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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from
The Public Service Commission of South Carolina

Appellate Case No. 2024-000208
PSC Docket No. 2022-84-WS

Strata Audubon, LLC and Strata Veridian, LLC, Respondents,

v.

Sarah Zito, Alvaro Sarmiento, Jr., Mark Shinn, and Daniel Bermudez, Petitioners.

APPENDIX

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VOLUME I of VIII

APPENDIX INDEX

Record on Appeal	APP 001
Brief of Appellant	APP 1692
Brief of Respondent	APP 1736
Reply Brief of Appellant.....	APP 1765
Opinion No. 6129.....	APP 1784
Petition for Rehearing	APP 1795
Order Denying Petition for Rehearing.....	APP 1806
Opinion No. 6129 Withdrawn, Substituted, and Refiled	APP 180

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH
CAROLINA

Appellate Case No. 2024-000208
PSC Docket No. 2022-84-WS

Sarah Zito, Alvaro Sarmiento,
Jr., Mark Shinn, and Daniel
Bermudez, Appellants,

v.

Strata Audubon, LLC and
Strata Veridian, LLC, Respondents.

RECORD ON APPEAL
VOLUME I

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INDEX
VOLUME I

Order Denying Motion for Reconsideration, filed January 18, 2024	1
Order Dismissing Complaint, filed October 2, 2023	17
Order Granting Partial Motion to Dismiss Complaint, filed September 13, 2023	37
Respondents' Memorandum in Opposition to Tenants' Motion for Reconsideration, filed October 23, 2023	41
Motion for Reconsideration of Order No. 2023-736, filed October 12, 2023	48
Motion for Order Granting Complainants Relief Based on the Written Record or in the Alternative, Setting a Schedule and a Hearing, and Memorandum in Opposition to Respondents' 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, filed May 26, 2023 and May 30, 2023 ¹	65
Respondents' Request for 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 Respondents' Motion for Protective Order, filed April 12, 2023	1,521
Answer to Complaint and Partial Motion to Dismiss, filed May 4, 2022	1,533
Complaint, filed February 22, 2022	1,552
Letter Regarding Subpoena Duces Tecum, filed October 3, 2022	1,653
Subpoenas to Conservice, LLC and Charleston Water System, filed August 24, 2022	1,658
UMCA Intervention and Letter of Protest	1,668
Respondents' Reply to Tenants' Memorandum in Opposition and Motion for Order	1,678
Certificate of Appellant	1,683

1 The Public Service Commission of South Carolina filed Exhibit H to the Motion as a confidential document due to personal identifying information in the document and placed a "Confidential" watermark and a header regarding personal information on each page of Exhibit H. The Exhibit H included in this Record on Appeal has the personal identifying information redacted.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2022-84-WS - ORDER NO. 2024-78
JANUARY 18, 2024

IN RE: Sarah Zito; Alvaro Sarmiento, Jr.; Mark	)	ORDER DENYING
Shinn; and Daniel Bermudez,	)	MOTION FOR
Complainants/Petitioners v. Strata Audubon,	)	RECONSIDERATION
LLC, and Strata Veridian, LLC,	)	
Defendants/Respondents	)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (Commission) on the timely Motion of Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez, Complainants/Petitioners (collectively, Complainants) for Reconsideration of Order No. 2023-736. This Motion arises out of the dismissal of the Complaint brought by the Complainants against Strata Audubon, LLC and Strata Veridian, LLC (jointly, Respondents) wherein the Commission determined that the Respondents are not operating a public utility and are therefore not subject to the Commission's jurisdiction. Petitioners' Motion for Reconsideration of Order No. 2023-736, filed October 12, 2023 (Motion).

The Complainants assert the following grounds for reconsideration:

- (1) Order No. 2023-736 is contrary to the plain, unambiguous language of Section 58-5-10(4) of the South Carolina Code. Motion, pp. 1-9, ¶ 1.
- (2) Order No. 2023-736 is contrary to Commission precedent. Motion, pp. 9-11, ¶ 2.

(3) Order No. 2023-736 erroneously relies on a finding that Defendants do not bill their tenants directly. Motion, pp. 12, ¶ 3.A.

(4) The Commission erroneously finds that Defendants' water and sewer billing "is designed to recover the actual cost of water and sewer service through an allocation method provided on a not-for-profit basis" and is "pass-through billing." Motion, pp. 12-15, ¶ 3.B.

(5) The Commission erroneously finds that Defendants "did not possess or take possession of the water." Motion, pp. 15-16, ¶ 3.C.

In addition to the above-listed alleged errors of the Commission, the Complainants also request additional discovery, without any further explanation.

For the reasons herein, the Commission denies the Motion to Reconsider and denies the request for additional discovery by the Complainants.

II. APPLICABLE LAW

Pursuant to S.C. Code Ann. § 58-5-330, a party may apply within twenty (20) days of service of the Order to the Commission for a rehearing in respect to any matter determined in the proceeding. The Commission received a timely filed Motion for Reconsideration pursuant to S.C. Code Ann. Regs. 103-825 and S.C. Code Ann. Regs. 103-854. Under S.C. Code Ann. Reg. 103-825(4):

A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:

- (a) The factual and legal issues forming the basis for the petition;
- (b) The alleged error or errors in the Commission order;
- (c) The statutory provision or other authority upon which the petition is based.

S.C. Code Ann. Reg. 103-825(4) (2012). "The purpose of a petition for rehearing [or reconsideration] is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing [or reconsideration] is not just to have the case tried ... a second time." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933); *see also, Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Further, "[t]he purpose of a Petition for Rehearing is not intended as a procedure for rearguing ... [a] case merely because the non-prevailing parties disagree with the original decision." *In re BellSouth BSE, Inc.*, Docket No. 97-361-C, Order No. 98-66 at 1-2. Rather, petitions for rehearing or reconsideration are to allow the Commission to identify and correct specific errors and omissions in its orders. Nor can a party raise issues in a motion to reconsider that could have been presented prior to the decision on the merits or that are raised for the first time in a petition for rehearing. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E. 2d 481, 482 (Ct. App. 1990); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995); *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996).

[T]he party challenging a PSC order must establish that (1) the PSC decision is not supported by substantial evidence and (2) the decision is clearly erroneous in light of the substantial evidence in the record. *Patton*, 280 S.C. at 291, 312 S.E.2d at 259; *Greyhound Lines, Inc. v. South Carolina Pub. Serv. Comm'n*, 274 S.C. 161, 262 S.E.2d 18 (1980).

Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C., 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004). A Petition for Rehearing or Reconsideration shall set forth clearly and concisely the factual and legal issues forming the basis for the petition, the alleged error or

errors in the Commission Order, and the statutory provision or other authority upon which the petition is based.

III. DISCUSSION AND FINDINGS OF FACT

Based on record, the Commission makes the following findings:

1. Order No. 2023-736 is consistent with the plain language of S.C. Code Ann. section 58-5-10(4).

2. The Commission did not err in its decision and findings of fact in Order No. 2023-736 by considering the following factors:

- a. The consideration of directly billing tenants;
- b. Determination that the tenants were billed using an allocation method on a not-for-profit basis; and
- c. Determination that the Defendants did not possess or take possession of the water.

3. Order No. 2023-736 is consistent with Commission precedent.

4. The Complainants fail to demonstrate that the Commission's decision and Order is unsupported by the evidence or embodies arbitrary or capricious action as a matter of law.

IV. EVIDENCE AND DISCUSSION FOR FINDINGS OF FACT

The Complainants assert that the Commission erred by ruling "contrary to the plain, unambiguous language of Section 58-5-10(4) of the South Carolina Code." Motion, pp 1-9, ¶ 1. For the reason stated below, the Commission concludes the Complainants have failed to show that the Commission erred in its determination.

A. Findings of Facts 1-2(a-c):

1. Consistency With Plain Language of S.C. Code section 58-5-10(4)

The Complainants contend that the Commission erred in Order No. 2023-736 by ignoring the plain language of the statute by adding an exception to the statutory definition of a public utility. The Complainants assert the Commission evaluated the characteristics that indicate whether an entity is engaged as a “public utility,” rather than finding the Defendants were a “public utility” under the definition in provided in S.C. Code Ann. section 58-5-10(4). “The construction of a statute by the agency charged with its administration should be accorded great deference and will not be overruled without a compelling reason.” *Hall v. United Rentals, Inc.*, 371 S.C. 69, 81, 636 S.E.2d 876, 883 (Ct. App. 2006) *quoting* *Risinger v. Knight Textiles*, 353 S.C. 69, 72, 577 S.E.2d 222, 224 (Ct.App.2002) (*quoting* *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 496, 536 S.E.2d 892, 900 (Ct.App.2000)).

The Commission made its decision by applying the literal meaning of the terms of the statute. The Commission evaluated the qualities of entities that constitute “furnishing” and “supplying” water and sewer, which is consistent with the plain language of the statute. Section 58-5-10(4) reads, in part:

The term "public utility" includes every corporation and person delivering natural gas distributed or transported by pipe, and 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. section 58-5-10(4). (2015). The plain language of the statute, clearly dictates that a “public utility” must “furnish” or “supply” a public service in order to be

considered a “public utility.” It is the obligation and duty of the Commission to judicially and consistently apply state and federal statutes and regulations in the matters before it. The most consistent way to apply legal standards is by establishing and evaluating characteristics for consideration of satisfaction of the standard.

The Complainants disagree with the Commission’s conclusion that an entity engaged in submetering is not a utility. The Complainants assert that there is no basis in the law, or in the record, for the Commission to read an exception into Section 58-5-10(4). The Complainants further allege that such an exception is not present in, and not supported by, the statutory text. The Commission does not read an exception into the statutory definition of a “public utility,” but rather applies a consistent and objective evaluation to determine if an entity is a “public utility.” In considering whether an entity is a “public utility,” the Commission found and concluded that, in the context of water, sewer, or both, the Defendants:

- (1) do not have water or sewer submetering infrastructure in either apartment building at issue;
- (2) contracted with a third-party to perform billing services and neither directly billed tenants nor contracted directly with a utility provider for service to tenants;
- (3) recovered the actual costs of water and sewer services to its tenants through an allocation formula method on a not-for-profit basis;
- (4) do not have any monopoly rights over a service area;
- (5) do not own any large, capital-intensive utility infrastructure;

- (6) do not seek or obtain an authorized¹ rate of return on the pass-through billing;
- (7) never take possession of the water; and
- (8) lack the ability to disconnect the water or sewer service to an individual tenant for non-payment.

Order No. 2023-736, pp. 9-10; Motion, pp. 2-3.

The Commission, in evaluating the above-listed characteristics of Defendants, is applying the standard dictated by S.C. Code Ann. section 58-5-10(4) clearly and consistently. The Complainants' Motion alleges that the Commission committed error in Order No. 2023-736 for the use of standardized criteria to determine whether an entity is a "public utility." The Commission notes that the Complainants attempt to demonstrate error in Order No. 2023-736 for the use of standardized criteria to determine if an entity is a "public utility." However, the Complainants cite authority using standardized criteria to discredit the use of standardized criteria by the Commission:

Hempling, *Regulating Public Utility Performance* 14–15 (“[A public utility’s franchise relationship] has seven distinct dimensions: . . . 7. Just and reasonable rates: The utility’s right to charge rates set by the regulator, designed to provide a reasonable opportunity to earn a fair return on equity investment.”); Phillips, *The Regulation of Public Utilities* 110 (“[P]ublic utilities have four rights that are largely the result of their special status. First, **public utilities have the right to collect a reasonable price for their services.** Regulatory authorities may not force such a business to operate at a loss.”).

Motion, p. 5 (emphasis added). Moreover, not only have the Complainants illustrated that there are standard criteria which ought to be considered characteristic of a “public utility,”

¹ Order No. 2023-736 referenced the language asserted by the Defendants (a “guaranteed rate of return”) Affidavit of Andrew Gordon, p. 2, ¶7. The Commission notes that a regulated utility would seek an *authorized* rate of return, rather than a *guaranteed* rate of return.

but Complainants also quote a standard specifically absent from the present case. The authority presented by the Complainants is distinguishable from the present case. Defendants have not sought “to collect a reasonable price for their services” but rather seek only to remain revenue neutral for service being provided by another entity. This is accomplished by recouping from the tenants only the cost of service charged to the Defendants by the service provider.

The Complainants rely on *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 418 S.E.2d 546 (1992), which is distinguishable from the matter at hand. In *Anchor Point, Inc.*, the homeowners’ association owned and operated the sewer plant system. In that case, the Court considered whether, under S.C. Code Ann. section 58-5-10(4), a nonprofit organization created to provide sewerage to condominiums was a public utility subject to Commission regulation. *Id.*, 308 S.C. at 424–25, 418 S.E.2d at 547–48. The South Carolina Supreme Court held that, “an entity was a public utility despite providing sewerage on a not-for-profit basis.” *Id.*, 308 S.C. 422, 426, 418 S.E.2d 546, 548 (1992). In the instant case, the Respondents do not own or operate the water or sewer system.

Anchor Point, Inc. is a factually different scenario. There, it was not a mere submetering arrangement; rather, the entity in question owned and operated the sewer plant system. *Id.*, 308 S.C. at 424, 428. As the Commission found here, pointedly differentiating this case from *Anchor Point*, “Defendants [] do not own any large, capital-intensive utility infrastructure.” Order No. 2023-736.

2. *Reliance on Findings*

The Complainants argue that the Commission erred in making irrelevant and unsupported findings. Motion, p. 11, section III. For the reasons stated in the previous

section of this Order, and as discussed below, the criteria established by the Commission are relevant to the determination of whether an entity is engaged as a “public utility” under the definition in S.C. Code Ann. section 58-5-10(4).

a. Consideration of Direct Billing to Tenants

In making a determination as to whether the Respondents are engaged as a “public utility” under South Carolina law, the Commission not only looked at the billing arrangement between the Complainants and Respondent, but also considered factors such as: whether the Respondents have sewer submetering infrastructure; whether Respondents recover actual costs on an allocation, not-for-profit basis; whether Respondents have monopoly rights over any service area, have capital intensive utility infrastructure, or seek a rate of return on the pass-through billing of water and sewer services; and whether Respondents ever take possession of the water or have the ability to disconnect water or sewer service to a resident for nonpayment. In issuing Order No. 2023-736, the Commission evaluated the parties’ filings and the evidence of record and determined that Respondents are not engaged as a “public utility” under section 58-5-10(4).

The Complainants argue that the consideration of the billing arrangement between a submeterer and its tenants is not relevant to the determination of whether the submeterer is a “public utility.” The Commission, as described in Order No. 2023-736 and herein, considers a number of criteria when determining whether an entity is a “public utility.” The Commission may place differing significance upon a single criterion based upon the record. As part of its determination, the Commission may find certain criteria to be more informative in the determination of whether an entity is a “public utility.” An entity that has not invested in the staff or infrastructure to bill tenants for water is less likely to be

engaged as a “public utility.” Alternatively, an entity that has significant staffing and infrastructure to facilitate in the collection, tabulation, and issuance of bills is more likely to be engaged as a “public utility.” Examining whether an entity conducts its own billing or contracts with third parties is relevant to whether the subject entity is engaged in a function of providing public utility service. While perhaps not dispositive when considered in isolation, it is not irrelevant as a matter of fact or law. The totality of the evidence, as applied to S.C. Code Ann. Section 58-5-10(4), demonstrates that Defendants are not a “public utility” under the laws of the State.

b. Determination That Tenants Were Billed on an Allocation, Not-for-Profit Basis

The Complainants alleged that, “[T]here is no evidence in the record that the water and sewerage were provided at cost and on a not-for-profit basis other than the conclusory assertion of Andrew Gordon in his affidavit.” Motion p. 12, (Emphasis added). The Complainants cite to the same undisputed evidence of record that the Commission accepted and relied upon in its finding. While the Complainants’ request for additional discovery will be addressed in a later section of this Order, it is worth noting that Complainants request additional discovery to determine whether the Respondents’ water and sewer billing operated on a pass-through basis. This argument fails as a matter of fact.

Additionally, Complainants raise an argument in their Motion that billing water usage for the common area and for the mutual benefit of tenants is evidence that Defendants are operating as a public utility. As discussed in Order No. 2023-736, the allocation of water used for the common grounds of the tenants’ dwelling for mutual benefit of the tenants does not invalidate a pass-through arrangement, whether allocated to the tenants

via a water and wastewater assessment, through incorporation into the rental rate directly, or any other lawful mechanism. Order No. 2023-736, p. 16.

c. Determination that Defendants Did Not Possess or Take Possession of the Water

The Complainants assert that the Commission did not make a clear finding, based on fact, which proves that the Defendants did not have possession of the water. *See* Motion p. 15. The Complainants state, “[e]mploying the Commission’s reasoning on possession, one is left struggling to conceive of how any entity could be a water or sewerage utility.” Petition, pp. 15-16.

In Order No. 2023-736, the Commission found:

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.

Order No. 2023-736 p. 17. Simply put, as the Respondents do not have a method to control the flow of water to the specific recipient – whether for failure to pay for a service or other reasons – the Respondent does not have control or possession of the commodity. The language originally employed by the Commission is argued by the Complainants as an “inconceivable” result. The Commission holds that if the entity does not have a method to control the flow of water to the specific recipient – whether for failure to pay for a service or other reasons – then the entity does not have control or possession of the commodity.

B. Finding of Fact 3:

The Complainants have alleged that the Commission did not follow prior Commission precedent, citing to a single and specific Order: Order No. 1999-307, which found that a submeterer is a regulated utility. However, Order No. 1999-307 was vacated by the Commission in Order No. 2003-214. “Since submeterers of water and wastewater do not meet the definition of a “public utility” under our statutes, this Commission does hereby deny and dismiss the Rules to Show Cause issued by us. Further, and following this conclusion, we hereby vacate Order No. 1999-307. . .” Order No. 2003-214. Thereafter, the Commission has consistently interpreted the term “public utility” not to include submeterers. *See, In re Rule to Show Cause on Submeterers*, Docket No. 2001-485-WS, Order No. 2003-214 (2003); *In re Seahorse*, Docket No. 2008-192-WS, Order No. 2008-725; *In re Quail Pointe Apartments*, Docket No. 2007-228-G, Order No. 2008-853. Activities which measure the commodity and provide billing functions do not make a submeterer a public utility.

Moreover, Complainants fail to acknowledge the prior Commission decisions enumerated by Order No. 2023-736. “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.” Order No. 2023-736. The Commission correctly found that the Respondents are not operating a public utility which is supported by the record. The Complainants did not meet their burden to show the Commission’s decision in Order No. 2023-736 is not supported by substantial evidence or that the decision is clearly erroneous in light of the substantial evidence in the record.

C. Finding of Fact 4:

The Complainants do not show that the Commission erred in its decision by failing to base it on the evidence of record, or that there was a lack of evidence to support the Commission's decision. The findings of the Commission

will only be set aside if unsupported by substantial evidence. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). Substantial evidence is not a mere scintilla of evidence but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached.

Anchor Point, Inc. v. Shoals Sewer Co., 308 S.C. 422, 425, 418 S.E.2d 546, 547-48 (1992)
(emphasis added).

The allegations in the Complaint, and the evidence of record, clearly support the ruling by the Commission finding the Defendants are not a public utility. The Complainants rely upon the "Utility and Services Addendum" and Lease entered into with the Defendants. The Utility and Service Agreement clearly states that water and sewer "bills will be billed by the service provider to us and then allocated to you based on the following formula" using a third-party billing company called Conservice. Exhibit A to Complaint, filed February 22, 2022, ¶¶ 1.a. and 1.b. There are no allegations by Complainants that the Defendants owned or operated the service provider or any of the infrastructure. Consistent with the Commission's prior decisions the Defendants, through a third-party billing company, "merely measure the amount of flow of water or wastewater and provide billing functions." Order No. 2003-214. ("[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; "These activities of measuring the commodity and providing billing functions do not make submeterers 'public utilities' for purposes of regulation by this Commission." Order No. 2003-214, p. 10. For these reasons, the Complainants' Motion is denied.

D. Request for Additional Discovery:

In a single, unexplained line in its Motion for Reconsideration, the Complainants request additional discovery. Without any basis stated by the Complainants for a reasoning for how additional discovery would bear upon the disposition of the case by the Commission, the Commission denies the request for additional discovery.

The Complainants fail to identify any material facts that have not yet been discovered that could somehow support their claims. It is duty of the Complainants as the party requesting additional discovery to demonstrate the likelihood that further discovery will uncover additional relevant evidence. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). There is no demonstration by the Complainants that a likelihood exists showing further discovery will uncover additional relevant evidence and that the party is not merely engaged in a 'fishing expedition.' *Baughman v. AT&T Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991). The record (i.e., the Complainants' pleadings) show that the parties conducted discovery and used this discovery to support their position. The Complainants do not identify any material facts in their Motion that have not yet been discovered that could somehow resuscitate their claims.

Additionally, a party cannot introduce new arguments not raised in the underlying case. "It is settled that '[a]n issue may not be raised for the first time in a motion to

reconsider.” *Repko v. Cnty. of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018) citing *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). The Complainants had ample opportunity to conduct discovery and did not file a motion to compel. For these reasons, the request is denied.

V. CONCLUSIONS OF LAW

Based upon the discussion set forth herein, and the record of the instant proceeding, the Commission makes the following Conclusions of Law:

1. The Commission did not err in the findings of fact nor conclusions of law made in Order No. 2023-736.
2. For the reasons set forth in Order No. 2023-736, the Complaint is properly dismissed and the Motion to Reconsider is denied.
3. No additional discovery has been justified by any party nor is necessary in this proceeding.

VI. ORDERING PROVISIONS

IT IS THEREFORE ORDERED:

1. The Motion for Reconsideration filed by the Complainants is denied.
2. The request for additional discovery made by the Complainants is denied.

3. This Order shall remain in force and effect until further action of the Commission.

BY ORDER OF THE COMMISSION:



A handwritten signature in black ink, reading "Delton W. Powers, Jr.", is written over a horizontal line.

Delton W. Powers, Jr., Vice Chairman
Public Service Commission of
South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2022-84-WS - ORDER NO. 2023-736

OCTOBER 2, 2023

IN RE:	Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez,	)	ORDER DISMISSING
		)	COMPLAINT
		)	
	Complainants/Petitioners	)	
		)	
	v.	)	
		)	
	Strata Audubon, LLC, and Strata Veridian, LLC,	)	
		)	
		)	
	Defendants/Respondents	)	

This matter comes before the Public Service Commission of South Carolina (Commission) on the Complaint of Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez (Complaint and Complainants, respectively) and subsequent motions for disposition of the Complaint based on the existing record of filings before the Commission. For the reasons outlined below, the Commission dismisses the Complaint.

I. INTRODUCTION

The Complainants, Alvaro Sarmiento, Jr., Mark Shinn, and Daniel Bermudez are represented by F. Elliotte Quinn, IV, Esquire, and Rachel Igdal, Esquire. Strata Audubon, LLC, and Strata Veridian, LLC, Defendants/Respondents (Defendants) are represented by Hayes Jernigan Finley, Esquire,¹ Kevin Hall, Esquire, and Bryant Caldwell, Esquire. The

¹ Admitted pro hac vice by Order No. 2023-333.

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 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

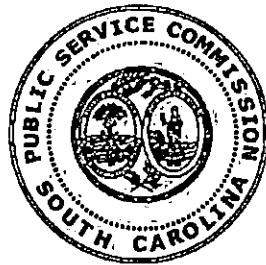
authority of the Commission. Therefore, the Complaint must be dismissed for lack of subject matter jurisdiction and removed to a court of competent jurisdiction.

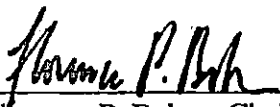
VIII. ORDERING CLAUSES

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:





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

Hall, Esquire, and Bryant Caldwell, Esquire.¹ The Utility Management & Conservation Association is represented by Lindsay Roach, Esquire. Conservice, LLC is also represented by Kevin Hall, Esquire, and Bryant Caldwell, Esquire. The Office of Regulatory Staff (ORS) is represented by Benjamin P. Mustian, Esquire.

II. MOTION FOR RECONSIDERATION

On July 19, 2023, the Complainants filed their Motion seeking reconsideration of the Commission Directive dated June 29, 2023. The Motion stated that the “Complainants respectfully request the Commission reconsider the Commission Directive and grant Complainants the relief requested in the Complaint.” Complainants’ Motion for Reconsideration, p. 9.

Before the Commission may consider the Motion on the merits, it must meet the statutory requirements for proper filing – including being timely. The Motion was filed within the statutorily required period of time *of the issuance of the Directive* on June 29, 2023. However, in this matter, the Directive was not issued as a Directive Order and does not constitute an order of the Commission.² The Directive serves to memorialize the vote of the Commission on the matter. The decision of the Commission in this matter will be set forth in a written order to be issued after the issuance of Directive. As of the time of the filing of the Motion, the final written order of the Commission had not been issued.

¹ Kevin K. Bell, Esquire, and Vordman Carlisle Traywick, III, Esquire, filed a Motion to Withdraw as Counsel for the Defendants on May 24, 2023. The Motion was granted by the Commission on June 15, 2023, by Order No. 2023-395.

² The Commission does issue “Directive Orders,” and those “Directive Orders” contain an Order Number as well as a heading which states, “THIS DIRECTIVE SHALL SERVE AS THE COMMISSION’S ORDER ON THIS ISSUE.”

III. APPLICABLE LAW REGARDING PETITIONS FOR RECONSIDERATION

Petitions (or motions) for rehearing or reconsideration, including in proceedings for consumer complaints, are petitions which may be considered by the Commission. S.C. Code Ann. Regs. 103-825 states:

Petitions may be submitted to the Commission for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority. Petitions which may be filed include: Petition for Rulemaking, Petition for a Declaratory Order, Petition to Intervene, Petition for Rehearing or Reconsideration, and Petition for a Rule to Show Cause.

S.C. Code Ann. Regs. 103-825 (2015).

The timing of Motions for Rehearing is governed by S.C. Code Ann. section 58-5-330, which states in part:

Within twenty days after an order or decision is made by the commission, any party to the action or proceeding may apply for a rehearing as to any matter determined in the action or proceeding and specified in the application for rehearing and a rehearing must be granted if in the judgment of the commission sufficient reason exists.

S.C. Code Ann. section 58-5-330 (2015)

IV. FINDINGS OF FACT

Based upon consideration and review of the information and filings in the record, the Commission finds as follows:

1. That the Motion was filed prior to the issuance of the written order which will contain the decision of the Commission, and therefore the Motion, is untimely.
2. That the Motion should be dismissed without prejudice.

V. CONCLUSIONS OF LAW

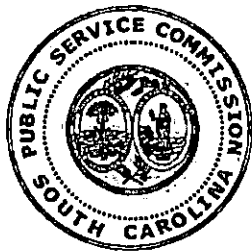
Based upon consideration and review of the information and filings in the record, the Commission concludes:

1. That the Motion filed prior to issuance of the final written order is untimely and should be dismissed.
2. That this dismissal is without prejudice and any party may file a petition or motion for reconsideration following the issuance of the written order.

VI. ORDERING CLAUSES

1. The Complainants' Motion for Reconsideration of the Commission Directive dated June 29, 2023, is dismissed as untimely.
2. The dismissal of the Motion is without prejudice as to any party.
3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:





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

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS**

SARAH ZITO, ALVARO SARMIENTO,
JR., MARK SHINN; AND DANIEL
BERMUDEZ,

Tenants,

v.

STRATA AUDUBON, LLC AND STRATA
VERIDIAN, LLC,

Respondents.

**RESPONDENTS' MEMORANDUM IN
OPPOSITION TO TENANTS' MOTION
FOR RECONSIDERATION**

Respondents respectfully submit this Memorandum in Opposition to Tenants' Motion for Reconsideration and request the Commission deny Tenants' Motion because it provides no basis for relief and rehashes arguments made in previous filings. At bottom, Tenants' request for relief is grounded in its disagreement with the Commission's interpretation of the South Carolina Code of Laws and the Commission's precedent.

ARGUMENT

I. The Commission Correctly Determined that Respondents are Not a Utility under Title 58 of the South Carolina Code of Laws.

Tenants claim that the Commission erred in its Order because the Order is contrary to the statute, S.C. Code Ann. § 58-5-10(4). (Mot. for Recons. at 1). Specifically, Tenants maintain the Commission's legal conclusion that an entity engaged in submetering is not a utility, reads an exception into Section 58-5-10(4) that is not present in and not supported by the statutory text.¹ *Id* at 2. Tenants, however, are misguided.

¹ To the extent Tenants attempt to use their Motion for Reconsideration to raise new arguments, these arguments are not preserved. *See Kiawah Property Owners Group v. Public Service Commission*, 359 S.C. 105, 597 S.E.2d 145

As a threshold matter, an unbroken line of South Carolina caselaw upholds the deference doctrine, which provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations, "unless there is a compelling reason to differ." *S.C. Coastal Conservation League*, 363 S.C. at 75, 610 S.E.2d at 486; *see also, e.g., Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013) (stating that an agency's interpretation "will not be overruled absent compelling reasons"); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) (same); *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (same); *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. at 515, 560 S.E.2d at 414 (same); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 469, 458 S.E.2d 535, 537 (1995) (same); *Faile v. S.C. Employment Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 222 (1976) (stating that an agency's interpretation will not be overruled "without cogent reasons"); *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 48, 190 S.E. 249, 253 (1937) (stating that an agency's interpretation "will not be overruled without cogent reasons").

Here, Tenants have failed to provide any reason, much less a compelling one, for this Commission to change course and Tenants' Motion fails for that reason.

On the merits, Section 58-5-10(4) defines a "public utility" as every person "furnishing or supplying" water or sewer service to the public for compensation. Here, not only does the Commission state that "[m]erely providing metering services and a billing function is not sufficient activity to be considered a 'public utility,'" the Commission also properly applied the

(2004) ("Since KPOG first broached the transfer line issue in its petition for rehearing to the PSC, the issue is not preserved."); *South Carolina Coastal Conservation League v. DHEC*, 380 S.C. 349, 380, 669 S.E.2d 899, 915 (Ct. App. 2008) ("A party cannot use a Rule 59(e) motion to present an issue to the court that could have been raised prior to judgment but was not so raised."); *McMillan v. S.C. Dep't of Agric.*, 364 S.C. 60, 67, 611 S.E.2d 323, 327 (Ct. App. 2005) (issue not preserved "because it cannot be raised for the first time in a motion to alter or amend.").

Commission's prior precedent interpreting the statutory language of "furnishing or supplying." (Order at 19).

Despite the Commission's interpretation of the statute, Tenants argue that the Commission erred because *Anchor Point, Inc. v. Shoals Sewer Co.*, "held that an entity was a public utility despite providing sewerage on a not-for-profit basis." 308 S.C. 422, 426, 418 S.E.2d 546, 548 (1992). In truth, *Anchor Point* is readily distinguishable.

In *Anchor Point*, the Court determined that Shoals Sewer was a public utility because it was a homeowners' association that had not filed an application to exempt it from utility status pursuant to the regulations. 26 S.C. Code Ann. Reg. 103-502.2 (1991). Critically, in relying on *Anchor Point*, Tenants conveniently left out the most important fact applicable to this case, that Shoals Sewer owned and operated the sewer plant system. *Anchor Point*, 308 S.C. at 424, 428. Unlike Shoals Sewer, Respondents do not own or operate the water or sewer system at issue.

Accordingly, the Commission did not err in determining that the Respondents are not public utilities subject to the Commission's jurisdiction, and Tenants have not presented any errors aside from rehashing previous arguments presented to, and disposed of by, the Commission.

II. The Commission Properly Followed Commission Precedent.

As a threshold matter, Tenants continue to insist, incorrectly, that this Commission's precedent is that a submeterer *is* a regulated utility based on Order No. 1999-307. (Mot. for Recons. at 9). However, the Order relied on by Tenants was later vacated in Order No. 2003-214, with detailed reasoning and explanation. Thereafter, the Commission consistently interpreted the term "public utility" *not* to include submeterers. *In re Rule to Show Cause on Submeterers*, Docket No. 2001-485-WS, Order No. 2003-214 (2003); *In re Seahorse*, Docket No. 2008-192-WS, Order No. 2008-725; *In re Quail Pointe Apartments*, Docket No. 2007-228-G, Order No. 2008-853.

Specifically, the Commission's precedent is that the activities of "measuring the commodity and providing billing functions" do not make submeterers "public utilities." *Id.* As such, the Commission correctly applied its precedent in holding 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" and, as a result, "Defendants are not operating as a public utility." (Order at 15, 18).

III. The Commission's Order is Supported by Relevant Evidence in the Record.

Tenants ignore the facts in the record that support the Commission's conclusions of law in attempting to claim the Commission erred in its Order. (Mot. for Recons. at 11). For example, Tenants argue "there is no evidence in the record that the water and sewerage were provided at cost and on a not-for-profit bases other than the conclusory assertion of Andrew Gordon in his affidavit." (Mot. for Recons. At 12) (emphasis added). Even in making this argument, Tenants acknowledge the existence of factual evidence in support of the Commission's finding of fact. But Tenants also ignore the vast amount of discovery that was produced, which Tenants relied on to unpersuasively support their arguments in their Motion for an Order. Further, there are no claims in the Complaint that Respondents sought or obtained a profit through the billing of water and sewer services. Consistent with the Commission's prior precedent on submetering, the Respondents, through a third-party billing company, "merely measure the amount of flow of water or wastewater and provide billing functions." (Order No. 2003-214). The Commission did not err in its findings and conclusions.

Recognizing this argument's fate, Tenants attempt to evade the Commission's Order by arguing, that additional discovery is needed to determine whether Respondents' water and sewer billing operated on a pass-through basis.² (Mot. for Recons. at 12-13).

In this instance, summary judgment can be forestalled only when the additional requested discovery bears on dispositive issues. *See, e.g., Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (“[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a ‘fishing expedition’” (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991))) (emphasis added); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009) (affirming summary judgment despite the appellant's claim for more discovery because “on appeal, Guinan fails to demonstrate further discovery would uncover additional relevant evidence or create a genuine issue of material fact”) (emphasis added); *see also Wieters v. Roper Hosp., Inc.*, 58 F. App'x 40, 44 (4th Cir. 2003) (affirming summary judgment despite the submission of a Rule 56(f) affidavit because the nonmovant had failed to explain how the additional requested discovery “will be useful in resisting summary judgment”).

In Tenants' Motion for Order of Relief on the Written Record, Tenants' expert “was able to use the water and sewer bills from the supplier utilities to Defendants and Defendants' records of the allocation formula charges to tenants each month” to support Tenants' opposition to the use of the allocation method. (Tenants Mot. for Order at 7). Tenants' own pleadings show that the Parties have conducted discovery and Tenants have used this discovery to support their position. As the Commission noted in their Order, by Tenants' own Motion for an Order in this docket, they

² Rule 56(f), SCRPC, specifically requires a party who seeks to avoid summary judgment due to the lack of discovery to identify in an affidavit what additional information he or she needs in order to respond to a dispositive motion. Tenants provided no such affidavit requesting information necessary to support their claims and, therefore, waived this argument.

presented the facts and asserted “that the record contains enough information and argument on the law, free from any question of fact, for the Commission to make a ruling without a hearing[.]” (Order at 4).

Tenants have failed to identify any material facts that have not yet been discovered that could somehow resuscitate their defective claims. Accordingly, Tenants’ argument for additional discovery fails as a matter of law, and the Commission should reject it. *See, e.g., Fields*, 354 S.C. at 69, 580 S.E.2d at 439 (stating that the party requesting additional discovery must demonstrate the likelihood that further discovery will uncover additional relevant evidence).

Finally, Tenants curiously argue that the Commission erred in finding that Respondents “do not possess or take possession of the water or sewerage.” (Mot. for Recons. at 15). However, Tenants cite no South Carolina law or case to support their argument. Rather, the Commission’s precedent has established that whether an entity has the ability to turn off water supply to customers for non-payment is indicative of whether that entity takes “possession” of the water or wastewater for the purpose of determining public utility status. (Order 2008-725). By ignoring the Commission’s prior orders on this and other issues, Tenants ask the Commission to overturn their prior precedent interpreting the statutory definition of a public utility. This argument fails and the Commission properly dismissed the Complaint on the basis that Respondents are not public utilities.

CONCLUSION

In conclusion, the Commission properly dismissed the Complaint for lack of subject matter jurisdiction, and it should readily deny Tenants’ Motion for Reconsideration.

(Signature on Following Page)

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October 23, 2023

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

**MOTION FOR RECONSIDERATION OF
ORDER NO. 2023-736**

Complainants Sarah Zito, Alvaro Sarmiento, Jr., Mark Shinn, and Daniel Bermudez (“Complainants”), by and through their undersigned counsel, hereby submit this Motion for Reconsideration of Order Number 2023-736 (“Order 736”). For the reasons set forth herein and in Complainants’ previous filings, Defendants Strata Audubon, LLC and Strata Veridian, LLC (“Defendants”) operated as public utilities subject to the jurisdiction of the Public Service Commission of South Carolina (“Commission,”), and Order 736’s finding otherwise is contrary to South Carolina statutory law and Commission precedent and is not supported by the evidence in the record.

I. Order 736 is Contrary to the Plain, Unambiguous Language of Section 58-5-10(4) of the South Carolina Code.

Title 58 provides: “The term ‘public utility’ includes. . . every corporation and person

furnishing or supplying in any manner . . . water, sewerage collection, sewerage disposal, . . . or any portion thereof, for compensation . . .” S.C. Code Ann. § 58-5-10(4). Therefore, an entity is a public utility regulated by the Commission and required to obtain Commission approval before charging customers a rate if: (1) the entity “furnish[es] or suppl[ies] . . . water, sewerage collection, [or] sewerage disposal . . . to the public, or any portion thereof” and (2) the entity does so “for compensation.” The Commission is obligated to apply South Carolina law and does not have the authority to disregard, alter, or deviate from statutory law. Section 58-5-10(4) plainly and unambiguously provides that any entity that furnishes or supplies water or sewer for compensation is a public utility regulated by the Commission, and the Commission must apply the plain language of the statute, rather than deviate from it as Order 736 does.

Order 736 concludes that submetering does not constitute the operation of a public utility because “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).” (Order 736 at 19.) Setting aside the factual issue that Defendants were not merely measuring the flow and providing billing functions, the Commission’s legal conclusion that an entity engaged in submetering is not a utility reads an exception into Section 58-5-10(4) that is not present in and not supported by the statutory text.

In finding that Defendants are not regulated public utilities, Order 736 relies on findings that Defendants: (1) contracted with a third-party to perform billing; (2) “recover the actual costs of water and sewer services to its [*sic*] tenants through an allocation formula method on a not-for-profit basis;” (3) “do not have any monopoly rights over a service area;” (4) “do not own any large,

capital-intensive utility infrastructure;” (5) “do not seek or obtain a guaranteed rate of return on the pass-through billing;” (6) “never take possession of the water;” and (7) “lack the ability to disconnect the water or sewer service to an individual tenant for non-payment.” (Order 736 at 9–10). Section 58-5-10(4) does not contain any language stating such limitations on what is a public utility or that could be interpreted as limiting the definition of public utilities in such a manner.

Several of the Commission’s findings engage in circular reasoning, finding that a characteristic that a regulated public utility has solely by virtue of being a regulated public utility and submitting to Commission jurisdiction means an entity that does not have those characteristics is not a regulated public utility. For example, Order 736 relies on a finding that Defendants “do not have any monopoly rights over a service area,” but an entity obtains monopoly rights over a service area solely by being a regulated public utility that submits to Commission jurisdiction and receives Commission approval of its tariffs and services. To the extent an entity has monopoly rights over a service territory, those monopoly rights exist solely by virtue of having been conferred on a utility by the Commission pursuant to Title 58 of the South Carolina Code. *See, e.g., New Orleans Gas-light Co. v La. Light & Heat Producing & Mfg. Co.*, 115 U.S. 650, 669 (1885) (“[T]he manufacture of gas, and its distribution for public and private use by means of pipes laid, under legislative authority, in the streets and ways of a city, is not an ordinary business in which every one may engage, but is a franchise belonging to the government, to be granted, for the accomplishment of public objects, to whomsoever, and upon what terms, it pleases.”); *Atlantic Coast Line R. Co. v. Pub. Serv. Comm’n*, 226 S.C. 136, 140, 84 S.E.2d 132, 134 (1954) (“Public utility corporations accept their franchises from the State subject to the valid exercise of the police

power of the State and to their duty to conform to reasonable regulations designed to promote the public safety and convenience.”); *S. Ry. Co. v. Pub. Serv. Comm’n*, 195 S.C. 247, —, 10 S.E.2d 769, 775 (1940) (“[I]t is quite true, . . . corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve” (internal quotations omitted)); *State v. Broad River Power Co.*, 157 S.C. 1, —, 153 S.E. 537, 548 (1929) (“It is the contention of the petitioners that a franchise is the privilege of doing that ‘which does not belong to the citizens of the country generally by common right,’ and that such franchises are granted primarily for the public benefit and when accepted constitute a contract, and that the grantee undertakes in consideration for the privilege granted to perform the services authorized. This position, in my opinion, is well supported by authority and cannot be successfully questioned.”); Scott Hempling, *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction* 14 (2013) (“For most of the twentieth century, the market structure faced by most retail consumers of electricity, gas, telecommunications and water was a monopoly. The incumbent provider was a vertically integrated company, government-selected, providing prescribed services within a defined territory at approved prices. Supporting this market infrastructure was a legal infrastructure, called a franchise: a ‘special privilege,’ granted by the state government to the utility to provide defined services subject to defined obligations. . . . [The franchise] typically has seven distinct dimensions: 1. *Exclusive retail franchise*: The utility’s right to be the sole provider of a government-prescribed service within a state-defined service territory.”); Charles F. Phillips, Jr., *The Regulation of Public Utilities* 110–11 (1988) (“[P]ublic utilities have four rights that are

largely the result of their special status. . . . Third, . . . public utilities have the right of *protection* from competition from an enterprise offering the same service in the same service area.”). Similarly, Order 736 relies on a finding that Defendants “do not seek or obtain a guaranteed rate of return on the pass-through billing,” but an entity seeks and obtains a guaranteed rate of return solely through being a regulated public utility and submitting to the jurisdiction of the Commission. *See, e.g., Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff*, 434 S.C. 392, 404–05, 864 S.E.2d 873, 879–80 (2021) (stating that the Supreme Court “has long followed the governing principles” set forth by the Supreme Court of the United States that public utilities are entitled to just and reasonable rates of return); *Nucor Steel v. S.C. Pub. Serv. Comm’n*, 312 S.C. 79, 85, 439 S.E.2d 270, 273 (1994) (holding that South Carolina’s public utility statutes require the Commission to “determine a fair rate-of-return”); Hempling, *Regulating Public Utility Performance* 14–15 (“[A public utility’s franchise relationship] has seven distinct dimensions: . . . 7. *Just and reasonable rates*: The utility’s right to charge rates set by the regulator, designed to provide a reasonable opportunity to earn a fair return on equity investment.”); Phillips, *The Regulation of Public Utilities* 110 (“[P]ublic utilities have four rights that are largely the result of their special status. First, public utilities have the right to collect a reasonable price for their services. Regulatory authorities may not force such a business to operate at a loss.”).

Not only are the Commission’s findings immaterial in relation to the plain language of Section 58-5-10(4)’s definition of a public utility, the Commission’s reliance on those findings as relevant to whether an entity is a public utility is directly contrary to the South Carolina Supreme Court’s binding application of 58-5-10(4) in *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422,

418 S.E.2d 546 (1992). In *Anchor Point*, the Court considered whether, under Section 58-5-10(4), a nonprofit organization created to provide sewerage to condominiums was a public utility subject to Commission regulation. 308 S.C. at 424–25, 418 S.E.2d at 547–48. The Court first stated that “it should be noted that [South Carolina’s] definition of public by including ‘any limited portion of the public’ is much broader than other states.” *Id.* at 426, 418 S.E.2d at 548. The Court concluded that because the nonprofit organization “serve[d] a limited portion of the public” it was a public utility. *Id.* The Court then addressed and rejected the argument that the entity was not a public utility because it was “constructed solely to serve members of a nonprofit organization.” *Id.* Therefore, the Court rejected the position adopted by the Commission here that an entity is not a public utility if it is providing water or sewerage on a nonprofit basis. In *Anchor Point*, the Court held that an entity was a public utility despite providing sewerage on a not-for-profit basis.

Additionally, the *Anchor Point* decision indicates the Commission’s other findings relied on to conclude Defendants are not a public utility are not proper considerations under Section 58-5-10(4). In *Anchor Point*, the Court did *not* consider whether the nonprofit entity had monopoly rights, owned large, capital-intensive utility infrastructure, had or sought a guaranteed rate of return, took possession of sewerage, or had the ability to disconnect service. Rather, the *Anchor Point* decision applied the plain language of the statute, finding the nonprofit entity was providing sewerage to a limited portion of the public, and therefore, concluding the entity was a regulated public utility. *Id.* The Court’s analysis indicates that once the elements of furnishing or supplying water or sewerage to a portion of the public for compensation are met, an entity is a public utility under Title 58 and there is no further analysis needed or exceptions to apply.

Finally, the Commission's findings and conclusion are contrary to the surrounding statutory language in Section 58-5-10(4). After generally and broadly defining a "public utility" as any entity or person who furnishes or supplies natural gas, heat, water, sewerage, or street railway service to a portion of the public for compensation, Section 58-5-10(4) states two exceptions to the broad, general definition of a public utility. First, Section 58-5-10(4) makes an exception from the broad definition of a public utility for "a corporation or person furnishing, supplying, marketing, and/or selling natural gas at the retail level for use as a fuel in self-propelled vehicles is not a public utility." Second, Section 58-5-10(4) makes an exception for "a corporation or person whose only purpose is the furnishing, supplying, marketing, and/or selling of treated effluent for irrigation purposes." The two exceptions are relevant to whether Defendants are a "public utility" under Section 58-5-10(4) for two reasons.

As an initial matter, the two exceptions indicate the broad scope of Section 58-5-10(4)'s definition of a public utility. By including the exceptions, the General Assembly indicated that absent the exceptions entities providing natural gas at the retail level for use as fuel in self-propelled vehicles and entities providing treated effluent for irrigation would be public utilities.

More importantly, under the recognized negative-implication rule of statutory construction—"*expressio unius est exclusio alterius*" when dressed up in its traditional Latin form—the expression of an exception in a statute implies the lack of other exceptions. See *Garrison v. Target Corp.*, 435 S.C. 566, 581, 869 S.E.2d 797, 806 (2022) ("Subsection (A) [of the statute] begins by stating 'except as provided in subsections (B) and (C),' indicating that the statute applies to all cases not specifically excluded by those subsections."); *Hodges v. Rainey*, 341 S.C.

79, 86–87, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘*expressio unius est exclusio alterius*’ . . . holds that to express or include one thing implies the exclusion of another, or of the alternative. . . . The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.” (internal quotations omitted)); Antonin Scalia & Bryan A. Garner, *Reading Law* 107 (2012) (“The expression of one thing implies the exclusion of others.”). Therefore, with Section 58-5-10(4) excluding retail suppliers of natural gas vehicle fuel and treated effluent for irrigation, the necessary conclusion is that the South Carolina General Assembly intended that all other suppliers of natural gas, heat, water, sewerage, and street railway service are public utilities pursuant to Section 58-5-10(4).

In conclusion, Section 58-5-10(4) plainly and unambiguously provides that an entity engaged in the conduct Defendants engaged in is a public utility subject to the jurisdiction of the Commission. Order 736 failed to apply that statutory law. Instead, the Commission considered statutorily irrelevant factors as somehow removing Defendants from Section 58-5-10(4)’s definition of a public utility. The Commission cannot disregard Section 58-5-10(4) and substitute its policy judgment of what should constitute a regulated utility for the policy judgment already made by the South Carolina General Assembly and codified in Section 58-5-10(4). The Commission’s disregard of the statutory language and substitution of its own considerations in place of the statutory language is erroneous. *See, e.g.*, S.C. Const. art. I, § 8; *Smith v. Tiffany*, 419 S.C. 548, 565, 799 S.E.2d 479, 488 (2017); *Kiawah Devel. Partners, II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 717 (2014); *Hampton v. Haley*, 403 S.C. 395, 403–09, 743 S.E.2d 258, 262–65 (2013).

Furthermore, as discussed in Complainants' previous filings, were the Commission to apply the statutory definition of a public utility in Section 58-5-10(4), the Commission would have to conclude Defendants acted as regulated public utilities. Defendants were supplying water and sewerage to Complainants and other tenants. Complainants and other tenants were a portion of the public. Defendants also were providing water and sewerage "for compensation" by receiving payments of money in exchange for providing water and sewerage to Complainants and other tenants.

II. Order 736 is Contrary to Commission Precedent.

Order 736 conflicts with Commission precedent that where an entity receives a benefit from furnishing water and sewerage, rather than merely measures the actual usage and passes through the costs of the usage, the entity is a regulated utility. As discussed in Complainants' previous filings, examining the language in Section 58-5-10(4), the Commission previously concluded in Order No. 1999-307 that "[a] literal interpretation of this statute would classify any entity that sells water and/or provides wastewater services for compensation as a public utility." The Commission then explicitly held in Order No. 1999-307 that a submeterer—regardless of whether a secondary metering submeterer or an allocation formula submeterer—is a regulated utility:

It appears to this Commission that any entity that sells water or provides wastewater services for compensation is a public utility, including submeterers. We believe that landlords and companies that submeter and bill tenants for water and/or wastewater services are indeed public utilities, and should be certificated by this Commission.

Order 736 provides no explanation of any legal basis for the Commission rejecting its prior

conclusions in Order No. 1999-307 and arriving at the apparent new standard for what constitutes a public utility provided in Order 736. Moreover, the Commission has not and cannot explain how the conclusion as to what constitutes a utility articulated in Order No. 1999-307 was incorrect. The Commission correctly concluded in Order No. 1999-307 that submeterers are public utilities under the plain language of Section 58-5-10(4), and Order 736 holding otherwise is erroneous.

In Order No. 2003-214, the Commission held that if an entity is submetering by merely measuring the flow and passing through the charges—*i.e.*, secondary meter submetering with no markup or other charges—the entity is not a regulated public utility. Order No. 2003-214 reasoned 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 736 is contrary to Order No. 2003-214 and Order No. 1999-307 because Defendants do not merely measure the flow of water and wastewater and pass through the associated costs. Rather, as explained in Complainants’ previous filings, Defendants neither measure the flow nor pass through the actual costs. Under Order No. 2003-214 and Order No. 1999-307, Defendants acted as regulated utilities, and Order 736 is contrary to those orders and provides no basis for deviating from those orders.

Finally, in Order No. 2008-725, the Commission found a complex owner was a non-regulated submeterer rather than a regulated utility only because the owner measured the actual water and sewer usage and passed the actual cost directly to the tenant, rather than charging tenants through a method other than actual usage and rather than charging tenants any fees in addition to the usage charge. The Commission found: “From the description of these activities undertaken

by [the owner], it appears that the Company is in fact submetering . . . water and sewer service to the residents of [the park] and not providing these services for compensation.” The Commission then ordered:

As a submeterer and not a regulated utility, [the owner] shall only pass through actual water and sewer service charges from Charleston Water System according to the metered usage of individual tenants of the [park]. No other water or sewer charges are allowed to be billed to these tenants.

Order No. 2008-725 therefore establishes that a submeterer who charges on a basis other than a tenant’s actual measured usage is a regulated utility and a submeterer who charges fees in addition to charges for actual usage or charges for anything more than actual usage is a regulated utility. Here, Defendants did not charge tenants an amount equal to their actual measured usage and charged fees and for common area usage in addition to the tenants’ estimated usages. Under Order No. 2008-725, Defendants acted as regulated utilities, and Order 736 fails to apply the standard articulated in and deviates from Order No. 2008-725 with no explanation as to how Order No. 2008-725 is incorrect or can be altered or extended under the governing statutory law.

III. Order 736 Makes and Relies on Factual Findings that Are Not Supported by the Evidence in the Record and Are Not Relevant Under Section 58-5-10(4) and Commission Orders.

In addition to conflicting with the governing statutory law and Commission orders applying that statutory law, Order 736 is erroneous because it makes a number of factual findings that are irrelevant under the governing statute and Commission orders and which are not supported by the evidence in the record.

A. Order 736 Erroneously Relies on a Finding that Defendants Do Not Bill Their Tenants Directly.

Order 736 relies on a finding that Defendants do not bill the tenants directly. Again, Section 58-5-10(4) contains no language whereby whether a utility bills customers itself or contracts with a third-party to bill customers is a requirement for an entity to be a regulated utility. Moreover, whether an entity bills its customers for water and sewer directly or contracts with a third-party for such billing could never be a relevant consideration in whether an entity is a regulated utility. Were it a relevant consideration, any entity could function as a public utility yet escape regulation by contracting out the billing portion of its business to a third-party. Such an absurd result must be rejected, especially where the statutory language provides no support for such an interpretation. *See, e.g., Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192–93 (2014) (“This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.”).

B. The Commission Erroneously Finds that Defendants’ Water and Sewer Billing “Is Designed to Recover the Actual Cost of Water and Sewer Service Through an Allocation Method Provided on a Not-For Profit Basis” and is “Pass-Through Billing.”

Despite the lack of evidence in the record to support the finding and all the evidence in the record indicating that the opposite is true, Order 736 erroneously finds that “Defendants are, in fact, only passing through to tenants—on an allocation basis—the cost of providing water and sewer service without profit.” (Order 736 at 15.) First, there is no evidence in the record that the water and sewerage were provided at cost and on a not-for-profit basis other than the conclusory assertion of Andrew Gordon in his affidavit. Complainants dispute whether the water

and sewerage were provided at cost and on a not-for-profit basis, and Complainants are entitled to conduct discovery as to whether the rates charged to the tenants per gallon is the same rate Defendants or their agents paid per gallon. A self-serving, conclusory assertion in an affidavit is insufficient to establish such a disputed fact. *See, e.g., Shupe v. Settle*, 315 S.C. 510, 516–17, 445 S.E.2d 651, 655 (Ct. App. 1994) (“A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.”); *Germann v. N.Y. Life Ins. Co.*, 286 S.C. 34, 38–39, 331 S.E.2d 385, 388 (Ct. App. 1985) (“Additionally, we observe that Mrs. Germann adduced no competent evidence to prove a purpose of the trust other than that expressed in the trust agreements. Her sole proof in the record before us is a conclusory statement in the affidavits of her two children that A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.”).

As discussed in Complainants’ previous filings and shown by the evidence submitted with those filings, Defendants’ method of billing does not recover actual costs and is not provided on a not-for profit basis because Defendants bill tenants for common area water and sewer usage and bill tenants administrative fees. Similarly, Order 736 erroneously finds that Defendants provide water and sewerage on a “pass-through basis.” As explained in Complainants’ previous filings and above and as shown by the evidence submitted by Complainants, Defendants do not provide water and sewerage on a pass-through basis. Defendants make no effort to measure water or sewer usage by particular tenants nor do they even make an effort to make a rough estimate of particular tenants’ actual water or sewer usage. Additionally, Defendants’ furnishing of water

and sewerage to tenants cannot be on a “pass-through basis” because Defendants bill tenants for common area water and sewer usage and bill tenants administrative fees.

The Commission bypasses these problems in two ways, neither of which complies with the applicable law. First, the Commission concludes the total amount that Defendants bill the tenants at each of the properties equals the total amount Defendants paid for water and sewerage services for each property. There is nothing in the record to support such a finding, and therefore, the finding is erroneous. Additionally, there is no basis in Title 58, judicial decisions applying Title 58, or even in Commission orders, to support such a shift from the amount paid by a particular water or sewer user to a group of water and sewer users. Analyzing the issue in terms of usage of all persons at a property rather than usage by individual users is directly contrary to the Commission’s Order No. 2008-725 which found a water and sewerage provider was not a public utility because it was “pass[ing] through *actual* water and sewer service charges from Charleston Water System according to the metered *usage of individual tenants* of the [mobile home park]” and provided that “[n]o other water or sewer charges are allowed to be billed to these tenants.”

Additionally, shifting the analysis from individual usage to property-wide usage would render absurd results plainly contrary to Title 58. For example, were the Commission’s analysis to turn on whether the total amount billed to a group equals the total cost of providing services to that group, an entity could in all respects function as and be a utility yet evade public utility regulation. An entity could incorporate as a nonprofit corporation without shareholders, provide water and sewerage to customers across a territory using an allocation formula, and including all operating expenses including salaries for executives in the total cost of providing those services.

The Commission's analysis must be rejected as rendering absurd results and as having already been rejected in *Anchor Point*.

C. The Commission Erroneously Finds that Defendants "Did Not Possess or Take Possession of the Water."

Order 736 erroneously finds that Defendants "did not possess or take possession of the water or sewerage," in spite of the lack of evidence in the record to support that finding and in spite of that finding conflicting with South Carolina law. As discussed in Complainants' previous filings and the evidence submitted in support, the evidence shows that Defendants possess the water and sewer at the points between the municipal utility's meter and the outlet or drain in an apartment. The Commission makes a conclusory finding that Defendants do not possess the water or sewerage without making any supporting factual findings—other than that Defendants owned the pipes in which the water or sewerage was located which supports a finding of possession—or providing any explanation of how, under South Carolina law, Defendants could not possess the water or sewerage when in pipes between the municipal utility's meter and the outlet or drain in an apartment. The Commission concludes "it cannot be said that Defendants assert exclusive domain over the water or sewer supplies," but that conclusion is not supported by any factual findings or any legal reasoning. The Commission does not make any finding or identify any evidence as to who—other than Defendants—exercised any domain over the water or sewer supplies. The Commission does not provide any explanation as to how whether one has "exclusive domain" over water or sewer is determinative of or relevant to whether one possesses the water or sewer under South Carolina law. Also, again, the Commission's reasoning yields absurd results. Employing the Commission's reasoning on possession, one is left struggling to

conceive of how any entity could be a water or sewerage utility. Water and sewerage utilities, by their very nature, own pipes, and consumers are able to obtain water from and deposit sewage into those pipes at the consumer's discretion. The fact that a consumer controls when to turn a faucet on and off and how much water to obtain from the utility is immaterial to whether the utility possesses the water in its pipes or whether the utility is a utility. Were the law otherwise, no utility would possess the water in its pipes, and following the Commission's reasoning, no water utility would be a utility under Section 58-5-10(4). Moreover, to be clear, even if Defendants did not take possession of the water or sewerage, as with the Commission's other factual findings, whether Defendants take possession of the water or sewerage is immaterial to whether Defendants are regulated utilities under the plain language of Title 58 of the South Carolina Code.

CONCLUSION

For the reasons set forth herein, Complainants respectfully request the Commission reconsider Order 736 and grant Complainants the relief requested in the Complaint.

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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

**MOTION FOR ORDER GRANTING
COMPLAINANTS RELIEF BASED ON
THE WRITTEN RECORD OR IN THE
ALTERNATIVE, SETTING A
SCHEDULE AND A HEARING**

AND

**MEMORANDUM IN OPPOSITION TO
RESPONDENTS' 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**

Complainants Sarah Zito, Alvaro Sarmiento, Jr., Mark Shinn, and Daniel Bermudez (“Complainants”), by and through their undersigned counsel, hereby submit this 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 Respondents’ 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. For the reasons set forth herein, the Public Service Commission of South Carolina (the “Commission”) should grant Complainants

the relief requested in the Complaint and deny Respondents' 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 (the "Motion"). Alternatively, should the Commission find that the disposition of this proceeding on the written record is not permitted by the applicable procedural law or is not appropriate in this particular case, Complainants submit the Commission should set a schedule for the completion of discovery, the resolution of pending motions, and a hearing.

FACTUAL BACKGROUND

The factual background provided by Defendants in their Motion misleads the Commission in two respects. First, the factual background provided by Defendants assert that Defendants billed customers "the actual costs of water and sewer services to its tenants," were billing tenants for water and sewer "on a not-for-profit, pass-through basis," and were "merely [] passing through costs of water and sewer services to its tenants." (Mot. 3–4.) Moreover, Defendants contend those assertions "are not in dispute." (Mot. 4.) To the contrary, those assertions are in dispute, and Complainants contend those assertions are false and directly contradicted by the evidence.

Defendants did not bill their tenants for their tenants' actual water and sewer usage. (Compl. ¶16; Ans. ¶16.; Mot. 2–3; Aff. of Andrew Gordon ¶¶3–4.) Instead, as admitted by Defendants, the tenants were billed for water and sewer services using "an allocation method," with tenants at the Veridian property billed "based on a combination of the square footage of the dwelling and the number of persons residing in the dwelling unit" and tenants at the Audubon property billed "based on . . . the number of persons residing in the dwelling unit." (Mot. 2; *see*

also Compl. ¶¶17, 33, 34; Ans. ¶¶17, 26.) 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.

Second, Defendants fail to discuss additional, undisputed facts material to and establishing that Defendants acted as regulated public utilities. Those material facts establish the falsity of Defendants' assertions that they billed tenants "on a not-for-profit, pass-through basis" and were "merely [] passing through costs of water and sewer services." (Mot. 3–4.) In addition to the allocation formula charge for water and sewer—which alone would make Defendants regulated utilities—Defendants charged Complainants and other tenants a "New Account Fee," a "Monthly Administrative Billing Fee," and a "Final Billing Fee." (Compl. ¶42, Ex. A at 12, & Ex. B at 12; Ans. ¶32.) 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.)

ARGUMENT

I. This Proceeding is a "Contested Case" Which Requires a Hearing.

While Defendants contend this proceeding is not a "contested case" and therefore, does not

require a hearing, the applicable laws and regulations do not support Defendants' position. The Administrative Procedures Act provides: "In a contested case, all parties must be afforded an opportunity for a hearing after notice of not less than thirty days, ..." S.C. Code Ann. § 1-23-320(A). The Administrative Procedures Act further provides that "[u]nless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default." S.C. Code Ann. § 1-23-320(F). Therefore, if a matter is a contested case, the matter cannot be summarily resolved on the written record without a hearing unless there is some agreement between the parties or a default.

The Administrative Procedures Act defines a "contested case" as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(3). "[T]he key consideration in determining whether a case is 'contested' is whether 'the legal rights, duties or privileges of a party are *required by law* to be determined by an agency *after an opportunity for a hearing*.'" *Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health & Envtl. Control*, 305 S.C. 90, 93, 406 S.E.2d 340, 342 (1991) (emphasis in original). Such a legal requirement of an opportunity to be heard may be imposed by "constitutional due process provisions," by the Administrative Procedures Act, or by other statutory or regulatory provisions. *Id.* at 93–94, 406 S.E.2d at 342. The Supreme Court has defined the "trigger giving rise to a contested case" as whether there was a legal duty owed by an agency to decide legal rights, duties, or privileges. *See Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 403 S.C. 576, 596, 743 S.E.2d 786, 797 (2013).

Here, the statute providing for consumer complaints expressly provides for a “hearing before the commission.” S.C. Code Ann. § 58-5-270. In addition to being a proceeding where consumers are pursuing a consumer complaint against Defendants, Complainants specifically seek relief pursuant to Section 58-5-240. (Compl. ¶¶73.) Additionally, South Carolina statutory law provides that the Commission can find a rate charged by a utility to be “unjust, unreasonable, . . . or in any wise in violation of any provision of law,” but may only do so “after hearing.” S.C. Code Ann. § 58-5-290. Complainants seek a declaration “[p]ursuant to Section 58-5-290” that the rates charged by Defendants are unjust, unreasonable, and in violation of law. (Compl. ¶¶62 & 77.) Therefore, the Administrative Procedure Act and public utility statutes provide for a hearing, make this proceeding a contested case, and do not provide for the resolution of this proceeding on the written record.

II. Defendants Rely on Disputed Facts as the Basis for Their Motion.

Defendants contend that they “filed an affidavit substantiating all relevant facts” and that the relevant facts “are not contested.” (Mot. 2.) Contrary to Defendants’ contentions, Complainants dispute several facts that Defendants claim are undisputed and relevant. Complainants submit that the uncontradicted evidence establishes the opposite of what Defendants contend are the undisputed relevant facts.

A. Defendants Are Compensated for and Profit from Providing Water and Sewerage to Tenants.

Defendants contend there “are no claims that [Defendants] sought or obtained a profit through the billing of water and sewer services.” (Mot. 3.) Defendants also contend that tenants

were billed for water and sewerage “through an allocation method on a not-for-profit, pass-through basis,” that Defendants “bill tenants on a not-for-profit, pass-through basis,” and that “[t]here is no allegation . . . , nor any evidence supporting, that [Defendants] are profiting from the allocation formula used” (Mot. 3 & 6.) These contentions are disputed and not supported by any evidence. The available evidence establishes that these contentions are incorrect and that Defendants are being compensated from their water and sewer billing beyond just recouping the charges Defendants paid the supplier utility for the water and sewerage, rather than merely passing through actual costs. Defendants are providing water and sewerage for compensation and benefiting from providing water and sewerage in multiple ways as discussed in detail in Section III.A, *infra*.

B. Defendants Do Not Measure the Flow of Water or Sewerage.

Defendants assert that they “measure the amount of flow of water or wastewater” (Mot. 5.), but that assertion is plainly incorrect in light of Defendants’ admissions and the evidence. Defendants admit that “there is no individual water or sewer submetering infrastructures in either of the buildings.” (Mot. 3; *see also* Aff. of Andrew Gordon ¶¶3–4.) Defendants do not actually “measure” anything in relation to the flow of water or wastewater for any particular apartment, and rather, Defendants use an allocation formula, which is not a “measurement” of anything.

To “measure” something means to “ascertain the size, amount or degree of (something) by using an instrument or device marked in standard units or by comparing it with an object of known size.” Ex. B, New Oxford American Dictionary 1085 (3rd ed. 2010) (defining “measure”). Defendants do not use any instrument or device to ascertain the amount of water or sewerage used

by a particular apartment. Rather, Defendants estimate or approximate the amount of water or sewerage used by a particular apartment using their allocation formulas.

Moreover, we know that Defendants do not “measure” the water or sewer usage by a particular apartment because Defendants’ allocation formula charges for water and sewerage did “not accurately reflect the usage of any specific unit.” (Ex. A, Dir. Test. of Dr. William Huber 8:1–11.) Dr. William Huber, expert statistician, was able to use the water and sewer bills from the supplier utilities to Defendants and Defendants’ records of the allocation formula charges to tenants each month to show the inaccuracy of the allocation formula charges to the tenants. As explained by Dr. Huber, at the Audubon property, there was a master meter installed at each apartment building at the property as well as two meters for common areas at the property. (Ex. A, Dir. Test. of Dr. William Huber 4:18–7:22.) Instead of using the meter at a building to allocate the water and sewer among the apartments in the building, Defendants added together the charges for the meters at all the buildings including the meters at the common areas and then allocated that total amount among the apartments. (Ex. A, Dir. Test. of Dr. William Huber 4:18–7:22.) By analyzing the records and determining the usage on a building-by-building basis, Dr. Huber was able to determine that Defendants’ allocation formula charges did not correspond with the actual usage in each building. (Ex. A, Dir. Test. of Dr. William Huber 4:18–7:22.) Dr. Huber determined that “some occupants pay three times as much for their water and sewer than other occupants of other buildings.” (Ex. A, Dir. Test. of Dr. William Huber 7:12–13.) In other words, using Defendants’ own records, it is apparent that the allocation formula charges not only do not “measure” the actual water and sewer usage of apartments, but the allocation formula charges are

also not even an approximation of the actual water and sewer usage of apartments.

Finally, even could an allocation formula be a “measure” of usage, which it cannot for the foregoing reasons, Defendants’ allocation formula rate could not be a “measure” of usage because Defendants admit they made no efforts to validate and keep current the number of occupants input used in the allocation formula. (Compl. ¶¶21–25, 37; Ans. ¶¶19 & 28; Ex. C, Resp’t Strata Audubon, LLC’s Resp. to Tenants’ First Set of Interrogs. & Reqs. for Produc. 11–12; Ex. D, Resp’t Strata Veridian, LLC’s Resp. to Tenants’ First Set of Interrogs. & Reqs. for Produc. 11–12; Ex. E, Conservice, LLC Subpoena Resp. Letter 2–4; Ex. F, Dir. Test. of Ashley Brown 6:3–20.) As explained by Complainants’ expert witness Ashley Brown, “[t]o the extent that the inputs to the formula are not kept current and accurate, and it is my understanding from reviewing the documents exchanged in this case that Defendants made no effort to keep the number of tenants inputs current and accurate, the application of the formula can be rendered meaningless.” (Ex. F, Dir. Test. of Ashley Brown 6:8–11.) As Mr. Brown further explains, “the use of an allocation formula is in no way the measurement and passing through of costs where the inputs to the formula are themselves not updated and kept accurate.” (Ex. F, Dir. Test. of Ashley Brown 6:18–20.)

C. Defendants Do Not Provide Water and Sewer on a “Pass-Through Basis” and Are Not “Passing Through Costs of Water and Sewer Services.”

Defendants assert they provide water and sewer services to tenants “on a not-for-profit, pass-through basis” and “merely by passing through costs of water and sewer services.” (Mot. 3–4.) Not only are those assertions factually erroneous as explained below, Defendants offer no evidence to support the assertions. The only purported evidence offered to support the assertions

is the sixth paragraph of the Affidavit of Andrew Gordon. The sixth paragraph of Mr. Gordon's affidavit merely states that Defendants contracted with a third-party "to recover the actual costs of water and sewer services to its tenants through an allocation formula method on a not-for-profit basis." (Aff. of Andrew Gordon ¶6.) That paragraph in Mr. Gordon's affidavit does not provide any evidence as to whether the water and sewer services were provided on a "pass-through basis." Moreover, that paragraph in Mr. Gordon's affidavit does nothing more than make conclusory assertions which are not evidence and are not a proper basis for a decision by the Commission. *See, e.g., Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) ("[T]he overwhelming majority of the affidavit is simply legal argument as to why summary judgment should be denied. For that reason, we hold the trial court correctly refused to consider it."); *Shupe v. Settle*, 315 S.C. 510, 516–17, 445 S.E.2d 651, 655 (Ct. App. 1994) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment. . . . Neither is Mrs. Shupe's conclusory statement in her affidavit sufficient to resist summary judgment."); *Germann v. N.Y. Life Ins. Co.*, 286 S.C. 34, 38–39, 331 S.E.2d 385, 388 (Ct. App. 1985) ("Additionally, we observe that Mrs. Germann adduced no competent evidence to prove a purpose of the trust other than that expressed in the trust agreements. Her sole proof in the record before us is a conclusory statement in the affidavits of her two children that A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.").

Setting aside the conclusory nature of the assertions and Defendants' failure to identify any evidence supporting them, the assertions are plainly factually erroneous given the available

evidence. As explained by expert witness Brown, “because Defendants are not measuring the actual usage, Defendants do not know the actual costs of water and sewerage used by particular tenants and cannot pass through the actual costs of water and sewerage to tenants.” (Ex. F, Dir. Test. of Ashley Brown 7:19–21.) To be a pass-through, both the amount of water used by a tenant and the charges associated with that usage must be directly passed through from the supplier utility to the tenant with the owner merely acting to transfer the water and charges from one to the other. (Ex. F, Dir. Test. of Ashley Brown 7:2–8:2.) Under an allocation formula, the tenant is not paying for the amount of water actually used by the tenant and the charge allocated to the tenant is not the charge the property owner incurred from the supplier utility for the water actually used by that tenant. Therefore, an allocation formula cannot be a “pass-through.” (Ex. F, Dir. Test. of Ashley Brown 7:2–8:2.)

Additionally, because Defendants were charging tenants for water and sewer usage in the common areas and because Defendants were charging tenants administrative fees related to water and sewer services, Defendants were not merely passing through the costs of water and sewer services. (Ex. F, Dir. Test. of Ashley Brown 7:19–8:13.) Defendants were marking up the water and sewer through those fees and common area usage charges, and Defendants cannot have been engaged in a mere pass through where they were marking up the water and sewer. (Ex. F, Dir. Test. of Ashley Brown 8:11–13.)

D. Defendants Take Possession of the Water and Sewerage.

Defendants also assert that they “do not take possession of the water or sewer” (Mot. 3.), but that assertion also is erroneous given Defendants’ admissions and the evidence, as well as

conclusory and nonsensical. The assertion is conclusory because Defendants presented no evidence to show they do not take possession of the water or sewerage.

Reviewing the evidence available, the assertion is nonsensical and erroneous. Defendants admit that there are no meters beyond the meter between the supplier utility and Defendants' property. (Mot. 3; Aff. of Andrew Gordon ¶¶3–4.) Therefore, once the water passes through the supplier utility's meter, the water has been purchased by Defendants and is owned by and possessed by Defendants. Additionally, once the water passes through the supplier utility's meter, the water is contained in pipes owned by Defendants, and the water is therefore possessed by Defendants. The same reasoning applies for sewerage except in the reverse direction.

Furthermore, as explained by Mr. Brown, “[u]nder a sale for resale arrangement, as carried out by Defendants in this case, Defendants undoubtedly take possession of the water.” (Ex. F, Dir. Test. of Ashley Brown 8:16–17.) Defendants purchase water on a volumetric basis and then turn around and sell the water to tenants on an allocation formula basis and in a manner where “the amount of water the defendant purchases for resale does not equal the aggregate amount of water consumed by tenants.” (Ex. F, Dir. Test. of Ashley Brown 8:21–9:1.) Defendants could not obtain water on a volumetric basis and then resell it on an allocation formula basis if Defendants did not own the water. (Ex. F, Dir. Test. of Ashley Brown 8:16–9:16.)

E. The Use of an Allocation Formula Does Not Reduce Consumption, Contribute to Water Conservation, or Provide Transparency.

Defendants assert that the use of an allocation formula “has even been found to reduce consumption and contributes towards water conservation.” (Mot. 7.) Defendants provide no

evidence in support of this assertion. UMCA asserts that the use of an allocation formula “significantly contribut[es] towards water conservation” and “promot[es] conservation through the transparency of utility costs.” (UMCA Letter of Protest 3.) UMCA cites in support a 1999 study by Industrial Economics, Inc. entitled “Submetering, RUBS, and Water Conservation.” (UMCA Letter of Protest 3.) However, a close reading of UMCA’s letter of protest indicates that study compared the use of an allocation formula to the inclusion of a set amount for water and sewerage in rent. (UMCA Letter of Protest 3 (“A 1999 study . . . discovered that RUBS properties used between 6 and 27 percent less water than properties that included water costs within the rent.”).) As explained by Mr. Brown, that is the comparison of a suboptimal billing method—use of an allocation formula—to a sub-suboptimal billing method—inclusion of a set amount in rent to cover water and sewerage. (Ex. F, Dir. Test. of Ashley Brown 13:20–14:16.)

What Defendants and UMCA do not discuss is that there is an alternative to the inclusion of water and sewerage in rent or the use of an allocation formula and that alternative provides a better price signal, more transparency, and as a result, more efficient use and conservation. Apartment complex owners can install submeters at apartment units in lieu of including water and sewerage in rent or using an allocation formula. The use of submeters provides the strongest price signal, provides the greatest level of transparency, and as a result, provides the greatest incentive for efficient resource use and conservation. The use of submeters also is the most equitable method of billing tenants for water and sewerage.

UMCA, an organization that Conservice is a member of, acknowledges that the use of an allocation formula is a suboptimal method of providing and billing for utilities, stating that it “is

an acceptable alternative to submetering when the economic cost of submetering, or the risks associated with installing submeters, outweighs the benefits.” (Ex. G, UMCA Website.) UMCA further states that it “supports the use of techniques that best represent the actual consumption of a utility by the multifamily or commercial resident.” (Ex. G, UMCA Website.) UMCA acknowledges that “with respect to water, there is a regulatory bias toward submetering versus RUBS.” (Ex. G, UMCA Website.)

Additionally, UMCA acknowledges that the practices engaged in by Defendants are not fair or equitable and do not comport with the concept of an allocation formula that UMCA claims can be an acceptable alternative to secondary meter submetering in limited circumstances. UMCA’s “RUBS Statement” provides:

When using a RUBS allocation method, there should be a specific percentage deduction for common areas, including pools, irrigation, and laundry rooms (if not directly metered), from the total utility cost before calculating resident allocation. The total amount billed to residents must not exceed the total amount billed by the provider.

(Ex. G, UMCA Website.)

III. Were this Proceeding Susceptible to Resolution on the Written Record, the Commission Should Enter an Order Declaring Defendants Are Regulated Utilities that Charged Illegal Rates and Deny Defendants’ Motion.

While Defendants argue that South Carolina statutory and regulatory law and the Commission’s past decisions provide that Defendants’ conduct did not make them a regulated utility, South Carolina statutory and regulatory law and the Commission’s decisions provide the exact opposite. The plain, unambiguous language of Title 58 of the South Carolina Code and the Commission’s decisions applying Title 58 both establish that an entity engaging in the conduct

Defendants engaged in is a public utility subject to regulation by the Commission. Therefore, were the Commission able to decide this matter on the written record without a hearing, the Commission should rule that Defendants acted as regulated utilities, and Complainants move the Commission for an order to that effect.

A. The Plain, Unambiguous Language of Title 58 Provides that Defendants Acted as a Regulated Utility.

Title 58 of the South Carolina Code unambiguously provides that an entity engaged in the conduct Defendants engaged in is a regulated utility. Under South Carolina law, “[w]here the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). “The words used in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 214, 423 S.E.2d 101, 103 (1992). Moreover, “[w]hat the General Assembly says in the text of a statute is the best evidence of its intent, and [those applying a statute are] bound to give effect to the legislature’s expressed intent.” *Aiken v. S.C. Dep’t of Revenue*, 429 S.C. 414, 419, 839 S.E.2d 96, 99 (2020).

Title 58 provides: “The term ‘public utility’ includes. . . every corporation and person furnishing or supplying in any manner . . . water, sewerage collection, sewerage disposal, . . . or any portion thereof, for compensation” S.C. Code Ann. § 58-5-10(4). Therefore, an entity is a public utility regulated by the Commission and required to obtain Commission approval before

charging customers a rate if: (1) the entity “furnish[es] or suppl[ies] . . . water, sewerage collection, [or] sewerage disposal . . . to the public, or any portion thereof” and (2) the entity does so “for compensation.” The plain, unambiguous statutory language therefore provides that entities engaged in the conduct Defendants engaged in are regulated utilities.

While there may be potential policy reasons for defining a “public utility” differently than the definition in Section 58-5-10(4)—for example, what Defendants contend are the “characteristics of a public utility” of “a monopoly service area; owning large, capital-intensive utility infrastructure; [and] guaranteed rate of return” (Mot. 6.)—the General Assembly made the policy decision to define “public utility” broadly in a manner encompassing Defendants. Where the General Assembly made a policy decision and expressed that policy decision in the plain language of a statute, both as a matter of the legal principles of statutory interpretation and as the result of South Carolina’s constitutional separation of powers, administrative agencies and courts must apply the statutory language and cannot use policy considerations to interpret the statute as having narrower application than the statutory text provides. *See, e.g.*, S.C. Const. art. I, § 8 (requiring the three branches of government be “forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other”); *Smith v. Tiffany*, 419 S.C. 548, 565, 799 S.E.2d 479, 488 (2017) (“We construe the statute in a manner to give effect to the policy decision made by the legislature. Is the policy decision advanced by Appellants, and adopted by the dissent, equitable and defensible? Absolutely. Could the legislature have drafted the statute to achieve the result desired by Appellants? Absolutely. But the policy decision belongs to the legislature, and the legislature

has crafted the provisions of the Act as it sees fit. We are a court, not a legislative body. That a court may disagree with a legislative body's policy decisions or believe a perceived 'more fair' outcome exists is of no moment."); *Kiawah Devel. Partners, II v. S.C. Dep't of Health & Env'tl. Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 717 (2014) ("Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of the statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." (internal citations and quotations omitted)); *Hampton v. Haley*, 403 S.C. 395, 403–09, 743 S.E.2d 258, 262–65 (2013) (stating that "[i]ncluded within the legislative power is the sole prerogative to make policy decisions; to exercise discretion as to what the law will be," that the executive branch including administrative agencies "may exercise discretion in executing the laws, but only that discretion given by the legislature," that "while non-legislative bodies may make policy determinations when properly delegated such power by the legislature, absent such a delegation, policymaking is an intrusion upon the legislative power," and "hold[ing] the [agency] violated the separation of powers by acting beyond its statutory authority and infringing upon the General Assembly's power to make policy determinations"). As recently and succinctly stated by the United States Court of Appeals for the Fourth Circuit, "no amount of policy-talk can overcome plain statutory text." *Julmice v. Garland*, 29 F.4th 206, 210 (4th Cir. 2022).

Defendants were supplying water and sewerage to Complainants and other tenants. (Ex.

H, Conservice Subpoena Resp. 1–1291; Aff. of Andrew Gordon ¶¶5–6.) The statute’s use of “furnishing” and “supplying” requires nothing more than that an entity make water or sewerage available to others for their use. For example, the New Oxford American Dictionary defines “supply” as “v. (supplies, supplying, supplied) [with obj.] make (something needed or wanted) available to someone; provide.” (Ex. B, New Oxford American Dictionary 1747 (3rd ed. 2010).) Similarly, the New Oxford American Dictionary defines “furnish” as “v. . . . (furnish someone with) supply someone with (something); give (something) to someone. (Ex. B, New Oxford American Dictionary 705 (3rd ed. 2010).) 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. (Ex. H, Conservice Subpoena Response 1–1291; Aff. of Andrew Gordon ¶¶2–6.) 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. Therefore, Defendants were furnishing and supplying water and sewerage to Complainants and other tenants.

Complainants and other tenants were a portion of the public. Title 58 provides the term “public, or any portion thereof” includes “any limited portion of the public” even if only “a person.” S.C. Code Ann. § 58-5-10(5). Therefore, Defendants were furnishing and supplying water and sewerage to a portion of the public, and the first requirement for an entity to be a

regulated public utility is satisfied.

Defendants also were providing water and sewerage “for compensation.” First, providing water or sewerage “for compensation” requires nothing more than that an entity receive something of value in exchange for providing water or sewerage. Black’s Law Dictionary defines “compensation” as “[r]emuneration and other benefits received in return for services rendered; esp., salary or wages.” (Ex. I, Black’s Law Dictionary 301 (8th ed. 2004).) Here, Defendants received payments of money in exchange for providing water and sewerage to Complainants and other tenants, and therefore, Defendants provided water and sewerage for compensation.¹

While the foregoing alone should result in a finding that Defendants acted as regulated utilities under the plain language of the statute, as discussed *infra* in relation to the Commission’s relevant orders, the Commission has interpreted Section 58-5-10(4) as requiring that the entity

¹ Defendants may contend they did not receive money for water and sewerage because Defendants contracted with a third-party—Conservice, LLC—for water and sewer billing of tenants, but such a contention would be unavailing. In addition to not having produced any evidence of the purported contractual arrangement, much less the details of that contractual arrangement, and instead refusing to produce any such contract (Ex. C, Resp’t Strata Audubon, LLC’s Resps. to Tenants’ First Set of Interrogs. & Requests for Produc. 11–12; Ex. D, Resp’t Strata Veridian, LLC’s Resps. to Tenants’ First Set of Interrogs. & Requests for Produc. 11–12; Respts’ Mot. for Protective Order; Non-Party Conservice, LLC’s Mot. for Protective Order), such a contractual arrangement would not change anything for Defendants. The leases between Complainants and Defendants provide that the water and sewer “will be billed by the service provider to us[, *i.e.*, Defendants,] and then allocated to you . . .” (Compl., Ex. A at 11 & Ex. B at 11.) The agreement for providing water and sewerage was between Complainants and the other tenants and Defendants, not between tenants and Conservice, LLC. (Compl., Ex. A at 2 & 11–13 & Ex. B at 2 & 11–13.) The leases merely identify “Conservice” as a “3rd party billing company.” (Compl., Ex. A at 11 & Ex. B at 11.) The provision and billing for water and sewerage using an allocation formula, with administrative fees, and including common area usage were the actions of Defendants regardless of whether Defendants had a third-party carry out the billing for them.

providing the water or sewerage receive a benefit from providing the water or sewerage and as not being satisfied where an entity merely measures the actual usage of water by a tenant and passes through the costs of that usage to the tenant. The Commission need not address here any conflict between the plain language of Section 58-5-10(4) and the Commission's interpretation of that statutory language, because here Defendants did not just measure actual water and sewerage usage by tenants and pass through the costs of that usage to the tenants. Here, Defendants obtained a benefit from and profited from providing the water and sewerage to Complainants and the other tenants.

The first way in which Defendants obtained a benefit from providing water and sewerage to Complainants and the other tenants is the administrative charge billed monthly to Complainants and the other tenants in addition to the allocation formula charge for water and sewerage. As reflected on the billing documents produced by Conservice, LLC—the entity that Defendants contracted with to perform the billing of Complainants and the other tenants for water and sewerage—each month Complainants and the other tenants were charged a \$4.87 service fee in addition to the allocation formula charges for water and sewerage. Therefore, the service fee was compensation paid for the furnishing of water and sewerage to the tenants.

The second way in which 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. (Compl. ¶43, Ex. A at 12, & Ex.

B at 12; Ans. ¶43; Ex. A, Dir. Testimony of Dr. William Huber 8:12–17.) Billing tenants for water and sewerage used in the common areas conferred a benefit on Defendants because Defendants were thus able to take what should be an operating expense and have the tenants pay those expenses. The fact that such operating expenses would presumably otherwise be included in the rent charged for apartments at the properties does not alter the fact that Defendants obtained a benefit from billing tenants for common area water and sewerage usage, and to the contrary, this further proves the point. By not having to include the water and sewerage expenses for the common areas in the rent, Defendants were able to either: (1) keep rents at the prevailing market rates but due to the decreased expenses obtain an increased profit from the rent or (2) lower rents below the prevailing market rate to make Defendants' rents more competitive and thereby increase occupancy and earn increased profits. Additionally, by not having to include water and sewerage in the common areas in operating expenses, Defendants benefited by being able to use excessive amounts of water and sewerage to further their profit interests without any concern for costs. For example, Defendants could use unlimited amounts of water for irrigation to beautify the landscaping at a property and make the property more desirable to prospective tenants without facing any expense from such water usage because the tenants were paying for the common area water usage. Similarly, Defendants could pressure wash the apartment buildings regularly or hose off the sidewalks and parking lots regularly because the tenants paid for such water usage. Finally, Defendants also benefited from the reverse scenario where Defendants were able to avoid non-water and sewerage costs by having tenants pay for common area water and sewerage usage. For example, if faucets, irrigation pipes, pools, or other common area components that use water

leaked, Defendants could avoid the expense of repairing a leak because the tenants were billed for the leaking water.

In conclusion, Defendants furnished water and sewerage to the public and were compensated for furnishing the water and sewerage. As such and under the plain language of Section 58-5-10(4), Defendants were a “public utility,” and any rate charged for water and sewerage by Defendants without prior approval from the Commission was an illegal rate.

B. The Commission’s Orders on Submetering Establish that Defendants Acted as a Public Utility.

Not only does the plain, unambiguous language of Title 58 provide that Defendants’ conduct them a regulated public utility, the Commission’s orders applying Title 58 require the same conclusion.²

Defendants invite the Commission to adopt a constrained reading of the Commission’s prior orders, but the constrained reading advanced by Defendants ignores the plain language of those orders. Defendants contend that Complainants “erroneously claim” that the Commission’s

² Defendants repeatedly attempt to use Complainants’ reference to the use of an allocation formula to bill tenants for water and sewerage as “the allocation version of submetering” as an admission by Complainants and as establishing that “[t]here is no dispute among the parties that the allocation formula should be given similar treatment as submetering for the purposes of determining ‘public utility’ status.” (Mot. 5.) To the contrary and as Complainants’ pleadings and arguments make clear, Complainants contend that submetering using a secondary meter is fundamentally different from the use of an allocation formula. Complainants submit that the use of an allocation formula should not be referred to as a version of submetering because when an allocation formula is used there is no submeter, *i.e.*, no meter secondary to the main meter at the connection with the supplier utility. Complainants refer to the use of an allocation formula as a version of submetering only because the Commission referred to secondary metering and the use of an allocation formula as versions of submetering in Order No. 1999-307.

prior orders “declare that any entity that sells water or provides sewerage for compensation is a public utility including entities that do so through submetering or the allocation version of submetering.” (Mot. 4.) Defendants invite the Commission to focus on one line in one order—Order No. 2003-214’s statement that “submeterers of water and wastewater do not meet the statutory definition of a public utility”—as creating a blanket rule that no submeterer—whether using secondary meter submetering or an allocation formula—can ever be a public utility. However, the language from Order No. 2003-214 relied on by Defendants has been taken out of context and separated from the limiting language contained in the order, and as consideration of the Commission’s prior orders plainly shows, the Commission has never made such a blanket ruling in relation to submetering, much less in relation to the use of an allocation formula to bill tenants.

To the contrary, the Commission’s prior orders establish that in light of Title 58’s broad definition of a “public utility,” the Commission narrowly held that a secondary meter submeterer is not a public utility where the entity “merely measure[s] the amount of flow of water or wastewater and provide[s] billing functions.” Order No. 2003-214 at 5 ¶2. The Commission’s orders do not provide that an entity that does not actually measure the flow of water or sewerage is not a public utility, that an entity that charges administrative fees for water and sewerage is not a public utility, or that an entity that charges tenants for water and sewerage used in the common areas of an apartment is not a public utility. Rather, the Commission’s orders plainly provide that an entity providing water and sewerage to tenants that is not merely measuring the actual usage and billing tenants for actual usage is a public utility.

In 1998, the Commission established a docket to consider both secondary metering submetering and allocation formula submetering or “RUBS,” the “Generic Proceeding Relating to Sub-Metering of Electric, Water and Wastewater Services,” the 1998-624-EWS docket. The Commission issued Order No. 1999-307 which first defined submetering as: “Submetering is done when the particular service (water/wastewater or electricity) is metered through a master meter, and the service is then split off into different sub-units, such as apartment or retail outlets in a shopping center.” Order 1999-307 recognized two forms of submetering: the secondary metering version and the allocation formula version at issue here where the submeterer allocates the water, wastewater, or electricity charges “by means of a calculated formula.” Examining the language in Section 58-5-10(4) of the South Carolina Code defining a “public utility,” Order 307 found that “[a] literal interpretation of this statute would classify any entity that sells water and/or provides wastewater services for compensation as a public utility.” The Commission then explicitly held that a submeterer—regardless of whether a secondary metering submeterer or an allocation formula submeterer—is a regulated utility:

It appears to this Commission that any entity that sells water or provides wastewater services for compensation is a public utility, including submeterers. We believe that landlords and companies that submeter and bill tenants for water and/or wastewater services are indeed public utilities, and should be certificated by this Commission.

Because the Commission found the record in docket 1998-624-EWS did “not contain enough information to set up specific rules,” the Commission ordered “that a rulemaking proceeding be established so that we may determine specific requirements for certifications of submeterers and regulation of them in general.”

The Commission then opened a new docket, “Rules and Regulations Dealing with Water and Wastewater Submetering,” docket 1999-216-WS, to engage in the rulemaking. Due to difficulties developing regulations, the Commission issued Order No. 2000-436 which provided the Commission would “hold this matter in abeyance until further notice” and “that the proposed regulations shall be held in abeyance.” Order No. 2000-436 merely held in abeyance the rulemaking proceedings and proposed regulations, and nowhere in Order No. 2000-436 did the Commission provide any reversal, or even skepticism, of its earlier holding that a submeterer is a public utility subject to Commission regulation.

After several years passed without the promulgation of regulations, Commission Staff filed petitions for rule to show cause orders as to why several submeterers should not be required to obtain certificates from the Commission as regulated utilities. In response, the Commission issued Order No. 2003-214 dismissing the petitions and holding that if an entity is submetering by merely measuring the flow and passing through the charges—*i.e.*, secondary meter submetering with no markup or other charges—the entity is not a regulated public utility. Order No. 2003-214 reasoned 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 did *not* hold that the allocation formula version of submetering does not make a submeterer a public utility. To the contrary, Order No. 2003-214 indicates that an entity engaging in allocation formula submetering is a regulated public utility. Order No. 2003-214 held a submeterer is not a public utility when “merely measur[ing] the amount of flow of water or wastewater and provid[ing] billing functions.” In the allocation formula version of

submetering, a submeterer does not actually “measure” the usage of a particular tenant and instead bills an inaccurate, formula-calculated estimate of usage. Additionally, a submeterer that charges administrative fees for water and sewerage in addition to the allocation formula amount is not “merely measur[ing] the amount of flow of water or wastewater and provid[ing] billing functions.” Similarly, a submeterer that charges tenants for the water and sewerage usage in common areas is not “merely measur[ing] the amount of flow of water or wastewater and provid[ing] billing functions.”

Therefore, Order No. 2003-214 is a narrow holding by the Commission that where a submeterer merely measures flow and passes through water and sewer charges to tenants, the submeterer is not a regulated public utility. Order No. 2003-214 does not discuss the Commission’s earlier Order No. 1999-307 which held the allocation formula version of submetering makes an entity a regulated utility. While Order No. 2003-214 vacated Order No. 1999-307, the language of Order No. 2003-214 indicates the vacating was limited to Order No. 1999-307’s findings as to secondary metering submetering and the rulemaking ordered. Order No. 2003-214 states the vacating is made “following this conclusion” that the secondary metering version of submetering does not make a submeterer a regulated utility. Order No. 2003-214 then states the Commission was vacating Order No. 1999-307 “in which this Commission ordered a rulemaking to determine specific requirements for certification and regulation of submeterers.”

Additionally, Defendants either acknowledge the limited nature of Order No. 2003-214 in relation to submeterers or Defendants’ requested reading of Order No. 2003-214 renders absurd results and thereby indicates the erroneous nature of that reading of the order. First, Defendants

appear to acknowledge that Order No. 2003-214 only holds that a submeterer who “merely measures the amount of flow of water or wastewater and provides billing functions” is not a regulated public utility. Defendants’ argument then is that Defendants only measure the flow and provide billing functions, which for reasons explained elsewhere herein is factually incorrect. However, in other places Defendants appear to argue that Order No. 2003-214 made a blanket holding that submeterers of any type—secondary meter submetering or allocation formula submetering—are uniformly not public utilities regardless of whether they measure actual flow or how they bill. (Mot. 4 (“The Commission has consistently interpreted the term ‘public utility’ not to include submeterers.”); Mot. 5 (“These Orders actually declare the opposite: ‘submeterers of water and wastewater do not meet the statutory definition of a ‘public utility.’”).) Such a reading of Order No. 2003-214 would render absurd results plainly not intended by Order No. 2003-214. For example, were that the holding of Order No. 2003-214, a property owner could charge tenants a per unit charge in excess of what the owner paid the supplier utility for water and sewerage and still not be a public utility.

Furthermore, even were Order No. 2003-214’s vacating language not limited, a subsequent Commission order establishes the holding in Order No. 1999-307 as to allocation formula submetering—*i.e.*, that an allocation formula submeterer is a regulated public utility—remains the law. In 2008 in *In re Seahorse Investment*, Commission Staff petitioned the Commission to stop a mobile-home park owner from discontinuing water and sewer service to tenants. The owner entered into a settlement agreement and sought Commission approval of the agreement and recognition that it was a non-regulated submeterer under Order No. 2003-214. In Order No. 2008-

725, the Commission found the owner was a non-regulated submeterer rather than a regulated utility. Order No. 2008-725 held the owner was a non-regulated submeterer only because it measured the actual water and sewer usage and passed the actual cost directly to the tenant, rather than charging tenants through a method other than actual usage and rather than charging tenants any fees in addition to the usage charge. The Commission found: “From the description of these activities undertaken by [the owner], it appears that the Company is in fact submetering . . . water and sewer service to the residents of [the park] and not providing these services for compensation.” The Commission then ordered:

As a submeterer and not a regulated utility, [the owner] shall only pass through actual water and sewer service charges from Charleston Water System according to the metered usage of individual tenants of the [park]. No other water or sewer charges are allowed to be billed to these tenants.

Order No. 2008-725 therefore establishes that a submeterer who charges on a basis other than a tenant’s actual measured usage is a regulated utility and a submeterer who charges fees in addition to charges for actual usage or charges for anything more than actual usage is a regulated utility.

Here, Defendants did not charge Complainants and other tenants an amount equal to their actual measured usage. Instead, Defendants charged according to an allocation formula. Additionally, Defendants charged a “New Account Fee,” a “Monthly Administrative Billing Fee,” and a “Final Billing Fee” in addition to the allocation formula charge. Defendants also charged Complainants and other tenants for water and sewerage used by Defendants for the common areas of the properties. Therefore, Defendants were not merely engaged in the measurement of the flow and passing through of costs that Order No. 2003-214 and Order No. 2008-725 found result in a

non-regulated submeterer. Those orders establish that Defendants' conduct removes them from the category of non-regulated, merely "pass through" submeterers and moves them into the category of entities receiving compensation for providing water and sewerage. Therefore, under Title 58 and the Commission's orders, Defendants were a regulated utility.

IV. Finding Defendants Were a Regulated Public Utility Will Not Result in a Flood of Apartment Complexes Subject to Commission Regulation, a Decrease in Resource Conservation., or an Increase in Housing Costs.

Defendants assert that the use of an allocation formula is a "common practice," thereby intimating that if Defendants were a regulated utility, the Commission will have to expend time and resources exercising regulatory oversight over a host of other apartment complexes. (Mot. 7.) Similarly, UMCA asserts that the Commission finding Defendants were a regulated utility would "result in waste which depletes the state's limited natural resources" and "landlords will most likely need to be [*sic*] increase rent to offset this cost." (UMCA Letter of Protest 3 & 7.)

While Complainants understand that the Commission would not consider such intimations or arguments because they are not relevant to statutory interpretation, such intimations and arguments also are not supported by any evidence and are incorrect. Apartment complex owners have alternatives that avoid the problems Defendants and UMCA claim will result from regulation. Apartment complex owners can either use submeters to provide and bill tenants for water and sewerage or include a set amount in rent to cover water and sewerage. Those options already exist for apartment complex owners, and the Commission regulating owners using an allocation formula would not change anything in relation to those options. Additionally, the Commission has options as to how to regulate owners using an allocation formula to minimize the regulatory

burden on such owners and the Commission resources expended on such regulation. (Ex. F, Dir. Test. of Ashley Brown 16:9–17:3.)

CONCLUSION

For the reasons set forth herein, Complainants respectfully submit that the Commission should grant Complainants the relief requested in the Complaint and deny 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. Alternatively, should the Commission find that the disposition of this proceeding on the written record is not permitted by the applicable procedural law or is not appropriate in this particular case, Complainants submit the Commission should set a schedule for the completion of discovery, the resolution of pending motions, and a hearing.

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May 26, 2023

Page 30 of 30
Motion for Order Granting Complainants Relief and Memorandum in Opposition to Respondents' Request for an
Order Dismissing on the Written Record
Zito, et al. v. Strata Audubon, LLC, et al.
Docket No. 2022-84-WS

Exhibit A

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

95

APP 000097

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

**DIRECT TESTIMONY OF DR.
WILLIAM HUBER**

- 1 Q. Please state your full name and address.
- 2 A. William Albert Huber, 1235 Wendover Road, Rosemont PA 19010.
- 3 Q. On whose behalf are you offering testimony?
- 4 A. Complainants.
- 5 Q. What is the subject and purpose of your testimony?
- 6 A. To analyze billing and payment data for utilities (water and sewer) at Audubon Park
- 7 Apartments for assessing (1) whether payments made for these services by tenants are
- 8 reasonably linked to their metered usage; and (2) whether those payments included usage
- 9 in common areas.

