



## Filing Receipt

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**DOCKET NO. 51619**

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

**THE GALLERY APARTMENTS AND ROSCOE PROPERTY MANAGEMENT’S  
REBUTTAL CLOSING BRIEF**

The Gallery Apartments and Roscoe Property Management (“RPM”) (collectively, the “Respondents”) respectfully submit this rebuttal closing brief in the form of suggested findings and conclusions. Respondents believe the below findings are in accordance with the evidence presented.

**Proposed Findings of Facts and Conclusions of Law as to Issues to be Addressed**

**1. Did Mr. Connors comply with the informal complaint process under 16 TAC § 22.242(c)?**

A: Yes, the informal complaint was properly submitted. However, the evidence does not support the existence of a scheme to tap into irrigation water lines or to artificially deflate occupancy totals. Conservice recognized the occupancy issue and corrected the water bills in June of 201. Mr. Connors received the documents he was looking for in January and February of 2021. Mr. Connors has been afforded all relief sought and there is no further relief this proceeding can award Mr. Connors.

**2. Did Mr. Connors meet all of the requirements to bring his formal complaint under TAC § 22.242(e)?**

A: Yes, the formal complaint was properly submitted. However, the evidence does not support the existence of a scheme to tap into irrigation water lines or to artificially deflate occupancy totals. Conservice recognized the occupancy issue and corrected the water bills in June of 2021 as required by and in compliance with applicable regulations requiring the correction of erroneous bills. Mr. Connors received the documents he was looking for in January and February of 2021. Mr. Connors has been afforded all relief sought and there is no further relief this proceeding can award Mr. Connors.

**3. Who is the owner, as defined by 16 TAC § 24.275(c)(12) and Texas Water Code (TWC) §13.501(5), that is responsible for compliance with the Commission rules applicable to this complaint?**

A: The evidence shows the Gallery is the Owner and the Gallery retains Conservice for its utility billing management.

**4. Does the Commission have jurisdiction over Conservice in this proceeding under 16 TAC § 24.285? If the Commission does not have jurisdiction over Conservice, should Conservice be dismissed from this proceeding?**

A: This issue has already been resolved by SOAH Order No. 1.

**5. Have a copy of the applicable water and sewer tariffs been provided in this docket?**

A: Not applicable, but a rate schedule was filed as part of Item No. 10.

**6. For each asserted violation of the TWC and Commission rules, what was the time period for each of the possible violations?**

A: Yes, the formal complaint was properly submitted. However, the evidence does not support the existence of a scheme to tap into irrigation water lines or to artificially deflate occupancy totals. Conservice recognized the occupancy issue and corrected the water bills in June of 2021 as required by and in compliance with applicable regulations requiring the correction of erroneous bills. Mr. Connors received the documents he was looking for in January and February of 2021. Mr. Connors has been afforded all relief sought and there is no further relief this proceeding can award Mr. Connors.

**7. Did the owner comply with 16 TAC § 24.277(a), relating to registration requirements for owners that intend to bill tenants for submetered or allocated utility service or who change the method to bill tenants for utility service?**

A: Yes. This issue is not in dispute.

**8. Did Mr. Connors request any records from the owner that are addressed in 16 TAC §24.277(e)? If so, did the owner maintain its records and make its records available in accordance with the applicable requirements in 16 TAC 24.277(e) and (g)?**

A: Yes. Evidence shows that MR. Connors requested records be made available to him for inspection in November and December 2020. Respondents assert that this email went to a spam folder and the documents were provided by email dated January 5, 2021. A follow up request was submitted by Mr. Connors on February 1, 2021, which Respondents responded to on February 2, 2021.

Although Mr. Connors asserts that he requested these records on or about February 28, 2020, Respondents don't have any record of this request, and copy of this request has not been provided. Further, Mr. Connors testified that due to the immediate onset of the COVID-19 in March 2020, he basically forgot about this request. He said he renewed his request in November/December of 2020 and the Respondents' response was timely at that point.

The evidence does not support a finding of a violation in this regard. There is no direct evidence of the February 28, 2020, request, but even if there is, the immediate onset of various mandatory stay-at-home orders by federal, state and local governments provides a valid defense whereby Respondents employees were prevented by applicable laws from going to work. We can all attest to the impact this had on our ability to do our jobs.

Further, Emergency Orders of the Supreme Court of Texas during this time explicitly allowed for the extension and modification of all deadlines during this time.

**9. Did the rental agreement between the owner and Mr. Connors include all of the information required under 16 TAC § 24.279, including written statements explaining the owner's billing for water and wastewater services? Was Mr. Connors provided a copy of the pertinent Commission rules at the time the lease was discussed in accordance with 16 TAC § 24.279(b)?**

**A: Yes.** Mr. Connors was fully informed of the average bill for water and the allocation method used to calculate that average. Mr. Connors lived there for years and got such information on a monthly basis.

**10. Did the owner charge Mr. Connors for water and wastewater utility service by means of submetering or an allocation formula? If an allocation formula was used, identify the formula, and indicate whether it is one of the formulas allowed under 16 TAC § 24.281(e).**

**A: Yes.** Mr. Connors was fully informed of the average bill for water and the allocation method used to calculate that average. Mr. Connors lived there for years and got such information on a monthly basis.

**11. Has the owner changed its billing method for water or wastewater charges since the inception of Mr. Connors's lease? If so, did the owner obtain Mr. Connor's agreement and provide notice as required by 16 TAC § 24.279(c)?**

**A: Yes.** This is not in dispute. PUC Exhibit 1, p. 7 explicitly states that the Respondents complied with this requirement:

**Q.** Is the allocation method selected on the Form filed in Project No. 47191 permitted under 16 TAC § 24.281(e)(2)?

**A.** Yes. The allocation method selected on the Form is equivalent to the allocation method identified in 16 TAC § 24.281(e)(2)(iv).

**Q.** Is the allocation method selected on the Form filed in Project No. 51613 permitted under 16 TAC § 24.281(e)(2)?

**A.** Yes. The allocation method selected on the Form is equivalent to the allocation method.

*See PUC Exhibit 1, p. 7, lines 5-13.*

**12. Did the owner comply with all applicable requirements of 16 TAC § 24.281 with respect to its water and wastewater billing charges? If not, which provisions of 16 TAC § 24.281 did the owner violate?**

**A: Yes.** The evidence shows that the customer service charge was not allocated to Tenants. While the PUC witness testified in her written testimony that this was the case, documentaty evidence shows otherwise. Mr. Connors, RPM, and Conservice all agree that no customer service charges were included and that no overbilling resulted therefrom. At the hearing, the PUC witness was unable to identify or describe how she reached this conclusion.

There is not sufficient evidence to support a finding of a violation based upon improper inclusion of customer service charges. There is evidence to the contrary:

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
<b>TOTAL CURRENT CHARGES .....</b>		<b>\$1,596.71</b>

3,1224.61

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.	<div style="border: 1px solid black; display: inline-block; padding: 2px;">\$1224.61</div> - \$306.15 = \$918.46
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It is clear that customer service charges were NOT included in the total that was allocated tot tenants. All parties agree with this except the PUC.

**13. If Mr. Connors was overbilled, what is the amount of the refund owed to him as required by 16 TAC § 24.283(k) and TWC § 13.505? Has the owner refunded Mr. Connors any overbilled amounts? If so, what are the specific amounts, and in what form were they distributed?**

**A.** The evidence does not support a finding that Mr. Connors was overbilled by reason of improper inclusion of customer service charges. It is clear that customer service charges were NOT included in the total that was allocated to tenants. All parties agree with this except the PUC.

Mr. Connors, RPM, and Conservice all agree that the only overbilling that occurred was due to an occupancy calculation mistake by Conservice that was corrected in June 2021 by Conservice by issuing refunds to all impacted tenants as required by law. Applicable law requires prompt correction of erroneous bills, not the complete absence of erroneous bills.

Not only that, Mr. Connors has been made whole, even if this overbilling did occur. In fact, Mr. Connors testified that he has been over-refunded at this point and would not accept any further refunds.

At the hearing, Mr. Eiland was unable to explain her calculations. The evidence does not support the finding that Mr. Connors was overbilled \$74.47, or any other amount, due to the improper inclusion of customer service charges.

**14. If Mr. Connors was overbilled, did the overbilling affect all tenants, requiring an adjustment to all tenants' bills in accordance with 16 TAC § 24.283(k)?**

**A.** The evidence does not support a finding that Mr. Connors was overbilled by reason of improper inclusion of customer service charges. It is clear that customer service charges were NOT included in the total that was allocated to tenants. All parties agree with this except the PUC.

