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Received - 2023-01-05 04:28:06 PM
Control Number - 51619
ItemNumber - 88

DOCKET NO. 51619
SOAH DOCKET NO. 473-22-2652

COMPLAINANT REBUTTAL OF THE GALLERY APARTMENTS
AND ROSCOE PROPERTY MANAGEMENT'S POSITION
STATEMENT AND DIRECT TESTIMONY

1/5/23

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

**COMPLAINANT REBUTTAL OF THE GALLERY APARTMENTS AND ROSCOE
PROPERTY MANAGEMENT’S POSITION STATEMENT AND DIRECT TESTIMONY**

I. Background

The Gallery Apartments and Roscoe Property Management filed their Position Statement and Direct Testimony to the Docket on November 1, 2022 (Item 77 in the Docket).

This is my rebuttal to their Position Statement and Direct Testimony.

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To clarify what I mean by “pdf pages”, a term I use in my footnotes, I am referring to the page number in the upper left-hand corner of the window when you pull up the document from the Docket; not the page numbers that are actually on the bottom of some of the documents. When I refer to paragraphs in my footnotes, I count partial paragraphs as paragraphs. Therefore, the second paragraph on a page may actually be the first full paragraph on that page.

The Gallery Apartments and Roscoe Property Management filed their Position Statement and Direct Testimony with a Confidential designation (Item 77 in the Docket). It doesn’t have any

page numbers on it, but they numbered the paragraphs in it so I will refer to material in it by the numbered paragraphs. I will refer to The Gallery Apartments and Roscoe Property Management as the Respondents in my rebuttal so that I don't have to keep typing out their complete names, but the Respondents in this case also include Conservice, which were not a party of The Gallery Apartments and Roscoe Property Management's Position Statement and Direct Testimony.

The colors of the rectangles and circles I may refer to in my evidence that highlight certain portions of it may not actually show up as colors on the evidence in the Docket because sometimes they are transformed into greyscale once I submit my documents through the PUC Interchange.

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II. Discussion

There are numerous inaccuracies and untruths in The Gallery Apartments and Roscoe Property Management's Position Statement and Direct Testimony that I want to correct for the record.

Inaccuracy #1: In paragraph 2, the Respondents state that The Gallery II complied with PUC Rule §24.281 though in fact they did not. I was overcharged for water on my October 2019 to May 2020 rental bills and for at least a four-month portion of that eight-month period, the only months that I was able to get occupancy data for that period, the Respondents did not use the correct totals for total number of occupants and occupied space used in the allocation formula that was applied to those bills, which was the formula found in PUC Rule §24.281 (e)(2)(A)(iv). The numbers they used instead were understated which made it a mathematical certainty that Gallery II residents would be overcharged for water since those numbers are divisors in the allocation formula.

The contrast between the occupancy figures used to calculate our water bills and the actual occupancy at The Gallery II is shown in the table below. I derived the actual occupancy figures from records that Roscoe Property Management (Roscoe) submitted to the Docket¹. The ones used to calculate our bills are found here². Note also that according to the records of the previous property management company, there were 101 total occupants living at the complex in the last month before Roscoe and Conservice took over the billing³.

¹ *The Gallery - January to June 2020.xlsx* in Item 12 ZIP folder

² *HIMBC Unit 2-239.docx* in Item 10 ZIP folder

³ Item 70 on pdf page 39 in paragraph 3

SEPTEMBER 2019 TO MAY 2020 OCCUPANCY INFO⁴

	<u>Occ. in billing</u>	<u>Actual Occ.</u>	<u>Occ. space in billing</u>	<u>Actual Occ. space</u>
Sept. 2019		101*		
Oct. 2019	78		42,459	
Nov. 2019	78		42,459	
Dec. 2019	70		38,877	
Jan. 2020	68		35,447	
Feb. 2020	60	99	31,387	51,616
March 2020	55	106	28,978	53,874
April 2020	50	112	25,636	55,310
May 2020	44	114	22,900	56,698

*Derived from *gl070 – 3506 Highlighted final summary – 9.4.19.xls* in Item 10 ZIP folder.