Page 1 of 15
Direct Testimony of Dr. William Huber
Zito, et al. v. Strata Audubon, LLC, et al.
Docket No. 2022-84-WS

1 Q. **What education, training, and experience qualifies you to provide expert testimony**
2 **on that subject?**

3 A. 37 years of experience as a consulting statistician including (but not limited to) litigation
4 concerning billing disputes and utility usage. Ongoing continuing education in statistics.
5 Publication of peer-reviewed research in statistics. Professional certification from the
6 American Statistical Association (the PSTAT®). BA, MA, M.Phil., and Ph.D. in
7 mathematics.

8 Q. **Have you arrived at opinions on that subject?**

9 A. Yes, subject to information and assumptions described below. Concerning subject (1),
10 the data show material differences between the amounts paid by individuals and their
11 utility usage (as measured in individual buildings). Concerning subject (2), I have
12 established that tenants were billed for utility costs in common areas and I have computed
13 those costs each month.

14 Q. **Are your opinions offered to a reasonable degree of certainty in your field of**
15 **expertise and based on methods and principles accepted in your field of expertise?**

16 A. Yes. They rely on data produced by Defendants, including copies of original billing
17 statements. I have processed the relevant computer files using reliable computing
18 systems while employing extensive checks for accuracy and completeness of the
19 processing.

20 Q. **What documents did you review in arriving at your opinions?**

21 A. (1) Portions of a PDF file, "Complete Conservice Subpoena Response.pdf" whose pages
22 are stamped Conservice Subpoena Response 000001 through 001300 (which correspond

1 to page numbers in the file). The relevant parts are organized as follows:

2 a. Monthly "Summary of Utilities Billed" tables of water, sewer, and trash bills
3 issued to tenants of units 1801 through 3037 of "Audubon Park (db24)", pages 1 -
4 46. These bills were due on the first day of each month between August 2019 and
5 December 2020.

6 b. Images of Conservice statements for rent, pest control, sewer, trash, water, and
7 other fees titled "Utility Statement for Audubon Park" issued to 1809 Audubon Dr
8 for "service periods" between October 2018 and July 2020, pages 169 – 242.

9 c. A "Total Community Cost Report: Audubon Park" table, pages 247 – 248. This
10 Conservice document is a monthly summary of "expenses" and "consumption" of
11 utilities (water, sewer, and trash) for "Audubon Park" from months nominally
12 designated "8 / 2019" through "12 / 2020."

13 d. Images of

14 (i) Berkeley County Water & Sanitation statements for "commercial sewer" at
15 1800, 1900, ..., 3000, and 3100 Audubon Dr and 1700 Eagle Landing Blvd for
16 service in various months; interspersed with

17 (ii) Charleston Water System statements for "Apt A, 18 Audubon Dr.," "Apt B,
18 18 Audubon Dr.," "19 Audubon Dr.," ..., "Apt B, 30 Audubon Dr.," and "1700
19 Audubon Dr." for various monthly billing periods, pages 258 – 1241.

20 (2) An Excel worksheet "Auduon Water and Sewer Bills by Building.xlsx" [sic] that
21 appears to summarize the billing (dollar) and usage (gallon) amounts for water and sewer
22 reflected in (1)(c) and (1)(d) above. The nominal dates in this file run from "July, 2019"

1 through "October, 2020" but they correspond to bills due on the first of the months
 2 August 2019 through December 2020 (and thereby omit information for August 2019).
 3 (3) Three aerial photographs from the Berkeley County GIS (viewed 5/24/2023) showing
 4 the locations of individual unit numbers in buildings on Eagle Landing Blvd and
 5 Audubon Dr.

6 (I find the Total Community Cost Report (TCCR), document (1)(c), to be
 7 unreliable because it frequently disagrees with monthly total cost and usage figures
 8 shown in the water and sewer bills, documents (1)(d). For example, the TCCR (at page
 9 247) states "Total Consumption" for water of only 142,902 gallons for "12 / 2020," a
 10 value that is wholly inconsistent with the sewer usage of 1,073,805.82 gallons. As a
 11 check, the bills due in December 2020 for the two meters in the 1800 building alone
 12 charge for $66,677 + 110,420 = 177,097$ gallons (pages 1094 and 1096), by itself
 13 exceeding the stated total for all buildings in the TCCR. Yet, because a plurality of the
 14 cost and usage figures in the TCCR agree *exactly* with the amounts computed from the
 15 bills as shown in document (2), I believe I am matching data in the two documents
 16 correctly. See the "Comparisons of Costs and Consumption..." table at the end of this
 17 report for details: pairs of conflicting values are highlighted in red.)

18 **Q. Having reviewed those documents, were you able to determine whether Defendants'**
 19 **allocation formula accurately billed Defendants' tenants for water and sewerage**
 20 **usage?**

21 **A.** Yes, I have been able to determine that. There are two kinds of inaccuracies. I will use
 22 the term "shortfall" to refer to the monthly total water or sewer bill for all buildings (as

1 issued by the utilities), minus the sum of the corresponding amounts in document (1)(a)
2 (the billings to each tenant charged by Conservice). Thus, the shortfall is the monthly
3 utility cost Conservice was not recovering directly from tenant fees. These totals include
4 utility bills for the “common” buildings identified as “1700” and “3100” in document (2)
5 and as “1700 Eagle Landing Blvd” and “31 Audubon Dr.” in documents (1)(d).
6 (According to the GIS images (document (3)), the first two digits of the unit number of
7 any tenant found in document (1)(a) identify their building. Thus, no tenants appear to
8 occupy the 1700 and 3100 buildings.)

9 The shortfalls are consistently positive, at least partly because some portions of
10 the bills are not collected from prorated tenants. Evidence for this appears in the last line
11 of the monthly summaries in document (1)(a) headed “Total loss Due to Proration.”
12 These total losses appear to account for prorating water, sewer, *and* trash bills, and
13 perhaps other fees as well, but I have been unable to determine exactly how this “total
14 loss” is calculated. Its magnitude (a few hundred dollars per month, approximately 2%
15 of total utilities fees for all units) is consistent with the number of tenant-days missing
16 each month due to proration (typically 1% to 4% of all tenant-days).

17 The shortfalls and proration losses are not exactly the same (and the possible
18 inclusion of a trash proration introduces some uncertainty), yet they follow similar
19 patterns over time and have roughly comparable averages: \$443 per month for the
20 combined water and sewer shortfalls, \$294 per month for the proration losses. See the
21 attached “Billing Comparison” table for monthly details. Thus, I interpret the shortfalls
22 as primarily reflecting proration losses.

1 On the other hand, the average combined water and sewer bills for the common
2 buildings is \$706, substantially exceeding the shortfalls. This, the first inaccuracy,
3 indicates the tenants were paying for the water and sewer costs in the common buildings,
4 either wholly or in substantial part. See the attached figure, "Shortfall, Proration Loss,
5 and Common-Area Bills."

6 The second inaccuracy is that Conservice allocates the total water and sewer costs
7 for all the buildings (including the common buildings) equally by occupant each month.
8 (I verified this with a statistical estimate of the per-occupant fees; this estimate
9 reproduces the unit fees – all 3,599 of them shown in document (1)(a) – to within \$0.01
10 in every case. See the "Unit Costs for Water and Sewer ..." table.) These totals are
11 divided by the numbers of occupants in the buildings during the service month (whether
12 they were present for the whole month or not) to obtain a cost per occupant. The bill for
13 any apartment in any building is found by multiplying this monthly per-occupant cost by
14 the number of occupants (given monthly in document (1)(a)). For the 17 bills due
15 between August 2019 and December 2020, the sum of the per-occupant costs for water
16 and sewer varied from \$21.57 to \$37.20. For example, this implies a family of three
17 living in any of these buildings during this period would have contributed monthly
18 amounts varying from \$64.71 to \$111.60.

19 On the other hand, the water and sewer authorities meter each building separately
20 and bill by the meter, documents (1)(d)(i) and (1)(d)(ii). The combined Conservice
21 production (documents (1)(a) through (d)) does not appear to contain any information
22 about which units are connected to each water meter, nor can I determine that from the

1 aerial photos, document (3). However, document (2) lists per-building monthly costs for
 2 each utility and document (1)(a) shows the units and numbers of occupants of each unit,
 3 permitting a month-by-month calculation of the total number of occupants in each
 4 building. Apportioning each building's sewer and water fees among its occupants, I
 5 apply the same equal-allocation formula currently used for all of Audubon Park to
 6 determine what the unit costs would have been with this more accurate method. Thus,
 7 for example, somebody living in a building with higher than average water usage would
 8 pay a higher than average fee that month, better aligning their payments with their actual
 9 consumption.

10 The figure titled "Water and Sewer Cost per Occupant by Building" charts these
 11 per-occupant costs over time. It demonstrates substantial variation in these per-occupant
 12 costs every month: typically, some occupants pay three times as much for their water and
 13 sewer than other occupants of other buildings. This 3:1 ratio changes from month to
 14 month but almost always is between 2:1 and 4:1. See the figure "Relative Variation in
 15 What Occupants Paid for Water and Sewer". Furthermore, this relative burden borne by
 16 some occupants tends to persist over time: from month to month, the same buildings tend
 17 to overpay and the same buildings tend to underpay. For instance (referring to the
 18 second "Water and Sewer Cost per Occupant by Building" figure), occupants of building
 19 2500 should have paid, on average, \$17.42 for water and sewer each month (\$52.26 for a
 20 hypothetical family of three), whereas occupants of building 1900 should have paid on
 21 average \$39.82 each month, rising as high as \$76.70 in July 1, 2020 (\$230.10 for the
 22 family of three).

1 **Q. Given those conclusions, were Defendants measuring the water and sewerage usage**
2 **of tenants?**

3 A. They were not measuring usage by individual units. They were measuring and charging
4 for usage for the entire apartment complex (including the common buildings), which does
5 not accurately reflect the usage of any specific unit. They had the capability to charge
6 for usage by the building or the meter, which would have *much* more accurately reflected
7 individual usage by the occupants.

8 **Q. In your opinion, did the allocation formula used by Defendants accurately allocate**
9 **water and sewerage charges among tenants?**

10 A. No. The allocation did not account for large measured variations among buildings in
11 both water and sewer usage.

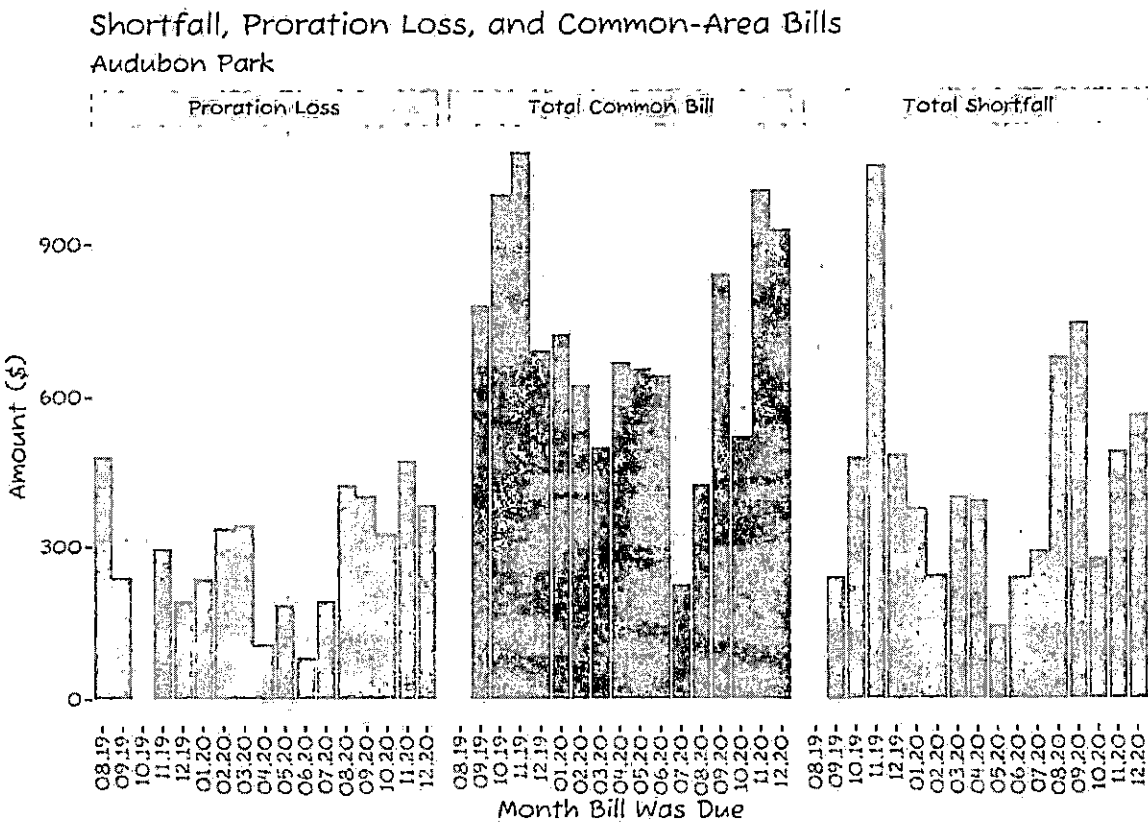
12 **Q. Having reviewed those documents, were you able to determine whether Defendants**
13 **were billing tenants for water and sewerage usage in common areas, and if so, in**
14 **what amounts?**

15 A. The water and sewer charges for common buildings (1700 and 3100) were passed on to
16 tenants (of buildings 1800 through 3000). On average this amount was \$706.12 per
17 month for bills due between September 2019 and December 2020.

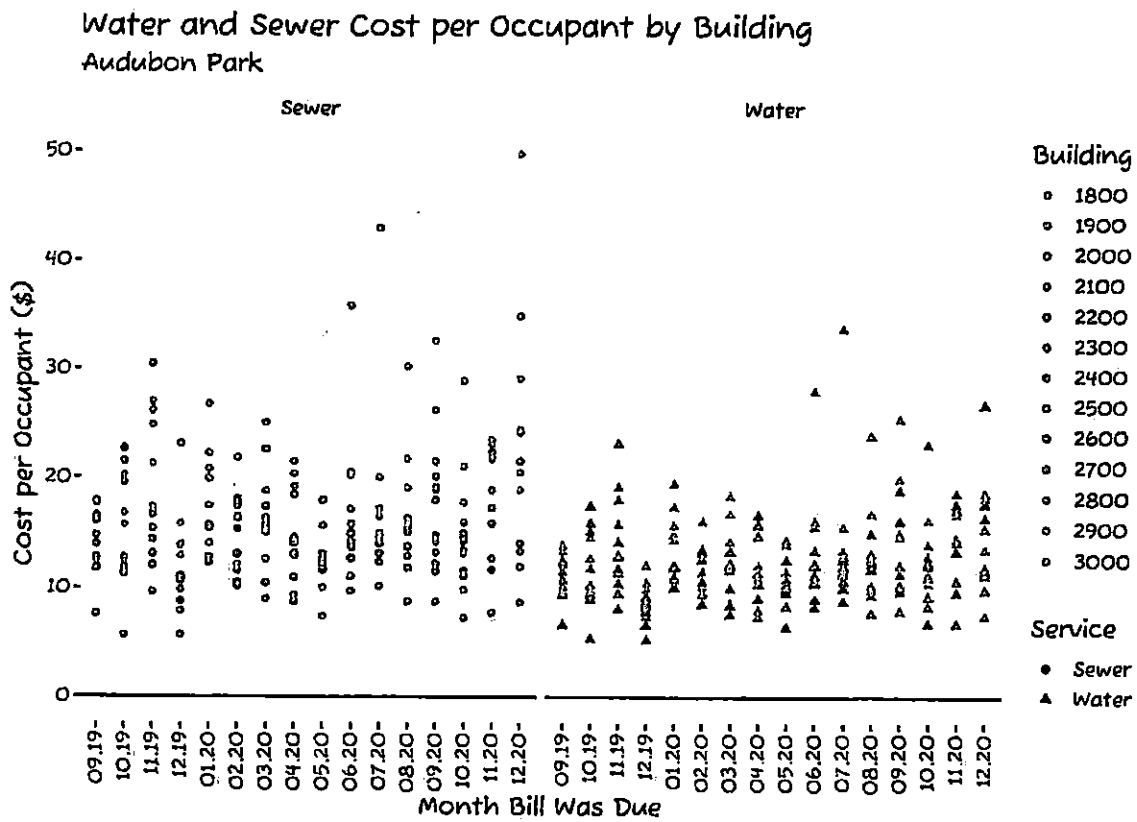
18 **Q. Does this conclude your testimony at this time?**

19 A. Yes

1 Figures

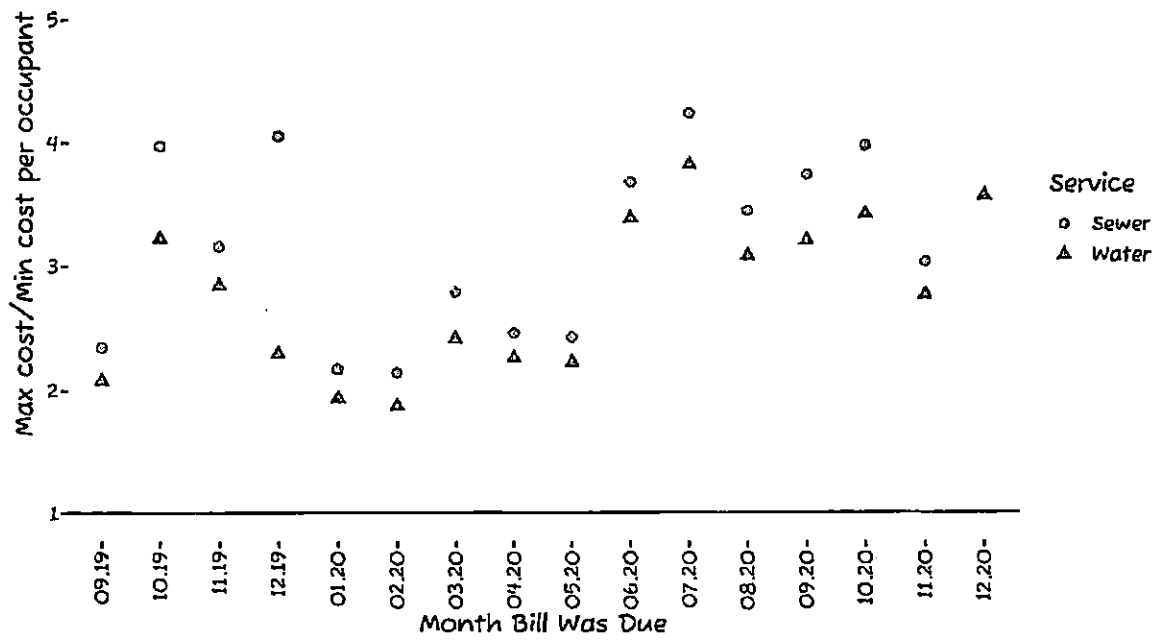


2



1

Relative Variation in What Occupants Paid for Water and Sewer Audubon Park



1

1 Tables

2 Unit Costs for Water and Sewer (per Occupant) by Month, as Charged

Year	Month	Water Unit Cost	Sewer Unit Cost	Total Unit Cost
2019	08	\$11.63	\$15.14	\$26.77
2019	09	\$12.19	\$15.92	\$28.11
2019	10	\$12.61	\$16.49	\$29.10
2019	11	\$14.90	\$19.81	\$34.72
2019	12	\$9.53	\$12.04	\$21.57
2020	01	\$14.02	\$18.79	\$32.81
2020	02	\$12.28	\$16.08	\$28.36
2020	03	\$13.29	\$17.51	\$30.80
2020	04	\$12.13	\$15.46	\$27.59
2020	05	\$11.18	\$14.28	\$25.47
2020	06	\$13.10	\$16.72	\$29.82
2020	07	\$12.77	\$16.17	\$28.94
2020	08	\$12.86	\$16.47	\$29.33
2020	09	\$14.81	\$18.88	\$33.68
2020	10	\$12.63	\$15.85	\$28.48
2020	11	\$15.46	\$19.81	\$35.27
2020	12	\$15.71	\$21.49	\$37.20

1 Billing Comparison

Page	Month	Water	Sewer	Sewer Shortfall	Total Common	Total Shortfall	Proration Loss
22	08.19	\$4,553.12	\$5,927.80				\$482.62
27	09.19	\$4,747.34	\$6,201.71	\$134.92	\$780.24	\$237.63	\$237.89
32	10.19	\$4,849.16	\$6,342.46	\$271.74	\$996.38	\$479.33	
37	11.19	\$5,614.55	\$7,464.12	\$781.49	\$1,081.29	\$1,054.38	\$295.08
42	12.19	\$3,745.83	\$4,732.52	\$399.20	\$689.32	\$483.97	\$191.82
1	01.20	\$5,499.31	\$7,368.74	\$78.17	\$722.09	\$375.51	\$235.80
4	02.20	\$4,819.31	\$6,311.75	\$146.74	\$622.56	\$243.80	\$336.22
7	03.20	\$5,224.56	\$6,881.78	\$226.63	\$498.31	\$399.19	\$344.35
10	04.20	\$4,740.76	\$6,040.47	\$194.61	\$666.01	\$392.50	\$107.10
13	05.20	\$4,443.34	\$5,676.49	\$(10.09)	\$654.96	\$142.68	\$182.75
16	06.20	\$5,030.84	\$6,420.58	\$132.69	\$642.11	\$237.09	\$82.25
19	07.20	\$4,736.84	\$5,998.02	\$162.59	\$223.82	\$291.03	\$191.50
25	08.20	\$4,486.15	\$5,746.92	\$379.84	\$425.25	\$676.07	\$425.74
30	09.20	\$5,095.45	\$6,496.78	\$374.68	\$839.22	\$743.35	\$401.77
35	10.20	\$4,500.79	\$5,648.61	\$153.19	\$522.32	\$275.37	\$326.76
40	11.20	\$5,410.51	\$6,933.79	\$276.17	\$1,005.53	\$491.78	\$473.95
45	12.20	\$5,508.58	\$7,534.01	\$399.87	\$928.47	\$563.68	\$382.52
Total		\$83,006.44	\$107,726.55	\$4,102.44	\$11,297.88	\$7,087.36	\$4,698.12
Average		\$4,882.73	\$6,336.86	\$256.40	\$706.12	\$442.96	\$293.63

1 Average Monthly Unit Costs (per Occupant) when Reallocated by Building

Building	Sewer per Occupant	Water per Occupant	Total
2500	\$9.38	\$8.05	\$17.42
2100	\$11.94	\$9.82	\$21.76
2600	\$13.58	\$10.89	\$24.47
2400	\$14.05	\$10.62	\$24.67
2900	\$15.37	\$11.39	\$26.76
2000	\$16.40	\$13.04	\$29.44
2300	\$16.49	\$12.98	\$29.48
2200	\$16.32	\$13.22	\$29.54
2800	\$17.80	\$12.24	\$30.04
3000	\$17.37	\$13.22	\$30.59
2700	\$17.91	\$13.61	\$31.52
1800	\$21.08	\$16.04	\$37.13
1900	\$22.26	\$17.56	\$39.82

1 Comparisons of Costs and Consumption between the Total Community Cost Report
2 and the Billing Detail spreadsheet

Month	Total (from building detail)	Cost (from Community Cost Report)	Gallons (from building detail)	Consumption (from Community Cost Report)
Sewer				
08.19		\$6,268.93		923,585
09.19	\$6,336.63	\$6,336.63	931,153	931,153
10.19	\$6,614.20	\$6,614.20	975,592	975,592
11.19	\$8,245.61	\$7,826.03	1,154,171	1,154,171
12.19	\$5,131.72	\$4,840.46	712,000	712,000
01.20	\$7,446.91	\$7,571.91	1,098,374	1,098,374
02.20	\$6,458.49	\$6,465.26	948,296	948,296
03.20	\$7,108.41	\$7,108.41	1,043,829	1,043,829
04.20	\$6,235.08	\$6,260.08	914,225	914,225
05.20	\$5,666.40	\$5,756.40	829,529	829,529
06.20	\$6,553.27	\$6,553.27	960,273	960,273
07.20	\$6,160.61	\$6,160.61	904,169	904,169
08.20	\$6,126.76	\$6,126.76	903,952	841,110
09.20	\$6,871.46	\$6,871.46	1,009,933	1,009,933
10.20	\$5,801.80	\$5,801.80	850,956	850,956
11.20	\$7,209.96	\$7,209.96	1,059,466	1,059,466
12.20	\$8,465.32	\$7,758.33	1,084,929	1,072,806
Water				
08.19		\$4,814.79		923,433
09.19	\$4,850.05	\$4,850.05	931,007	931,007
10.19	\$5,056.75	\$5,056.75	975,437	975,437
11.19	\$5,887.44	\$5,887.44	1,153,986	1,153,986
12.19	\$3,830.60	\$3,830.60	711,886	711,886
01.20	\$5,796.65	\$5,651.30	1,098,198	1,096,784
02.20	\$4,916.37	\$4,936.72	948,142	949,556
03.20	\$5,397.12	\$5,397.12	1,043,662	1,043,662
04.20	\$4,938.65	\$4,913.65	914,080	914,080
05.20	\$4,596.11	\$4,506.11	829,398	829,398
06.20	\$5,135.24	\$5,135.24	960,120	960,120
07.20	\$4,865.28	\$4,865.28	904,025	904,025
08.20	\$4,782.38	\$4,782.38	886,808	886,808
09.20	\$5,464.12	\$5,389.12	1,009,770	136,046
10.20	\$4,622.97	\$4,622.97	850,819	850,819
11.20	\$5,626.12	\$5,626.12	1,059,295	141,617
12.20	\$5,672.39	\$5,672.39	1,068,907	142,902

3

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

AFFIDAVIT OF DR. WILLIAM HUBER

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

1. I am over eighteen years of age and in all other respects am competent to execute this Affidavit.
2. The Direct Testimony of Dr. William Huber provided herewith is testimony I intend to and would offer at a hearing in this proceeding.
3. The Direct Testimony of Dr. William Huber provided herewith consists of statements of fact and expressions of opinions I prepared.
4. I swear or affirm that the testimony in the Direct Testimony of Dr. William Huber is true.

Page 1 of 2
Affidavit of Dr. William Huber
Zito, et al. v. Strata Audubon, LLC, et al.
Docket No. 2022-84-WS

FURTHER AFFIANT SAYETH NOT

William A Huber

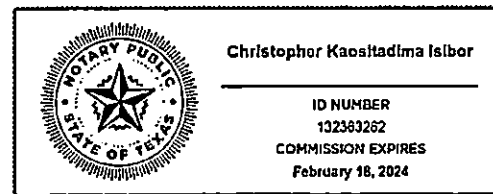
William Albert Huber

05/25/2023

State of Texas, Williamson County

SWORN to before me this 25th day of May, 2023.

Christ
NOTARY PUBLIC FOR PENNSYLVANIA Texas

My commission expires: 02/18/2024

Notarized online using audio-video communication

Exhibit B

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

113

APP 000115

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Elizabeth J. Jewell

Frank Abate

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114

APP 000116

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mean sun

mean sun ► n. an imaginary sun conceived as moving through the sky throughout the year at a constant speed equal to the mean rate of the real sun, used in calculating mean solar time.

meant /ment/ past and past participle of MEAN.

mean-time /'mēn,tīm/ ► adv. (also in the **meantime**) *meanwhile: in the meantime, I'll make some inquiries of my own* | Mom and Dad, meantime, had learned to confront their differences.

— **ORIGIN** Middle English (as a noun): from MEAN + TIME.

mean time ► n. another term for MEAN SOLAR TIME. See also GREENWICH MEAN TIME.

meanwhile /'mēn,(h)wīl/ ► adv. (also in the **meantime**) in the intervening period of time: *Julie has meanwhile found herself another dancing partner.* ► at the same time: *steam for another five minutes; meanwhile, make a white sauce.*

— **ORIGIN** late Middle English: from MEAN + WHILE.

Mea-ny /'mēnē/, George (1894–1980), US labor leader. He served as president of the AFL-CIO 1955–79.

mean-y /'mēnē/ ► n. variant spelling of MEANIE.

meas. ► abbr. measurable or measured or measurement.

meas-les /'mēzəl/ ► plural n. (often the **measles**) [treated as sing.] an infectious viral disease causing fever and a red rash on the skin, typically occurring in childhood. ► a disease of pigs and other animals caused by the encysted larvae of the human tapeworm.

— **ORIGIN** Middle English *maseles*, probably from Middle Dutch *masel* 'pustule' (compare with modern Dutch *mazelen* 'measles'). The spelling change was due to association with Middle English *mesel* 'leprous, leprosy'.

meas-ly /'mēzlē/ ► adj. (measlier, measliest) informal contemptibly small or few: *three measly votes.*

— **ORIGIN** late 16th cent. (describing a pig or pork infected with measles): from MEASLES + -ly. The current sense dates from the mid 19th cent.

meas-ur-a-ble /'mezH(ə)rəbəl/ ► adj. able to be measured: *objectives should be measurable and achievable.* ► large enough to be measured; noticeable; definite: *a small but measurable improvement in behavior.*

— **DERIVATIVES** meas-ur-a-bil-i-ty /'mezH(ə)rə'bilitē/ n., meas-ur-a-bly adv. [as submodifier] *the company's performance was measurably better.*

— **ORIGIN** Middle English (in the sense 'moderate'): from Old French *mesurable*, from late Latin *mensurabilis*, from Latin *mensurare* 'to measure.'

meas-ure /'mezHər/ ► v. [with obj.] 1 ascertain the size, amount, or degree of (something) by using an instrument or device marked in standard units or by comparing it with an object of known size: *the amount of water collected is measured in pints* | *they will measure up the room and install the cabinets.* ► be of (a specified size or degree): *the fabric measures 45 inches wide.* ► ascertain the size and proportions of (someone) in order to make or provide clothes for them: *he will be measured for his tuxedo next week.* ► (measure something out) take an exact quantity or fixed amount of something: *she helped to measure out the ingredients.* ► estimate or assess the extent, quality, value, or effect of (something): *it is hard to measure teaching ability.* ► (measure someone/something against) judge someone or something by comparison with (a certain standard): *she did not need to measure herself against some ideal.* [no obj.] (measure up) reach the required or expected standard; fulfill expectations: *I'm afraid we didn't measure up to the standards they set.* ► scrutinize (someone) keenly in order to form an assessment of them: *the two shook hands and silently measured each other up.* 2 consider (one's words or actions) carefully: *I had better measure my words so as not to embarrass anyone.* 3 archaic travel over (a certain distance or area): *we must measure twenty miles today.*

► n. 1 a plan or course of action taken to achieve a particular purpose: *cost-cutting measures* | *children were evacuated as a precautionary measure.* ► a legislative bill: *the Senate passed the measure by a 48–30 vote.* ► archaic punishment or retribution imposed or inflicted on someone: *her husband had dealt out hard measure to her.*

2 a standard unit used to express the size, amount, or degree of something: *a furlong is an obsolete measure of length* | *tables of weights and measures.* ► a system or scale of such units: *the original dimensions were in imperial measure.* ► a container of standard capacity used for taking fixed amounts of a substance. ► a particular amount of something: *a measure of egg white as a binding agent.* ► a standard official amount of an alcoholic drink as served in a licensed establishment. ► a graduated

rod or tape used for ascertaining the size of something. ► Printing the width of a full line of type or print, typically expressed in picas. ► Mathematics a quantity contained in another an exact number of times; a divisor.

3 a certain quantity or degree of something: *the states retain a large measure of independence.* ► an indication or means of assessing the degree, extent, or quality of something: *it was a measure of the team's problems that they were still working after 2 a.m.*

4 the rhythm of a piece of poetry or a piece of music. ► a particular metrical unit or group: *measures of two or three syllables are more frequent in English prose.* ► any of the sections, typically of equal time value, into which a musical composition is divided, shown on a score by vertical lines across the staff; bar. ► archaic a dance, typically one that is grave or stately: *now tread we a measure!*

5 (measures) [with modifier] a group of rock strata.

— **PHRASES** beyond measure to a very great extent: *it irritates him beyond measure.* for good measure in addition to what has already been done, said, or given: *he added a couple of chili peppers for good measure.* take (or get or have) the measure of assess or have assessed the character, nature, or abilities of (someone or something): *he's got her measure—she won't fool him.* in — measure to the degree specified: *his rapid promotion was due in some measure to his friendship with the CEO.*

— **ORIGIN** Middle English (as a noun in the senses 'moderation,' 'instrument for measuring,' 'unit of capacity'): from Old French *mesure*, from Latin *mensura*, from *mens-* 'measured,' from the verb *metiri*.

meas-ured /'mezHəd/ ► adj. having a slow, regular rhythm: *he walks with confident, measured steps.* ► (of speech or writing) carefully considered; deliberate and restrained: *his measured prose.*

— **DERIVATIVES** meas-ured-ly adv.

meas-ure-less /'mezHərləs/ ► adj. having no bounds or limits; unlimited: *Otto had measureless charm.*

meas-ure-ment /'mezHərment/ ► n. the action of measuring something: *accurate measurement is essential* | *a telescope with which precise measurements can be made.* ► the size, length, or amount of something, as established by measuring: *his inexact measurement.* ► a unit or system of measuring: *a hand is a measurement used for measuring horses.*

meas-uring cup /'mezH(ə)rɪŋg/ ► n. a cup marked in graded amounts, used for measuring ingredients in cooking.

meas-uring tape ► n. another term for TAPE MEASURE.

meas-uring worm ► n. another term for INCHWORM.

meat /mēt/ ► n. 1 the flesh of an animal (esp. a mammal) as food: *rabbit meat* | [as modifier] *meat sandwiches* | *assorted meats.* ► the flesh of a person's body: *this'll put meat on your bones!* ► the edible part of fruits or nuts. ► (the meat of) the essence or chief part of something: *he did the meat of the climb on the first day.* 2 archaic food of any kind.

— **PHRASES** be meat and drink to Brit. 1 be a source of great pleasure to: *meat and drink to me, this life is!* 2 be a routine matter or task for: *he should be meat and drink to the English defense.* meat and potatoes ordinary but fundamental things; basic ingredients: *the club's meat and potatoes remains blues performers.* one man's meat is another man's poison proverb things liked or enjoyed by one person may be distasteful to another.

— **DERIVATIVES** meat-less adj.

— **ORIGIN** Old English *mete* 'food' or 'article of food' (as in *sweetmeat*), of Germanic origin.

meat-ball /'mēt,bɔ:l/ ► n. a ball of ground or chopped meat, usually beef, with added seasonings. ► informal a dull, stupid, or foolish person.

meat grinder ► n. a machine for mincing meat. ► a destructive action or process: *trench warfare was the meat grinder that every soldier dreaded.*

Meath /'mēTH, mēTH/ a county in the eastern part of the Republic of Ireland, in the province of Leinster; county town, Navan.

meat-head /'mēt,hed/ ► n. informal a stupid person.

meat-hook /'mēt,hōk/ ► n. a sharp metal hook of a kind used to hang meat carcasses. ► (meathooks) informal a person's hands or arms: *get your big meathooks out of those pies!*

meat loaf (also **meatloaf**) ► n. ground or chopped meat, usually beef, with added seasonings, molded into the shape of a loaf and baked.

meat market ► n. informal a meeting place such as a bar or nightclub for people seeking sexual encounters.

meat-space /'mēt,spās/ ► n. informal the physical world, as opposed to cyberspace or a virtual environment: *I'd like to know a little more before we talk about a get-together in meatspace.*

me-a-tus /'mē'tə:s/ ► n. (pl. same or **meatuses**) Anatomy a passage or opening leading to the interior of the body: *the urethral meatus.* ► (also external auditory meatus) the passage leading into the ear. — **ORIGIN** late Middle English: from Latin, 'passage,' from *meare* 'to flow, run.'

meat wag-on ► n. informal an ambulance or hearse.

meat-y /'mētē/ ► adj. (meatlier, meatiest) consisting of or full of meat: *a meaty flavor.* ► fleshy; brawny: *the tall, meaty young man.* ► full of substance or interest; satisfying: *the ballet has stayed the course because of the meaty roles it offers.*

— **DERIVATIVES** meat-ily /'mēt-ē/ adv., meat-i-ness /'mētēnis/ n.

Mec-ca /'mekə/ a city in western Saudi Arabia, an oasis town in the Red Sea region of Hejaz, east of Jiddah, considered by Muslims to be the holiest city of Islam; pop. 1,385,000 (est. 2007). The birthplace in AD 570 of the prophet Muhammad, it was the scene of his early teachings before his emigration to Medina in 622 (the **Hegira**). On Muhammad's return to Mecca in 630 it became the center of the new Muslim faith. Arabic name **MAKKAH**. ► (as noun a Mecca) a place that attracts people of a particular group or with a particular interest: *Holland is a Mecca for jazz enthusiasts.*

— **DERIVATIVES** Mec-can adj. & n.

mech /mek/ ► n. informal a mechanic.

— **ORIGIN** mid 20th cent.: abbreviation.

me-chan-ic /'mæ'kanik/ ► n. 1 a person who repairs and maintains machinery: *a car mechanic.* 2 archaic a manual laborer or artisan: *the Mechanics' Institute.*

— **ORIGIN** late Middle English (as an adjective in the sense 'relating to manual labor'): via Old French or Latin from Greek *mēkhanikos*, from *mēkhanē* (see MACHINE).

me-chan-i-cal /'mæ'kanikəl/ ► adj. 1 working or produced by machines or machinery: *a mechanical device.* ► of or relating to machines or machinery: *a mechanical genius* | *mechanical failure.*

2 (of a person or action) not having or showing thought or spontaneity; automatic: *she stopped the mechanical brushing of her hair.*

3 relating to physical forces or motion; physical: *the smoothness was the result of mechanical abrasion.* ► (of a theory) explaining phenomena in terms only of physical processes. ► of or relating to mechanics as a science.

► n. 1 (mechanicals) the working parts of a machine, esp. a car.

2 (usu. **mechanicals**) archaic (esp. with allusion to Shakespeare's *A Midsummer Night's Dream*) a manual worker: *rustic mechanicals.*

3 Printing a completed assembly of artwork and copy, typically mounted on a sheet of stiff paper.

— **DERIVATIVES** me-chan-i-cal-ly adv., me-chan-i-cal-ness n.

— **ORIGIN** late Middle English (describing an art or occupation concerned with the design or construction of machines): via Latin from Greek *mēkhanikos* (see MECHANIC) + -AL.

me-chan-i-cal ad-van-tage ► n. the ratio of the force produced by a machine to the force applied to it, used in assessing the performance of a machine.

me-chan-i-cal draw-ing ► n. a scale drawing of a mechanical or architectural structure done with precision instruments. ► the action or process of making such drawings.

me-chan-i-cal en-gi-neer-ing ► n. the branch of engineering dealing with the design, construction, and use of machines.

— **DERIVATIVES** me-chan-i-cal en-gi-neer n.

me-chan-i-cal pen-cil ► n. a pencil with a plastic or metal case and a thin replaceable lead that may be extended as the point is worn away by twisting the outer casing.

mech-a-ni-cian /'mekə'nɪʃən/ ► n. a person skilled in the design or construction of machinery.

me-chan-ics /'mæ'kaniks/ ► plural n. 1 [treated as sing.] the branch of applied mathematics dealing with motion and forces producing motion. ► machinery as a subject; engineering.

2 the machinery or working parts of something: *he looks at the mechanics of a car before the bodywork.* ► the way in which something is done or operated; the practicalities or details of something: *the mechanics of cello playing.*

— **PRONUNCIATION KEY** ə ago, up; ər over, fur; ə hat; ɪ ate; ɪ car; ɛ let; ɛ see; ɪ fit; ɪ by; ʌ sing; ō go; ō law, for; ɔ toy; ō good; ōo goo; ʊ out; TH thin; TH then; ZH vision

superset

- su-per-set** /'sɒpər, set/ ► n. Mathematics a set that includes another set or sets.
- su-per-size** /'sɒpər, siz/ ► v. [with obj.] produce or serve (something) in a larger size: *click here to supersize the picture.*
- adj. larger than average or standard sizes; extremely large: *a pair of supersize sunglasses.*
- su-per-son-ic** /'sɒpər, sɒnɪk/ ► adj. involving or denoting a speed greater than that of sound.
- DERIVATIVES **su-per-son-ic-al-ly** /-ɪk(ə)l/ adv.
- su-per-son-ics** /'sɒpər, sɒnɪks/ ► plural n. [treated as sing.] another term for **ultrasonics**.
- su-per-space** /'sɒpər, spɑːs/ ► n. Physics a concept of space-time in which points are defined by more than four coordinates. ► a space of infinitely many dimensions postulated to contain actual space-time and all possible spaces.
- su-per-star** /'sɒpər, stɑːr/ ► n. a high-profile and extremely successful performer or athlete.
- DERIVATIVES **su-per-star-dom** /-dɒm/ n.
- su-per-state** /'sɒpər, stɑːt/ ► n. a large and powerful state or union formed from a federation of nations: *we are not advocates of a European superstate.*
- su-per-sta-tion** /'sɒpər, stɑːʃən/ ► n. a television station that broadcasts widely via cable or satellite.
- su-per-sti-tion** /'sɒpər, stɪʃən/ ► n. excessively credulous belief in and reverence for supernatural beings: *he dismissed the ghost stories as mere superstition.* ► a widely held but unjustified belief in supernatural causation leading to certain consequences of an action or event, or a practice based on such a belief: *she touched her jacket for luck, a superstition she had had since childhood.*
- ORIGIN Middle English: from Old French, or from Latin *superstitio* (n-), from *super-* 'over' + *stare* 'to stand' (perhaps from the notion of 'standing over' something in awe).
- su-per-sti-tious** /'sɒpər, stɪʃəs/ ► adj. having or showing a belief in superstitions: *many superstitious beliefs and practices are connected with sneezing.*
- DERIVATIVES **su-per-sti-tious-ly** /-stɪʃəsli/ adv., **su-per-sti-tious-ness** /-stɪʃəsness/ n.
- su-per-store** /'sɒpər, stɔːr/ ► n. a retail store, as a grocery store or bookstore, with more than the average amount of space and variety of stock.
- su-per-stra-tum** /'sɒpər, strætəm, -strætəm/ ► n. (pl. *superstrata* /-tə/) an overlying stratum.
- su-per-string** /'sɒpər, strɪŋg/ ► n. Physics a subatomic particle in a version of string theory that incorporates supersymmetry.
- su-per-struc-ture** /'sɒpər, strʌktʃər/ ► n. a structure built on top of something else. ► the parts of a ship, other than masts and rigging, built above its hull and main deck. ► the part of a building above its foundations. ► a concept or idea based on others. ► (in Marxist theory) the institutions and culture considered to result from or reflect the economic system underlying a society.
- DERIVATIVES **su-per-struc-tur-al** /'sɒpər, strʌktʃərəl/ adj.
- su-per-sym-me-try** /'sɒpər, sɪmɪtri/ ► n. Physics a very general type of mathematical symmetry that relates fermions and bosons.
- DERIVATIVES **su-per-sym-met-ric** /-sɪ'metrik/ adj.
- su-per-tank-er** /'sɒpər, tæŋkər/ ► n. a very large oil tanker, specifically one whose dead-weight capacity exceeds 75,000 tons.
- su-per-tax** /'sɒpər, tæks/ ► n. an additional tax on something already taxed.
- su-per-ti-tle** /'sɒpər, tɪtl/ ► n. (usu. *supertitles*) a caption projected on a screen above the stage in an opera, translating the text being sung.
- v. [with obj.] provide (an opera) with supertitles.
- su-per-ton-ic** /'sɒpər, tɒnɪk/ ► n. Music the second note of the diatonic scale of any key; the note above the tonic.
- Super Tuesday** ► n. Informal a day on which several US states hold primary elections.
- su-per-us-er** /'sɒpər, yʊzər/ ► n. a user of a computer system with special privileges needed to administer and maintain the system; a system administrator.
- su-per-vene** /'sɒpər, ven/ ► v. [no obj.] occur later than a specified or implied event or action, typically in such a way as to change the situation: (as adj.) *supervening* any plan that is made is liable to be disrupted by supervening events. ► Philosophy (of a fact or property) be entailed by or consequent on the existence or establishment of another: *the view that mental events supervene upon physical ones.*
- DERIVATIVES **su-per-ven-ient** /-vɛnɪənt/ adj., **su-per-ven-tion** /-vɛnʃən/ n.
- ORIGIN mid 17th cent.: from Latin *supervenire*, from *super-* 'in addition' + *venire* 'come'.

1747

- su-per-vise** /'sɒpər, vɪz/ ► v. [with obj.] observe and direct the execution of (a task, project, or activity): *the sergeant left to supervise the loading of the trucks.* ► observe and direct the work of (someone): *nurses were supervised by a consulting psychiatrist.* ► keep watch over (someone) in the interest of their or others' security: *prisoners were supervised by two officers.*
- ORIGIN late 15th cent. (in the sense 'survey, peruse'): from medieval Latin *supervis-* 'surveyed, supervised,' from *supervidere*, from *super-* 'over' + *videre* 'to see'.
- su-per-vi-sion** /'sɒpər, vɪʒən/ ► n. the action of supervising someone or something: *students were under the supervision of the faculty member at all times.*
- su-per-vi-sor** /'sɒpər, vɪzər/ ► n. a person who supervises a person or an activity.
- DERIVATIVES **su-per-vi-so-ry** /'sɒpər, vɪzəri/ adj.
- su-per-vol-tage** /'sɒpər, vɒltɪdʒ/ ► n. [usu. as modified] Medicine a voltage in excess of 200 kV used in X-ray radiotherapy: *supervoltage therapy.*
- su-per-wom-an** /'sɒpər, wʊdman/ ► n. (pl. *superwomen*) informal a woman with exceptional strength or ability, esp. one who successfully manages a home, brings up children, and has a full-time job.
- su-pi-nate** /'sɒpə, nɑːt/ ► v. [with obj.] Anatomy turn or hold (a hand, foot, or limb) so that the palm or sole is facing upward or outward: (as adj.) *supinated* a supinated foot. Compare with **pronate**. ► [no obj.] walk or run with most of the weight on the outside of the feet.
- DERIVATIVES **su-pi-na-tion** /'sɒpə, nɑːʃən/ n.
- ORIGIN mid 19th cent.: back-formation from *supination*, from Latin *supinatio* (n-), from *supinare* 'lay backward,' from *supinus* (see **SUPINE**).
- su-pi-na-tor** /'sɒpə, nɑːtər/ ► n. Anatomy 1 a muscle whose contraction produces or assists in the supination of a limb or part of a limb. 2 a person who supinates when walking or running.
- su-pine** /'sɒp, pin/ ► adj. 1 (of a person) lying face upward. ► technical having the front or ventral part upward. ► (of the hand) with the palm upward. 2 failing to act or protest as a result of moral weakness or indolence: *supine in the face of racial injustice.*
- n. a Latin verbal noun used only in the accusative and ablative cases, esp. to denote purpose (e.g., *dictu in mirabile dictu* 'wonderful to relate').
- DERIVATIVES **su-pine-ly** adv., **su-pine-ness** n.
- ORIGIN late Middle English: the adjective from Latin *supinus* 'bent backward' (related to *super-* 'above'); the noun from late Latin *supinum*, neuter of *supinus*.
- supp.** ► abbr. ► supplement. ► supplementary.
- sup-per** /'sʌpər/ ► n. an evening meal, typically a light or informal one: *we had a delicious cold supper* | *I was sent to bed without any supper.*
- PHRASES *sing for one's supper* earn a favor or benefit by providing a service in return: *the cruise lecturers are academics singing for their supper.*
- DERIVATIVES **sup-per-less** adj.
- ORIGIN Middle English: from Old French *super* 'to sup' (used as a noun) (see **SUP**).
- sup-per club** ► n. a restaurant or nightclub serving suppers and usually providing entertainment.
- suppl.** ► abbr. ► supplement. ► supplementary.
- sup-plant** /'sʌplənt/ ► v. [with obj.] supersede and replace: *another discovery could supplant the original finding.*
- DERIVATIVES **sup-plant-er** n.
- ORIGIN Middle English: from Old French *supplanter* or Latin *supplantare* 'trip up,' from *sub-* 'from below' + *planta* 'sole.'
- sup-ple** /'sʌpl/ ► adj. (suppler, supplest) bending and moving easily and gracefully; flexible: *her supple fingers* | figurative *my mind is becoming more supple.* ► not stiff or hard; easily manipulated: *this body oil leaves your skin feeling deliciously supple.*
- v. [with obj.] make more flexible.
- DERIVATIVES **sup-ple-ly** /'sʌpl(ə)li/ (also **supply**) adv., **sup-ple-ness** n.
- ORIGIN Middle English: from Old French *souple*, from Latin *supplex*, *supplic-* 'supplive,' from *sub-* 'under' + *placere* 'propitiate.'
- sup-ple-jack** /'sʌpləjæk/ ► n. either of two New World twining plants. ► a tall North American climber (*Berchemia scandens*, family *Rhamnaceae*). ► a plant of the Caribbean and tropical America (*Paullinia plumieri*, family *Sapindaceae*).
- sup-ple-ment** ► n. ► **supplement** /1 something that completes or enhances something else when added to it: *the handbook is a supplement to the official manual.* ► a substance taken to remedy the deficiencies in a person's diet: *multivitamin*

supply chain

- supplements**. ► a separate section, esp. a color magazine, added to a newspaper or periodical. 2 Geometry the amount by which an angle is less than 180°.
- v. /'sʌplə, ment-, mant/ [with obj.] add an extra element or amount to: *she took the job to supplement her husband's income.*
- DERIVATIVES **sup-ple-ment-al** /'sʌplə'mentl/ adj., **sup-ple-ment-al-ly** /'sʌplə'mentl-i/ adv., **sup-ple-ment-a-tion** /'sʌplə, ment-təʃən/ n.
- ORIGIN late Middle English: from Latin *supplementum*, from *supplere* 'fill up, complete' (see **SUPPLY**).
- sup-ple-men-tary** /'sʌplə'mentəri/ ► adj. completing or enhancing something: *the center's work was to be seen as supplementary to orthodox treatment and not a substitute for it.*
- n. a supplementary person or thing.
- DERIVATIVES **sup-ple-men-tar-i-ly** /-men'te(ə)rəli/ adv.
- sup-ple-men-tary an-gle** ► n. Mathematics either of two angles whose sum is 180°.
- sup-ple-tion** /'sʌpləʃən/ ► n. Linguistics the occurrence of an unrelated form to fill a gap in a conjugation (e.g., *went* as the past tense of *go*).
- DERIVATIVES **sup-ple-tive** /'sʌplətɪv, 'sʌplətɪv/ adj.
- ORIGIN Middle English: from Old French, from medieval Latin *suppletio* (n-), from *supplere* 'fill up, make full' (see **SUPPLY**).
- Sup-plex** /'sʌpleks/ ► n. trademark a synthetic stretchable fabric which is permeable to air and water vapor, used in sports and outdoor clothing.
- sup-pli-ant** /'sʌplənt/ ► n. a person making a humble plea to someone in power or authority.
- adj. making or expressing a plea, esp. to someone in power or authority: *their faces were suppliant.*
- DERIVATIVES **sup-pli-ant-ly** adv.
- ORIGIN late Middle English (as a noun): from French, 'beseeching,' present participle of *supplier*, from Latin *supplicare* (see **SUPPLICATE**).
- sup-pli-cate** /'sʌplɪ, kət/ ► v. [no obj.] ask or beg for something earnestly or humbly: [with infinitive] *the plutocracy supplicated to be made peers.*
- DERIVATIVES **sup-pli-cant** /-kənt/ adj. & n., **sup-pli-ca-to-ry** /-kə, tɔːrɪ/ adj.
- ORIGIN late Middle English: from Latin *supplicat-* 'implored,' from the verb *supplicare*, from *sub-* 'from below' + *placere* 'propitiate.'
- sup-pli-ca-tion** /'sʌplɪ, kəʃən/ ► n. the action of asking or begging for something earnestly or humbly: *he fell to his knees in supplication.*
- sup-ply**¹ /'sʌplɪ/ ► v. (supplies, supplying, supplied) [with obj.] make (something needed or wanted) available to someone; provide: *the farm supplies apples to cider makers.* ► provide (someone) with something needed or wanted: *they struggled to supply the besieged island with aircraft.* ► be adequate to satisfy (a requirement or demand): *the two reservoirs supply about 1% of the city's needs.* ► archaic take over (a place or role left by someone else): *when she died, no one could supply her place.*
- n. (pl. *supplies*) a stock of a resource from which a person or place can be provided with the necessary amount of that resource: *there were fears that the drought would limit the exhibition's water supply.* ► the action of providing what is needed or wanted: *the deal involved the supply of forty fighter aircraft.* ► Economics the amount of a good or service offered for sale. ► (supplies) the provisions and equipment necessary for an army or for people engaged in a particular project or expedition. ► (supplies) Bill a grant of money by Parliament for the costs of government. ► [usu. as modifier] a person acting as a temporary substitute for another. ► [as modifier] providing necessary goods and equipment: *a supply ship.*
- PHRASES *in short supply* not easily obtainable; scarce: *he meant to go, but time and gas were in short supply.* *supply and demand* the amount of a commodity, product, or service available and the desire of buyers for it, considered as factors regulating its price: *by the law of supply and demand the cost of health care will plummet.*
- DERIVATIVES **sup-ply-er** n.
- ORIGIN late Middle English: from Old French *soupleier*, from Latin *supplere* 'fill up,' from *sub-* 'from below' + *plere* 'fill.' The early sense of the noun was 'assistance, relief' (chiefly a Scots use).
- sup-ply**² /'sʌpl(ə)li/ ► adv. variant spelling of **SUPPLY** (see **SUPPLY**).
- sup-ply chain** ► n. the sequence of processes involved in the production and distribution of a commodity.

PRONUNCIATION KEY a ago, up; ər over, fur; ʌ hat; ʌtə; ʌcər; e let; ʊ see; ɪ fit; ɪ by; ŋc sing; ɔ law, for; o lot; ʊ good; ʊ go; ou out; ʌ thin; ʌ then; ʌ vision

Exhibit C

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS**

SARAH ZITO, ALVARO SARMIENTO,
JR., MARK SHINN; AND DANIEL
BERMUDEZ,

Tenants,

v.

STRATA AUDUBON, LLC AND STRATA
VERIDIAN, LLC,

Respondents.

**RESPONDENT STRATA AUDUBON, LLC'S
RESPONSES TO TENANTS' FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION**

Respondent Strata Audubon, LLC, by and through counsel and pursuant to Rules 26, 33 and 34 of the South Carolina Rules of Civil Procedure and the S.C. Code of Regulations, hereby answers the Tenants' First Set of Interrogatories and Requests for Production as follows:

GENERAL OBJECTIONS

1. Respondent objects to Tenants' discovery on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to evidence admissible at trial. This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. Respondent further objects to requests for such extraneous information or documents on the grounds that they are overly broad as to time, scope and subject matter, and would be unduly burdensome to produce.

2. Respondent objects to Tenants' discovery to the extent that it seeks to impose upon Respondent a duty of disclosure, supplementation or other obligation not required by the South Carolina Rules of Civil Procedure.

3. Respondent objects to Tenants's discovery to the extent that it seeks disclosure of

privileged information, including information protected by the attorney-client privilege or work product doctrine, self-critical analysis doctrine or any other applicable privileges. By responding to these discovery requests, Respondent does not waive their right to assert any privileges or to seek protective orders.

4. Respondent objects to Tenants' discovery to the extent it seeks disclosure of information, documents, or materials prepared in anticipation of litigation or for trial, which are outside the scope of discovery permitted by the South Carolina Rules of Civil Procedure.

5. Respondent may identify and make available for review documents or things which appear to Respondent to be responsive to discovery requests which themselves may be objectionable on one or more grounds, including, but not limited to, failure to precisely define the scope of such discovery requests so as to permit Respondent to identify a reasonably limited universe of responsive documents. By doing so Respondent (a) does not waive its objections with respect to any objectionable discovery request; (b) does not waive its objections with respect to any document; (c) may not impliedly adopt any particular interpretation of the meaning of the discovery request in response to which such documents are made available; (d) does not make any representation that the documents so made available are actually responsive to the discovery request had the discovery request been worded in an unobjectionable manner; and (e) does not make any representation that the documents so made available are all of the documents that might conceivably be considered responsive to a particular discovery request.

6. When discovery requests seek identification or production of documents or things that are described with reasonable specificity, Respondent will attempt to identify and/or produce such specific responsive documents. Pursuant to South Carolina Rule of Civil Procedure 33(c), where the answer to an interrogatory may be derived or ascertained from the business records, including

electronically stored information, of the Respondent, and the burden of deriving or ascertaining the answer is substantially the same for Respondent as for Tenants, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Respondent states that it is not bound by Tenants' definitions or instructions concerning all terms or phrases as they are used by Respondent in these responses.

8. Respondent reserves the right to supplement its responses to Tenants' discovery as additional information or documents become known. A response that indicates that responsive documents, if any, will be made available should not be interpreted to mean that such documents exist.

9. Respondent incorporates their General Objections by reference as though fully set forth into the specific response to each and every discovery request.

FIRST SET OF INTERROGATORIES

1. Give the names and addresses of persons known to You or Your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent further objects to this request to the extent it seeks disclosure of information and materials that may be subject to the attorney-client privilege or the work product doctrine.

2. **Set forth a list of photographs, plats, sketches, or other prepared documents in Your possession that relate to the claim or defense in the case.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request to the extent it seeks disclosure of information and materials that may be subject to the attorney-client privilege or the work product doctrine. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

3. **For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the opposing party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request to the extent it seeks disclosure of information and materials that may be subject to the attorney-client privilege or the work product doctrine. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

4. **Identify each employee, agent, or contractor responsible for overseeing the billing of tenants at the Audubon Property for water and sewerage for any portion of the period from September 28, 2016, to February 22, 2022.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not

limited in any way to the actual issues in controversy. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. Subject to these objections, the billing of tenants at the Audubon Property is the responsibility of the property manager, Cushman & Wakefield.

5. **State the allocation formula rate or rates used to charge tenants for water and sewerage at the Audubon Property at any time from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to the term "rate" to the extent that it implies that Respondent is a public utility and charging unauthorized "rates" for water and sewer, which Respondent denies as Respondent was passing-through the cost of water and sewer services through an allocation formula. Subject to these objections, the allocation formula is stated in the Utility and Services Addendum to the Lease Agreements, which are attached hereto as Appendix A, as well as Exhibits A and B to Tenants' Complaint. *See also* Respondent' Answer to Complaint, paragraphs 15, 17, and 18.

6. **State how the allocation formula rate was used to determine charges to tenants for water and sewerage at the Audubon Property at any time from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not

reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to the term “rate” to the extent that it implies that Respondent is a public utility and charging unauthorized “rates” for water and sewer, which Respondent denies as Respondent was passing-through the cost of water and sewer services through an allocation formula. Subject to these objections, the allocation formula was used as described in the Utility and Services Addendum to the Lease Agreements, which are attached hereto as Appendix A, as well as Exhibits A and B to Tenants’ Complaint. *See also* Respondent’ Answer to Complaint, paragraphs 15, 17, and 18. Further, Respondent contracted with Conservice, LLC to calculate and bill the tenants at the Audubon Property. Respondent defers Tenants to the documents produced by Conservice, LLC which included documents responsive to this request.

- 7. Identify the data inputs used to apply the allocation formula rate to determine charges to tenants for water and sewerage at the Audubon Property at any time from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent’s Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to the term “rate” to the extent that it implies that Respondent is a public utility and charging unauthorized “rates” for water and sewer, which Respondent denies as Respondent was passing-through the cost of water and sewer services through an allocation formula. Subject to these objections, Respondent is without sufficient knowledge to respond to this request on the basis that Respondent contracted with Conservice, LLC to calculate and bill the tenants at the Audubon Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

- 8. State the new account fees, monthly administrative billing fees, and final bill fees for water and sewerage charged to tenants at the Audubon Property from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent is without sufficient knowledge to respond to this request on the basis that Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Audubon Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

- 9. Identify the off-site source entity for the water and sewerage provided to tenants at the Audubon Property from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent does not contract directly with off-site source entities for the water and sewerage provided to tenants at the Audubon Property. Based on the documents produced by Conservice, LLC, the providers of sewer services at the Audubon Property is Berkeley County Water & Sanitation, and the provider of water services is Charleston Water System.

- 10. Identify each apartment in the Audubon Property.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad,

not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy. Subject to these objections, Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

11. Identify the total number of persons residing in the Audubon Property each month from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent refers Tenants to the documents produced by Conservice, LLC which included documents responsive to this request.

12. Identify the total number of persons residing in each apartment in the Audubon Property each month from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not

limited in any way to the actual issues in controversy. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

- 13. State whether You have withheld any information responsive to any Interrogatory or not produced any document requested by Tenants' First Set of Requests for Production, and if so, identify the information or documents withheld and state the legal and factual basis for the withholding or non-production.**

RESPONSE: Respondent has not withheld any documents or information responsive to a valid and unobjectionable request.

REQUESTS FOR PRODUCTION

- 1. Leases between You and Tenant Sarah Zito applicable at any time from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to this objection, see documents attached hereto as Appendix A. Respondent also refers Tenants to Exhibit A of their own Complaint.

- 2. Leases between You and Tenant Alvaro Sarmiento, Jr. applicable at any time from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not

reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to this objection, see documents attached hereto as Appendix A. Respondent also refers Tenants to Exhibit A of their own Complaint.

3. **Written communications between You and Tenants the subject of which is or which mentions water, sewerage, the lease, or the number of persons residing at the Audubon Property.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy. Subject to these objections, Respondent does not have any responsive documents to produce.

4. **Any "Utility and Services Addendum" to tenant leases in use for tenants at the Audubon Property at any time from September 28, 2016, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020 and further object to the extent this request seeks information governing leases to which Tenants are not a party. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to this objection, see the documents attached hereto as Appendix A.

5. **Documents showing the allocation formula rate calculation for water and sewerage for Tenants for each month Tenants leased an apartment at the Audubon Property from You in the period from September 28, 2016, to February 22, 2022.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to

the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Audubon Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

6. Records of the total water and sewer usage of the Audubon Property each month from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Audubon Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

7. Records of the number of persons residing in each apartment unit at the Audubon Property each month from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad,

not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Audubon Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

8. Notifications You received at any time from September 28, 2016, to February 22, 2022, of a change in the number of persons residing in a particular apartment unit at the Audubon Property.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

9. Documents reflecting any effort by You, Your employee, Your agent, or Your contractor to verify the number of persons residing in each apartment unit at the Veridian Property at any time from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to

the needs of the case. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

10. Monthly bills, invoices, or statements sent to Tenants by You or Your agent or contractor at any time from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Audubon Properties. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

11. Records of payments made by Tenants to You or Your agent or contractor for charges other than rent at any time from September 28, 2016, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property

from August 2017 to July 2020. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

12. Bills, invoices, or statements sent to Tenants at any time from September 28, 2016, to February 22, 2022, for new account fees, monthly administrative billing fees, or final bill fees for water or sewerage, alone or in combination with other services.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from August 2017 to July 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Audubon Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

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Attorneys for Respondents

April 12, 2023

Exhibit D

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

135

APP 000137

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS**

SARAH ZITO, ALVARO SARMIENTO,
JR., MARK SHINN; AND DANIEL
BERMUDEZ,

Tenants,

v.

STRATA AUDUBON, LLC AND STRATA
VERIDIAN, LLC,

Respondents.

**RESPONDENT STRATA VERIDIAN, LLC'S
RESPONSES TO TENANTS' FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION**

Respondent Strata Veridian, LLC, by and through counsel and pursuant to Rules 26, 33 and 34 of the South Carolina Rules of Civil Procedure and the S.C. Code of Regulations, hereby answers the Tenants' First Set of Interrogatories and Requests for Production as follows:

GENERAL OBJECTIONS

1. Respondent objects to Tenant's discovery on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to evidence admissible at trial. This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. Respondent further objects to requests for such extraneous information or documents on the grounds that they are overly broad as to time, scope and subject matter, and would be unduly burdensome to produce.

2. Respondent objects to Tenant's discovery to the extent that it seeks to impose upon Respondent a duty of disclosure, supplementation or other obligation not required by the South Carolina Rules of Civil Procedure.

3. Respondent objects to Tenant's discovery to the extent that it seeks disclosure of privileged

information, including information protected by the attorney-client privilege or work product doctrine, self-critical analysis doctrine or any other applicable privileges. By responding to these discovery requests, Respondent does not waive their right to assert any privileges or to seek protective orders.

4. Respondent objects to Tenant's discovery to the extent it seeks disclosure of information, documents, or materials prepared in anticipation of litigation or for trial, which are outside the scope of discovery permitted by the South Carolina Rules of Civil Procedure.

5. Respondent may identify and make available for review documents or things which appear to Defendant to be responsive to discovery requests which themselves may be objectionable on one or more grounds, including, but not limited to, failure to precisely define the scope of such discovery requests so as to permit Respondent to identify a reasonably limited universe of responsive documents. By doing so Respondent (a) does not waive its objections with respect to any objectionable discovery request; (b) does not waive its objections with respect to any document; (c) may not impliedly adopt any particular interpretation of the meaning of the discovery request in response to which such documents are made available; (d) does not make any representation that the documents so made available are actually responsive to the discovery request had the discovery request been worded in an unobjectionable manner; and (e) does not make any representation that the documents so made available are all of the documents that might conceivably be considered responsive to a particular discovery request.

6. When discovery requests seek identification or production of documents or things that are described with reasonable specificity, Respondent will attempt to identify and/or produce such specific responsive documents. Pursuant to South Carolina Rule of Civil Procedure 33(c), where the answer to an interrogatory may be derived or ascertained from the business records, including

electronically stored information, of the Respondent, and the burden of deriving or ascertaining the answer is substantially the same for Respondent as for Tenants, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Respondent states that it is not bound by Tenants' definitions or instructions concerning all terms or phrases as they are used by Respondent in these responses.

8. Respondent reserves the right to supplement its responses to Tenants' discovery as additional information or documents become known. A response that indicates that responsive documents, if any, will be made available should not be interpreted to mean that such documents exist.

9. Respondent incorporates their General Objections by reference as though fully set forth into the specific response to each and every discovery request.

FIRST SET OF INTERROGATORIES

1. Give the names and addresses of persons known to You or Your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent further objects to this request to the extent it seeks disclosure of information and materials that may be subject to the attorney-client privilege or the work product doctrine.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in Your possession that relate to the claim or defense in the case.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request to the extent it seeks disclosure of information and materials that may be subject to the attorney-client privilege or the work product doctrine. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

3. For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the opposing party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request to the extent it seeks disclosure of information and materials that may be subject to the attorney-client privilege or the work product doctrine. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

4. Identify each employee, agent, or contractor responsible for overseeing the billing of tenants at the Veridian Property for water and sewerage for any portion of the period from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request on grounds

that it is not relevant and not limited in any way to the actual issues in controversy. Respondent further objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. Subject to these objections, the billing of tenants at the Veridian Property is the responsibility of the property manager, Cushman & Wakefield.

5. **State the allocation formula rate or rates used to charge tenants for water and sewerage at the Veridian Property at any time from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to the term "rate" to the extent that it implies that Respondent is a public utility and charging unauthorized "rates" for water and sewer, which Respondent denies as Respondent was passing-through the cost of water and sewer services through an allocation formula. Subject to these objections, the allocation method is stated in the Utility and Services Addendum to the Lease Agreements, which are attached hereto as Appendix A, and are also included as Exhibits A and B to Tenant's Complaint. *See also* Respondents' Answer to Complaint, paragraphs 33, 34.

6. **State how the allocation formula rate was used to determine charges to tenants for water and sewerage at the Veridian Property at any time from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not

reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to the term “rate” to the extent that it implies that Respondent was public utility and charging unauthorized “rates” for water and sewer, which Respondent denies as Respondent was passing-through the cost of water and sewer services through an allocation formula. Subject to these objections, the allocation formula was used as described in the Utility and Services Addendum to the Lease Agreements, which are attached as Exhibits A and B to Tenants’ Complaint. *See also* Respondents’ Answer to Complaint, paragraphs 33, 34. Further, Respondent contracted with Conservice, LLC to calculate and bill the tenants at the Veridian Property. Respondent defers Tenants to the documents produced by Conservice, LLC which included documents responsive to this request.

- 7. Identify the data inputs used to apply the allocation formula rate to determine charges to tenants for water and sewerage at the Veridian Property at any time from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent’s Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to the term “rate” to the extent that it implies that Respondent was public utility and charging unauthorized “rates” for water and sewer, which Respondent denies as Respondent was passing-through the cost of water and sewer services through an allocation formula. Subject to these objections, Respondent is without sufficient knowledge to respond to this request on the basis that Respondent contracted with Conservice, LLC to calculate and bill the tenants at the Veridian Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

- 8. State the new account fees, monthly administrative billing fees, and final bill fees for water and sewerage charged to tenants at the Veridian Property from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent is without sufficient knowledge to respond to this request on the basis that Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Veridian Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

- 9. Identify the off-site source entity for the water and sewerage provided to tenants at the Veridian Property from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent does not contract directly with off-site source entities for the water and sewerage provided to tenants at the Veridian Property. Based on the documents produced by Conservice, LLC, the providers of water and sewer services to the Veridian Property is Spartanburg Water System.

- 10. Identify each apartment in the Groves Apartments and the square footage of each apartment.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad,

not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy. Subject to these objections Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

11. Identify the total number of persons residing in the Groves Apartments each month from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent refers Tenants to the documents produced by Conservice, LLC which included documents responsive to this request.

12. Identify the total number of persons residing in each apartment in the Groves Apartments each month from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects to this request on grounds that it is not relevant and not

limited in any way to the actual issues in controversy. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request.

- 13. State whether You have withheld any information responsive to any Interrogatory or not produced any document requested by Tenants' First Set of Requests for Production, and if so, identify the information or documents withheld and state the legal and factual basis for the withholding or non-production.**

RESPONSE: Respondent has not withheld any documents or information responsive to a valid and unobjectionable request.

REQUESTS FOR PRODUCTION

- 1. Leases between You and Tenant Mark Shinn applicable at any time from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to this objection, see documents produced in the attached Appendix A. Respondent also refers Tenants to Exhibit B of their own Complaint.

- 2. Leases between You and Tenant Daniel Bermudez applicable at any time from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not

reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to this objection, see documents produced in the attached Appendix A.

3. **Written communications between You and Tenants the subject of which is or which mentions water, sewerage, the lease, or the number of persons residing at the Veridian Property.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy. Subject to these objections, Respondent does not have any responsive documents to produce.

4. **Any "Utility and Services Addendum" to tenant leases in use for tenants at the Veridian Property at any time from January 30, 2018, to February 22, 2022.**

RESPONSE: Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020 and further object to the extent this request seeks information governing leases to which Tenants are not a party. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to this objection, see the documents in the attached Appendix A.

5. **Documents showing the allocation formula rate calculation for water and sewerage for Tenants for each month Tenants leased an apartment at the Veridian Property from You in the period from January 30, 2018, to February 22, 2022.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to

the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Veridian Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

6. Records of the total water and sewer usage of the Veridian Property each month from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Veridian Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

7. Records of the number of persons residing in each apartment unit at the Veridian Property each month from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad,

not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conserve, LLC, to calculate and bill the tenants at the Veridian Property. Respondent refers Tenants to the documents produced by Conserve, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

8. Notifications You received at any time from January 30, 2018, to February 22, 2022, of a change in the number of persons residing in a particular apartment unit at the Veridian Property.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

9. Documents reflecting any effort by You, Your employee, Your agent, or Your contractor to verify the number of persons residing in each apartment unit at the Veridian Property at any time from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to

the needs of the case. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

10. Monthly bills, invoices, or statements sent to Tenants by You or Your agent or contractor at any time from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Veridian Properties. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

11. Records of payments made by Tenants to You or Your agent or contractor for charges other than rent at any time from January 30, 2018, to February 22, 2022.

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Further, Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property

from May 2018 to November 2020. Respondent further objects to this request on grounds that it is not relevant and not limited in any way to the actual issues in controversy.

- 12. Bills, invoices, or statements sent to Tenants at any time from January 30, 2018, to February 22, 2022, for new account fees, monthly administrative billing fees, or final bill fees for water or sewerage, alone or in combination with other services.**

RESPONSE: This matter involves a legal question of what constitutes a public utility, and the material facts are not in dispute. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Respondent objects as to the time frame requested on the basis that it is outside the scope of the issues in dispute since Tenants only lived in Respondent's Property from May 2018 to November 2020. This request is therefore unduly burdensome, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Subject to these objections, Respondent contracted with Conservice, LLC, to calculate and bill the tenants at the Veridian Property. Respondent refers Tenants to the documents produced by Conservice, LLC, which included documents responsive to this request. Respondent has no additional documents responsive to this request.

WOMBLE BOND DICKINSON (US) LLP

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Attorneys for Respondents

April 12, 2023

Exhibit E

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

151



October 3, 2022
Sent via E-mail

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Kevin Hall
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Re: Subpoena Duces Tecum
Zito, et al. v. Strata Audubon, LLC, et al.
Docket No.: 2022-84-WS
SLF File No.: 202019013

Dear Elliott:

As you are aware, we represent Conservice, LLC. We have been asked to assist them in responding to the Subpoena Duces Tecum which you served on them in the above-referenced matter.

First, there are twenty-three document requests, which in and of itself is burdensome since Conservice is not a party to this matter. Second, it is our understanding that the four named parties only resided at the relevant apartment complexes between August 1, 2019 and December 31, 2020. As such, your request for information outside that time period is burdensome as well as irrelevant. Accordingly, we are limiting our responses to that time period. Finally, to the extent there are other more specific objections to each request, they will be contained in the responses below.

The following is a response to each of your requests, which I have taken the liberty of numbering:

1. Monthly bills, invoices, or statements sent to Complainants for water or sewerage at the Audubon Property or Veridian Property or associated new account fees, monthly administrative billing fees, or final bill fees.

RESPONSE: Monthly bills for the time period August 1, 2019 through December 31, 2020 will be produced.

2. Documents showing the allocation formula rate calculation for water and sewerage charges billed to Complainants.

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October 3, 2022
Page 2

RESPONSE: A “worksheet” showing the allocation formula rate calculation for the period August 1, 2019 through December 31, 2020 will be produced.

3. Documents identifying the data inputs used to apply the allocation formula rate to determine charges to Complainants for water and sewerage at the Audubon Property or Veridian Property at any time from September 28, 2016, to February 22, 2022.

RESPONSE: A QC report identifying the data inputs for the period August 1, 2019 to December 31, 2020 will be produced.

4. Records of the total water and sewerage usage of the Audubon Property each month from September 28, 2016, to February 22, 2022.

RESPONSE: Responsive documents for the time period August 1, 2019 through December 31, 2020 will be produced.

5. Records of the total water and sewerage usage of the Veridian Property each month from January 30, 2018, to February 22, 2022.

RESPONSE: Responsive documents for the time period August 1, 2019 through December 31, 2020 will be produced.

6. Records of the number of persons residing in each apartment unit at the Audubon Property each month from September 28, 2016, to February 22, 2022.

RESPONSE: Responsive documents for the time period August 1, 2019 through December 31, 2020 will be produced.

7. Records of the number of persons residing in each apartment unit at the Veridian Property each month from January 30, 2018, to February 22, 2022.

RESPONSE: Responsive documents for the time period August 1, 2019 through December 31, 2020 will be produced.

8. Notifications You received at any time from September 28, 2016, to February 22, 2022, of a change in the number of persons residing in a particular apartment unit at the Audubon Property.

RESPONSE: This request is also unclear, vague, and ambiguous because we cannot determine what you mean by the term “notifications” or from whom you are requesting if Conservice received such notifications. Without waiving these objections but express relying upon them, Conservice did not receive any such notifications between August 1, 2019 and December 31, 2020.



October 3, 2022
Page 3

9. Notifications You received at any time from January 30, 2018, to February 22, 2022, of a change in the number of persons residing in a particular apartment unit at the Veridian Property.

RESPONSE: This request is also unclear, vague, and ambiguous because we cannot determine what you mean by the term "notifications" or from whom you are requesting if Conserve received such notifications. Without waiving these objections but expressly relying upon them, Conserve did not receive any such notifications between August 1, 2019 and December 31, 2020.

10. Bills, invoices, or statements from any off-site provider of water or sewerage to the Audubon Property for water or sewerage provided at any time from September 28, 2016, to February 22, 2022.

RESPONSE: The requested documents can be obtained from Defendant Strata Audubon, LLC.

11. Bills, invoices, or statements from any off-site provider of water or sewerage to the Veridian Property for water or sewerage provided at any time from January 30, 2018, to February 22, 2022.

RESPONSE: The requested documents can be obtained from Defendant Strata Veridian, LLC.

12. Contracts between You and Strata Audubon, LLC applicable to billing for water or sewerage at the Audubon Property at any time from September 28, 2016, to February 22, 2022.

RESPONSE: Objection. This request seeks information which is confidential and proprietary. In addition, you can obtain the contracts from Defendant Strata Audubon, LLC.

13. Contracts between You and Strata Veridian, LLC applicable to billing for water or sewerage at the Veridian Property at any time from January 30, 2018, to February 22, 2022.

RESPONSE: Objection. This request seeks information which is confidential and proprietary. In addition, you can obtain the contracts from Defendant Strata Veridian, LLC.

14. Communications between You and Strata Audubon, LLC the subject of which is or which mentions the number of persons residing in each apartment unit at the Audubon Property at any time from September 28, 2016, to February 22, 2022.

RESPONSE: There were no such communications.

15. Communications between You and Strata Veridian, LLC the subject of which is or which mentions the number of persons residing in each apartment unit at the Veridian Property at any time from January 30, 2018, to February 22, 2022.

RESPONSE: There were no such communications.



October 3, 2022
Page 4

16. Documents You received from Strata Audubon, LLC at any time from September 28, 2016, to February 22, 2022, stating the number of persons residing in each apartment unit at the Audubon Property.

RESPONSE: None.

17. Documents You received from Strata Veridian, LLC at any time from January 30, 2018, to February 22, 2022, stating the number of persons residing in each apartment unit at the Veridian Property.

RESPONSE: None.

18. Communications between You and Strata Audubon, LLC the subject of which is or which mentions the rate charged by an off-site provider for water or sewerage to the Audubon Property at any time from September 28, 2016, to February 22, 2022.

RESPONSE: None.

19. Communications between You and Strata Veridian, LLC the subject of which is or which mentions the rate charged by an off-site provider for water or sewerage to the Veridian Property at any time from January 30, 2018, to February 22, 2022.

RESPONSE: None.

20. Documents You received from Strata Audubon, LLC at any time from September 28, 2016, to February 22, 2022, stating the rate charged by an off-site provider for water or sewerage to the Audubon Property.

RESPONSE: None.

21. Documents You received from Strata Veridian, LLC at any time from January 30, 2018, to February 22, 2022, stating the rate charged by an off-site provider for water or sewerage to the Veridian Property.

RESPONSE: None.

22. Communications between You and Strata Veridian, LLC the subject of which is or which mentions the square footage of the apartment units at the Veridian Property and sent or received at any time from January 30, 2018, to February 22, 2022.

RESPONSE: Responsive documents can be found in the QC report which is being produced.

23. Documents You received from Strata Veridian, LLC at any time from January 30, 2018, to February 22, 2022, stating the square footage of apartments units at the Veridian Property.

RESPONSE: Responsive documents can be found in the QC report which is being produced.



October 3, 2022
Page 5

Sincerely,

Womble Bond Dickinson (US) LLP

A handwritten signature in black ink, appearing to read "K. Hall", positioned above the printed name "Kevin Hall".

Kevin Hall
Partner

CC: Andrew M. Bateman
David Stark
Kimberly Godsey
Roger P. Hall
Kevin K. Bell & Vordman Carlisle Traywick III
Public Service Commission of South Carolina Legal Filings

Exhibit F

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

**DIRECT TESTIMONY OF ASHLEY
BROWN**

1 Q. Please state your full name and address.

2 A. Ashley C. Brown, 70 Leicester Road, Belmont, Massachusetts.

3 Q. On whose behalf are you offering testimony?

4 A. I am offering testimony on behalf of the Complainants.

5 Q. What education, training, and experience qualifies you to provide expert testimony
6 on water, sewerage, and utility regulation?

7 A. I am an attorney who was licensed to practice in Ohio, Massachusetts, and the District of
8 Columbia. I served two full, five-year terms as a Commissioner of the Public Utilities
9 Commission of Ohio (1983-1993). From 1993 to 2021, I was Executive Director of the
10 Harvard Electricity Policy Group at Harvard University's Kennedy School. My full

1 breadth of regulatory experience is set forth in my CV attached hereto as Exhibit 1. As
2 indicated on my CV, I have extensive experience consulting and practicing law on matters
3 related to utility and infrastructure regulation both in the United States and abroad. I
4 advised The World Bank, Asian Development Bank, United Nations, and Inter-American
5 Development Bank, and well as many governments and private clients on regulatory
6 matters. I am a co-author of The World Bank's Guide to Evaluating Infrastructure
7 Regulation. I taught infrastructure regulation in universities and training programs
8 through the United States, Latin America, Europe, Africa, and Asia.

9 **Q. What specific qualifications do you have for providing expert testimony on water**
10 **and sewerage regulation?**

11 A. The Public Utilities Commission of Ohio on which I served as a Commissioner has
12 regulatory jurisdiction over investor owned water and sewer companies in Ohio. As such,
13 I was deeply involved in all aspects of regulatory oversight of water and sewer companies.
14 In addition, many of the consulting projects I worked on abroad related to water and
15 sewerage regulation.

16 **Q. Do you have specific qualifications related to submetering and landlord-tenant**
17 **matters?**

18 A. Yes, I do. At the beginning of my career, I worked as an intern during law school at the
19 Housing Litigation Bureau in New York City and at the Miami Valley Regional Planning
20 Council in Dayton, Ohio. My work there involved code enforcement, housing policy,
21 landlord-tenant relations, and four housing rights. Upon admission as a lawyer but prior

1 to my appointment to the Public Utilities Commission of Ohio, I practiced law at the Legal
2 Aid Society of Dayton and as Legal Director of the Montgomery County, Ohio Fair
3 Housing Center. My primary focus in those positions was housing, including landlord-
4 tenant issues, housing policy, consumer protection, and fair housing. While in those
5 positions, I advised local governments on housing policies, litigated cases involving
6 housing rights, and assisted in policy development at the local and regional levels. As a
7 Commissioner, I was involved in cases addressing submetering for natural gas, electricity,
8 and water and sanitation. In my work abroad, most notably in Eastern Europe, I worked
9 extensively on master metering in those services plus district heating.

10 **Q. What documents did you review in relation to this case?**

11 A. I reviewed the pleadings and other filings in this matter, relevant South Carolina statutes,
12 and relevant past decisions by the Public Service Commission of South Carolina.

13 **Q. Are the opinions you offer here based on your education, training, and experience in**
14 **your field of expertise, made to a reasonable degree of certainty in your field of**
15 **expertise, and based on principles accepted in your field of expertise?**

16 A. Yes.

17 **Q. Do you have professional experience addressing issues regarding submetering and**
18 **sale for resale of water services?**

19 A. Yes, I do, in addition to experience addressing submetering for other utility services.

20 **Q. How would you define submetering of water service?**

21 A. Submetering in water is where a person or entity that owns or controls a large structure or

1 premises (e.g., apartment complexes or trailer parks) purchases water from a supplier utility
2 and pays for it based on the input to the premises as measured by a master meter located
3 where the delivery is made (i.e., where the water leaves the supplier's pipes and enters
4 pipes owned by the purchaser). The purchaser then uses its pipes to move the water
5 through common areas to the individual premises within the complex. The water is
6 delivered through a submeter located at the point where the common area pipes
7 interconnect with pipes on the individual premises. The submeter measures the
8 throughput to each unit and provides the basis for the billing, the methodology for which
9 is identical to that used by the utility for billing the complex owner. In submetering
10 arrangements, the occupants of the individual units pay only for the water consumed on
11 their premises and not for consumption in common areas or on the premises of others in
12 the complex.

13 **Q. Can you have submetering without the use of actual submeters?**

14 **A.** No, you cannot. Without the physical deployment of meters, what you have is a sale for
15 resale, something that is a very different product than submetering. In the case at hand,
16 Defendants are buying water from a supplier utility on a volumetric basis, where the pricing
17 is based on physical throughput. Thus, the total cost for the complex is driven by the
18 volume consumed on the complex, but the individual occupants are billed based on a
19 formula created by the complex owner, a formula that reflects subjective, and potentially
20 entirely irrelevant, criteria, such as the number of permanent residents and the square
21 footage of the individual unit. The fact is that per capita consumption of water is hardly

1 uniform, and billing for water using a formula provides no meaningful price signal,
2 provides minimal or no transparency, and is subject to crass manipulation to the detriment
3 of consumers.

4 Allocation formula billing also fails to follow a fundamental rule of ratemaking,
5 namely that the cost causer should bear the costs it causes to be incurred. To the extent
6 there are variations in the use of water which is an inevitable occurrence, customers using
7 less water will be subsidizing heavy users. Additionally, as is the case with the allocation
8 formula used here, all tenants bear the costs of water used in common areas despite the fact
9 that not the tenants cannot have equally used the common areas like a leasing office, pool,
10 gym, etc. and cannot control the costs incurred in the common areas.

11 Finally, the use of formulaic rather than volumetric pricing provides the complex
12 owner with not only the incentive to transfer its risks onto consumers and enhance its
13 profits through opportunistic formula design rather than performance, but also provides the
14 complex owner with the means to surreptitiously do so. In short, the risks of formulaic
15 pricing are precisely the asymmetric arrangements that regulatory oversight is intended to
16 mitigate and control.

17 **Q. Is a complex without submeters and using an allocation formula to bill tenants for**
18 **water and sewerage measuring the flow of water and sewerage?**

19 **A.** No, it is not. First, there are no meters or any other mechanism for actually measuring the
20 flow and use of water. An allocation formula does not measure anything. At best, an
21 allocation formula is a rough approximation of usage, and at worst, an allocation formula

1 bears no relationship to actual usage. By definition, an allocation formula is not a
2 measurement, it is a sale for resale.

3 **Q. How valid is formulaic pricing if the inputs to the formula are not validated and**
4 **kept current?**

5 A. Formula based pricing is simply the practice of using models to provide an approximation
6 of usage as a substitute for real usage data. That renders formulaic pricing subjective and
7 at best, a rough approximation of actual usage, and at worst, lacking any relationship to
8 actual usage. To the extent that the inputs to the formula are not kept current and accurate,
9 and it is my understanding from reviewing documents exchanged in this case that
10 Defendants made no effort to keep the number of tenants inputs current and accurate, the
11 application of the formula can be rendered meaningless. If, for example, in a household a
12 child is born, a child leaves home, or a family member dies, or houses guests on a regular
13 basis, and the formula inputs fail to reflect those changes, the formula price will be, in the
14 context of its own internal logic and assumptions, entirely erroneous. That error not only
15 results in charging the consumer the wrong price (too much or too little depending on the
16 change in the household size), but to the extent the use of an allocation formula could ever
17 be considered measuring and passing through the costs of water, which it cannot for the
18 reasons previously stated, the use of an allocation formula is in no way the measurement
19 and passing through of costs where the inputs to the formula are themselves not updated
20 and kept accurate.

21 **Q. Is the use of an allocation formula to bill for water and sewerage the same as passing**

1 through water and sewerage?

2 A. No, it is not. Submetering may or may not be a pass through depending on the
3 circumstances. There are two elements of a pass through, the commodity flow (*i.e.*, the
4 water or sewerage) flow and the dollar flow. There may or may not be a markup (using
5 the term “markup” to refer to any charges that exceed the actual price paid for the product
6 being resold, including profit or administrative charges). If there is such a markup, the
7 dollar flow is not simply a pass through. In regard to the commodity, to be a pass-through,
8 the amount of water paid for by each tenant must equal the amount used by the tenant. It
9 is not clear what a pass-through of the water means in practical terms if the dollars do not
10 pass-through as well, on the very same basis as the water flows through. So while a
11 submetering arrangement may or may not be a pass through depending on the details of
12 the arrangement and the definition of pass through, an allocation formula is not a pass
13 through in any scenario and regardless of how pass through is defined.

14 While submetering does not necessarily preclude markups, it does, unlike formulaic
15 pricing, make markups transparent. Additionally, unlike formulaic pricing, submetering
16 does not shift risks or cause cross-subsidies between consumers, does not transfer risks
17 from the owner to the tenants, and does not provide the owner with customer paid subsidies.

18 **Q. Were Defendants passing through the costs of water and sewerage to tenants?**

19 A. No, because Defendants are not measuring the actual usage, Defendants do not know the
20 actual costs of water and sewerage used by particular tenants and cannot pass through the
21 actual costs of water and sewerage to tenants. Defendants also include the use of water

1 and sewerage in common areas in the allocation formula and the use in common areas
2 among all tenants.

3 **Q. Were Defendants being compensated for providing water and sewerage to tenants?**

4 A. Yes, Defendants were clearly being compensated through the administrative fees paid in
5 addition to the charge for allocated water and sewer and through the tenants having to pay
6 for water and sewer usage in the common areas, the actual costs of which are passed on in
7 a bundled and non-transparent basis to the residents, the calculations of which may, through
8 intent or effect, produce other compensation for defendants.

9 **Q. Do the administrative fees and common area usage charges constitute a markup on**
10 **the water and sewer?**

11 A. Those fees and charges are a markup on the water and sewer, and Defendants cannot be
12 engaged in a mere pass through where Defendants are marking up the water and sewer
13 charges.

14 **Q. Does the owner of a complex ever take possession of the water under submetering or**
15 **sale for resale arrangements?**

16 A. Under a sale for resale arrangement, as carried out by Defendants in this case, Defendants
17 undoubtedly take possession of the water. We know that because in the transition from
18 the volumetric basis on which the complex owner buys water to the formulaic basis on
19 which it sells water to tenants, the owner effectively allocates water on an administratively
20 determined, formulaic basis. That allocation, it is important to note, includes allocation
21 of water to the common area, thus the amount of water the defendant purchases for resale

1 does not equal the aggregate amount of water consumer by tenants, nor does it accurately
2 reflect the cost each tenant caused to be incurred. Indeed, the amount of money paid by
3 tenants does not comport with the consumption of water by each apartment's tenants
4 because the payments are made on a formula that does not actually reflect what is
5 consumed by each apartment. That is because the formula is based on a model that
6 effectively subsidizes heavy users at the expense of light users and charges all tenants for
7 water consumed in common areas. Such actions simply cannot be taken if Defendants did
8 not take possession of the water. Obviously, the complex owner cannot make such an
9 allocation unless it actually takes possession of the water. Otherwise, it is literally taking
10 property—water—belonging to others and redistributing it without any effort to
11 compensate those whose property it has allocated elsewhere. The question of whether a
12 complex owner takes possession of water under a submetering arrangement is a closer
13 question that need not be addressed here, since in the facts before the Commission in this
14 case, the owner is carrying out a sale for resale arrangement, not a submetering
15 arrangement. Any precedents based on the notion that a complex owner engaged in a
16 submetering arrangement does not take possession of the water is not applicable here.

17 **Q. Are the incentives in the sale for formulaic resale arrangements consistent with**
18 **public policy?**

19 **A.** The use of an allocation formula to bill for water and sewerage is most decidedly
20 inconsistent with some of the fundamental pillars of both public policy and sound pricing,
21 notably the incentive to use resources efficiently and conserve them where possible, and

1 the principle that costs be borne by the person or entity that caused the costs to be incurred.
2 First, regarding aligning incentives, it is critical to note that the utility selling water to
3 Defendants' complexes does so on a volumetric basis. Under that arrangement, the less
4 one uses, the less one pays, so there is an incentive to consume water efficiently and
5 conserve water. If Defendant simply passed through the water and charges to tenants on
6 the same volumetric basis, the efficiency and conservation incentives would be preserved.
7 Instead, Defendants convert the prices to tenants from a volumetric, price per unit of
8 consumption basis to a formula, which not only distorts the price signals but creates a
9 complex pattern of cross-subsidies among tenants and direct subsidies to defendants.
10 These subsidies further distort the price signals in ways that further dilute the efficiency
11 and conservation incentives. In a state like South Carolina, where droughts are not
12 unknown, such a pricing distortion can have truly adverse consequences. Ironically, for
13 the reasons noted, formulaic ratemaking, designed primarily to reduce the risks of the
14 supplier by transferring them to the consumers, are inconsistent with basic principles of
15 regulation and pricing. In fact, the place where, in my personal experience, I have
16 encountered widespread ratemaking of this type was in the former Soviet Union, where
17 individual water meters (and district heating ones as well) were virtually unknown, a
18 circumstance which led to the very inefficient use of resources that characterized, and
19 ultimately contributed to the undermining of the Soviet economic system. Indeed, one of
20 the reasons for demands for regulatory reform in the countries of the former Soviet Union
21 was to bring an end to such inefficient prices. The same logic applies here.

1 Q. What about the principle that cost causer pays?

2 A. The cost causer pays principle is based on two key considerations. The first is to signal to
3 consumers that to the extent they impose costs on the system, they will bear the costs.
4 That is an important element of incentivizing efficient use of resources. The second
5 consideration is a simple matter of fairness in the allocation of costs, so that consumers
6 cover their own costs, but are not compelled to pay for costs they neither cause to be
7 incurred or have no control over. In the case of the formula used by Defendants, the key
8 criteria—square footage and number of residents—are at best only distantly related, if
9 related at all, to cost causation. Indeed, it is difficult to see what impact, if any, the size
10 of a rental unit has on the amount of water being used or sewage being disposed of. In
11 regard to number of residents in a unit, there may be some correlation between that figure
12 and the water consumption, but any such correlation fails to take into account such critical
13 variables as variations in use of water among residents throughout a complex, the number
14 and frequency of visitors, the amount of time residents are actually present in their
15 apartments, etc. Any meaningfulness of the formula is further reduced by the fact that the
16 costs of all use of water and sewage services in the common areas are allocated to
17 consumers, rather than being allocated to the party in control of the consumption in the
18 common areas. In short, costs are not aligned with cost causation, but rather, are allocated
19 based on administrative convenience for the defendants. In the case of consumption in
20 common areas, costs are allocated to shift the cost burden from Defendants who control
21 the consumption and costs incurred to residents who have little, if any, control over such

1 costs.

2 **Q. The Utility Management & Conservation Association (“UMCA”) asserts in its Letter**
3 **of Protest in Opposition to Complainants that the use of an allocation formula to bill**
4 **tenants for water and sewerage is “commonly used and regulated in many**
5 **jurisdictions” and has “been utilized in these jurisdictions for many years without**
6 **violation of consumer protection laws or public utility regulations.” From your**
7 **knowledge and experience in the field, are those assertions correct and complete?**

8 **A.** Attached as Exhibit 2 to this testimony is a summary of submetering laws and regulations
9 across the United States published by The National Association of State Legislatures. As
10 is clear from the summary, states vary widely in regard to their laws and regulations on
11 submetering and allocation formula billing. Some states permit allocation formula billing
12 generally or have not addressed the issue, some states permit allocation formula billing but
13 only subject to certain statutory and regulatory restrictions and limitations, and some states
14 prohibit allocation formula billing. However, there is a fairly broad consensus, based on
15 time honored regulatory principles and practices, that allocation formula billing systems,
16 particularly ones as haphazardly administered as in this case, are decidedly inferior to the
17 use of actual meters that enable precise measurement of consumption, as well as better
18 enabling the determination of cost causation and providing greater transparency. In
19 addition to those reasons for preferring the use of meters over formulas, the recent
20 development of more sophisticated meters, including those that can not only measure
21 throughput but also be effective tools for resource and financial management, combined

1 with increased concerns regarding economic efficiency, social equity, and environmental
2 protection, have led to a clear policy preference for the use of meters over formulas.

3 **Q. The UMCA asserts in its Letter of Protest in Opposition to Complainants that the use**
4 **of an allocation formula to bill tenants for water and sewerage “significantly**
5 **contribut[es] towards water conservation.” Is that assertion correct?**

6 **A.** The notion that the use of an allocation formula could significantly contribute to water
7 conservation is, in theory, possible, but is entirely irrelevant. Whether an allocation
8 formula could contribute to water conservation depends entirely on the design of the
9 formula. The likelihood of that happening in the absence of meaningful regulatory
10 oversight is virtually non-existent because the primary concern of those who design and
11 implement the formula is meeting their revenue requirements, not the attainment of public
12 policy objectives such as efficient use and conservation of resources. The irony of the
13 argument put forth by UMCA is that, in effect, it is making the case for necessity of utility
14 regulatory oversight of the use of an allocation formula. To ensure an allocation formula
15 is not being used in a manner that undermines public policy regarding fairness, consumer
16 rights, price signals, efficiency, affordability, resource conservation, non-discrimination,
17 and environmental considerations. UMCA’s arguments in no way refute the fact that the
18 most meaningful pricing system is one based on the actual and accurate measurement of
19 consumption, costs, and cost causation, not the imposition of a formula.

20 To the extent that UMCA is arguing that sending a separate water and sewer bill to
21 consumers is a better signal for conservation than including water and sewer costs in a

1 bundled rental payment, that contention may or may not be true, but is virtually
2 meaningless because it is comparing a clearly sub-optimal methodology with a sub-sub-
3 optimal methodology, neither of which provide the customer with any meaningful price
4 signals. Neither method reflects actual customer specific costs or cost causation, neither
5 cuts down on the inefficient cross subsidies, and neither does anything to decrease the
6 subsidy to the defendants by requiring all consumers to bear the water and sewerage cost
7 incurred in the common areas. Moreover, it does not even explore the possibility of
8 designing an alternative formulaic pricing arrangement that might cure those defects and
9 better and more transparently signal the value of conservation and end use efficiency.
10 Indeed, regulatory oversight would compel periodic review of the pricing methodology
11 with a view toward more efficient pricing. While it seems highly unlikely that any
12 formula-based pricing is capable of providing customers price signals as meaningful as
13 those provided by actual meters for each rental unit, there is no question that pricing as
14 imprecise and as primitive as what is currently used would not survive without being
15 challenged and improved, if not ultimately replaced with actual metering. Indeed, even
16 cursory review of the pricing makes it clear that regulatory oversight is long overdue.

