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Item Number - 5

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Commissioner



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Governor

Connie Corona
Executive Director

Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Aaron Haas *A. J.*
Administrative Law Judge

RE: **Docket No. 57028** – *Settlement Agreement and Report to the Commission Regarding K-Mar Mobile home Park's Violations of 16 TAC § 24.283, Related to Billing*

DATE: September 24, 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 October 14, 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.

/s/lec
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DOCKET NO. 57028

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

PROPOSED ORDER

This Order addresses the agreement between Commission Staff and K-Mar Mobile Home Park 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 owned and operated by OW K-Mar LLC, a Texas limited liability company registered with the Texas secretary of state under filing number 804543735.
2. K-Mar is a manufactured home rental community that provides submetered water and wastewater service to its residents.

Violations of 16 TAC § 24.283(i)

1. As a biller for submetered water and wastewater service, 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. In such a case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.
2. For the March 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 to the subsequent bills for the months of April and August 2023.

Violations of 16 TAC § 24.283(k)

3. As a biller for submetered water and wastewater service, 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 the bills of all tenants that included overcharges.
4. K-Mar did not calculate or apply billing adjustments to tenants' bills for the billing error that occurred during its April 2023 billing for water and wastewater.

Violations of 16 TAC § 24.283(f)

5. As a biller of submetered water and wastewater service, 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.
6. From March through December 2023, K-Mar did not include a statement on its water and wastewater billing that the utility service was submetered, did not include the name of the retail public utility on the bill, and did not include a statement that the bill was not from the retail public utility.

Violations of 16 TAC § 24.283(g)

7. 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, and the cost per gallon, liter, or cubic foot for each service provided.
8. 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 foot for each service provided.

Seriousness of Violations

9. 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 service. Customers were overcharged for water and wastewater and were provided estimates that were never adjusted to reflect actual usage. The extent of the actual

overcharges cannot be determined. Customers have a right for certain specific information to be provided on their bills. K-Mar failed to include required information on the customer billing for water and wastewater, including that their bills were estimated, the meter readings applicable to their usage, and correct dates of usage and other billing terms.

Compliance History and Deterrence of Future Violations

10. K-Mar does not have a history of similar violations.
11. The agreed administrative penalty of \$80,000 imposed by this Order is appropriate and necessary to promote compliance and deter future violations involving customer complaints.

Notice

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

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 in which Commission Staff recommended, and K-Mar agreed to pay, an administrative penalty of \$80,000 for 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.

Evidence

17. In Order No. 1 filed on September 24, 2024, the administrative law judge admitted the agreement and report to the Commission filed on September 10, 2024, as evidence in the record of this proceeding.

Informal Disposition

18. More than 15 days have passed since completion of all notice requirements.
19. No person filed a protest or motion to intervene.

20. K-Mar and Commission Staff are the only parties to this proceeding.
21. No party requested a hearing, and no hearing is needed.
22. Commission Staff recommended approval of the agreement.
23. 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 Texas Water Code (TWC) §§ 13.041, 13.4151, and 13.503.
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. 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.
4. K-Mar violated 16 TAC § 24.283(i) by estimating bills for March and July 2023 under circumstances other than those allowed by the rule, failing to 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.
5. Under 16 TAC § 24.283(k), if a submetering bill is issued and subsequently found to be in error, the owner must calculate and apply a billing adjustment for all bills of all tenants that included overcharges.
6. K-Mar violated 16 TAC § 24.283(k) by failing to calculate billing adjustments for overcharges that were reflected in its April 2023 billing.
7. Under 16 TAC § 24.283(f), a submetering bill must clearly state that the utility service is submetered and must include certain information, including the total amounts due for different charges, the name of the retail public utility, and a statement that the bill is not from the retail public utility.

8. 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.
9. Under 16 TAC § 24.283(g), a bill for submetered service must include the total number of gallons, liters, or cubic feet submetered and the cost per gallon, liter, or cubic foot for each service provided.
10. 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 foot.
11. Under TWC § 13.4151(a), the Commission has the authority to assess an administrative penalty against K-Mar for violations of TWC chapter 13 or a rule or order adopted under TWC chapter 13.
12. Under TWC § 13.4151(a) and 16 TAC § 22.246(d), the Commission may assess a penalty against K-Mar 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.
13. 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, as required under 16 TAC §§ 22.241(a)(2) and 22.246(f)(2).
14. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
15. The Commission processed this docket in accordance with the requirements of applicable statutes and Commission rules.
16. 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 agreement 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 to the Commission 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 an affidavit of payment in this docket of the administrative penalty no later than five calendar days after remitting final payment.
5. This Order resolves only the claims 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 that have not been 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

COURTNEY K. HJALTMAN, COMMISSIONER