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Filing Date - 2024-03-07 10:39:52 AM

Control Number - 56213

Item Number - 5

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Commissioner

Jimmy Glotfelty
Commissioner

Kathleen Jackson
Commissioner




Greg Abbott
Governor

Connie Corona
Interim Executive Director

Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Susan E. Goodson 
Administrative Law Judge

RE: **Docket No. 56213** – *Settlement Agreement and Report to the Commission Regarding Aqua Texas, Inc.'s Violations of TWC §§ 13.135 and 13.136(a) and 16 TAC § 24.165(a)*

DATE: March 7, 2024

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by March 25, 2024.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

/lha

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DOCKET NO. 56213

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

PROPOSED ORDER

This Order addresses the agreement between Commission Staff and Aqua Texas, Inc. relating to 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 services 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

Commission Staff and Aqua stipulated to the following findings of fact.

Respondent

1. Aqua is a Texas corporation registered with the Texas secretary of state under file number 800304878.
2. Aqua operates, maintains, and controls facilities for providing retail water service in several counties under certificate of convenience and necessity number 13254.

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 labeled "Turn on Charge," in the amounts of \$50 and \$45.
4. Commission Staff researched Aqua's tariffs 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 in Aqua's tariffs as a "Transfer Fee;" a \$50 fee for water service and a \$45 fee for sewer service.
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 it could also 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 13, 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 13, 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. 1 filed on March 4, 2024, the administrative law judge admitted the agreement and report to the Commission 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 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 authority over this matter under TWC §§ 13.041, 13.135, 13.136, and 13.4151.
2. Aqua is a water utility as that term is defined under TWC § 13.002(23) and 16 TAC § 24.3(38).
3. 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 the requirements of 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 agreement 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 violations identified in this Order.
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 on the _____ day of _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS J. GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER