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COMPLAINANT REPLY BRIEF

3/13/23

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DOCKET NO. 51619
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COMPLAINT OF JEFF CONNORS	§	PUBLIC UTILITY COMMISSION
AGAINST THE GALLERY	§	
APARTMENTS, ROSCOE PROPERTY	§	OF TEXAS
MANAGEMENT, AND CONSERVICE	§	

COMPLAINANT REPLY BRIEF

I. Background

At the hearing for the complaint on February 6, 2023, Judge Bailey set a deadline of March 13, 2023 for Reply Briefs to be submitted

This is my Reply Brief.

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To clarify what I mean by “pdf pages”, a term I use in my footnotes, I am referring to the page number in the upper left-hand corner of the window when you pull up the document from the Docket; not the page numbers that are actually on the bottom of some of the documents. When I refer to paragraphs in my footnotes, I count partial paragraphs as paragraphs. Therefore, the second paragraph on a page may actually be the first full paragraph on that page.

When I refer to pages within this document, I will be referring to the page numbers on the bottom of the page of the documents.

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II. Reply to Conservice's Initial Brief

Conservice claimed in their Initial Brief in Item 118 that a technical error caused incorrect occupancy and square footage counts which resulted in tenant overbilling but has never provided any verifiable proof of that; it's all based upon their word and a document that they claim they sent Gallery tenants back in June of 2021 that supposedly informed tenants of the inaccurate occupancy counts. I never received that document and they never mentioned it in any of their submissions to the docket until January of this year.¹

Their own records indicate that either their billing program was coded so that understated occupancy figures would pass through their quality process or they or Roscoe manually inputted data into it in order to get the overcharges to pass through their quality process which, after Roscoe's approval, were sent to Gallery II tenants on Roscoe's behalf.²

Conservice also claims that they issued refunds in accordance with PUC Rule §24.283 (k).

PUC Rule §24.283. Billing. (k), in part, states:

(k) Overbilling and underbilling. If the overbilling or underbilling affects all tenants, an adjustment must be calculated for all of the tenants' bills.

However, Conservice hasn't refunded all of the amount of money that they owe tenants because tenants were billed a second time on our October 2019 rental bill for a City of Austin bill that they already paid the previous month and Conservice did not refund them the full amount that they overcharged them for it, only part of it, if any.³ In Item 102 on pdf page 2, Conservice provided the amount that they refunded me for October 2019 and it clearly is not for the full amount that I was billed for that month that is found in Item 105 on pdf pages 15 and 16. By PUC Rule §24.283 (k), every tenant who lived at The Gallery II at that time is due a refund on their water and wastewater charges on their October 2019 rental bill.

¹ Pages C3 to C6 in this document

² Appendix F of this document

³ Appendix E of this document

III. Reply to Roscoe's Closing Brief

Roscoe begins their brief found in Item 120 with a complaint that I was not completely correct as to the cause of the overbilling when I first filed my Formal Complaint.

What Roscoe does not mention though is that they broke PUC Rules by not providing me any information prior to me filing my Formal Complaint, which was the primary reason that I filed it. I asked The Gallery, managed by Roscoe Properties, for water billing records on February 28th, September 29th, October 8th, October 21st, and December 14th of 2020 and it wasn't until January 5th of 2021 that Roscoe finally provided me anything. I also filed an Informal Complaint on November 2nd of that year that Roscoe did not respond to and the PUC closed on November 19th, though it was later reopened by the PUC after I had already filed my Formal Complaint.

Two weeks after they finally did provide me with any information, I submitted to the docket an amended complaint that stated in it that they had used understated occupancy information to calculate my bills. Shortly after they gave me more information in early February of 2021, I proved in *DOCKET 51619 - Reply to submissions made by The Gallery on 2/3/21* that the occupancy figures they used to calculate my bill were way off and they had also used falsified water billing dates to bill us for an extra water bill.

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In bullet point 2 on pdf page 2 Roscoe claims that the “simple truth” is that tenants were overbilled due to an occupancy calculation mistake by Conservice and that this mistake was voluntarily corrected and that this is not in dispute by any of the parties. That is not true. I dispute that the understated occupancy calculations were a mistake at all. I believe that Roscoe supplied those understated occupancy figures and Conservice created a story to cover it up and that there are solid reasons to doubt Conservice's word in this matter.⁴

As far as the correction, it only happened after Roscoe claimed that Roscoe and Conservice had done a “thorough investigation” and had found nothing wrong.⁵ Then I proved that they were incorrect and had used understated occupancy figures to calculate our bills and overbill us.

In regards to Roscoe's contention that Conservice openly admitted to this mistake, Conservice never mentioned the notice they claimed they sent us about the overbilling for over a year and a

⁴ Appendix C of this document

⁵ Item 112 on pdf pages 6 and 7

half after they supposedly sent it to us. During this time, Conservice said nothing about it as this case progressed. They tried to get themselves removed as a party in this complaint and then watched as Roscoe made four failed attempts to have this case dismissed before they ever made any claims about sending notices to tenants. Conservice could have chimed in before then and cleared a lot of this up and saved all the parties, including the PUC, a lot of time by just admitting to this supposed mistake they made but instead they stayed silent about it. So, I disagree with Roscoe that Conservice openly admitted to their mistake.

Roscoe then claims that PUC Rules “contemplate human error” and “doesn’t require the complete absence of mistakes” by pointing to PUC Rule §24.283 (k). I’ll point out that there is nothing in PUC Rules that states that if a PUC Rule is broken that it’s all forgiven or never occurred as long as tenants are refunded their money or the violation is corrected. All PUC Rule §24.283 (k) says is that tenants should be refunded their money if they were found to be overcharged. Also, according to PUCT §22.246 (c)(3)(E), which is about administrative penalties, the amount of an administrative penalty should be partially based on the “efforts to correct the violation”. From that we can surmise that the PUC doesn’t forgive PUC Rule violations just because they’ve been corrected. And, I’ll point out again, that the Respondents have never owned up to and fully paid back Gallery II tenants for billing them a second time for the 7/15/19-8/14/19 City of Austin water bill in October 2019 so they haven’t even fully lived up to PUC Rule §24.283 (k) anyway.

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In bullet point 8 on pdf page 4, Roscoe writes of PUC Rule violations which involve failing to provide bills in a timely manner. The standard in PUC Rule §24.283 (b)(1) however is actually rendering tenants’ water usage bills as “promptly as possible” after they are received from the service provider. As I’ve proven, the previous water biller, Performance, was able to get us our water bills within a half a month of the City of Austin’s water bill which gave tenants the option to pay it with their rent that month though the water bill wasn’t actually due until 16 days after Performance sent us our bills. Also, as I proved, the two primary events that happened between when Performance billed us a half a month behind the City of Austin bill and now, where we are billed a month and a half behind the City of Austin bill, is that Roscoe and Conservice started to do the water billing and on the first month they billed us they charged us a second time for the City of Austin water bill that we’d paid for the previous month.⁶

I’ll mention that there is no requirement in PUC Rules that the City of Austin bill to the complex must be paid before it can be billed to tenants. There is also no logical reason for a requirement

⁶ Appendix E of this document

that the bill has to be paid prior to billing tenants for it either, as far as I can see. If the water got shut off because the water bill isn't paid, it would be for water that tenants hadn't paid for yet anyway. And I also believe that the City of Austin wouldn't casually shut off water to an apartment complex just because the water bill hadn't been paid.

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In bullet point 19 on pdf page 8, Roscoe moved on to the matter involving Roscoe breaking PUC Rules for over two years by never providing me the total amount billed to tenants every month. They claim that the information was provided to me several times and then stated that I conceded this. This is also incorrect. I only said that Conservice provided that information in January of this year and I have been adamant that Roscoe never did provide it.⁷

As far as their example is concerned, it exposes the fallacy in their argument: that the total amount billed to us was limited by the amount they point to as the amount allocated to Gallery II tenants. There were two billing methods used at The Gallery II at the time and that amount Roscoe points to was actually used in two equations⁸. If you look at Conservice's records you can see that some Gallery II tenants were billed for one water billing method (*Water 2*) and one for another (*Water 4*)⁹ and if you add up the amounts they collectively got charged in April, which is the bill that Roscoe is referencing at the bottom of pdf page 8, you'll see that Gallery II tenants were actually billed \$771.41 for *Water 2* and \$1,245.52 for *Water 4* so Gallery II tenants were billed a total of \$2,016.93 for that bill¹⁰, not the \$1,404.81 that Roscoe points to.

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Next, in bullet point 24 on pdf page 9, Roscoe continued on by falsely claiming that I've never provided any proof that I requested water billing information from Roscoe in late-February of 2020. However, I did and it can be found in Item 71 on pdf pages 5 to 3 (the emails go backward in time). Item 71 was submitted as evidence at the hearing.

Then Roscoe begins claiming that I resumed my efforts to get water billing records in "November/December 2020" though, as I stated earlier, I asked The Gallery, managed by

⁷ Appendix D of this document

⁸ Appendix B of this document

⁹ Item 105 on pdf page 68

¹⁰ Item 109 on pdf page 6 on bottom half of the page see *Billed* (third column from right) for *Water 2* (\$771.41) and *Water 4* (1245.52)

Roscoe Properties, for water billing records on February 28th, September 29th, October 8th, October 21st, and December 14th of 2020 and it wasn't until January 6th of 2021 that Roscoe finally provided me with anything. What Roscoe is doing by inaccurately stating that I didn't resume my quest to get water billing records from Roscoe until "November/December 2020" is ignoring the fact that I made requests for records on September 29th, October 8th, October 21st of that year. Proof of these emails can also be found in Item 71 on pdf pages 10 to 6. And it also shows that Roscoe is not being truthful when they state that the "Respondents provided the documents as soon as they became aware of the request".

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Roscoe then continues on in their Conclusion section on bullet point 32 on pdf page 12 with a stream of inaccuracies that they flatly declare as facts.

Roscoe claims that the Respondents "have acted in good faith at all times relative to Mr. Conners and the PUC". Good faith in my view would have been providing water billing records before requiring me to ask for it five times and file an Informal and Formal Complaint. It would have been providing the total amount billed to all tenants, which they never actually did before Conservice did earlier this year. That and the fact that I was overbilled, Roscoe approved of the overbilling, and Conservice sent me my bills with the overcharges on them on Roscoe's behalf, and Roscoe collected the money I paid for the water charges doesn't support their claim that they have at all times acted in good faith towards me.¹¹

Next Roscoe made the statement that "there is no evidence of and there truly never was a scheme to defraud tenants".

This is also not true, there's plenty of evidence that there was a scheme to defraud residents and both Roscoe and Conservice played a critical role in this since Conservice calculated the bill, Roscoe approved of the bill, and then Conservice sent those inaccurate bills that had water overcharges on them to tenants on Roscoe's behalf.

The elements of fraud in Texas are: (1) the defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) when the defendant made the representation the defendant knew it was false or made the representation recklessly and without knowledge of its truth; (5) the defendant made the representation with the intent that

¹¹ Appendix A of this document

the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused the plaintiff injury. *Shandong Yinguang Chem. Indus. Joint Stock Co., Ltd. v. Potter*, 601 F.3d 1029, 1032 - 33 (5th Cir. 2010) (citing *Ernst & Young, L. L. P. v. Pacific Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001)).

One of the ways the Respondents schemed to defraud residents was by using falsified water billing dates on Gallery II tenants' water bills to conceal that they billed us a second time for the 7/15/19-8/14/19 City of Austin water bill. They then shortened the water billing periods to 25 days for six months to get us back in compliance with PUC Rule §24.283 (d)(1) and back in synch with the City of Austin bills though now a month and a half behind instead of a half a month like it was before.

That's a scheme which encompassed both the crime (billing tenants a second time for a City of Austin bill they had already paid) and the cover-up (concealing it by falsifying water billing dates and shortening billing cycles to 25 days for six months).

It also satisfies every element of fraud:

1. A representation was made on the bills that Conservice sent to us on behalf of Roscoe. The bills came to tenants with Conservice's name and logo on them, Roscoe approved of them, and they were sent to tenants on Roscoe's behalf.
2. The representation was material because it induced tenants to pay the bill. If the correct billing dates were used then tenants may have caught on that they were being billed for the same City of Austin bill that they had paid the previous month.
3. The representation was undoubtedly false as reflected in Conservice's own records.¹²
4. Conservice knew that representation was false. In their own records they have listed both the dates of both the provider bills and the ones they used on our bills and the two do not match. Roscoe approved the bills that Conservice sent us and thus endorsed the representation and had Conservice send the bills to us on their behalf. Conservice also claimed that they checked the dates before they sent the bills to us.¹³
5. The Respondents undoubtedly made the representation with the intent that tenants act on it. It was a monthly bill and if tenants didn't pay the Respondents knew that tenants could be charged late fees, it could damage their credit, and even potentially lead to eviction.
6. Tenants relied on their representation for how much they supposedly owed for water.
7. The representation caused injury because it charged tenants for a bill that they already paid and thus cost them money that they didn't legally owe.

¹² Page E3 of this document in last paragraph

¹³ Item 67 on pdf page 5 from lines 3 to 11

In regards to the understated occupancy info, this information made it through Conservice's billing program and led to tenants being overbilled. As shown, they either had their billing software programmed in such a way that these overcharges passed through their quality process or they or Roscoe input information into the billing program that allowed these overcharges to get through. If it was programmed into the software then it was literally a fraud factory and all it required to overcharge tenants was for the cost for the water usage on the City of Austin bill and understated occupancy figures to be input into it to create overcharges that made it through Conservice's "quality process". Roscoe didn't even need to do anything to approve the bills, they were auto-approved in two days if Conservice hadn't heard back from Roscoe.¹⁴ Then Conservice sent us the water overcharges on our bills on Roscoe's behalf.

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After declaring that the overbilling was all due an honest mistake regarding inaccurate occupancy totals that was admitted to by Conservice and that Conservice corrected their "mistake" and refunded the totals that were owed Gallery II tenants, Roscoe made a blanket statement that no one disputes this.

I dispute that also. I dispute that the incorrect occupancy totals input into Conservice's billing program was an honest mistake. I also dispute that the overbilling was entirely due to the inaccurate occupancy totals because it also included the use of falsifying water billing dates to conceal that the Respondents billed us a second time for a bill we had already paid. And I dispute that the Respondents refunded the full amount that they owe tenants.

Of course, I also dispute Roscoe's claims in bullet point 33 on the bottom of pdf page 12 that there is no evidence of a PUC Rule violation of any kind committed by the Respondents. As the evidence shows, (1) Roscoe did not provide water billing info until ten months after I initially requested it and over three months from when I resumed my requests for the information, (2) Roscoe never provided me with the total amounts billed to all tenants before Conservice finally provided it to me nearly three years after I first requested it and over two years after I filed my Formal Complaint, (3) Roscoe approved of the overcharges due to the incorrect occupancy totals and was required to do a brief review that included making sure that the "occupancy data that [Conservice had] listed [was] correct" so they were very much involved in the violation of PUC Rule §24.281 (e)(2)(A)(iv), and (4) the bills that Conservice created for Gallery II tenants that Roscoe approved of and Conservice then sent to tenants on Roscoe's behalf used falsified water

¹⁴ Page A3 of this document fourth paragraph from top

billing dates which concealed that the Respondents billed us a second time for the same City of Austin bill and caused violations of PUC Rule §24.283 (b)(1) and (d)(1).

IV. Reply to the PUC Staff's Initial Brief

In Item 117 in the last paragraph of page 8 of the PUC Staff's Written Brief, using the page numbers found in the bottom right-hand corner of the document itself, the PUC Staff makes mention that it took Roscoe much more than the allotted time to provide water billing records to me, which was three to fifteen days, and that when they did finally comply those records didn't include the total amounts billed to tenants each month for water and wastewater usage. This omits that Roscoe never did provide those total amounts and this went on for over two years after I filed my Formal Complaint before Conserve provided them this past January.

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On the bottom of page 11 in point 12, the PUC Staff states the Respondents broke §24.281, but they only cite §24.281 (c). There was no impact of any violation of this rule because, as I've proven, the Respondents charged us correctly for the fixed charges, which includes the Customer Service Charge.¹⁵

In regards to PUC Rule §24.281, the PUC Staff ignored and made no mention of the fact that the Respondents have admittedly broke PUC Rule §24.281 (e)(2)(A)(iv). Even Conserve, which used the understated occupancy figures to calculate our bills, and Roscoe, which approved of the billing that Conserve later sent to tenants on Roscoe's behalf, openly admit to this, but the PUC Staff doesn't acknowledge that this rule was broken by Conserve and Roscoe, a violation that led to tenants being overcharged for a public utility.

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In point 15 on page 13 the PUC Staff poses this question to itself:

Were the bills timely rendered and delivered in compliance with 16 TAC §24.283(b) through (d) and (h) with a due date not less than 16 days after they are mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend?

¹⁵ Item 82 on pdf page 9 fourth paragraph from top to pdf page 12 second paragraph

The PUC Staff then simply answers ‘Yes’, which is incorrect.

I’ll bring up this table below once again:

SEPTEMBER 2019 TO MAY 2020 BILLING DATES AT GALLERY II¹⁶

	<u>City of Austin bill</u>	<u>On rental bill</u>
September 2019	7/16/19- 8/14/19	7/11/19-8/9/19
October 2019	7/16/19- 8/14/19*	8/14/19-9/8/19
November 2019	8/14/19-9/13/19	9/8/19-10/3/19
December 2019	9/13/19-10/14/19	10/3/19-10/29/19
January 2020	10/14/19-11/13/19	10/29/19-11/23/19
February 2020	11/13/19-12/13/19	11/23/19-12/18/19
March 2020	12/13/19-1/14/20	12/18/19-1/14/20
April 2020	1/14/20-2/12/20	1/14/20-2/12/20
May 2020	2/12/20-3/13/20	2/12/20-3/13/20

*Double-billed for City of Austin water bill paid in September 2019

On the bills that run from October 2019 to March 2020, the dates on the left, which are from the City of Austin bill, are different than the dates on the right, which Conservice had on the bills they sent us. The billing periods on the left also span approximately 30 days while the ones on the right run for 25.

