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

COMMISSION STAFF'S RESPONSE TO CONSERVICE'S MOTION TO DISMISS

I. BACKGROUND

On December 14, 2020, Jeff Connors (Complainant) filed a formal complaint against the Gallery Apartments (Apartment), Roscoe Property Management (RPM), and Conservice (together, Respondents) regarding improper billing practices.¹ This complaint was filed under 16 Texas Administrative Code (TAC) § 22.242.

On April 25, 2022, the administrative law judge (ALJ) filed Order No. 13, requiring Conservice to provide evidence that: (a) they are a third-party biller regarding this matter; and (b) they make no billing decisions or determine the amounts charged for RPM, the Apartment, or for the Complainant's account. Order No. 13 also established a deadline for the remaining parties to file a response to Conservice's motion to dismiss by May 20, 2022.

II. CONSERVICE'S MOTION TO DISMISS

On May 3, 2022, Conservice filed a response to Order No. 13. Conservice states that it is a third-party utility billing company.² It also states that it does not make billing decisions or determine the amounts to be charged for (a) Roscoe Property Management), (b) the Gallery Apartments, or (c) the Complainant's account.³ Ultimately, Conservice argues that it is not subject to the Commission's jurisdiction based upon a strict interpretation of the language of 16 TAC § 24.248 and requests that the ALJ dismiss it as a party on this basis.⁴

¹ Complaint of Jeff Connors against The Gallery Apartments, Roscoe Property Management, and Conservice 1-69 (Dec. 14, 2020) (Complaint).

² Response to Order 13 at 2 (May 3, 2022) (Response).

³ *Id.* at 2.

⁴ 16 TAC § 24.248; Response at 7.

III. STAFF'S RESPONSE TO CONSERVICE'S MOTION TO DISMISS

Staff (Staff) for the Public Utility (Commission) respectfully requests that the ALJ deny Conservice's motion to dismiss. Despite Conservice's insistence that it is not subject to the Commission's jurisdiction, Staff disagrees. 16 TAC § 24.248 is not the sole consideration in a jurisdiction analysis; other jurisdictional considerations outweigh Conservice's reliance on 16 TAC § 24.248. In brief, Conservice is subject to Texas jurisdiction. Texas has delegated the power to hear water and waste-water complaints to the Commission. Conservice provides third-party utility billing services to the Apartment. It did so for the period alleged in the Complaint. Indeed, bills addressed to the Complainant prominently display the name "Conservice: The Utility Experts."⁵ This Complaint arises from a dispute over the amounts in those bills. Accordingly, Conservice is subject to the Commission's jurisdiction.

A. Conservice is subject to Texas jurisdiction

Conservice has consented to Texas jurisdiction by conducting business in the State of Texas. Conservice is a limited liability company, a taxable entity. Per the Texas Secretary of State's website, Conservice is registered under Texas Taxpayer No. 32016614086.⁶ Its right to transact business in Texas is "Active," meaning that its right to transact business is intact.⁷ William Moss is its registered agent, and 608 Turtle Bend Drive Killeen, TX 76542 is the street address of its Registered Office.⁸ Because Conservice has registered with the Texas Secretary of State and conducts business throughout Texas, it has consented to Texas jurisdiction. Thus, Conservice is subject to Texas jurisdiction.

B. Conservice is subject to the Commission's jurisdiction

Conservice is not only subject to Texas's jurisdiction, but also to the Commission's. The Commission is the Texas agency responsible for hearing water and waste-water billing complaints. And all necessary parties to water and waste-water billing complaints are subject to the Commission's jurisdiction.

⁵ Complaint at 16/69.

⁶ See search results for "Conservice" at <https://mycpa.cpa.state.tx.us/coa/search.do>.

⁷ *Id.*

⁸ *Id.*

Under Tex. R. Civ. Pro. 39(a), "[a] person who is subject to service of process shall be joined as a party in an action if . . . in his absence complete relief cannot be accorded among those already parties."⁹ In its response, Conservice states that it "is a third-party billing company that delivers utility management services to multifamily communities, commercial properties, single-family homes, student housing, and military housing."¹⁰ The response also states that Conservice "provides property [sic] accurate and efficient service, direct support, customized solutions, and personalized training."¹¹ Yet, Conservice then says that it "merely provides a tool used by owners to manage and allocate utility costs amongst tenants in accordance with PUC Rules and Regulations."¹²

Staff only need emphasize Conservice's acknowledgement that it has contracted with the Apartment to provide a tool used to manage and allocate utility costs for the Apartment's tenants. Conservice stated that it does so in accordance with PUC Rules and Regulations.¹³ This implies an acknowledgement that Conservice understands the importance of, and deliberately plans for, compliance with Commission rules and regulations. That Conservice would plan to comply with Commission rules and regulations if it did not believe that its business activities were subject to the Commission's jurisdiction is not a reasonable inference. This is notwithstanding the fact that the ALJ has previously ruled that Conservice is a necessary party in water and waste-water billing disputes.¹⁴

In the Complaint, the Complainant asserts that the conduct giving rise to this action occurred while he lived at the Apartment. Conservice is the third-party billing utility that contracted with the Apartment. It provided the Apartment a tool to manage and allocate costs to tenants for the period alleged in the Complaint. The Complaint even includes attached monthly billing statements from Conservice. Conservice cannot wriggle free from the Commission's jurisdiction by arguing that a strict, literal interpretation of a single provision plucked from the

⁹ Tex. R. Civ. Proc. 39(a).

¹⁰ Response at 4.

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ See *Complaint of Muneer Ahmed Against Fredd Apartments*, Docket No. 51198, Order No. 10 at 1 (Jul. 27, 2021).

Administrative Code immunizes it from the Commission's scrutiny. Thus, Staff respectfully requests that Conservice's motion to dismiss be denied.

IV. CONCLUSION

By virtue of its doing business in Texas, Conservice consented to Texas jurisdiction. Water and waste-water billing disputes fall within the Commission's purview. Conservice contracted with the Apartment to provide third-party billing services during the complaint period. Because the conduct underlying this formal complaint involves a dispute over water and waste-water billing issues, Conservice is subject to the Commission's jurisdiction. Staff respectfully requests the issuance of an order denying Conservice's motion to dismiss.

Dated: May 27, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

Marisa Lopez Wagley
Managing Attorney

/s/ Phillip Lehmann
Phillip Lehmann
State Bar No. 24100140
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7385
(512) 936-7268 (facsimile)
Phillip.Lehmann@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 27, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann