



## **Filing Receipt**

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**Control Number - 57028**

**Item Number - 2**

**DOCKET NO. 57028**

<b>SETTLEMENT AGREEMENT AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>REPORT TO THE COMMISSION</b>	<b>§</b>	
<b>REGARDING K-MAR MOBILE HOME</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PARK'S VIOLATIONS OF 16 TAC</b>	<b>§</b>	
<b>§ 24.283, RELATED TO BILLING</b>	<b>§</b>	

**SETTLEMENT AGREEMENT AND REPORT TO THE COMMISSION**

The Staff of the Public Utility Commission of Texas (Commission Staff) and K-Mar Mobile Home Park (K-Mar) (collectively, the parties) enter into this settlement agreement and file this joint report to the Commission under 16 Texas Administrative Code (TAC) § 22.246(h)(1). The agreement resolves and concludes Commission Staff's investigation of K-Mar for violations of 16 TAC § 24.283, related to billing.

**The parties agree as follows:**

1. The parties stipulate to the assertions and agree to the facts contained in the agreement and the proposed order,<sup>1</sup> and request approval of an order by the Commission consistent with the details contained herein.
2. The Commission has jurisdiction over this matter under Texas Water Code (TWC) §§ 13.041, 13.4151, 13.503 and 16 TAC § 24.275.
3. K-Mar is owned and operated by OW K-Mar LLC, a limited liability company registered with the Texas secretary of state under filing number 804543735.
4. K-Mar provides submetered water and wastewater service to 96 occupied dwelling units.
5. Water and wastewater charges are included on a multi-item bill, which also includes charges for electricity, trash, and rent.
6. From March 1, 2023, through December 31, 2023, K-Mar committed violations related to its billing of submetered water and wastewater service to its units.

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<sup>1</sup> Attachment 1.

***Violations of 16 TAC § 24.283(i)***

7. Under 16 TAC § 24.283(i), an estimated bill may be rendered if a master meter, submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.
8. K-Mar violated 16 TAC § 24.283(i), by estimating bills for March 2023 and July 2023 under circumstances other than those allowed by the rule, by failing to mark or identify the charges as being an estimate, and by failing to make required adjustments for the estimated bills on subsequent billing during the months of April and August 2023.

***Violations of 16 TAC § 24.283(k)***

9. Under 16 TAC § 24.283(k), if a bill is issued and subsequently found to be in error, the owner must calculate a billing adjustment. If the tenant is due a refund, an adjustment must be calculated for all of that tenant's bills that included overcharges.
10. K-Mar violated 16 TAC § 24.283(k) by failing to calculate a billing adjustment for overcharges which were reflected in its April 2023 water and wastewater billing.

***Violations of 16 TAC § 24.283(f)***

11. Under 16 TAC § 24.283(f), the bill must clearly state that the utility service is submetered or allocated, as applicable, and must include, among other things, the name of the retail public utility and a statement that the bill is not from the retail public utility.
12. Commission staff reviewed bills from March through December 2023 and concluded K-Mar violated 16 TAC § 24.283(f) by failing to state that the utility service was submetered, by failing to include the name of the retail public utility, and by failing to include a statement that the charges for water and wastewater were not from the retail public utility.

***Violations of 16 TAC § 24.283(g)***

13. Under 16 TAC § 24.283(g), in addition to the information required in 16 TAC § 24.283(f), a bill for submetered service must also include the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters.

14. K-Mar violated 16 TAC § 24.283(g) by failing to indicate whether the water and wastewater were measured by gallons, liters, or cubic feet and by failing to include the cost per gallon, liter, or cubic foot on bills reviewed from March through December 2023.

**Corrective Action**

15. K-Mar has corrected the violations described in this agreement and implemented the following corrective measures to prevent violations of 16 TAC §24.283 from occurring, and will maintain such measures going forward:
  - a. Established a dedicated Utility Department, headed by a Utility Coordinator solely focused on utility and utility-related issues,
  - b. Implemented a bi-monthly internal audit of tenant invoices, and
  - c. Implemented a quarterly review of municipal billing rates to ensure accurate billing rates and formula.

**Agreement**

16. On June 11, 2024, Commission Staff notified K-Mar of the results of its investigation and provided information about K-Mar's opportunity to explain its activities and rights to a hearing.
17. K-Mar cooperated with Commission Staff's investigation.
18. Under TWC § 13.4151, the Commission is authorized to impose administrative penalties against K-Mar for violations of TWC or rules adopted under TWC.
19. Under TWC § 13.4151(a), the Commission is authorized to impose an administrative penalty of up to \$5,000 per day.
20. Commission Staff recommends, and K-Mar agrees to pay, an administrative penalty of \$80,000 in resolution of the violations acknowledged in this agreement and in the attached proposed order.
21. This agreement resolves all matters related to Commission Staff's investigation of K-Mar for violations of 16 TAC §24.283 occurring between March 1, 2023, and December 31, 2023, as described in this agreement and attached proposed order.

