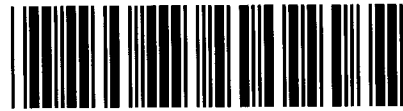




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Item Number: 95

Addendum StartPage: 0

P.U.C. DOCKET NO. 41848  
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PETITION OF COMMISSION STAFF §  
TO REVOKE THE RETAIL ELECTRIC §  
PROVIDER CERTIFICATE OF §  
PROTON ENERGY, INC. AND NOTICE §  
OF VIOLATION BY PROTON §  
ENERGY, INC. OF PURA §§17.004(a) & §  
39.101(b) & P.U.C. SUBST. R. 25.107, §  
25.454, 25.472, 25.473, 25.474, 25.475, §  
25.479, 25.480, 25.483, & 25.485 §

PUBLIC UTILITY COMMISSION  
OF TEXAS

**CONSENT ORDER**

This Consent Order approves the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff, Proton Energy, Inc. (Proton), and Mr. Ramzan Ali (together, Parties) regarding Commission Staff's investigation of Proton for alleged violations of PURA<sup>1</sup> §§ 17.004(a) and 39.101(b), as well as Subchapters E and R of the Commission's substantive rules. The Agreement resolves all issues in this docket. The Agreement is unopposed and provides for a reasonable resolution to the issues in this docket. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

1. Proton is a certificated retail electric provider (REP), No. 10191, pursuant to PURA § 39.352 and P.U.C. SUBST. R. 25.107.
2. Proton's agent for service in this matter is Mr. Robert A. Rima, Law Office of Robert A. Rima, 7200 N. MoPac Expy, Ste. 160, Austin, Texas 78731.
3. Proton and Mr. Ramzan Ali admit to the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Order.

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

4. As of the date of the Agreement, the principals of Proton were:
  - a. Ramzan Ali, President
  - b. Abdullah Ali, CEO
  - c. Hadi Tajani, Vice President
  - d. Munira Ali, Secretary
  - e. Shirin Ali, Treasurer
  - f. Anwar Ali, Customer Service Supervisor
  - g. Shermila Ali, Customer Service Supervisor
  - h. Murad Bharwani, Risk Management
  
5. The investigation conducted by the Commission's Oversight and Enforcement Division (O&E) (Investigation SIR 2012050002) asserted that Proton was not in compliance with the following rules:
  - a. P.U.C. SUBST. R. 25.107(f)(2), relating to protection of customer deposits and advance payments, requires REPs to provide an irrevocable standby letter of credit payable to the Commission in an amount sufficient to cover 100% of the REP's outstanding customer deposits. Proton acknowledges that it did not always maintain its irrevocable standby letter of credit in an amount sufficient to cover 100% of its outstanding customer deposits.
  - b. P.U.C. SUBST. R. 25.107(i)(5), relating to requirements for reporting and changing certificates, requires REPs to file their semi-annual report on August 15 or 225 days after the end of the REP fiscal year. Proton acknowledges that it did not file its 2013 semi-annual report in a timely fashion.
  - c. P.U.C. SUBST. R. 25.107(j), relating to REP suspension and revocation, prohibits a REP from providing false or misleading information to the Commission. Commission Staff asserts that Proton knowingly provided information to the Commission in response to Requests for Information (RFIs) during the course of this proceeding regarding the number of switch-holds placed on customer accounts that did not accurately reflect the number of customers on switch-holds. Proton denies Commission Staff's allegation that it knowingly provided false information, but concedes that the information provided to Commission Staff was inaccurate.

- d. P.U.C. SUBST. R. 25.472(b), relating to individual customer and premise information, prohibits a REP from releasing proprietary customer information, as defined by P.U.C. SUBST. R. 25.272(c)(5), to any person without first obtaining the customer's authorization. Commission Staff asserts that Proton released the personal email addresses of several customers without obtaining the customers' authorizations. Proton acknowledges the release of email addresses, but denies that a customer's email address, by itself without any other customer identifying or specific information, is proprietary information under the rule definition.
- e. P.U.C. SUBST. R. 25.474(n), relating to fees, prohibits a REP from charging a fee to an applicant to switch to, select, or enroll with the REP unless the applicant does not have a provisioned advanced meter and requests an out-of-cycle meter read for the purpose of a self-selected switch. Commission Staff asserts that Proton's agent, Energy Broker Consultants (EBC), charged applicants a fee to switch to, select, or enroll with Proton. Proton acknowledges that Energy Broker Consultants charged a fee to EBC applicants, but denies that an agency relationship existed. Proton asserts that Energy Broker Consultants was a Commission-registered aggregator at the time it was soliciting customers.
- f. P.U.C. SUBST. R. 25.480(1) relating to switch-holds, prohibits REPs from imposing switch-holds unless the customer has entered into either a deferred payment plan or a levelized billing plan consistent with the rules. Proton acknowledges that due to a computer programming error switch-holds were inadvertently placed on some customer accounts, thereby improperly preventing some customers from legitimately switching to other REPs. Commission Staff asserts that some of the switch-holds placed by Proton were not due to computer programming error.
- g. P.U.C. SUBST. R. 25.480(j), relating to deferred payment plans, requires a REP to obtain consent from a customer before placing a customer on a deferred payment plan that involves a switch-hold. Further, the rule requires that REPs must provide specific disclosures to customers prior to enrolling customers on these plans. Commission Staff asserts that Proton imposed deferred payment plans on customers

without the customer agreeing to the plan and that Proton's deferred payment plans did not contain the proper disclosures. Proton asserts that customers it knowingly placed on switch-holds agreed to such placement as part of entry into a deferred payment with Proton in compliance with Commission rules. Proton acknowledges that customers placed on switch-holds due to computer error were never placed on deferred payment plans.

- h. P.U.C. SUBST. R. 25.483(j), relating to disconnection of service, prohibits a REP from authorizing disconnection of service for non-payment during an extreme weather emergency. Commission Staff asserts that Proton requested the disconnection of customers during extreme weather emergencies, although no customers were actually disconnected by the Transmission & Distribution Utilities (TDUs) during these times. Proton acknowledges that its vendor requested disconnection of customers for non-payment during extreme weather emergencies.
- i. P.U.C. SUBST. R. 25.483(1) and (m), relating to disconnection of service, requires a REP to provide a disconnection notice with specific disclosures prior to requesting disconnection of service. Commission Staff asserts that Proton authorized the disconnection of service without providing the customers all of the required disclosures. Proton asserts that it sent several different types of disconnect notices to its customers over time and that at least one of these notices met the disconnection notice disclosure requirements.
- j. P.U.C. SUBST. R. 25.485(e), relating to complaints to the Commission, requires REPs to respond to informal complaints forwarded to them by the Commission within 21 days of receipt of such complaint from the Commission. Proton acknowledges that it did not timely respond to certain complaints forwarded to it by the Commission's Customer Protection Division.
- k. P.U.C. SUBST. R. 25.491(b) requires REPs to establish and maintain records and data that are sufficient to verify its compliance with the requirements of any applicable Commission rules and support any investigation of customer complaints. Commission Staff asserts that Proton has not retained records sufficient to establish

that Proton was in compliance with the Commission's substantive rules relating to proper notice of disconnection. Proton acknowledges that it cannot produce copies of the actual disconnection notices sent to customers or other documentation to substantiate the time period when specific disconnection notice templates were used by Proton to generate disconnection notices.

1. At the time of O&E's initial investigation in May 2012, a number of Proton's contract documents, bills, and its website did not fully comply with applicable Commission substantive rules found in P.U.C. SUBST. R. 25.474, 25,475, and 25.479.
6. After O&E notified Proton of its initial investigation, Proton hired a consultant in July 2012 to facilitate ongoing compliance with Commission rules.
7. Commission Staff recommended, and Proton agreed to pay, an administrative penalty of \$400,000 for the alleged violations committed by Proton as described herein and in the attached Agreement.
8. The term Remaining Balance is defined as it is in the Agreement: \$400,000 minus any installments paid by Proton toward the administrative penalty as contemplated in the Agreement.
9. The term New Company is defined as it is in the Agreement: the persons or entity seeking to become the new owner of Proton.
10. The term Letter of Credit is defined as it is in the Agreement: Proton's \$500,000 Irrevocable Standby Letter of Credit Number 2010-02 on file with the Commission in *Letter of Credit and Letter of Credit Amendment Filings Pursuant to PUC Substantive Rule 25.107*, Project No. 37919, Item No. 99 (Project No. 37919, Item No. 99).
11. On or before July 1, 2014, an unrelated third-party entity, New Company, will file an Application to Amend REP Certificate No. 10191 to Reflect a Change in Control and Ownership (Application for Change of Ownership) in order to change ownership and control of Proton from Mr. Ramzan Ali to new ownership.

12. Proton and Mr. Ramzan Ali authorized the Commission in writing (Exhibit A of the Agreement) to demand and receive payment from Proton's \$500,000 Irrevocable Standby Letter of Credit Number 2010-02 on file with the Commission in Project No. 37919, Item No. 99 for the amount and reasons set forth in the Agreement.
13. Synergy Bank, SSB has submitted a letter to the Commission (Exhibit B of the Agreement) providing that it is aware of and will in fact honor a request by the Commission to draw down the Letter of Credit as provided in the Agreement.
14. Proton agreed to revocation of REP Certificate No. 10191 and immediate payment of the Remaining Balance out of the Letter of Credit, or any replacement letter of credit as provided for in Paragraph 15 of the Agreement, on the occurrence of any one of the following events:
  - a. Failure by Proton or Mr. Ramzan Ali to pay an installment as specified in subparagraph (a) or (b) of Paragraph 10 of the Agreement.
  - b. Failure by New Company for any reason to file the *Application to Amend REP Certificate No. 10191 to Reflect a Change in Control and Ownership* (Application for Change of Ownership) in Docket No. 42450 on or before July 1, 2014.
  - c. Failure by Proton and New Company for any reason to close the agreement contemplated in the Application for Change of Ownership within 14 calendar days of Commission approval of New Company's Application for Change of Ownership.
  - d. Failure by Proton and New Company to file a confidential copy of the executed sale agreement in Docket No. 42450 within 14 calendar days of Commission approval of New Company's Application for Change of Ownership.
  - e. Commission denial of the Application for Change of Ownership for any reason.
  - f. Prior to payment in full of the administrative penalty, Commission receipt of a notice sent by Synergy Bank, SSB, stating that Synergy Bank has elected not to extend the Letter of Credit, except as provided for in Paragraph 15 of the Agreement.

- g. Failure of any New Company Letter of Credit (as specified in Paragraph 15(b) of the Agreement) to meet the requirements of Paragraphs 15(b)(i) and (ii) of the Agreement, along with receipt by the Commission of the notice described in Paragraph 15(a) of the Agreement.
  - h. Termination of the entity Proton Energy, Inc. for any reason.
  - i. Proton or Mr. Ramzan Ali materially breaches the Agreement and fails to cure such breach within three business days after receiving notice setting forth the alleged breach.
  - j. Proton or Mr. Ramzan Ali failed to authorize the Commission in writing to demand and receive payment from the Letter of Credit for the amount and reasons set forth in the Agreement.
  - k. Synergy Bank, SSB failed to submit a letter to the Commission providing that it is aware of and will in fact honor a request by the Commission to draw down the Letter of Credit as provided in the Agreement.
15. One of the events in Paragraph 14 of this Consent Order has occurred.
16. Proton and Mr. Ramzan Ali acknowledge the alleged violations detailed in this Order and consent to the entry of this Order.
17. On April 25, 2014, the Parties entered into a settlement agreement resolving the violations as described herein.
18. The Agreement provides for a reasonable resolution of this matter.

## II. Conclusions of Law

- 1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 39.101, 39.352, 39.356, and 39.357.
- 2. Proton is a certificated REP for purposes of PURA §§ 39.101, 39.352, 39.356, and 39.357, as well as P.U.C. SUBST. R. 25.107 and Subchapter R of the Commission's Substantive Rules.



3. Pursuant to PURA §§ 17.004(a)(1) and 39.101(b)(6), a customer is entitled to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including protection from being billed for services that were not authorized or provided.
4. Pursuant to PURA §§ 17.004(a)(2) and 39.101(b)(2), all buyers of retail electric services are entitled to a choice of a retail electric provider, where that choice is permitted by law, and to have that choice honored.
5. As a REP, Proton is required to comply with the customer protection standards established by PURA §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.107 and 25.471-498. The Commission may revoke a REP's certificate for significant violations of the Commission's rules pursuant to PURA §§ 14.051 and 39.356(a), and P.U.C. SUBST. R. 25.107(j) and 25.492.
6. Proton waives any notice required by the Texas Administrative Procedure Act and does not challenge the authority of the Commission to enter this Consent Order.
7. The requirements for informal disposition pursuant to P.U.C. PROC. R. 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 order:

1. REP Certificate No. 10191 is revoked.
2. Pursuant to the Agreement, the Commission shall immediately demand payment from the Letter of Credit, or any replacement letter of credit as provided for in Paragraph 15 of the Agreement, in the amount of the Remaining Balance to satisfy the administrative penalty.
3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
4. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order consistent

with the Agreement shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the Agreement.


5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 21<sup>st</sup> day of August 2014.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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DONNA L. NELSON, CHAIRMAN

  
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KENNETH W. ANDERSON, JR., COMMISSIONER

  
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BRANDY D. MARTY, COMMISSIONER