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SOAH DOCKET NO. 473-22-2652
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COMPLAINT OF JEFF CONNORS	§	BEFORE THE STATE OFFICE
AGAINST THE GALLERY	§	OF
APARTMENTS, ROSCOE PROPERTY	§	ADMINISTRATIVE HEARINGS
MANAGEMENT, AND CONSERVICE	§	

**COMMISSION STAFF’S RESPONSE TO THE GALLERY APARTMENTS AND
ROSCOE RESPONSE TO OBJECTIONS FILED BY THE PUBLIC UTILITY
COMMISSION**

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 responses to evidentiary objections by February 20, 2023. On February 20, 2023, the Gallery and RPM filed a response to Staff’s objections. On February 23, 2023, The Gallery and RPM filed an amended response removing its request for sanctions and attorney’s fees. Under 16 TAC § 22.78, responsive pleadings shall be filed by a party within five working days after receipt of the pleading to which the response is made. Therefore, this pleading is timely filed.

**II. STAFF’S RESPONSE TO THE GALLERY AND RPM’S RESPONSE TO
STAFF’S OBJECTIONS**

In its objections filed on February 15, 2023, Staff objected to the introduction of the Gallery and RPM’s testimony filed on January 25, 2023. In their response to Staff’s objection to their late-filed testimony, The Gallery and RPM deliberately evaded the pertinent issue. The issue is not whether the testimony should be considered direct testimony or rebuttal testimony. The issue is that regardless of how the testimony is construed, the Gallery and RPM filed it late according to the deadlines established by the SOAH ALJ. If it is construed as direct testimony, it was filed 87

days past the due date established by SOAH Order No. 2. If it is construed as rebuttal testimony, it was filed 13 days past the due date established by the SOAH ALJ's order extending the deadline for parties to file rebuttal or supplemental rebuttal testimony. Although there is a document titled RPM and Gallery Rebuttal Testimony and Position Statement filed on January 13, 2023, this document is a certificate of filing unrelated to this proceeding. Either way, the Gallery and RPM failed to meet the established deadlines for both direct and rebuttal testimony. 16 TAC § 22.225(11) requires that a party intending to offer late-filed testimony into evidence shall inform the presiding officer, who shall establish procedures and deadlines regarding such testimony. This was not done. Accordingly, Staff maintains its objection to the testimony in accordance with 16 TAC § 22.225(11).

III. CONCLUSION

Staff respectfully maintains the objections it filed on February 15, 2023.

Dated: February 27, 2023

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Respectfully submitted,

Keith Rogas
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Managing Attorney

/S/ Phillip Lehmann
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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 27, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/S/ Phillip Lehmann
Phillip Lehmann