I'll also mention that the spreadsheet of The Gallery's occupancy⁵, which has the occupancy data for the months of January to June, are a month behind the rental bills that the water charges are in. So, for example the data in the worksheet *06.2020* in that spreadsheet is actually applied to the water charges in the July rental bill. It makes sense that since the rental bills are sent out on the first of the month that the property would use the occupancy data from the prior month to calculate the water charges since it's their most recent data.

Therefore, the worksheets *01.2020*, *02.2020*, *03.2020*, and *04.2020* apply to the water charges in our February 2020 to May 2020 rental bills. The occupancy figures for those months did not match with the ones used to calculate our bills, but starting on our water charges in our June 2020 rental bill, which covered the first service period after I began asking Roscoe for water billing records, both Roscoe's occupancy figures and the ones used to calculate our bills did

⁴ Item 70 in *51619_70_1243339* on pdf page 13

⁵ *The Gallery - January to June 2020.xlsx* in Item 12 ZIP folder

match⁶. That also coincided with our water bills returning to the amounts they had been for the previous three and a half years prior to Roscoe and Conservice taking over the water billing.

Inaccuracy #2: In paragraph 2, the Respondents go on to claim that the occupancy rate dropped due to COVID while as one can see in the table above that the occupancy actually went in the opposite direction and grew the last four months that I was overcharged even though the Respondents were claiming that it was decreasing in the occupancy figures they were providing Conservice to calculate our bills.

Inaccuracy #3: In paragraph 3, the Respondents claim that a slight increase in my bill set off my suspicions that I was being overcharged when in fact I didn't contact Roscoe and ask them for water billing records until February 28, 2020 which was after I received my March 2020 rental bill and found that my water charges were now almost \$50/month, about triple as much as they had been for the previous three and a half years before Roscoe and Conservice began administering the billing.

The table on the following page shows the amounts I was billed for water (water and wastewater) on my May 2019 to November 2020 rental bills⁷. Our May 2019 to September 2019 water charges were administered by the previous property management company (Valiant) and previous water billing company (Performance Utilities). The span of dates in the second column of the table is the service period of the water charges on our rental bill which should match the period of the service of the City of Austin's bills to the complex. However, they didn't on our October 2019 to March 2020 rental bills when the service periods were shortened to 25 days to conceal the fact that Roscoe charged us a second time for the 7/16/19-8/14/19 City of Austin's water bill⁸.

⁶ Item 70 from pdf page 34 fourth paragraph to pdf page 38 first paragraph with evidence on pdf pages 68 to 76

⁷ Item 70 on pdf page 5

⁸ Item 70 on pdf page 14 third paragraph to pdf page 16 third paragraph, explanation of evidence on pdf page 39 fourth paragraph to pdf page 44 fourth paragraph; evidence in Item 71 on pdf page 56 to pdf page 102

WATER CHARGES FROM MAY 2019 TO NOVEMBER 2020

\$14.93	3/15/19-4/12/19	May '19 rental bill with Valiant (daily irrigation)
\$15.80	4/13/19-5/14/19	June '19 rental bill with Valiant (daily irrigation)
\$15.70	5/15/19-6/13/19	July '19 rental bill with Valiant (daily irrigation)
\$16.84	6/14/19-7/15/19	August '19 rental bill with Valiant (daily irrigation)
\$18.27	7/16/19-8/14/19	September '19 rental bill with Valiant (daily irrigation)
<i>Roscoe began managing complex in late-July 2019</i>		
\$23.52	8/14/19-9/8/19	October '19 rental bill with Roscoe (daily irrigation)
\$29.14	9/8/19-10/3/19	November '19 rental bill - Roscoe (daily irrigation)
\$28.87	10/3/19-10/29/19	December '19 rental bill - Roscoe (daily irrigation)
\$32.09	10/29/19-11/23/19	January '20 rental bill - Roscoe (daily irrigation)
\$40.84	11/23/19-12/18/19	February '20 rental bill - Roscoe (daily irrigation)
\$49.79	12/18/19-1/14/20	March '20 rental bill - Roscoe (daily irrigation)
\$54.14	1/14/20-2/12/20	April '20 rental bill - Roscoe (daily irrigation)
\$55.92	2/13/20-3/13/20	May '20 rental bill – Roscoe (daily irr. until 2/28)
<i>Water records requested from Roscoe on 2/28 and daily irrigation promptly ends</i>		
\$17.09	3/13/20-4/14/20	June '20 rental bill - Roscoe (<u>no</u> daily irrigation)
\$15.29	4/14/20-5/13/20	July '20 rental bill - Roscoe (<u>no</u> daily irrigation)
\$14.03	5/13/20-6/12/20	August '20 rental bill - Roscoe (<u>no</u> daily irrigation)
\$17.06	6/12/20-7/15/20	September '20 rental bill - Roscoe (<u>no</u> daily irrigation)
\$14.64	7/15/20-8/13/20	October '20 rental bill - Roscoe (<u>no</u> daily irrigation)
\$14.36	8/13/20-9/14/20	November '20 rental bill - Roscoe (<u>no</u> daily irrigation)