PUC Rule §24.283 (d)(1) states:

(d) Billing period.

(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.

¹⁶ On page E4 of this document

So, PUC Rule §24.283 (d)(1) was demonstrably violated. Those two sets of dates from October 2019 to March 2020 don't match each other and the billing periods of the City of Austin's run for about a month and the ones Conservice used on our bills is 25 days. No matter how it's read, that rule was broken.

I'll also note that in the PUC Staff's Direct Testimony in late-November that they stated that §24.283 (d)(1) was violated¹⁷ though they didn't elaborate further on it.

It's also undoubtable that PUC Rule §24.283 (b)(1) was broken.

PUC Rule §24.283 (b)(1) states:

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public bill.

The Rule says that the bills should be rendered "*as promptly as possible*". As I've often pointed out, Performance was able to render us our water bills within a half a month of the City of Austin's for three and a half years, but Roscoe and Conservice bumped that out to a month a half of the City of Austin's after billing us a second time for the City of Austin's 7/15/19-8/14/19 bill. Since Performance billed us within a half a month within the City of Austin bill for three and a half years that certainly proves it was "possible".¹⁸

The violation of these two rules, like the violation of §24.281 (e)(2)(A)(iv) involved overbilling tenants' bills and both Conservice and Roscoe. Conservice created the bills, they passed Conservice's quality process, Roscoe approved the bills, and Conservice sent them to us with their name and logo on them on Roscoe's behalf.

I also want to try to clear up some confusion regarding PUC Rule §24.283 (b)(1) and (h) that began at the very beginning of Ms. Eiland testimony¹⁹ at the hearing when, in response to Mr. Lehmann's questioning, she said that she was retracting the claims she made in her Direct Testimony that the due dates on the bills were short of 16 days of when they were delivered. She

¹⁷ Item 81 on the bottom of pdf page 15 line 17 to pdf page 16 line 10

¹⁸ Pages E14 to E15 of this document

¹⁹ Starting at 36:00 mark at 473-22-2652_HOM_2 which is the second tape of the hearing

referred to it as PUC Rule §24.283 (b)(1). What she was actually referring to though was PUC Rule §24.283 (h), not (b)(1) as she misidentified it as at the hearing and also in her Direct Testimony²⁰. Ms. Kat also, referring to Ms. Eiland's Direct Testimony in her rebuttal testimony, pointed incorrectly to (b)(1) when it in fact was (h) that she was referring to²¹.

PUC Rule §24.283 (h) states:

(h) Due date. The due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following work day will be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.

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The only important part remaining in the PUC Staff's Written Brief, in my view, and perhaps the most important, is found in bullet point 17 on page 15 where they state that "the Gallery should be ordered to review all of its water and wastewater billing practices to ensure that they comply with 16 TAC Subchapter I, Water Utility Submetering and Allocation". This refers to the ownership itself, which tenants had no direct contact with and presumably had nothing to do with the overbilling. What this also means is that nothing will essentially come of this complaint because the property has been sold and the LLC that owned it back then is presumably now defunct.

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To review, the PUC Staff made very little mention about the fact that Roscoe never provided the total amounts billed monthly to tenants and it took me over two years to get it from when I filed my Formal Complaint. They made no mention about the §24.281 (e)(2)(A)(iv) violation caused by using inaccurate occupancy figures to calculate our bills even though Conservice openly admitted to it at the hearing. This led to overcharges and involved Conservice and Roscoe. Also, the PUC Staff completely dismissed that PUC Rules §24.283 (b)(1) and (d)(1) were broken which were also due to overbilling tenants and involved both Roscoe and Conservice.

In light of that, I don't believe that the PUC Staff's recommendation that a likely defunct LLC be ordered to do a review of all of its water and wastewater billing practices to ensure that they

²⁰ Item 81 starting on pdf page 15 line 21 and ending on pdf page 16 line 11

²¹ Item 95 at end of pdf page 2 to pdf page 3

comply with 16 TAC Subchapter I, Water Utility Submetering and Allocation is based upon a fair review of the record and that the PUC Staff's recommendations ought to be deferred to in deciding this case. The two parties that were involved in the most impactful PUC Rule violations were Roscoe and Conservice. One of them had a quality process issue with their billing software that allowed overcharges to pass through it and the other was approving the overbilling of their tenants and not noticing that they were billing some tenants almost three times as much as others.²² Any sort of review of billing practices and filing of compliance reports ought to be targeting their billing practices instead of some defunct LLC that never was actively involved in the billing anyway.

*

I will email stephanie.laird@rpmliving.com, jaime.hearn@rpmliving.com, jkat@conservice.com, edmunds@hooverslovacek.com, liu@hooverslovacek.com, and phillip.lehmann@puc.texas.gov to inform them of this submission to the docket.

Respectfully submitted,
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-

CERTIFICATE OF SERVICE

²² Page F6 fourth paragraph from top to page F7 end of fourth paragraph from the top

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on March 13, 2023 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Jeff Connors

Jeff Connors

Complainant

APPENDIX A

Note: This information can also be found in Item 119 on pdf pages 4 to 7 and pdf pages 62 to 64 or, going by the numbers on the bottom of the document itself, pages 2 to 5 and pages 60 to 62.

The Roles of Roscoe and Conservice

Roscoe hired Conservice as a third-party billing provider to calculate tenants' water and sewage bills, and send those bills out on behalf of Roscoe, among other tasks. Roscoe paid Conservice for this service, tenants did not. Though Conservice sent us our water bills, tenants did not pay Conservice; we paid ClickPay to process their monthly charges and ClickPay then in turn transferred those payments to Roscoe.

Roscoe began managing The Gallery in late-July 2019 and they kept a ledger of our accounts (see Item 110 on pdf pages 6 to 11). As you can see up top in Item 110 on pdf page 10, the ledger was the property of Roscoe Properties. You can see too that my security deposit was transferred into this account on 7/25/19 and that balance was accrued for various charges and once my monthly payments to ClickPay were applied to the account those charges were settled. As I said, tenants paid a processing fee to ClickPay when we paid our monthly bill, which was stripped out of the total that got deposited into my account. ClickPay got the processing fee and transferred the money to Roscoe.

In the far-right column is a column labeled *Chg/Rec*. This printout was done in black-and-white, but the charges in that column are blue in color and underlined, which means that they are activated links that lead to other data and/or files.

During the hearing we heard Roscoe and Conservice talk about the process in which Roscoe approved the water charges that Conservice sent us. Mr. Mathews from Conservice described it as a potentially passive approval process and if Conservice didn't hear back from Roscoe within 48 hours after they sent Roscoe the info it was assumed by Conservice that Roscoe approved the bills and Conservice sent the bills out¹.

The fact that Roscoe hired Conservice, Conservice required some sort of approval process from Roscoe before they sent the bills out, and the payments for the water bill came through Roscoe's system means that Roscoe was placed in charge of the water billing by the ownership of the complex. They had the authority to hire Conservice, the water bills had to be approved through some agreement between Roscoe and Conservice, Conservice sent the bills to us on behalf of Roscoe, and then the tenant payments for the water bills passed through Roscoe's hands.

In the ledger you can also see that Roscoe had a record of tenants' water charges so they also had the means to provide me with the total monthly amount charged to tenants for water and

¹ Starting at 0:50 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

wastewater, which has been an oft contested issue in this case, without even asking Conservice for it because they always had that information available to them on their tenants' ledgers. All they had to do, if it wasn't already linked somehow to a spreadsheet, was add up all the tenants' water and wastewater charges together to provide the information that I kept asking them for, and for them to check if we were being collectively overbilled. In regards to that, I'll note that they could also have gotten that info from Conservice.

The testimony in the hearing regarding Roscoe's process to approve the water bills that Conservice sent us on behalf of Roscoe described a pretty lax procedure. It required no action at all from Roscoe and they could literally nap on it and it would still happen. I'll mention that that shouldn't be taken as any indication, in my view, that Roscoe was any less complicit in the overbilling or that Roscoe's responsibilities to tenants to not overbill them for a public utility were somehow diminished in any way just because they claim they barely looked at it, if at all. Instead, it's an indictment of what a poor and reckless job they did of it; if they did anything at all.

Also, Mr. Mathews mentioned in the beginning of my questioning² when I asked him about what information property managers or landlords would sign off on before Conservice sent the bills on their behalf:

"They'd" ... "just do a brief review to make sure that the occupancy data that we have listed is correct."

From that it actually sounds like Roscoe had to sign off on the occupancy data that was actually used by Conservice to calculate our bill. So, they would have, or should have, checked that data before they allowed the bills to be sent out to tenants on their behalf. The understated occupancy data was the root cause of most of the overbilling.

In regards to how this all applied to tenants and how I perceive this pertains to the responsibilities that Roscoe and Conservice had to tenants, there's nothing in the PUC Rules that says anything about going to your third-party water biller to get water billing records; only about going to property managers. So, Roscoe's contract with Conservice, which tenants are not part of or privy to, does not mean that Conservice assumed Roscoe's responsibilities to provide water billing records to tenants. Those responsibilities fall 100% on Roscoe, the on-site property manager. Conservice has no responsibility for any of that.

² Starting at 1:00 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

Where Conservice does gain a responsibility to tenants are in the bills themselves that Conservice sends tenants, with Conservice's name and logo on them ("The Utility Experts")³. Those bills state that tenants owe this much money for the water billing service period. Tenants have a reasonable expectation that since Conservice calculates their bills and sends the bills to them to expect that Conservice is sending accurate bills to them. That's even so even though tenants were not entered into a contract with Conservice because Conservice is making a false representation to them and if tenants fail to act on that representation they put themselves in danger of having late fees applied to their charges, damaged credit, or even possibly facing eviction.

Also, Conservice calculated and created these bills, they were a product of their tool, and in their documentation of their calculations it states that Conservice was using the occupancy of the complex to calculate tenants' water bills⁴. In regards to that last point, by doing this Conservice was implicitly vouching for the accuracy of the occupancy numbers used in the calculations as tenants had a reasonable expectation that Conservice was using their complex's actual occupancy figures to calculate their bills and is not misleading them about that.

Conservice, along with Roscoe, also had in their possession the City of Austin monthly water bills, which they used to do their calculations of tenants' bills, and on those bills was the water billing service period and the charges to the complex. So, Conservice even had the information in their hands to ensure the accuracy of their product, the water bills they sent tenants, but for some reason they either didn't use it or did a very poor job of it and instead sent us inaccurate bills with falsified water billing dates and overcharges.

Roscoe did not in whole, or even in part, lose any responsibilities for billing tenants correctly for a public utility just because Conservice made the false representation to tenants though. And Conservice can't waive away or assume any responsibilities that Roscoe had to tenants, in my view, by saying it was all Conservice's fault. For Roscoe is in fact also responsible for the false representation because they approved the overcharges to tenants on the bills that Conservice sent tenants on Roscoe's behalf. Roscoe also imposed Conservice's billing on tenants so they had a duty to tenants to ensure it was accurate, which they obviously didn't do.

It should be mentioned that Roscoe was in position to potentially profit from these inaccurate bills that Conservice represented to tenants on Roscoe's behalf because Roscoe collected tenants' payments so the tenants' payments passed through their system. Roscoe got touchy when I

³ Item 71 on pdf page 75

⁴ Item 71 on pdf page 18

awkwardly asked Ms. De Leon, an employee of Roscoe, about this at the hearing and Mr. Edmunds, the lawyer representing Roscoe, said something to the effect that there was no evidence that happened, “that”, in my mind, being Roscoe profiting off of billing for a public utility⁵. Though Roscoe portrays themselves as largely passive, innocent actor in this matter, the fact that they were positioned to profit from it is of relevance in this case. Innocence, in a general sense, is less believable if you happen to be in the position to profit from what, at its basest core, was a fraud operation, a numbers game, that they were a party in.

Ms. De Leon also described some process in which the City of Austin water bills were supposedly paid by a third party, for some reason⁶. But, again, Roscoe collected the money for it and it’s extremely unlikely that they would have turned around and gave all that they collected from tenants for water to that third party and say “*that’s all we got, if there’s any extra you can keep it*”. So, that money from the water bill overcharges, which were again approved by Roscoe and sent to us on behalf of Roscoe, either had to have ended up in Roscoe’s pockets or the ownership’s if for some reason an ownership that paid twelve million dollars for The Gallery II wanted to have their hands in the monthly water billing and expose themselves to the possible legal exposure to it, which I consider highly doubtful.

Anyway, without knowing exactly where the money went, we can still say that Roscoe either directly profited from overcharging tenants for a public utility or the ownership that hired and paid Roscoe to manage the place profited from it. Either way, Roscoe stood to potentially financially benefit from the overbilling they approved.

So, in summary, in regards to Roscoe’s role in this matter:

1. They oversaw the contractor work on the exterior plumbing of the residential buildings and irrigation system that began almost as soon as they arrived at The Gallery and that work, as well as Roscoe’s abysmal job of maintaining the irrigation system, led to immense amount of water being wasted. I encourage you to read [this](#)⁷ and [this](#)⁸ to get an idea of the incredible waste of water they oversaw. To get an idea of how absurd the increases in water were, before Roscoe arrived, it can be surmised from the City of Austin’s bills to us that the complex had us collectively using about 120K/gallons a month and the amount of water used for irrigation was about 12.5K gallons/month. By January 2020 the complex was using over 400K gallons/month and by the end of February of 2020 over 15K gallons were spewing from the irrigation system every morning, more than the irrigation system used to use for a full month. All in all, the flow

⁵ Starting at 2:39:40 mark of 473-22-2652_HOM_1 which is the first tape of the hearing

⁶ Starting at 2:39:00 mark of 473-22-2652_HOM_1 which is the first tape of the hearing

⁷ Item 70 on pdf pages 24 to 27

⁸ Item 71 on pdf pages 118 to 121

of about 1.5 million gallons of water was wasted in eight months due to their irresponsibility and it would have likely continued if I didn't begin asking for water billing records.

2. They oversaw substantial increases in tenants' water costs that they approved on the billing that Conservice did for them and sent to us on Roscoe's behalf.
3. They did not respond to my requests for water billing info until after I made five written requests for it, filed an Informal Complaint, and finally a Formal Complaint.
4. When they finally did respond they immediately declared that they, Gallery, and Conservice had conducted a "thorough investigation" and found their billing fully in compliance with PUC Rules.
5. Despite me asking for it for over two years and their repeated insistence otherwise, they never provided me the total amounts billed monthly to the Gallery II for water, information that would have revealed years ago that they were overcharging Gallery II tenants for water and could have cleared this matter up quickly if they were acting in good faith.
6. They were best positioned to directly profit off of the water overcharges that they approved on the bills that Conservice sent to us on their behalf since the money went through their hands and they either pocketed it themselves or transferred it to the owners that employed them to manage the property.
7. They always had all the information on hand to provide me with the total amounts charged to Gallery II tenants for water because they kept a ledger of tenants' charges. They also had all the info they needed to catch the overcharges and falsified water billing dates because they had the City of Austin water bills.

As far as Conservice's:

1. Their software tool that was used to bill Gallery II tenants was programmed to overcharge tenants. All it required was to have the water usage costs from the City of Austin's bill input into their tool and understated occupancy information.
2. Their "quality process" whiffed and allowed substantial overcharges to pass through it that their client, Roscoe, was in position to profit off of.
3. The inaccurate bills they sent us, which were calculated using understated occupancy info and had falsified water billing dates on them, were sent to us from their server and arrived with their name and logo on the letterhead.
4. Their documentation of the calculations of my charges implicitly vouched for the accuracy of the occupancy info they used to calculate our bills.
5. They had, on hand, all the info that they needed to detect the overcharges and falsified water billing dates: the City of Austin water bills.
6. They also had information on hand that could have been used to detect that the understated occupancy figures that led to the overcharges were inaccurate because the amount of bills they were actually sending Gallery II tenants exceeded the total number of occupants they were using to calculate *Water 4* and *Sewer 4* for Gallery II tenants.

7. They either allowed Roscoe to, or they themselves, placed falsified water billing dates on the water bills they sent to us on Roscoe's behalf which concealed that we were billed twice for the same City of Austin bill.

APPENDIX B

Note: This information can also be found in Item 119 on pdf pages 7 to 7 to 9 or, going by the numbers on the bottom of the document itself, pages 5 to 7.

