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COMPLAINANT SUPPLEMENTAL REBUTTAL TESTIMONY

1/12/23

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

COMPLAINANT SUPPLEMENTAL REBUTTAL TESTIMONY

I. Background

On December 21, 2022, I submitted a request to extend the deadline for rebuttal testimony from January 5, 2023 to January 12, 2023¹. Conservice, LLC² and the Gallery Apartments and Roscoe Property Management³ made the same request on January 5, 2023. This request was honored by the Administrative Law Judge on January 10th and I was afforded the right to file supplemental rebuttal testimony by today⁴.

Conservice, which, despite being a party of the Respondents, hasn't filed any written testimony or a statement of position thus far, filed rebuttal testimony earlier today⁵. I will be addressing their rebuttal testimony in this submission.

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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

¹ Item 85 in the Docket

² Item 87

³ Item 91

⁴ Item 93

⁵ Item 95

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.

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

In regards to Conservice's comments on the PUC Staff's claims that they violated 16 TAC §24.283 (b)(1), I'll note that the reason Gallery II residents' bills weren't issued as "promptly as possible after the owner receives the retail public utility bill" was because The Gallery, managed by Roscoe Property Management (Roscoe), which hired Conservice to calculate, prepare, and send Gallery II residents their water and wastewater bills⁶, falsified water billing dates on our bills so that they could conceal the fact that they billed us a second time for the 7/16/19-8/14/19 City of Austin water bill⁷. It has nothing to do with Conservice needing "sufficient time to receive and process the bill from the retail public utility provider, calculate and mail tenant bills"⁸. The entire reason that we're currently billed a month and a half behind the City of Austin water bill to the complex instead of the half a month we were before Roscoe and Conservice arrived on the scene is that we got billed for the 7/16/19-8/14/19 City of Austin water bill on both our September and October 2019 rental bills.

The previous water billing company, Performance Utilities, had managed to issue us our water and wastewater bills, along with our drainage bills, within a week or so of receiving them from the City of Austin so there's no reason that Conservice couldn't have done the same⁹. Mind you

⁶ Item 77 in paragraph 9

⁷ 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

⁸ Item 95 on pdf page 2 in paragraph 2

⁹ Item 70 on pdf page 16 in paragraph 3 and pdf page 44 in paragraph 4 with evidence in Item 71 on pdf page 102

that Conservice also received the water bills to the complex straight from the City of Austin¹⁰ and those bills had their service periods on them but Conservice apparently didn't check to see if they matched with the service periods of the water charges they calculated, prepared, and sent to us which therefore made it possible for The Gallery, managed by Roscoe, to get away with it.

Also, the fact that “none of the bills were issued after 60 days of the retail utility provider bill” has no bearing on whether or not Conservice is in compliance with 16 TAC §24.283 because there is nothing in the rule that dictates that anything within 60 days or less is acceptable, only that they are issued “as promptly as possible”.

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In regards to Conservice's rebuttal of my testimony concerning the inaccurate occupancy figures that they used to calculate my bills, I'll first mention that although Conservice claims that they sent residents a “notice” informing us that we were overbilled¹¹, I never received it and neither did anyone I talked to about the matter. One of the residents here I spoke to though did go to the property manager, which was Lincoln Property Company at the time, and asked them what the refund was about and Lincoln informed them it was for water overcharges.

I'll also note that I proved that inaccurate occupancy figures were use to calculate our bills in early February of 2021¹² and up until that point, according to Roscoe Senior Regional Manager Courtney Gaines, Conservice, along with Roscoe and The Gallery, had conducted a “thorough investigation” of my allegations that I'd been overcharged and graciously found themselves fully in compliance with “all laws and regulations in the state of Texas and the Public Utility Commission”¹³. Conservice also again had access to everything they needed to recognize and prevent us from being overcharged: the City of Austin water bills to The Gallery II, which had the amounts of the charges to the complex, and the bills Conservice sent out to us. Conservice could have checked to see if the amounts collectively charged to Gallery II residents equaled the amount of our total financial responsibility for the bill, but apparently they didn't.

In regards to the table that Conservice provided of the occupancy counts and the amounts they claim I was overcharged, I was overbilled for water for eight months, on my October 2019 to May 2020 rental bills, not six as shown in their table. Conservice didn't include the total occupant counts used for those last two months and those bills were the ones I was the most

¹⁰ Item 64 on pdf page 3 on lines 4 to 12

¹¹ Item 95 on pdf page 5 in paragraph 2

¹² Item 13 on pdf pages 23 to 28 in *B. The worksheets (tabs) in the spreadsheet for monthly billing*

¹³ COMPLAINT # CP2020101118 – Jeff Conners in Item 10 ZIP folder

overcharged for because on those bills the actual occupancy was the most understated¹⁴. For the water charges on our April 2019 rental bill, Conservice used 50 total occupants to calculate them though there were actually 112 occupants at The Gallery II at the time, and for May, Conservice used a total occupant count of 44 when there were actually 114 occupants living here.

I'll also mention that for the water charges on our October 2019 rental bill, Gallery II residents should be refunded the entire amount they paid because we were charged that month a second time for the 7/16/19 to 8/14/19 City of Austin water bill that we'd already paid for on our September 2019 rental bill.

Conservice, alluding to my Supplemental Statement of Position¹⁵, then went on to claim that “any allegations of fraud should not be addressed in this proceeding” and cites *Complaint of Giovanni Homes Corporation Against Oncor Electric Delivery Company, LLC*, Docket No. 45854 which they say stated in part that the “Legislature has also not conferred upon the Commission any general authority to preside over tort actions” and “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”. I'm not requesting though that the Commission preside over a tort action and/or award me any attorney fees, court costs, or damages under tort law.

The Commission does possess the power to access administrative penalties and, as I stated in my Supplemental Statement of Position¹⁶, I'm using my proof that fraud was committed by the Respondents to buttress my argument that the Commission should impose administrative penalties on Conservice.

Texas Water Code Section 13.4151 (a) and (b)(1) states:

Section 13.4151 Administrative Penalty

(a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section.

¹⁴ Item 70 in *51619_70_1243339* on pdf page 12 second paragraph to 14; pdf page 32 to 39; and Evidence in Item 71 on pdf pages 17 to 55

¹⁵ Item 89

¹⁶ Item 89 on pdf page 3 in paragraph 1

The penalty may be in an amount not to exceed \$5,000 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

Proving that the Respondents committed fraud in this matter, and the systematic way they did it, adds to the nature and gravity of the prohibited acts and therefore is relevant to this proceeding.

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I will email 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 12, 2023 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Jeff Connors

Jeff Connors

Complainant