I'll mention now, since this will come up shortly, that a day or two after I contacted Roscoe on February 28, 2020 to request to examine the water billing records at the complex, I went for an early morning walk and found that the daily irrigation system had been turned off and it has remained off ever since except for a few occasions when maintenance turned it on for whatever reasons⁹. As one can see above, my water bills also promptly went right back down to what they had been before on the first billing cycle that fully reflected the irrigation ending, which was the 3/13/20 to 4/14/20 City of Austin water bill that I paid for with my June 2020 rent.

Inaccuracy #4: The Respondents go on to write in paragraph 3 that I “accused the Respondent of improperly including irrigation and construction related water usage into the allocation formula”. I did not accuse the Respondents of including “construction related water usage into the allocation formula”, but I did think at the time that I filed my Formal Complaint that since Roscoe had overseen contractor work on the irrigation system, which connected the system to the apartment building water lines¹⁰ instead of the common area water line, and my water bills happened to increase immediately after that work that it had an indirect cause on my water charge increases.

Mind you, back then Roscoe hadn't provided me any water billing records even though I'd requested them from Roscoe five times and had filed an Informal Complaint. The fact set available to me at the time I filed my original Formal Complaint was: (1) contractors had done a ton of work around the plumbing of the apartment buildings and on the irrigation systems that had started soon after Roscoe arrived, (2) our water bills began climbing shortly after that work, (3) I experienced decreased water pressure in my apartment in the early morning during those months, (4) the daily irrigation was shut down right after my request to see past water bills, (5) our water bills went right back down to where they had been once they stopped irrigating, and (6) Conservice was calculating our water bills and also sending them to us so I reckoned that they had a spreadsheet of the roster of tenants at the complex and were using accurate occupancy info instead of numbers Roscoe made up.

With that set of facts my thoughts were that the contractors' work had rerouted the complex's irrigation system so that it would bypass being drawn through the common area submeter that was supposed to measure the water usage for the pool, laundry room, and irrigation system. In that scenario the ownership could use the common area submeter to measure their common area water usage and then only pay for the pool and laundry room water and therefore stick residents

⁹ Item 70 on pdf page 8 from paragraph 2 to paragraph 4

¹⁰ Item 1 on pdf pages 62 to 67

with paying the irrigation water along with the water usage we usually paid for. That wasn't an unreasonable assumption under those circumstances.

Once Roscoe finally turned over water billing and occupancy information though I found that the return of my water bills to their former amounts, which began on my June rental bill, was not only from the irrigation system being turned off, which resulted in much less water usage at the complex, but also due to The Gallery, managed by Roscoe, starting to provide accurate occupancy figures to Conservice to calculate the bills.

This also happened to coincide with The Gallery II changing their allocation formula, but the formula change itself actually had very little to no effect on the decrease of my monthly water charges. It was just a different way of allocating the charges to tenants. The major change was that Conservice started using the actual occupancy figures in that formula whereas with the previous formula they hadn't.

In regards to the drop in water usage that occurred after Roscoe turned off the daily irrigation, to get a sense of the magnitude of it I'll point out that the total monthly water usage at the complex was slightly over 100K gallons, which included daily irrigation, before Roscoe arrived and then surged up to as much as 400K gallons with daily irrigation after Roscoe oversaw the work on the irrigation system and then it dropped back down to around 100K gallons per month after they turned it off.¹¹

Inaccuracy #5: The Respondents then also goes onto reclaim in paragraph 3 that the "slight" increase was due to "steady loss of occupancy experienced during the beginning of the pandemic", which as I shown earlier is also untrue. The cost increase was not slight, and neither was the trajectory of those increases, and according to Roscoe's own occupancy records, the occupancy at the complex for the last four months they overbilled me was actually increasing rather than decreasing.

I'll also point out that even if you ignore Roscoe's own occupancy figures¹², as the Respondents always do, and just look at the occupancy figures Roscoe provided Conservice to calculate our

¹¹ Item 70 from pdf page 24 second paragraph to pdf page 27 second paragraph with evidence in Item 71 pdf pages 118 to 121

¹² *The Gallery – January to June 2020.xlsx* in Item 12 ZIP folder

bills, the story they tell makes little practical sense because when they changed the allocation formula, which, as mentioned earlier, happened on my June 2020 water bill, the occupancy multiplier total¹³ Conservice used to calculate the bill was 135.4. The way their new allocation formula worked¹⁴ is that every one-bedroom apartment got an occupancy multiplier of 1.6 and each efficiency apartment got a multiplier of 1.0. The make-up of the apartments at The Gallery II is such that it consists only of one-bedrooms and efficiencies and since the complex had 76 one-bedroom apartments and 28 efficiencies the only way you can get to 135.4 is if you either have 74 one-bedrooms and 17 efficiencies occupied or 69 one-bedrooms and 25 efficiencies. From that we know, at the very least, there were 91 occupied apartments used to calculate that bill (there were actually 94 according to Roscoe's own occupancy records¹⁵).

Now comparing the 44 total number of occupants used to calculate the water charges on my May 2020 bill to 91 total occupied apartments the next month means that Roscoe is claiming that there was an increase of at least 47 apartments being occupied in the course of one month in a complex which has slightly over 100 total apartments in it. They're saying the occupancy more than *doubled* in one month.

Also, as I mentioned earlier, according to the previous property management company's records there was 101 total occupants used to calculate the water charges on our September 2019 rental bill, which was the last bill before Roscoe and Conservice took over the billing, and then only 78 on October 2019 according to the occupancy numbers Roscoe provided Conservice, which means that they are claiming that the total occupancy dropped by 20% in the course of one month, the first month they began billing us, which is also very unlikely.

Inaccuracy #6: In paragraph 5, the Respondents claim that the increase of water charges I experienced were due to math, not malfeasance, when in fact, according to Roscoe's own occupancy records, the malfeasance of using understated occupancy figures led to me being overcharged. There was further malfeasance involved in falsifying water billing dates¹⁶ which concealed that they billed us a second time for the 7/16/19-8/14/19 City of Austin water bill.

¹³ Item 70 on pdf page 76

¹⁴ PUCT §24.281 (e)(2)(A)(iii)

¹⁵ Item 70 on pdf page 37 fourth paragraph to pdf page 38 first paragraph with evidence on pdf page 75

¹⁶ Item 70 on pdf page 14 third paragraph to pdf page 16 third paragraph, explanation of evidence on pdf page 39 fourth paragraph to pdf page 44 fourth paragraph; evidence in Item 71 on pdf page 56 to pdf page 102

Irrelevancy #1: In paragraph 6, the Respondents, as they often do, cite the opinion of the PUC's Consumer Protection Division that The Gallery had "acted consistently" with PUC Rules to bolster their case though those determinations were made way back during the Informal Complaint process, over 80 Items in the docket ago in this case history, back in January of 2021, before much of the evidence in the case was ever submitted and any of it was examined by me or commented upon¹⁷. At this juncture that determination can't even be credibly submitted as an expert's opinion since the findings in it were not based upon the entirety of the docket, only a small portion of it.

Inaccuracy #7: In paragraph 13, the Respondents claim that the allocation formula that they changed to to calculate my water bills starting with my June 2020 rental bill "was not influenced by the occupancy rate" though in fact it was. The formula they transitioned to is found in PUCT §24.281 (e)(2)(A)(iii) and the text of it even states that it "shall be determined by the following occupancy formula". Unoccupied apartments play no part in that formula, only occupied apartments, so the new formula, in contrast to the Respondents' claims, was indeed "influenced by the occupancy rate".

Inaccuracy #8: The Respondents go on to make the claim that they satisfied all the terms of the relief sought in my complaint including "Copies of the total amount that Roscoe billed to residents of The Gallery II for water and wastewater for the January 2020 – June 2020 monthly bills." This, as I pointed out in my response¹⁸ to the Respondents' Amended Motion to Dismiss is also untrue.

