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DOCKET 51619

REPLY TO CONSERVICE'S MOTION TO DISMISS

5/20/2022

DOCKET NO. 51619

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

REPLY TO CONSERVICE’S MOTION TO DISMISS

Background

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 be 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. The Commission gave the remaining parties to this proceeding until May 20, 2022 to file a response to Conservice’s motion to dismiss

On May 3, 2022, Conservice filed their response to this order and contended that: (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.

Discussion

A. Conservice's contention that the Commission does not have jurisdiction over Conservice because Conservice is a third party utility billing company

To support this claim Conservice cites PUC § 24.285 on Complaint Jurisdiction which states:

(a) Jurisdiction. The commission has exclusive jurisdiction for violations under this subchapter.

(b) Complaints. If 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.

Next, Conservice cites PUC § 22.181 Dismissal of a Proceeding (d)(1) which states:

(d) Reasons for dismissal. Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons:

(1) lack of jurisdiction;

By combining these two PUC Rules Conservice then concludes that the "Commission's Jurisdiction is limited to owners of apartment houses. manufactured home rental communities, other multiple use facilities, and condominium managers" and that Conservice ought to be dismissed as a party from the proceeding.

On closer reading though Conservice is misapplying PUC § 24.281 (d)(1) because the subject matter of the rule is the dismissal *of* a proceeding or issues *within* a proceeding, not the dismissal of a *party from* a proceeding.

The meaning of PUC § 24.285 is also being contorted by Conservice for the rule in fact states that the Commission has exclusive jurisdiction over the *complaints* that an "apartment house owner, condominium manager, manufactured home rental community owner, or other multiple

use facility owner” violated a PUC rule regarding utility costs. The rule does not state, as Conservice implies, that the only parties that can be subjected to a proceeding about that complaint be confined to an ”apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner”.

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Further on in this section of Conservice’s argument Conservice also contends that “Conservice merely provides a tool used by owners to manage and allocate utility costs amongst tenants in accordance with PUC Rules and Regulations” and that “Conservice makes no billing decisions nor determines the amounts to be charged”. I’ll note that Conservice provides no hard evidence of these contentions such as a copy of the contract between them and The Gallery’s owners and/or the property managers that defines what they were actually contracted to do for The Gallery and/or Roscoe Property Management during the period in which I was overcharged.

This characterization that Conservice provides to the Commission about their role in the complex’s water billing also differs substantially with how they present themselves to tenants. For instance, attached to the end of this Reply is a snip of pages 1 and 2 of Conservice’s calculations of my water and wastewater bills for October 2019 (EVIDENCE A) that come from a document that a Roscoe Senior Regional Manager provided to the Docket in response to a request I made for the info. (The full document, *HIMBC Unit 2-239*, is found in the zip folder in Item 10 of the Docket and has the calculations for my October 2019 to January 2021 water bills.)

These calculations of my monthly water and wastewater bills have “Conservice The Utility Experts” in the header. On the first page beneath the subject title of “How is my Conservice Utility Bill Calculated?” it’s stated that “Conservice will use the number of occupants in the unit and the unit’s square footage, compared with the total square footage (of all occupied units) at the community, to *calculate* your monthly water bill.” The emphasis on ‘calculate’ is mine.

Conservice contends that they make “no billing decisions nor determines the amounts to be charged” but the Oxford Languages definition of ‘calculate’ includes “determine (the amount or number of something) mathematically”. “*Calculating* your monthly water bill” is thus the same as “*determining the amount of* your monthly bill” which equates to “determining the amounts to be charged”. More substantial than the semantics though is the fact that the results of

Conservice's calculations were the exact amount I got charged for water usage on my monthly rental bills that Conservice emailed me.

B. Conservice's contention that they do not make billing decisions or determine the amounts to be charged for (a) Roscoe Property Management, (b) Gallery Apartments, or (c) for the account of Jeff Connors

To further support these contentions Conservice claims in this next section of their argument that they are "contracted by owners to help manage utilities at the direction of owners or property managers" and that they do "not dictate or decide what billing methods a property owner or landlord elects to take". They add that "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" and "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 concludes their argument with the contention that "Conservice only calculates bills, which is not the same as determining the amount to be charged" and that "(d)etermining the amount to be charged is analogous to determining what billing method to use".

As I stated earlier, the Oxford Languages definition of 'calculate' includes "determine (the amount or number of something) mathematically" which is what Conservice did by using the equations that the owners of The Gallery II chose as their billing method to allocate residents' water bills and then plugging occupancy figures, which were inaccurate and understated, into those equations to determine residents' bills.

I'll also note that, contrary to Conservice's claims, they do not "allocate consumption amongst residents"; they allocate the costs of the complex's monthly water bill. As shown in EVIDENCE A, the results of their numerical calculations have '\$' signs in front of them, not *gallons* behind.

Conservice did not calculate the bills in accordance to PUC Rules either. The Gallery opted to use an allocated billing method for tenants' water and wastewater bills that deducted 25% from The Gallery II's total water costs for common area costs and then divided up half of the remaining amount to calculate the tenants' bills by their percentage of occupancy at the complex (occupants in their apartment divided by the total amount of occupants in the complex) and the other half by their percentage of occupied space (the square footage of their apartment divided

by the total square footage of all the occupied apartments in the complex). Conservice implicitly vouched for the occupancy numbers they used as you'll find on the first page of EVIDENCE A, again beneath the Conservice letterhead, in which they wrote in Column 1, rows 3 and 5 that "(h)alf of the expense is divided by the total number of occupants in your building to calculate the per occupant amount" and "(t)he other half of the provider expense will be divided by the square feet of your building to calculate the per square foot charge". But the numbers that Conservice actually used for total number of occupants and total occupied space appeared to have been made-up by someone and have no numerical relationship with the real occupancy numbers for the months that I was overcharged that Roscoe provided occupancy information for in spreadsheet *The Gallery – January to June 2020* (found in the zip folder in Item 12 of the Docket) except that they were unerringly less than them. This led to the violation of PUC Rule §24.281(e)(2)(A)(iv) and resulted in I, and presumably the rest of the Gallery II residents, being overcharged for water and wastewater.

As mentioned earlier, Conservice also emailed Gallery II residents their monthly rental bills with the monthly water and wastewater charges that Conservice calculated. I've attached a snip of the December 2019 bill that I was emailed by Conservice to this Reply (EVIDENCE B). (Copies of the December 2019 to November 2020 monthly bills that Conservice emailed me can be found in Item 1 of the Docket on pages 17 to 40 of the pdf file.)

On six of the monthly bills that Conservice emailed to Gallery II residents there were falsified water billing dates and shortened water billing cycles of 25 days that did not match with those on the corresponding City of Austin water bills to the complex, which broke PUC Rule §24.283(d)(1) and concealed that I was billed twice for the City of Austin monthly water bill that ran from 7/16/19 to 8/14/19. These dating inaccuracies occurred on our bills that Conservice emailed us even though, as noted in the first paragraph of this section, Conservice was "given service provider bills" and the City of Austin's water bills have the billing cycle's dates printed right on them.

I'll also make the point that I don't agree with Conservice that "determining the amount to be charged is analogous to determining what billing method to use" because the numbers inputted into the billing method's equations, such as the occupancy figures, are a variable and play a factor, an operative role, in mathematically determining the amount residents are charged. Put another way, the billing method does not solely determine the amounts residents are charged, in fact the billing method by itself produces no numerical amounts at all; it's just a set of equations.

Summary

I ask that the Commission deny Conservice's motion to be dismissed as a party in this complaint.

The PUC Rules which Conservice cites to support their motion, PUC § 24.285 and PUC § 22.181 (d)(1), are mischaracterized by Conservice in their arguments. PUC § 24.285 pertains to the PUC's exclusive jurisdiction over a *complaint* regarding utility costs involving a violation of PUC Rules by "an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner". It does not define the only parties that can be subjected to that complaint. PUC § 22.181 (d)(1) pertains to a dismissal *of* a proceeding or an *issue within* a proceeding, not a dismissal of a *party within* a proceeding.

Conservice also claims to the Commission that they did not determine the amount that Gallery II residents were charged for water and wastewater during the period of my complaint but Conservice provides no hard evidence to support this contention such as a contract between them and the Gallery II owners and/or Roscoe Property Management that details exactly what they were hired to do by them. Conservice's documentation of their calculations of my monthly water bills and the fact that I was charged those precise amounts on the monthly bills they emailed me contradicts their contention that they did not determine the amounts I was charged.

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This complaint was brought to the PUC because I was overcharged for a public utility by my apartment complex and numerous PUC rules were violated in that process which gives the PUC exclusive jurisdiction over these proceedings. Conservice played an integral role in the violation of several of those PUC Rules and in overcharging me, and presumably all Gallery II residents, during the period of my complaint. Somehow somehow Conservice ended up using understated occupancy numbers in their calculations of tenants' bills and emailing monthly bills to tenants with falsified water billing dates. It's my position that they ought to be a party in this complaint and explain how that happened.

*

I will email frontdesk@roscoeproperties.com, jkat@conservice.com, and liu@hooverslovacek.com to inform them of this submission to the docket.

Respectfully submitted,

Jeff Connors

3506 Menchaca Road

Apt. 239

Austin, TX 78704

(509)990-2154

jeffc_419@hotmail.com

EVIDENCE A



Dear [The Gallery] Resident,

The ever-increasing cost of utilities, tied with the impact utility consumption has on the environment, has made conservation an important concern at [The Gallery]. When residents are aware of their utility usage, they will be more likely to conserve. Because of this, you will be billed for your utility usage each month.

When it comes to the billing of utility costs, we all want to ensure that utility usage is billed accurately and fairly. That's why [The Gallery] is a direct customer of Conservice, a worldwide leader in utility billing for the [Water/Sewer] utilities consumed by residents. The utility providers send bills to [The Gallery] which include charges for [Water/Sewer] that you consume in your apartment. These utility costs are passed on to our residents through Conservice. You will receive a utility bill from Conservice every month.

