commission (Commission) to file any evidentiary objections by February 15, 2023. Therefore, this pleading is timely filed.

**II. STAFF’S OBJECTIONS**

**a. The Gallery and RPM’s Testimony**

**i. Timing**

Under 16 TAC § 22.225(11), late-filed testimony may only be admitted if its admission would not be unduly prejudicial to the legal rights of any party.<sup>1</sup> A party that intends to offer late-filed testimony into evidence shall, inform the presiding officer, who shall establish procedures and deadlines regarding such testimony.<sup>2</sup>

On September 23, 2022, the SOAH ALJ filed SOAH Order No. 2, establishing a deadline for the Respondents (the Gallery, RPM, and Conservice) to file direct testimony by October 31, 2022. On January 25, 2023, the Gallery and RPM filed its rebuttal position statement and direct testimony. This direct testimony was filed 87 days after the deadline. Staff objects to the

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<sup>1</sup> 16 TAC § 22.225(11).

<sup>2</sup> *Id.*

untimeliness of this filing, which prejudices all parties in their ability to conduct discovery on it. If this direct testimony is to be construed as rebuttal testimony, the same objection applies.

On January 5, 2023, Conservice filed an extension request to file its rebuttal testimony, not as provided by the latest procedural schedule, but on the later date of January 12, 2023. On January 5, 2023, RPM and the Gallery filed a concurrence with the extension request extending the time to file rebuttal to January 13, 2023. On January 10, 2023, the SOAH ALJ filed an order extending the deadline for parties to file rebuttal or supplemental rebuttal testimony to January 12, 2023. Staff filed no objection to the extension request or concurrence. Nevertheless, RPM and the Gallery failed to meet that extended deadline, instead filing its rebuttal position statement and direct testimony on January 25, 2023—13 days after the date proposed in their extension request, which the SOAH ALJ granted.

Staff objects. This testimony was filed in contravention of 16 TAC § 22.225(11), SOAH Order No. 2 and the SOAH Order extending the deadline for rebuttal. Staff must rely on the procedural schedules established by the SOAH ALJs in contested cases. Staff's resources are limited, and Staff must allocate those resources across a broad range of deadlines and responsibilities. Without the parties' strict adherence to the SOAH ALJ's deadlines, Staff cannot properly allocate its resources or conduct discovery. To permit the introduction of this late-filed, direct testimony at the hearing on the merits is unduly prejudicial to Staff's legal rights. Staff notes that, had the Gallery and RPM obeyed any of the SOAH ALJ's orders establishing deadlines for filing direct testimony and rebuttal testimony, and extending the rebuttal testimony at their request, Staff would not have to raise this objection.

## **ii. Foundation**

Additionally, Staff objects to the introduction of RPM witness Jaime Hearn's Direct Testimony due to a lack of foundation. Rule 701 of the Texas Rules of Evidence provides "if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue. During cross-examination at the hearing on the merits, Jaime Hearn testified that she was not involved in calculations underlying the bills at issue. She could not attest to how the information presented in her testimony was arrived at. She even admitted that her attorney—not she—prepared the testimony. Because her attorney prepared her testimony and she could not explain the information within it, the testimony is not based on

her understanding, but her attorney's. Although counsel attempted to explain this away by saying that attorneys regularly prepare legal documents for their clients, this is not persuasive. Pleadings or motions may be prepared on behalf of a client, but unlike those documents, testimony is evidence. Attorneys are not allowed to take the stand in their client's place at trial. Even though testimony is pre-filed in proceedings before the Commission, the same principle applies.

Furthermore, counsel for the Gallery and RPM repeatedly attempted to explain away his witnesses' testimony during cross examination. To the extent that his explanations were appropriate at all, they were appropriate only during argument, not during cross examination. Staff maintains its running objection to this behavior as it occurred throughout the hearing on the merits whenever counsel's witnesses provided unfavorable testimony.

**b. The Gallery and RPM's Witnesses**

Under 16 TAC § 22.225(a)(1), unless otherwise ordered by the presiding officer upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness shall be prefiled.<sup>3</sup> On January 31, 2023, the Gallery and RPM filed its witness list, including Jaime Hearn and Stephanie De Leon as custodians of records (if needed). No direct testimony was filed for Stephanie De Leon. Direct Testimony for Jaime Hearn was filed 87 days late, as detailed above. If the SOAH ALJ construes the testimony as rebuttal and not direct, Staff maintains its objection. Opposing parties cannot properly cross-examine a witness who has not pre-filed testimony in accordance with the administrative code and the SOAH ALJ's orders. Thus, Staff objects to the direct examinations of these witnesses.

Additionally, after the cross-examination of its witnesses, counsel for the Gallery and RPM said that cross-examination on the calculation of bills was inappropriate for his two witnesses and that they were only presented as custodians of record. This is nonsensical. The crux of the complaint arises from a dispute regarding whether the calculations within those bills are accurate. If the two witnesses are custodians of record but not the appropriate witnesses to opine on the records subject of this dispute, then Staff also objects to their testimony as lacking foundation.

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<sup>3</sup> 16 TAC § 22.225(a)(1).

**c. Conservice's Rebuttal Testimony and Witness**

On January 12, 2023, Conservice filed rebuttal testimony. Unlike RPM and the Gallery's filings, this was timely filed. However, Staff objects because this document is not testimony. The contents of the filing were not prepared by any witness, but by counsel for Conservice, Julianna Kat. In line with the analysis above, this is not properly testimony, but argument. Staff objects to counsel introducing argument as testimony.

Additionally, on January 30, 2023, Conservice filed its witness list, detailing that it intended to call Dylan Mathews at the hearing on the merits. Dylan Mathews did not prefile testimony as required by 16 TAC § 22.225(a)(1). Accordingly, Staff objects.

**III. CONCLUSION**

Staff respectfully re-urges its objections to aforementioned evidence into the record.

Dated: February 15, 2023

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 15, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/S/ Phillip Lehmann  
Phillip Lehmann