



## Filing Receipt

**Received - 2023-02-23 04:07:35 PM**  
**Control Number - 51619**  
**ItemNumber - 115**

**DOCKET NO. 51619**

<b>COMPLAINT OF JEFF CONORS AGAINST THE GALLERY APARTMENTS, ROSCOE PROPERTY MANAGEMENT, AND CONSERVICE</b>	<b>§ § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
--	----------------------------	--

**THE GALLERY APARTMENTS AND ROSCOE AMENDED RESPONSE TO  
OBJECTIONS FILED BY THE PUBLIC UTILITY COMMISSION**

The Gallery Apartments and Roscoe Property Management (“RPM”) (collectively, the “Respondent”) respectfully submits this amendment and that the court allow RPM to withdraw any previous request for sanctions provided in their original response to objections filed by the Public Utility Commission (the “PUC”).

**Background and Summary of Response**

1. The PUC’s objections filed February 15, 2023 should be denied. The purpose of the new objection period was to object to new evidence offered, NOT to allow new objections to already admitted evidence based on bad faith mischaracterizations.

2. The purpose of this proceeding is to ensure a just resolution to complaints<sup>1</sup>. There is nothing just about proceeding on a 2+ year complaint that is now moot, fundamentally altering the nature of the accusations against a responding party in the weeks prior the hearing, and then objecting entirely, as the PUC is now doing, to the responding party’s ability to rebut the new allegations.

3. This case has evolved, to say the least. When items become moot, exposed to be without evidentiary support, or shown to be simply false, the accusations change. Now, when recent accusations are still unsupported, the PUC moves to simply strike the entire defense of the responding parties.

---

<sup>1</sup> See Procedural Rule §22.2(a).

4. This complaint started in December 2020 as (1) baseless accusation of tapping irrigation lines into tenant water lines in order to allocation irrigation costs to tenants and (2) failing to provide certain documents for review. The requested documents were provided shortly thereafter by emails dated January 5, 2021 and February 1, 2021<sup>2</sup> at which point accusations of water line tapping were abandoned. The accusations switched to overbilling based upon occupancy rates. Conservice admitted to miscalculating occupancy rates and issued refunds and corrections on or about **June 1, 2021** (almost 2 full years ago) as required by §24.283(k). Then, to keep the complaint alive, Connors stated that the refund was not quite big enough, claiming that he was still owed \$85.06<sup>3</sup>. That was sent to Mr. Connors by RPM on or about September 26, 2022. Mr. Connors actually disagreed with the fact he was overbilled at all in the manner alleged by the PUC and stated that he believes he has been over-refunded. There is simply no further relief sought as of September 26, 2022<sup>4</sup> by the complaining party.

5. Then, to keep the complaint alive and evolving, on November 28, 2022, the PUC made numerous other allegations for the first time<sup>5</sup>. Many of which were abandoned, changed, or could not be explained at the hearing on February 5, 2023. Now the PUC has moved to strike all testimony and evidence which was offered to rebut the recent accusations made by the PUC. It is hard to imagine a legitimate reason for a State agency being so vehemently opposed to the presentation of a defense by a responding party. In any action such as this, the parties ought to desire a fully informed decision. Getting to the truth is what justice and due process require.

### **Response**

---

<sup>2</sup> See RPM Exhibits J and K.

<sup>3</sup> See Item No. 38 - Motion to Amend Requested Relief

<sup>4</sup> See Item No. 69 and 78.

<sup>5</sup> See Item No. 81 - DIRECT TESTIMONY OF KATHRYN EILAND, RATE REGULATION DIVISION, PUBLIC UTILITY COMMISSION OF TEXAS, NOVEMBER 28, 2022

**A. The Case is still moot and the evolving nature of the allegations as seen at the hearing on February 6, 2023 underscores the importance of not proceeding with moot controversies.**