How is my Conservice Utility Bill Calculated?

[Post Month 10/2019]

Water Charges

Your water charges are calculated based on local utility provider bills. Conservice will take the monthly charges and subtract the designated common area deduction amount. A common area deduction occurs when a property decides to pay for commonly used areas (i.e., leasing office, fitness center, pool, etc.). After the common area expense has been removed, Conservice will use the number of occupants in the unit and the unit's square footage, compared with the total square footage (of all occupied units) at the community, to calculate your monthly water bill.

A 25% common area deduction is subtracted from the total water charge for your building to calculate the amount that will be allocated to residents.	$\$828.37 - \$207.09 = \$621.28$
The adjusted expense is divided in half.	$\$621.28 / 2 = \310.64
Half of the expense is divided by the total number of occupants in your building to calculate the per occupant amount.	$\$310.64 / 78 \text{ occupants} = \$3.98 \text{ per occupant}$
If your apartment has 2 occupants, the per occupant charge will be multiplied by 2 to calculate your total monthly occupant charge.	$\$3.98 \times 1 \text{ occupants} = \3.98
The other half of the provider expense will be divided by the square feet of your building to calculate the per square foot charge.	$\$310.64 / 42459 \text{ square feet} = \$0.007316 \text{ per square foot}$
The per square foot charge will be multiplied by the square footage of your unit to calculate your total monthly square footage charge.	$\$0.007316 \times 694 \text{ square feet} = \5.08

service@conservice.com

750 S. Gateway Drive River Heights, UT 84321

conservice.com


Your monthly occupant charge will then be added to your monthly square footage charge to calculate your total monthly water charge.	$\$3.98 + \$5.08 = \$9.06$
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Sewer Charges

Your sewer charges are calculated based on local utility provider bills. Conservice will take the monthly charges and subtract the designated common area deduction amount. A common area deduction occurs when a property decides to pay for commonly used areas (i.e., leasing office, fitness center, pool, etc.). After the common area expense has been removed, Conservice will use the number of occupants in the unit and the unit's square footage, compared with the total square footage (of all occupied units) at the community, to calculate your monthly sewer bill.

A 25% common area deduction is subtracted from the monthly expense to calculate the amount that will be allocated to residents.	$\$987.00 - \$246.75 = \$740.75$
The adjusted expense is divided in half.	$\$740.75 / 2 = \370.13
Half of the expense is divided by the total number of occupants at your community to calculate the per occupant amount.	$\$370.13 / 78 \text{ occupants} = \$4.75 \text{ per occupant}$
If your apartment has 2 occupants, the per occupant charge will be multiplied by 2 to calculate your total monthly occupant charge.	$\$4.75 \times 2 \text{ occupants} = \9.50
The other half of the provider expense will be divided by the square feet in your community to calculate the per square foot charge.	$\$370.13 / 42459 \text{ square feet} = \$0.008717 \text{ per square foot}$
The per square foot charge will be multiplied by the square footage of your unit to calculate your total monthly square footage charge.	$\$0.008717 \times 694 \text{ square feet} = \6.05
Your monthly occupant charge will then be added to your monthly square footage charge to calculate your total monthly sewer charge.	$\$9.50 + \$6.05 = \$15.55$

EVIDENCE B

 Conserve <ebill@conserve-mall.com>
Mon 11/12/2019 7:44 AM
To: You



Your utility statement due on **12/01/2019** is ready. A summary of your charges is below, for the account number ending in **2691**. To view the bill or see payment options, please click below.

We see that you have not logged in to our site. Before you can access your utility information, please click 'View Statement' and register your account using the pin: **7634**. To view the bill or see payment options, please click below.

Current Rent and Lease Charges

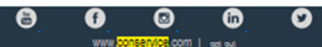
SERVICE TYPE	SERVICE PERIOD	CHARGES
Rent	12/01/2019 - 12/31/2019	\$1,050.00
Rent and Leasing Charges Due 12/01/2019		\$1,050.00

Current Utility Charges

SERVICE TYPE	SERVICE PERIOD	CHARGES
Water Base Charge 2	10/03/2019 - 10/29/2019	\$3.56
Drainage 5	10/03/2019 - 10/29/2019	\$12.53
Pest Control	12/01/2019 - 12/31/2019	\$5.00
Sewer Base 2	10/03/2019 - 10/29/2019	\$0.10
Sewer 4	10/03/2019 - 10/29/2019	\$11.90
Trash	12/01/2019 - 12/31/2019	\$9.00
Trash Admin Fee	Conserve is a service provider contracted to prepare monthly statements and provide residents with conservation resources.	\$3.00
Valet Trash	12/01/2019 - 12/31/2019	\$25.00
Water 4	10/03/2019 - 10/29/2019	\$13.31
Current Utility Charges due	the later of 16 days after the statement date listed above or 12/01/2019	\$83.40
Total Current Charges		\$1,133.40
Prior Balance		\$0.00
Grand Total Due		\$1,133.40

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