Background on Water Billing at Gallery

1. The Gallery II was billed using two billing methods during the period I was overbilled. When I say that I mean that some of the apartments at The Gallery II were being billed using one set of allocation equations and some the other (see Item 105 on pdf page 68). The difference between the two billing methods was that they allocated the water usage costs to tenants using different allocation equations.
2. The two methods of billing for The Gallery II were PUC Rule §24.281 (e)(2)(A)(iii) and PUC Rule §24.281 (e)(2)(A)(iv). For the Gallery II, the apartments that were billed using §24.281 (e)(2)(A)(iii) had water usage charges on their bill for *Water 2* and *Sewer 2*. The ones billed using §24.281 (e)(2)(A)(iv) had water usage charges on their bill for *Water 4* and *Sewer 4*.
3. The Gallery I was also billed using the two methods (see Item 105 on pdf page 67) and the ones who had water usage charges on their bill of *Water* and *Sewer* were billed using §24.281 (e)(2)(A)(iii) and the ones who had water usage charges on their bill of *Water 3* and *Sewer 3* were billed using §24.281 (e)(2)(A)(iv).
4. In the table that Conservice provided in Item 100 (see Item 105 on pdf page 68), the residents that were billed for *Sewer 2* and *Water 2* had their bills calculated using the *CustMult* method and *Sewer 4* and *Water 4* with *Oc50/Sq50*.
5. Conservice has attributed the fact that there were two sides (Gallery I and II), or phases, as they prefer, as the reason why there were problems with the water billing, though I disagree with that.
6. The Gallery tenants were being transitioned over to the billing method in §24.281 (e)(2)(A)(iii) and that was being done monthly with the new water billing method being placed in lease renewals and the leases on new tenants. There is nothing wrong with that way of transitioning tenants over to a new billing method and it was probably the best way to do it because otherwise it would have required getting tenants to sign some sort of separate agreement for it and it's doubtful that they'd be able to get all the tenants in a 103-unit complex agree to it and sign the agreement quickly. So, instead it was placed in the leases and tenants agreed to it when they renewed their lease or new tenants signed their leases and tenants at The Gallery were gradually transitioned over to it.
7. The allocation equations used for the two billing methods can be seen in Item 71 on pdf page 25 for §24.281 (e)(2)(A)(iii) and in Item 71 on pdf page 18 for PUC Rule §24.281 (e)(2)(A)(iv).
8. The water billing done under the new billing method, §24.281 (e)(2)(A)(iii), was done using correct occupancy figures and residents that were billed using that method were billed correctly. The billing done under the old billing method §24.281 (e)(2)(A)(iv) used inaccurate and understated occupancy figures and therefore tenants on that billing method got overcharged. To get an idea of the difference between the charges, tenants that were billed using the new method in May 2020 averaged water bills of around \$12 and the ones still being billed using the old method that month were being billed an average of over \$34 (more on this later).

9. In October 2019, there were 90 occupied apartments at The Gallery II and 70 of them were billed using the old method and 20 the new method. By May 2020, 30 apartments were billed using the old method and 63 apartments were billed using the new method. Since the transition happened monthly through leases the entire complex would have been transitioned over to the new method by the end of the summer in 2020. I was transitioned over in June 2020 and my bills dropped considerably at that time to what they had been prior to Roscoe and Conserve doing the billing and they stayed consistently at that level from then on.
10. The allocation equations using the new method used an occupancy multiplier to allocate the water costs to Gallery II tenants that assigned a value of 1.0 for efficiency apartments and 1.6 for one-bedrooms. It did not take into account the number of tenants that lived in the apartments. There are only efficiency and one-bedroom apartments at The Gallery II.
11. The allocation equations using the old method determined how much each apartment was billed by calculating half of it by their portion of the occupancy at the complex, in essence the amount of tenants in their apartment divided by the total number of occupants at The Gallery II, and the other half by the total occupied space of the apartment being billed divided by the total occupied space at The Gallery II, which was the amount of square footage of all the occupied apartments at The Gallery II. These two fractions were then added together and divided by half and then multiplied by the total amount of the water usage that tenants were responsible for which was the total water usage costs to the complex with 25% deducted for common area water costs. The common area water costs are supposed to be picked up by the property and are for the water for the pool, laundry room, office, and irrigation system.
12. Since there were two allocation equations being used to bill Gallery II tenants during the period of my complaint that meant that the total amount that tenants were responsible for, the total water usage costs to the complex with 25% deducted for common area water costs, was used in two allocation equations to calculate costs to tenants. That created the possibility that tenants could be overcharged for water because the total amount allocated to tenants was not confined only to the total amount that tenants were responsible for since that total amount was being used twice to allocate it.
13. How The Gallery II got overbilled was that due to the incorrect occupancy figures used to calculate tenants being billed using the old method they were collectively billed for a larger portion of the total amount allocated to tenants than should have to tenants being billed by that method so while the apartments being billed using the new method were being billed correctly, collectively Gallery II tenants were being overbilled. For instance, in May 2020, the apartments being billed using the old method were only 30 out of 93 total occupied apartments, which was a percentage of around 32%, and yet due to the inaccurate occupancy figures used to calculate their bills they were billed for over 83% of the Gallery II tenants' total responsibility for the water usage (see Item 105 on pdf page 71). So, while the tenants being billed on the new method were billed for 61% of the bill, which was roughly the percentage of tenants being billed using that method, since the tenants being billed on the old method were billed for 83% of it that meant that collectively Gallery II tenants were billed for 144% of their financial responsibility and

therefore were collectively overbilled by 44%, which all fell on the backs of the folks that were being billed using the old method.

14. Conservice's quality process did not catch the overbilling and after Roscoe approved it Conservice sent the bills with the water overcharges on them to Gallery II tenants on Roscoe's behalf.

APPENDIX C

Note: This information can also be found in Item 119 on pdf pages 10 to 18 or, going by the numbers on the bottom of the document itself, pages 8 to 16.

Conservice's Recent Claims

Conservice submitted a lot of information to the docket late in this case, after the discovery process had ended, and also made some comments and testimony at the hearing that I don't believe should be given much, if any, weight in deciding this matter. Conservice's submittals to the docket that I'm referring to are those on January 12th when they submitted their rebuttal testimony (Item 95), on January 24th when they submitted two responses to RFIs that I made to them (Items 99 and 100), and on January 25th when they submitted a statement of position (Item 102).

One reason that I don't believe that these claims by Conservice, which I'll get into more detail about shortly, should be given much sway in this case is that Ms. Kat and Mr. Mathews of Conservice are basing their opinions on evidence that they presumably did not secure exclusive access to. If it was doctored, added to, or altered in anyway after the billing errors were found, Ms. Kat and Mr. Mathews would not know that and may factually attest to what they saw, and they may be completely honest in their observations and conclusions, but they can't attest to the veracity of what they base them on.

So, unless Ms. Kat, who works for Conservice and is representing them in the case, and Mr. Mathews, who also works for Conservice as a Billing Manager and was called as a witness at the hearing by Ms. Kat, can provide proof that they had exclusive access to the internal billing information during the time it was billed, which is an impossibility since they weren't actually involved in the billing, then what they are basing their claims on is information that it is several years old that others at Conservice presumably had access to.

Sure, Mr. Mathews can claim that he is serving as an expert in his field since he is a billing manager, that he did a review of the billing for the complex, and that based upon his expertise he came to his conclusions, but he can't guarantee that the data that he was examining wasn't changed or doctored or that other information, such as notes, may have been added to the billing files.

So, Mr. Mathews can't credibly vouch for the veracity of the information he is claiming he examined to come to his conclusions, nor can Ms. Kat on some of her claims for that matter, and his expertise ultimately has no value in his determinations. What his testimony ultimately amounts to is an employee of a company that was caught red-handed calculating and sending bills to tenants with their company name and logo on them (Conservice "The Utility Experts") that had inaccurate water service dates and water overcharges on them that they calculated on their own tool, and passed through their "quality process", is making claims that it was all an innocent accident and their client Roscoe, that hired and paid Conservice and that probably still

has a business relationship with them through other properties that they manage, had nothing to do with it because Roscoe provided accurate occupancy info to them.

It's all effectively hearsay and the threshold of credibility of testimony shouldn't come down to whether or not an employee of a company broke down in a fit of guilt during questioning and admitted that their company, or another they do business with, did something wrong. He likely would be risking his employment with the company if he admitted that Conserve, or another company they do business with, did something wrong and might also possibly be violating the terms of his employment with Conserve and potentially exposing himself to a lawsuit.

Here are some of the specifics that I disagree with Ms. Kat and/or Mr. Mathews on, many of these which I'll be revisiting later in this brief:

Conserve's claim that they sent a notice to Gallery II tenants about the overbilling and that they "discovered" it was "due to an occupancy calculations error"

In Item 95, Conserve finally admitted that PUC Rule §24.281 (e)(2)(A)(iv) was violated due to Conserve using understated occupancy figures to calculate our bills on the bills they sent to us¹ on Roscoe's behalf, which caused overcharges. They also claimed, for the first time, that they "discovered" this and sent out a notice to tenants² sometime in the Summer of 2021 that we were getting a refund "due to an occupancy calculations error". Mr. Mathews, who reviewed the billing of The Gallery from back then even said that the billing issue was an ongoing one in the Spring of 2021 when Conserve caught the error.

In regards to Conserve's "discovery" of the overbilling in the Spring of 2021, which they also made mention of in the hearing, this happened over a year after the overbilling ended and after I definitively proved in my *DOCKET 51619 - Reply to submissions made by The Gallery on 2/3/21* submission to the docket that I filed in February of 2021, with Roscoe's own occupancy evidence they submitted to the docket, that we were being overcharged using understated occupancy information. This purported discovery also occurred after Roscoe Senior Regional Manager Courtney Gaines claimed in an email in January of 2021 that a "thorough investigation [had] been conducted by the Gallery, RPM and Conserve, our professional utility partner and it is our position that the Gallery has been billing appropriately in accordance with all laws and regulations in the state of Texas and the Public Utility Commission."³

¹ Item 95 on pdf page 5

² Item 95 on pdf page 8

³ Item 112 on pdf page 6

I'll also mention that by the end of the Summer of 2020 that all tenants had been transitioned over to the new billing method because by that time everyone who lived there had either renewed their leases or had signed leases agreeing to the billing method on it when they moved in. The cost of my water bills went back to normal when I started getting billed on the new method so since we are on allocated billing I'd imagine that no one else at the complex was being overbilled on the new method either so it's unlikely that they would find something like that on their own after it had already ceased to be an issue for almost a year.

In contrast to Mr. Mathews' account of this matter in which he said that the overbilling was an ongoing issue in the Spring of 2021 when they caught it, Ms. Kat said both in her rebuttal testimony in Item 95⁴ and statement of position on Item 102⁵ that the occupancy counts used to calculate tenants' bills were incorrect from October 1, 2019 to July 1, 2020 which supports my view that the overbilling ended once all Gallery II tenants had been transitioned over the new billing method by the end of the Summer in 2020.

Also, as I noted on the cover page on the first very item in this Docket, my original Formal Complaint, I had an account number of 23332691 from at least November 2019⁶, and it was very likely October 2019, the first month Conservice billed us, to November 2020 and then in November 2020 the account number got changed to 26258106⁷. So, the whole account was changed in November 2020 and it is very unlikely that Conservice would have been scouring through old, past accounts and doing post-mortems on them to check for overbilling. Especially, when you consider that when it mattered, when we were being overbilled, they were not diligent enough to notice it and prevent it.

Though I did indeed get a refund of around \$120 over the course of my monthly bills from June to September 2021, as I mentioned in my *Complainant Supplemental Rebuttal Testimony* in Item 96, I never received any notice from Conservice about it or from anyone else⁸. Everything that I ever received from Conservice came through email and I can tell you for certain that they have no proof that they emailed that notice to me. No one here ever mentioned to me about getting any notice about it either though a tenant I knew asked the front office, the place was managed by Lincoln Property at this point, and they told her that it was for overbilling.

So, to review, the claim that Conservice sent us a notice admitting that we were overbilled and it was due to an issue about the occupancy figures is an unverifiable claim made by Conservice,

⁴ Item 95 on pdf page 5

⁵ Item 102 on pdf page 2

⁶ Item 71 on pdf page 70

⁷ Item 108 in *51619_108_1270453* on pdf page 1

⁸ Item 96 on pdf page 5

they have no definitive proof of it, the document they produced was never emailed to me and very easily could have been written up recently. There was money refunded to tenants after I proved that that they overbilled tenants but it was not all that they owed me either because they didn't refund me in full for charging me a second time for a water bill that I had already paid (much more on this later). Also, Roscoe claimed in January 2021 when they first responded to my requests for info that Conservice took part in a "thorough investigation" that found the complex in compliance of all PUC Rules. Then, once I proved that they were wrong and were overbilling us by using understated occupancy numbers and falsifying water billing dates to conceal the fact they billed us a second time for a water bill, they refunded us some money.

I'll note as well, that this claim made by Conservice this past January that they sent us a notice about the overbilling and the inaccurate occupancy info doesn't jibe with their previous submittals to the Docket, in which they made absolutely no mention of it, nor their responses to my RFIs, which are supposed to be done under oath. In Item 64, in their response to my First RFI they made this past August, about a year after they supposedly sent this notice to us, Ms. Kat claimed that they "received tenant data directly from the client's software on a daily basis to ensure accurate tenant information"⁹. Later in that RFI to them, I asked them if they had any evidence to substantiate the accuracy of the total number of occupants and total occupied space occupancy figures that they used to calculate my bills and they responded that they "[were] able to use the tenant data files to support the numbers during the period in question"¹⁰. That doesn't sound like the words of someone who had previously acknowledged that tenants had been overcharged during the period in question "due to an occupancy calculations error". So, Ms. Kat was literally vouching in Item 64 for the accuracy of the occupancy information they used.

I'll also mention in regards to that, that in August 2022, in my Second RFI to Conservice, I asked for a copy of the "tenant data" that Conservice used to "ensure accurate tenant information". To make the request less burdensome to them I even clarified that I only wanted a printout of the Gallery II "tenant data" that they used for one day from each of the months of the designated period but Conservice stated that "[a]fter diligent review" that they were "no longer in possession of the requested documents for the designated period"¹¹.

Conservice's late-inning claims that the occupancy data used to calculate Gallery II tenants' bills was inaccurate due to data pulling and/or saving errors and that Roscoe had provided accurate occupancy information to them

⁹ Item 64 on pdf page 3 on lines 18 to 25

¹⁰ Item 64 on pdf page 4 on lines 10 to 19

¹¹ Item 67 on pdf page 13 on lines 11 to 20

In Conservice's response to my Third RFI (Item 100) they stated that Roscoe provided the occupancy information they used to calculate our bills¹². Then in Item 102, Conservice claimed that the occupancy data they used was inaccurate due to it "being pulled incorrectly"¹³. During the hearing, Mr. Mathews from Conservice, a billing manager that was not directly involved in billing The Gallery, made the additional claims that the inaccurate occupancy data was due to problems saving it and that the occupancy data that Roscoe provided was actually accurate but due to Conservice's problems "pulling" and/or "saving" the data it became inaccurate¹⁴. He also mentioned that there was data pulling issues that caused a correlation between the Method Penetration percentages used in the billing¹⁵, which I'll get into much greater detail later, and the occupancy data.

Again, all these claims are based upon information that Ms. Kat and Mr. Mathews did not have exclusive access to and, as mentioned a short while ago, Ms. Kat claimed in August 2022 in Item 67 that Conservice no longer possessed the "tenant data" that Conservice used to do the billing.

So, I don't think that any claims by Mr. Mathews or Ms. Kat that the understated occupancy data wasn't Roscoe's doing and it was instead due to an innocent data pull or saving issue should be given much consideration in this matter. First of all, they were not directly involved in the billing so their opinions are based upon information from years ago that they didn't have exclusive access to so the info could have been doctored in it. Also, according to Ms. Kat the tenant data files used for the billing are no longer in Conservice's possession so Mr. Mathews can't truly determine that Roscoe provided accurate occupancy info and if this was all due to a data pulling and/or saving error.

The service period inaccuracies on Gallery II tenants' bills and Ms. Kat's and Mr. Mathews' differing views on how that may have occurred

Mr. Mathews also answered many questions at the hearing about the general procedures of the billing. He describes the relationship between Roscoe and the billing as one in which Roscoe had very little active role in it. In fact, according to him, they could approve the bills by simply taking no action at all¹⁶. He also claimed that Roscoe had no access to the bills that Conservice sent to us on Roscoe's behalf and couldn't edit or change them¹⁷.

¹² Item 100 on pdf page 4 on lines 7 to 24

¹³ Item 102 on pdf page 4 in first paragraph

¹⁴ Starting at 32:20 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

¹⁵ Starting at 23:30 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

¹⁶ Starting at 0:50 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

¹⁷ Starting at 07:45 mark at 473-22-2652_HOM_2 which is the second tape of the hearing

Again, Mr. Mathews couldn't speak to the particular billing that was done in this case though, which he himself admitted, and though he cites what may or not be the general billing procedures at Conservice it doesn't necessarily mean those procedures were followed in this case. So, that testimony by Mr. Mathews also shouldn't carry any weight in deciding this case, in my view. Furthermore, as I'll show in a bit, much of Mr. Mathews' testimony in regards to Conservice's general billing procedures often makes no logical or statistical sense when applied to The Gallery II's billing.

In addition to the difference in opinion between Ms. Kat and Mr. Mathews as to how long Gallery II tenants were being overbilled, another way that Mr. Mathews' testimony contradicts from Ms. Kat's is in his claims at the hearing that Roscoe didn't have any opportunity to change the billing dates on the bills that Conservice sent us on Roscoe's behalf¹⁸. I asked Ms. Kat in my third RFI to her if Roscoe had the opportunity to change the water billing dates of the water charges on Gallery II residents' monthly rental bills after the bills were calculated, but before they were sent to us. Ms. Kat in her response in Item 100 answered 'Yes'¹⁹.

As I've been mentioning since my second amended complaint back on February 3, 2021, what happened is that on the first month that Roscoe and Conservice administered our billing, Conservice, on behalf of Roscoe, billed us a second time for the same City of Austin bill.

To conceal the second billing of the 7/15/19-8/14/19 City of Austin bill the bills that Conservice sent us on Roscoe's behalf had falsified water billing dates. So, instead of using the 7/15/19-8/14/19 water billing dates, as Performance had used on the water bill we got with our September rent, the bills Conservice had an inaccurate one (8/14/19-9/8/19) which made it look like we were getting billed for the correct month. If the bills Conservice sent us had the true 7/15/19-8/14/19 date on the water bills they sent us it would have been obvious that they were billing us a second time for the bill since that was essentially the same dates that Performance printed on Performance's last bill to us (Performance's bill to us had it as 7/16/19-8/14/19). For the next five months our water billing dates were falsified and billing cycles shortened to 25 days instead of a month like the City of Austin bills run for and then they fell back in stride with the City of Austin's in April 2020 and matched them from there. Once the bills were in synch with the City of Austin's billing cycles again, the net effect on the water billing dates were that we were now a month and a half behind the City of Austin bill instead of the half a month we had been with Performance.