22. In support of the agreed administrative penalty, Commission Staff provides the following analysis of factors to be considered when determining a reasonable and appropriate administrative penalty, as required under 16 TAC § 22.246(d)(3):
- a. *The nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions.* Commission Staff asserts that the \$80,000 recommended administrative penalty reflects the nature of the violations described in this agreement. Violations concerning billing are serious in nature because they present a hazard to the economic welfare of the public. Customers have a right to fair and accurate billing for water and wastewater services. As a result of K-Mar's improper billing practices, customers were overcharged for water and wastewater services based on estimations that were never adjusted to reflect actual usage. The extent of the actual overcharges will never be known. Furthermore, customers have a right to detailed information to be provided on their bills. K-Mar failed to include pertinent information on the customer billing for water and wastewater which prevented customers from knowing that their bills were estimated, the meter readings applicable to their usage, and confused customers by having incorrect dates of usage or inapplicable terms included on their billing. These violations continued for at least 10 months.
  - b. *The degree of culpability, including whether the violations were attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided.* Commission Staff asserts that K-Mar is culpable for the violations described in this agreement. In March 2023, K-Mar experienced communication issues with electronic meter readers in and meters were not manually read due to the departure of the property manager. K-Mar installed new meters at the property in April 2023; however, errors persisted due to inaccurate rates used by K-Mar's third party billing software company. Commission Staff asserts the remaining violations were the result of poor billing practices conducted by K-Mar. K-Mar should have taken measures to avoid the violations by taking swift action upon the departure of the property manager, anticipating potential complications associated with changing out meters, and being

aware of applicable rules governing estimated billing and the information required to be present on water and wastewater bills.

- c. *The demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violations.* K-Mar's efforts to correct the cause of the violations include the creation of a utility department headed by a Utility Coordinator to oversee utility billing of tenants, a bi-monthly internal audit of tenant invoicing and conducting a quarterly review of municipal billing rates to ensure accurate billing rates and formulas are used.
- d. *Economic benefit gained through the violations.* K-Mar was unable to recreate the meter readings for the months in which meter readings were unable to be obtained. As a result, Commission Staff cannot determine if K-Mar benefited economically from the violations, and if so, by how much.
- e. *The amount necessary to deter future violations.* Commission Staff finds that the recommended administrative penalty is an appropriate amount to deter violations of this nature from reoccurring.
- f. *Any other matter that justice may require.* Commission Staff is not aware of any other matter that should be considered in the determination of a reasonable administrative penalty.

#### **Settlement Terms**

- 23. This agreement resolves all claims related to Commission Staff's investigation of K-Mar concerning violations 16 TAC § 24.283, as described in this agreement and in the attached proposed order.
- 24. Unless specifically provided for in this agreement, K-Mar 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. 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.

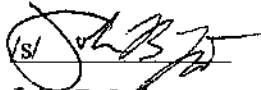
27. The parties contemplate that this agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). If, however, the Commission issues an order that materially changes the terms of this agreement, the parties agree that any party adversely affected by that material alteration has the right to withdraw 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 final 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 Commission Staff's investigation of K-Mar concerning the violations 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, as well as electronic signatures, are valid to show execution. If this agreement is executed in multiple counterparts, each is deemed an original, but all of which will constitute the same agreement.
30. K-Mar warrants that it has read this agreement carefully, knows the contents thereof, and signs the same as its free act.
31. **EXECUTED** by the parties by their authorized representatives designated below.



David Altman

Authorized Signatory, OW K-Mar LLC

Date: 9/9/2024



John B. Lajzer

Director, Compliance and Enforcement  
Public Utility Commission of Texas

Date: 9/10/2024



**DOCKET NO. 57028**

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<b>PARK'S VIOLATIONS OF 16 TAC</b>	<b>§</b>	
<b>§ 24.283, RELATED TO BILLING</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the agreement between Commission Staff and K-Mar Mobile Home Park (K-Mar) relating to Commission Staff's investigations of K-Mar for violations of 16 Texas Administrative Code (TAC) § 24.283, related to billing. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that K-Mar pay to the Commission an administrative penalty of \$80,000. K-Mar 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 Commission makes the following findings of fact.

**Respondent**

1. K-Mar is a limited liability company registered with the Texas secretary of state under filing number 801040723.
2. K-Mar is owned and operated by OW K-Mar LLC, a limited liability company registered with the Texas secretary of state under filing number 804543735.

**Violations of 16 TAC § 24.283(i)**

3. As a biller for submetered water and wastewater, K-Mar is allowed to estimate a bill if a master meter, submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.
4. For the March 2023 and July 2023 water and wastewater billing, K-Mar estimated the billing under circumstances other than those allowed by the rule, failed to include any marking that identified the charges as being estimates on the bills and did not make required

adjustments for the estimated bills on subsequent bills for the months of April 2023 and August 2023.

**16 TAC § 24.283(k)**

5. As a biller for submetered water and wastewater, if a bill is issued and subsequently found to be in error, K-Mar is required to calculate and apply a billing adjustment for all tenants' bills that included overcharges.
6. K-Mar did not calculate or apply billing adjustments to tenant bills for the billing error which occurred during its April 2023 billing for water and wastewater.

