



## **Filing Receipt**

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**Control Number - 56213**

**Item Number - 2**

**DOCKET NO. 56213**

<b>SETTLEMENT AGREEMENT AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>REPORT TO THE COMMISSION</b>	<b>§</b>	
<b>REGARDING AQUA TEXAS, INC.'S</b>	<b>§</b>	<b>OF TEXAS</b>
<b>VIOLATIONS OF TWC §§ 13.135 AND</b>	<b>§</b>	
<b>13.136(a) AND 16 TAC §§ 24.165(a)</b>	<b>§</b>	

**SETTLEMENT AGREEMENT AND REPORT TO THE COMMISSION**

The Staff of the Public Utility Commission of Texas (Commission) and Aqua Texas, Inc. (Aqua) (together, the parties) enter into this settlement agreement and file this joint report to the Commission. The agreement resolves and concludes Commission Staff's investigation of Aqua for violations of Texas Water Code (TWC) §§ 13.135 and 13.136(a), as well as 16 Texas Administrative Code (TAC) §§ 24.165(a), relating to improper billing .

**The parties agree as follows:**

1. The parties agree to the assertions and stipulate to the facts contained in this agreement and its attachments and request approval of an order by the Commission consistent with the details contained herein.
2. The Commission has jurisdiction over this matter under TWC § 13.041.
3. Aqua is a Texas for-profit corporation registered with the Texas secretary of state under filing number 800304878.
4. Aqua operates, maintains, and controls facilities for providing retail water service under CCN number 13254 in Bandera, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Kimble, Live Oak, Llano, Medina, Nueces, Travis, Williamson, and Wilson counties.
5. On or about July 13, 2022, Commission Staff provided Aqua with notice of its investigation, the results of the investigation, information about Aqua's right to a hearing, and an opportunity to explain its activities.
6. Commission Staff recommends, and Aqua agrees to pay, an administrative penalty of \$20,000 for the violations detailed in this agreement.
7. Aqua agrees to bill its customers according to the terms of its tariff.

8. This agreement resolves all matters related to Aqua for violations of TWC §§ 13.135 and 13.136(a), as well as 16 TAC §§ 24.165(a).

**Applicable Requirements**

9. TWC § 13.135 prohibits a utility from charging any rate for utility service other than as provided in TWC chapter 13.
10. TWC § 13.136(a) requires each utility to file with the Commission tariffs showing all rates that are subject to the original and appellate jurisdiction of the Commission and that are in force at the time for any utility service, product, or commodity offered.
11. Under 16 TAC § 24.165(a), bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's tariff.

**Improper Billing Language**

12. In a complaint filed with the Commission on December 3, 2021, a customer of Aqua reported that her bill included two fees both labeled "Turn on Charge". One fee amounted to \$50 and the other to \$45.
13. Commission Staff researched Aqua's tariff for the region and determined that it did not include a fee called "Turn on Charge".
14. However, the amounts assessed for the Turn on Charge matched the amounts listed on the tariff for a fee called "Transfer Fee" for water service (\$50) and a fee called "Transfer Fee" for sewer service (\$45).
15. The language on Aqua's bill did not match the language in its tariff.

**Corrective Action**

16. As of May 24, 2022, Aqua revised its billing language to match the language used in its tariff.

17. On November 9, 2023, Aqua filed an application for a minor tariff revision, proposing to revise the “transfer fee” language to read “service initiation fee” in order to reduce customer confusion. As of the date of this agreement, Commission Staff has recommended approval of the application.<sup>1</sup>

**Administrative Penalty**

18. Under TWC § 13.4151(a), the Commission may assess an administrative penalty not to exceed \$5,000 for each violation of TWC chapter 13 or a rule or order adopted under TWC chapter 13. Each day the violation persists may be considered a separate violation.
19. Commission Staff recommends, and Aqua agrees to pay, an administrative penalty of \$20,000 for the violations discussed in this settlement agreement.
20. The parties agree that the recommended administrative penalty is reasonable.
21. Consistent with TWC § 13.4151(b), and in support of the agreed administrative penalty, Commission Staff provides the following analysis of factors required for consideration when determining a reasonable and appropriate administrative penalty:
- a. ***The nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions.*** Commission Staff asserts that the \$20,000 recommended administrative penalty reflects the nature of the violations described in this agreement. While it is imperative that the fees that Aqua includes in its bills correspond to the fees in its tariff, Aqua’s customers were not overcharged as a result of the inconsistency in language.
- Ultimately, Commission Staff asserts that Aqua’s violations, described in this agreement, support the imposition of the recommended administrative penalty.
- b. With the respect to the violator:
1. ***The history and extent of previous violations.*** Commission Staff is not aware of any previous violations of TWC §§ 13.135 or 13.136(a) or of 16 TAC §§ 24.165(a).

