



## Filing Receipt

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**BEFORE THE**  
**STATE OFFICE OF ADMINISTRATIVE**  
**HEARINGS**

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**COMPLAINT OF JEFF CONNORS AGAINST THE GALLERY**  
**APARTMENTS, ROSCOE PROPERTY MANAGEMENT, AND**  
**CONSERVICE**

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**SOAH ORDER NO. 1**  
**FILING DESCRIPTION; RULING ON PENDING MOTIONS TO STRIKE**  
**AND FOR DISMISSAL; AND SETTING PREHEARING CONFERENCE**

**I. FILING DESCRIPTION**

On December 14, 2020, Jeff Connors filed a formal complaint with the Public Utility Commission of Texas (Commission) against the Gallery Apartments (Apartments), Roscoe Property Management, and Conservice regarding their water and waste-water billing practices. Mr. Connors amended and supplemented his complaint multiple times.<sup>1</sup>

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<sup>1</sup> See Motion to Amend Complaint (Jan. 19, 2021 ); Jeff Connors' Supplemental Filing (Jan. 29, 2021 ); Second

The Commission issued an Order of Referral on May 10, 2022, referring the case to the State Office of Administrative Hearings (SOAH) for assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a proposal for decision, if necessary, to resolve any issues contested by the parties. The Commission issued its Preliminary Order on May 12, 2022, listing the issues that shall be addressed in this proceeding.

## **II. RULING ON PENDING MOTIONS TO STRIKE AND FOR DISMISSAL**

On January 6, 2021, Conservice responded to Mr. Connors's complaint requesting that Conservice be dismissed from the proceeding due to lack of jurisdiction. Conservice argued it is a third-party utility billing company employed by the types of owners listed in 16 Texas Administrative Code (TAC) § 24.285 to allocate and bill tenants for their utility service charges but that it is not itself an owner as described by that rule.<sup>2</sup> For that reason, Conservice asserted the Commission lacks jurisdiction over it and that it should be dismissed as a party.

On April 25, 2022, the Commission ALJ issued Order No. 13, requiring Conservice to respond and provide specific evidence to support its lack of jurisdiction claim by May 6, 2022,<sup>3</sup> and provided the other parties an opportunity

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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>2</sup> Conservice's Response to Order No. 1 (Jan. 6, 2021).

<sup>3</sup> The Commission ALJ requested Conservice provide evidence that it (1) is a third-party biller regarding this matter; and (2) makes no billing decisions or determines the amounts to be charged for Roscoe Property Management, Gallery Apartments, or for Mr. Connors's account.

to file a reply by May 20, 2022. On May 3, 2022, Conservice responded to Order No. 13 and provided additional argument to support its request for dismissal.

On May 20, 2022, Mr. Connors replied and opposed Conservice's request for dismissal, arguing that that Conservice misapplied Commission rules, failed to provide evidence as requested by the Commission ALJ, and inaccurately portrayed its role in the water billing process for the Apartment's tenants. In sum, Mr. Connors asserted in part:

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 tenant's bills and emailing monthly bills to tenants with falsified water billing dates. It's my position that [Conservice] ought to be a party in this complaint and explain how that happened.<sup>4</sup>

On May 27, 2022, staff of the Commission (Staff) also replied and opposed Conservice's request for dismissal, arguing that Conservice's strict interpretation and reliance on 16 TAC § 24.248<sup>5</sup> is not the sole consideration in a jurisdictional analysis and that other considerations weigh in favor of denying Conservice's

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<sup>4</sup> Reply to Conservice's Motion to Dismiss at 6 (May 20, 2022).

<sup>5</sup> 16 TAC § 24.248, as indicated in Staff's response, is not an existing, valid Commission rule and is not interpreted or relied upon by Conservice in its Motion to Dismiss. The ALJ presumes this citation was listed in error, and that Staff most likely meant to reference 16 TAC § 24.285.

request. Staff argues that Conservice should remain a party to this proceeding because “all necessary parties to water and waste-water billing complaints are subject to the Commission’s jurisdiction.”<sup>6</sup> Staff stresses that Conservice acknowledged that it contracted with the Apartments to provide a tool used to manage and allocate utility costs among the Apartments’ tenants and that it did so in accordance with the Commission’s rules and regulations.<sup>7</sup> Additionally, Staff asserts that the Commission ALJ previously ruled in a separate proceeding that Conservice is a necessary party in water and waste-water billing disputes.<sup>8</sup> In sum, Staff opines that Conservice is subject to the Commission’s jurisdiction because the conduct underlying Mr. Connors’s complaint involves a dispute over water and waste-water billing issues. Conservice objected to Staff’s May 27, 2022 reply and requests it be stricken for untimeliness. Staff contests Conservice’s request to strike.

Conservice’s request for dismissal from this proceeding is **DENIED**. The ALJ finds Mr. Connors’s arguments and documentation persuasive and also that Conservice failed to present evidence demonstrating that it made no billing decisions or determinations concerning the amounts to be charged for Roscoe Property Management, the Apartments, or for Mr. Connors’s account. The Commission has exclusive jurisdiction over violations of its water utility submetering and allocation rules and complaints of those rules, as described in 16 TAC § 24.285(b). Unlike Conservice’s narrow interpretation of 16 TAC

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<sup>6</sup> Commission Staff’s Response to Conservice’s Motion to Dismiss at 2 (May 27, 2022).

<sup>7</sup> See Conservice Response at 4.

<sup>8</sup> See *Complaint of Muneer Ahmed Against Fredd Apartments*, Docket No. 51198, Order No. 10 at 1 (Jul.2 7, 2021).

