



Control Number: 44833



Item Number: 1

Addendum StartPage: 0

DOCKET NO. **44833**

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO DIRECT ENERGY, §
LP'S VIOLATIONS OF PURA § 39.101 §
AND P.U.C. SUBST. R. 25.498, §
RELATING TO DISCONNECTION OF §
SERVICE §

PUBLIC UTILITY COMMISSION
OF TEXAS

2015 JUN 12 AM 9:53
FILING CLERK

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

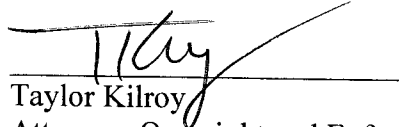
Staff of the Public Utility Commission of Texas (Commission) files this Application for Approval of Settlement Agreement and would show in support as follows:

Commission Staff and Direct Energy, LP (Direct or Company) (together, Parties) have entered into a Settlement Agreement and Report to Commission (Agreement). The Agreement, attached to this motion, has been signed by representatives of both parties and includes a Proposed Order. This Agreement resolves and concludes Commission Staff's investigation of Direct for violation of PURA¹ § 39.101(h) and P.U.C. SUBST. R. 25.498(j)(1), relating to disconnection of service.

WHEREFORE, Commission Staff respectfully requests that its Application for Approval of Settlement Agreement be granted.

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

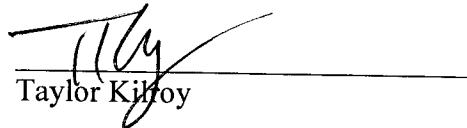
Respectfully Submitted,
Robert M. Long
Division Director
Oversight and Enforcement Division



Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
taylor.kilroy@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 12th of June, 2015 in accordance with 16 Tex. Admin. Code § 22.74 (TAC).



Taylor Kilroy

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO DIRECT ENERGY,	§	OF TEXAS
LP'S VIOLATIONS OF PURA § 39.101	§	
AND P.U.C. SUBST. R. 25.498,	§	
RELATING TO DISCONNECTION OF	§	
SERVICE	§	

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff (Staff) of the Public Utility Commission of Texas (Commission) and Direct Energy, LP (Direct or Company) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violations of PURA¹ § 39.101(h) and PUC SUBST. R. 25.498(j)(1), relating to disconnection of service.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Direct is a Retail Electric Provider (REP), Certificate No. 10040, pursuant to PUC SUBST. R. 25.107.
3. Pursuant to PURA § 39.101(h), a REP "may not disconnect service to a residential customer during an extreme weather emergency."
4. Pursuant to PUC SUBST. R. 25.498(j)(1), "a REP shall not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance ... during an extreme weather emergency."
5. Pursuant to PUC SUBST. R. 25.483(j)(2), which requires a Transmission and Distribution Utility (TDU) to notify the Commission of an extreme weather emergency, Oncor Electric Delivery (Oncor) sent out notices to REPs statewide advising of extreme weather

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

emergencies in various counties on February 3, February 6, February 7, and February 11, 2014.

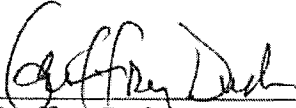
6. Direct received these extreme weather emergency notifications.
7. On February 6, 2014, Direct initiated disconnections for failure to maintain a current balance above the disconnection balance against 69 customers in counties affected by the extreme weather emergencies, of which eight disconnections were completed by Oncor.
8. On February 11, 2014, Direct initiated disconnections for failure to maintain a current balance above the disconnection balance against 183 customers in counties affected by the extreme weather emergencies, of which two disconnections were completed by Oncor.
9. Direct maintains that these disconnections were the result of an administrative error.
10. The Commission has jurisdiction over the Parties to this proceeding and the subject matter of this Agreement.
11. Direct voluntarily and fully cooperated with the Commission Staff's investigation.
12. Direct took steps to review the causes of the disconnection requests against customers in counties affected by the extreme weather emergencies and implemented new procedures to prevent future occurrences.
13. Commission Staff recommends, and Direct agrees to pay, an administrative penalty of Two Hundred and Twenty Thousand Dollars (\$220,000) for Direct's violations described in the attached Proposed Order.
14. Unless specifically provided for in this Agreement, Direct waives any notice and procedures that might otherwise be authorized or required in this proceeding.
15. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
16. 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.

