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Kristofer S. Monson
Chief Administrative Law Judge

May 12, 2023

Stephen Journey, Commission Counsel
Commission Advising and Docketing Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-22-2652.WS; PUC Docket No. 51619;
Complaint of Jeff Connors Against The Gallery Apartments, RPM
Property Management, and Conservice**

Dear Mr. Journey:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. Please notify the undersigned Administrative Law Judge and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**COMPLAINT OF JEFF CONNORS AGAINST THE GALLERY
APARTMENTS, RPM PROPERTY MANAGEMENT, AND
CONSERVICE**

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**COMPLAINT OF JEFF CONNORS AGAINST THE GALLERY
APARTMENTS, RPM PROPERTY MANAGEMENT, AND
CONSERVICE**

PROPOSAL FOR DECISION

On December 14, 2020, Jeff Connors¹ filed with the Public Utility Commission of Texas (Commission) a formal complaint against The Gallery Apartments (The Gallery), RPM Property Management (RPM), and Conservice (collectively, Respondents) alleging improper water and wastewater billing

¹ Various party exhibits and/or post-hearing briefs refer to “Mr. Connors” or “Mr. Connor” and it is presumed that those references are to the complainant, Mr. Connors.

practices. Mr. Connors amended and supplemented his initial formal complaint multiple times.²

As addressed in detail below, the ALJ finds The Gallery violated the following Commission rules: 16 Texas Administrative Code sections (Rules) 24.277(e) and (g), .279(a)(4), .281(e)(2)(A)(iv), and .283(d)(1) and (l). Consequently, the ALJ recommends the Commission require The Gallery to: (1) refund Mr. Connors \$30 and an amount equal to what he was billed for water and wastewater services in his October 2019 bill; (2) review all of its water and wastewater billing practices to ensure compliance with 16 Texas Administrative Code Subchapter I, Water Utility Submetering and Allocation; and (3) file a compliance report detailing the steps taken to alleviate the violations identified above.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

A. PROCEDURAL HISTORY

It is uncontested that Mr. Connors complied with the informal complaint resolution requirements set forth in Rule 22.242(c). On May 10, 2022, the Commission referred Mr. Connors's formal complaint to the State Office of Administrative Hearings (SOAH) for assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a proposal for decision to resolve any contested

² See Motion to Amend Complaint (Jan. 19, 2021); Jeff Connors's Supplemental Filing (Jan. 29, 2021); Second Motion to Amend Complaint (Feb. 3, 2021); Reply to Submissions Made by The Gallery Apartments (Feb. 9, 2021); Reply to Respondent's Response to Formal Complaint (Oct. 11, 2021); Response to Respondent's Motion for Leave to Serve Discovery (Oct. 11, 2021); Motion to Amend Requested Relief (Oct. 11, 2021); Complainant's List of Issues (Mar. 31, 2022).

issues, if necessary. The Commission issued its Preliminary Order two days later and listed the issues that must be addressed in this proceeding.

SOAH ALJ Meghan Bailey convened the hearing on the merits via Zoom on February 6, 2023, and all parties appeared and participated. Mr. Connors represented himself; attorney Daniel Edmunds represented The Gallery and RPM; attorney Juliana Kat represented Conservice; and attorney Phillip Lehman represented the Commission staff (Staff). The record closed on March 13, 2023, with the filing of the parties' post-hearing reply briefs.

B. JURISDICTIONAL ISSUES

On January 6, 2021, Conservice filed a motion seeking dismissal as a party for lack of jurisdiction because it is not an “owner” as referenced in Rule 24.285 and defined in Rule 24.275.³ Rather, Conservice stated it is a third-party utility billing company employed by “owners” to allocate and bill tenants for the owners’ utility service charges.⁴

³ Rule 24.285 concerns the Commission’s exclusive jurisdiction over complaints regarding violations of its water utility submetering and allocation rules (Chapter 24, Subchapter I) and provides in part, “[i]f an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a commission rule regarding utility costs, the person claiming the violation may file a complaint with the commission and may appear remotely for a hearing.” Rule 24.275(c)(12) defines “owner” as “[t]he legal titleholder of an apartment house . . . and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house . . . The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.”

⁴ See Conservice’s Response to Order No. 1 (Jan. 6, 2021).

On April 25, 2022, the Commission ALJ required Conservice to provide specific evidence to support its jurisdictional claim.⁵ Mr. Connors and Staff objected to Conservice's requested dismissal. They highlighted Conservice's involvement in the alleged overbilling of The Gallery's tenants, opposed Conservice's narrow interpretation that Rule 24.285 applied only to an "owner," and asserted that Conservice is a necessary party to the complaint.⁶

The SOAH ALJ reviewed the parties' arguments and issued SOAH Order No. 1 denying Conservice's request for dismissal and stating in part:

Conservice failed to present evidence demonstrating that it made no billing decisions or determinations concerning the amounts to be charged for [RPM], [The Gallery], or for Mr. Connors's account. The Commission has exclusive jurisdiction over violations of its water utility submetering and allocation rules and complaints of those rules, as described in 16 TAC § 24.285(b). Unlike Conservice's narrow interpretation of 16 TAC § 24.285(b), the ALJ finds that an entity not specifically listed in subsection (b) may be the subject of such a complaint and subject to the Commission's jurisdiction under Chapter 24, Subchapter I if they assisted or participated in the violation alleged in the complaint. Because the ALJ is unable to determine the exact role Conservice had in the contested billing practices alleged in Mr. Connors's complaint, the ALJ finds Conservice is a necessary

⁵ The Commission ALJ requested Conservice provide evidence that it: (1) is a third-party biller regarding this matter; and (2) makes no billing decisions or determines the amounts to be charged for RPM, The Gallery, or Mr. Connors. *See* PUC Order No. 13 (Apr. 25, 2022).

⁶ Reply to Conservice's Motion to Dismiss (May 20, 2020); Commission Staff's Response to Conservice's Motion to Dismiss (May 27, 2020).

party to this proceeding and its request for dismissal is denied. Accordingly, Conservice remains a party to this proceeding.⁷

Upon review of the evidence, the ALJ reaffirms the ruling in SOAH Order No. 1 that Conservice is a necessary party and should not be dismissed as a party. However, that order contains an erroneous finding that Conservice, as a third-party utility billing company that does not meet the definition of “owner” under Rule 24.275, could be the subject of a complaint alleging violations of the Commission’s water utility submetering and allocation rules and subject to the Commission’s jurisdiction if it assisted or participated in the violation alleged in the complaint. As will be discussed in greater detail below, the definition of “owner” does not include a third-party utility billing provider and therefore Conservice is not subject to the Commission’s jurisdiction over complaints alleging violations of Rules 24.275-.287. Therefore, the ALJ finds that rather than being categorized as a respondent,⁸ which by definition is person that is subject to the Commission’s jurisdiction, Conservice should have instead been joined as a necessary party to this proceeding under Texas Rule of Civil Procedure 39. This is explained further below in the sections on Applicable Law and Preliminary Order Issue No. 4 below.

In their reply brief, The Gallery and RPM requested that this proceeding be dismissed based on the issues being moot because, as they assert, Mr. Connors has

⁷ SOAH Order No. 1 at 4-5 (July 11, 2023). *See Complaint of Muneer Ahmed Against Fredd Apartments*, Docket No. 51198, Order No. 10 (July 27, 2021)(Commission ALJ granted Staff’s request that Conservice be joined to the complaint proceeding as a necessary party under Texas Rule of Civil Procedure 39(a)).

⁸ Rule 22.2(41) defines “respondent” as a person under the Commission’s jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the Commission.

received all the relief he was seeking in the form of refunds and requested records. However, Mr. Connors and Staff made additional requests for relief not identified by The Gallery and RPM and findings on each of Mr. Connors's alleged violations, as well as the Preliminary Order Issues added by the Commission, must be made. Thus, because there are outstanding issues this proceeding is not moot, and The Gallery and RPM's motion to dismiss is **DENIED**.

C. NOTICE ISSUES

At the hearing on the merits, Mr. Connors stated that he would provide evidence to show that the Respondents acted fraudulently and that he is requesting relief in the form of administrative penalties. Counsel for The Gallery and RPM objected, arguing improper notice of this allegation and the requested relief.

The issues listed in the Commission's Preliminary Order are not exclusive and Mr. Connors raised these issues in his January 5, 2023 Supplemental Statement of Position.⁹ Accordingly, notice was sufficient. However, Mr. Connors's common law fraud allegations are outside the scope of this proceeding which concerns: (1) whether The Gallery violated Commission rules regarding water utility submetering and allocation; and (2), if so, what is an appropriate remedy, if any.¹⁰

⁹ Complainant Supplemental Statement of Position (Jan. 5. 2023).

¹⁰ The ALJ finds Mr. Connors failed to show that the Commission has jurisdiction to adjudicate his common law fraud claims against Respondents. *See* Tex. Water Code § 13.505; *Panda Power Generation Infrastructure Fund, LLC v. Elec. Reliability Council of Tex., Inc.*, 641 S.W.3d 893, 921 (Tex. App.—Dallas 2022, *pet. granted*); *Complaint of John S. Dashtgoli Against Southwestern Bell Telephone Company d/b/a AT&T Texas*, Docket No. 41655, Order No. 5 at 3 (Feb. 26, 2014).

Furthermore, at the hearing on the merits, the ALJ explained that Mr. Connors's request for administrative penalties is outside the scope of remedies that can be awarded in a complaint proceeding but that such penalties could be sought by Staff in a separate enforcement action.¹¹ Accordingly, the issues raised by Mr. Connors concerning Respondents' alleged fraudulent actions and the requested administrative penalties will not be further discussed.

II. APPLICABLE LAW

After complying with the informal complaint procedures set forth in Rule 22.242(c), an affected person may present a formal complaint to the Commission.¹² A list of information required to be included in a formal complaint is provided in Rule 22.242(e)(2).

Per Texas Water Code section 13.505, if an apartment house owner violates a Commission rule regarding utility costs, the person claiming the violation may file a complaint with the Commission. If the Commission determines that the owner overcharged a complaining tenant for water or wastewater service from a retail public utility, the Commission shall require the owner to repay the complaining tenant the amount overcharged.¹³ "Owner" as defined in Texas Water Code section 13.501(5) and Rule 24.275(c)(12) means:

¹¹ 16 Tex. Admin. Code (TAC) § 22.246. It is within the discretion of the Executive Director of the Commission to initiate an investigation after receipt of an alleged violation.

¹² 16 TAC § 22.242(c).

¹³ Rule 24.285 reiterates a complaining tenant's ability to file a complaint with the Commission against an apartment house owner for alleged violations regarding utility costs.

The legal titleholder of an apartment house . . . and any individual, firm, or corporation expressly identified in a lease agreement as the landlord of tenants in the apartment house . . . The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

Rule 24.285 states that the Commission has exclusive jurisdiction over violations regarding its water utility submetering and allocation rules and that if an owner violates a Commission rule regarding utility costs, the person claiming the violation may file a complaint with the Commission. In this proceeding, the applicable Commission rules regarding an owner's requirements concerning water utility submetering and allocation include: Rule 24.277 (owner registration and records); Rule 24.279 (rental agreement); Rule 24.281 (charges and calculations); and Rule 24.283 (billing).

Neither RPM, as the property manager, nor Conservice, as the third-party utility billing provider, meet the definition of "owner" in Rule 24.275 and no evidence was provided to show that either RPM or Conservice were expressly identified as the landlord in the lease agreement for the periods at issue. Thus, while the ALJ finds that both entities are necessary parties¹⁴ to this proceeding due to their involvement and control over the bills issued to Mr. Connors as a tenant of The Gallery during the period at issue and the billing records he requested, they are not considered an "owner" and are not subject to the requirements under Rules 24.277, .279, .281, and .283, or responsible for providing any relief to

¹⁴ See Tex. R. Civ. P. 39.

Mr. Connors under Texas Water Code section 13.505 or Rule 24.283(k). That responsibility ultimately resides with The Gallery as owner. As such, the ALJ's analysis throughout the Proposal for Decision will focus exclusively on whether The Gallery complied with applicable Commission rules, and, if not, what relief The Gallery should be required to provide.

Mr. Connors bears the initial burden to prove the allegations that form the basis of his complaint, and upon presentation of his *prima facie* case, the burden of production shifts to the Respondents to present contrary evidence. As the complainant, Mr. Connors bears the burden of persuasion as to all issues in this proceeding.¹⁵

III. BACKGROUND

Mr. Connors's complaint centers around bills for water and wastewater service he received from October 2019 to June 2020, while he was a tenant at The Gallery, as well as requests he made for records relating to those bills.¹⁶ The Gallery consists of two apartment complexes located next to each other, Gallery I and Gallery II, which are collectively referred to as The Gallery. Mr. Connors resides in Gallery II.

¹⁵ 16 TAC § 24.12; see *Complaint of McCord Development, Inc. Against CenterPoint Energy Houston Electric, LLC*, Docket No. 48583, SOAH Order No. 4 (May 3, 2019).

¹⁶ Mr. Connors's initial complaint regarding the tapping of an irrigation system and the allocation of irrigation costs to The Gallery's tenants is no longer a live complaint and not one of the issues listed in the Preliminary Order. Thus, that issue will not be addressed further.

The Gallery contracted with RPM to provide property management services in July 2019. Conservice was then contracted to serve as the third-party utility billing provider for The Gallery from September 1, 2019 to May 6, 2022. During that period Conservice generated and issued the water and wastewater bills for The Gallery's tenants.¹⁷ Prior to The Gallery contracting with RPM and Conservice, Valiant Residential served as its property management company and Performance Utilities (Performance) served as its third-party utility billing provider.

During the eight months at issue, The Gallery's tenants were billed using two different allocation methods; some tenants were billed using the allocation method identified in Rule 24.281(e)(2)(A)(iii) (the *CustMult* method), and some were billed using the method identified in subsection (e)(2)(A)(iv) (the *Oc50/Sq50* method). It is undisputed that The Gallery was transitioning all of the tenants to the *CustMult* method when the tenants' lease renewals and/or new leases were executed, so the transition occurred on a tenant-by-tenant basis rather than all at once.¹⁸ Mr. Connors states that he was transitioned to the *CustMult* method in June 2020 and estimates the transition for the entire complex should have been completed by the end of summer 2020.¹⁹

¹⁷ Mr. Connors Ex. B at B1-B2; *see* Mr. Connors's Initial Brief; Conservice Initial Brief; Staff Initial Brief.

¹⁸ Mr. Connors Initial Brief at 5-6; Mr. Connors Ex. B at B3-B4.

¹⁹ Mr. Connors Initial Brief at 6.

According to Mr. Connors, the tenants that were being billed under the *CustMult* method were billed correctly but the customers billed under the *Oc50/Sq50* method were overbilled due to inaccurate and understated occupancy figures.²⁰

Conservice admits an error occurred in its system that resulted in incorrect occupancy and square footage counts being used for Gallery II tenants' billing from October 2019 to May 2020, which led to overbilling of those tenants.²¹ Conservice witness Dylan Matthews confirmed that the data error occurred solely within Conservice's billing software and that the tenant data Conservice pulled from The Gallery was accurate.²² The fact that Mr. Connors, and other Gallery II tenants, were overbilled during that period is uncontested. The question of how the error in billing occurred is not at issue in this proceeding, simply that it did occur. Therefore, the questions that remain are:

- (1) How much was Mr. Connors overbilled?
- (2) Did The Gallery violate any other violations alleged by Mr. Connors or raised by the Commission in the Preliminary Order?
- (3) What is an appropriate remedy, if any?

²⁰ To highlight the difference in tenant bills under the two methods, Mr. Connors testified that, for May 2020, tenants' bills that were calculated under the *CustMult* method averaged around \$12, whereas tenants' bills that were calculated under the *Oc50/Sq50* method averaged over \$34. Mr. Connors Initial Brief at 6.

²¹ Conservice Initial Brief at 1.

²² Hearing Transcript (Tr.) at 35:00 (audio file titled "Hearing on the Merits Part 1").

IV. EVIDENCE AND ARGUMENT

At the hearing, Mr. Connors testified on his own behalf and had eight exhibits admitted.²³ The Gallery and RPM had 11 exhibits were admitted.²⁴ Conservice presented the testimony of Dylan Matthews as the Billing Manager and had four exhibits admitted.²⁵ Staff presented the testimony of Kathryn Eiland, called The Gallery and RPM's identified witnesses Jamie Hearn and Stephanie De Leon, and had one exhibit admitted.²⁶

The record was held open until February 10, 2023, for the parties to submit supplemental exhibits. Any objections to supplemental exhibits were due February 15 and responses to objections, if any, were due February 20. Mr. Connors timely submitted four supplemental exhibits and no party objected. Therefore, Mr. Connors's Exhibits A-D are **ADMITTED**.²⁷

²³ Mr. Connors's Exhibits 1-8 include his: direct testimony and related evidence (Exs.1 & 2); rebuttal of Staff's direct testimony and related evidence (Exs. 3 & 4); rebuttal of The Gallery and RPM's statement and direct testimony (Ex. 5); supplemental statement of position and supplemental rebuttal testimony (Exs. 6 & 7); and hearing exhibit (Ex. 8).

²⁴ The Gallery and RPM's Exhibits A-K include: their position statement and direct testimony (Ex. A); Ms. Hearn's rebuttal testimony (Ex. B); The Gallery's lease with Mr. Connors (Ex. C); water and wastewater rates (Ex. D); Mr. Connors's utility and rent statements from Conservice (Ex. E); City of Austin utility statements (Ex. F); Conservice's guidance on how bills were calculated (Ex. G); a refund check issued to Mr. Connors (Ex. H); RPM's first request for information (Ex. I); and emails sent to Mr. Connors (Exs. J & K).

²⁵ Conservice's Exhibits CON-1 – CON-4 include: City of Austin bills to Gallery II (CON-1); Conservice billing statements to Mr. Connors (CON-2); refund calculation for incorrect billing (CON-3); and the Gallery II unit directory (CON-4).

²⁶ Staff Exhibit 1 is Ms. Eiland's direct testimony.

²⁷ Mr. Connors' supplemental Exhibits A-D include: tables of various billing information concerning The Gallery and RPM (Ex. A); emails between Mr. Connors and employees of The Gallery and RPM (Exs. B & D); and various filings made in this proceeding (Ex. C).

The Gallery and RPM timely submitted supplemental Exhibit L which contains City of Austin (CoA) water bills for the periods of August 14, 2019, through September 13, 2019, and also September 13, 2019, through October 14, 2019. Staff timely objected; however, Staff's objections were directed at evidence that was previously admitted at the hearing, not to The Gallery and RPM's supplemental Exhibit L. Thus, Exhibit L is **ADMITTED**. Staff's post-hearing objections were either previously raised and overruled at the hearing or raised for the first time after the objected-to evidence had been admitted at hearing; therefore, Staff's objections are **OVERRULED**.²⁸

Within that same post-hearing filing, Staff also objected to evidence presented by Conservice; however, like the issues addressed above, Staff's objections are improper as the objected-to evidence was previously admitted at hearing and the objected-to witness testified at the hearing and was available for cross-examination. As such, Staff's objections are **OVERRULED**.

A. THE COMPLAINT

Mr. Connors alleges Respondents violated multiple Commission rules which resulted in him being overbilled for water and wastewater service from October 2019 to June 2020 and that The Gallery and RPM failed to provide him with water billing

²⁸ Commission Staff's Objections (Feb. 15, 2023).

information after he requested it. The specific violations alleged by Mr. Connors are discussed in detail below:

1. Rule 24.281(e)(2)(A)(iv)²⁹

As noted above, it is uncontested that a violation of Rule 24.281(e)(2)(A)(iv) occurred and that Mr. Connors, and other tenants, were overbilled for water and wastewater service due to inaccurate occupancy and square footage figures being used in the *Oc50/Sq50* method to calculate tenants' bills from October 2019 to May 2020.

2. Rule 24.277(g)(1) and (2)³⁰

Once certain billing information is requested, an owner (The Gallery in this case) is required to produce the records within an identified timeframe (3, 15, or 30 days), depending on whether there is an on-site manager, and if so, whether the records are or are not maintained at the on-site manager's office.³¹

a) Mr. Connors's and Staff's Position

Mr. Connors asserts he requested water billing records from The Gallery and RPM on February 28, September 29, October 8, October 21, and

²⁹ Mr. Connors Initial Brief at 37-60.

³⁰ Mr. Connors Initial Brief at 17-22.

