

Control Number: 51619



Item Number: 132

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COMPLAINT OF JEFF CONNORS § PUBLIC UTILITY COMMISSION
AGAINST THE GALLERY § FILING CLERK
APARTMENTS, ROSCOE PROPERTY § OF TEXAS
MANAGEMENT, AND CONSERVICE §

ORDER

This Order addresses the complaint of Jeff Connors against the Gallery Apartments (The Gallery), Roscoe Property Management (RPM), and Conservice. In his complaint, Mr. Connors alleges that The Gallery, RPM, and Conservice engaged in overbilling, failed to provide him with water and wastewater billing records after numerous requests, and failed to timely render bills during the same billing period as the City of Austin in violation of Commission rules and that he is owed a refund for overbilling. On May 15, 2023, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) issued a proposal for decision recommending that the Commission find that The Gallery violated six Commission rules regarding water and wastewater billing practices, order The Gallery to refund Mr. Connors a total of \$30.00 for overbilling, and require The Gallery to review all of its water and wastewater billing practices to ensure they comply with subchapter I of the Commission's substantive water rules and file a compliance report detailing the steps taken to mitigate the violations. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, except as discussed in this Order.

The Commission makes the following modifications to the proposal for decision filed by the SOAH ALJ. The Commission modifies findings of fact 5 and 6 to delete details that are unnecessary and not customary for Commission orders. The Commission also modifies finding of fact 43 for clarity. In addition, the Commission deletes conclusion of law 1 because it is more appropriately framed as a finding of fact and relocates its content to new finding of fact 17A. The Commission modifies conclusion of law 2 to apply the law to the facts of this proceeding and modifies finding of fact 23 for clarity. The Commission rejects ordering paragraph 3 allowing The Gallery to choose between filing in this docket a compliance report reflecting it has addressed any overbilling of The Gallery tenants or file documentation to show that it no longer owns the apartment community in question and accordingly deletes finding of fact 44. The Commission adds conclusion of law 22A to apply the law to the facts of this proceeding. Additionally, the

Commission makes other non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability. The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

The Commission adopts the following findings of fact.

1. On November 2, 2020, Jeff Connors filed an informal complaint with the Commission against The Gallery, RPM, and Conservice (collectively, the 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, 2021, 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. In Order No. 1 filed on July 11, 2022, the SOAH administrative law judge (ALJ) denied Conservice's motion for dismissal.
6. On February 6, 2023, the ALJ convened the hearing on the merits via videoconference, 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.
7. The following evidence was admitted at the hearing: Mr. Connors's exhibits 1 through 8; The Gallery and RPM's exhibits A through K; and Conservice's exhibits CON-1 through 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 through 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 briefs 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 has 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 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 nor 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.
- 17A. Subchapter M of Texas Water Code (TWC) chapter 13 provides a framework for submetering and nonsubmetering of water and wastewater services for apartment complexes.
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 (TAC) § 24.281(e)(2)(A)(iv) (the *combination of square footage and occupancy* 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 16 TAC § 24.281(e)(2)(A)(iii) (*average number of occupants per bedroom* method) to allocate utility charges to tenants.
20. The Gallery obtained Mr. Connors's consent to transition him from the *combination of square footage and occupancy* method to the *average number of occupants per bedroom* 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 *average number of occupants per bedroom* method, and some were billed using the *combination of square footage and occupancy* method.
22. Mr. Connors was billed under the *combination of square footage and occupancy* method until June 2020 when he was transitioned to the *average number of occupants per bedroom* 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 *combination of square footage and occupancy* 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 states 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 Utilities, included water and wastewater service charges incurred from the City of Austin from July 15, 2019 to August 14, 2019 (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 City of Austin for the July-August service period.
32. Mr. Connors was double-billed for the water and wastewater service charges incurred from the City of Austin for the July-August 2019 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.
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 City of Austin's corresponding 29 or 30 day billing periods, respectively, for the incurred water and wastewater charges included within those bills.
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 City of Austin'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. It is appropriate that The Gallery review all of its water and wastewater billing practices to ensure they comply with subchapter I of the Commission's substantive water rules.
44. DELETED.

