



## Filing Receipt

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**DOCKET NO. 51619**

|                                  |          |                                  |
|----------------------------------|----------|----------------------------------|
| <b>COMPLAINT OF JEFF CONNORS</b> | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>AGAINST THE GALLERY</b>       | <b>§</b> |                                  |
| <b>APARTMENTS, ROSCOE</b>        | <b>§</b> | <b>OF TEXAS</b>                  |
| <b>PROPERTY MANAGEMENT, AND</b>  |          |                                  |
| <b>CONSERVICE</b>                |          |                                  |

**CONSERVICE’S REBUTTAL TESTIMONY**

**Rebuttal of PUC Staff Witness Testimony by Kathryn Eiland**

Violation of 16 TAC § 24.283(b)(1)

Ms. Eiland claims Respondents violated 16 TAC § 24.283(b)(1) by failing to issue bills as “promptly as possible after the owner receives the retail public utility bill.” However, Ms. Eiland points does not point to any specific bill that violated this rule or provide any justification or evidence as to what would qualify “as promptly as possible after the owner receives the retail public utility bill.”

Respondents need sufficient time to receive and process the bill from the retail public utility provider, calculate and mail tenant bills. Based on varying circumstances each month, such as receiving bills from the retail public utility late, investigating provider bill errors or charges, etc., “as promptly as possible” can be a varying standard and is not defined by a set number of days in the rules. However, none of the bills were issued after 60 days of the retail public utility provider bill. Therefore, Respondents should be found in compliance with 16 TAC § 24.283(b)(1).

Violation of 16 TAC § 24.283(b)(1)

Ms. Eiland claims that Respondents violated 16 TAC § 24.283(b)(1) because the due date was less than 16 days from the statement date of the bill, however, again fails to identify which bills are not in compliance. Each bill contains the following statement:

*“Current Utility Charges due the later of 16 days after the statement date listed above or xx/01/20xx”*

The billing statement dates and due dates for the bills for Mr. Connor provided by roscoe Property Management in item 32 of the docket are as follows:

| Statement Date | Due Date   | Number of Days |
|----------------|------------|----------------|
| 8/17/2021      | 9/1/2021   | 16             |
| 7/10/2021      | 8/1/2021   | 22             |
| 6/12/ 2021     | 7/1/2021   | 19             |
| 5/15/2021      | 6/1/2021   | 18             |
| 4/16/2021      | 5/1/2021   | 16             |
| 3/16/2021      | 4/1/2021   | 17             |
| 2/13/2021      | 3/1/2021   | 17             |
| 1/15/2021      | 2/1/2021   | 18             |
| 12/11/2020     | 1/1/2021   | 22             |
| 11/14/2020     | 12/01/2020 | 18             |

None of these bills submitted to the docket have a due date that is less than 16 days from the statement date of the bill. Regardless, every bill contains language stating the charges for utilities are due 16 days after the statement date above should the due date listed on the bill for rent and other ancillary charges fall before the 16 days as required by 16 TAC § 24.283(b)(1). Therefore, Respondents should be found in compliance with 16 TAC § 24.283(b)(1).

### Violation of 16 TAC § 24.283(f)

Ms. Eiland claims Respondents violated 16 TAC § 24.283(f) because the bills do not clearly state the bills are allocated. Mr. Connors bills prior to his bill due June 1 2021, contained the following description:

*“Water service is provided by City of Austin TX. Service provider issues bill, property management pays a portion to cover common area usage. Remaining amount is paid by residents using a multiplier based on the number of bedrooms in the unit. Your multiplier is 1.6”*

While this description clearly describes an allocation method, thus putting the tenant on notice that his water and sewer charges are allocated per the spirit of 16 TAC § 24.283(f), it did not contain the word “allocated”. This was changed on Mr. Connor’s bill due June 1, 2021. The bill description was changed to the following:

*“Water service is provided by City of Austin TX. Service provider issues bill, property management pays a portion to cover common area usage. Water Remaining amount is allocated to residents using a multiplier based on the number of bedrooms in the unit. Your multiplier is 1.6.”*

Every bill after has contained this same language. Therefore, Respondents should be found in compliance with 16 TAC § 24.283(f).