³¹ 16 TAC § 24.277(g)(1)-(3). Rule 24.277(c) sets forth what billing records are subject to the production requirements under subsection (g).

December 14, 2020,³² but that he did not receive any records from The Gallery or RPM until January 5, 2021, and that the records he did receive were incomplete.³³ Ms. Hearn, witness for The Gallery and RPM, testified that a resident of The Gallery seeking billing records issued from Conservice could obtain those records by contacting RPM or Conservice directly.³⁴

Mr. Connors submitted evidence that shows he emailed The Gallery's leasing manager, Carl Bunch, on February 28, 2020, and requested the water and wastewater bills from June 2019 and January 2020 and the calculation method used to calculate his June 2019 bill. Mr. Connors indicated he wanted to review the billing records "to see what's going on and what has changed."³⁵ Mr. Bunch replied via email later that day indicating that his request "is being passed along to our community manager to make sure you get everything you need."³⁶

On September 24, October 8, and October 21, 2020, Mr. Connors emailed Kimberly Hoffman, community manager for The Gallery, and requested "the water/sewage/drainage bills from June 2019 (6/11/19-7/10[/]19) and September 2019 (9/8/19-10/3/19)," "the same [billing information] for February 2020 (2/13/20-3/13/20) and March 2020 (3/13/20-4/14/20)," and "to

³² Mr. Connors Ex. 2 at A1-A11 (Mr. Connors's emails to The Gallery and RPM employees requesting water billing information and the responses to said emails).

³³ Mr. Connors Ex. 2 at A12-A14; Mr. Connors Initial Brief at 21.

³⁴ Tr. at 1:37 (audio file titled "Hearing on the Merits Part 2").

³⁵ Mr. Connors Ex. 2 at A1-A3.

³⁶ Mr. Connors Ex. 2 at A1.

see how these charges were calculated for my individual unit and also the common area charges during those periods.”³⁷ Ms. Hoffman responded via email on October 21, 2020, stating that she did not know if she could provide the June 2019 bills because “RPM did not take over until the end of July 2019” and that she had attached a copy of his lease with the utility addendums that would explain the billing formula. Her email did not indicate that the requested September 2019 or February and March 2020 bills were attached.³⁸

On November 2, 2020, Mr. Connors filed an informal complaint with the Commission in which he asserts he reiterated his requests for the above-referenced records and for the amounts billed to all residents but received no response from The Gallery or RPM.³⁹

On December 14, 2020, Mr. Connors emailed Ms. Hoffman again stating that he had dropped off a written and signed request to her office for copies of his past water bills for periods earlier than he had previously requested and for the already requested September 2019 bill.⁴⁰ There is no evidence that Ms. Hoffman responded.

Mr. Connors asserts that it was only after he filed his formal complaint that Courtney Gaines, RPM’s Senior Regional Manager, provided some of the requested

³⁷ Mr. Connors Ex. 2 at A4-A6.

³⁸ Mr. Connors Ex. 2 at A4.

³⁹ Mr. Connors Reply Brief at 3.

⁴⁰ Mr. Connors Ex. 2 at A9-A11.

records on January 5, 2021, excluding the total monthly amounts charged for all customers due to tenant privacy concerns.⁴¹ On February 1, 2021, Mr. Connors responded back to clarify that he did not seek tenants' personal bills for the months of January to June 2020, just the total amount that was billed to residents during that time for water, wastewater, and drainage.⁴² The next day, Ms. Gaines provided billing summaries for those months.⁴³ Mr. Connors insists the total billing summaries he was provided were incomplete, and that he did not receive the complete records until Conservice provided them to him in January 2023.⁴⁴

Staff supports Mr. Connors's assertion that he did not receive the records he requested in accordance with Rule 24.277(g) and that he did not receive all the requested records from Ms. Gaines on January 5, 2021.⁴⁵ Specifically, according to Staff witness Kathryn Eiland, the records provided on that date did not include the CoA or the Conservice bills for August 2019, September 2019, and a portion of October 2019, as requested.⁴⁶

⁴¹ Mr. Connors Ex. D at 6-7. This exhibit does not contain consecutively numbered or Bate-stamped pages; therefore, the ALJ references the PDF page number the applicable information is found on when viewed electronically from the Commission's Interchange.

⁴² Mr. Connors Ex. D at 8-9.

⁴³ Mr. Connors Ex. D at 10-11.

⁴⁴ Mr. Connors Initial Brief at 19-20.

⁴⁵ Staff Ex. 1 (Eiland Dir.) at 8-9.

⁴⁶ Staff Ex. 1 (Eiland Dir.) at 9; Tr. at 1:15:00 and 1:35:00 (audio file titled "Hearing on the Merits Part 1"). At the hearing, counsel for The Gallery and RPM stated that records prior to August 2019 could not be provided because The Gallery did not own the property at that time. It is uncontested that the first bill issued by Conservice to the tenants was in October 2019.

b) Respondents' Positions

In contrast to Mr. Connors's assertions and evidence, The Gallery and RPM maintain there "is no direct evidence of [Mr. Connors's] February 28, 2020 request." They also assert that they were unaware of Mr. Connors's email containing his original, informal complaint and request for records because it was forwarded to a spam folder.⁴⁷

The Gallery and RPM maintain that Mr. Connors received all the records he requested, including the total amount billed to all tenants each month, on January 5, February 2, and October 4, 2021.⁴⁸ The Gallery and RPM insist that Ms. Gaines's January 5 email and provision of records was a good faith response to Mr. Connors's request from December 16, 2020, and that her response time was reasonable given the holidays, the existence of logistical challenges caused by COVID-19, and the need to gather and aggregate several sets of data. Furthermore, although they maintain there is no evidence that Mr. Connors submitted a request for records on February 28, 2020, they argue that even if he had, the timing of Ms. Gaine's January 5 email would still be reasonable and would not warrant a violation given the upheaval of the COVID-19 pandemic and various stay-at-home orders.⁴⁹

⁴⁷ The Gallery & RPM Initial Brief at 9-10. This exhibit does not contain consecutively numbered or Bate-stamped pages; therefore, the ALJ references the PDF page number the applicable information is found on when viewed electronically from the Commission's Interchange.

⁴⁸ The Gallery & RPM Exs. G at 139-70, J, K; The Gallery & RPM Reply Brief at 2, 8-9.

⁴⁹ The Gallery & RPM Initial Brief at 9-10; *see* The Gallery & RPM Ex. J.

In response to their arguments, Staff insists that the rule's requirement to provide records within the applicable timeframe does not contain exceptions for human error or the logistical challenges caused by the COVID 19 pandemic.⁵⁰

3. Rule 24.283(b)(1), (d)(1), (k)⁵¹

This rule provides in part:

§24.283. Billing.

...

(b) Rendering a bill.

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

...

(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.

...

- (k) Overbilling and underbilling.** If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment must be calculated for all of that tenant's bills that included overcharges. If the overbilling . . . affects all tenants, an adjustment must be calculated for all of the tenants' bills.

⁵⁰ Staff Reply Brief at 5.

⁵¹ Mr. Connors Initial Brief at 22-37.

a) Mr. Connors's Position

Mr. Connors argues that Respondents double-billed him for CoA water service charges, falsified water billing dates, and shortened the water billing cycles for certain months from a full month down to 25 days, which violated Rule 24.283(b)(1) and (d)(1).⁵²

Specifically, Mr. Connors contends Respondents' October 2019 bill included charges from a CoA bill for charges incurred during the service period 7/15/19 to 8/14/19 (the July/August service period) that the tenants had already paid the month before in their September 2019 bill issued by Performance.⁵³ He further contends that Respondents concealed the fact that they had double-billed tenants for those CoA charges by falsifying the water billing dates printed on the tenants' bills and shortening the water billing cycles to 25 days until Respondents' billing dates again synched up with the CoA's. Because of this, Mr. Connors argues the Gallery II tenants' water charges lagged behind the CoA's bill by a month and a half.⁵⁴ He contends that, by shortening the billing cycle to 25 days for the October 2019 to March 2020 bills, Respondents were able to get back in compliance with subsection (d)(1). Specifically, he opined:

since we got charged a second time for the [CoA's July/August service period bill] we were now a month and [a] half behind the City of Austin's instead of a half a month behind as we were when Performance

⁵² Mr. Connors Initial Brief at 13-24.

⁵³ Mr. Connors Initial Brief at 13, 16-17.

⁵⁴ Mr. Connors Initial Brief at 17.

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).⁵⁵

Mr. Connors's September 2019 Bill:

Mr. Connors presented portions of a CoA bill that shows the total water and wastewater service charges for The Gallery for the July/August service period were \$828.37 and \$987.00, respectively. Mr. Connors asserts Performance paid the CoA July/August service period bill because the bill was scheduled for electronic payment on September 3, and that the CoA's subsequent bill for the following service period did not include a line item for unpaid charges for the July/August service period.⁵⁶

The bill issued by Performance to Mr. Connors that he asserts included the CoA charges for the July/August service period and billing cycle (the September 2019 bill⁵⁷) shows an allocated "Water: City of Austin" charge for \$6.67 and an allocated "Sewer: City of Austin" charge for \$7.94. The September 2019 bill indicated that there would be a fee if the bill is paid after September 5, 2019.⁵⁸

⁵⁵ Mr. Connors Initial Brief at 24.

⁵⁶ Mr. Connors Reply Brief at E15; The Gallery & Roscoe Ex. L at 60-62.

⁵⁷ The CoA bill indicates the July/August service period started on "7/15/2019" whereas the Performance bill indicates it started on "7/16/19," one day later.

⁵⁸ Mr. Connors Ex. 8 at 16.

RPM's Resident Ledger for Mr. Connors corroborates the charges in his September 2019 bill, showing a September 1, 2019 "ubwater" charge for \$6.67 and a "ubsewer" charge for \$7.94. The description listed for both charges is "7/11/19-8/9/19."⁵⁹

Mr. Connors's October 2019 Bill:

Conservice first billed Mr. Connors, and other The Gallery tenants, in October 2019 (the October 2019 bill), and Conservice provided a guidance document to him explaining the specific charges and calculations for that bill. That guidance indicated the total applicable water and wastewater charges to be allocated amongst the tenants for the October 2019 bill totaled \$828.37 and \$987.00, respectively. Those charges are identical to the total water and wastewater charges allocated amongst tenants in Performance's September 2019 bill for the CoA's July/August service period.

Conservice's guidance further indicated that Mr. Connors's allocated portions of those charges were \$9.06 and \$10.80, respectively. Unlike the corroborating ledger entries for September 2019, RPM's Resident Ledger does not corroborate the allocated charges indicated in Conservice's October 2019 bill guidance. Instead, the ledger shows an October 1, 2019 "ubwater" charge of \$12.62 with the description "Water Allocation 08/14/19-09/08/19" and a "ubsewer" charge of \$10.90 with the description "Sewer Allocation 08/14/19-09/08/19." The

⁵⁹ The differing dates for the July/August service period listed in RPM's Resident Ledger were not explained ("7/15/19-8/14/19" listed on the CoA bill compared to "7/11/19-8/9/19" listed in the ledger).

charges listed in the ledger are higher than Mr. Connors's allocated charges per Conservice's guidance.

He also presented portions of the CoA bill for the August/September service period (the period immediately following the July/August period that ran from 8/14/2019 to 9/13/2019) to show that the total water service charges that should have been included in the October 2019 bill totaled \$1,342.13, not the \$828.37 that was included. For these reasons, Mr. Connors argues that the October 2019 bill was a double-billing of the prior CoA July/August service period charges.

Mr. Connors's November 2019 Bill:

Conservice presented additional guidance to Mr. Connors regarding how his November 2019 bill was calculated that indicates the total water charge included in that bill was \$1,342.13, which is the amount he argues should have been included in the October 2019 bill. Thus, according to Mr. Connors, in addition to being double-billed for the CoA's July/August service period charges, tenants' CoA water and wastewater charges for the August/September service period were pushed back a month and incorporated in Conservice's bill the next month, the November 2019 bill, instead of being properly included in the October 2019 bill. In short, he argues Conservice's actions resulted in the tenants' bills being pushed out a month,

which results in a “lagging bill” of previously assessed CoA water service charges that tenants will have to pay whenever they move out.⁶⁰

Mr. Connors created the table below illustrating the water billing dates for the CoA’s water service period charges as listed on his monthly rental bills from September 2019 to May 2020:

SEPTEMBER 2019 TO MAY 2020 BILLING DATES AT GALLERY II⁶¹

	City of Austin bill	On rental bill
September 2019 ⁶²	7/16/19-8/14/19	7/11/19-8/9/19
October 2019 ⁶³	7/16/19- 8/14/19	8/14/19-9/8/19
November 2019 ⁶⁴	8/14/19-9/13/19	9/8/19-10/3/19
December 2019 ⁶⁵	9/13/19-10/14/19	10/3/19-10/29/19

⁶⁰ Mr. Connors argued that billing tenants a month and a half behind the CoA bills provides “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.” Mr. Connors Reply Brief at E16.

⁶¹ Mr. Connors Initial Brief at 23 (asterisk not included). The dates listed in this table were uncontested. The far left column represents Mr. Connors’s monthly utility bills for The Gallery by the month they were due to be paid. The middle column represents the CoA service period listed on the corresponding monthly bill. The far right column represents the billing period listed on the corresponding monthly bill. For example, Mr. Connors’s October 2019 bill indicated that it incorporated the CoA water and wastewater charges from the July/August service period and that the billing period was for the period of 8/14/19 to 9/8/19.

⁶² Mr. Connors Ex. 8 at 1-17.

⁶³ Mr. Connors Ex. 8 at 19-23.

⁶⁴ Mr. Connors Ex. 8 at 24-28.

⁶⁵ Mr. Connors Ex. 8 at 29-33.

January 2020 ⁶⁶	10/14/19-11/13/19	10/29/19-11/23/19
February 2020 ⁶⁷	11/13/19-12/13/19	11/23/19-12/18/19
March 2020 ⁶⁸	12/13/19-1/14/20	12/18/19-1/14/20
April 2020 ⁶⁹	1/14/20-2/12/20	1/14/20-2/12/20
May 2020 ⁷⁰	2/12/20-3/13/20	2/12/20-3/13/20

Mr. Connors maintains this table proves that: (1) the CoA July/August service period charges were included in both his September and October 2019 bills, (2) the billing dates used for the tenants' rental bills from October 2019 to March 2020 differ from the CoA's service dates, and (3) Conservice used a 25-day billing cycle for certain months.⁷¹ For these reasons, Mr. Connors asserts Respondents violated Rule 24.283(d)(1), and consequently, subsection (b)(1) because the rendering of rental bills a month and a half after the CoA bill is not compliant with the requirement that such bills be rendered as promptly as possible. Mr. Connors insists that Respondents could have rendered bills timely within half-a-month of receiving the CoA bills because Performance was able to do so.⁷²

⁶⁶ Mr. Connors Ex. 8 at 34-38.

⁶⁷ Mr. Connors Ex. 8 at 39-43.

⁶⁸ Mr. Connors Ex. 8 at 44-48.

⁶⁹ Mr. Connors Ex. 8 at 49-53.

⁷⁰ Mr. Connors Ex. 8 at 54-58.

⁷¹ Based on the dates provided in the table, the following monthly bills from Conservice used a 25-day billing cycle: October and November 2019 and January and February 2020, and the December 2019 bill had a 26-day billing cycle.

⁷² Mr. Connors Initial Brief at 32-33.

Mr. Connors admits he received an approximate \$120 refund over the course of his monthly bills from June to September 2021, and that he received a check for \$85.56 from The Gallery and RPM.⁷³ However, Mr. Connors stated that he has not cashed the check because it is for an amount that is larger than what he is still owed for the amount he was overbilled. At the hearing, Mr. Connors indicated he is still owed approximately \$30, not \$85.56.⁷⁴ He contends that Conservice's calculations of the amount that he should be refunded did not account for the fact that he should be refunded for the entire amount he paid for his October 2019 rental bill that he argues was a double-billing. As such, he argues Respondents are also in violation of Rule 24.283(k) regarding overbilling. He also raises a concern that this double-billing was not included in the refunds given to other tenants that were also overbilled for the months at issue in this proceeding, and therefore asserts those tenants' October 2019 bills should be refunded as well.⁷⁵

b) Staff's Position

In contrast to Mr. Connors's assertion that Respondents violated subsections (b)(1) and (d)(1), Staff asserts The Gallery timely rendered and delivered bills in compliance with subsections (b), (d), and (h).⁷⁶

⁷³ The Gallery & RPM Ex. H. Mr. Connors stated at the hearing and in his post-hearing briefs that he received this refund amount. Mr. Connors Initial Brief at 10.

⁷⁴ Tr. at 25:00 (audio file titled "Hearing on the Merits Part 2").

⁷⁵ Mr. Connors Initial Brief at 37; Mr. Connors Ex. 8 at 5-23.

⁷⁶ Staff Initial Brief at 13; Tr. at 37:00 (audio file titled "Hearing on the Merits Part 1"). Staff witness Eiland confirmed at the hearing that her prefiled direct testimony should be revised to reflect that the bills did have a due date that was at least 16 days after they were mailed or hand delivered, in accordance with Rule 24.283(h).

As to the calculation of the bills, Staff witness Eiland was unable, based on the information provided, to recreate the charges for water and wastewater utility service that The Gallery charged to Mr. Connors from August 14, 2019 through March 13, 2020. Therefore, she was unable to determine whether the charges were allocated correctly.⁷⁷ However, by applying the standards in Rule 24.283(k) and Texas Water Code section 13.505 to the charges for which Mr. Connors was billed, she calculated that he was due a refund totaling \$76.90, which consists of \$74.47 for overcharges and \$2.43 in accrued interest for August 2019 through November 2022.⁷⁸

Ms. Eiland testified that “[i]t appears that an adjustment may be due to all tenants’ bills due to the manner in which the Owner calculated its charges to Mr. Connor [sic] for water and wastewater utility service.”⁷⁹ And it is Staff’s position that “it stands to reason that other tenants would be similarly overbilled. When [T]he Gallery originally gave him a refund, they recalculated it for everybody.”⁸⁰

⁷⁷ Staff Ex. 1 (Eiland Dir.) at 10.

⁷⁸ Staff Ex. 1 (Eiland Dir.) at 12-13. A detailed explanation of Ms. Eiland’s calculations regarding her recommended \$76.90 refund was not provided; however, she indicated she used the Commission-approved interest rates for overbillings established in Project No. 43519 for her interest calculation. Staff Ex. 1 (Eiland Dir.) at 12-13, Attach. KE-2; see *Interest Rates Set Under Texas Utilities Code § 183.003 and Set for Overcharges and Undercharges Under 16 Texas Administrative Code §§25.28, 25.480, and 26.27*, Project No. 45319, Order (Dec. 4, 2018), Order (Nov. 15, 2019), Order (Nov. 19, 2020).

⁷⁹ Staff Ex. 1 (Eiland Dir.) at 14.

⁸⁰ Staff Initial Brief at 12.

c) Respondents' Position

Respondents argue tenants' bills were rendered as fast as possible and were ultimately timely. The Gallery and RPM assert that:

[W]ater bills were due to be paid to the City of Austin at the beginning of each month. Then, they were allocated to the residents the very next month.⁸¹

As an example, they provided a water bill that: was printed on July 20, 2020, by the CoA; was due to be paid by The Gallery to the CoA on August 6, 2020; and which they assert appeared on the tenants' bills the next month on September 1, 2020.⁸² Similarly, Conservice argues it needs sufficient time to receive and process the CoA bills and to then calculate and mail tenant bills. It maintains that none of the applicable bills were issued after 60 days of receiving the corresponding CoA bill.⁸³

The Gallery and RPM further contend that Ms. Eiland confirmed that subsection (b)(1) does not define "timeliness" or "prompt" and that the standard

⁸¹ The Gallery & RPM Initial Brief at 4-5 (this document is not consecutively page numbered or Bate-stamped so the page numbers referenced represent the PDF page the information is found when viewed on the Commission's Interchange).

⁸² The Gallery & RPM Exs. F at RPM000103, G at RPM000161. The document in Exhibit G that The Gallery and RPM reference does not indicate that the July 20, 2020 CoA bill charges appeared on tenants' bills specifically on September 1, 2020, rather it notes simply "Post Month 09/2020." In addition, this bill is outside the scope of the eight-month period at issue.

⁸³ Conservice Initial Brief at 1.

for timeliness in rendering bills to tenants has not been provided to housing providers and is not easily accessible to them.⁸⁴

Conservice contests the comparisons Mr. Connors makes between it and Performance, asserting that he did not submit evidence that shows Performance's bills were correctly calculated, timely, or complied with the Commission's rules. As such, Conservice argues those comparisons are based simply on his assumptions, not fact.⁸⁵

Conservice disputes Mr. Connors's claim that he was double-billed for the CoA July/August service period charges in his October 2019 bill. While Conservice admits that incorrect CoA service dates were printed on the billing statements sent to Mr. Connors, it asserts the correct service dates and bills were used in the calculation of his charges and did not result in a billing error.⁸⁶ Conservice further argues that Mr. Connors relies exclusively on the service dates printed on Performance's billing statement to prove that he was billed for the CoA July/August service period charges in his September 2019 bill but offers no evidence to show that he was actually billed for those charges by Performance.

⁸⁴ The Gallery & RPM Initial Brief at 6. The Gallery and RPM did not cite to the hearing transcript for these assertions. Ms. Eiland indicated in her prefiled and hearing testimony that The Gallery *did not* render bills to tenants timely, Staff did not pursue that alleged violation in its initial brief and instead indicated that The Gallery *did* timely render bills to tenants. Staff Initial Brief at 13.

⁸⁵ Conservice Reply Brief at 1-2; *see* Mr. Connors Initial Brief at 30.

⁸⁶ In addition, Conservice argues that Rule 24.283(f) does not require billing service dates be printed on tenant statements. Conservice Reply Brief at 1.

Conservice casts further doubt that the CoA July/August service period charges were included in the September 2019 bill by breaking down how quickly Performance would have had to act to include those charges in that bill. According to Conservice, Performance would have had only three business days from the date the CoA bill was printed to then receive said bill in the mail, calculate tenant charges, and issue tenants their billing statements. Conservice stresses that no evidence was provided to show that Performance accomplished that “impressive timeline.”⁸⁷

Conservice also asserts that none of the charges on the bills issued by Performance to Mr. Connors match any calculations issued to him by Conservice on any billing statement or corrected billing summary, which it asserts indicates the Respondents did not double-bill Mr. Connors for the CoA July/August service period. However, in the event Mr. Connors was billed for those charges in his September 2019 bill from Performance, Conservice argues that no evidence was offered to show that Performance billed those charges correctly.⁸⁸

Ultimately, Respondents jointly argue that, once the error in Conservice’s billing system was identified it was promptly corrected and refunds were issued in accordance with Rule 24.283(k).⁸⁹ Conservice notes that Mr. Connors’s overbilled

⁸⁷ Conservice Reply Brief at 3.

⁸⁸ Conservice Reply Brief at 2.

⁸⁹ The Gallery & RPM Initial Brief at 12; Tr. at 31:30 (audio file titled “Hearing on the Merits Part 1”).

amount for the period at issue totaled \$138.23, while Mr. Connors admits receiving bill credits and a check totaling \$188.18.⁹⁰

B. ADDITIONAL ISSUES

The Commission's Preliminary Order raised the following additional issues that must be addressed in this proceeding.

1. Rule 24.281(c), (e)

Under Rule 24. 281(e), before an owner may allocate a retail public utility's master meter bill for water and wastewater service to tenants, it must first deduct any customer service charge, if applicable.⁹¹ Per Subsection (c), if a retail public utility's rate structure includes a customer service charge, the owner must bill each dwelling unit the amount of such charge divided by the total number of dwelling units, including vacant units, that can receive service through the master meter serving the tenants.

According to Ms. Eiland, The Gallery failed to provide evidence to indicate that the customer service charge was deducted before the water and wastewater charges were allocated, and therefore The Gallery is not in compliance with subsection (e).⁹² Upon review of the applicable bills, she presumed that the "Customer Charge" for water and wastewater services listed on the CoA bills was

⁹⁰ Conservice Initial Brief at 1-2.

⁹¹ 16 TAC § 24.281(e)(1)(A).

⁹² Staff Ex. 1 (Eiland Dir.) at 10-11.

included in the tenants' allocated bills and labeled as the "Water Base Charge" and "Sewer Base Charge," respectively.⁹³ Ms. Eiland testified that "base charges" are not included in the CoA's rate structure, and therefore the CoA customer service charges are not properly included on the tenants' bills.⁹⁴ As such, Ms. Eiland testified that The Gallery violated subsection (c) as well.

The Gallery and RPM and Mr. Connors disagree with Ms. Eiland's position on this issue for different reasons. The Gallery and RPM assert the customer service charge was not included in the total that was allocated to tenants.⁹⁵ They argue the evidence does not support a finding that a violation or overbilling occurred due to the inclusion of customer service charges. They referred to past CoA bills and corresponding tenant bills to argue the evidence definitively shows customer service charges were always deducted prior to allocating water and wastewater services to the tenants.⁹⁶ Conversely, Mr. Connors argues that the CoA customer service charge was treated as a fixed charge and properly divided up by the units at the Gallery II.⁹⁷

⁹³ Tr. at 59:00 (audio file titled "Hearing on the Merits Part 1").

⁹⁴ Tr. at 59:00 (audio file titled "Hearing on the Merits Part 1").

⁹⁵ The Gallery & RPM Reply Brief at 4-5.

⁹⁶ The Gallery & RPM Exs. F at RPM000136, G at RPM000145. They assert these documents indicate that the total water and wastewater charges that were allocated among the tenants for January 2020 did not include the respective \$75.10 or \$10.30 customer charges included on the corresponding CoA bill.

⁹⁷ Mr. Connors Ex. 3 at 7-10.

2. Rule 24.283(f)(1-4), (7), (I)

Rule 24.283 (f)(1-4) and (7) require a tenants' bill to clearly state that the utility service is submetered or allocated, as applicable, and must include all of the following:

- (1) total amount due for . . . allocated water;
- (2) total amount due for . . . allocated wastewater;
- (3) total amount due for dwelling unit base charge(s) or customer service charge(s) or both, if applicable;
- (4) total amount due for water or wastewater usage, if applicable;
- ...
- (7) name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute.

a) Staff's Position

Ms. Eiland testified that she did not receive copies of all the bills issued to Mr. Connors during the applicable period but that the bills she reviewed did not: (1) clearly state that the utility service is allocated; (2) include the total amount due to customer service charges; and (3) state the name or title of the person to contact in case of a billing dispute or Conservice's address, although she noted the bills did list the name of the firm (Conservice) and a telephone number and email address for customer service.⁹⁸

⁹⁸ Staff Ex. 1 (Eiland Dir.) at 15-16; Staff Initial Brief at 13-14.

In addition, Ms. Eiland testified that in response to Mr. Connors's numerous attempts to contact The Gallery to contest his water and wastewater bills, the earliest being in February 2020, there is no evidence to indicate that The Gallery conducted a timely investigation of his dispute or reported the results of the investigation to him within 30 days in accordance with Rule 24.283(d).

b) Respondents' Position

The Gallery and RPM contest Ms. Eiland's testimony that bills issued by Conservice do not clearly indicate that utility service is allocated. In support, they refer to the second page of the bills that were issued from November 14, 2020 to August 17, 2021, which state in part:

Water service is provided by the City of Austin TX. Service provider issues bill, property management pays a portion to cover common area usage. Remaining amount is allocated to residents using a multiplier based on the number of bedrooms in the unit. Your multiplier is 1.6.⁹⁹

Neither Conservice nor Mr. Connors addressed this issue.

C. REQUESTED RELIEF

As indicated previously, Mr. Connors asserts that he is still due \$30 for the overbilling that occurred from October 2019 through May 2020 due to Conservice's billing system error. In addition, Mr. Connors requests that Respondents be ordered

⁹⁹ The Gallery & RPM Initial Brief at 11; *see* The Gallery & RPM Ex. C. These bills are inapplicable to this proceeding as they were issued outside the applicable eight-month period.

to: (1) pay for an entire CoA monthly bill because, as detailed above, he asserts the Gallery II tenants were charged twice for the CoA's July/August service period charges, and (2) return their water billing dates to what they were previously, i.e., a half-a-month behind the CoA's bills.

Staff requests that The Gallery be ordered to: (1) refund Mr. Connors the amount he was overbilled with interest which by Staff's calculation totals \$76.90, or, alternatively, \$30.00 as calculated by Mr. Connors; (2) review all of its water and wastewater billing practices to ensure they comply with 16 Texas Administrative Code Subchapter I, Water Utility Submetering and Allocation; and (3) file a compliance report detailing the steps taken to alleviate the violations.¹⁰⁰

As previously stated, Respondents admit Mr. Connors was overbilled and insist the overbilling occurred due to a mistake in Conservice's system that resulted in improper occupancy and square footage figures being utilized to allocate water and wastewater charges from October 2019 through May 2020. Conservice argues Mr. Connors should not be awarded any further monetary relief as he has already been credited and refunded an amount that is greater than what he was overbilled.¹⁰¹

¹⁰⁰ Staff Initial Brief at 15; Staff Ex. 1 (Eiland Dir.) at 16-17.

¹⁰¹ Conservice Initial Brief at 1-2.

V. ALJ'S DISCUSSION OF THE PRELIMINARY ORDER ISSUES AND RECOMMENDATION

Each of the Commission's Preliminary Order Issues are addressed and considered in light of the evidence provided in detail below:

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

Yes. Mr. Connors's formal complaint references informal complaint #CP2020101118 and Staff confirmed that it matches the parties and subject matter of the formal complaint at issue. Staff's assertion on this issue is unopposed.¹⁰²

Issue 2: Did Mr. Connors meet all of the requirements to bring his formal complaint under 16 TAC § 22.242(e)?

Yes. Mr. Connors's formal complaint meets the applicable requirements set forth in Rule 22.242. By Commission order, the filing and service rules set forth in Rules 22.71 and 22.74 are suspended, but Mr. Connors complied with Rule 22.242(f) by filing his complaint on the Commission's Interchange database and providing notice of the complaint to Respondents by email.¹⁰³ This issue is uncontested.¹⁰⁴

¹⁰² Staff Initial Brief; The Gallery & RPM Reply Brief at 2.

¹⁰³ The Commission's order is available at: http://interchange.puc.texas.gov/Documents/50664_205_1075813.PDF

¹⁰⁴ The Gallery & RPM Reply Brief at 2.