**16 TAC § 24.283(f)**

7. As a biller of submetered water and wastewater, K-Mar is required to clearly state on the bill that the utility service is submetered or allocated, as applicable, and must include, among other things, the name of the retail public utility and a statement that the bill is not from the retail public utility.
8. From March through December 2023, K-Mar did not include a statement on its water and wastewater billing to state that the utility service was submetered, include the name of the retail public utility on the bill, or include a statement that the bill was not from the retail public utility.

**16 TAC § 24.283(g)**

9. As a biller of submetered water and wastewater service, K-Mar is required to include on its bills the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters.
10. From March through December 2023, K-Mar did not indicate on its bills whether the water and wastewater were measured by gallons, liters, or cubic feet, nor did K-Mar include the cost per gallon, liter, or cubic feet.

**Notice**

11. On June 11, 2024, Commission Staff provided K-Mar with notice of the results of its investigation and provided information about K-Mar's right to a hearing and an opportunity to explain its activities.

**Evidentiary Record**

12. In Order No. \_\_ filed on \_\_\_\_\_, 2024, the administrative law judge admitted into evidence the application for approval of a settlement agreement and all attachments filed on September 10, 2024.

**Agreement**

13. K-Mar cooperated with Commission Staff's investigations.
14. K-Mar acknowledges the bases for the violations detailed in this Order.
15. On September 10, 2024, Commission Staff and K-Mar entered into an agreement for full and final settlement of the alleged and acknowledged violations described in this Order. Commission Staff recommended, and K-Mar agreed to pay, an administrative penalty of \$80,000 to resolve the violations described in this Order.
16. On September 10, 2024, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

**Seriousness of Violations**

17. The violations are serious in nature because they create a potential hazard to the economic welfare of the public. Customers have a right to fair and accurate billing for water and wastewater services. Customers were overcharged for water and wastewater and were provided estimations that were never adjusted to reflect actual usage. The extent of the actual overcharges cannot be determined. Furthermore, customers have a right to detailed information to be provided on their bills. K-Mar failed to include pertinent information on the customer billing for water and wastewater which prevented customers from knowing that their bills were estimated, the meter readings applicable to their usage, and confused customers by having incorrect dates of usage or inapplicable terms included on their bills.

**Compliance History and Deterrence of Future Violations**

18. K-Mar does not have a history of similar violations.
19. The agreed administrative penalty of \$80,000 is sufficient and necessary to deter violations of this nature from reoccurring.

**Informal Disposition**

20. More than 15 days have passed since completion of all notice requirements.

21. No person filed a protest or motion to intervene.
22. USR and Commission Staff are the only parties to this proceeding.
23. No party requested a hearing, and no hearing is needed.
24. Commission Staff recommended approval of the agreement.
25. 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 Texas Water Code (TWC) §§ 13.041, 13.4151, 13.503 and 16 TAC § 24.275.
2. K-Mar is a manufactured home rental community as that term is defined under TWC § 13.501(8) and 16 TAC § 24.275(c)(7).
3. K-Mar violated 16 TAC § 24.283(i) by estimating bills for March 2023 and July 2023 under circumstances other than those allowed by the rule, failing identify the charges as being an estimate and failing to make required adjustments for the estimated bills on subsequent billing during the months of April and August 2023.
4. K-Mar violated 16 TAC § 24.283(k) by failing to calculate a billing adjustment for overcharges which were reflected in its April 2023 billing.
5. K-Mar violated 16 TAC § 24.283(f) on bills reviewed from March through December 2023 by failing to state that the utility service was submetered, failing to include the name of the retail public utility, and failing to include a statement that the bill is not from the retail public utility.
6. K-Mar violated 16 TAC § 24.283(g) on bills reviewed from March through December 2023 by failing to indicate on its bills whether the water and wastewater were measured by gallons, liters, or cubic feet and by failing to include the cost per gallon, liter, or cubic feet.
7. Under TWC § 13.4151, the Commission has authority to impose administrative penalties against K-Mar for violations of TWC and Commission rules.

8. Under TWC § 13.4151(a), the Commission may impose a penalty against K-Mar of up to \$5,000 per violation per day.
9. In accordance with 16 TAC §§ 22.241(a)(2) and 22.246(f)(2), K-Mar was provided proper notice of Commission Staff's investigation into this matter, the results of the investigation, information about K-Mar's right to a hearing, and an opportunity to explain its activities.
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 under 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 administrative penalty to the extent provided in this Order.
2. K-Mar must comply with the terms of the agreement and this Order.
3. K-Mar must pay an administrative penalty in the amount of \$80,000 on or before 30 calendar days after the date the Commission signs 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  
PO Box 13326  
Austin, TX 78711-3326
4. K-Mar must file, in this docket, an affidavit of payment of the administrative penalty no later than five calendar days after remitting final payment.
5. The Commission is not constrained in any matters from requiring additional action or penalties from matters that are not resolved by this Order.
6. This Order resolves only the claims identified in this Order.

7. 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.
8. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

**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**

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**COURTNEY K. HJALTMAN, COMMISSIONER**

