

Utility Management & Conservation Association is represented by Lindsay Roach, Esquire. Conservice, LLC is represented by Kevin Hall, Esquire, and Bryant Caldwell, Esquire. The Office of Regulatory Staff (ORS) is represented by Benjamin P. Mustian, Esquire.

On February 22, 2022, the Complainants filed their complaint alleging twelve (12) causes of action against Defendants Strata Audubon, LLC, and Strata Veridian, LLC.

These causes of action are:

- (1) Finding and Declaration that Defendants are Public Utilities Subject to the Jurisdiction and Regulation of the Commission;
- (2) Finding and Declaration that Rates Charged by Defendants for Water and Sewerage are Unlawful Because Not Approved by the Commission (S.C. Code Ann. §58-5-240);
- (3) Finding and Declaration that Rates Charged by Defendants are Unjust, Unreasonable, and in Violation of Law (S.C. Code Ann. §58-5-290);
- (4) Refund of Water and Sewerage Charges Collected by Defendants (S.C. Code Ann. §58-5-270);
- (5) Breach of Contract;
- (6) SC Residential Landlord and Tenant Act Violation;
- (7) Penalty for Unlawful Water and Sewer Rates (S.C. Code Ann. §58-5-370);
- (8) Negligence;
- (9) Unjust Enrichment/Quantum Meruit;
- (10) Unfair Trade Practices, S.C. Code Ann. §§39-5-10, *et. seq.*;
- (11) Declaratory Judgment, S.C. Code Ann. §§15-53-10, *et. seq.*; and
- (12) Injunctive Relief.

Id. The Complainants brought this Complaint related to the Defendants' ownership, leasing and operation of the Audubon Property and the Veridian Property whereby the tenants are allocated water and sewer costs using the formula stated in the rental agreement. Each tenant signs a lease or rental agreement authorizing that the tenant's water and sewer services shall be billed using an allocation formula rate (i.e., a ratio utility billing system). Specially, the Complainants allege that the Defendants illegally provide tenants with water

and sewer utility services in exchange for compensation at rates other than the rates at which Defendants obtained such water and sewer resources and operate as an unauthorized public utility.

On May 4, 2022, following an extension to respond of the Complaint, the Defendants filed a Partial Motion to Dismiss the fifth, sixth, eighth, ninth, tenth, and twelfth causes of action for want of jurisdiction, as well as an Answer to the Complaint where the Defendants deny that they are a public utility and assert that they are a landlord. There was no opposition to this Defendants' Motion to dismiss certain causes of action. On May 26, 2022, the Commission granted the Defendants' Partial Motion to Dismiss the Complainant's causes of actions numbered 5, 6, 8, 9, 10, and 12 and held that the Commission does not possess the required subject matter jurisdiction to adjudicate or grant the relief sought in these causes of action. Order No. 2022-503. The Defendants assert multiple defenses including by not limited to citing to Commission precedent whereby a public utility does not include submetering activities of a landlord who passes the costs of utility services to their tenants through rental charges. Order No. 2003-214, Order No. 2008-725, and Order No. 2008-853.

The parties engaged in discovery. On April 12, 2023, the Defendants filed a Motion for Protective Order related to discovery requests from the Complainants. The Defendants also filed a Motion requesting an order from the Commission finding that no hearing is required in this customer complaint proceeding and dismissing the matter based on the written record before it. (See Section II below). On the same day, non-party Conservice, LLC (Conservice) filed a limited notice of appearance and Motion for Protective Order

related to subpoena requests from the Complainants. Conservice is the third-party billing company which the Defendants contracted with to provide billing services.

On May 26, 2023, the Complainants filed a response in opposition to the Defendants' Motion for Protective Order and to Conservice's Motion for Protective Order. The Complainants also filed a Motion for an Order Granting Complainants Relief Based on the Written Record or in the Alternative, Setting a Schedule and a Hearing and Memorandum in Opposition to Defendants' Request for an Order Finding that No Testimonial Hearing is Required in this Customer Complaint Proceeding and Dismissing the Matter Based on the Written Record Before It. (See Section II below). With this motion, each party is asserting that the record contains enough information and argument on the law, free from any questions of fact, for the Commission to make a ruling without a hearing; otherwise, the Commission should proceed to set the matter for hearing.

The Defendants and Conservice filed a Reply in support of their respective Motions for Protective Order on June 15, 2023.

II. OVERVIEW OF MOTIONS

A. Defendants' Request for an Order That No Hearing is Required

On April 12, 2023, the Defendants moved for an order finding that no hearing is required in this proceeding and that the matter may be dismissed based on the record in the existing filings.² Defendants' April 12, 2023, Request for An Order and Motion to Dismiss, p. 1.

² On April 12, 2023, the Defendants' made two motion filings: (1) Defendants' Request for an Order Finding That No Testimonial Hearing is Required in this Customer Complaint Proceeding and Dismissing the Matter Based on the Written Record Before It, and (2) Defendants' Motion for Protective Order.

The Defendants claim:

1) Commission precedent determines “public utility” to “not include landlords which pass the cost of utility services to their tenants through rental charges.” *Id.* Defendants cite Docket Nos. 2001-485-WS; Docket 2008-192-WS; and Docket No. 2007-228-G to support the assertion of precedential rulings. *Id.*

2) “This is not a contested case under the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, and there is no statutory right to an evidentiary hearing.” *Id.*, p. 2.

3) “The sole issue before the Commission, is whether the allocation formula agreed to among the parties, subjects [Defendants] to public utility status.” *Id.*, p. 3.

4) The Commission has found the following factors persuasive in determining the public utility status of a submeterer:

a. Billing on a not-for-profit, pass-through basis (Order Nos. 2003-214; 2008-853).

b. Lacking the characteristics of a public utility (monopoly service area; owning large, capital-intensive utility infrastructure; guaranteed rate of return) (Order No. 2008-853).

c. Ability to turn off water supply to individuals for failure to pay charges (Order No. 2008-725).

d. The provision of “essential services” and available remedies under the South Carolina Landlord and Tenant Act (Order No. 2008-853). *Id.*, p. 6.

B. Complainants' Motion for Order Granting Relief Based on the Written Record or to Schedule Hearing

On May 26, 2023, the Complainants filed a motion with the Commission seeking that the Commission grant the relief sought by the Complainants based upon the written record or to schedule and hold an evidentiary hearing. Complainants' Motion for Order Granting Complainants Relief Based on the Written Record, or in the Alternative, Setting a Scheduled and a Hearing, dated May 26, 2023 (Complainants' May 26, 2023 Motion for Relief). The Complainants want the Commission to deny the Defendants' motion for an order finding that a hearing is not required. The Complainants assert that the Commission should grant the Complainants' Motion and find for them based upon the written record without hearing, or in the alternative, if the Commission decides that it is unwilling to grant the relief based on the record before it, that a hearing should be set. Complainants' May 26, 2023 Motion for Relief, p. 1-2.

Complainants assert that it is a question of fact whether the Complainants' water usage reflect the Defendants' actual usage. *Id.*, p. 2. Complainants assert that the cost and billing are materially different based on the lack of tenant-specific metering. Complainants argue that the allocation method used to submeter is not appropriate, and because each usage is not measured at the tenant-level, the Defendants are functioning as a public utility by billing in excess of costs to some tenants. *Id.*, p. 3.

III. APPLICABLE LAW REGARDING SUBJECT MATTER JURISDICTION

As alleged by the Complainants, the Commission does regulate the rates and services of every public utility in South Carolina. Complaint, p. 7, ¶47. Under South Carolina law, the Commission is:

vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every 'public utility' as herein defined.

S.C. Code Ann. section 58-5-210 (2015). If a customer has a complaint, the person may "...petition in writing, setting forth any act or thing done, or omitted to be done, with respect to which, under the provisions of Articles 1, 3, and 5 of this chapter, the commission has jurisdiction..." S.C. Code Ann. section 58-5-270 (2015). The process for filing a complaint is found in Commission Regulation 103-824 requiring specific information about the act or violation alleged and the relief sought. S.C. Code Ann. Regs. 103-824.A(3) & (4) (2012).

In this matter, the Complainants allege that the submetering activity of the landlord Defendants is the unlawful provision of public utility services by providing water and sewer to the tenant. Complaint, ¶¶ 38-43. The Commission has previously addressed whether submetering of water and sewer services by a landlord subjects a landlord to the Commission's jurisdiction as a "public utility." Submeters of water and sewer services do not meet the statutory definition of a "public utility" as defined in S.C. Code Ann. Section

58-5-10 (2015). Order No. 2003-214, p. 10, ¶¶ 2-4. Through submetering, the landlord is capturing its monthly costs for water and sewer service. It is well-established by the Commission that submetering does not actually constitute furnishing or supplying the commodity to the tenant. Submetering “measure[s] the amount of flow of water or [sewer] [services] and provide[s] billing functions.” *Id.*, p. 10, ¶ 2. The landlord is not a public utility because it does not take possession of the water [or sewerage], but only passes through the utility costs to the tenant. *Id.*

The Complainants’ ability to get relief from the Commission is subject to the threshold evaluation of whether the Commission has subject matter jurisdiction to hear the matter.

Subject matter jurisdiction is defined as “the power [of a court] to hear and determine cases of the general class to which the proceedings in question belong.” *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994). Issues related to subject matter jurisdiction may be raised at any time. *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989).

In re: November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 686 S.E. 2d 683, 687 (2009).

The Commission, being an administrative agency, only has the jurisdictional authority conferred upon it by the South Carolina General Assembly. This authority, in pertinent part, is clearly defined in unambiguous terms by statute:

The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and

regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every "public utility" as herein defined.

S.C. Code Ann. § 58-5-210 (2015).

The term "public utility" includes ... every corporation and person furnishing or supplying in any manner heat (other than by means of electricity), water, sewerage collection, sewerage disposal, and street railway service, or any of them, to the public, or any portion thereof, for compensation[.]

S.C. Code Ann. § 58-5-10(4) (2015). Since the motions before the Commission may only be considered if the Commission possesses adequate subject matter jurisdiction to hear the matter in controversy, the relevant initial question before the Commission is whether its enabling statutes authorize the Commission to hear this Complaint. For the reasons stated herein, Commission dismisses the Complaint for a lack of subject matter jurisdiction and the Commission does not need to further address whether or not the Complainants are entitled to the relief sought.

IV. FINDINGS OF FACT

Based upon consideration and review of the information and filings in the record, the Commission makes the following findings of fact:

1. Defendants do not have water or sewer submetering infrastructure in either apartment building at issue in this proceeding.
2. Defendants contracted with a third-party billing provider, Conservice, to provide the billing functions for water and sewer service to resident units, and did not bill

tenants directly, nor did the Defendants contract directly with any utility providers for service to resident units.

3. Defendants contracted with Conservice to recover the actual costs of water and sewer services to its tenants through an allocation formula method on a not-for-profit basis.

4. Defendants do not have any monopoly rights over any service area; do not own any large, capital-intensive utility infrastructure; and do not seek or obtain any guaranteed rate of return on the pass-through billing of water and sewer services.

5. The water and sewer services are provided to the properties by local utilities and the Defendants never take possession of the water and lack the ability to disconnect the water or sewer service to an individual tenant for non-payment.

6. Defendants are not operating a public utility that is subject to the jurisdictional authority of the Commission.

VI. EVIDENCE AND DISCUSSION FOR FINDINGS OF FACT

Findings of Fact No. 1:

By verified affidavit of Andrew Gordon filed April 12, 2023, the Defendants assert the undisputed fact that the two apartment buildings at issue do not have submetering infrastructure installed. Defendants' Witness Gordon is the Chief Operations Officer of Strata Equity Group, Inc., the parent company of Defendants Strata Audubon, LLC, and Strata Veridian, LLC. Witness Gordon attests, *inter alia*:

3. The Audubon Park Apartment building was constructed in 1991. The building is served water and sewer through a master meter. There is no water or sewer submetering infrastructure in the building.

4. The Grove Apartment building was constructed in 1998. The building is served water and sewer through a master meter. There is no water or sewer submetering infrastructure in the building.

Affidavit of Andrew Gordon, p. 1, ¶¶ 3-4. This assertion of no submetering infrastructure is undisputed by the Complainants in their Complaint. The complete Complaint, filed June 6, 2022, alleges:

Defendants do not maintain any meter between the point of delivery/outflow of water and sewerage from the utility from which Defendants obtain such services and Defendants' tenants. There are no meters on Defendants' properties determining the actual water and sewerage usage of Defendants' tenants.

Complaint p. 3, ¶ 16. As there is no dispute as to the status or existence of submetering infrastructure, the Commission may accept these assertions as undisputed fact.

Findings of Fact No. 2:

Defendants' Witness Gordon states that the Defendants contracted a third-party billing provider for billing functions:

As the owner of the properties, the Strata entities contracted with a third-party billing provider, Conservice, to provide the billing functions for water and sewer service to resident units, and did not bill tenants directly. Nor did we contract directly with any utility providers for service to resident units.

Affidavit of Andrew Gordon, p. 1, ¶ 5.

At a minimum, there is tacit acknowledgement by the Complainants that Conservice has been contracted for – and performs – billing functions for the Complainants' dwellings.

On August 26, 2022, Complainants served Conservice with the Subpoena requesting certain information concerning Conservice's billing and invoicing practices for water and sewerage at the properties owned by Defendants Strata Audubon, LLC and Strata Veridian, LLC ("Defendants").

Complainants Memorandum in Opposition to Non-Party Conservice, LLC's Motion for Protective Order, p. 1.

The Commission notes there is no allegation that the Defendants have contracted for service to specific residential units. It is not in dispute that Conservice has been providing billing services on behalf of the Defendants in this case. Since there is no dispute, the Commission may accept the fact as asserted.

Findings of Fact No. 3:

Defendants' Witness Gordon attests that:

The Strata entities contracted with the third-party billing company, Conservice, to recover the actual costs of water and sewer services to its tenants through an allocation formula method on a not-for-profit basis.

Affidavit of Andrew Gordon, p. 1, ¶ 6. Mr. Gordon's statement, as quoted above, is not in factual dispute.

There are three aspects to the above-referenced assertion. First, the Defendants contracted with Conservice to do their billing. Second, the amount billed to tenants is pursuant to an allocation formula. Third, the rate of billing is for the actual cost of water and sewer services and is on a not-for-profit basis.

Regarding the first portion of Mr. Gordon's statement – that Defendants contracted for billing services - for the reasons set forth in Finding of Fact 2, it is undisputed that Conservice was contracted to perform billing services.

Regarding the second portion of Mr. Gordon's statement – the amount billed to tenants is pursuant to an allocation formula - it is undisputed that water and sewer charges were billed to Complainants based on an allocation formula rate. "The Utility and Services Addendum to the Audubon Lease provides that water and sewerage utilities were and are billed to Zito, Sarmiento, and the other tenants according to an allocation formula rate, also known as a ratio utility billing system." Complaint p. 3, ¶15. The Complaint details, to an extent, the design of the allocation method.

In the Veridian Lease, the allocation formula rate specified in the Utility and Services Addendum for billing water and sewerage utilities is and was an allocation to the tenants in a particular apartment unit of a portion of the total water and sewerage usage of the entire Veridian Property according to a combination of the square footage of the apartment unit and the number of persons residing in that apartment unit as a percentage of the total for the Veridian Property.

Complaint p. 5, ¶ 34. The fact that the rates are based on an allocation formula is not in dispute and may be accepted as fact by the Commission.

The third portion of Mr. Gordon's statement – that the Defendants have billed tenants to recover the actual cost of water and sewer service – initially appears to be a disputed matter of fact. The Complainants allege, in many permutations, that the Defendants are not charging the actual cost of water and sewer services to the tenants. For example, the Complaint's First Claim states that "Defendants do not charge tenants the actual water and sewerage charges that Defendants pay to a utility for water and sewerage for the properties." Complaint p. 7, ¶ 48. This is similar to, "Defendants do not merely pass through the costs of water and sewerage to their tenants." Complaint p. 8, ¶ 53.

However, the Complainants are actually alleging that there is a misalignment of the cost of water delivered and the fee charged on an individual tenant basis, not on a premise-wide basis. The Complaint alleges:

63. The rates charged by Defendants for water and sewerage do not reflect actual usage of water or sewerage.

64. The rates charged by Defendants for water and sewerage are based on an allocation formula using either the number of persons residing in an apartment or a combination of the square footage of an apartment and the number of persons residing in an apartment.

65. The allocation formulas used by Defendants are unjust and unreasonable because the allocation formulas do not accurately calculate, nor even approximate, the actual water and sewerage usage of Defendants' tenants.

Complaint p. 9, ¶¶ 63-65. The Complainants' allegations make clear that the issue that Complainants really have is not the cumulative amount sought for collection by the Defendants – except as it relates to common areas³ – but rather, that the tenants' actual utility usage and pro rata billed amount are different.

An allocation method of billing is, at best, an approximation of actual usage and is not a measure of a tenants' actual usage. Defendants attempt to obfuscate this issue through a sleight of hand, first discussing the actual usage of tenants in relation to the lack of individual meters to measure “the actual usage of each tenant,” and then using “actual” in relation to Defendants' water and sewer costs and not tenant's actual usage. (Mot. 3.) As discussed *infra*, the tenants' actual usage and Defendants' actual costs are not the same, and in relation to Defendants' status as regulated public utilities, the two are materially different.

³ Reiterating their claim that Defendants did not bill on a “not-for-profit basis,” Complainants point out that “Defendants also billed Complainants and other tenants for water and sewerage used by Defendants for the common areas of the properties. (Compl. ¶43, Ex. A at 12, & Ex. B at 12; Ans. ¶43; Ex. A, Dir. Testimony of Dr. William Huber 8:12–17.)” Complainants' May 26, 2023 Motion for Relief, p. 3.

Complainants' May 26, 2023 Motion for Relief, p. 3.

Contrary to the assertion of the Complainants, Defendants were clear in describing the nature of the aggregate billing amount. "The Strata entities contracted with the third-party billing company, Conservice, to recover the actual costs of water and sewer services to its tenants through an allocation formula method on a not-for-profit basis." Affidavit of Andrew Gordon, p. 1, ¶ 6. The Commission understands that this statement is undisputed as it related to the aggregate cost of water and sewer service to the premises to be allocated to the tenants based on the formula rate structure used by Defendants. The Commission is satisfied that the Defendants are, in fact, only passing through to tenants -- on an allocation basis -- the cost of providing water and sewer service without profit.

By its very nature, a formula method for sub-metered allocation of costs is going to be approximate on a specific-tenant basis. The only way to reflect actual usage, and bill, accordingly, is to have all tenants individually metered. Such a method would require significant infrastructure installation and would have material detrimental financial impacts on Defendants and ultimately, the ratepaying tenants.

Complainants allege that billing water usage for the common area and mutual benefit of tenants is evidence that the Defendants are operating a public utility.

...Defendants obtained a benefit from providing water and sewerage to Complainants and the other tenants is the billing of the tenants for water and sewerage usage in the common areas of the properties. At each property, the total water and sewerage usage at the property billed to the tenants included water and sewerage used at the common areas of the property, including any leasing office, gym, pool, irrigation, etc. [citations omitted]

Complainants' May 26, 2023 Motion for Relief, p. 19. Regarding the allocation of water used for the common grounds of the tenants' dwelling for mutual benefit of the tenants, the Commission finds that this does not invalidate a mere pass-through arrangement to be allocated to the tenants via a water and wastewater assessment versus incorporation into the rental rate directly or any other lawful mechanism.

Findings of Fact No. 4:

The ownership of utility infrastructure in an exclusive service territory is an indicator of the operation of a public utility. Similarly, and relatedly, seeking a rate of return on the ownership or investment in utility infrastructure is a key indicator of the operation of a public utility. In this instance, Defendants attest that, “[t]he Strata entities do not have any monopoly rights over any service area, we do not own any large, capital-intensive utility infrastructure, and we do not seek or obtain any guaranteed rate of return on the pass-through billing of water and sewer services.” Affidavit of Andrew Gordon, p. 2, ¶ 7.

The Complainants do not dispute that Defendants do not own significant utility infrastructure and do not seek a rate of return on an investment in the same. The Commission may accept this undisputed assertion as fact.

Findings of Fact No. 5:

Defendants attest that, “[t]he water and sewer services are provided to the properties by local utilities and the Strata entities never take possession of the water, and we do not have the ability to disconnect or turn off the water or sewer to an individual tenant for non-payment.” Affidavit of Andrew Gordon, p. 2, ¶ 8. It is uncontested that the Defendants

provided service from a local water and wastewater utility. “Defendants provided pipes between the municipal utility connection and fixtures in the apartments that made water and sewerage available to Complainants and other tenants for their use. [citations omitted]” Complainants’ May 26, 2023 Motion for Relief, p. 17. The Commission finds that Defendants have provided water and sewer service from a municipal utility.

It is uncontested that the Defendants do not have the ability to turn off water or sewer service to individual tenants, and the Commission finds that the Defendants do not have the ability to control water or sewer service to individual tenants. Regarding possession of the water, Complainants state:

Defendants were taking water from the municipal utility into pipes owned by Defendants, transporting that water to faucets, shower heads, and other outlets owned by Defendants and at those outlets, providing the water to Complainants and the other tenants. Similarly, Defendants were accepting wastewater into pipes owned by Defendants and using those pipes to transport the wastewater to sewer pipes owned by municipal utilities.

Complainants’ May 26, 2023 Motion for Relief, p. 17.

There is a difference in positions between the parties regarding whether the Defendants “possess” the water or not. While the water did move through pipes owned by Respondent into the rented dwellings of the tenants, it cannot be said that Defendants assert exclusive domain over the water or sewer supplies. Defendants undisputedly did not have the ability to control the flow of water or sewer service in a tenant-specific capacity and therefore could not exercise control of the commodities. The Commission finds, therefore, that the Defendants did not possess or take possession of the water or sewerage.

Findings of Fact No. 6:

In consideration of all evidence of record, and consistent with the criteria considered by the Commission in prior proceedings, the Defendants are not operating as a public utility.

[S]ubmeterers of water and wastewater services do not meet the statutory definition of a “public utility,” and should not therefore be regulated by this Commission as jurisdictional utilities, in that such submeterers do not actually “furnish or supply” the commodity, but merely measure the amount of flow of water or wastewater and provide billing functions.

Order No. 2003-214, p. 10, ¶ 2. The Commission has applied this same standard to the submetered provision of water and wastewater in multiple proceedings. “Simply undertaking the activities of measuring the commodity and providing billing functions does not make submeterers ‘public utilities.’ ” Order No. 2008-725, pp. 2-3. Consistent with this standard, the Commission has evaluated the provision of natural gas as a submetered commodity using the same criteria.

[T]he Commission found that the apartment complex in question billed its tenants for water and sewer service on a not-for-profit, pass-through basis. The apartment complex did not have the characteristics of a public utility: it had no monopoly over any service area; it did not own a large, capital-intensive utility infrastructure; and it did not seek a guaranteed rate of return.

Order No. 2008-853, p. 4, citing Order No. 2003-214. Here the Defendants are engaged in a relatively common practice of submetering water and wastewater service to their tenants. Consistent with prior Commissioner Orders, this activity is not determinative of operation of a public utility. “The activities of measuring the commodity and providing billing

functions do not make submeterers ‘public utilities’ for the purpose of regulation by the Commission.” Order No. 2003-214, p. 10, ¶ 3.

The Commission has previously evaluated the arguments over whether submetering activities of a landlord should be regulated by the Commission and whether it meets the definition of a public utility. The Commission has considered the same arguments set forth by the Complainants in Docket No. 2001-485-WS, Order No. 2003-214; Docket No. 2008-192-WS, Order No. 2008-725; and Docket No. 2007-228-G, Order No. 2008-853. Submeters are not a public utility as defined by Section 58-5-10 of the South Carolina Code of Laws for regulation by the Commission. The use of an allocation formula as alleged by the Complainants is also allowed in submetering to recover the actual cost of water and sewer service on a not-for-profit basis.

VII. CONCLUSIONS OF LAW

Consistent with Findings of Fact No. 6, the Commission has long-standing criteria which is employed in the consideration of whether the facts of a submetering arrangement for water, wastewater, and natural gas service constitute the operation of a public utility as defined in S.C. Code Ann. section 58-5-10(4). Merely providing metering services and a billing function is not sufficient activity to be considered a “public utility” as defined in S.C. Code Ann. section 58-5-10(4). Such an arrangement does not subject the submeterer to the jurisdiction of the Commission.

Based upon consideration and review of the information and filings in the record, the Commission concludes that the Defendants are not operating a public utility as defined in S.C. Code Ann. section 58-5-10(4), which would be subject to the jurisdictional

authority of the Commission. Therefore, the Complaint must be dismissed for lack of subject matter jurisdiction and removed to a court of competent jurisdiction.

VIII. ORDERING CLAUSES

1. The Complaint of Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez, Complainants/Petitioners v. Strata Audubon, LLC, and Strata Veridian, LLC, Defendants/Respondents is dismissed.

2. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



A handwritten signature in blue ink, reading "Florence P. Belser", is written over a horizontal line.

Florence P. Belser, Chair
Public Service Commission of
South Carolina