

January 27, 2020

By Email and First Class Mail To:

105th Management, Inc.
21 Orinda Way, Suite C #521
Orinda, CA 94563

Re: Resolution of PG&E Utility Dispute between Management and Tenants of
722 105th Avenue

Dear 105th Management:

I am writing to formally offer a proposal for resolution of the ongoing PG&E Utility dispute between 105th Management, Inc. (“105th Management” or “management”) and the tenants of 722 105th Avenue (the “tenants”), on behalf of and as agreed to by a majority of those tenants. Greg Minor and I have had the opportunity to meet and speak with a majority of the tenants at 722 105th Avenue, to discuss the findings detailed in my office’s 12/09/2019 memorandum, regarding our review and evaluation of the PG&E utility dispute amongst the parties. In our discussions with tenants their chief concerns were with (i) the accuracy and transparency of 105th Management’s billing practices, and (ii) the proper recording and application of payments tendered by the tenants.

As such, the Tenants propose the following:

Apportioning PG&E Utility Costs Moving Forward

1. That management, at its own expense, procure, install, and calibrate submeters for each tenant, where a meter has not otherwise already been installed; and that any existing submeter be calibrated as needed.
2. That management establish procedures and practices for the regular and periodic reading of those submeters, and apportion PG&E utility bills based upon actual usage, as recorded by and read from those submeters.
3. That management exercise standardized billing practices by providing itemized monthly invoices to each tenant, with supporting vendor statements either attached, or universally accessible through shared digital storage, and that tenants be afforded a reasonable payment remittance period of not less than 10 business days.
4. That the cost associated with powering the street facing lighting and the security gate, currently tied to the power panel at 722 105th Ave., is either carried by the

tenants' incubator (Eco Cannabis) as a security expense, or apportioned across all tenants on the property parcel.

5. That the cost associated with the power consumed by the tenant occupying the loading dock at 722 105th be apportioned separately to ensure that equity applicants are not being billed for such consumption.

Response to Concerns Raised by 105th Management in Jan. 21, 2020 Email

The tenants believe that this proposal is the best means to ensure transparent and accurate apportionment of PG&E utilities across the tenants at 722 105th Ave. This proposal was summarized in my email to management, on January 21, 2020. In response to that email, Ms. Zabrina Law and Mr. Brian Collins raised several concerns specific to the tenant's proposal, which I will address below:

- i. *"[t]here is no debate that the tenants of 722 have collectively used the utilities billed...other than...for street facing lighting..."*

It has recently been brought to our attention that the street facing lighting is not the only consumer of power on the 722 panel, aside from the equity tenants. Purportedly, the security gate, as well as a non-equity tenant occupying the loading dock at 722, are both drawing off of the 722 panel. Observations have been made that there is additional conduit running from that same panel, the recipients of which have not yet been identified.

- ii. *"What [the proposal] is now stating is counter to [the recommendation in] Section 6.2.1(i) of the memo...where '[e]ach Tenant [shall] procure and install their own sub-meter...'. This is now a significant change in plans and also contradicts the existing leases."*

While the memo may have made the recommendation that each tenant procure and install their own submeters, this presently is a negotiation for a resolution of an ongoing dispute, and the majority of tenants participating have agreed to request that management absorb the cost of those improvements, particularly since many of those tenants have less than (1) year left on their leases, and it is not clear whether management intends or is even willing to consider renewing those leases for an additional term. If management is willing to negotiate an extended term, the tenants may be more amenable to making those improvements at their own expense.

- iii. *"It is impossible to bill based on actual usage, as PG&E bills by time of use and not solely by the amount of KWh used. Even with regular meter readings, the bill will need to be apportioned by an estimated formula."*

There are many submeters on the market that perform interval data reading for precisely this purpose, measuring power consumption during peak and off-peak time periods. A cursory search on google found numerous

submetering products available on the market that could measure KWh used by time of use.

- iv. *"We do not see itemized statements as being a necessary step..."*

This position does not take into account that a substantial amount of trust that has been lost between management and tenants. While making management's spreadsheets available is a step towards transparency, spreadsheets themselves are not static and can be changed or manipulated; in an environment where trust has been eroded, asking the tenants to rely on management's spreadsheets is likely not adequate. Although I am unfamiliar with whether Quickbooks itemizes bills, it can definitively itemize invoices, which is what the tenants should be furnished with.

Historical Apportionment; Billing Reconciliation & Application of Payment(s)

The tenants have been advised that they do have an obligation under the lease and at law to pay for the utilities that they consume. Further, the tenants were advised this past week, that it would be in everyone's best interest to keep the PG&E account active and in good standing, while we attempt to resolve the ongoing dispute. However, in attempting to reach a consensus amongst the tenants on how to address historical apportionment and the outstanding PG&E obligations, the additional the tenants raised the issue of management's billing reconciliation and application of payments made by the tenants.

In further review of management's spreadsheet, the PG&E statements, and documented payments made by the tenants, there appears to be significant discrepancies in management's records. Some tenants have produced documentary evidence of payments made that do not appear to be recorded in management's records nor applied to those tenants' historical balances; further, management's records indicate that payments were collected in certain periods, but corresponding PG&E statements indicate that no payment was received by PG&E for those same periods. This raises the issue of management's collection and recording practices, billing reconciliation, and application of the tenants' payments.

I have asked each of tenants to furnish my office with copies of documentation confirming all payments made to management, including but not limited to, cancelled checks, receipts, money-orders, etc. Again, transparency and accuracy is of the utmost importance in this regard. I would ask that management also review their own records in this regard to ensure the proper recording, reconciliation and application of the tenants' payments.

Conclusion

Finally, I would be remiss not to discuss the potential outcomes of the tenants and management not reaching a resolution of this dispute. Moving forward under the

status quo will likely result in: continued confusion amongst the tenants as to the accuracy, transparency and validity of management's service invoices; possible termination of electrical services to 722 105th Ave., thereby damaging the tenants' businesses; possible civil litigation brought against management by the tenants, as a result; and the possible suspension and/or revocation of the permit issued to the tenants' general incubator, Eco Cannabis, should the termination of utility service cause the equity incubates to cease operations during the incubation period. As such, I think it would be in the best interests of all involved, if we could continue to work together towards an amicable resolution, as opposed to engaging in inflammatory or threatening behavior.

My hope is that management will reconsider the tenants' proposal for resolving the dispute moving forward, or at the very least offer a counterproposal that will similarly ensure transparent and accurate billing, which can be presented to the tenants for consideration. I am open to meeting in person to discuss possible resolutions, should management be inclined to do so.

Sincerely,

Knox & Ross Law Group



Zachary A Knox, Esq.
Attorney and Legal Services Provider
Equity Technical Assistance Program

Cc: Tenants of 722 105th Avenue (by email)

Office of the City Administrator
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