Mr. Connors was not required to bring his formal complaint under Rule 22.242(e)(1) because that rule establishes requirements to present complaints concerning electric, water, or sewer utilities within the limits of a city with original jurisdiction over said utility and none of the Respondents are water utilities.¹⁰⁵

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

The Gallery is the owner. For the complaint period, The Gallery contracted with RPM to provide property management services and with Conservice to provide billing services.¹⁰⁶ No evidence was provided to show that RPM or Conservice were expressly identified as the landlord in the lease agreement; therefore, they are not considered the owner.

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

No, the Commission does not have jurisdiction over Conservice in this proceeding under Rule 24.285 because Conservice is not an owner, as defined in Rule 24.275(c)(12). Therefore, Conservice is not subject to the requirements regarding

¹⁰⁵ See Tex. Water Code § 13.002(23); 16 TAC § 24.3(38).

¹⁰⁶ The Gallery & RPM Reply Brief at 2.

water utility submetering and allocation as set forth in Rules 24.277, .279, .281, and .283 and is not responsible for providing relief to Mr. Connors under Texas Water Code section 13.505 or Rule 24.283(k) for any violation of those rules. That responsibility resides solely with the owner, The Gallery.

However, although Conservice is not the subject of the complaint nor considered a respondent in this proceeding, it should not be dismissed from the proceeding. Rather, Conservice should be joined as a necessary party per Texas Rule of Civil Procedure 39 due to its involvement and control over the bills issued to Mr. Connors as a tenant of The Gallery and the billing records he requested. To support this finding, the ALJ highlights Conservice witness Matthews's testimony confirming that Conservice has exclusive control over the water and wastewater bills that are issued to The Gallery's tenants and that it assumes the responsibility for entering the data from the service providers bills (here the bills from CoA) and billing the tenants accurately. In sum, once the CoA bills are issued to The Gallery, Conservice is in control of those bills and is responsible for billing The Gallery's tenants appropriately.¹⁰⁷

Accordingly, while the Commission does not have jurisdiction over Conservice in this complaint proceeding per Rule 24.285, Conservice should not be dismissed from the proceeding.¹⁰⁸

¹⁰⁷ Tr. at 27:55 (audio file titled "Hearing on Merits Part 1.").

¹⁰⁸ The ALJ refers to and incorporates herein the discussion of the ruling on Conservice's motion to dismiss in SOAH Order No. 1.

The question of whether the Commission has jurisdiction over RPM in this proceeding under Rule 24.285 was not raised.

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

No water or sewer tariffs were filed because The Gallery is not a utility. Staff, The Gallery, and RPM indicate the CoA's rate schedule was filed as Interchange Item No. 10.¹⁰⁹

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

The applicable time period for the alleged violations was October 2019 to June 2020.¹¹⁰

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

Yes, The Gallery filed the applicable Commission form (*Registration of Submetered or Allocated Utility Service Form*) for the Gallery II on November 12, 2018,

¹⁰⁹ The Gallery & RPM Reply Brief at 3; Staff Initial Brief at 6. The rate schedule identified was not offered or admitted into evidence.

¹¹⁰ The overbilling occurred from October 2019 through May 2020, with the last month being represented in Mr. Connors's June 2020 bill.

in Project No. 47191.¹¹¹ On April 23, 2021, The Gallery filed a new form to change the method it bills its tenants in Project No. 51613.¹¹² The new form showed the property name had changed from the Gallery II to Motif South Lamar II. This issue is uncontested.

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

Yes, Mr. Connors requested applicable billing records under Rule 24.277(e)(6) and (8) from The Gallery as early as February 28, 2020. However, Mr. Connors was not provided with any such records until January 5, 2021, well past even the longest 30-day timeframe allowed under Rule 24.277(g). Therefore, the The Gallery violated Rule 24.277(e) and (g) by failing to provide the requested records within the timeframe allowed after being requested. Because The Gallery violated subsections (e) and (g) by not providing the records within the required timeframe, the issue of whether The Gallery provided complete records on January 5, 2021, does not need to be addressed.

While The Gallery failed to *provide* the requested records as required, the ALJ finds there is insufficient evidence to determine that The Gallery failed to *maintain*

¹¹¹ *Registration of Submetered or Allocated Utility Service for 2018*, Project No. 47191, Registration of Submetered or Allocated Utility Service – The Gallery II, 356060 Manchaca Rd, Item No. 1117 (Nov. 12, 2018).

¹¹² *Registration of Submetered or Allocated Utility Service for 2021*, Project No. 51613, Registration of Submetered or Allocated Utility Service, Item No. 247 (Apr. 23, 2021).

the required records for the required retention period. Accordingly, the ALJ does not find a violation of Rule 24.277(f).

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

Mr. Connors did not take a position on this issue.

Upon her review of The Gallery's 2019 rental agreement with Mr. Connors, Staff witness Eiland testified that The Gallery's *Lease Addendum for Allocating Water/Wastewater Costs* was not compliant with Rule 24.279(a)(4) and (5) because it did not include the average monthly bill for all dwelling units in the previous calendar year and the highest or lowest months bills for that period or a clear description of the formula used to allocate utility services.¹¹³ Additionally, Staff argues that The Gallery violated Rule 24.279(b) because it provided Mr. Connors with a copy of Rule 24.281 on January 5, 2021, rather than at the time The Gallery discussed the rental agreement with Mr. Connors as required.¹¹⁴

¹¹³ Staff Ex. 1 (Eiland Dir.) at 9.

¹¹⁴ Staff Initial Brief at 9.

The Gallery and RPM generally maintain the requirements set forth in this rule were complied with and that “Mr. Connors [sic] was fully informed of the average bill for water and the allocation method used to calculate that average. Mr. Connors [sic] lived there for years and got such information on a monthly basis.”¹¹⁵

The Gallery’s 2019 and 2020 rental agreements with Mr. Connors were admitted into evidence, and upon review of those documents, The ALJ finds neither rental agreement includes the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month’s bills for that.¹¹⁶ Accordingly, the ALJ finds a violation of Rule 24.279(a)(4).

The ALJ further finds that the identification of the allocation formula to be used as well as the inclusion of a copy of Rule 24.283 in Mr. Connors’s 2019 and 2020 *Lease Addendum for Allocating Water/Wastewater Costs* satisfied the requirement in Rule 24.279(a)(5) for a clear description of the formula used to allocate utility services. Accordingly, the ALJ does not find a violation of subsection (a)(5).

Finally, the ALJ finds there is insufficient evidence to determine that The Gallery did not provide Mr. Connors a copy of the required Commission rules at the time the rental agreement was discussed with him simply because an individual

¹¹⁵ The Gallery & RPM Reply Brief at 3-4.

¹¹⁶ The Gallery & RPM Ex. C at 000016-23, 42-47; Staff Ex. 1 (Eiland Dir.) at 9.

on behalf of RPM subsequently provided a copy of those rules to him on January 5, 2021. Accordingly, the ALJ does not find a violation of Rule 24.279(b).

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

The Gallery charged Mr. Connors for water and wastewater service using an allocation method. As indicated on the *Registration of Submetered or Allocated Utility Service Form* The Gallery filed in Project No. 47191, The Gallery selected to implement the ratio occupancy allocation method identified in Rule 24.281(e)(2)(A)(iv). However, as detailed above, Conservice admitted the application of this allocation method was not accurate and resulted in overbilling during the time period at issue. This issue is uncontested, and the ALJ therefore finds a violation of Rule 24.281(e)(2)(A)(iv).

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

Yes, The Gallery changed its billing method since the inception of Mr. Connors's lease and selected the estimated method to allocate utility charges identified in Rule 24.281(e)(2)(A)(iii). This change was made through The Gallery's filing of the applicable Commission form in Project No. 51613.

The Gallery obtained Mr. Connors's consent to this change in January 2020, per his 2020 lease renewal, and as Mr. Connors's testified, his bills were not calculated using the new allocation method until June 2020. Therefore, Mr. Connors received more than the required 35 days' notice.¹¹⁷ Accordingly, the ALJ finds no violation of Rule 24.279(c).

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

Staff was the sole party to allege that The Gallery violated Rule 24.281(e)(1) and (c), as addressed above. From the evidence provided, the ALJ finds there is insufficient evidence to determine The Gallery did not comply with this rule. Accordingly, the ALJ does not find a violation of Rule 24.281(e)(1) and (c).

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

The parties have varying positions on: (1) the total amount Mr. Connors was overbilled, (2) how much Mr. Connors has already been refunded, and (3) whether he is due any additional refund amounts.

¹¹⁷ The Gallery & RPM Ex. C at 000043-47; Mr. Connors Ex. 3 at 6-7. Mr. Connors Initial Brief at 6.

Conservice asserts Mr. Connors was overbilled \$138.23 due to its inaccurate billing allocation from October 2019 through May 2020 and that he received a total refund of \$188.18 and is not entitled to additional monetary relief. Conservice also disputes Mr. Connors's assertion that he was double-billed for the CoA July/August service period charges.

Although Staff witness Eiland testified that she was unable to recreate the water and wastewater utility service charges The Gallery billed Mr. Connors from August 14, 2019, through March 13, 2020, and could not determine whether The Gallery allocated those charges correctly, she testified that Mr. Connors is due a remaining refund of \$76.90. Alternatively, Staff supports Mr. Connors's position that he is due a refund of approximately \$30, as discussed below. Staff does not state a position on whether Mr. Connors was overbilled for the CoA July/August service period charges on the October 2019 bill.

At the hearing, Mr. Connors stated that he received approximately \$120 in credits, and that while he did receive a check for \$85.56, he has not cashed it because it is more than he is due.¹¹⁸ He approximated that at this point he is only due \$30 for what he was overbilled due to Conservice's erroneous allocation figures. Mr. Connors also alleges that he was overbilled for the CoA July/August service period charges because those charges were included in both his September 2019 and

¹¹⁸ Mr. Connors Initial Brief at 10.

October 2019 bills; therefore, he asserts he should be refunded for the entire amount he paid for his October 2019 bill.

From the evidence submitted, it is apparent that Mr. Connors maintained thorough records of how much he was charged by The Gallery for water and wastewater services. Being that Mr. Connors, as the complainant who was overbilled, asserts that the remaining refund he is due is less than what Staff estimated and what Conservice has provided (i.e., the check for \$85.56 that has not been deposited), the ALJ finds it reasonable to presume his calculations regarding what amount he has received and what amount he is still due are accurate. Accordingly, the ALJ finds that for the overbilling that occurred due to Conservice's inaccurate billing system, Mr. Connors was overbilled approximately \$150. Of that, he has received approximately \$120 in bill credits from June to September 2021 and that he is due an additional \$30.