17 **Q. Do Defendants have a monopoly or are they subject to market forces?**

18 **A.** Defendants clearly have a monopoly in the provision of water and sewerage services to the
19 tenants of the complexes relevant to this proceeding. The tenants, as a practical matter,
20 have no alternative means of procuring bulk supply of water or sewerage services through
21 any means other than that provided via the pipes within the complex, which are entirely

1 within the control of Defendants. While one could argue that the tenants could move to
2 different housing, that is only the case where there are no constraints to moving, constraints
3 such as leases or other contractual obligations, locational constraints, family constraints,
4 transportation considerations, etc. Such constraints certainly limit the short term, and
5 perhaps the longer term, mobility that might free consumers from their captivity to the
6 water and sewerage services provided by Defendants. Moreover, in regard to utility
7 regulation, I do not know of any case where regulators have ruled that monopoly power is
8 somehow mitigated because consumers have the ability to move outside the service
9 territory of a monopoly utility. In this case, the lack of transparency and lack of customer
10 control of water and sewerage services, make comparing the costs of alternative housing
11 to the costs of Defendants' offerings opaque, perhaps too much so for meaningful
12 competition. Indeed it is comparable for shopping for airline tickets when some airlines
13 advertise a price that turns out to be merely a baseline price before taking getting hit with
14 additional costs for checking bags, carrying on bags, getting a seat assignment, arranging
15 boarding priority, etc. Succinctly stated, the residents of the defendants' complexes are
16 subject to excessive market power, if not full monopoly power exercised by Defendants
17 over water and sewerage services. There are only two remedies for that type of market
18 power: opening the markets or subjecting the monopoly power to regulatory oversight.
19 Given that a competitive water and sewer market is not in the offing, indeed, not feasible
20 in this case, the only practicable relief is regulatory oversight, the very *raison d'etre* of the
21 Commission.

1 **Q. Would the Commission concluding that Defendants acted as a regulated public utility**
2 **result in the Commission regulating a multitude of apartment complexes across South**
3 **Carolina?**

4 **A. It is conceivable that other apartment complexes would fall within the purview of the**
5 **Commission should the Commissioners determine to exercise that jurisdiction. As a**
6 **factual matter, I do not know if there are others, and if so, how many. That, however, is**
7 **not the question at hand. I say that for two reasons. The first is simply that it has nothing**
8 **to do with whether or not the Commission has jurisdiction. That is a legal call for the**
9 **Commission to make. Secondly, if the Commission concludes that it possesses**
10 **jurisdiction, it has many options as to how it exercises it. There are numerous examples**
11 **of small water companies, some of them literally “mom and pop” operations subject to the**
12 **jurisdiction of state commissions around the U.S. While, I make no effort to be exhaustive**
13 **in describing options for regulatory treatment of small water companies, suffice it to say**
14 **that there are many, including issuing guidelines and making sure they are followed**
15 **through systematized reporting and auditing requirements that streamline regulatory**
16 **processes, issuing broadly applicable rules exempting companies from certain regulatory**
17 **requirements if certain conditions are met, issuing boilerplate pricing formulas that, absent**
18 **special circumstances, would, if followed, be presumed valid. Variations of these types**
19 **of regulatory processes have been in use for years where the expense and broad scope of**
20 **regulation of large utilities was more than what was needed to protect the consumers served**
21 **by small water and sewer companies. While I express no opinion regarding what is**

1 permitted under the law in South Carolina, I do know that many states do afford public
2 utility commissions flexibility, especially in regard to how they choose to regulate small
3 utilities.

4 **Q. Does this conclude your testimony at this time?**

5 **A. Yes.**

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2022-84-WS

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

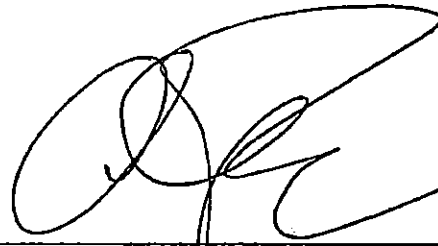
AFFIDAVIT OF ASHLEY BROWN

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

1. I am over eighteen years of age and in all other respects am competent to execute this Affidavit.
2. The Direct Testimony of Ashley Brown provided herewith is testimony I intend to and would offer at a hearing in this proceeding.
3. The Direct Testimony of Ashley Brown provided herewith consists of statements of fact and expressions of opinions I prepared.
4. I swear or affirm that the testimony in the Direct Testimony of Ashley Brown is true.

Page 1 of 2
Affidavit of Ashley Brown
Zito, et al. v. Strata Audubon, LLC, et al.
Docket No. 2022-84-WS

FURTHER AFFIANT SAYETH NOT



Ashley C. Brown

SWORN to before me this 26th day of May, 2023.



NOTARY PUBLIC FOR MAINE

My commission expires: 12/29/2023

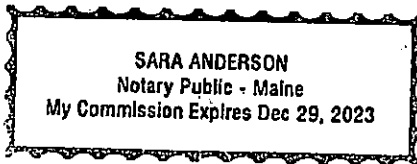


Exhibit 1

to Direct Testimony of Ashley Brown

ASHLEY C. BROWN
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 Belmont, MA 02478
 617-803-2280
 brownashleyc@outlook.com

Ashley Brown is an attorney who had been admitted to practice in Ohio, Massachusetts, and the District of Columbia. He is the Founding Executive Director, and prior to retirement, was Executive Director from 1993-2021 of the Harvard Electricity Policy Group (HEPG) at Harvard University's Kennedy School. HEPG is a leading "think tank" on matters related to electricity restructuring, regulation, and market formation. He has been an instructor in Harvard's Executive program on "Infrastructure in a Market Economy," at the World Bank Regulatory Training Program at the University of Florida, and at the European Union University's Florence School of Regulation. Mr. Brown has also served as an arbitrator in matters relating to the evolution of competition in infrastructure industries.

Before his current activities, Ashley Brown served as Commissioner of the Public Utilities Commission of Ohio, appointed twice by Governor Richard F. Celeste, first for a term from April 1983 to April 1988 and for a second term from April 1988 to April 1993. As Commissioner, he was one of five members responsible for the regulation of the state's electricity, telecommunications, surface transport, water and sanitation, and natural gas sectors.

Prior to his appointment to the Commission, Mr. Brown was Coordinator and Counsel of the Montgomery County, Ohio, Fair Housing Center. From 1979-1981 he was Managing Attorney for the Legal Aid Society of Dayton, Inc. From 1977 to 1979 he was Legal Advisor of the Miami Valley Regional Planning Commission in Dayton. While practicing law, he specialized in litigation in federal and state courts, as well as before administrative bodies. He has served as an expert witness in litigation in the courts and administrative agencies. In addition, Mr. Brown has extensive teaching experience in public schools and universities.

EDUCATIONAL

BACKGROUND	1968	B.S.	Bowling Green State University, Bowling Green, Ohio
	1971	M.A.	University of Cincinnati, Cincinnati, Ohio
	1977	J.D.	University of Dayton School of Law, Dayton, Ohio
			Doctoral Studies (all but dissertation) New York University, New York, New York
	1967		Attended Universidade do Parana; Curitiba, Parana, Brazil as an exchange student

FAMILY	Wife	Edith M. Netter
	Daughter	Sara Mariasha Brown-Worsham
	Daughter	Mariel Brown-Cunningham

CURRENT AND PAST AFFILIATIONS

Member, Editorial Advisory Board of *The Electricity Journal*

Member, Editorial Board, *International Journal of Regulation and Governance*

Member, Board of Directors, e-Curve

Fellow, Centro de Estudios en Regulación e Infraestructura, Fundación Getulio Vargas, Rio de Janeiro, Brazil

Member, Policy Committee, David Rockefeller for Latin American Studies, Harvard University

Member, Brazilian Studies Committee, David Rockefeller Center for Latin American Studies, Harvard University

Member, Advisory Board of Development Gateway Site, The World Bank

Frequent speaker and lecturer on regulatory, infrastructure, and energy policy matters in North and South America, Europe, Africa and Asia.

Member, Board of Directors, Entegra Power

Chairman, Town of Belmont Municipal Light Advisory Board

Member, Board of Directors, Oglethorpe Power Corporation, Tucker, GA

Member, Editorial Advisory Board of *Electric Light and Power*

Vice-Chair, American Bar Association Committee on Energy, Section of Administrative Law and Regulatory Practice

Chair, American Bar Association Annual Conference on Electricity Law

Member, The Keystone Center Energy Advisory Committee

Member, National Association of Regulatory Utility Commissioners

Member, Executive Committee, National Association of Regulatory Utility Commissioners

Chair, Committee on Electricity, National Association of Regulatory Utility Commissioners

Chair, Subcommittee on Strategic Issues, National Association of Regulatory Utility Commissioners

Member, Great Lakes Conference of Public Utilities Commissioners

Member, Great Lakes Conference of Public Utilities Commissioners
Executive Committee

Member, Mid-America Regulatory Conference

Member, Board of Directors, The National Regulatory Research Institute

Member, Advisory Council to the Board of Directors of the Electric Power
Institute

Research

Member, U.S. EPA Acid Rain Advisory Committee

Chair, Planning Section, National Governors' Association Task Force on
Electric Transmission

Member, the Keystone Center Dialogue on Emissions Trading
 Member, the Keystone Center Project on the Public Utility Holding Company Act of 1935

Member, The Keystone Center Project on State/Federal Regulatory Jurisdictional Issues Affecting Electricity Markets

Member, Policy Steering Group, The Keystone Center Project on Electricity Transmission

Member, Advisory Council of the Board of Directors of Nuclear Electric Insurance Limited

Member, Advisory Council of the Consumer Energy Council of America Project on Electricity

Member, Advisory Committee of the Consumer Energy Council of America Air Pollution Emissions Trading Project

Member, National Task Force on Low Income Energy Utilization and Conservation

Member, Board of Directors, Center for Clean Air Policy

Member, National Blue Ribbon Task Force on Allocating the Cost of New Transmission

Of Counsel, Dewey & LeBoeuf

Of Counsel, Greenberg Tauris

Member, Board of Directors, Entegra Power Corporation

INTERNATIONAL EXPERIENCE

Member, U.S. Delegation of State Government Officials in the Center for Clean Air Policy/ German Marshall Fund Sponsored Exchange on Clean Air Issues to Germany, 1989

Member, U.S. Delegation to International Electric Research Exchange (IERE), Rio de Janeiro, Brazil, 1991

Consultant, Hungarian Ministry of Industry and Trade on Gas and Electric Regulatory policy, 1991-1992

Advisor to Ministry of Trade and Industry on Writing New Laws Governing Electricity, Natural Gas, and Regulation

Consultant, SNE, Costa Rican Regulatory Agency, on Transmission Access Issues, 1992
Advisor on Development of Independent Power Producers and Transmission Access

Consultant, World Bank Mission to Hungary Investigating the Financing of New Power Plants for MVM (Hungarian Electric Co.), 1992.

Preparation of Background Materials in Preparation of a World Bank loan to the Hungarian Power Sector

Member, U.S. Delegation, in Conjunction with the U.S. Department of Energy, to the Argentina and United States Natural Gas and Electricity Regulatory Meetings, 1992

Consultant, ENARGAS, the Argentine gas regulatory agency, 1992
Providing Training for ENARGAS Commissioners and Staff

Consultant, USAID India Private Power Initiative Program on the Introduction of Private Generation and Competition into the Public Sector, 1993
Preparation of a Report on Introducing and Promoting Private Investment in the Indian Power Sector

Instructor, Regulatory Training Program of the National Regulatory Research Institute at Ohio State University and the Institute of Public Utilities at Michigan State University, Buenos Aires, Argentina, 1993
Providing Training to Commissioners and Staff of ENARGAS

Consultant, The Province of Salta, Argentina on infrastructure regulation, 1996
Providing Training to Commissioners and Staff of the Regulatory Agency of the Province of Salta

Consultant, USAID, Philippines Electric Sector Restructuring, 1994
Preparation of Analysis and Report on Restructuring the Philippine Power Sector Including the Attraction of Private Capital in Generation, and Introduction of Competition

Consultant, USAID, Russian Electric Sector Restructuring, 1994
Preparation of Analysis and Report on Restructuring the Russian Power Sector Including the Attraction of Private Capital in Generation, and Introduction of Competition

Participant, Harvard University's East Asian Electricity Restructuring Forum, 1994-1995
Delivering a Series of Lectures in China, Indonesia, and Thailand on Reforming the Power Sector

Consultant, Government of Ukraine on Electricity regulatory policy and industry restructuring, 1994-1995
Advisor to the National Energy Regulatory Commission on the Structure, Processes and Substance of Electricity Regulation

Consultant, Government of Brazil on Electric Sector Restructuring, 1995-1996
Adviser to the Ministry of Mines and Energy on Various Issues Related to Privatization and Introduction of Competition in the Power Sector

Consultant, Energy Regulatory Board of Zambia, 1997- 2001
Advisor to the Energy Regulatory Board on the Structure, Processes and Substance of Electricity Regulation

Member, Brazil-U.S. Energy Summit, 1995-1996
Preparation of a Report and Lecture on the Options for the Regulation of a Restructured Brazilian Power Sector

Consultant, Nam Power, the electric utility in Namibia, 1998-1999

Advisor on Development of Independent Power Project and on Restructuring of the Electric Distribution Sector

Consultant, Government of Indonesia on electricity regulation, 1999
Training Government and Industry Personnel on Electricity Regulation

Consultant, Government of Mozambique on reform of the commercial code, 2000
Advisor on Reformation and Rewriting of the Commercial Code

Instructor, South Asia Forum for Infrastructure Regulation, 1999-present
Annual Training Regulatory Personnel from Five South Asian Countries

Consultant, Government of Tanzania on electricity regulation, 2002
Advisor of Rewriting the Laws Governing Energy and Transport Regulation

Consultant to Inter-American Development Bank on Sustainability of Sector Reform in Latin American energy markets, 2001-2002
Preparation of a report and Analysis on the Sustainability of Power Sector and Regulatory Reform in Latin America, with Specific Focus on Colombia, Honduras, and Guatemala

Consultant to Inter-American Development Bank, Brazilian Electric Restructuring, 2002
Preparation of A Report and Analysis on Problems in the Privatization and Market Reform on the Brazilian Power Sector

Consultant to World Bank on Brazilian energy regulation, 2002-2004
Preparation of A Report and Analysis of Means for Improving Regulation of the Brazilian Power Sector.

Consultant to the Brazilian Government on Redesign of Electricity Market, 2003-2004
Advisor to Ministry of Mines and Energy on Electricity Market Design

Consultant to Government of Dominican Republic on Electricity Regulation, 2004
Delivery of a Series of Lectures on Problems in Restructuring and Privatization in Dominican Power Sector

Consultant to Eskom, South Africa, 2004-2005
Advisor on to Eskom on Restructuring of South African Electric Distribution Sector

Consultant to World Bank on Regulation and Market Reform in Russian Power Sector, 2004-2005
Preparation of Report and Lecture on Regulatory Issues in proposed New Market Design of Russian Power Sector, and Attraction of Private Capital

Consultant to Government of Guinea-Bissau on Infrastructure Regulation, 2005
Training Government and Industry Personnel on Infrastructure Regulation

Consultant to the Government of Mozambique on Electricity Regulation, 2006-2007 & 2015-2018
Assisting in the Re-Establishment of the Electricity Regulatory Agency

Consultant to the Government of Equatorial Guinea, 2007 & 2014-2016
Assisting in writing the country's electricity law

Consultant to the Public Utilities Commission of Anguilla,
 2008 *Report on Funding Regulatory Agencies*

Languages: English, Knowledge of Spanish and Portuguese

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Exhibit 2

to Direct Testimony of Ashley Brown

Summary**Utility Submetering**

Updated January 15, 2016

Related Topic: Energy**Note**

The information on this page is for reference by state legislators and legislative staff. If you are a homeowner, landlord or tenant with questions about submetering in your area, please contact your state department or public utility commission department of consumer protection.

Utility submetering is the implementation of meter systems that allows the operator of a multi-unit property to bill each unit for individual utility usage through the installation of additional meters behind a utility meter.

Submetering can be managed by a third-party entity that does not produce electricity, gas or water but resells utilities to the customers behind the utility meter. Utility submetering can also be the installation of an additional meter on the customer side of a utility meter to obtain data about a specific end use or uses inside a facility. Utilities may install these meters on specific appliances as part of utility-managed interruptible service rates or demand response. Submetering differs from master-metering, where a landlord purchases energy at a commercial customer rate and then sub-meters electricity to tenants at a residential or smaller commercial rate.

Twenty-two states, three counties and Washington, D.C., have statutes, regulations, or rulings on utility submetering, as shown in the table below. Several local ordinances are also included in the chart below. While state approaches to utility submetering vary, policies may establish provisions for acceptable uses of submetering in properties, create a mechanism for determining customers charges, and determine if building owners may charge customers additional fees.

Several states, including Alabama, Arizona, California and Texas, have separate provisions for submetering water versus electricity. At least three states—Alabama, Connecticut and Maryland—require a utility commission's approval for specific components of submetering policy. Submetering policies determine if pricing is calculated volumetrically or formulaically while one state requires pricing to be "equitable" to customers.

Policies also address additional fees and service charges by utilities and building operators, including formula-based fees or service charges, device fees; flat service charges; and other "reasonable" fees or charges. Additionally states may prohibit additional fees and service charges. Statutes also address submetering versus mastermetering policies in specific circumstances. A number of policies address fees for late payments separately than other fees and charges. An Oklahoma regulation authorizes submetering if the intent is energy conservation.

State Submetering Policies

State	Submetering Policy
Alabama	Rule W-13 of the Water Rules of the Alabama Public Service Commission generally requires all water sold by a utility with 100 or more customers to be based on metered volume sales. The rule allows utilities to provide flat rate or estimated service for temporary service where the water use can be readily estimated; public and private fire protection. Water used for street sprinkling and sewer flushing under certain circumstances; and other flat rate service arrangement that must be approved by the commission.
Arizona	The Arizona Corporation Commission's Rules on Water requires all water delivered by a regulated water utility to be billed on the basis of metered volume sales. Arizona's regulations allow the utility to provide a fixed charge schedule for temporary service where water use can be readily estimated; public and private fire protection; water used for street sprinkling and sewer flushing under certain circumstances; and other fixed charge schedules approved by the commission (Ariz. Admin. Code, title 14, art. 4 §R14-2-408).
	A landlord may charge separately for gas, water, wastewater, solid waste removal or electricity by installing a submetering system or by allocating the charges separately through a ratio utility billing system. If a landlord charges separately for a utility, the landlord may recover the charges imposed on the landlord by the utility provider plus an administrative fee for the landlord for actual administrative costs only. The landlord shall not impose any additional charges. The rental agreement shall contain a disclosure that lists the utility services that are charged separately and shall specify the amount of any administrative fee that is associated with submetering or the use of a ratio utility billing system (Ariz. Rev. Stat. Ann. §33-1314.01).
	The landlord may charge an administrative fee for the landlord's actual administrative costs. Any monthly administrative fee shall not exceed the greater of the landlord's actual administrative costs or 10 percent of the monthly charges by the utility provider in the aggregate to the landlord. The landlord shall not impose any other additional charges. If the landlord arranges for utility billings to be handled by a third party, the utility billings shall instead include the actual and reasonable cost charged by the third party for the service. Those third party charges shall not exceed ten per cent of the monthly charges by the utility provider for that utility in the aggregate to the landlord. For the purposes of this paragraph, "administrative costs" includes the direct actual costs to the landlord of billing for utilities, including the cost of staff time to calculate and mail the bills, postage and stationery (Ariz. Rev. Stat. Ann. §33-2107).

State	Submetering Policy
California	California law has generally required utility water meters for all new water service connections installed since 1992. In 2004, the state expanded this requirement to pre-existing connections by requiring all urban water suppliers (public or private water companies serving at least 3,000 customers) to install utility water meters on all of their water service connections. The suppliers that receive water from the federal Central Valley Project had to meet this requirement by Jan. 1, 2013 and begin charging their customers based on the actual volume of water delivered by March 1, 2013. Other urban water suppliers must install utility meters on all of their service connections by Jan.1, 2025. Starting Jan. 1, 2010, their charges for any customer with a metered connection must be based on the actual volume of water delivered, as measured by the water meter. The law allows the water companies to recover their related costs through rates, fees, or charges (Cal. Water Code, §525 through 527).
	Where the management provides both master-meter and submeter service of utilities to a homeowner, for each billing period the cost of the charges for the period shall be separately stated along with the opening and closing readings for his or her meter. The management shall post, in a conspicuous place, the specific current residential utility rate schedule as published by the serving utility or the Internet Web site address of the specific current residential utility rate schedule. If the management elects to post the Internet Web site address where the schedule may be accessed, the management shall also: (1) provide a copy of the specific current residential utility rate schedule, upon request, at no cost; and (2) state in the posting that a homeowner may request a copy of the rate schedule from management. (b) If a third-party billing agent or company prepares utility billing for the park, the management shall disclose on each resident's billing, the name, address, and telephone number of the billing agent or company (Cal. Civil Code §798.40).
	The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building or similar residential complex, the master-meter customer shall charge each user of the service at the same rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level that will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service (Cal. Public Utilities Code §739.5).

State	Submetering Policy
Connecticut	For marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the marina, park, or complex owns and is responsible for the utility meters, the device fee shall not exceed the following: for water submeters, two dollars (\$2) per device per space or apartment; for electric submeters, three dollars (\$3) per device per space or apartment; and for vapor submeters, four dollars (\$4) per device per space or apartment (Cal. Business and Professions Code §12240).
	San Diego, CA enacted an ordinance in 2010 that requires sub-meters to be installed in every new multi-unit building with at least three residential units and an existing multi-unit building with at least three residential units, whenever the entire potable water supply piping is being replaced. It exempts existing multi-unit buildings with individual units that are served by more than one cold water riser and one hot water riser system. The ordinance also regulates sub-metered billing by requiring monthly or bi-monthly billing; requiring fixed charges to be allocated equally among units; requiring variable charges to be charged at the same rate as in the water utility's bill; allowing an administrative fee up to \$4 per month; allowing a late fee up to \$10 per billing cycle; and setting bill content and notification requirements.
	Connecticut does not require that utility meters or sub-meters be installed for each unit of a multi-unit building. Submetering is permitted only with the approval of the commission (Conn. Reg. State Agencies §16-11-55).
Delaware	Under Delaware law, landlords who did not install separate submeters for their commercial tenants were regulated under statute prohibiting electricity profiteering where fluctuating utility payments were part of the rent and in light of related federal regulation policy (Del. Code Ann. tit. 25 §5114).
Florida	Where individual metering is not required and master metering is used in lieu thereof, reasonable apportionment methods, including submetering may be used by the customer of record or the owner of such facility solely for the purpose of allocating the cost of the electricity billed by the utility. The term "cost" as used herein means only those charges specifically authorized by the electric utility's tariff, including but not limited to the customer, energy, demand, fuel, conservation, capacity and environmental charges made by the electric utility plus applicable taxes and fees to the customer of record responsible for the master meter payments. The term does not include late payment charges, returned check charges, the cost of the customer-owned distribution system behind the master meter, the customer of record's cost of billing the individual units, and other such costs. Any fees or charges collected by a customer of record for electricity billed to the customer's account by the utility, whether based on the use of submetering or any other allocation method, shall be determined in a manner which reimburses the customer of record for no

State	Submetering Policy more than the customer's actual cost of electricity. Each utility shall develop a standard policy governing the provisions of submetering as provided for herein. Such policy shall be filed by each utility as part of its tariffs. The policy shall have uniform application and shall be nondiscriminatory (Fla. Administrative Code §25-6.049).
Georgia	Georgia's 2010 Water Stewardship Act requires submetering of each new multi-unit residential building and certain retail and light industrial buildings granted a construction permit after July 1, 2012. Tenants in these new buildings must be charged for water and wastewater use based on their measured usage. The act also encourages, but does not require the installation of sub-meters in existing multi-unit buildings and for any office components of newly constructed multi-unit buildings. The act also allows an affected building's owner to seek reimbursement from tenants for common area water usage through an allocation based formula; allows the owner to charge a reasonable fee for establishing, servicing, and billing the tenant's water service; allows water companies to charge for sub-meter installations; relieves owners from liability that results from billing or meter-reading errors by an unaffiliated third-party; and allows the requirement to be temporarily waived under certain circumstances. DeKalb County, GA, which provides public water service, enacted an ordinance in 2008 that requires sub-meters for any water supplied to a multi-unit residential building built after June 1, 2008. It allows multi-unit property owners or landlords to use the sub-meters to bill each tenant for their actual water use. It also requires water meters for any single family residence or condominium built after July 1, 2008.
Indiana	Submetering equipment may be installed in individual units of rented or leased units in a building or in individuals units of a building exempt from commission rules on master metering to fairly allocate the cost of each individual unit's electrical consumption. Tenants may be billed for the total number of kilowatt hours consumed by the tenant during a particular billing period; multiplied by a fraction, the numerator of which is the total electric bill for a master meter, and the denominator of which is the total kilowatt hours consumed on a master meter. The total electric bill for a master meter, in addition to the rate per kilowatt hour, includes any sales tax, demand charges, energy component charges, and any other taxes or charges that are lawfully applied to the bill. The owner, operator, or manager of a building or buildings served by a master meter may not impose on the tenant any extra charges over and above the total electric bill for a master meter (which includes the rate per kilowatt hour and any lawful taxes or charges, but does not include a late payment charge) for a particular billing period than is charged to the owner, operator, or manager of a building or buildings served by a master meter (Ind. Code §8-1-2-36.5).

State	Submetering Policy
Maine	A campground owner or operator may submeter electric service to campground sites within the campground in accordance with this section, as long as electric service is not provided to any particular submeter user for a period greater than 6 consecutive months. A campground owner or operator may charge a submeter user only for kilowatt hours used by that submeter user. The charge that a campground owner or operator may charge a submeter user for electric service may not exceed the kilowatt usage of the submeter user multiplied by the combined rate per kilowatt hour that the campground owner or operator is charged by the transmission and distribution utility and competitive electricity provider (Me. Rev. Stat. Ann. tit. 35A §313).
	Authorizes electric vehicle charging station providers to install electric submeters and only to charge a submeter for kilowatt-hours used (Me. Rev. Stat. Ann. tit. 35A §313-A).
Maryland	"Submetering" means the installation of equipment to determine the actual use of gas or electricity for each residential unit in an apartment house or commercial rental unit in an office building or shopping center. An apartment house, office building, or shopping center that contains a combination of dwelling units or commercial rental units is included under the requirements of this section. With the approval of the Commission, a local housing authority established under Division II of the Housing and Community Development Article may sub-meter any combination of apartment houses, commercial rental units, dwelling units, office buildings, and shopping centers. The Commission shall adopt regulations to establish standards to allocate fairly the cost of each unit's gas or electrical consumption. An owner, operator, or manager of an apartment house, office building, or shopping center who installs submetering equipment under this section to provide bulk metered service may not impose on a unit in the facility any utility cost except the charges that the Commission authorizes and that the gas company or electric company actually imposes on the owner, operator, or manager. The charges imposed shall be allocated among the units in proportion to the actual usage of cubic feet or kilowatt hours by the unit. The owner, operator, or manager of an apartment house, office building, or shopping center may collect an additional service charge not exceeding \$1 per unit per month to cover administrative costs and billing. If the owner, operator, or manager of an apartment house, office building, or shopping center installs sub-meters during the term of a lease or agreement that includes the cost of gas or electricity consumed for the unit, the owner, operator, or manager shall determine the amount of gas or electric costs saved by that unit; and pass that amount on to the unit's occupant as a payment or reduction in rent. The owner, operator, or manager of an apartment house, office building, or shopping center may not be considered a public service company; and may use metering equipment only to allocate fairly the costs of gas or electric

State	Submetering Policy service among the occupants of the apartment house, office building, or shopping center (Md. Public Utilities Code §7-303). The Commission may authorize the use of a master meter in a residential multiple occupancy building for heating, ventilation, and air conditioning services without requiring individual metering or submetering for heating, ventilation, and air conditioning services if: the utility bill for heating, ventilation, and air conditioning services for each individually leased or owned occupancy unit is included in the rent for that unit; the Commission is satisfied that the use of the master meter for heating, ventilation, and air conditioning services will result in a net savings of energy over the energy savings that would result from individual metering or submetering for heating, ventilation, and air conditioning services; and each individually leased or owned occupancy unit has individual metered service for other energy services and directly receives the utility bill for the other energy services (Md. Public Utilities Code Ann. §7-304.1).
Massachusetts	A landlord may cause to be installed by a plumber licensed in the commonwealth, at the expense of such landlord, submetering equipment in the landlord's building to measure the quantity of water provided for the exclusive use of each dwelling unit, provided that such equipment meets the standards of accuracy and testing of the American Water Works Association or a similar accredited association; and provided further, that a sub-meter is installed for each dwelling unit in the building and for the common areas of the building, so that all water used in a building is measured by both a primary meter and a sub-meter. All provisions of this section allowing landlords to charge tenants for water usage shall also be deemed to apply to sewer service charges calculated by means of the same primary meter or sub-meter. A landlord may not charge the tenant of a dwelling unit separately for water usage measured by a submeter, nor allow such tenant to be so charged, unless the submeter measures only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure any water usage for any portion of the common areas or by any other party or dwelling unit; provided further, that a landlord shall not charge such tenant for water supplied through a submeter to the dwelling unit prior to the landlord installing fully functional water conservation devices for all faucets, showerheads and water closets in the dwelling unit; and provided further, that the landlord shall ensure that such water conservation devices are installed and functioning properly at the commencement of each subsequent tenancy in such dwelling unit. A landlord shall determine a calculated cost per unit of water consumption by dividing the total amount of any bill or invoice provided to the landlord from the water company for water usage, the customer service charge and taxes, but not

State	Submetering Policy including any interest for the late payment, penalty fees or other discretionary assessments or charges, for all water provided to the premises through the water company meter in that billing period, by the total amount of water consumption for the entire premises. The total amount charged separately to each submetered dwelling unit for water usage for any billing period shall not exceed such calculated cost per unit of water multiplied by the number of units of water delivered exclusively to the particular dwelling unit for the same billing period, provided that the landlord has verified that the total amounts of water usage measured by all submeters in the building, including all submeters for common areas, does not exceed the total amount of water usage in the building for the same billing period as shown on such bill or invoice. A landlord shall not charge or recover, or allow to be charged or recovered, any additional servicing, administrative, establishment, meter-reading, meter-testing, billing, or submetering fee or other fee whatsoever, however denominated. In the event of nonpayment of a bill to a water company by the landlord, such water company shall have all the remedies against the customer of the water company available pursuant to any law, rule or regulation. A landlord may not shut off or refuse water service to a tenant on the basis that the tenant has not paid a separately assessed submetered water usage charge. (Mass. Gen. Laws ch. 186 §22).
Minnesota	A public utility and the Public Service Commission cannot limit the availability of submetering to a building occupant when the building is served by a public utility's master meter which measures the total electric energy delivered to the building (Minn. Stat. §216B.022).
Mississippi	An apartment house owner, manufactured home community owner or condominium manager may provide for submetering of each dwelling unit or rental unit for the measurement of the quantity of water consumed by the occupants of the unit. If submetering is utilized, tenants may be charged separately for water and wastewater services on a pass through allocated basis for charges incurred by the customer. The charges for a tenant may not exceed the tenant's pro rata share of all water and wastewater services used by all of the tenants in that apartment house, manufactured home community or condominium. Any apartment house owner, manufactured home community owner or condominium manager utilizing submetering pursuant to this section shall disclose the submetering to each tenant and obtain from the tenant an acknowledgment of the submetering in a written document. Submeters installed pursuant to this section must meet the American Water Works Association standards for accuracy. In rendering charges to tenants pursuant to this section, the customer shall provide: beginning and ending meter reads; a statement that the bill is not from the public utility; and a telephone number for tenant inquiries on the bill. Water and wastewater services utilized by

State	Submetering Policy the tenant may not be disconnected for nonpayment of submetered bills (Miss. Code. Ann. §77-3-97).
New Jersey	The New Jersey Board of Public Utilities authorizes submetering for industrial or commercial buildings; publically financed and government-owned buildings; cooperative housing or condominiums; and charitable institutions. In 2005, the Board issued a five-year pilot program for residential submetering of electricity and gas. Residential buildings constructed after August 8, 2011 must install submeters (N.J. Board of Public Utilities Decision, Docket No. WO11060381).
New York	Authorizes residential electric submetering and determines the Public Service Commission holds authority over submetering. Authorizes landlords to charge residents up to, but not more than, the direct metered utility rate for electricity. Establishes different provisions for master metered, rent stabilized or controlled buildings converting from rent inclusion to submetering and for new construction and market rate buildings (N.Y. Public Service Law §54, 53, 65 and 66).
	Where the conversion is to submetering of electricity, with the tenant purchasing electricity from the owner or a contractor retained by the owner, who purchases electricity from a utility at the bulk rate, such schedule of rent reductions is based on the median monthly cost of electricity to tenants derived from data from the United States Census Bureau's 2002 New York City Housing and Vacancy Survey, as tabulated by the New York City Rent Guidelines Board, 51 Chambers Street, Suite 202, New York, N.Y., and available on its website at www.housingnyc.com , adjusted to reflect the bulk rate for electricity plus a reasonable service fee for the cost of meter reading and billing, based on the maximum estimated fee included in the Residential Electric Submetering Manual revised October 2001, published by the New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, NY, and available on its website at www.nyserda.org , and reflected in Operational Bulletin 2003-1. The owner or contractor retained by the owner is not permitted to charge the tenant more than the bulk rate for electricity plus a reasonable service charge for the cost of meter reading and billing. The charge for electricity as well as any related service surcharge is not part of the maximum rent and not subject to this Subchapter. The resolution of any dispute arising from the billing or collection of such charge or surcharge is not within the jurisdiction of the city rent agency. A conversion to submetering does not require rewiring the building provided the owner submits an affidavit sworn to by a licensed electrician that the existing wiring is safe and of sufficient capacity for the building. Every three years, upon the publication of new housing vacancy survey, and tabulation of the survey data by the New York City Rent Guidelines Board, DHCR shall issue a new operational bulletin governing electrical conversions setting forth rent reductions based on the new survey data, and shall move to amend the regulations to incorporate by reference the new Operational Bulletin Housing Vacancy Survey, and