17. This Agreement fully and finally resolves all issues related to Commission rules violations arising out of the facts described herein. The Parties enter into this Agreement to resolve by compromise the issues related to this matter. This Agreement is entered into by the Parties in order to avoid the potential for expensive and protracted litigation, the outcome of which would be uncertain. Neither the payment of the penalty amount by Direct nor anything in this Agreement shall be construed as an admission of liability by Direct for any claims, penalties, causes of actions, damages, demands, suits or costs not set forth herein.
18. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission 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 providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.
19. This Agreement is the final and entire agreement between the Parties regarding the alleged violations related to disconnection of service and supersedes all other communications among the Parties or their representatives regarding its terms.
20. 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.

21. Direct 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.



Geoffrey Duda
VP - General Manager, Direct Energy Residential
Direct Energy, LP
12 Greenway Plaza, Suite 250
Houston, Texas 77046

Date: 6/11/15



Taylor C. Kilroy
Attorney
Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 6/11/15

ATTACHMENT

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO DIRECT ENERGY,	§	OF TEXAS
LP'S VIOLATIONS OF PURA § 39.101	§	
AND P.U.C. SUBST. R. 25.498,	§	
RELATING TO DISCONNECTION OF	§	
SERVICE	§	
	§	

PROPOSED ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff (Staff) of the Public Utility Commission of Texas (Commission) and Direct Energy, LP (Direct or Company) (together, Parties) regarding Commission Staff's investigation of Company for violations of PURA¹ § 39.101(h) and PUC SUBST. R. 25.498(j)(1), relating to disconnection of service. The Agreement resolves all issues in this docket. Commission Staff recommended, and Direct agreed to pay, an administrative penalty of \$220,000. The Agreement is approved.

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

I. FINDINGS OF FACT

1. Direct is a Retail Electric Provider (REP), Certificate No. 10040, pursuant to PUC SUBST. R. 25.107.
2. Pursuant to PUC SUBST. R. 25.483(j)(2), which requires a Transmission and Distribution Utility (TDU) to notify the Commission of an extreme weather emergency, Oncor Electric Delivery (Oncor) sent out notices to REPs statewide advising of extreme weather

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11 001-66.016 (West 2007 & Supp. 2014) (PURA)

emergencies in various counties on February 3, February 6, February 7, and February 11, 2014.

3. Direct received these extreme weather emergency notifications.
4. On February 6, 2014, Direct initiated disconnections for failure to maintain a current balance above the disconnection balance against 69 customers in counties affected by the extreme weather emergencies, of which eight disconnections were completed by Oncor.
5. On February 11, 2014, Direct initiated disconnections for failure to maintain a current balance above the disconnection balance against 183 customers in counties affected by the extreme weather emergencies, of which two disconnections were completed by Oncor.
6. In order to prevent future noncompliance, Direct has increased staffing, retrained existing employees, and implemented redundant procedures to ensure that notifications of an extreme weather emergency are implemented in its system in a timely manner.
7. On or about September 12, 2014, Direct was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
8. Direct fully cooperated with Commission Staff's investigation.
9. Direct acknowledges the violations detailed in this Order.
10. Direct participated in one or more settlement discussions with Commission Staff to resolve this matter.
11. On June 11, 2015, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and Direct agreed to pay, an administrative penalty of Two Hundred and Twenty Thousand Dollars (\$220,000).
12. The Agreement provides for a reasonable resolution of this dispute.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.003, 14.051, 15.023, 15.024, and 39.101.

2. Direct was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
3. Pursuant to PURA § 39.101(h), a REP "may not disconnect service to a residential customer during an extreme weather emergency."
4. Pursuant to PUC SUBST. R. 25.498(j)(1), "a REP shall not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance ... during an extreme weather emergency."
5. Direct initiated disconnection against a total of 252 customers during extreme weather emergencies in February 2014, of which 10 disconnections were completed by Oncor. Therefore, Direct violated PURA § 39.101(h) and PUC SUBST. R. 25.498(j)(1).
6. P.U.C. PROC. R. 22.246(g)(1)(A), (B) and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
7. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
8. This docket was processed in accordance with applicable statutes and Commission rules.
9. 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. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. Direct shall pay an administrative penalty to the Commission in the amount of Two Hundred and Twenty Thousand Dollars (\$220,000). Direct shall remit payment of the full amount of the administrative penalty on or before thirty (30) calendar days after the date this Order is signed. Payment of the administrative penalty shall be made by

electronic funds transfer or check payable to the Public Utility Commission of Texas and shall reference this docket. The check shall be sent to the following address:

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

3. Direct shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
5. 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.
6. 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 ____ day of _____, 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER