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**Lori Cobos**  
Commissioner

**Jimmy Glotfelty**  
Commissioner



**Greg Abbott**  
Governor

**Thomas J. Gleeson**  
Executive Director

## *Public Utility Commission of Texas*

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TO: Chairman Peter M. Lake  
Commissioner Will McAdams  
Commissioner Lori Cobos  
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Margaux Fox  
Commission Advising

RE: *Complaint of Jeff Connors Against the Gallery Apartments, Roscoe Property Management, and Conservice, Docket No. 51619, Draft Preliminary Order, May 12, 2022 Open Meeting, Item No. 3.*

DATE: May 5, 2022

Please find enclosed a revised draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this revised draft preliminary order at the May 12, 2022 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the revised draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the May 12, 2022 open meeting.

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**DOCKET NO. 51619**

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

**DRAFT PRELIMINARY ORDER**

Jeff Connors filed a formal complaint against the Gallery Apartments, Roscoe Property Management, and Conservice regarding their water and wastewater billing practices. This preliminary order identifies the issues that must be addressed in this proceeding.

Mr. Connors was a resident of the Gallery Apartments at the time he filed his formal complaint. The Gallery Apartments was managed by Roscoe Property Management, who contracted with Conservice to prepare and issue water and wastewater billing statements.<sup>1</sup> The apartment complex has now been renamed Motif South Lamar and is owned by the same company, but is now managed by Lincoln Property Company.<sup>2</sup>

Mr. Connors filed his formal complaint on December 14, 2020 and amended and supplemented his complaint multiple times.<sup>3</sup> In the complaint, as amended and supplemented, Mr. Connors asserts that the Gallery Apartments, Roscoe Property Management, and Conservice failed to provide him with water and wastewater billing records after numerous requests,<sup>4</sup> used the incorrect numbers for total occupancy and total occupied square footage in the allocation formula used to calculate his water and wastewater bills,<sup>5</sup> and failed to timely render their bills during the same billing period as their retail public utility, the City of Austin, as required by Commission rules, which resulted in Mr. Connors being double billed for a water and wastewater usage period,

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<sup>1</sup> Complaint at 1 and 17.

<sup>2</sup> Motion to Update Information on the Gallery Apartments at 2 (Jun. 7, 2021).

<sup>3</sup> See Motion to Amend Complaint (Jan. 19, 2021); Jeff Connors' 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).

<sup>4</sup> Complaint at 2–3 (Dec. 14, 2020); see also Complainant's Proposed List of Issues at 2 (Mar. 31, 2022).

<sup>5</sup> Motion to Amend the Complaint at 2 (Jan. 19, 2021); see also Complainant's Proposed List of Issues at 2–3.

and that he is owed a refund of \$85.06 for overbilling between the time period of August 2019 and March of 2020.<sup>6</sup>

In Order No. 1, the Commission administrative law judge (ALJ) required the Gallery Apartments, Roscoe Property Management, and Conservice to respond to the complaint. The Gallery Apartments filed a response which included copies of Mr. Connors's water and wastewater bills, and subsequently the Gallery Apartments and Roscoe Property Management filed a joint response that asserts they cannot provide Mr. Connors with the water and wastewater billing information he requested prior to Roscoe Property Management managing those bills,<sup>7</sup> their billing methods are in compliance with Commission rules,<sup>8</sup> and Mr. Connors's water and wastewater bill increase was due to low occupancy as a result of the COVID-19 pandemic, not due to a water leak.<sup>9</sup>

On October 25, 2021, Commission Staff filed its supplemental statement of position recommending that, based upon the information filed in this proceeding, the Gallery Apartments, Roscoe Property Management, and Conservice's water and wastewater billing practices may not be compliant with Commission rules. Therefore, Commission Staff recommended that this docket be referred to the State Office of Administrative Hearings (SOAH) to develop an evidentiary record.

There is a pending motion to dismiss Conservice from this proceeding. Specifically, Conservice asserts that because it is a third-party billing company, the Commission lacks jurisdiction over Conservice pursuant to 16 Texas Administrative Code (TAC) § 24.285.<sup>10</sup> In Order No. 13, the Commission ALJ ordered Conservice to file evidence in support of its motion to dismiss by May 6, 2022 and stated that the remaining parties to the proceeding may file responses to Conservice's motion by May 20, 2022.

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<sup>6</sup> Second Motion at Amend the Complaint at 1 (Feb. 3, 2021); *see also* Reply to Submissions Made by the Gallery Apartments at 16–17 (Feb. 9, 2021) and Complainant's Proposed List of Issues at 2–3.

<sup>7</sup> The Gallery Apartments and Roscoe Property Management's Response to Complaint and Motion for Leave to Serve Discovery at 2 (Oct. 4, 2021).

<sup>8</sup> *Id.* at 2–3.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Conservice's Response to Order No. 1 at 1 (Jan. 6, 2021).

Mr. Connors, the Gallery Apartments, Roscoe Property Management, and Conservice were directed, and Commission Staff and other interested persons were allowed, to file by March 31, 2022 a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. Mr. Connors and Commission Staff each filed a list of issues. The Gallery Apartments and Roscoe Property Management jointly filed a list of issues. Conservice did not file a list of issues.

### **I. Issues to be Addressed**

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>11</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did Mr. Connors comply with the informal complaint process under 16 TAC § 22.242(c)?
2. Did Mr. Connors meet all of the requirements to bring his formal complaint under 16 TAC § 22.242(e)?
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?
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?
5. Have a copy of the applicable water and sewer tariffs been provided in this docket?
6. For each asserted violation of the TWC and Commission rules, what was the time period for each of the possible violations?
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?

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<sup>11</sup> Tex. Gov't Code § 2003.049(e).

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)?
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)?
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).
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)?
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?
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?
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)?
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.
  - 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?

- 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)?
  - 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)?
  - 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)?
  - 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)?
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(l).
17. If the Gallery Apartments, Roscoe Property Management, or Conservice did not comply with Commission rules or the Texas Water Code, what is the appropriate remedy?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

## **II. Effect of Preliminary Order**

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion, or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PETER M. LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**