



## Filing Receipt

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

**RESPONSE TO ORDER 13**

**STATEMENT OF FACTS**

On January 6, 2021, Conservice filed a response to the complaint of Jeff Connors arguing that the Commission is without jurisdiction over Conservice, under 16 Texas Administrative Code (TAC) § 24.285, because Conservice is a third-party utility billing company employed by the types of owners listed in 16 TAC § 24.285, not an owner that allocates and bills tenants for their utility service charges. For this reason, Conservice requested that it been dismissed from this complaint.

On April 25, 2022, the Commission filed Order No. 13 regarding the complaint of Jeff Connors because the administrative law judge found Conservice’s “one-line request” lacking evidential support. Accordingly, Commission requested that Conservice provide evidence that: (1) Conservice is a third-party biller regarding this matter; and (2) Conservice makes no billing decisions or determines the amounts to be charged for Roscoe Property Management, Gallery Apartments, or for the account of Jeff Connors.

This timely response followed.

**DISCUSSION**

The issues here are: (1) whether Conservice is a third-party utility billing company, which would mean the Commission is without jurisdiction over Conservice because Conservice is not an owner or landlord that allocates and bills tenants for their utility service charges; and (2) whether Conservice makes billing

decisions or determines the amounts to be charged for (a) Roscoe Property Management, (b) Gallery Apartments, or (c) for the account of Jeff Connors.

The conclusions here are: (1) Conservice is a third-party utility billing company; and (2) Conservice does not make billing decisions or determines the amounts to be charged for (a) Roscoe Property Management, (b) Gallery Apartments, or (c) for the account of Jeff Connors.

**1. The Commission does not have jurisdiction over Conservice because Conservice is a third-party utility billing company.**

- a. The Commission's Jurisdiction is limited to owners of apartment houses, manufactured home rental communities, other multiple use facilities, and condominium managers.

The Commission has exclusive jurisdiction for violations of Subchapter I, which relates to water utility submetering and allocation. (PUC § 24.285(a).) Specifically, “[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.” (PUC § 24.285(b).) Dismissal of a proceeding may be based on lack of jurisdiction. (See PUC § 22.181(d)(1).) Notably, the Commission's jurisdiction is narrowly limited to complaints against the above listed categories of property owners.

- b. Conservice is not an owner under PUC § 24.285 because Conservice is not the legal titleholder of apartment houses, manufactured home rental communities, other multiple use facilities, and condominium managers.

An “owner” is “the legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.” (PUC § 24.275(c)(12).) Notably, the “term [‘owner’] does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.” (*Id.*)

An “apartment house” is a building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rent paid at intervals of one month or more. (PUC § 24.275(c)(2).) A “Condominium manager” is a condominium unit owners’ association organized under Texas Property Code §82.101<sup>1</sup>, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code<sup>2</sup>. (PUC § 24.275(c)(3).) A “manufactured home rental community” is a property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer. (PUC § 24.275(c)(7).) A “multiple use facility” is a commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.” (PUC § 24.275(c)(9).)

Conservice is not an “owner” for purposes of PUC § 24.285(b) because Conservice is not the legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility. Moreover, Conservice is not expressly identified in any lease agreement as the landlord of tenants in an apartment house, manufactured home rental community, or multiple use facility. Furthermore, Conservice is not expressly identified as the landlord in lease agreements nor is Conservice a manager of an apartment home.

Conservice does not hold legal title to an apartment house because Conservice does not own a building or buildings containing five or more dwelling units that are occupied for nontransient use, including

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<sup>1</sup> Texas Property Code §82.101 states “the membership of the association at all times consists exclusively of all the unit owners or, following termination of the condominium, all former unit owners entitled to distribution of proceeds, or the owners’ heirs, successors, or assigns.”

<sup>2</sup> Chapter 81, Property Code defines “counsel of owners” to mean all the apartment owners in a Condominium project.

a residential condominium whether rented or owner occupied. (See PUC § 24.275(c)(2).) Therefore, Conservice is not an owner of an apartment house.

Conservice is not a condominium manager because Conservice is not a condominium unit owners' association. (See PUC § 24.275(c)(3).) Therefore, Conservice is not a condominium manager.

Conservice does not hold legal title to a manufactured home rental community because Conservice does not own a property on which spaces are rented for the occupancy of manufactured homes for non-transient residential use. (See PUC § 24.275(c)(7).) Therefore, Conservice is not an owner of a manufactured home rental community.

Conservice does not hold legal title to a commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use. (See PUC § 24.275(c)(9).) Therefore, Conservice is not the owner of a multiple use facility.

For the foregoing reasons, Conservice is not an "owner" for purposes of PUC § 24.285.

- c. Conservice is a third-party utility billing company because it manages utility billing administration on behalf of landlords.

Conservice is the largest utility management provider in the nation. Conservice is a third-party utility billing company that delivers utility management services to multifamily communities, commercial properties, single-family homes, student housing, and military housing. Conservice provides property accurate and efficient service, direct support, customized solutions, and personalized training. In other words, Conservice merely provides a tool used by owners to manage and allocate utility costs amongst tenants in accordance with PUC Rules and Regulations.

Furthermore, Conservice does not hold legal title to any of our clients' properties nor does Conservice act as a landlord; Conservice is an external third-party in the landlord-tenant relationship; and Conservice is legally distinct from our clients and their properties.

For the foregoing reasons, Conservice is a third-party utility billing company.

- d. The Commission lacks jurisdiction over Conservice because the Commission's jurisdiction is limited to owners, and Conservice is a third-party utility billing company contracted to manage utility bills and is not an owner of apartment houses, manufactured home rental communities, other multiple use facilities, or condominium managers.

Conservice seeks dismissal of this proceeding based on lack of jurisdiction because Conservice is a third-party utility billing company. Conservice is not an owner of apartment houses, manufactured home rental communities, multiple use facilities, nor is it a condominium manager. Moreover, Conservice makes no billing decisions nor determines the amounts to be charged.

Rather, Conservice is a third-party utility billing company because Conservice is contracted by owners to help assist with the management of utility billings. Conservice's services include regulatory guidance and compliance, an advanced billing and record keeping system, expert advice, and administration of billing.

Accordingly, the Commission lacks jurisdiction over Conservice, and this complaint should therefore be dismissed. (See PUC § 24.285(b); see also PUC § 22.181(d)(1).)

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2. **Conservice does not make billing decisions or determines the amounts to be charged for (a) Roscoe Property Management, (b) Gallery Apartments, or (c) for the account of Jeff Connors.**

Conservice is contracted by owners to help manage utilities at the direction of owners or property managers. In other words, Conservice works for property owners and managers to implement cost-saving solutions and increase billing and administrative efficiency. Conservice employs experts in utility billing and regulation to advise and manage our clients' accounts, but Conservice does not dictate or decide what billing methods a property owner or landlord elects to take. Similarly, Conservice does not make billing decisions or determines the amounts to be charged because such decisions and determinations are at the discretion of the owner or landlord when they decide and determine what allocation methods they want implement.

After the owner decides on an allocation method, there are not really any decisions to be made: Conservice is given service provider bills, which show the property's consumption, then Conservice uses that data to calculate and allocate consumption amongst residents in accordance with PUC Rules. Conservice only calculates bills, which is not the same as determining the amount to be charged. Determining the amount to be charged is analogous to determining what billing method to use.

### **CONCLUSION**

Conservice is the largest utility management provider in the nation. Conservice is not an owner under PUC § 24.285 because Conservice is not the legal titleholder of apartment houses, manufactured home rental communities, other multiple use facilities, and condominium managers. Furthermore, Conservice is not explicitly stated as the landlord of tenants on any lease document. In addition, Conservice's billing practices adhere to PUC § 24.281, and Conservice calculates water and sewer bills to be sent to residents on behalf of landlords and owners. Performing calculations at the direction of an owner or landlord should be considered a nondecision. Conservice does not make billing decisions or determines the amounts to be charged for any owner, property management, landlord, or resident account. Therefore, Conservice does not

make billing decisions or determines the amounts to be charged for (a) Roscoe Property Management, (b) Gallery Apartments, or (c) for the account of Jeff Connors.

Therefore, the Commission is without jurisdiction over Conservice because Conservice is not an owner or landlord that allocates and bills tenants for their utility service charges. (See PUC § 24.285.) Conservice should be should dismissed from this complaint because dismissal of a proceeding may be based on lack of jurisdiction. (See PUC § 22.181(d)(1).) Here, there is lack of jurisdiction.

Respectfully Submitted,

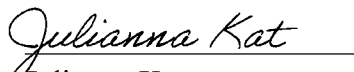


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#### CERRTIFICATE OF SERVICE

I hereby certify by my signature below that a true and correct copy of the foregoing document was filed through the Interchange on this the 3rd day of May, 2022.

  
Julianna Kat