Mr. Connors, RPM, and Conservice all agree that the only overbilling that occurred was due to an occupancy calculation mistake by Conservice. This error was corrected in June 2021 by Conservice by issuing refunds to all impacted tenants as required by law. Applicable law requires prompt correction of erroneous bills, not the complete absence of erroneous bills.

Not only that, Mr. Connors has been made whole, even if this overbilling did occur. In fact, Mr. Connors testified that he has been over-refunded at this point and would not accept any further refunds.

At the hearing, Mr. Eiland was unable to explain her calculations. The evidence does not support the finding that Mr. Connors was overbilled \$74.47, or any other amount, due to the improper inclusion of customer service charges.

**15. Did the owner comply with all requirements of 16 TAC § 24.283 with respect to rendering bills to tenants? If not, which provisions did the owner violate?**

A. Yes. The bills were produced timely. Evidence shows that the bills were received at the end of each month by Respondents and that payment was due to the City at the beginning of the following month. The allocation to the Tenants was then applied the very next month. This allocation could not realistically have been performed any faster.

The PUC further said explicitly under oath that there is no set timeline for what is reasonable and that there is nothing in the applicable laws that would alert a homeowner to the estimated timeframe to which they were testifying would be reasonable.

Further, the bills provided in evidence explained the allocation method.

**16. Did Mr. Connors dispute the bills at issue with the owner? If so, did the owner conduct a timely investigation of any bills disputed by Mr. Connors and report the results to him in accordance with 16 TAC § 24.283(1)?**

A. Yes and Yes. The evidence shows that the dispute was formalized in November/December 2020 and that the Owner provided responses in a timely manner. An informal inquiry was open and closed in the Respondent's favor yet, as is his right, this formal complaint was pursued.

An investigation by Conservice and Respondents resulted in the discovery of an overbilling due to inaccurate occupancy totals which was immediately corrected in June 2021. This was an investigation, and it was timely given the circumstances.

**17. If the Gallery Apartment, Roscoe Property Management, or Conservice did not comply with Commission rules of the Texas Water Code, what is the appropriate remedy?**

A. Mr. Connors has admitted that he has been afforded all relief sought and there is no further relief this proceeding can award Mr. Connors.

The only possible issue raised by the evidence is: Whether, assuming a request to review billing records was received on February 28, 2020, the Respondents are in violation for not promptly responding?

The ALJ is unwilling to find a violation here where no copy of the February 28, 2020, request has been provided and where even Mr. Connors states that he kind of forgot about this request until much later in the year due to the COVID-19 lockdowns that immediately occurred thereafter. Further, I will not recommend remedies or penalties based on delays caused by the forced lockdowns.

This delay, if it occurred, was caused by an act of god, a global pandemic, and state ordered lockdowns over which Respondents maintained no control. It would be unfair for now the State to hold Respondents accountable after it was the State who issued the lockdown orders.

When the request was renewed in November or December of that year, the Respondents responded timely and fully via emails dated January 5, 2021, and February 2, 2021.

## **CONCLUSION**

Respondents respectfully request that the ALJ adopt the above findings and conclusions. Many allegations raised by the PUC for the first time very recently are simply not supported by the evidence and are not germane to the actual Complaint filed by Mr. Connors.

Customer service charges clearly were not included, no one thinks they were except for the PUC. The bills were produced as timely as they possibly could have been. No one believes otherwise except for the PUC yet they admit that there is no standard. The bills clearly explain the allocation formula used and the registrations were proper. No one raises this concern except the PUC. Mr. Connors clearly knew his bills were allocated.

Please consider that the prompt investigation and correction of the occupancy issue is in compliance with applicable law. The law does not require no errors. This would be absurd. The law requires prompt investigation and correction of erroneous bills. This occurred. No one disputes this. This correction was issued a LONG time ago in June 2021. These recent allegations made by the PUC are not germane to the Complainant and nor are they supported by evidence.

Please consider that no copy of the February 28, 2020 request has been provided and even Mr. Connors states that he kind of forgot about this request until much later in the year due to the COVID-19 lockdowns that immediately occurred thereafter. If this delay in providing documents for review is the sole cause of an adverse finding, please consider that this delay was caused by an act of god, a global pandemic, and state ordered lockdowns over which Respondents maintained no control. It would be unfair for now the State to hold Respondents accountable after it was the State who issued the lockdown orders.

Finally, please consider that there is no further relief that can be granted to the complaining party and that this case is moot. Respondents respectfully request that the ALJ make a finding and recommendation that there is no evidence that a violation of any kind has been committed by Respondents.

Respectfully submitted,

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