¹⁸ Starting at 08:00 mark at 473-22-2652_HOM_2 which is the second tape of the hearing

¹⁹ Item 100 on pdf page 5 on lines 1 to 7

Which brings me to a comment by Ms. Kat and a question of hers to Mr. Mathews at the hearing. Again, as I mentioned earlier, I've been writing about this double billing and the falsified water billing dates since early February of 2021. Ms. Eiland also noted that the Respondents were in violation of PUC Rules §24.283 (b)(1) and (d)(1) in her Direct Testimony²⁰.

I have mentioned this repeatedly in my filings in the docket because Conservice and Roscoe have never acknowledged it in any of their pleadings though I've asked Ms. Kat questions about it in my RFIs and she's answered some of my questions regarding it.

Mind you, no one can blame these falsified billing dates on a bad "data pull" or anything like that. Conservice and/or Roscoe shortened our water billing cycles for six months until they slid back into line with the City of Austin's which concealed that we got billed a second time for the 7/15/19-8/14/19 City of Austin water bill. That doesn't look accidental; it looks methodical. In fact, one could say it encompasses both the crime (billing tenants a second time for a City of Austin bill they had already paid the month before) and the cover-up (concealing it by falsifying water billing dates and shortening billing cycles to 25 days for six months).

It's also the root cause of the PUC Rule violations in this case of §24.283 (b)(1) and (d)(1):

PUC Rule §24.283 (b)(1) states:

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public bill.

PUC Rule §24.283 (d)(1) states:

(d) Billing period.

(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.

The Respondents have written and spoken plenty about §24.283 (b)(1). They've focused their arguments towards the meaning of the term "promptly" and ignored the broader implications of the "as possible" afterwards. But what Conservice and Roscoe never talk about is the PUC Rule §24.283 (d)(1) violation. That rule gets you warmer to the root cause of both of the (b)(1) and (d)(1) violations because the reason the billing dates are wrong and the billing cycles are

²⁰ Item 81 on pdf page 15 on line 21 to pdf page 16 on line 11

shortened is that Roscoe and/or Conservice billed us a second time for a bill and tried to conceal it. And the reason that we're in violation of (b)(1) is that since they billed us twice for the same bill, we're now a month and a half behind the City of Austin. The previous company that did the water billing here, Performance, had proved it was possible to get us our bills within a half a month of the City of Austin bill for the previous three and a half years.

Anyway, both Roscoe and Conservice again had totally ignored this until the hearing and then we got into a discussion about the "dangling bill" issue, which I had mentioned in my preliminary testimony and then Ms. Kat mentioned said at the hearing at around the 56:45 mark on the first tape that Conservice actually had some note in their "system" that the previous water billing company was doing things incorrectly and that Conservice was trying to fix that. She also talked about how she could provide evidence of it if needed.

If this note in their system was made right after they took over for Performance Utilities, that would have been from around September of 2019, almost three and a half years ago. Conservice has never mentioned this note before. Again, like the material that Mr. Mathews might have used in his review, Ms. Kat can't establish that she had exclusive access to that info for the past three and a half years so what it amounts to in the end is hearsay. Even if they produce a document, like the one they claimed they sent to tenants about the overcharges and the occupancy data issues, it doesn't establish that document's authenticity either, even if it has a date stamp after it.

So, I don't think any evidence or claims that Ms. Kat made in the hearing about having notes that explain the reason why the billing dates were falsified are credible. If she can't establish that she had the foresight to secure herself exclusive access to wherever those notes are at then to accept her testimony is to simply take her word for it. And beyond that, even if she could, what right does Conservice have to take it into their own hands to break PUC Rules to correct some issue that they never notified the PUC about? And to charge tenants a second time for a bill?

The other mention that Ms. Kat made about it is that she asked Mr. Mathews that since there were two phases at The Gallery and they were supposedly billed together if that could have been the cause of the inaccurate billing dates, could they have been mixed up, it sounded like she was getting at. Mr. Mathews said it could have been the reason for it²¹.

²¹ Starting at 29:45 mark at 473-22-2652_HOM_2 which is the second tape of the hearing

I've never bought into that any of the billing problems at The Gallery had anything to do with there being two sides (phases) of this place. As I've pointed out and proven in the past, each side had their own water meter and separate water system and they were each billed separately. Furthermore, none of the incorrect water billing dates on The Gallery II bills matched with either the Gallery I's City of Austin bill or Gallery I tenants' bills anyway so it doesn't make any sense that The Gallery I billing dates were somehow the reason for the incorrect Gallery II billing dates.

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So, again I don't think that claims by Conservice about sending notices out to tenants a couple years ago admitting to their error should be taken seriously since they have no proof that they actually sent it to us. I can guarantee that they didn't email it to me, and their previous actions weren't consistent with that having taken place. I also don't believe that their claims that Roscoe supplied accurate occupancy figures to them and that data pulling and/or data saving issues were a reason, even a partial one, for why understated occupancy figures were used to calculate our bills should be given much consideration in this matter. Especially in light of the fact that Conservice earlier stated that they were no longer in possession of the tenant data files they used back then. And I do not think that eleventh-hour alibis made by Conservice that they found a note from over three years ago in their systems can be credibly used to explain away why we got billed twice for one bill and our water billing dates were monkeyed with to conceal it.

APPENDIX D

Note: This information can also be found in Item 119 on pdf pages 19 to 24 or, going by the numbers on the bottom of the document itself, pages 17 to 22.

PUC Rules §24.277 (g)(1) and (g)(2) for failing to provide any water billing records on my five requests prior to filing my Informal and then my Formal Complaint, which was well after the prescribed response times.

PUC Substantive Rules §24.277 (g)(1) and (2) are:

(g) Availability of records.

(1) If the records required under subsection (e) of this section are maintained at the on-site manager's office, the owner shall make the records available for inspection at the on-site manager's office within three days after receiving a written request.

(2) If the records required under subsection (e) of this section are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant or the commission or commission staff.

In regards to Roscoe breaking PUC Rules by failing to provide water billing records within three to fifteen days of request, that's never been in dispute as far as I know. In 2020, I requested water billing records from Roscoe on February 28th, September 29th, October 8th, October 21st, and December 14th (the day that I filed my Formal Complaint). I only heard back from them on any of those requests on October 21st when they basically brushed me off and still provided no billing info. I proceeded to file an Informal Complaint that Roscoe didn't initially respond to. PUC temporarily closed it and I filed my Formal Complaint in mid-December. Finally, in early January 2021 Roscoe began responding to my requests for information¹.

That, on its own, that I made five written requests, filed an Informal and then Formal Complaint before they got back to me, is a minor issue in this case, in my view. I'd like to clarify how this all happened though because Roscoe has at times taken to fast talking this into a narrative in which I filed my Formal Complaint in mid-December, it supposedly went into their email spam which Roscoe didn't initially notice, and then Roscoe found it (or maybe the PUC contacted them about it), and Roscoe got back to me in early January. Reducing it down to that omits four written requests and an Informal Complaint that Roscoe isn't shy to mention otherwise. The larger point on this particular aspect of the case though is that tenants shouldn't have to go through all that to get information if the property manager is acting in good faith.

The much bigger deal is that although they provided a lot of information in January 2021 and February 2021, they did not provide the total amount billed to all tenants. Roscoe never has, but

¹ Item 112 on pdf page 6

as I mentioned at the hearing, Conservice recently did in Item 100². And as Conservice admitted to earlier in January, and what the information in Item 100 confirms, Gallery II tenants were overcharged for water, as I've been saying all along and Roscoe has been denying.

PUC Substantive Rules §24.277 (e)(8) and (9) are:

(e) Records. The owner should make the following records available for inspection by the tenant or the commission or commission staff at the on-site manager's office during normal business hours in accordance with subsection (g) of this section. The owner may require that the request by the tenant be in writing and include:

(8) the total amount billed to all tenants each month;

(9) total revenues collected from the tenants each month to pay for water and wastewater service;

Below is a comparison between what tenants actually got billed, as confirmed by Conservice's records³, for water and wastewater usage for the months I was overbilled and the numbers Roscoe keeps pointing to on the right as the total amount billed to all tenants:

² Item 100 on pdf pages 8 to 11

³ Item 100 on pdf pages 6 and 7

Total Monthly Amounts Billed to Gallery II Tenants for Water and Wastewater Usage

	<u>Conservice's Records of our Bills</u>		<u>Roscoe's Numbers</u>	
	<u>Sewer</u>	<u>Water</u>	<u>Sewer</u>	<u>Water</u>
October 2019*	\$887.57	\$744.69	\$740.75	\$621.28
November 2019	\$867.48	\$1,179.34	\$740.75	\$1,006.60
December 2019	\$884.63	\$989.87	\$740.75	\$828.36
January 2020	\$907.59	\$1,125.87	\$740.75	\$918.46
February 2020	\$1,005.61	\$1,599.85	\$740.75	\$1,177.77
March 2020	\$1,018.73	\$1,994.67	\$740.75	\$1,449.51
April 2020	\$1,062.83	\$2,016.93	\$740.75	\$1,404.81
May 2020	\$1,073.57	\$1,785.30	\$740.75	\$1,230.64

*Billed tenants second time for City of Austin water bill they'd paid in September 2019

As one can see, the numbers in the set on the left (the totals we paid for the bills) are all larger than their compatriots on the right, the numbers Roscoe keeps insisting are the amounts we were billed. That means that Gallery II tenants were overbilled every one of those months for water and wastewater.

At the hearing, Mr. Edmunds, who represented Roscoe, made repeated attempts to get Ms. Eiland of the PUC to agree that Roscoe provided me the total monthly amounts that Gallery II residents were billed for water and wastewater. The essence of Mr. Edmunds' argument is that the total monthly amount allocated to tenants is the same as the total amount billed to tenants.

I'll get into this in greater detail later, but what Mr. Edmunds never mentioned in his arguments is that there were two billing methods being used at The Gallery II at the time. What I mean by that is that the water bills for some of the apartments at the complex were being calculated/allocated with one set of formulas (the old billing method) and the others a new one because The Gallery was gradually transitioning tenants over to the new billing method through lease renewals and the leases of new tenants every month.

As a result, there were two sets of allocation equations used to calculate the water bills at the complex and the number that Mr. Edmunds points to as the total amount allocated to tenants and synonymizes into the total amount billed to tenants is actually being used twice: once in the allocation equations for the old billing method that some of the tenants' water bills were still on and then another in the allocation equations for the new billing method. So, therefore the total amount billed to tenants are not limited by the total Mr. Edmunds refers to. If, for example, one billing method produced bills to the apartments being billed by that method that amount to 60% of the water bill from the City of Austin and the other produces bills to the tenants on it that amount to 80% of the City of Austin bill then 140% of that water bill was billed. That's also happens to be roughly what was happening at The Gallery II by April 2020⁴.

I'll mention here that before Conservice provided those totals in January 2023, after I had been asking for them for years, I was unaware that part of the complex was being billed for water on one method and part on another. I had thought we were all on the same billing method and that we all moved to the new billing method in unison in June 2020 when I did. So, because I had believed that all Gallery II tenants were being billed on the old billing method that used the inaccurate occupancy figures I thought the entire complex was overbilled from October 2019 to May 2020 and therefore overestimated the totals of how much Gallery II tenants were overbilled during the period in question in some of my past submissions to the docket. At times, I had estimated it be over \$10,000.

It turns out to actually be \$6,270.25 in total according to the information I received from Conservice in January for the water billing from November 2019 to May 2020. I'll mention that my calculations take into account that Roscoe and Conservice billed us a second time for the 7/15/19 to 8/14/19 City of Austin water bill in October 2019, the first water bill they administered, which was the same City of Austin bill we paid the previous property manager and water billers in September 2019. We therefore should have been reimbursed for all the money we paid for that bill.

-

The history of my requests for these total monthly amounts billed to tenants is that I first asked for some of it in February of 2020, asked for it again in all my other written requests and in my Informal Complaint, but never received it. Though Roscoe finally responded to my requests for info in January 2021 after I filed my Formal Complaint, they refused at that time to provide these

⁴ Item 109 on pdf page 10

total monthly amounts for privacy reasons that they contrived⁵ though I never asked for anyone's private information with it and had copied language straight from the PUC when I requested it.

I made another request to them in February 2021 and in this one I specifically stated that I was not asking for tenants' private info with this information⁶. Roscoe responded and produced a spreadsheet that had six worksheets in it of the monthly occupancy information for both the Gallery I and II from January 2020 to June 2020 and another worksheet in it that was labeled *Summary* that Roscoe Senior Regional Manager Ms. Gaines claimed contained both the Gallery I and II's totals. She said the totals of The Gallery I and II couldn't be separated since both sides were billed together⁷.

Each side of the Gallery was billed separately though, each side had their own City of Austin water bill that their tenants had allocated to them, and what Ms. Gaines actually produced in the *Summary* worksheet of her spreadsheet was only the totals from The Gallery I. I proved that to Roscoe back in February of 2021 in my *DOCKET 51619 - Reply to submissions made by The Gallery on 2/3/21* that they had only produced the totals from The Gallery I in their spreadsheet. Mind you, one would expect that this spreadsheet would have contained the Gallery II's totals at some point; it had both The Gallery I and II's occupancy info in it so it doesn't make logical sense that it would only have the Gallery I's total amount billed and not The Gallery II's as well.

They knew at that point what I was asking for, they produced it for The Gallery I, but they never did for The Gallery II. As shown in the ledger I mentioned earlier, they also had all the info on hand to supply me with this info: the totals each Gallery tenant was charged each month for water and wastewater.

In the course of trying to get this case dismissed on the grounds they had satisfied all my relief, Roscoe eventually began making claims that they already gave me the info, which was in my relief requested. Mind you, that if they provided this info it would have been an admission that Roscoe knew, or should have known, that they were overcharging tenants for water that they were taking in tenants' payments for.

So, in summary, despite Roscoe's insistence otherwise, the total amount billed to tenants for any of the months for the period I was overbilled never were provided to me until Conservice finally produced them in January of this year. And even though Conservice ended up providing it,

⁵ Item 112 on pdf page 6

⁶ Item 112 on pdf pages 8 and 9

⁷ Item 112 on pdf pages 10 and 11

Roscoe were the ones that ultimately had responsibility for it and Roscoe should be the ones held to account for it, in my view.

APPENDIX E

Note: This information can also be found in Item 119 on pdf pages 24 to 38 or, going by the numbers on the bottom of the document itself, pages 22 to 36.

PUC Rules §24.283 (d)(1) and §24.283 (b)(1) for falsifying water billing dates and shortening water billing cycles by five days on six monthly rental bills which placed Gallery II residents a month and a half behind the City of Austin bills instead of the half a month it was before.

PUC Rule §24.283 (d)(1) states:

(d) Billing period.

(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.

PUC Rule §24.283 (b)(1) states:

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public bill.

I'll start with §24.283 (d)(1) since, as I mentioned before in my discussion about Conservice's credibility on some of their recent claims regarding this matter, this violation led to §24.283 (b)(1) being violated. As I also noted in that section of my brief, Ms. Eiland pointed out this PUC Rule violation in her Written Testimony¹, but neither Roscoe or Conservice has ever acknowledged or addressed any accusations that they violated §24.283 (d)(1).

Below is a table of the water billing dates for the water charges on the Gallery II's tenants' monthly rental bills from September 2019 to May 2020. The accuracy of the info can be verified by going through the proof in my Written Testimony, but the easier way to do it is to just go to the tables that Conservice provided. First of all, one must go to Item 105 on pdf page 68 and you'll see that the water and sewer charges at The Gallery II were *Water 2* and *Sewer 2* for the new billing method that we were transitioning to and *Water 4* and *Sewer 4* for the billing method we were transitioning from. Info for the Gallery I is also in the table and from Item 105 on pdf page 67 you can see that for The Gallery I it was *Water* and *Sewer* for the new billing method and *Water 3* and *Sewer 3* for the old. In Item 109 on pdf pages 6 to 9 I placed blue plus signs besides the data that is for The Gallery II and red minus signs next to The Gallery I. In the columns in the tables in Item 109 I placed a red box around the Provider Cycle (City of Austin billing dates) and Conservice Cycle (the water billing dates on our rental bills) in the middle of table on pdf pages 7 to 9.

¹ Item 81 on pdf page 15 on line 21 to pdf page 16 on line 11

SEPTEMBER 2019 TO MAY 2020 BILLING DATES AT GALLERY II

	<u>City of Austin bill</u>	<u>On rental bill</u>
September 2019	7/16/19- 8/14/19	7/11/19-8/9/19
October 2019	7/16/19- 8/14/19*	8/14/19-9/8/19
November 2019	8/14/19-9/13/19	9/8/19-10/3/19
December 2019	9/13/19-10/14/19	10/3/19-10/29/19
January 2020	10/14/19-11/13/19	10/29/19-11/23/19
February 2020	11/13/19-12/13/19	11/23/19-12/18/19
March 2020	12/13/19-1/14/20	12/18/19-1/14/20
April 2020	1/14/20-2/12/20	1/14/20-2/12/20
May 2020	2/12/20-3/13/20	2/12/20-3/13/20

*Double-billed for City of Austin water bill paid in September 2019

The last month that the previous property management company (Valiant) and water biller (Performance Utilities) administered the billing was September 2019. Roscoe and Conservice began administering the billing in October 2019. As you can see², we got billed for the 7/15/19 to 8/14/19 City of Austin water bill twice (it's dated as 7/16/19 to 8/14/19 in the bill that Performance sent us). We got billed for it in September 2019 with the previous outfit³ and a second time in October 2019⁴ with Roscoe and Conservice. I'll show further proof of this in a bit.