Additionally, Mr. Connors presented convincing evidence that he was in fact billed twice for the CoA service period charges in his October 2019 bill. Conservice's response that the incorrect service periods were printed on the bills and were not used to calculate the bills, and therefore, no double-billing occurred, was insufficient to refute Mr. Connor's evidence. Accordingly, the ALJ finds that Mr. Connors should be refunded for an amount that equals his October 2019 bill payment for water and wastewater services, excluding the base water and sewer charges. The amount

to be refunded totals \$19.86 and consists of a \$9.06 water service charge and a \$10.80 wastewater service charge.¹¹⁹

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

The preponderance of the evidence indicates that other tenants, in addition to Mr. Connors, were overbilled due to Conservice's billing system error. This error did not affect all tenants, only those that were billed under the *Oc50/Sq50* method during the applicable period, and therefore, while the affected tenants are due a refund for any overbilled amount, an adjustment for all tenants under Rule 24.283(k) is not warranted.

No bills for any tenant except Mr. Connors are in evidence and therefore the ALJ is uncertain if all of The Gallery's tenants were double-billed for the CoA July/August water service charges in their October 2019 bills. Accordingly, the ALJ cannot determine if an adjustment for all tenants under Rule 24.283(k) is warranted.

Issue 15: Did the owner comply with all requirements of 16 TAC § 24.283 with respect to rendering bills to tenants? If not, which provisions did the owner violate? In addressing this question, evaluate the following.

¹¹⁹ Mr. Connors Ex. 8 at 19-23.

- a. **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?**

All parties except Mr. Connors assert that tenants' bills were rendered and delivered in accordance with Rule 24.283(b)-(d), and (h). Mr. Connors alleges violations of subsections (b) and (d).

As Respondents highlighted, there is no definition for what "promptly" means, as forth in subsection (b), and Staff witness Eiland confirmed that the Commission has not provided owners with a standard for what this term means. Being that there is no definition or standard for "promptly" set forth in the Commission's rules and that no past decisions on this issue were cited as precedent, the ALJ finds Respondents' arguments on the amount of time needed to render the bills at issue persuasive. Accordingly, the ALJ does not find a violation of subsection (b).

As Mr. Connors's table above demonstrates, some of The Gallery's allocated bills for the eight months at issue were not rendered for the same billing period as the CoA's. Specifically, The Gallery's October, November, and December 2019 and January and February 2020 bills were rendered for a 25- or 26-day billing period whereas the corresponding CoA billing periods were for 29 or 30 days. Accordingly, for those specific bills, the ALJ finds a violation of subsection (d), which requires that

allocated bills be rendered for the same billing period as that of the applicable retail public utility (the CoA in this case).

The bills issued to Mr. Connors from December 2019 through June 2020 provided that charges listed in the bill were “due the later of 16 days after the statement date listed above or 12/01/2019.”¹²⁰ This statement satisfies the minimum 16-day requirement in subsection (h). Although the full bills issued by Conservice for October 2019 and November 2019 were not admitted, it is a reasonable presumption based on the specific portions of those bills that were admitted that those bills contained the information required by this subsection as well.

b. Do the bills that the owner issued to Mr. Connors clearly state that the utility service is submetered or allocated, as applicable, and provide the appropriate information as required by 16 TAC § 24.283(f)(1) through (4)?

The bills that The Gallery and RPM rely upon to prove compliance with this rule (the bills issued from November 14, 2020 to August 17, 2021) are inapplicable as they are outside the time period at issue.

The ALJ reviewed all of the complete bills admitted into evidence, which were the bills issued December 2019 through June 2020, and finds that they included the

¹²⁰ Conservice Ex. CON-2 at 1-11.

total amounts due for allocated water and wastewater as required by subsections (f)(1)-(2).¹²¹ Although the full bills issued by Conservice for October and November 2019 were not admitted, it is a reasonable presumption based on the specific portions of those bills that were admitted that those bills contained the information required by these subsections as well.

The ALJ concludes there is insufficient evidence to determine that The Gallery violated subsections (f)(3)-(4).

c. Do the bills clearly state the name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute as required by 16 TAC §24.283(f)(7)?

The December 2019 through June 2020 bills issued to Mr. Connors clearly stated the name of the firm rendering the bill (Conservice) and provided a physical address, email address, website, and telephone number that a tenant could use in case of a billing dispute.¹²² The ALJ finds that this satisfies the information required under Rule 24.283(f)(7).

Although the full bills issued by Conservice for October and November 2019 were not admitted, it is a reasonable presumption based on the specific portions of

¹²¹ Conservice Ex. CON-2 at 1-11.

¹²² Conservice Ex. CON-2 at 1-11.

those bills that were admitted that those bills contained the information required by this subsection as well.

- d. Do the bills clearly state the name, address, and telephone number of the party to whom payment is to be made as required by 16 TAC § 24.283(f)(8)?**

The December 2019 through June 2020 bills issued to Mr. Connors clearly stated the name and telephone number of The Galley, the party to whom payment was to be made, in accordance with Rule 24.283(f)(8).

Although the full bills issued by Conservice for October and November 2019 were not admitted, it is a reasonable presumption based on the specific portions of those bills that were admitted that those bills contained the information required by this subsection as well.

- e. If the service is submetered, do the bills that the owner issued to Mr. Connors include all information required by 16 TAC § 24.283(g)?**

This question is inapplicable as The Gallery's service is not submetered.

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

Yes, Mr. Connors disputed the bills at issue on multiple occasions and as early as February 2020. Mr. Connors filed his informal complaint on November 2, 2020, and it was not until January 5, 2021, that Ms. Gaines with RPM responded to Mr. Connors to inform him that a thorough investigation had been conducted and that it was The Gallery and RPM's position that The Gallery had been billing appropriately in accordance with state laws and the Commission's rules.¹²³ Ms. Gaines did not indicate when the investigation was conducted. Conservice witness Matthews confirmed at the hearing that the error in Conservice's billing system regarding inaccurate occupancy and square footage data was not noticed until early 2021 (sometime in March through May of that year), over a year after Mr. Connors began disputing his bill and after the investigation that Ms. Gaines referenced was completed.¹²⁴

Accordingly, the ALJ finds that The Gallery did not conduct a timely investigation of Mr. Connors disputed bills within 30 days as required under Rule 24.283(l).

Issue 17: If the Gallery Apartments, RPM Property Management, or Conservice did not comply with Commission rules or the Texas Water Code, what is the appropriate remedy?

¹²³ Mr. Connors Ex. 2 at A12.

¹²⁴ Tr. at 28:30 (audio file titled "Hearing on Merits Part 1").

For the reasons addressed above, the ALJ finds The Gallery violated Rules 24.277(e) and (g), .279(a)(4), .281(e)(2)(A)(iv), and .283(d)(1) and (l). In addition, the ALJ finds that a refund is due to Mr. Connors under Rule 24.283(k).

Consequently, the ALJ recommends the Commission require The Gallery to: (1) refund Mr. Connors \$30 and an amount equal to what he was billed for water and wastewater services in his October 2019 bill, which totals \$19.86; (2) review all of its water and wastewater billing practices to ensure they comply with 16 Texas Administrative Code Subchapter I, Water Utility Submetering and Allocation; and (3) file a compliance report detailing the steps taken to alleviate the violations identified above.

The ALJ recommends the Commission adopt the recommendations and findings set forth in the discussion above by adopting the following findings of fact, conclusions of law, and ordering paragraphs in the Commission's final order.

VI. FINDINGS OF FACT

1. On November 2, 2020, Jeff Connors filed an informal complaint with the Public Utility Commission of Texas (Commission) against The Gallery Apartments (The Gallery), RPM Property Management (RPM), and Conservice (collectively, Respondents) alleging improper water and wastewater billing practices.
2. On December 14, 2020, Mr. Connors filed a formal complaint with the Commission against The Gallery, RPM, and Conservice alleging improper water and wastewater billing practices.

3. On January 6, 2020, Conservice filed a motion for dismissal for lack of jurisdiction.
4. On May 10, 2022, the Commission referred Mr. Connors's formal complaint to the State Office of Administrative Hearings (SOAH), and two days later the Commission issued the Preliminary Order identifying the issues that must be addressed in this proceeding.
5. On July 11, 2022, SOAH Administrative Law Judge (ALJ) Meaghan Bailey issued SOAH Order No.1 denying Conservice's motion for dismissal.
6. On February 6, 2023, ALJ Bailey convened the hearing on the merits via Zoom and all parties appeared. Mr. Connors represented himself; attorney Daniel Edmunds represented The Gallery and RPM; attorney Juliana Kat represented Conservice; and attorney Phillip Lehman represented Commission staff (Staff).
7. The following evidence was admitted at the hearing: Mr. Connors's Exhibits 1-8; The Gallery and RPM's Exhibits A-K; and Conservice's Exhibits CON-1-CON-4.
8. The evidentiary record was held open until February 10, 2023, to allow the parties to offer supplemental evidence.
9. Mr. Connors's supplemental Exhibits A-D and The Gallery and RPM's supplemental Exhibit J were admitted.
10. The parties filed initial post-hearing briefs on March 6, 2023, and reply brief on March 13, 2023, at which time the record closed.
11. The Gallery is the owner of two apartment complexes, Gallery I and Gallery II (which have since been renamed Motif South Lamar), located in Austin, Texas.
12. Mr. Connors is a tenant of The Gallery and resides in Gallery II.
13. The Gallery contracted with RPM to provide property management services beginning in July 2019.