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<sup>1</sup> *Application of Aqua Texas, Inc. for a Minor Tariff Change*, Docket No. 55818, Commission Staff’s Final Recommendation at 1 (Jan. 24, 2024).

2. *The degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided.* Commission Staff finds the violation was the result of administrative error, which could have been avoided.
  3. *The demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation.* Aqua has since revised its billing language to correspond with the fees included in its tariff.
  4. *Any economic benefit gained through the violation.* Aqua did not receive any economic benefit as a result of the violation.
  5. *The amount necessary to deter future violations.* Commission Staff finds the recommended administrative penalty is the appropriate amount to deter future violations of this nature.
- c. *Any other matter that justice may require.* The recommended administrative penalty was calculated with consideration toward Aqua's willingness to revise its tariff and change its billing practices.

#### **Settlement Terms**

22. Aqua acknowledges that billing its customers in a manner that is inconsistent with its tariff constitutes a violation of TWC §§ 13.135 and 13.136(a), as well as 16 TAC §§ 24.165(a).
23. Aqua agrees to bill in accordance with its tariff in the future and to comply with TWC §§ 13.135 and 13.136(a), as well as 16 TAC §§ 24.165(a).
24. Unless specifically provided for in this agreement, Aqua waives any notice and procedures that might otherwise be authorized or required in this proceeding.
25. Nothing in this agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in TWC and the Commission rules.
26. A party's support of the resolution of this docket in accordance with this agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. This agreement represents a

compromise of claims and allegations, and the execution of this agreement does not admit the truth or accuracy of any such disputed claims. Because this is a settlement agreement, a party is under no obligation to take the same position as set out in this agreement in other proceedings not referenced in this agreement, whether those dockets present the same or a different set of circumstances. The parties' agreement to entry of a final order of the Commission consistent with this agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this agreement.

27. The parties contemplate that this agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). If, however, the Commission issues an order that materially changes the terms of this agreement, the parties agree that any party adversely affected by that material alteration has the right to withdraw from this agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by filing a written notice in the proceeding within seven calendar days of the date the Commission files the order acting on this agreement. Failure to file a notice of withdrawal within the specified time period constitutes acceptance of the material changes to this agreement made by the Commission.
28. This agreement is the final and entire agreement between the parties regarding Aqua's violations of TWC §§ 13.135 and 13.136(a), as well as 16 TAC §§ 24.165(a), as described herein, and supersedes all other communications among the parties or their representatives regarding its terms.
29. Each person executing this agreement represents that he or she has been authorized to sign on behalf of the party represented. Copies of signatures are valid to show execution. If this agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same agreement.
30. Aqua warrants that it has read this agreement carefully, knows the contents thereof, and signs the same as its free act.

**EXECUTED by the parties by their authorized representatives designated below.**

/s/ Ann Coffin

Date: 2-13-24

Aqua Texas, Inc.  
Ann Coffin  
Coffin Renner LLP  
1011 W. 31st Street  
Austin, TX 78705

/s/ Merritt Lander

Date: 2-12-24

Merritt Lander  
Attorney  
Division of Compliance and Enforcement  
Public Utility Commission of Texas

**DOCKET NO. 56213**

<b>SETTLEMENT AGREEMENT AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>REPORT TO THE COMMISSION</b>	<b>§</b>	
<b>REGARDING AQUA TEXAS, INC.'S</b>	<b>§</b>	<b>OF TEXAS</b>
<b>VIOLATIONS OF TWC §§ 13.135 AND</b>	<b>§</b>	
<b>13.136(a) AND 16 TAC §§ 24.165(a)</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the agreement between Commission Staff and Aqua Texas, Inc. regarding Commission Staff's investigation of Aqua for violations of Texas Water Code (TWC) §§ 13.135 and 13.136(a), as well as 16 Texas Administrative Code (TAC) §§ 24.165(a), relating to improper billing. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that Aqua pay to the Commission an administrative penalty of \$20,000. Aqua agrees to pay the administrative penalty recommended by Commission Staff. The Commission approves the administrative penalty to the extent provided in this Order.

**I. Findings of Fact**

The parties stipulate to the following findings of fact.

**Respondent**

1. Aqua is a Texas for-profit corporation registered with the Texas secretary of state under filing number 800304878.
2. Aqua operates, maintains, and controls facilities for providing retail water service under CCN number 13254 in Bandera, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Kimble, Live Oak, Llano, Medina, Nueces, Travis, Williamson, and Wilson counties.