Also, of minor note is the fact that Roscoe used a 7/11/19-8/9/19 water billing date on my ledger for September 2019. They may have got that date from the City of Austin bill to the Gallery I, but as I'll show later that was the only time that they used a Gallery I water billing date and they didn't use them during the period I was overbilled.

² Item 105 on pdf pages 7 to 16

³ Item 105 on pdf page 9

⁴ Item 105 on pdf pages 12 to 16

You can see the dates used in the October 2019 to March 2020 rental bills⁵ all differ from the City of Austin's and none of them are for a full month, they instead use billing cycles of 25 days. This is in violation of (d)(1) because the bills weren't for the same billing period as the City of Austin's.

What shortening the water billing cycles to 25 days accomplished was bring the complex back in compliance with (d)(1) after six months, but since we got charged a second time for the 7/15/19-8/14/19 bill we were now a month and a half behind the City of Austin's instead of a half a month behind as were when Performance did the billing. You can see it from comparing the water billing dates at the beginning of the period with each other. In November we were 25 days behind, the difference in days between 8/14 and 9/8, and that difference shrank by five days each month until we got back in synch with the City of Austin's and back in compliance with (d)(1).

Ms. Kat asked Mr. Mathews during the hearing if the fact that there were two phases (I and II) at The Gallery could have contributed to the inaccurate water billing dates and Mr. Mathews said that it could have.

Below is a list of the City of Austin water billing dates (Provider Cycle) for The Gallery I and then the cycle that was used by Conservice for the Gallery I and II tenant bills. This is found on the table⁶. As you can see, just as the cycles for The Gallery II didn't match from October 2019 to March 2020, neither do the Gallery II's match the Gallery I's for either the City of Austin bill to The Gallery I or the ones on Gallery I tenants' bills that Conservice sent them. In fact, the Gallery I's themselves don't even match and the same scam that was pulled on us was also apparently deployed over there to bill Gallery I tenants' a second time for a bill and then conceal it and get them back in compliance with (d)(1). So, I believe it is reasonable to conclude that what Ms. Kat and Mr. Mathews were referring to as being a possible culprit in this case, a mix-up between water billing dates between The Gallery I and II, wasn't the innocent cause of the billing date inaccuracies at The Gallery II or the reason for violation of (d)(1).

⁵ Item 109 on pdf pages 7 to 9

⁶ Item 109 on pdf pages 7 to 9

Gallery I

Gallery II

	<u>Provider Cycle</u>	<u>Conservice Cycle</u>	<u>Conservice Cycle</u>
October 2019	7/10/19- 8/9/19	8/9/19-9/3/19	8/14/19-9/8/19
November 2019	8/9/19-9/10/19	9/3/19-9/30/19	9/8/19-10/3/19
December 2019	9/10/19-10/9/19	9/30/19-10/24/19	10/3/19-10/29/19
January 2020	10/9/19-11/7/19	10/24/19-11/17/19	10/29/19-11/23/19
February 2020	11/7/19-12/9/19	11/17/19-12/14/19	11/23/19-12/18/19
March 2020	12/9/19-1/9/20	12/14/19-1/9/20	12/18/19-1/14/20
April 2020	1/9/20-2/8/20	1/9/20-2/8/20	1/14/20-2/12/20

Now, I'd like to refer to you to my proof that I got billed two times for the 7/16/19-8/14/19 bill⁷. In Item 105 on pdf page 9, you can see inside dashed green oval that Performance billed us for the billing cycle of 7/16/19-8/14/19 and then on the next page (pdf page 10) that we paid for it with our September 2019 rent. That's the last bill they did for us. There's a snip of a spreadsheet on top of pdf page 9 and the name of it is *9.4.19* and in the green box you can that this spreadsheet was printed on 8/21/19. You can also see on the next page that I was charged those charges in that bill for water and sewer usage of \$6.67 and \$7.94 respectively on 9/1/19. In my October rental bill water charges shown on pdf pages 12 to 16, you can see that my water charges were calculated from the 7/15/19-8/14/19 City of Austin water bill (pdf page 12), which, though it starts on 7/15 instead of the 7/16 in our last bill from Performance, is obviously the same billing period. And you see on the ledger for October (pdf pages 15 and 16) they have the sewer and water charges that were calculated from the 7/15/19 to 8/14/19 City of Austin water bill with their fixed charges added to them (0.10 for sewer and \$3.56 for water).

So, according to Performance's billing I was billed twice for the 7/15/19-8/14/19 bill.

But we don't have any other water billing info from Performance for that time period to verify it so it's only fair to take a look at what we do have to see if Performance may have used the wrong dates on the bills they sent. Though I believe that the general assumption should be that they did since they seemed to be playing it straight with the billing since the charges I got from them were

⁷ Item 105 on pdf pages 7 to 16

consistent in cost, the weight of that assumption shouldn't carry the day by itself and it still should be verified.

I'll note that if you go to Item 105 on pdf page 65 you can see an email exchange that I had with the property manager at the time shortly after I moved in and that I was being charged in May 2016 a half a month behind the City of Austin water bill and if you look at Performance bill on the top of the page before (pdf page 64) you can see that we were still a half a month behind the City of Austin bill on the last month they did the billing in September 2019. From that I think it is reasonable to conclude that Performance didn't have any financial incentive to use incorrect water billing dates and to break (d)(1) needlessly since we didn't pay them for any extra bill so they had no financial incentive to lie about the dates.

But anyway, again, it still ought to be verified and we know that one of the two things happened: Performance either did their billing using the City of Austin water billing dates they listed on their bills to us or they were a month and a half behind them and used inaccurate water billing dates. There's no way their bills could have billed us a month ahead of when they billed us because that would have meant that they were billing us for water that hadn't even been drawn yet.

The methodology I'm going to use to try to see if I can verify if Performance was using the correct water billing dates is to compare the amount that I was being charged for water usage on my bills from Performance with the overall water usage at The Gallery II for that period and then run a hypothetical that the water billing dates Performance used were inaccurate and were actually referring to the City of Austin bills from the month before. My water usage charges should correlate to what the total amount of usage at the complex since we are on allocated billing and the movements from month-to-month in my water usage charges ought to map those in the City of Austin graph for the water usage to The Gallery II.

Occupancy also can obviously affect the cost of my bills so there is an assumption made in this methodology that the occupancy changes from month-to-month weren't substantial enough to destroy the correlation between my water usage costs and the total water usage at the complex. I think this is a reasonable assumption because as you can see from the table in Item 102 on pdf pages 2 to 3 under the *Correct Occupancy Count* in Conservice's records of the occupancy at the complex from October 2019 to May 2020 that the total number of occupants never changed more than 6% month-to-month and was usually much less than that. Though that occupancy info is not actually from the period we are analyzing, I am assuming that it wasn't substantially different during the period we're looking into.

I got a table of my monthly charges for water and sewer below and some of the months that Performance did the billing: from 3/15/19-8/14/19, a period of five months, the last five months Performance did our billing. I have a copy of my Performance bills I got those figures from and I included them in my initial Formal Complaint but I didn't submit them as exhibits so I'm unsure if I can use them in this brief, but I'll work around that. I can use that table⁸ though and it says that these are the amounts I was billed for water (water and wastewater) from March 2019 to August 2019:

\$14.93	3/15/19-4/12/19	May '19 rental bill with Valiant (daily irrigation)
\$15.80	4/13/19-5/14/19	June '19 rental bill with Valiant (daily irrigation)
\$15.70	5/15/19-6/13/19	July '19 rental bill with Valiant (daily irrigation)
\$16.84	6/14/19-7/15/19	August '19 rental bill with Valiant (daily irrigation)
\$18.27	7/16/19-8/14/19	September '19 rental bill with Valiant (daily irrigation)

Those amounts include charges for water usage, fixed water costs, sewer usage, and fixed sewage costs. A few things to say about that: the sewer usage costs are capped if the water usage goes above 108,700 due to a wastewater averaging program. They use the average amount of water costs during the winter months and cap it at that. Any water usage over 108,700 gallons and The Gallery II was still billed for 108,700 gallons of wastewater and if the monthly water usage was anything less than that then the City of Austin used that lesser amount to calculate it.

Also, I'll mention that the water usage rate costs go up in the summer months. The City of Austin charges in total \$5.20/1000 gallons from July to October while the rate for the rest of the months is \$4.73. So, it's about a 10% increase in water rates in the summer.

So, if we go to Item 99 on pdf page 4 we can see the bill I've been talking so much about: the 7/15/19-8/14/19 City of Austin bill, the one we got charged for twice. On pdf page 5 are the water and wastewater charges to The Gallery II. If you go to the top left-hand corner of pdf page 5, you'll see a graph of the Gallery II's historical monthly water usage. The letters below the bar graphs are the first letter of that month and you see for this bill it has 159,300 for August, as in the bill itself. You can see below it that there is the sewage graph and you see that it capped the

⁸ Item 70 on pdf page 5

sewage water at 108,700 from May to August and that in April it was slightly less than 108,700 gallons.

Only the water usage charge on my monthly bill is actually proportional to the total water usage on the City of Austin water bills. The other three charges are fixed or semi-fixed. The water base charge is always \$3.56 and the sewer base is always 0.10 and, assuming that the occupancy doesn't change much month-to-month, the sewer shouldn't change much for the most part either since the usage is capped at 108,700 for all the months we are looking at except the April month when it is slightly below that amount.

So, I'm going to go to the August 2019 bill from Performance back in Item 105 on pdf page 64 and add up those fixed and mostly fixed costs (\$3.56 + \$7.94 (for sewer usage) + 0.10) which adds up to \$11.60. I subtracted that amount from all of the water costs above and got this as an approximation of the water usage costs for those months:

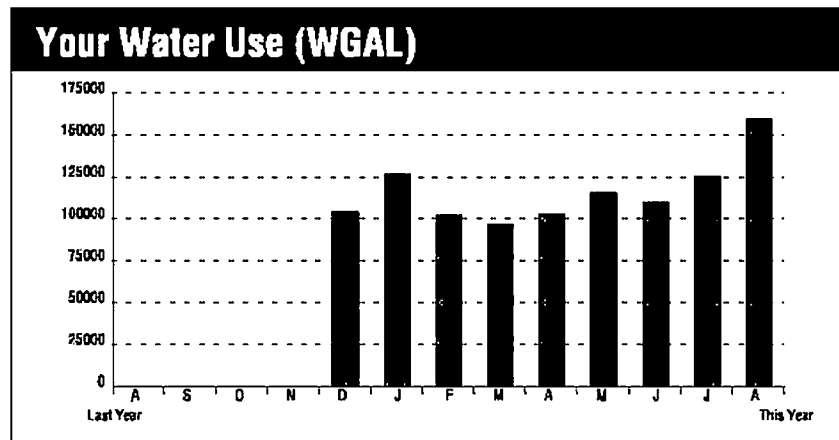
<u>Performance Billing Dates</u>	<u>Water Usage Charge</u>
3/15/19-4/12/19 (April)	\$3.83
4/13/19-5/14/19 (May)	\$4.20
5/15/19-6/13/19 (June)	\$4.10
6/14/19-7/15/19 (July – summer rates)	\$5.24
7/16/19-8/14/19 (August – summer rates)	\$6.77

I'm going to refer to the billing date periods to the month they end on, like is done in the City of Austin graphs, so for example I'll call April the billing period of 3/15/19-4/12/19. Again, I'm going to also be running the hypothetical that the water usage charges on my water bills were actually lagging the billing dates that Performance used on my bills, so I created this below to list what the billing dates for the water usage charges would be for each scenario:

<u>Performance's Months</u>		<u>Water Usage Charge</u>		<u>Month Behind Performance's Months</u>
April	←	\$3.83	→	March
May	←	\$4.20	→	April
June	←	\$4.10	→	May
July (summer rates)	←	\$5.24	→	June
August (summer)	←	\$6.67	→	July (summer)

Next, I am going to look at the City of Austin water usage graph I mentioned earlier that's in Item 99 on pdf page 5 and note the changes in water usage on it from month-to-month for the period I will be evaluating using both scenarios:

Water Usage Graph for The Gallery II found in the 7/15/19 to 8/14/19 bill



**Current
Month**

Month-to-Month Water Usage Movements

March-April: Slight increase in water usage

April-May: 10% increase in water usage

May-June: 5% decrease & June > April

June-July: 10% increase + summer rates

July-August: 20% increase

First, we'll check to see if the graph supports the assumption: that Performance used the right dates which I do in the table below:

Assuming Performance Billing Dates Matched the City of Austin's

<u>Month-to-Month Water Usage Movements</u>	<u>City of Austin Bill</u>	<u>Water Usage Charges</u>
	April	\$3.83
April-May: 10% increase in water usage	→	+
	May	\$4.20
May-June: 5% decrease & June > April	→	+
	June	\$4.10
June-July: 10% increase + summer rates	→	+
	July	\$5.24
July-August: 20% increase	→	+
	August	\$6.67

In April, we got \$3.83 and then in May we got \$4.20 and there is an increase of water during that period too on the graph so that matches. Next, we look at June and we see that there was a slight drop in June in my water costs (\$4.10) and that on the graph the water usage drops a little more than we might expect, but is still in the right direction. June is probably a month that a lot of leases are up so maybe the occupancy dropped significantly and that's why my bill didn't drop as much as expected. Also, the water usage in June (\$4.10) is more than in April (\$3.83), so it checks with that. Next, we look at the July costs and we see that we got \$5.24, so we'd expect an increase in usage between the two months and there is. Also, in July we start using the greater rate of \$5.20/1000 gallons. From the graph, we'd also expect a fairly significant increase in water usage from July (\$5.24) to August (\$6.67) and we have that in our bills so that sequence checks as well. It all checks out then for the hypothetical that Performance was using accurate water billing dates on the bills they sent us.

Now let's see how it would work if Performance fudged the dates on the bills they sent us and was actually billing us a month and a half behind and see if it correlates with the graph:

Assuming City of Austin's Lagged Performance Billing Dates

<u>Month-to-Month Water Usage Movements</u>	<u>City of Austin Bill</u>	<u>Water Usage Charges</u>
	March	\$3.83
March-April: Slight increase in water usage	→	+
	April	\$4.20
April-May: 10% increase in water usage	→	X
	May	\$4.10
May-June: 5% decrease & June > April	→	X
	June	\$5.24
June-July: 10% increase + summer rates	→	+
	July	\$6.67

We start off in March and get \$3.83 and then move on to \$4.20 in April and there is an increase in water usage between the two months so that checks. Next in May we'd expect the water usage to stay about the same because the water charges slightly decreased to \$4.10 but we see that there is about a 10% increase in water usage and yet the costs went down from the previous month. That doesn't check. Next, we go to the \$5.24 bill for June, which we would expect to predict a higher water usage. This \$5.24 bill would now also still be on the \$4.73 rate since it is before the summer rate increase in July. But we see that there's a noticeable drop in the water usage instead of a significant increase. So, that doesn't check either. Then, we check the if there is an increase from June to July because we have \$6.67, which is being billed at the summer rate of \$5.20/1000 gallons, and we see that there was a notable increase in water usage so that checks.

Altogether, for the hypothetical that the City of Austin water billing dates actually lagged Performance's by a month, it was 50-50 that it would correlate with the water usage, about the odds of a coin flip, and some of the ones that were wrong were significantly off. So, when we

run it through the hypothetical of Performance lying on their billing dates and violating (d)(1) for no good reason, it doesn't correlate.

In contrast, assuming that Performance used the right dates produced a 100% correlation between the movements in the amount I was billed and that of the water usage at the complex.

So, the totality of it all tells us that there's no logical reason to believe that Performance wasn't using the correct billing dates on their bills.

I'll also note that I still have my January 2019 bill from Performance and I can provide that as well, if needed. I didn't include it in my submissions to the docket because I didn't have the mid-January to mid-March bills and I wanted only to use successive bills. That January bill, if it is consistent with the billing dates that Performance used should have greater water usage than the 3/15/19 to 6/13/19 bills since the water usage is notably higher for January. Also, compared to July, which has slightly lower water usage my January water usage charge should be slightly more than what the 6/14/19-7/15/19 bill, which used the summer rate. After adjusting the cost of the July bill by $4.73/5.2$ to discount it from the summer rates ($5.24 \times 4.73/5.2$) we get \$4.77. Therefore, the January bill ought to have a water usage charge on it slightly above \$4.77.

So, whatever notes in Conservice's system that Ms. Kat referred to during the hearing about Performance "doing things incorrectly"⁹, shouldn't have to do with Performance using the incorrect water billing dates because the water billing dates they were using were exactly what Performance said they were.

Also, it is not "all good" by any means if Conservice took it upon themselves to correct something like that anyway, even if there were notes in Conservice's system that Performance had done something incorrectly, because Conservice had no right to violate PUC Rules to correct it. And what they did to tenants like me, since we got billed twice for the same bill which pushes out our bills a month and a half, was tack another water bill on us even though we'd paid for water for every month we lived here. And now, the way it's currently set up, I'll still have a water bill to pay a month after I move out. So, not only did Conservice have no right to break PUC Rules to correct anything, they also had no right to charge tenants for an extra bill and push out their water billing a month and leave them with a lagging bill to pay after they move out.