14. Prior to July 2019, Performance Utilities (Performance) provided property management services for The Gallery.
15. The Gallery contracted with Conservice to serve as a third-party utility billing provider from September 1, 2019 to May 6, 2022, and during that time Conservice generated and issued the water and wastewater bills for The Gallery's tenants.
16. Neither RPM not Conservice were expressly identified as the landlord in Mr. Connors's 2019 or 2020 rental agreements with The Gallery.
17. Mr. Connors's 2019 and 2020 rental agreements with The Gallery did not include or provide the average monthly bill for all dwelling units in the previous calendar year or the highest and lowest month's bills for that period.
18. The Gallery filed the Commission-approved *Registration of Submetered or Allocated Utility Service Form* for Gallery II on November 12, 2018, indicating it would use the allocation method identified in 16 Texas Administrative Code section (Rule) 24.281(e)(2)(A)(iv) (the *Oc50/Sq50* method) to allocate utility charges to tenants.
19. The Gallery filed another *Registration of Submetered or Allocated Utility Service Form* for Gallery II on April 23, 2021, indicating it would use the allocation method identified in Rule 24.281(e)(2)(A)(iii) (the *CustMult* method) to allocate utility charges to tenants.
20. The Gallery obtained Mr. Connors's consent to transition him from the *Oc50/Sq50* method to the *CustMult* method more than 35 days before the transition occurred.
21. From October 2019 to June 2020, The Gallery's tenants were billed using two different allocation methods; some tenants were billed using the *CustMult* method and some were billed using the *Oc50/Sq50* method.
22. Mr. Connors was billed under the *Oc50/Sq50* method until June 2020 when he was transitioned to the *CustMult* method.

23. An error occurred in Conservice's system that resulted in incorrect occupancy and square footage figures being used in the calculations for the Gallery II tenants billed under the *Oc50/Sq50* method, including Mr. Connors, from October 2019 to May 2020, which led to those tenants being overbilled for those months.
24. Due to this error, Mr. Connors was overbilled approximately \$150 from October 2019 to June 2020 (his June 2020 bill represents the overbilling that occurred in May 2020).
25. At the time of the hearing, Mr. Connors had received approximately \$120 in bill credits from June to September 2021, and a check for \$85.56. Those amounts were intended to refund him for the amount he was overbilled due to Conservice's system error.
26. Mr. Connors did not deposit the check for \$85.56 because that amount is greater than the remaining \$30 he is owed.
27. Mr. Connors is still due a \$30 refund for the amount he was overbilled from October 2019 to May 2020.
28. Mr. Connors contacted multiple staff members of The Gallery and RPM and requested billing records via email on February 28, September 29, October 8, October 21, and December 14, 2020.
29. Mr. Connors did not receive any of the requested records from The Gallery or RPM until January 5, 2021.
30. Mr. Connors's September 2019 rental bill, issued by Performance, included water and wastewater service charges incurred from the City of Austin (CoA) from 7/15/19 to 8/14/19 (the July/August service period).
31. Mr. Connors's October 2019 rental bill, issued by Conservice, also included water and wastewater service charges incurred from the CoA for the July/August service period.
32. Mr. Connors was double-billed for the water and wastewater service charges incurred from the CoA for the July/August service period.

33. Mr. Connors is due a refund equal to the amount he paid for water and wastewater services in October 2019, excluding base charges, which totals \$19.86.
34. The rental bills Mr. Connors received for October, November, and December 2019 and January and February 2020 indicated a billing period of 25 or 26 days that differed from the CoA's corresponding 29- or 30-day billing periods, respectively for the incurred water and wastewater charges included within those bills, respectively.
35. Mr. Connors's rental bills for October 2019 through June 2020 were timely rendered to him and they notified him that payment was due not less than 16 days after they were mailed or hand delivered to him, unless the due date falls on a federal holiday or weekend.
36. Mr. Connors's rental bills for October 2019 through June 2020 clearly stated the utility service was allocated to tenants.
37. Based on the evidence, it is unknown whether Mr. Connors's rental bills for October 2019 through June 2020 clearly stated the total amount due for the dwelling unit base charge(s) or customer service charge(s) or both, if applicable, or the total amount due for water or wastewater usage, if applicable.
38. Mr. Connors's rental bills for October 2019 through June 2020 clearly stated the name of the firm rendering the bill (Conservice) and provided a physical address, email address, website, and telephone number that a tenant could use in case of a billing dispute.
39. Mr. Connors's rental bills for October 2019 through June 2020 clearly stated the name, address, and telephone number of The Gallery, to whom the payment was to be made.
40. Based on the evidence, it is unknown whether during the period at issue, The Gallery deducted the CoA's customer service charge prior to allocating water and wastewater service charges to tenants or whether that charge was treated as a fixed charge to the tenants and divided by The Gallery's units, including vacant units.

41. Mr. Connors disputed the bills at issue on multiple occasions, as early as February 28, 2020, and The Gallery did not notify him that an investigation had been conducted or of the results of that investigation until January 5, 2021.
42. The Gallery did not conduct a timely investigation or report the results of the investigation within 30 days of Mr. Connors's dispute.
43. The Gallery should review all of its water and wastewater billing practices to ensure they comply with 16 Texas Administrative Code Subchapter I, Water Utility Submetering and Allocation.
44. The Gallery should file a compliance report detailing the steps taken to alleviate the violations of Rules 24.277(e) and (g), .279(a)(4), .281(e)(2)(A)(iv), and .283(d)(1) and (l), as identified above.

VII. CONCLUSIONS OF LAW

1. Texas Water Code chapter 13, subchapter M provides a framework for submetering and nonsubmetering of water and wastewater services for apartment complexes.
2. The Commission has exclusive jurisdiction for violations of Texas Water Code chapter 13, subchapter M, and the Commission is authorized to require an owner of an apartment complex to repay a tenant who has been overcharged for water and wastewater services from a retail public utility. Tex. Water Code § 13.505.
3. The Gallery is the owner of the apartment complex consisting of the Gallery I and Gallery II (which has since been renamed Motif South Lamar). Tex. Water Code § 13.501(1), (5); 16 Tex. Admin. Code § 24.275(c)(2), (12).
4. Conservice is not the owner of The Gallery apartment complex and is not subject to the Commission's jurisdiction regarding complaints of water utility submetering or allocation. Tex. Water Code §§ 13.501(5), .5031, .505; 16 Tex. Admin. Code §§ 24.275(c)(12), -.285.
5. Conservice is a necessary party to this proceeding and should not be dismissed. Tex. R. Civ. P. 39.

6. The CoA is the retail public utility that provides water and wastewater service to The Gallery. Tex. Water Code § 13.002(19); 16 Tex. Admin. Code § 24.3(31).
7. Mr. Connors is a tenant of The Gallery. Tex. Water Code § 13.501(6); 16 Tex. Admin. Code § 24.275(c)(15).
8. The Commission has jurisdiction over this matter pursuant to Texas Water Code section 13.505.
9. Mr. Connors filed his informal and formal complaint in accordance with Rule 22.242.
10. Mr. Connors complied with the Commission's informal complaint process.
11. Mr. Connors complied with the Commission's requirements for formal complaints.
12. The Commission processed Mr. Connors's complaint in accordance with the requirements of the Texas Water Code, the Administrative Procedure Act, and Commission rules.
13. SOAH has jurisdiction over matters related to the hearing of this proceeding including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code section 2003.049.
14. Notice of the hearing on the merits was given in compliance with Texas Government Code sections 2001.051-.052.
15. Mr. Connors had the burden of proof to prove the alleged violations of Commission rules. 16 Tex. Admin Code § 24.12.
16. Mr. Connors's allegations regarding fraudulent actions and his request for administrative penalties are outside the scope of this proceeding. *Panda Power Generation Infrastructure Fund, LLC v. Elec. Reliability Council of Tex., Inc.*, 641 S.W.3d 893, 921 (Tex. App. — Dallas 2022, pet. granted); *Complaint of John S. Dashtgoli Against Southwestern Bell Telephone Company d/b/a AT&T Texas*, Docket No. 41655, PUC Order No. 5 at 3 (Feb. 26, 2014); 16 Tex. Admin. Code § 22.246.

17. The Gallery complied with the registration requirements for owners that intend to bill tenants for allocated utility service and for owners that change the allocation method used for billing tenants for utility service, in accordance with Rule 24.277(a).
18. The Gallery rendered the allocated bills as promptly as possible after receiving the CoA bill, in accordance with Rule 24.283(b)(1).
19. The Gallery complied with Rule 24.283(f). The Gallery's bills to Mr. Connors clearly stated that the utility service is allocated, and the evidence did not show that The Gallery failed to provide any of the bill information required under that rule.
20. From October 2019 to June 2020, The Gallery used the Commission-approved allocation method identified in Rule 24.281(e)(2)(A)(iv) to bill Mr. Connors for utility service.
21. The Gallery's October 2019 to June 2020 bills issued to Mr. Connors were not in compliance with the requirements set forth in Rule 24.281(e)(2)(A)(iv) because they were calculated based on inaccurate occupancy and square footage figures and led to Mr. Connors's being overbilled.
22. Per Texas Water Code section 13.505 and Rule 24.283(k), The Gallery owes Mr. Connors an outstanding refund totaling \$30 for the amount he was overbilled due to the inaccurate allocations from October 2019 to June 2020 and \$19.86 for the amount he was double-billed in his October 2019 bill for the charges incurred from the CoA for the July/August service period.
23. Mr. Connors requested billing records from The Gallery that are identified in Rule 24.277(e)(6) and (8) on February 28, September 29, October 8, October 21, and December 14, 2020.
24. The Gallery did not provide Mr. Connors with the requested records within the timeframe required under Rule 24.277(e), (g).
25. The Gallery did not conduct an investigation and report the findings of that investigation to Mr. Connors within 30 days of Mr. Connors disputing his bill as required under Rule 24.283(l).

26. The Gallery's bills issued to Mr. Connors in October, November, and December 2019 and January and February 2020 were not compliant with Rule 24.283(d) because they were not rendered for the same billing period as the corresponding CoA billing period.
27. The Gallery's 2019 and 2020 rental agreements for Mr. Connors were not compliant with Rule 24.279(a)(4) because they did not include or provide the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month's bills for that period.

VIII. PROPOSED ORDERING PARAGRAPHS

1. Mr. Connors's request for relief is granted in part.
2. Within ___ days of this Order, The Gallery is ordered to refund Mr. Connors a total of \$49.86, which consists of the \$30 he is still owed for the overbilling that occurred from October 2019 to July 2020 and the \$19.86 that he was double-billed in his October 2019 bill.
3. Within ___ days of this Order, The Gallery is ordered to review all of its water and wastewater billing practices to ensure they comply with 16 Texas Administrative Code Subchapter I, Water Utility Submetering and Allocation and file a compliance report detailing the steps taken to alleviate the violations identified above.

Signed May 12, 2023

ALJ Signature:


Meaghan Bailey

Presiding Administrative Law Judge