### Refund for Overbilled Amounts

Based on Ms. Eiland's calculations, Mr. Connor was overbilled \$74.47 and should pay interest of \$2.43, for a total of \$76.90. She recommends Respondents reimburse Mr. Connors for this amount. However, her calculations do not appear to take into consideration the \$103.12 credit Mr. Connors received for service from March 18, 2021 to June 14, 2021 nor the check mailed to Mr. Connors on September 20, 2022 in the amount of \$85.06. Taking these amounts already paid into consideration, Mr. Connors has already been compensated for the overbilling and interest Ms. Eiland claims is owed to him. Therefore, Respondents should not be required to reimburse Mr. Connors for any additional amount.

### **Rebuttal of Jeff Connors Testimony**

#### **Inaccurate Occupancy Counts**

Mr. Connor takes issue with the occupancy counts and claims they are inaccurate for the disputed time period. However, this discrepancy has already been addressed and tenants have already received a refund for incorrect occupancy amounts. The occupancy counts for the time period between October 1, 2019 to July 1, 2020 were incorrect. When the issue was discovered, the refunds were issued to tenants using correct occupancy counts on tenant's bills due June 1, 2021. Mr. Connor's refund totaled \$103.12. I have included the notice that was sent to residents informing them of this billing error and resulting credit. The following is a breakdown of the credit and occupancy totals for Mr. Connors:

| Date  | Credit Total | Incorrect Occupancy Count | Correct Occupancy Count |
|-------|--------------|---------------------------|-------------------------|
| 10/19 | \$12.41      | 78                        | 102                     |
| 11/19 | \$13.97      | 70                        | 103                     |

|       |         |    |     |
|-------|---------|----|-----|
| 12/19 | \$15.87 | 70 | 106 |
| 1/20  | \$17.97 | 68 | 102 |
| 2/20  | \$14.29 | 60 | 102 |
| 3/20  | \$30.88 | 55 | 106 |

### Fraud

Any allegations of fraud raised by Mr. Connors should not be addressed in this proceeding. The following is an excerpt from the *Complaint of Giovanni Homes Corporation Against Oncor Electric Delivery Company, LLC*, Docket No. 45854:

*“It is a tenet of administrative law that an agency, such as the Commission, is a creature of statute and its powers and duties are limited to those expressly conferred upon it by the Legislature through statute and those implied powers reasonably necessary to accomplish its express responsibilities... The Legislature has also not conferred upon the Commission any general authority to preside over tort actions. Furthermore, although the Commission has been expressly delegated authority to grant some remedies, such as ordering charges or refunds to resolve billing disputes, the Commission does not have authority to order some forms of relief available in courts of law. such as awards of attorney fees and court costs or damages under tort law.”*

A List of Issues was not formally adopted in this proceeding. However, the issues discussed in this proceeding should be limited to whether the water and sewer billing charges assessed to Mr. Connors were in compliance with the Subchapter I Water Utility Submetering and Allocation rules, and whether Mr. Connors is owed any refunds above what has already been granted to him.

Respectfully Submitted,

/s/Julianna Kat

By: Julianna Kat

Conservice, LLC  
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San Diego, CA 92131  
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jkat@conservice.  
**Representative for Conservice**

Dear Motif South Lamar Resident,

As part of Motif South Lamar's utility conservation program, you are responsible for payment of various utilities including water and sewer. We thank you for being part of this program and want to notify you of a pending credit to your account.

If you received water and sewer charges from Conservice for the billing periods of October 1, 2019 through July 1, 2020, your charges may have been overbilled due to an occupancy calculations error. Conservice has thoroughly reviewed all occupancy data with the site staff and calculated any necessary credits for your unit.

Any unit with a total credit under \$65.00 will receive their full credit on the utility statement sent in May due June 1, 2021. Any unit with a total credit over \$65.00 will receive their credit over the next three billing cycles (June, July, and August due dates).

Conservice will continue to send you monthly bills and you will be able to access real time information about your account on our website ([www.utilitiesinfo.com](http://www.utilitiesinfo.com)) or via our multi-lingual call center (866-947-7379). Thank you for being part of this important program and please let us know if you have any questions or concerns regarding these changes and/or how your bill will be calculated each month.

Sincerely,

Conservice Utility Management and Billing