⁹ 56:45 mark at 473-22-2652_HOM_1 which is the first tape of the hearing

Transitioning on to the Respondents' violation of (b)(1), I think it's indisputable that bills are not being rendered as soon possible when taking into account that Performance had rendered them to us within a half a month for the previous three and a half years, as supported by my 7/16/19-8/14/19 bill from Performance and my email to the complex's former manager shortly after I moved in, back in May of 2016¹⁰. The Respondents don't concur though and point towards the complexities of the task (Conservice) and the impossibilities of it (Roscoe) but water billing didn't get any more complex between August and September of 2019; the only noteworthy occurrences with our billing was that Conservice started doing the bills on behalf of Roscoe and they charged us a second time for a bill. And despite Roscoe's heated insistence that it is simply humanly impossible to bill tenants within a half a month of receiving the City of Austin bill, Performance Utilities pulled that rabbit out of their hat monthly for over three years so they proved that it was indeed possible.

PUC Rule §24.283 (b)(1) states:

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public bill.

The Respondents have latched onto the term "promptly" to debate (b)(1), but rarely, if ever, include the implications of the "as possible" part of it. Performance repeatedly proved it was possible to bill us within a half a month of the City of Austin bill.

To keep in line with PUC Rule §24.283 (h), which states that the due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, Performance would get their bill to us before the beginning of the month so that we could pay it with our rent if we liked, but the charge didn't get posted to our account until after the 16 days. So, it really wasn't due until the 9th of the month or so but most folks, like myself, just paid it with their rent so they didn't have to remind themselves to pay the water by itself.

So, the Respondents are guilty of violating §24.283 (b)(1) as well. Both Conservice and Roscoe, since Conservice made a false representation to us and Roscoe approved the bills. Both Roscoe

¹⁰ Item 105 on pdf pages 64 and 65

and Conservice, by the way, had the City of Austin bills too which had their service dates on them.

As far as which of the Respondents was actually responsible for putting the inaccurate water billing dates on the bills Conservice sent us on Roscoe's behalf, Ms. Kat said that Roscoe had the opportunity to change the water billing dates after the bills were calculated but before they were sent¹¹. Mr. Mathews, however, had a different view and said that Roscoe would have never had access to them¹², though, it must be noted, Mr. Mathews did not bill The Gallery either so he can't vouch for how the particular contract worked between Roscoe and Conservice for billing The Gallery. Also, I'll note that Roscoe did the drainage billing themselves in house and the incorrect water billing dates were also on them¹³ and one might assume that if Roscoe did the drainage billing they would have also have provided the billing dates for the drainage billing.

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I think it's worth taking some time to think about what actually happened due to the second billing of the 7/15/19-8/14/19 City of Austin water bill. If you go back to the City of Austin 7/15/19-8/14/19 water bill in Item 99 and look at pdf page 4, on the first page of the bill, and look right below the Total Amount Due after the summary of the charges on the right you'll see that an Electronic Autopayment was setup. It also says the same on the third and second lines up from the bottom right of the page: *Do Not Send Payment. Your Bill is Scheduled for Electronic Payment on 09/03/2019.*

Now if you go to the original City of Austin for water bill for 8/14/19-9/13/19 bill in Item 108 in 51619_108_1270455 on pdf page 60, which is the one after the one we just talked about, you'll see that the 7/15/19-8/14/19 bill got paid and if you look in that same area of the payment page as the one before (right below the Total Amount Due and on the bottom right of the page) for the autopay you can see that there is no autopayment setup. To me, that supports the notion that the previous crew, Valiant and Performance, had autopay set up and paid that bill before they left.

¹¹ Item 100 on pdf page 5 on lines 1 to 7

¹² Starting at 08:00 mark at 473-22-2652_HOM_2 which is the second tape of the hearing

¹³ Item 109 on pdf page 9 for Oct-19, see dates for *Drainage 4*

So, there was no City of Austin bill to pay a second time obviously so where did the money go that we paid when we got billed for it the second time? It had to have been all pure profit because the bill was paid off so there was no third party to pay, or the owner, or anyone else. It was fair amount of cash too. If you only count The Gallery II, and don't even include drainage, which also got billed twice, just at The Gallery II alone it was around \$2K. I found that by adding up the *Water Base Charge 2*, *Water 2*, *Water 4*, *Sewer Base 2* and *Sewer 2* that are in the October 2019 table¹⁴ in its *Billed* column and it comes to \$1,955.88.

So, who got that money? Well, I am going to refer you back to that ledger in Item 110 on pdf pages 10 and 11 and you can see that money flow for the charges went through Roscoe's system. Where it went from there, I don't know. We just know Roscoe had their hands on it at some point and that it either went into their pockets or the owners that paid them to manage the place.

As I mentioned earlier, placing tenants a month and a half potentially benefits property managers and landlords in other ways as well. One thing it does is provide an opportunity for a property management company or landlord to bill new residents for an extra bill by billing them for water after their first month renting at the complex, like most properties do, though in fact it would be for a water billing period that the renter didn't actually reside at the complex. So, the tenant would have an extra water bill waiting for them after they ended their lease even though they'd paid for water during the entire course of their lease.

Potentially the worst part of that is that if an ex-renter doesn't disconnect their autopay after they move out it could potentially empower a property management company to tack on move-out charges in excess of the security deposit, charges that the property manager should have to file a lawsuit to obtain, just by adding a move-out charge to their bill and then drawing the bill payment from their credit card or bank account. A credit card or bank account isn't going to restrict the release of funds due to the limits on a security deposit it's unaware of. In that scenario, the ex-renter would now have the burden of proof in court to get their money back when it should be on the property manager or landlord to sue them if they want to charge them for move-out costs that exceed their security deposit.

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¹⁴ Item 109 on pdf page 9 on bottom half of the page

A few more notes on the PUC Rule violations involving billing dates. First of all, at the very beginning of Ms. Eiland testimony¹⁵ at the hearing she mentioned that she was retracting the claims she made in her Direct Testimony that the due dates on the bills were short of 16 days of when they were delivered. She referred to it as PUC Rule §24.283 (b)(1). What she was actually referring to though was PUC Rule §24.283 (h), not (b)(1) as she identified it as at the hearing and in her Direct Testimony¹⁶. Ms. Kat also, referring to Ms. Eiland's Direct Testimony in her rebuttal testimony also pointed to it incorrectly as (b)(1) when it is in fact (h) that she was referring to¹⁷.

PUC Rule §24.283 (h) states:

(h) Due date. The due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following work day will be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.

Lastly, Ms. Kat asked Ms. Eiland at the hearing about §24.281 (e)(3), which in part states:

“If a tenant moves out during a billing period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.”

I just want to mention that the operative word in that is that the owner “may” calculate a final bill before the tenant moves out, which isn't the same as having to. If your water bill obligations end when your lease ends, like it was before Roscoe and Conservice arrived, a property manager or landlord doesn't have any hook into your autopay after you leave because your business relationship with them ends when your lease ends.

¹⁵ Starting at 36:00 mark at 473-22-2652_HOM_2 which is the second tape of the hearing

¹⁶ Item 81 starting on pdf page 15 line 21 and ending on pdf page 16 line 11

¹⁷ Item 95 on pdf page 3 in last paragraph

APPENDIX F

Note: This information can also be found in Item 119 on pdf pages 39 to 62 or, going by the numbers on the bottom of the document itself, pages 37 to 60.

PUC Rule §24.281 (e)(2)(A)(iv) for using understated numbers for total numbers of occupants and total occupied space in the equations used to calculate my water and wastewater usage bills.

PUC Rule §24.281. Charges and Calculations. (e)(2)(A)(iv) states:

(e) Calculations for allocated utility service.

(2) To calculate a tenant's bill:

(A) for an apartment house, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion must be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house;

One of the larger lessons that I think can be drawn from the PUC Rule violations involving the falsified billing dates is the brazenness of the Respondents. The proof of what they did was left in the billing statements they sent us; they all have the incorrect dates. So, in a sense, they left themselves exposed, there was no way to cover it up, and if called on it, one of the few, and perhaps only, ways to claim innocence on it would be to claim that it was done to correct something from the previous water biller.

In those regards, the largest lesson that I believe can be learnt from the Respondents' violation of PUC Rule §24.281 (e)(2)(A)(iv) is Conservice's complicity in overbilling Gallery II tenants for a public utility.

As I'm going to show, from their own records it can be determined that one of three things occurred:

1. Conservice's software program that they used to calculate our bills was programmed such that all that it required for landlords and property managers to profit off of billing for a public utility is to input, or have inputted, understated occupancy figures into the program for *Water 4* and *Sewer 4* because the program was coded so that its checks wouldn't flag the overbilling and instead would enable it.

OR

2. Instead of having the software program coded to do it automatically, Conservice themselves input data into the program that allowed the overcharges to get through their system and, after Roscoe's approval, be sent to tenants.

OR

3. Conservice allowed Roscoe access to the program in some way such that Roscoe had the power to input data that would allow the overcharges to pass through Conservice's quality process and get sent to tenants.

So, no matter how you cut it, any of them three mean that Conservice knew, or should have known, that their quality process would allow overcharges to get through their system and, after Roscoe approved it, churn out bills that overcharged tenants for a public utility that arrived to tenants from Conservice's server with Conservice's name and logo on them.

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As mentioned earlier, I've been pointing out to Roscoe and Conservice that they had overcharged Gallery II tenants through the use of incorrect occupancy counts since February 9, 2021, when I filed my *DOCKET 51619 - Reply to submissions made by The Gallery on 2/3/21*. Here are the occupancy counts¹ that I derived from *gl070 – 3506 Highlighted final summary – 9.4.19.xls*, a spreadsheet that Roscoe submitted in the Item 10 ZIP folder:

¹ Item 70 on pdf page 13

SEPTEMBER 2019 TO MAY 2020 OCCUPANCY INFO

	<u>Occ. in billing</u>	<u>Actual Occ.</u>	<u>Occ. space in billing</u>	<u>Actual Occ. space</u>
Sept. 2019		101*		
Oct. 2019	78		42,459	
Nov. 2019	78		42,459	
Dec. 2019	70		38,877	
Jan. 2020	68		35,447	
Feb. 2020	60	99	31,387	51,616
March 2020	55	106	28,978	53,874
April 2020	50	112	25,636	55,310
May 2020	44	114	22,900	56,698

*Derived from *gl070 – 3506 Highlighted final summary – 9.4.19.xls* found in Item 10 ZIP folder

Like I mentioned earlier, this past January Conservice finally confirmed that this rule was violated and claimed that they sent Gallery tenants a notice admitting that there were incorrect occupancy figures used to calculate our bills.

In January, Conservice also made a claim that the billing calculations error involving the incorrect occupation data was due to the data being pulled incorrectly² and then Mr. Mathews added at the hearing that there were data saving problems that led to the miscalculations and that Roscoe actually provided the correct occupancy figures and had nothing to do with the error or the data pulling and/or saving problem³.

² Item 102 on pdf page 4 in first paragraph

³ Starting at 32:20 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

Like I mentioned earlier, there were two billing methods used and one of them actually did render accurate bills. So, it's fair for Roscoe and Conservice to point out that one of the billing methods actually produced accurate bills and say that supports their contentions that the overcharges were just due to an innocent data pulling and/or saving error and that they intended to charge all tenants correctly.

But the ultimate question though is why didn't their quality process catch it? That's something that their quality checks should have flagged: a data pulling error of occupancy figures that resulted in overcharges from October 2019 to July 2020. Some of these overcharges were fairly large as well, I was paying over two and half times what I legally owed for water in May 2020 and their system still did not catch it.

When I questioned Mr. Mathews about that he pointed out that he wasn't directly involved in the billing but his guess would that Conservice's quality process missed it and that also the secondary check on it, a manual one done by a Conservice employee, also must have whiffed on it. He stated that the software system itself may have missed it due to some confusion about the fact that there were two phases to The Gallery, I and II.

I'd like to discuss that table again that I referred to earlier in Item 100⁴. As I mentioned, that table has the totals that Gallery II tenants for each billing method (*Water 2* and *Water 4*) and Gallery I tenants as well for that matter (*Water* and *Water 3*). This has the information in it that I asked Roscoe for that Roscoe never provided: the total monthly amounts billed to all tenants for water and wastewater for the period in question.

I mentioned during the hearing that the data on that table correlates to data in the spreadsheet that Roscoe sent me in February, which Roscoe claimed contained both The Gallery I and II total amounts billed mixed together since they were supposedly billed together. I showed that wasn't the case many times in this case⁵, that despite the fact that the spreadsheet also had worksheets of both the Gallery I's and II's occupancy info, that those totals billed tenants that were provided in the spreadsheet were only for The Gallery I and not The Gallery II⁶.

⁴ Item 100 on pdf pages 8 to 11

⁵ Item 70 from bottom of pdf page 44 to end of pdf page 46

⁶ Item 71 on pdf pages 103 to 117

At the hearing, after I mentioned that data in the table correlated with the spreadsheet that Roscoe had sent me in February 2021, Mr. Edmunds was quick to jump on that and make the connection that the aforementioned spreadsheet had the total amount billed to Gallery II tenants. So, I want to clarify exactly what information correlates between the two.

If you go to that table in Item 109 on pdf 6 and take the *Billed* amount for *Water 2* (3rd column from the right), for instance, which in May 2020 was \$755.25, and you divide that amount by the number of bills (apartments) that used that billing method (63 for May 2020 in *# of Bills* column), then you get an average ($755.25/63$) and that average is \$11.99. Now if you go to the spreadsheet that Roscoe sent me in February 2021 and go to the *05.2020* worksheet in that spreadsheet and go to cell A243 you will find this: *Avg. Water 2 this Month : \$11.99*.

So, that's one way the data between the table that Conservice provided in January 2023 and the spreadsheet that Roscoe provided in February 2021 correlates. The monthly water and sewer usage charges in the table can be averaged and those averages show up in the spreadsheet in the worksheet for that month.

This holds for all the water and sewer charges, by the way, if you divide them up and get the average, they'll match with what you'll find in the spreadsheet. For instance for *Water 4* in May 2020, you have \$1030.05 billed and if you divide that by the number of bills for that month (*# of Bills*) that used that billing method (30) you get \$34.34, which is shown in cell A245 on the same worksheet in the spreadsheet as: *Avg. Water 4 this Month : \$34.34*. Note the difference between what apartments were being billed for water between the two methods: one was being billed roughly almost three times as much as the other for the same City of Austin bill. This is something that I would have hoped that Roscoe and/or Conservice would have noticed when they were checking for billing irregularities, but they didn't.

Another way that the table and the spreadsheet correlate is found in the *Summary* worksheet of that spreadsheet (the table is also in the email that Ms. Gaines sent me in Item 112 on pdf page 10), which I have stated many times only has the totals for The Gallery I.

Using the May 2020 table again in Item 109 on pdf page 6, if we go to it and add up the *Billed* for *Water* (\$373.10), *Water 3* (\$512.86), and *Water Base Charge* (\$82.68) we get \$968.64 and you'll find that figure in the *Summary* worksheet under Total Billed Amount for Water for the

month of May. Similarly, if we go to the table and add up *Sewer* (\$716.48), *Sewer 3* (\$984.72), and *Sewer Base* (\$7.83) we get \$1709.03, which is also found for May in the *Summary* worksheet in the spreadsheet under Total Billed Amount for Sewer.

Similarly, if you add up the Total Expenses for *Water* (\$903.43) (or *Water 3*, for that matter, since the charges both come from the same City of Austin bill to The Gallery I) and the *Water Base Charge* (\$108.40) you get \$1,011.83 in the worksheet for May under Total Expense for Water. Similarly, if you add the *Sewer*, or *Sewer 3*, City of Austin charge to The Gallery I (\$1,734.28) to the *Sewer Base* (\$10.30), you get \$1,744.58, which is found in the worksheet for May under Total Expense for Sewer. Note though that neither of these totals include the 25% deducted from the water and sewer bills to produce those totals in the worksheet so it's not really a comparison of what Gallery I tenants were charged for water and sewer to what they actually should have been charged because the Total Expenses in the spreadsheet Roscoe provided are the full amount for water and sewer usage costs to The Gallery I without the common area deduction. After taking the 25% deduction into account, Gallery I tenants were collectively overcharged for every one of those months.

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Getting back to the table that Conservice provided in Item 109 that runs from pdf pages 6 to 9, I want to go over the information in it to explain what the data in each column in the table is.

Before I start, I want to point out that any of my comments that apply to *Water 2* and *Water 4* also apply to *Sewer 2* and *Sewer 4* since *Water 2* and *Sewer 2* use the same allocation formula and *Water 4* and *Sewer 4* use the same one too though the amounts that are divided up in them are different since water and sewer usage charges are different on the monthly City of Austin bills to the Gallery II.

Utility - As I showed earlier⁷, Gallery II tenants were billed for either *Water 2* (new billing method) or *Water 4* (old method with occupancy). For The Gallery I, it was *Water* and *Sewer* (new method) and *Water 3* and *Sewer 3* (old method). I'll note also that for the fixed charges that Gallery II tenants were billed *Sewer Base 2* and *Water Base Charge 2* and for Gallery I

⁷ Item 105 on pdf page 68

residents it was *Sewer Base* and *Water Base Charge*. The names of all these charges are also what they were named on the monthly bill that I received from Conservice.

Method – For the *Water 2* it is the new method and it is named *CustMult*. For *Water 4* (old method) it was *Oc50/Sq50*. For *Sewer Base 2* and *Water Base Charge 2*, which are fixed charges, they use *Admin* as their *Method*. The two fixed charges are calculated very simply, the numbers of bills (*# of Bills*), which is the number of apartments being billed, is divided by the total number of apartments, occupied and unoccupied at The Gallery II, which is 103.

of Bills – For *Water 2*, *Water 4*, *Sewer 2*, and *Sewer 4* this is the number of apartments that are billed using those methods. You'll see that *Water 2* and *Sewer 2* each have the same number of bills and *Water 4* and *Sewer 4* each have the same number of bills. The *Sewer Base 2* and *Water Base Charge 2* number of bills (the fixed charges for The Gallery II) are the number of bills for *Water 2* plus the number of bills for *Water 4*. There weren't separate billing methods for the fixed charges. Every apartment just got charged 1/103rd of the bill.

Method Pen – Mr. Mathews called this the Method Penetration. I am going to spend quite a bit of time on this. What this is, or should be, for *Water 2* and *Water 4* is some sort of percentage of the portion of the tenants that are using each method because the *Method Pen* is actually used in this table as a check to make sure that tenants using a particular billing method are not being overcharged. Since two methods are being used there are two sets equations allocating those costs so there is a danger that tenants might be charged too much if the occupancy figures used in either of those calculations are incorrect. And, as we know, the occupancy figures used for the calculations for *Water 4* were incorrect and understated. The *Method Pen* should have acted as a check on that, if it was set correctly.

The *Method Pen* is multiplied by the total water charges that tenants are supposed to have allocated to them (*Billable To Residents*), which is simply the water usage costs to the complex with the 25% common area deduction, essentially 75% of the water usage costs to the complex, to arrive at the *Expected Based on Pen*.⁸

Mr. Mathews claimed in the hearing that the *Method Pen* is some sort of ratio of the occupied to unoccupied apartments. I repeatedly asked him about this in regards to the *Water 2* and *Water 4* charges and he was adamant that that was the case, but it doesn't make any sense that any ratio that factors in vacant apartments would be used to determine how much water usage charges tenants should be charged for an allocated cost. The water usage is supposed be allocated among

⁸ Item 105 on pdf page 69

the tenants that *used* the water. So, the best I can figure is that Mr. Mathews maybe was confused and mistook the *Method Pen* that should be used for the fixed charges, which does take into account a ratio of the occupied apartments to the total number of apartments.

I'll also mention that the sum of the *Method Pens* used in the *Water 2* and *Water 4* should equal 100% so that tenants are not billed more than the entire bill to the complex. If the sum of the two is over 100% then that means that Conservice's quality process may be unable to catch overcharges.

Billable Expense and *Total Expense* – Each of these columns have the same numbers in them for water and sewer charges. You can see that this number is also the same for *Sewer 2* and *Sewer 4*; as well as *Water 2* and *Water 4* as it is the same City of Austin bill that the allocation equations of each method are using. Also, for the *Water Base Charge 2* it is always \$367.10 every month, the costs of the Water Customer Charge (\$75.10) plus the Fixed Charge (\$292.00) on the City of Austin bill. For *Sewer Base 2* it is always the Sewer Customer Charge (\$10.30).

Provider Cycle and *Conservice Cycle* – As we went over before, these are the billing cycle of the City of Austin bill (*Provider Cycle*) and the billing cycle that Conservice used (*Conservice Cycle*). As you can see from pdf pages 7 to 9, I placed blue pluses to the left of these two columns for the dates used by The Gallery II and red minuses next to the dates used by The Gallery I and you can see that the *Provider Cycle* and *Conservice Cycle* don't match from October 2019 to March 2020.

CAD – This is the common area deduction and it is 25% for *Sewer 2*, *Water 2*, *Sewer 4*, and *Water 4*. It is zero for the fixed charges as there is no common area deduction for them.

Billable to Residents – This is the amount found in the *Billable Expense* column, with the 25% CAD deducted from it. So, for *Water 2*, *Sewer 2*, *Water 4*, and *Sewer 4* it is 75% of the *Billable Expense*. You'll find that the amounts in this column for *Water 2* and *Water 4*, and *Sewer 2* and *Sewer 4*, are the same. I want to clarify that the Billable amounts used for *Water 2* and *Water 4*, and *Sewer 2* and *Sewer 4*, are not added up to determine the amount that should be billed to tenants. The identical numbers found in the column for *Water 2* and *Water 4*, and *Sewer 2* and *Sewer 4*, are each the total *Billable to Residents* from the City of Austin bill to the Gallery II.

Note: I am going to be using this term '*Billable to Residents*' throughout the rest of the document. What it is again is the amount that was the *Billable Expense* to the Gallery II, which

was the total monthly cost for the water usage at the complex, with the 25% deducted from it for the common area deduction that the landlord is financially responsible for by PUC Rules.

Billable to Residents is essentially 75% of the *Billable Expense*.

Expected Based on Pen – This is the *Method Pen* multiplied by the *Billable to Residents* (see Item 105 on pdf page 69). What it should amount to is the limit that tenants that used the particular billing method should be collectively charged. This is part of the check to make sure that tenants are not being billed too much. If the *Method Pen* was correct on both the *Water 2* and *Water 4* and added up to 100%, then the sum of the two *Expected Based on Pens* used in *Water 2* and *Water 4*, and *Sewer 2* and *Sewer 4*, would not exceed the *Billable to Residents*, but as you can see for all the months they did (Ex. May 2020 – *Water 2* is \$781.21 and *Water 4* is 1030.05 and the two equal \$1,811.26 which exceeds the \$1,230.64 for *Billable to Residents* for *Water 2* and *Water 4*) so Conservice's table allowed for more money than what should have been billable to Gallery II tenants which led to the overcharges that made it through Conservice's quality process. Again, the *Expected Based on Pen* is the maximum total amount that Conservice should have legally expected to have recovered from tenants that had their water bills calculated using that method. Anything over it should mean that the tenants being billed on that method are being overcharged.

Billed – This is the total amount that all tenants paid who were billed by that method and if you add up the amounts for *Water 2* and *Water 4*, and *Sewer 2* and *Sewer 4*, it was greater than the *Billable to Residents* every month and proof that Gallery II tenants were overcharged.

% of Total Expense Recov'd – This is the total amount that was *Billed* to tenants for the charge divided up by the *Billable Expense*, which is the water charges without the 25% of the cost deducted for the common areas that the owner is supposed to pay. So, this percentage does not take into account the *CAD* and doesn't provide a comparison of what tenants actually should have been charged to what they were for *Water 2* and *Water 4*.

% of Expected Recov'd – The total amount *Billed* divided by the *Expected Based on Pen*. This is literally the amount that tenants were billed for that billing method divided by what Conservice should have expected to have recovered from tenants being billed by that method.

Mr. Mathews claimed several times at the hearing that Conservice didn't look too closely at this during Conservice's quality process, but this figure is logically what should be used to check if tenants who are being billed by this method are being overbilled. It's in the name, *% of Expected*

Recov'd. But it only works as a check if the *Method Pen* is reflective to what percentage of the community are being billed by the method.

% of Billable Recov'd – This column is only shown on pdf pages 10 to 13 in Item 109; I cut it off the tables on pdf pages 6 to 9. This is the *Billed* divided by the *Billable to Residents*. Again, the *Billable to Residents* is simply the total water usage minus the 25% common area deduction. Mr. Mathews claimed that this is the column that was looked at by Conservice more closely than the *% of Expected Recov'd* column but that doesn't make any sense when you are billing part of the complex using one billing method and one for the other. Because of that you could have 83.7% in this column, as it was for May 2020 for *Water 4*, but you'd still be overbilling if you were only billing say 32.26% of the occupied apartments using that method, as was happening in May 2020 for *Water 4* (30/93)⁹. That would mean that you charged about 30% of the complex the amount of 80% of the bill. Where that should flag, if the *Method Pen* was accurate, would be in the *% of Expected Recov'd* column because that would be over 100% in that instance.

In May 2020 about 30% of the complex got billed 80% of what all tenants at The Gallery II should have been billed. If the *Water 4 Method Pen* reflected the portion of the complex that used that method then while the *% of Billable Recov'd* would read around 80%, which according to Mr. Mathews would not raise a flag, while the *% of Expected Recov'd* would be well over 200% which would indicate that tenants that were being billed using that method were being overcharged.

Example: If half of the complex was billed by the *Water 4* method, the *Method Pen* should be 50% for *Water 4*. If the *Total Expense* for water usage to the complex was \$800; and the *CAD* was 25%; then the *Billable to Residents* would be \$600 ($\$800 \times .75$) and the *Expected Based on Pen* would be \$300 (\$600 multiplied by 50%). If the total amount billed to tenants that used the method for *Water 4* was \$480 for some reason, such as understated occupancy figures being used, that would mean that the *% of Billable Recov'd* was 80% ($\$480/\600) and no flags would be raised by that, but the *% of Expected Recov'd* would be reading 160% ($\$480/\300) and that would indicate that tenants on that billing method were being overcharged.

Old Bills Used – This column is the last column in the tables, but all there is in that column for each charge is FALSE, which I assume means if Old Bills were used, which they obviously weren't, so that column has no value in our discussion. I cut this column off of all my Exhibits that use this table.

⁹ Item 109 on pdf page 71

Before I get into how the water and sewer usage overbilling should have been caught in Conservice's system from the data in that table and why it wasn't, I want to emphasize first how easy it would have been to detect the fact that Gallery II tenants were being overbilled.

First of all, both Roscoe and Conservice had access to the amounts we were billed and how much tenants should have been billed, which was simply the costs of the water usage to The Gallery II with 25% of it deducted for the common areas, essentially 75% multiplied by the water usage at the complex. So, they each had all that data available to them. They both got the City of Austin bill and apparently Conservice sent Roscoe the community cost¹⁰ that provided the total water usage costs with the 25% deducted.

Mr. Mathews made several mentions that the "system" was unable to recognize that tenants were being overbilled. The term "system" in this context means the billing software, in my view. The software would have recognized that tenants were being overbilled if it did one simple thing: add up the monthly amounts that Gallery II tenants were charged for *Water 2* and *Water 4* and compare them to the *Billable to Residents* for *Water 2* or *Water 4*. A water billing company that proclaims it's "the largest utility management provider in the nation"¹¹ and refers to themselves on their bills as "The Utility Experts" shouldn't be so obtuse that it wouldn't occur to them to check this.

Conservice has also talked plenty about the supposed complexities in the billing caused by the fact that there were two phases to The Gallery, I and II. But even if they added up the water charges to everyone, Gallery I and II, and compared them to the sum of the *Billable To Tenants* for the Gallery I and II that would have shown that we were getting overbilled because both The Gallery I and II were overbilled every single month like clockwork.

So, even if Roscoe and/or Conservice got totally confused by the fact that there were two phases here, they could have just added up the amounts billed to *all* the tenants on *both* sides and no matter which way they did it they'd have found that they were overbilling.

¹⁰ Item 67 on pdf page 12 from lines 15 to 23 with table on pdf page 14

¹¹ Item 49 bottom of pdf page 5

Getting back to the table in Item 109. Please go to the bottom of pdf page 13. The table from pdf pages 10 to 13 are a copy of the one that runs on pdf pages 6 to 9 except that it also has the *% of Billable Recov'd* column on the far right and different markings on it. It, like the other one, runs chronologically in reverse. I placed green pluses next to the *% of Expected Recov'd* for the *Water 4* and *Sewer 4* and a brown plus for the *Water 2* and *Sewer 2* on the table because I just want to focus on that now.

For October, at the bottom of pdf page 13, you can see that the *% of Billable Recov'd* in the column on the far right for *Water 4* is 99.99% and then you'll see that it is 19.87% for *Water 2*. What that means is that Gallery II tenants were billed for 119.86% of the bill, which means that we were collectively overbilled by 19.86%. You can see it in the sum of the amounts *Billed* in *Water 2* and *Water 4* ($\$621.24 + \$123.45 = \$744.69$) is greater than the *Billable To Residents*, which is \$621.28. As I mentioned earlier, this was just the start, we got overcharged every month, and the overbilling in October 2019 would have been the least of the monthly overcharges if not for the fact that we were overcharged for the *entire* amount tenants paid on that bill because we'd already paid it the previous month.

When I asked Mr. Mathews during the hearing how he would detect that an overcharge occurred on this table he said that he'd check to see if the *% of Billable Recov'd* for any of the billing methods was over 100%. But, as you can see, that doesn't detect an overbill when there is more than one billing method being used and doesn't take into account that the sum of the *% of Billable Recov'd* for the methods is over 100%. The strongest example of this is the billing for May 2020 on the top of pdf page 10. There is a *% of Billable Recov'd* of 83.69% for *Water 4* and 61.37% for *Water 2* which means that Gallery II tenants were *Billed* for 145.07% of what they collectively owed for water usage that month and the "system" did not catch it and apparently neither did the manual checks done by Conservice employee(s).

This also sheds a brighter light on the faulty premise in Mr. Edmunds' arguments that the amount allocated in the old billing method is the same as what tenants were billed for. For May 2020, you add up the *Billed* for *Water 2* (\$755.25) and *Water 4* (\$1,030.25) you find out we were billed \$1,785.30 in total, but if Mr. Edmunds was applying his argument to the May billing he'd be pointing to amount in *Billable* (\$1,230.64) and insist that's all we could have possibly been

billed for, though that number is also actually being used to allocate water costs for another billing method so the \$1,230.64 doesn't necessarily, and didn't, limit the total amount that could be billed tenants. In fact, since that figure Mr. Edmunds would be pointing to is being used in two sets of billing methods, it's theoretically possible that tenants could have been billed twice of \$1,230.64, over \$2,000.

The way to ensure that tenants don't get overbilled in that situation is to limit the amount each of the methods can bill for by the percentage of the complex that is using that billing method. For instance, if 60% of the complex was being billed using one method and 40% the other, then you'd want to limit the amount that can be billed out on the first method by multiplying *Billable to Residents* by 60% and 40% for the other. If you billed the folks that were using that method more than that then that would tell you that you overbilled them if you had a check in your system to compare the total billed for that method to what you expected to bill the folks that got billed using that method.

That's one logical way to make sure that even though you are allocating the total water usage costs to tenants twice that something doesn't go awry and you accidentally end up overbilling tenants. One of the primary things you'd be checking by that is that your occupancy data used for that billing method was correct. If they are understated, as we know, that causes overcharges.

Looking at what is in the table, as I've mentioned before, the percentage that should be used to ensure that tenants are not being overbilled is the *Method Pen*. It's the percentage that is multiplied by the *Billable to Residents*. That amount produces the *Expected Based on Pen*. The *Billed* then gets divided by the *Expected Based on Pen* to produce the *% of Expected Recov'd*.¹²

Getting back to what Mr. Mathews said about what he looked at to ensure tenants were not being overbilled, in response to my question in regards to if Conservice looked at the *% of Expected Recov'd* when they were doing their manual check of the table, which he mentioned was part of their quality process, he stated this¹³:

¹² Item 105 on pdf page 69

¹³ Starting at 20:00 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

“The expected numbers aren’t taken into consideration too much, the reason why is because what we’re really looking for is to make sure that, especially for the type of billing method, that there is not an over-recovery.”

“We would mainly go off of the” ... “percent of Billable Recovered. That’s where our main focus would be whenever we are reviewing this table.”

We came back around to that again when I asked him if there was anywhere in the table where he might look at to indicate that there was an overbilling and he confirmed that he’d look at the *% of Billable Recov’d* to see if it was over 100%.¹⁴

But in this situation, as I mentioned earlier, where you have two billing methods, the only place on the table that is going to flag if you are overbilling for a particular billing method is by checking that the *% of Expected Recov’d* is over 100%. It’s the purest measure of whether or not you are overbilling for a particular billing method. Not to mention that it literally says in the column’s name that it is the percentage of what you should *expect* to recover, though what the essentially means is the percent of the optimal amount that should be recovered. Which is why anything over 100% in the *% of Expected Recov’d* should be a flag that there is overbilling.

And, again, what you’d logically expect to recover from the bill from tenants using a particular billing method would be the percentage of them being billed by it and the way this table is set up that percentage would definitely have to be the *Method Pen*. The *Method Pen* should represent the proper percentage of the complex using that billing method. Also, as I mentioned earlier, the *Method Pens* used for The Gallery II for *Water 2* and *Water 4* shouldn’t add up to more than 100%. And this is precisely where this quality process went awry: the *Method Pen* for the *Water 2* and *Sewer 2* were OK, but the *Method Pen* for *Water 4* and *Sewer 4* were way high compared to the percentage of the complex using that billing method and because of that the system didn’t flag the overcharges.

The *Method Pen* is another subject that I had disagreements with Mr. Mathews about. I asked him if the *Method Pen* was calculated or input and he told me that it was calculated and was a ratio of occupied to unoccupied, referring to apartments. I think he worded it differently a few

¹⁴ Starting at 24:10 mark of 473-22-2652_HOM_2 which is the second tape of the hearing

times, but I think what he meant is that it was occupied units divided by the units in the entire complex, so, in effect, a percentage of the apartments that were occupied.

I could be wrong about that, it is a guess, but no matter what a ratio or an equation that takes into account vacant units has no proper role in determining amounts that are allocated for water usage. The water usage is allocated to the tenants who *used* the water and vacant apartments or any ratios involving unoccupied units shouldn't have any say in how water *usage* is allocated.

Again, I think Mr. Mathews could have been confused. The *Method Pen* for the *Water Base Charge 2*, which is the fixed costs (we each pay \$3.56/month), is actually what I think he may have been referring to. It is the amounts of occupied apartments (*# of Bills*) divided up by the total amount of units, which is 103 at The Gallery II. You can also see for *Water Base Charge 2* that the *Expected Based on Pen* is the *Billable To Residents* multiplied by the *Method Pen*.

For the water usage costs though, the *Method Pen* clearly ought to reflect the percentage of the occupancy at the complex that were billed by that method. And for *Water 2* it pretty much did. If you look at *# of Bills* for *Water 2* and divide it by the *# of Bills* at The Gallery II, which as I stated earlier can be found in the *Water Base Charge 2*, it's in the ball park of the *Method Pen*, usually within 5% points of it to the low side.

I think in the end that what Conservice, or Conservice's system, decided to use as a *Method Pen* for *Water 2* was some measure of the total number of occupants being billed by that method compared to the total amount of tenants in the complex, essentially the percentage of the occupants at the complex being billed by that method. There were some indications of that in the table, though I'm not going to get into them. This is also probably the fairest way to do it for water, assuming you believe that total water usage correlates closer with how many people are using it than the size of the apartments they live in.

Since both *Water 2* and *Water 4* are allocated from the same bill, one reasonable way to determine the *Water 4 Method Pen* would simply be to subtract the *Water 2 Method Pen* from 100%, which would be $100\% - \text{Method Pen for Water 2}$. That way you would ensure that only 100% of the bill was expected to be billed.

The *Method Pen* for *Water 4*, however doesn't seem to have any numerical relation to the *Method Pen* for *Water 2* whatsoever. It's also considerably higher than what is reasonable to bill the percentage of apartments using that billing method. In October 2019, the *Water 4 Method Pen* (Item 109 on pdf page 13) was 100% though only 70/90 apartments used that billing method. What that basically said that it was okay, according to the *% of Expected Recov'd*, for tenants who used that billing method to pay the full amount that all Gallery II tenants owed for water usage. By May 2020, according to the *% of Expected Recov'd*, the *Method Pen* was saying that was okay to bill 32% of the complex for over 83% of that total amount¹⁵. And for both months, and this is pretty wild when you think about it, the *Expected Based on Pen* for *Water 4* ended up equaling what was actually billed to tenants for *Water 4*. It was within a few pennies or even on the nose in the case of May when the *Expected Based on Pen*, based upon the unexplainably large *Method Pen* for *Water 4*, was \$1,030.05 and the amount we got billed was exactly the same. That meant that the *% of Expected Recov'd* was 100% for May 2020.

In fact, all of the *% of Expected Recov'd* for *Water 4* are very close to 100% in every one of the months in the table.

So, I have to disagree with Mr. Mathews when he says that he wouldn't look closely at *% of Expected Recov'd* and instead *% of Billable Recov'd*. It literally says in the column's name that it's a measure of what you'd *expect* to recover. Plus, the *% of Expected Recov'd* for *Water 4* was between 99.98% and 100.01% for every month I was billed, and it was around that for *Water 3* over at The Gallery I as well, so it doesn't make much sense to me that even though it's a percentage that you're not concerned about too much that it happens to come in at the optimal amount every month.

And though Mr. Mathews said several times that whomever did the manual quality check would have looked primarily at *% of Billable Recov'd*, if the percentage in the data to the left of it, under the *% of Expected Recov'd* column, had read over 200%, like it would have if the *Method Pen* was proportional to the tenants using that billing method in May 2020, which would have made the *Method Pen* about 35% rather than the 83% they used, then I think it's reasonable to argue that it may have caught the examiner's attention that something was off, that tenants were being overbilled even though the *% of Billable* was saying everything's all right since it was not above 100%.

¹⁵ Item 105 on pdf page 71

But getting back to the most amazing thing about those near 100%, if not spot on it, *% of Expected Recov'd for Water 4*, it means that even though the *Water 4 Method Pens* don't seem to have any relation whatsoever to the percentage of the tenants being billed by that method, when they are multiplied by the *Billable to Residents* they produce an *Expected Based on Pen* that ended up extremely close to what apartments at The Gallery II that were billed for that method were actually charged. And the amount that Gallery II tenants were charged using that billing method was based upon those crazily inaccurate total number of tenants and total occupied space that Conservice claims was due to the data pulling and/or saving issues. So, it's wild that in some way it looks like those two errors correlate. And they correlate so strongly.

For example, if you look at the *% of Expected Recov'd for Water 2*, which is dependent upon the *Water 2 Method Pen*, you get numbers from anywhere from 91.32% to 98.54% with an average of 95.17%. And then you look at the *% of Expected Recov'd for Water 4*, which again is dependent upon the *Water 4 Method Pen*, and those percentages range from 99.98% to 100.1% with an average of 99.996%. They're almost exactly spot-on.

The almost 100% spot-on *% of Expected Recov'd for Water 4* means is that the *Expected Based on Pen* practically equaled what was actually billed to the tenants who were billing by that method. In fact, the *largest* difference between the *Expected Based on Pen* to the *Billed for Water 4* came in February 2020 and it was only 22 cents, \$1,083.55 to \$1,083.33.

We know the *Expected Based on Pen* is the *Method Pen* multiplied by the *Billable To Residents*. And we also know the *Billed* is the *Billable To Residents* multiplied by the allocation equations. As I mentioned before, as shown in Item 71 on pdf pages 18 and 19, the allocation equations for the old billing method were half based on the number of occupants in the apartment compared to the total number of occupants in the complex and the other half based on the size of the apartment compared to the total amount of occupied space at the complex. Since the *Expected Based on Pen* essentially equaled the *Billed for Water 4*, that meant that the *Method Pen* strongly correlated to those allocation equations, which again, were based on inaccurate occupancy figures that Conservice says were due to data pulling and/or saving issues.

So, to dig into all this to see what that all means and show why Conservice's quality process didn't work, I want to first establish how the amounts for *Billed for Water 4* in the table are calculated. What it literally is is the sum of the water usage charges of every apartment that got

billed using the method for *Water 4*. You can see in Item 71 on pdf pages 18 and 19 the equations that were used to calculate the charges.

Looking at the allocation equations for *Water 4*, for each apartment being billed for *Water 4* they were:

Water charges for each apartment being billed for *Water 4* =

$$(Billable\ to\ Residents) \times [1/2 \times ((TotOcinApt/TotOcII) + (TotSqFtofApt/TotSqII))]$$

where:

TotOcinApt = Total Number of Occupants in apartment being billed

TotSqFtofApt = Total Square Footage of the apartment being billed

TotOcII = Total Number of Occupants in Gallery II (both those being billed by the *Water 4* method and those that weren't)

TotSqII = Total Square Footage of Occupied Apartments in Gallery II (both those being billed by the *Water 4* method and those that weren't)

If you only had three apartments (Apts. **A**, **B**, and **C**) that were being billed using this method,

Water charges for all apartments being billed for *Water 4* =

$$[(Billable\ to\ Residents) \times [1/2 \times ((TotOcinAptA/TotOcII) + (TotSqFtofAptA/TotSqII))]] +$$

$$[(Billable\ to\ Residents) \times [1/2 \times ((TotOcinAptB/TotOcII) + (TotSqFtofAptB/TotSqII))]] +$$

$$[(Billable\ to\ Residents) \times [1/2 \times ((TotOcinAptC/TotOcII) + (TotSqFtofAptC/TotSqII))]]$$

Which is, in effect:

$$[(Billable\ to\ Residents) \times [1/2 \times ((TotOcinAptA + TotOcinAptB + TotOcinAptC)/TotOcII) + ((TotSqFtofAptA + TotSqFtofAptB + TotSqFtofAptC)/TotSqII)]]$$

The equations that involve the Method Pen:

$MP = \text{Method Pen for Water 4}$

$\text{Total Expense} = \text{Total Cost of Water Usage at The Gallery II}$

$CAD = \text{Common Area Deduction} = 25\%$

$TotOc50 = \text{Total number of occupants in apartments being billed using the Water 4 method}$

$TotSq50 = \text{Total square footage of apartments being billed using Water 4 method}$

$TotOcII = \text{Total Number of Occupants at The Gallery II (regardless of billing method)}$

$TotSqII = \text{Total Square footage of all occupied apartments at Gallery II (regardless of method)}$

First of all, we know, that since the *% of Expected Recov'd* was always very near 100% for *Water 4* that:

$\% \text{ of Expected Recov'd} = \text{Billed for Water 4} \div \text{Expected Based on Pen for Water 4} \approx 100\%$

SO

$\text{Expected Based on Pen for Water 4} \approx \text{Billed for Water 4}$

$\text{Expected Based on Pen for Water 4} =$

$MP \times [\text{Total Expense} - ((CAD) \times (\text{Total Expense}))] = MP \times [(.75) \times (\text{Total Expense})]$

$\text{Billed for Water 4} =$

$[\text{Total Expense} - ((CAD) \times (\text{Total Expense}))] \times [\frac{1}{2} \times ((TotOc50/TotOcII) + (TotSq50/TotSqII))]$

$= [(.75) \times (\text{Total Expense})] \times [\frac{1}{2} \times ((TotOc50/TotOcII) + (TotSq50/TotSqII))]$

Since *Expected Based on Pen* for *Water 4* \approx *Billed* for *Water 4* we can equate the two:

$$MP \times \{(-.75) \times (\text{Total Expense})\} \approx$$

$$\{(-.75) \times (\text{Total Expense})\} \times [\frac{1}{2} \times ((\text{TotOc50/TotOcII}) + (\text{TotSq50/TotSqII}))]$$

AND WE GET

$$\text{Method Pen} \approx \frac{1}{2} \times ((\text{TotOc50/TotOcII}) + (\text{TotSq50/TotSqII}))$$

So, since the *Expected Based on Pen* for *Water 4* equaled what was actually billed to the tenants billed by that method for those eight months, and there were a variety of number used for number of occupants and occupied space used in those equations, that means that the *Method Pen* always essentially equaled the fraction of the total bill that was allocated to the apartments that were billed by that method.

$$\text{Method Pen} \approx \frac{1}{2} \times ((\text{TotOc50/TotOcII}) + (\text{TotSq50/TotSqII}))$$

And it's worth noting that the equation to the right of the equals sign is a pretty complicated equation that produces a fraction that has a denominator (the total number of tenants at the complex) that's somewhere in the 90s to 110s plus another fraction that has a denominator in the tens of thousands (the total occupied space at the complex). Therefore, there's essentially no way the *Method Pen* just happened to follow the results of that calculation around by coincidence and there's absolutely zero chance, as Mr. Mathews continually claimed, that if the *Method Pen* was based upon some ratio of occupied to unoccupied apartments that it's going to follow it around to that level of precision such that *Expected Based on Pen* is within 99.98% to 100.01% of the *Billed*, which is so close that it's probably just a result of decimal round-off differences anyway in determining tenants' bills.

So, the *Method Pen* is actually mimicking what it's supposed to ultimately be checking: that the portion of the bill that is being billed to tenants using the *Water 4* billing method is representative of the portion of the tenants that are being billed by it. Instead of confirming that the occupancy data used is producing a *Billed* amount that is representative of the portion of the complex being billed by it, it's enabling any occupation numbers to be used, be it they get pulled incorrectly or not, and it will always produce an *Expected Based on Pen* for *Water 4* that pretty much equals what was actually *Billed* to the tenants billed by that method using those occupancy figures. In actuality, it is, in some sense, what it's supposed to be checking. And it's not an

accident if it happens eight times with eight different sets of four occupancy numbers inputted into it each time.

$$\text{Method Pen} \approx \frac{1}{2} \times ((\text{TotOc50}/\text{TotOcII}) + (\text{TotSq50}/\text{TotSqII}))$$

So, the question becomes then: which is calculating the other? Which side of the equation is dependent on the other? Does the *Method Pen* create the fraction to the right that's based upon occupancy figures or does the occupancy figures create the *Method Pen*? Mr. Mathews claimed that the *Method Pen* was calculated.

If the *Method Pen* determined the occupancy figures, which means that an input or calculated *Method Pen* would be used to calculate the occupancy numbers, then it would be a pretty complex mathematical process figuring out occupancy figures to make it all work. So, it's almost surely the other way around: the occupancy figures determine the *Method Pen*. Which makes sense, occupancy figures are input into the program.

But how does the occupancy figures determine the *Method Pen*?

Which leads me back to some of the questions that I asked Mr. Mathews. Around the 23:00 mark in 473-22-2652_HOM_2 (the second tape of the hearing) he talked about how the *Method Pen* was a percentage to see what was occupied and unoccupied. Then I asked him why the *Method Pens* wouldn't be the same for *Water 2* and *Water 4* and he said (24:00):

"That is correlating with the data that is pulled into the software which correlates with the error itself, which is where the incorrect amounts were being pulled."

Then in my follow-up questions (33:00), he added that:

"So, the totals that we pulled, or the data we pulled from the clients' software, doesn't appear to be what the issue was. What the issue was was that the system was saving the incorrect totals."

The data, even if it is pulled incorrectly, doesn't have the ability to determine if it is going to be saved or how it's going to be saved. The software program does that. So, the issue that Mr. Mathews is describing is not a data pulling problem but instead a software *programming* issue.

Well, the table itself was based on calculations and data that came from Conservice's billing program so the *Method Pen* for *Water 4* calculation most likely was done *in* the program, if it wasn't manually inputted. The occupancy data was input into the program somehow, or pulled incorrectly, as Roscoe and Conservice prefer, and that must have calculated the *Method Pen*.

The *Method Pen* was then multiplied in the program by the *Billable to Residents* to arrive at the *Expected Based on Pen*. The *Billed* is done using the same allocation equations that determined the *Method Pen*, so the *Expected Based on Pen* and *Billed* are always essentially equal, except for minute rounding off differences, so the *% of Expected Recov'd* is always going to be 100%, or damn near it. Also, the *% of Billable Recov'd*, which Mr. Mathews claimed was the prime consideration during the quality process is always going to be less than 100% as long as you don't screw up the amounts tossed into the allocation equations by claiming that you got more folks being billed for the billing method than you got folks living in the entire complex. That's the only way your *Method Pen* and *% of Billable Recov'd* will go above 100%.

The *% of Billable Recov'd* in fact is essentially the *Method Pen* itself because it is the *Billed* divided by the *Billable to Residents* and the *Method Pen* is the essentially the same. Because the *Method Pen* multiplied by the *Billable To Residents* is the *Expected Based on Pen*, which is also essentially the *Billed* since the *Method Pen* is also determined by the allocation equations that were used to calculate all the apartments bills that were being billed for *Water 4*. So, the *Method Pen* is *Billed* divided by the *Billable To Residents* as well.

$$\text{Expected Based on Pen for Water 4} = \text{Method Pen} \times \text{Billable To Residents}$$

$$\text{Method Pen} = \text{Expected Based on Pen} \div \text{Billable to Residents}$$

$$\text{Expected Based on Pen for Water 4} \approx \text{Billed for Water 4}$$

$$\text{Method Pen} \approx \text{Billed for Water 4} \div \text{Billable to Residents} \approx \% \text{ of Billable Recov'd}$$

So, whatever was input into the program as the occupancy numbers, if it was input on purpose or was drawn wrong, it would produce a *Method Pen* that would tell the *Expected Based on Pen* that whatever is billed out is pretty much exactly what it expected, in fact the optimal amount. And no matter what occupancy figures were used, as long as they didn't create a fraction greater than 1, the billing would pass Conservice's "quality process" because the *% of Billable Recov'd* would never exceed 100%.

If Conservice says that I got it wrong, that I'm misunderstanding how their software program worked, then I hope they can provide a plausible explanation as to how four different figures could be tossed into the equation below for TotOc50, TotOcII, TotSq50, and TotSqII for eight straight months and have the *Method Pen* independently arrive at the same amount as its results all eight times. That's four different numbers, some of them pretty large since occupied space runs into the tens of thousands, tossed into that equation below every month for eight straight months and they "predicted" the *Method Pen* to a precision of a couple hundredths of a percentage point each month and was 100.00% on the money for half of them.

$$\frac{1}{2} \times ((\text{TotOc50}/\text{TotOcII}) + (\text{TotSq50}/\text{TotSqII}))$$

TotOc50 = Number of Occupants in apartments being billed using the Oc50/Sq50 method

TotSq50 = Total square footage of apartments being billed using Oc50/Sq50 method

TotOcII = Total Number of Occupants at The Gallery II (regardless of billing method)

TotSqII = Total Square footage of all occupied apartments at Gallery II (regardless of method)

So, it was possible for a property manager to use Conservice's billing software that was used to calculate Gallery II tenants bills during the period in question and if the property manager or landlord could somehow report, get lucky on a data draw, or manually input understated total occupancy figures to Conservice's tool, Conservice's program would then produce bills that overbilled tenants but still passed Conservice's quality process. And if the property manager didn't take some action to stop the bills from being sent, then the bills overcharging tenants for a public utility would be auto-approved and arrive in tenants' email with Conservice's name and logo on them ("The Utility Experts"). And then, if a tenant like myself asked for documentation of the calculations of their bills and was able to get it, they'd get Conservice's implicit assurance in the billing documentation that the occupancy figures used to calculate their bills reflected the actual occupancy figures of their complex.

If, by chance, the calculation for the *Method Pen* for *Water 4* was not actually part of the software code (I doubt it), then the only other explanations for it aren't any better because that means that someone manually entered it in order to get the bills through Conservice's quality process which means it would have been either an employee of Conservice who knew, or should have known, that the bills were overcharging tenants but they still messed with the *Method Pen* to get them out the door and to Gallery II tenants; or Roscoe was somehow able to change the *Method Pen*, which would mean that Conservice empowered Roscoe in some way to bypass Conservice's quality process.

In regards to Roscoe, although it's great that they and Conservice have such a trusting relationship that they can silently communicate approvals for overbilling tenants with not so much as even a nod of the head to each other, there's always the fact that the money for the overcharges on the bills they approved of in some manner, that Conservice sent to us on their behalf, went through their hands and those overcharges either settled in their pockets or the folks that paid them to manage the property. Plus, even if it is to be believed that they had nothing to do with the understated occupancy info, something that neither they or Conservice actually has any proof of, Mr. Mathews stated that part of the review that Roscoe was supposed to do had to do with specifically making sure that the "occupancy data that [Conservice had] listed [was] correct",¹⁶.

¹⁶ Starting at 1:00 mark of 473-22-2652_HOM_2 which is the second tape of the hearing