II. Conclusions of Law

The Commission adopts the following conclusions of law.

1. DELETED.
2. The Commission has exclusive jurisdiction for violations of subchapter M of TWC chapter 13, and the Commission is authorized to require The Gallery to repay a tenant who has been overcharged for water and wastewater services from a retail public utility under TWC § 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) in accordance with TWC § 13.501(1) and (5) and 16 TAC § 24.275(c)(2) and (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 under TWC §§ 13.501(5), 13.5031, 13.505, and 16 TAC §§ 24.275(c)(12) through 24.285.
5. Conservice is a necessary party to this proceeding under Texas Rule of Civil Procedure 39 and should not be dismissed.
6. The City of Austin is the retail public utility that provides water and wastewater service to The Gallery under TWC § 13.002(19) and 16 TAC § 24.3(31).
7. Mr. Connors is a tenant of The Gallery under TWC § 13.501(6) and 16 TAC § 24.275(c)(15).
8. The Commission has jurisdiction over this matter under TWC § 13.505.
9. Mr. Connors filed his informal and formal complaint in accordance with 16 TAC § 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 TWC, the Administrative Procedure Act,¹ 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 under Texas Government Code § 2003.049.
14. Notice of the hearing on the merits was given in compliance with Texas Government Code §§ 2001.051 through 2001.052.
15. Mr. Connors had the burden of proof to prove the alleged violations of Commission rules under 16 TAC § 24.12.
16. Mr. Connors's allegations regarding fraudulent actions and his request for administrative penalties are outside the scope of this proceeding under 16 TAC § 22.246.

¹ Tex. Gov't Code §§ 2001.001–.903.

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 16 TAC § 24.277(a).
18. The Gallery rendered the allocated bills as promptly as possible after receiving the City of Austin bill, in accordance with 16 TAC § 24.283(b)(1).
19. The Gallery complied with 16 TAC § 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 16 TAC § 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 16 TAC § 24.281(e)(2)(A)(iv) because they were calculated based on inaccurate occupancy and square footage figures and led to Mr. Connors being overbilled.
22. Under TWC § 13.505 and 16 TAC § 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 for the amount he was double-billed in his October 2019 bill for the charges incurred from the City of Austin for the July-August service period.
- 22A. Under 16 TAC § 24.283(k), The Gallery is required to calculate an adjustment for all of the tenant's bills that include an over- or under-charge if one is found to have occurred. If the over or under-billing affects all tenants, then an adjustment must be calculated for the bills of all of the tenants.
23. The billing records Mr. Connors requested from The Gallery on February 28, September 29, October 8, October 21, and December 14, 2020 are required under 16 TAC § 24.277(e)(6) and (8) to be made available for inspection by the tenant or the Commission or Commission Staff at the on-site manager's office during normal business hours.

24. The Gallery did not provide Mr. Connors with the requested records within the timeframe required under 16 TAC § 24.277(e) and (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 16 TAC § 24.283(f).
26. The Gallery's bills issued to Mr. Connors in October, November, and December 2019 and January and February 2020 were not compliant with 16 TAC § 24.283(d) because they were not rendered for the same billing period as the corresponding City of Austin billing period.
27. The Gallery's 2019 and 2020 rental agreements for Mr. Connors were not compliant with 16 TAC § 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.


III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision to the extent provided in this Order.
2. The Commission grants Mr. Connors's request for relief, in part.
3. Within 30 days of this Order, The Gallery must cancel or void the previous refund check of \$85.56 that was provided to Mr. Connors, and then refund Mr. Connors a total of \$30.00, which is the amount Mr. Connors estimates he is still owed for the overbilling that occurred from October 2019 to July 2020 and the amount he was double-billed in his October 2019 bill.
4. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 29th day of June 2023.

PUBLIC UTILITY COMMISSION OF TEXAS


KATHLEEN JACKSON, INTERIM CHAIR


WILL MCADAMS, COMMISSIONER


JIMMY GLOTFELTY, COMMISSIONER