§ 24.285(b), the ALJ finds that an entity not specifically listed in subsection (b) may be the subject of such a complaint and subject to the Commission's jurisdiction under Chapter 24, Subchapter I if they assisted or participated in the violation alleged in the complaint. Because the ALJ is unable to determine the exact role Conservice had in the contested billing practices alleged in Mr. Connors's complaint, the ALJ finds Conservice is a necessary party to this proceeding and its request for dismissal is denied. Accordingly, Conservice remains a party to this proceeding.

Conservice's request to strike Staff's May 27, 2022 filing is **DENIED**. It is uncontested that Staff's reply was filed after the deadline set by the Commission ALJ. Conservice argues that because of that untimeliness Staff's arguments contained within its late filing should not be considered. The ALJ disagrees. Although Staff did not provide an explanation for its late filing, Staff's arguments align with the ALJ's determination to deny Conservice's request for dismissal after considering Mr. Connors's May 20, 2022 reply and attached documents. Staff's late filing does not prejudice Conservice and the ALJ finds there is no basis to strike the filing based solely on its untimeliness. According, Staff's May 27, 2022 filing is not stricken from the administrative record.

### **III. SETTING PREHEARING CONFERENCE**

The undersigned ALJ will convene a **prehearing conference at 10:00 a.m. on July 25, 2022**, via the Zoom videoconferencing application. The ALJ will make an audio recording of the hearing, which will be the official record of the proceeding, unless the parties provide a court reporter. You may access the

prehearing conference by going to <https://soah-texas.zoomgov.com/> or the Zoom application on your mobile device, selecting “Join a Meeting,” and entering the following information when prompted:

**Meeting ID:** 160 734 4035  
**Passcode:** PUC2652

If you do not have access to a device that would allow videoconferencing capabilities, you may join by telephone by calling either number below and entering the following Meeting ID and passcode.

**(669) 254-5252**  
**(646) 828-7666**

**Meeting ID:** 1 669 254 5252  
**Passcode:** 5486526

The following matters will be discussed at the prehearing conference:

1. All pending motions filed by 1:00 p.m. on July 22, 2022;
2. A procedural schedule, including a date for the hearing on the merits;
3. The parties’ opinions as to whether mediation would be beneficial to resolving all or some of the contested issues; and
4. Any other matter that may assist in the disposition of this case in a fair and efficient manner.

#### **IV. PROCEDURES**

Except as modified by orders issued in this case or by the Commission or SOAH in response to COVID-19, the Commission’s procedural rules govern this

case.<sup>9</sup> The parties should review the Commission and SOAH websites as needed for updates regarding any such modifications.<sup>10</sup>

## **A. FILING AND SERVICE PROCEDURES**

Filing and service of pleadings is governed by 16 TAC §§ 22.71 and 22.74. However, under the Commission's order suspending those rules due to COVID-19,<sup>11</sup> all parties must file any pleading or document with the Commission solely through the Interchange on the Commission's website (<https://interchange.puc.texas.gov/filer>) and provide notice, by e-mail, to all other parties that the pleading or document has been filed with the Commission, unless otherwise ordered by the presiding officer. It will be incumbent upon all other parties to obtain a copy of the pleading or document by accessing the Interchange.<sup>12</sup> **All pleadings must contain both the SOAH and PUC docket numbers.**

When a party files a document with the Commission, that party is also required to serve (i.e., provide a copy of that document to) every other party. At this time, due to COVID-19, service must be accomplished by e-mail. Any party to this proceeding who has not previously provided an e-mail address **SHALL, no later than 7 days after the date of this order**, file a notice informing the parties of the e-mail address to be used for service.

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<sup>9</sup> Available at: <https://www.puc.texas.gov/agency/rulesnlaws/procrules/Procedural.aspx>.

<sup>10</sup> Available at <https://www.puc.texas.gov/> and <http://www.soah.texas.gov/>.

<sup>11</sup> The Commission's order is available at: [http://interchange.puc.texas.gov/Documents/50664\\_205\\_1075813.PDF](http://interchange.puc.texas.gov/Documents/50664_205_1075813.PDF).

<sup>12</sup> All PUC filings are available on the Commission's website under Filings: click on "Filings Search," and enter the control number 51619, and click "Search." A list of documents filed in this docket will appear and you may access those documents by clicking on the document number.



## **B. MOTIONS**

Motions for continuance shall be governed by 16 TAC § 22.79. If a continuance or extension of time is sought, the motion shall propose a new date or dates and shall indicate whether the other parties agree to the new date or dates. Because the ALJ or a hearing room may not be available on a given day, a proposed range of dates would be preferable. The ALJ will not contact parties to ascertain their position or to negotiate dates. In the absence of a ruling by the ALJ, a contested motion for continuance or extension is not granted and the existing schedule remains in place.

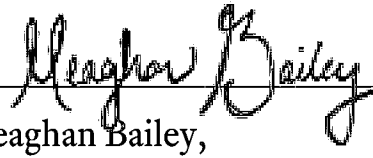
Unless otherwise specified in the applicable procedural rules, responses to any motion or other pleading shall be filed within **five working days** from receipt of the motion or pleading. The response shall state the date of receipt of the motion or pleading to which a response is made. If a party does not respond to a motion, the ALJ will assume that the party agrees with the motion or does not oppose the requested relief.

## **C. DISCOVERY**

Discovery may begin immediately pursuant to Subchapter H of the Commission's procedural rules.

**SIGNED JULY 11, 2022**

ALJ Signature:

  
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Meaghan Bailey,

Presiding Administrative Law Judge