State	Submetering Policy
	Rent Guidelines Board Tabulation. At such time as New York State Energy Research and Development Authority issues a new residential electric submetering manual setting forth a new maximum estimated submetering service fee. DHCR shall move to amend the regulations to incorporate that document by reference (N.Y. Rent and Evictions Law §2202.16). Owners acting as a provider of a utility service (including, but not limited to electricity, gas, cable or telecommunications), may collect surcharges which shall not be part of the legal regulated rent (N.Y. Rent and Evictions Law §2202.27).
North Carolina	Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter (N.C. Gen. Stat. §143-151.42) Boone, North Carolina, which operates a municipal water system, has a local ordinance that requires all new multi-unit developments and buildings with major renovations to have individual water utility meters for each unit. These meters would allow each metered unit to be billed directly by the municipal water system.
North Dakota	Electric service furnished by a public utility under established rate schedules shall not be resold or submetered by a customer unless the rate schedule under which the customer receives service specifically so provides (N.D. Administrative Code §69-09-02-15).
Oklahoma	Residences, apartment complexes, or similar residential units and multicommercial unit complexes may be or may continue to be served with a single utility meter and consumer submeter system, if such measuring of electrical service is deemed to: encourage conservation of energy; contribute to the efficient use of facilities and resources of electric utilities; and results in equitable rates to the electrical consumers affected by such meters (Okla. Administrative Code §165:35-13-7).
Oregon	Subject to the policies of the utility or service provider, a landlord may, except as provided in subsections (2) to (5) of this section, provide for utilities or services to tenants by one or more of the following billing methods: (a) A relationship between the tenant and the utility or service provider in which: (A) The provider provides the utility or service directly to the tenant's space,

State	Submetering Policy including any utility or service line, and bills the tenant directly; and (B) The landlord does not act as a provider. (b) A relationship between the landlord, tenant and utility or service provider in which: (A) The provider provides the utility or service to the landlord; (B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and (C) The landlord: (i) Includes the cost of the utility or service in the tenant's rent; or (ii) Bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning on a pro rata basis the provider's charge to the landlord as measured by a master meter. (c) A relationship between the landlord, tenant and utility or service provider in which: (A) The provider provides the utility or service to the landlord; (B) The landlord provides the utility or service directly to the tenant's space; and (C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided (Or. Rev. Stat. §90-532). If a written rental agreement so provides, a landlord using the submeter billing method described in ORS 90.532 (1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter. A utility or service charge to be assessed to a tenant under this section may consist of (a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge; (b) The cost of any sewer service for wastewater as a percentage of the tenant's water charge as measured by a submeter, if the utility or service provider charges the landlord for sewer service as a percentage of water provided; (c) A pro rata portion of the cost of sewer service for storm water and wastewater if the utility or service provider does not charge the landlord for sewer service as a percentage of water provided; (d) A pro rata portion of costs to provide a utility or service to a common area; (e) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider; and (f) A pro rata portion of the cost to read water meters and to bill tenants for water if third party service reads the meters and bills tenants for the landlord; and the landlord allows the tenants to inspect the third party's billing records. Except as provided in subsection (2) of this section, the landlord may not bill or collect more money from tenants for utilities or services than the utility or service provider charges the landlord. A utility or service charge to be assessed to a tenant under this section may not include any additional
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State	Submetering Policy
Texas	charge, including any costs of the landlord, for the installation or maintenance of the utility or service system or any profit for the landlord (Or. Rev. Stat. §90-536).
	A political subdivision may not authorize the construction or occupancy of a new apartment house, including the conversion of property to a condominium, unless the construction plan provides for the measurement of the quantity of electricity consumed by the occupants of each dwelling unit of the apartment house, either by individual metering by the utility company or by submetering by the owner. This section does not prohibit a political subdivision from issuing a permit to a nonprofit organization for construction of a new apartment house for occupancy by low-income elderly tenants if the nonprofit organization establishes, by submitting engineering and cost data and a sworn statement, that all cost savings will be passed on to the low-income elderly tenants (Tex. Utilities Code Ann. §184.012). The Texas Water Code requires each unit in a building with five or more residential units built after Jan. 1, 2003 to have either an individual water utility meter or sub-meter. If feasible, it requires water companies to install individual meters in such buildings at the building owner's request. The water company can charge reasonable costs for installing the meters. If the water company determines that installing these meters is not feasible, the law requires the property owner to install a plumbing system compatible with sub-meters. For submetering multi-unit property owners, the state's water code limits submetering charges on tenants to the cost per gallon and applicable taxes and surcharges charged by the water company; a late fee up to five percent of the late bill; and a service charge of up to nine percent of the costs related to submetering allocated to each sub-metered unit. The code also requires the property owners to maintain adequate records and make them available to tenants and sub-meters to meet certain standards for accuracy, testing, and record keeping (Texas Water Code §13.501 through 13.506).
Virginia	Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a commercial or residential building, manufactured home park, or campground if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission. If energy submetering equipment, water and sewer submetering equipment, or energy allocation equipment is used in any building, manufactured home park, or campground, the owner, manager, or operator of the building, manufactured home park, or campground shall bill the tenant for electricity, natural gas or water and sewer for the same billing period as the utility serving the building or campground, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of the building, manufactured home park, or campground may charge and collect from the tenant additional service charges,

State	Submetering Policy including, but not limited to, monthly billing fees, account set-up fees or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building, manufactured home park, or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building or campground owner and the tenant in the rental agreement or lease. The building or campground owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. (Va. Code §55-226.2). Notwithstanding any law to the contrary, the Commission shall promulgate regulations and standards under which any owner, operator, or manager of an apartment house, office building, shopping center, or campground, which is not individually metered for electricity or gas for each dwelling unit, nonresidential rental unit, or campsite may install submetering equipment or energy allocation equipment for the purpose of fairly allocating (a) the cost of electrical or gas consumption for each dwelling unit, nonresidential rental unit, or campsite and (b) electrical or gas demand and customer charges made by the utility. In addition to other appropriate safeguards for the tenant, the regulations shall require (i) that an apartment house, office building, shopping center, or campground owner shall not impose on the tenant any charges, over and above the cost per kilowatt-hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company to the owner, including any sales, local utility, or other taxes, if any, except that additional service charges permitted by §55-226.2 may be collected to cover administrative costs and billing, and (ii) that the apartment house, office building, shopping center, or campground owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours. The provisions of this section shall not restrict the right of the owner, operator or manager to recover in periodic lease payments the tenant's fair share of electricity or gas costs attributable to owner-paid areas and costs incurred by the owner, operator or manager in establishing and maintaining the submetering or energy allocation equipment (Va. Code §56-245.2 through §56-245.3).
Vermont	A person operating a recreational campground may provide submetered electric service to campground users on a nonprofit basis, if such service is provided in accordance with rules adopted by the board, including rules relating to notice of rates and charges, accuracy of electrical submeters, and reasonable billing and complaint procedures (Vt. Stat. Ann. tit. 30 §249a).
Washington	Enacted in 2003, Washington's Municipal Water Law requires all municipal water suppliers (public and private water utilities serving at least 15 residential connections) to have meters on all of their service connections by January 2017.

State	Submetering Policy
Washington, D.C.	The Commission shall promulgate rules, including standards, under which any owner, operator, or manager of a building which is not individually metered for electricity or gas for each nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating: the cost of electrical or gas consumption for each nonresidential rental unit; and electrical or gas demand and customer charges made by the utility and electricity and natural gas supplier. A late payment charge shall not be imposed on all amounts, including deferred payment installments, paid by the due date or on amounts in dispute before the Commission. Amounts paid after the due date shall bear a late payment charge of 1 percent, and an additional late payment charge at the rate of 1.5 percent on the remaining unpaid balance per billing month thereafter (District of Columbia Code §34-1552 through 34-1553).

Sources:

- Connecticut Office of Legislative Research, 2013.
- WestlawNext, 2016.

Related Resources

Updated May 11, 2023

Human-Driven Physical Threats to Energy Infrastructure

From simple trespassing and acts of vandalism to more serious attacks on energy infrastructure with rifles, explosives or other destructive devices, states need to be aware of and prepared for physical threats perpetrated by humans.

Energy*Map*

Updated May 01, 2023

Plugged In | May 2023

May edition of the Plugged In Newsletter, NCSL's monthly energy newsletter highlighting key state and federal developments affecting energy policies.

Energy

Updated April 21, 2023

New Support for Energy Projects and Transition to Low-Carbon Power

Major federal investments are allowing state legislatures to pursue new energy policy goals and manage the impacts on consumers, workers and industry of the ongoing transition away from fossil fuels.

Energy

State Legislatures News

Exhibit G

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

203

APP 000205

ABOUT US

ABOUT US

The UMCA community serves the multifamily and commercial real estate industry specific to resource conservation, meter utility management. *The overall Mission and utility allocation industry focuses on issues that may affect utility services for our members.* Our members include manufacturers, service providers, property owners, and managers with an interest in promoting a 'Lifestyle' of conservation and accountability. The UMCA focuses specifically on submetering and allocation billing methods to promote conservation while helping reduce costs through accountability. The UMCA offers members a unique set of member services that include principles and best practices for managing your metering, conservation, and utility management programs.

BECOME A MEMBER

Interested in becoming a member?

This directory has been designed as an internal document for use by member companies. It is NOT intended to be distributed beyond member companies. The association maintains separate listings for distribution to the industry in general. For additional information on those listings, contact the UMCA office.

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[Mission Statement](#)

[Metering Statement](#)

[RUBS Statement](#)

RUBS Statement

RUBS is an acceptable alternative to submetering when the economic cost of submetering, or the risks associated with installing submeters, outweighs the benefits. When deploying any utility cost recovery methodology, the UMCA supports the use of techniques and technologies that best represent the actual consumption of a utility by the multifamily resident or commercial resident, within these constraints.

[RESIDENT UTILITY BILLING](#)

[UTILITY ALLOCATION METHODS](#)

[RUBS BILLING EXAMPLES](#)

[BEST PRACTICES](#)

RESEARCH DATABASE

Our research database continues to expand. The database includes Best Practices, Federal Rules, Member News, Legislative Updates and much more for each individual state.

[CLICK TO ACCESS](#)

✓ In general, to determine the end-user's utility costs, calculations should include one of the following factors:

- (i) Actual occupancy,
- (ii) Ratio occupancy factor,
- (iii) Occupant bedroom factor,
- (iv) 50/50 square footage and occupancy, or
- (v) Cold water capture, hot water allocation.

✓ When using a RUBS allocation method, there should be a specific percentage deduction for common areas, including pools, irrigation, and laundry rooms (if not directly metered), from the total utility cost before calculating resident allocation. The total amount billed to residents must not exceed the total amount billed by the provider.

✓ RUBS and the specific billing methodology used should be fully disclosed and explained in the lease. Any changes pertaining to utility charges in the lease agreement should be signed in an addendum or pursuant to the original lease language.

✓ Residents should be given sufficient written notice in accordance with the lease when changing to a RUBS billing method. Full details and details any associated fees should be disclosed in the notice.

The Multi-Family Resident Utility Billing Regulatory Environment & Legislative Intent

The regulatory environment around multi-family resident utility billing is highly fragmented. Federal laws – administered primarily by the Environmental Protection Agency – generally govern water quality issues, but do not extend to utility billing practices such as RUBS and submetering. According to the National Conference of State Legislatures, 22 states and Washington, D.C. have statutes, regulations or rulings on submetering and/or RUBS extending across one or more utility types. Additionally, there are many county/municipal ordinances that regulate multi-family utility billing in one way or another. In many cases, whether at the state or municipal level, there are separate requirements for water, electricity and natural gas. Water-related laws tend to be more restrictive and reflect drought conditions, such as in California. Accordingly, with respect to water, there is a regulatory bias toward submetering versus RUBS. However, in some states, such as Florida, the electric utility environment is more restrictive.

The intent of applicable laws is generally two-fold:

- ✓ Conservation of resources – water, electricity, gas.
- ✓ Consumer Protection – to ensure that residents are charged fairly for their utility consumption and prohibiting property owners from profiting from providing utilities, e.g., not charging residents more for utilities than what the property was charged by the utility. Many laws also require disclosure of utility billing methodologies – RUBS (including specific billing methodology) and submetering – in resident lease agreements.

Some of the laws, contain requirements and/or prohibitions around direct metering, submetering or RUBS.

Additionally, some laws address assessment of fees to residents for the administrative costs of maintaining a RUBS program. Such fees are generally permitted – and expressly permitted in some jurisdictions – however, they are prohibited in a few jurisdictions for certain utility types, such as water in Massachusetts and Miami-Dade County.

THE BENEFITS OF RUBS

CONCLUSION

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Name		E-mail	
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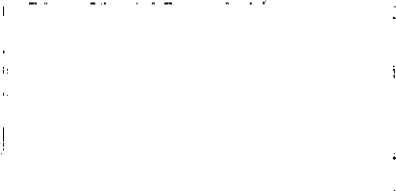
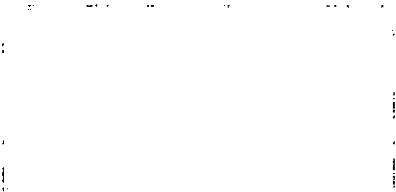
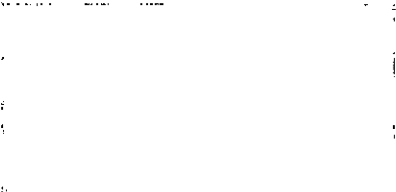
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MEMBERS

OUR MEMBER ASSOCIATIONS

	ATI ENERGY www.atienergygroup.com
	AMS BILLING www.amsbilling.com
	ARGEN www.argeninc.com
	AW SERVICES GROUP www.awservicesgroup.com

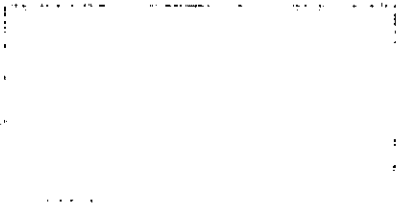


www.camdenliving.com



CONSERVICE

conservation.com



CRESTLINE SOFTWARE LLC DBA MUNIBILLING

munibilling.com



EDGE UTILITIES

www.edgeutilities.com



ENERGY MANAGEMENT SYSTEMS

www.ems3.com



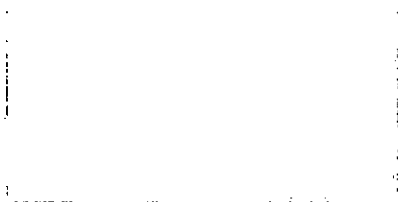
ENTRATA

www.entrata.com



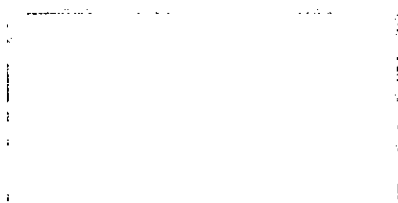
GRIDGEAR SOLUTIONS LTD.

www.gridgear.ca



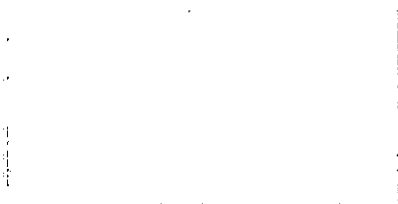
GRIFFIS RESIDENTIAL

GriffisResidential.com



GUARDIAN WATER & POWER

www.guardianwp.com



H2O DEGREE

www.h2odegree.com



JET UTILITIES

jet.industries/jet-utilities



LEVITON

www.leviton.com



LISS TECHNOLOGIES GROUP

www.lisstechologies.com



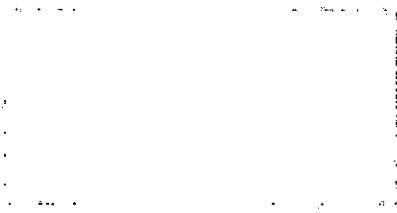
MANAGE AMERICA

www.ManageAmerica.com



METER TECHNOLOGY WERKS

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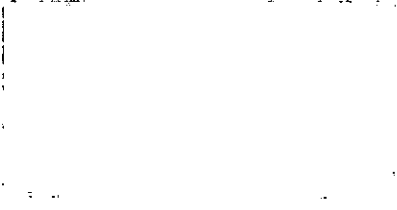
METERGY SOLUTIONS

www.metergysolutions.com



MINOL

www.minolusa.com



MULTIFAMILY UTILITY COMPANY, INC.

www.multifamilyutility.com



NATIONAL EXEMPTION SERVICE

www.submeter.com



NATIONAL UTILITY GROUP

www.nationalutilitygroup.com



PIONEER ENERGY MANAGEMENT

1 2 3 4 5 6 7 8 9 10 11 12

13 14 15 16 17 18 19 20 21 22 23 24

POWERSTREAM ENERGY SERVICES
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QMC METERING SOLUTIONS

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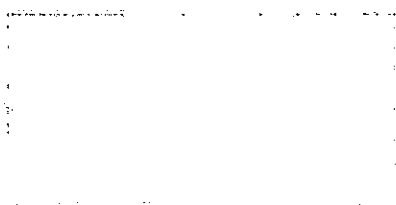
REAL PAGE

realpage.com



RESIDENCE BILLING

www.residencebilling.com



SOUTHCROSS SECURITY

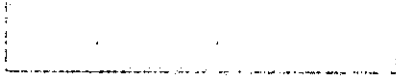


SPECTRUM UTILITIES

www.spectrumsubmetering.com



SUBMETER SOLUTIONS, INC.



submetersolutions.com



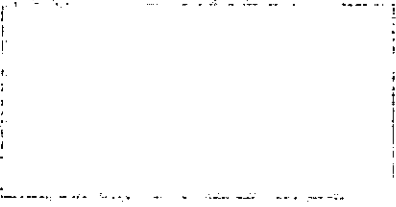
SYNERGY UTILITY BILLING

www.synergyutilitybilling.com



TEAL SYSTEM

www.tealsystem.com



TEHAMA WIRELESS

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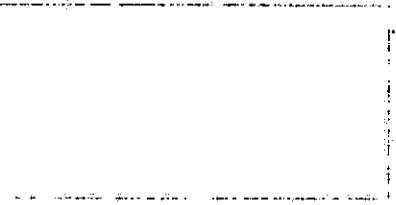
UTILITY MANAGEMENT SOLUTIONS

utilitymanage.com



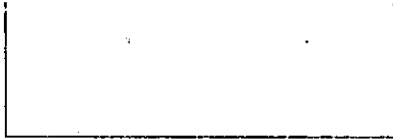
WATER SYSTEMS

www.getwatersystems.com

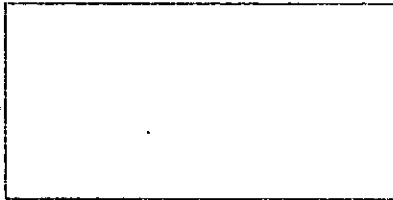


WH TECH SERVICES, INC.

www.whtechservices.com



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Exhibit H

Exhibits to Complainants' Motion for Order Granting Complainants Relief and Memorandum in
Opposition to Respondents' Request for an Order Dismissing on the Written Record

Zito, et al. v. Strata Audubon, LLC, et al.

Docket No. 2022-84-WS

215

APP 000217

Consent: Subject Response 000001

copy of Audubon (m24) 01.20.xh

Contractor Subpoena Response 000002

Total Bills this Month:	217
Avg. Water this Month:	\$25.34
Avg. Trash this Month:	\$11.80
Avg. Sewer this Month:	\$32.90
Avg. Acct. Setup this Month:	\$20.00
Avg. Convenience Charges this Month:	\$78.87
Avg. Convenience Charges last Month:	\$50.25
Avg. Bill this Month:	\$1527.40
Avg. Bill last Month:	\$1500.44
Total lost Due to Promotion:	\$235.80

219

Converge Subpoena Response 000004

copy of Audition (02/4) 02.30.40

Conversion Subsystem Response 000005

copy of Audubon (1902-4) 02.20.19

Item	Unit	QTY	UNIT PRICE	AMOUNT	TAX	TOTAL	REMARKS
1 Non-Schedule Unit	2108						
2 Non-Schedule Unit	2112						
3 Non-Schedule Unit	2907						
4 Non-Schedule Unit	2901						
5 Non-Schedule Unit	2914						
6 Non-Schedule Unit	2702						
7 Non-Schedule Unit	2907						
8 Non-Schedule Unit	2907						
9 Non-Schedule Unit	2709						
Total							

Total Bills this Month	219
Avg. Water this Month	\$22.11
Avg. Trash this Month	\$11.70
Avg. Sewer this Month	\$29.58
Avg. Acct. Setup this Month	\$40.00
Avg. Convenience Charges this Month	\$48.48
Avg. Convenience Charges last Month	\$79.82
Avg. Bld this Month	\$1783.63
Avg. Bld last Month	\$1804.02
Total Fees Due to Promotee	\$336.22

For Internal Company Use Only - Do Not Distribute Outside the Company

Copy of Audited (2020-01-2025)

Summary of Utilities Billed - Q1 1/1/2020 - 3/31/2020 (Due 3/1/2020)																											
#	Name	Account #	Unit	Move In	Doc	Received Date	Water	Sewer	Trash	Vacant Electric	Vacant Service Fee	Appl. Setup	Service Fee	Courtesy Credit	Employee Rent	Charge	Insurance	Parking	Net Control	Net Fee	Net Rent	Storage	Commons	Owner	Credits	Total	
Leave Forward Data						01/01/20	02/01/20	03/01/20	04/01/20	05/01/20	06/01/20	07/01/20	08/01/20	09/01/20	10/01/20	11/01/20	12/01/20	01/01/21	02/01/21	03/01/21	04/01/21	05/01/21	06/01/21	07/01/21	08/01/21	09/01/21	
Utilities Paid (2020)						01/01/20	02/01/20	03/01/20	04/01/20	05/01/20	06/01/20	07/01/20	08/01/20	09/01/20	10/01/20	11/01/20	12/01/20	01/01/21	02/01/21	03/01/21	04/01/21	05/01/21	06/01/21	07/01/21	08/01/21	09/01/21	
1	Maria Perez (2020)	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
2	Robert Luciano Jr.	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
3	Leah Smith	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
4	Marcia Rodriguez	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
5	David Mendez	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
6	Chela Rodriguez	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
7	Christy Alcantara	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
8	Alonso Hernandez Jr.	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
9	Robert Gonzalez	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
10	Maribel Salas	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
11	Maribel Salas	11112009					11112009	11112009	11112009				11112009							11112009					11112009		
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copy of Audubon [0824] 03.20.17

101 Kaiti Teitahi	12/22/2018	1	09/15/18	\$285.50	\$33.72	\$12.00				\$4.87		\$9.00		\$3.50		\$182.00		\$0.00	\$802.48	\$887.48
110 Jesse Matheson	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$80.00		\$12.00		\$0.00		\$12.00		\$0.00	\$299.71	\$312.99
111 Thomas Maitland	01/13/2019	1	04/29/18	\$0.00	\$0.00	\$0.00				\$12.00		\$12.00		\$0.00		\$141.78		\$0.00	\$1,641.90	\$1,655.88
112 Nealea Bickel	01/10/18	1	01/10/18	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
113 Jennifer Bickel	12/22/18	1	01/26/18	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
114 Anthony Bickel	04/27/19	1	01/26/18	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
115 Highway Newton	12/22/18	1	01/26/18	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
116 Tara Allen	01/13/2019	1	01/13/2019	\$28.51	\$35.62	\$12.00				\$4.87		\$9.00		\$3.50		\$182.00		\$0.00	\$1,641.90	\$1,655.88
117 Tamara Cole	04/27/19	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
118 Michael Cole	04/27/19	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
119 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
120 Kaiti Teitahi	04/27/19	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
121 Terry Hunt	06/27/17	1	06/27/17	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
122 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
123 Jacob Brown	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
124 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
125 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
126 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
127 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
128 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
129 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
130 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
131 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
132 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
133 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
134 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
135 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
136 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
137 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
138 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
139 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
140 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
141 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
142 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
143 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
144 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
145 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
146 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
147 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
148 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
149 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
150 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
151 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
152 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
153 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
154 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
155 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
156 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
157 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
158 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
159 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
160 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
161 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
162 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
163 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
164 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
165 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
166 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
167 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
168 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
169 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
170 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
171 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
172 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
173 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
174 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
175 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
176 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
177 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$80.00		\$0.00	\$189.09	\$195.90
178 Kaiti Teitahi	12/27/2019	1	04/27/19	\$13.29	\$17.51	\$19.00				\$6.82		\$9.00		\$0.00		\$				

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Total \$/lb this Month:	217
Avg. Weight this Month:	\$24.08
Avg. Thrash this Month:	\$11.89
Avg. Sower this Month:	\$31.71
Avg. Acc'd. Setup this Month:	\$20.00
Avg. Commodity Charges this Month:	\$73.12
Avg. Commodity Charges last Month:	\$68.47
Avg. ROI this Month:	\$1505.74
Avg. ROI last Month:	\$1541.49
Total loss due to Fraction:	\$344.25

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Conservé Subprime Response 00001

Total Bill this Month:	215
Avg. Water this Month:	\$22.29
Avg. Trash this Month:	\$11.91
Avg. Sewer this Month:	\$28.39
Avg. Acid Setup this Month:	\$20.00
Avg. Convenience Charges this Month:	\$67.85
Avg. Convenience Charges last Month:	\$72.78
Avg. Bill this Month:	\$1780.06
Avg. Bill last Month:	\$1741.88
Total fees Due in Promotion:	\$167.10



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Summary of UNICEF BHWB-COC 2/1/2020 - 6/30/2020 Due 6/30/2020																												
#	Name Service Dept Address Contract Start	Account #	Line	Move In	Disc	Revised Date	Water 000000-03/31/20	Sewer 000000-03/31/20	Trash 000000-03/31/20	Vacant Electric 000000-03/31/20	Vacant Service Fee 000000-03/31/20	Acct. Group	Service Fee 000000-03/31/20	Country Club 000000-03/31/20	Golf Course 000000-03/31/20	Insurance 000000-03/31/20	Parking 000000-03/31/20	Post Office 000000-03/31/20	Pet Fee 000000-03/31/20	Pet Shop 000000-03/31/20	Rent 000000-03/31/20	Storage 000000-03/31/20	Telephone 000000-03/31/20	Current Balance	Current Balance	Credits	Total	
1	Admission Fee (John)																											
2	20000000																											
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Consent to Publish: 000213

Copyright Subscribers: B400004 005614

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	6 Non-Mileage Unit	2402																	\$0.00	\$0.00		\$0.00		
	8 Non-Mileage Unit	2413																	\$0.00	\$0.00		\$0.00		
	9 Non-Mileage Unit	2506																	\$0.00	\$0.00		\$0.00		
	4 Non-Mileage Unit	2703																	\$0.00	\$0.00		\$0.00		
	6 Non-Mileage Unit	2732																	\$0.00	\$0.00		\$0.00		
	10 Non-Mileage Unit	2807																	\$0.00	\$0.00		\$0.00		
	11 Non-Mileage Unit	2832																	\$0.00	\$0.00		\$0.00		
	12 Non-Mileage Unit	2932																	\$0.00	\$0.00		\$0.00		
	13 Non-Mileage Unit	3018																	\$0.00	\$0.00		\$0.00		
Total	Non-Mileage/Event % Market Demand																		\$0.00	\$0.00		\$0.00		
	Total	604			\$1,643.34	\$8,376.49	\$2,817.37	\$142.33	\$2,680.00	\$1,800.00	\$1,842.14	\$-174.90	\$400.00	\$1,131.00	\$25.26	\$8,547.80	\$30.00	\$448.00	\$244,706.13	\$105.00	\$65,899.27	\$507,777.89	\$219.00	\$3,626,89.89

Total Bills this Month:	214
Avg. Water this Month:	\$20.75
Avg. Trash this Month:	\$11.61
Avg. Sewer this Month:	\$25.63
Avg. A/C, S/Wg this Month:	\$20.00
Avg. Convenience Charges this Month:	\$66.61
Avg. Convenience Charges last Month:	\$67.67
Avg. Btl this Month:	\$1016.85
Avg. Btl last Month:	\$1034.82
Total fees Due in Transition:	\$162.78

City of Aurora (05/16/2023)

City of Aurora (05/16/2023)

Summary of Utilities Billed - Q1 4/1/2020 - 3/31/2020 Due 4/1/2020

#	Name	Account #	Unit	Meters	Area	Shower Date	Water	Sewer	Trash	Vacated Electric	Vacated Service Fee	Auto. Setup	Service Fee	Courtesy Credit	Grace	Insurance	Parking	Pest Control	Ref Fee	Ref Ret	Ref	Storage	Community	Concess	Credits	Total
							04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20				04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	04/01/20-04/01/20	
1	Altera Power Co	11212019					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
2	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
3	Lucas Smith	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
4	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
5	Alfred Johnson (T)	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
6	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
7	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
8	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
9	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
10	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
11	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
12	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
13	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
14	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
15	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
16	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
17	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
18	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
19	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
20	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
21	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
22	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
23	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
24	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
25	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
26	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
27	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
28	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
29	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
30	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
31	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
32	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
33	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
34	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
35	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
36	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
37	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
38	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
39	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
40	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
41	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
42	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
43	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
44	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
45	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
46	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
47	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
48	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
49	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
50	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
51	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
52	Robert Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
53	Michael Rodriguez	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
54	David Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
55	Chloe Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
56	Cheryl Johnson	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
57	Altera Services	04/01/20					04/01/20	04/01/20	04/01/20	04/01/20			04/01/20													
58	Robert Johnson	04/01/20					04/01/20	04																		

Conserv. Sci. 2009, 13: 100017

Total RT's this Month:	208
Avg. Wear this Month:	324.16
Avg. Trash this Month:	\$11.88
Avg. Sewer this Month:	\$30.87
Avg. Acid. Setup this Month:	\$25.00
Avg. Cosmenica Charges this Month:	\$72.38
Avg. Cosmenica Charges last Month:	\$64.63
Avg. Bid this Month:	\$1533.95
Avg. Bid last Month:	\$1568.88
Total loss Due to Proximate:	\$82.26

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Thomson Reuters Practice Solutions

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Summary of Unfunded (Unmet) - OC - 5/1/2020 - 5/31/2020 Due 5/31/2020

Agency	Account #	Unit	Move In	Out	Unfunded Date	Water	Gas	Trash	Vehicle Expense	Personal Services Fee	Asset Setup	Service Fee	Commuter	Country Club	Employee Rent	Croquet	Insurance	Parting	Post Control	Pub Fee	Fun Fee	Food	Storage	Trade Show	Community	Charity	Other	Total
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copy of Audited 2020 Q 07 2020

Avg. Taxes 100 Months	\$11.28
Avg. Salary 100 Months	\$26.18
Avg. Accr. Salary 100 Months	\$20.00
Avg. Compensation 100 Months	\$88.23
Avg. Compensation Charges 100 Months	\$11.88
Avg. Net 100 Months	\$101.53
Avg. Net 100 Months	\$101.53
Total Net Due to Provider	\$191.80

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The following report is provided for informational purposes only. It is not intended to be used for legal or financial purposes.

copy of Audited (2023) 05.18.23

Summary of Utilities Billed - Q2 (6/1/2018 - 6/30/2018) Due 6/15/2018		Account #	Unit	How In	Code	Normal Date	Water	Sewer	Trash	Vacant Electric	Vacant Service Fee	Acct. Setup	Service Fee	Amenity	Greening Credit	Employee Rent	Garage	Insurance	Parking	Pest Control	Pool Fee	Pool Rent	Pest	Storage	Community	Current	Credits	Total
							06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18				06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	06/01/18 - 06/30/18	
Audited Part 08/20																												
1	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
2	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
3	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
4	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
5	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
6	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
7	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
8	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
9	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
10	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
11	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
12	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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20	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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26	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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51	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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56	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
57	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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63	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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69	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			
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71	Robert McQuinn	840917				03/04/18	\$44.42	\$44.42	\$10.00																			

Call Service Subject Response 000023

Conservation Subproposals Response 000024

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CONSERVACE

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Name		Account #	Last	Month	Class	Normal Date	Amount	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year
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Total Real Avg Monthly	\$0
Avg. Water Bill Monthly	\$29.75
Avg. Trash and Storm	\$13.68
Avg. Sewer Use Monthly	\$62.15
Avg. Fuel, Siding Use Monthly	\$291.00
Avg. Community Charges Use Monthly	\$75.20
Avg. Community Charges Sewer Monthly	\$88.15
Avg. MSW Use Monthly	\$1588.52
Avg. MSW Inc Monthly	\$1887.45
Tiered Gas Cost by Period:	\$409.77
CHARGE PRICE	# 8075 / 8 / 1250242 / 25 / 15 / PM

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