**Improper Billing Language**

3. In a complaint filed with the Commission on December 3, 2021, a customer of Aqua reported that her bill included two fees both labeled "Turn on Charge". One fee amounted to \$50 and the other to \$45.
4. Commission Staff researched Aqua's tariff for the region and determined that it did not include a fee called "Turn on Charge".



5. However, the amounts assessed for the Turn on Charge matched the amounts listed on the tariff for a fee called “Transfer Fee” for water service (\$50) and a fee called “Transfer Fee” for sewer service (\$45).
6. The language on Aqua’s bill did not match the language in its tariff.

#### **Seriousness of Violations**

7. Charging customers in a manner that is inconsistent with an approved tariff caused customer confusion and could lead to inadvertent overcharges.

#### **Compliance History and Deterrence of Future Violations**

8. Aqua does not have a history of previous violations of TWC §§ 13.135 or 13.136(a), or 16 TAC §§ 24.165(a).
9. The agreed administrative penalty of \$20,000 imposed by this Order is appropriate and necessary to promote compliance with and deter future violations involving billing practices that are inconsistent with the language in Aqua’s tariff.

#### **Notice**

10. On or about July 13, 2022, Commission Staff provided Aqua notice of its investigation, the results of the investigation, information about Aqua’s right to a hearing, and an opportunity to explain its activities.

#### **Agreement**

11. Aqua cooperated with Commission Staff’s investigation.
12. Aqua acknowledges the bases for the violations detailed in this Order.
13. As of May 24, 2022, Aqua has discontinued the practice of using improper billing language.
14. On February \_\_\_\_, 2024, Commission Staff and Aqua entered into an agreement in which Commission Staff recommended, and Aqua agreed to pay, an administrative penalty of \$20,000 for the violations described in this Order.
15. On February \_\_\_\_, 2024, Commission Staff filed a copy of the executed agreement with the Commission’s filing clerk.

The Commission makes the following findings of fact.

**Evidence**

16. In Order No. \_\_\_ filed on \_\_\_\_\_, 2024, the ALJ admitted the February \_\_\_\_, 2024 settlement agreement as evidence into the record of this proceeding.

**Informal Disposition**

17. More than 15 days have passed since the completion of all notice requirements.
18. No person filed a protest or motion to intervene.
19. Aqua and Commission Staff are the only parties to this proceeding.
20. No party requested a hearing and no hearing is needed.
21. Commission Staff recommended approval of the settlement agreement.
22. This decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law:

1. The Commission has jurisdiction over this matter under TWC § 13.041.
2. Aqua is a water utility as that term is defined under TWC § 13.002(23) and 16 TAC § 24.3(38)
3. Under TWC § 13.135 prohibits a utility from charging any rate for utility service other than as provided in TWC chapter 13.
4. TWC § 13.136(a) requires each utility to file with the Commission tariffs showing all rates that are subject to the original and appellate jurisdiction of the Commission and that are in force at the time for any utility service, product, or commodity offered.
5. Under 16 TAC § 24.165(a), bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's tariff.
6. Aqua violated TWC §§ 13.135 and 13.136(a), as well as 16 TAC §§ 24.165(a), by charging its customers in a manner inconsistent with its tariff.

7. Under TWC § 13.4151(a), the Commission has the authority to assess an administrative penalty against Aqua for violations of TWC chapter 13 or a rule or order adopted under TWC chapter 13.
8. Under TWC § 13.4151(a) and 16 TAC § 22.246(d), the Commission may assess a penalty against Aqua of up to \$5,000 per violation per day for each violation of TWC chapter 13 or a rule or order adopted under TWC chapter 13.
9. Aqua was provided proper notice of Commission Staff's investigation into this matter, the results of the investigation, information about Aqua's right to a hearing, and an opportunity to explain its activities, as required under 16 TAC §§ 22.241(a)(2) and 22.246(f)(2).
10. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
11. The Commission processed this docket in accordance with applicable statutes and Commission rules.
12. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the agreed administrative penalty to the extent provided in this Order.
2. Aqua must comply with the terms of the settlement agreement and this Order.
3. Aqua must pay an administrative penalty to the Commission in the amount of \$20,000 for the violations detailed in this agreement, with payment being due within 30 days of this Order. Payment of the administrative penalty may be made by check payable to the Public Utility Commission of Texas. The check must reference this docket and must be sent to the following address:

Public Utility Commission of Texas  
ATTN: Fiscal Services  
P.O. Box 13326  
Austin, Texas 78711

4. Aqua must file an affidavit of payment in this docket no later than five calendar days after remitting its payment.
5. This Order resolves only the claims identified in this Order related to Aqua's violations of TWC §§ 13.135 and 13.136(a), as well as 16 TAC §§ 24.165(a).
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**THOMAS J. GLEESON, CHAIRMAN**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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**KATHLEEN JACKSON, COMMISSIONER**