6. This case features significant notice and due process issues where the initial complaint, filed over 2 years ago by Mr. Conners, is moot. Mr. Conners stated several times that there is no further relief that he is seeking in this complaint. Mr. Conners stated he has been over refunded and has received all the documentation he was requesting. **The Supreme Court of the United States has said that a case is moot if the court can no longer grant any effectual relief to the complaining party. See *Mills v. Green*, 159 U.S. 651, 653 (1895).** That is the exact situation we are in now. Due process would dictate that this Court dismiss this case as there is no relief that can be afforded the complaining party. *Id.*

7. Nevertheless, the case proceeded to oral hearing on February 6, 2023 based upon a desire by the PUC to have written findings entered as to allegations that were raised by the PUC for the first time on November 28, 2022 by Ms. Eiland<sup>6</sup>, which is nearly 2 years after the complaint was filed but only a handful of weeks prior to hearing on the merits. At the hearing, Ms. Eiland was completely unable to explain or support the accusations made in her November 28, 2022 written testimony. In some cases, she withdrew the accusations, in other cases she switched their nature entirely, and in other cases she was completely unable to explain the factual or legal basis to support them. In short, the PUC completely failed to support its allegations and has now moved instead to simply strike the entire rebuttal of both RPM and Conservice.

8. This situation facing RPM and Conservice underscores the importance of the century's old doctrine of mootness. It is an issue of due process and fundamental fairness. Even though the initial complaint is moot, the case is proceeding with little direction and with PUC

---

<sup>6</sup> See item No. 81 – Direct Testimony of Kathryn Eiland filed by PUC on November 28, 2022.

now filing a motion asking that the responding party not be allowed to defend itself against the meandering presentation of evidence that we saw on February 6, 2023 and in the week prior.

**B. The PUC's objections have already been denied once and the ALJ should not change its mind based upon the recent objections which are based upon significant misrepresentations by the PUC.**

9. The PUC objections were for the large part already overruled at the hearing and this court should NOT change its mind.

10. The PUC objections are based upon an inaccurate timeline. In the objections filed on February 15, 2023, the PUC mischaracterizes RPM's rebuttal testimony in an effort to pretend it was filed 87 days late. **To be clear, the PUC made certain accusations in its testimony dated November 28, 2022 and now objects to RPM's rebuttal testimony because it was not filed on October 31, 2022.** This makes no sense. How could RPM have filed a rebuttal to allegations that would not be filed for yet another month?

11. To support this position, PUC mischaracterizes RPM's rebuttal testimony as their direct testimony and pretends that it was 87 days late. PUC is playing a semantics game, trying to pull the wool over the ALJ's eyes. RPM's rebuttal is entitled on the interchange system as "*RPM and Gallery Rebuttal Testimony and Position Statement*". PUC's attorney focuses on a subheading within the document which states "direct testimony", which merely distinguishes *direct* from *cross* examination. In doing this, PUC's attorney pretends it was 87 days late. This argument strains credulity. The rebuttal testimony, which was *direct testimony* (and not *cross*), states that is "**purpose is also to rebut the direct testimony which as been provided by other parties in this proceeding.**" *See Item No. 101, p.4.* To pretend this was not RPM's rebuttal testimony is a bad faith argument. When the testimony was described as "direct," it was still being offered in rebuttal. It is possible to re-direct and re-cross a witness. It is still a *direct*

*examination* if it is your witness, even if it is offered in rebuttal or response. PUC is playing semantics in trying to exclude the presentation of relevant evidence.

### **CONCLUSION**

Respondent respectfully requests that the ALJ DENY PUC's objections in their entirety and dismiss this case as moot.

Respectfully submitted,  
**HOOVER SLOVACEK LLP**

By: /s/Daniel S. Edmunds  
**Daniel S. Edmunds**  
Texas Bar Number: 24115624  
[edmunds@hooverslovacek.com](mailto:edmunds@hooverslovacek.com)  
**Xinyi (Cindy) Liu**  
Texas Bar Number: 24121726  
[liu@hooverslovacek.com](mailto:liu@hooverslovacek.com)  
5051 Westheimer, Suite 1200  
Houston, Texas 77056  
Telephone: (713) 977-8686;  
Facsimile: (713) 977-5395

**ATTORNEYS FOR RPM**