A definition of the records that I've requested, and have been requesting since late-February of 2020¹⁹, can be found in §24.277 (e)(8): the total amount billed to all tenants each month. What the Respondents have provided in Item 32 from RPM000111-138²⁰ are the bills from the retail public utility to the owner, which is the records in §24.277 (e)(5). What the respondents provided from RPM000146 –156²¹ are the formula, occupancy factors, and percentages used to calculate our bills (the records defined in §24.277 (e)(6)(A)); the total number of occupants used to calculate our bills (the records defined in §24.277 (e)(6)(B)); and the total square footage at the complex used to calculate our bills (the records defined in §24.277 (e)(6)(C)).

¹⁷ Item 37 on pdf page 3 under I. Respondent's remarks about mv Informal Complaint

¹⁸ Item 80 from pdf page 5 last paragraph to pdf page 6 last paragraph

¹⁹ Item 1 on pdf pages 56 to 58

²⁰ Item 32 in 51619_32_1157353 on pdf pages 12 to 39

²¹ Item 32 in 51619_32_1157353 on pdf pages 47 to 57

I'll mention once again that this violation of PUC Rule §24.277 (g) has been going on for over two years and ten months now and the Respondents supposedly still can't quite grasp what I'm asking for. If they're truly confused about what I'm requesting then they should look at the spreadsheet that they provided for the September 2019 billing²², the last month the previous property managers administered the billing. That has all the information required to tally those amounts up: the amounts each apartment was charged for water and wastewater that month.

Mind you, these are records that according to PUC Rules they're supposed to provide access to within 15 days of a tenant's written request and it is the most basic of accounting info that a property management company should keep track of, how much each apartment should be billed for a monthly charge, even if it wasn't required by the PUC. It's also worth mentioning again that Roscoe handled the monthly drainage billing themselves and that the drainage costs to the complex come on the same City of Austin bill as the water and wastewater charges. Therefore, Roscoe must have been paying the City of Austin water bill for the complex and it's reasonable to conclude that they were also collecting for it.

I'll also mention, to avoid any potential confusion, that although Conservice billed us for water, we didn't pay Conservice for it. The payments we made for our monthly charges, which included the water costs and rental bill, were processed through ClickPay and Conservice had no contractual relationship with them²³. If money passed hands between Conservice and ClickPay it would have necessitated a contract between them. The money we paid for water therefore had to have at least passed through Roscoe's hands and they should have, as property managers are commonly hired to do, been keeping monthly records of how much each apartment was billed for those charges.

III. Summary

The Respondents' Position Statement and Direct Testimony is riddled with inaccuracies and assertions that conflict with their own evidence and PUC Rules. Notably, as the Respondents always do, they neither addressed nor acknowledged the proof I've provided that they overcharged residents by using fraudulent occupancy data to calculate our bills and falsified water billing dates to conceal that they billed us a second time for the 7/16/19-8/14/19 City of Austin water bill. Instead, they directed the reader's attention back to the opinion of the PUC's Consumer Protection Division that was made two years ago, back before much of the evidence in this case was ever presented and any of it was analyzed by me, and ask the ALJ to focus their attention on that and essentially ignore the over 80 Items in the Docket which were submitted after it.

²² *gl070 – 3506 Highlighted final summary – 9.4.19.xls* in Item 10 ZIP folder

²³ Item 67 on pdf page 8 from line 19 to pdf page 9 on line 4

I'll close on the note that now as we find ourselves in the dawn of a new year, the Respondents' Position Statement also causes me to reflect on the grim fact that we're rapidly approaching the *third* anniversary of when I initially requested records²⁴ of Roscoe's monthly water charges of Gallery II residents²⁵ and, despite their persistence, they haven't produced them yet.

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I will email frontdesk@roscoeproperties, stephanie.laird@rpmliving.com, jaime.hearn@rpmliving.com, jkat@conservice.com, edmunds@hooverslovacek.com, liu@hooverslovacek.com, and phillip.lehmann@puc.texas.gov to inform them of this submission to the docket.

Respectfully submitted,

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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 on January 5, 2023 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Jeff Connors

Jeff Connors

Complainant

²⁴ Item 70 on pdf pages 49 to 51

²⁵ PUCT §24.277 (e)(8)