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APPEAL OF TXU ENERGY SERVICE §  
COMPANY (TXU ES) FROM AN §  
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APPEAL OF TXU ENERGY SERVICE §  
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COPPERAS COVE §

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SOAH DOCKET NO. 473-02-1558  
DOCKET NO. 25310

APPEAL OF RELIANT RESOURCES, §  
INC. FROM AN ORDINANCE NO. 2007- §  
12-01 CITY OF ALLEN §

PUBLIC UTILITY COMMISSION

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SOAH DOCKET NO. 473-02-1949  
DOCKET NO. 25462

RELIANT RESOURCES, INC.'S APPEAL §  
OF CITY OF MISSOURI CITY'S §  
ORDINANCE NO 0-02-02 §

PUBLIC UTILITY COMMISSION

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SOAH DOCKET NO. 473-02-1974  
DOCKET NO. 25484

APPEAL OF RELIANT RESOURCES, INC. §  
OF CITY OF NORTH RICHLAND HILLS' §  
ORDINANCE NO 2595 §

PUBLIC UTILITY COMMISSION

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SOAH DOCKET NO. 473-02-1975  
DOCKET NO. 25485

RELIANT RESOURCES, INC.'S §  
APPEAL OF CITY OF KILLEEN'S §  
ORDINANCE NO. 01-60 §

BEFORE THE STATE OFFICE OF

ADMINISTRATIVE HEARINGS

DOCKET NO. 25513

APPEAL OF RELIANT RESOURCES, INC. §  
OF CITY OF BENBROOK'S ORDINANCE §  
NO. 1113 §

PUBLIC UTILITY COMMISSION

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DOCKET NO. 25615

RELIANT RESOURCES INC.'S APPEAL §  
OF CITY OF ARLINGTON'S ORDINANCE §  
NO. 02-007 §

PUBLIC UTILITY COMMISSION

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**DOCKET NO. 25649**

APPEAL OF RELIANT RESOURCES, INC.	§	PUBLIC UTILITY COMMISSION
OF CITY OF GRAND PRAIRIE'S	§	
ORDINANCE NO. 6556	§	OF TEXAS

**DOCKET NO. 25650**

APPEAL OF RELIANT RESOURCES, INC.	§	PUBLIC UTILITY COMMISSION
OF CITY OF CAMERON'S ORDINANCE	§	
(CHAPTER 4, SECTION 11)	§	OF TEXAS

**DOCKET NO. 25685**

APPEAL OF TXU ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
COMPANY FROM AN ORDINANCE (NO.	§	
01-60) OF THE CITY OF KILLEEN	§	OF TEXAS

**DOCKET NO. 25686**

APPEAL OF TXU ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
COMPANY FROM AN ORDINANCE (NO.	§	
2595) OF THE CITY OF NORTH	§	OF TEXAS
RICHLAND HILLS		

**DOCKET NO. 25687**

APPEAL OF TXU ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
COMPANY FROM AN ORDINANCE (NO.	§	
02-007) OF THE CITY OF ARLINGTON	§	OF TEXAS

**DOCKET NO. 25688**

APPEAL OF TXU ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
COMPANY FROM AN ORDINANCE (NO.	§	
1113) OF THE CITY OF BENBROOK	§	OF TEXAS

**DOCKET NO. 25689**

APPEAL OF TXU ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
COMPANY FROM AN ORDINANCE (NO.	§	
02-09) OF THE CITY OF ROCKWALL	§	OF TEXAS

**DOCKET NO. 25690**

APPEAL OF TXU ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
COMPANY FROM AN ORDINANCE (NO.	§	
020207) OF THE CITY OF HEATH	§	OF TEXAS

**DOCKET NO. 25691**

<b>APPEAL OF TXU ENERGY RETAIL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY FROM AN ORDINANCE (NO.</b>	<b>§</b>	
<b>2002-001) OF THE CITY OF ROBINSON</b>	<b>§</b>	<b>OF TEXAS</b>

**DOCKET NO. 25766**

<b>APPEAL OF TXU ENERGY RETAIL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY FROM AN ORDINANCE OF</b>	<b>§</b>	
<b>THE CITY OF SNYDER ORDINANCE NO.</b>	<b>§</b>	<b>OF TEXAS</b>
<b>899</b>		

**DOCKET NO. 25767**

<b>APPEAL OF TXU ENERGY RETAIL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY FROM AN ORDINANCE OF</b>	<b>§</b>	
<b>THE CITY OF CAMERON ORDINANCE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CHAPTER 4, SECTION 11</b>		

**DOCKET NO. 25768**

<b>APPEAL OF TXU SESCO ENERGY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SERVICES COMPANY FROM AN</b>	<b>§</b>	
<b>ORDINANCE OF THE CITY OF MEXIA</b>	<b>§</b>	<b>OF TEXAS</b>
<b>ORDINANCE NO. 2001-14</b>		

**DOCKET NO. 25769**

<b>APPEAL OF TXU ENERGY RETAIL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY FROM AN ORDINANCE OF</b>	<b>§</b>	
<b>THE CITY OF GROESBECK ORDINANCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>NO. 02-0-01</b>		

**DOCKET NO. 25770**

<b>APPEAL OF TXU ENERGY RETAIL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY FROM AN ORDINANCE OF</b>	<b>§</b>	
<b>THE CITY OF GRAND PRAIRIE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>ORDINANCE NO. 6556</b>		

**ALLIANCE FOR RETAIL MARKETS, TRACTEBEL NORTH AMERICA, INC. AND THE  
NEW POWER COMPANY'S REPLY BRIEF ON THRESHOLD LEGAL/POLICY ISSUES**

**TO THE HONORABLE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION OF  
TEXAS:**

The Alliance for Retail Markets ("ARM"), Tractebel North America, Inc. ("Tractebel")  
and The NewPower Company ("NewPower"), jointly file their reply brief on threshold legal and

policy issues. ARM, Tractebel, and NewPower primarily reply to the briefs filed by the Cities of Coppel and Allen, and the Cities of Groesbeck and Cameron. Failure to respond to any party's comments on an issue should not be taken as agreement with those comments, however.

**1. What is the meaning of “register with the municipality” in PURA §39.358? In answering this issue, parties should address the purpose of requiring registration and the consequences of the particular construction.**

The Commission should reject Groesbeck's and Cameron's contention that REPs must “inevitably” submit their original registration form when registering. They first state they need the registration form to determine whether the Commission has certified the REP. The application form, however, does not establish that the REP obtained Commission certification. The certification application proves only that the REP sought certification. Only the Commission's order granting certification demonstrates that the Commission has certified the REP. Groesbeck and Cameron also claim they need the application form to determine whether the REP continues to comply with the representations it made to the Commission, presumably concerning its technical, financial, and managerial resources. Elsewhere in their brief, they contend that municipalities should monitor whether REPs remain in compliance with the Commission's REP certification criteria. While PURA sec. 39.358 allows municipalities to revoke registration for failure to comply with rules implementing competition, the Commission alone certifies REPs and determines whether they comply with the certification criteria. PURA confers on the Commission the exclusive responsibility to grant to or withhold REPs certificates to operate.<sup>1</sup> More importantly, PURA confers on the Commission alone the authority to suspend or revoke a REP's certification.<sup>2</sup> Municipal assertions of authority to revoke registration and therefore suspend a REP's operations for failure to meet certification requirements infringes

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<sup>1</sup> PURA §39.352.

<sup>2</sup> PURA §39.356 (a).

upon the Commission's exclusive authority to determine whether REPs possess the requisite financial, technical, and managerial resources to obtain and maintain certification.

**2. Under PURA §39.358, is a municipality restricted to a single registration process for a REP, or may a municipality require a REP to file updates to its registration or periodically to re-register, or both?**

The municipal comments stress that they need updated information, but do not discuss why they should implement an automatic "re-registration" procedure and assess a yearly fee. As ARM, Tractebel, and NewPower noted in their initial brief, PURA does not authorize such a procedure.

**4. To be considered reasonable, must an administrative fee assessed under PURA §39.358 be limited to recovering a municipality's costs associated with the registration process? Regardless of the answer, upon what factors should the registration fee be based?**

Coppell and Allen's suggestion that the fee should recover the costs associated with handling customer complaints, monitoring REPs, notifying customers of changes in REP status and relaying information to customers seeks to recover through a registration fee costs not attributable to registration. These activities do not relate to or arise from registration. Municipalities would presumably need to answer these calls even if no registration requirement existed. Rather, municipalities undertake these activities because they are municipalities; answering constituent calls and questions represents a basic government activity. Had the Legislature intended REPs to pay for these activities, it would have said so. "Registration" does not entail or encompass all municipal activities in any way relating to REPs. "Registration" covers only the act of identifying oneself to the municipality.

**5. May a municipality take any action against a REP under PURA §39.358 other than suspending or revoking a REP's registration and operation in the municipality?**

The Commission already has decided that municipalities cannot issue fines, so Coppell and Allen's suggestion otherwise should fail. Additionally, to their rhetorical question on how

they can enforce their registration ordinance without sanctioning non-registering REPs, the municipality may file a complaint with the Commission against the REP. The Commission unquestionably would not take much time to conclude that the REP had violated the statute and require the REP to register.

**9. May a municipality require REPs to file periodic reports regarding complaints (including the number and status of the complaints) made by residents of the municipality?**

The Commission should reject Groesbeck and Cameron's assertion that quarterly customer service reports enable it to measure how significantly and frequently a REP violates Commission rules. Complaints do not signify rule violations. Often, customers complain about matters wholly beyond the REP's control, such as meter inaccuracies or other matters within the utility's responsibility. Customers also call simply to inquire about matters without actually complaining. Alternatively, the customer and REP may differ on whether the REP has violated any rule, and unless the Commission rules on the specific case, merely accusing a REP of violating a rule does not establish that the REP has actually violated the rule. Certainly the municipalities understand this principle—not every complaint or lawsuit about city employees or services proves that the city has violated state or federal law or its own ordinances. Accordingly, the Commission should not allow municipalities to impose a quarterly complaint report requirement.

**12. May a municipality make a determination that a REP has significant violations of PURA or Commission rules under PURA §39.358 absent a Commission finding that the REP has violated PURA or Commission rules and/or that such violations are significant?**

Groesbeck or Cameron's unsubstantiated point that it "makes more sense" for municipal officials to determine whether a REP has committed significant violations of Commission rules, rather than "going to Austin to file a complaint" does not establish that it possesses authority to determine whether a REP has committed significant violations. If Groesbeck or Cameron

contend that deferring to the Commission presents a travel burden, they overlook that Mr. Boyle can provide them able representation without incurring travel expense. Otherwise, they do not address whether they possess the expertise or resources to determine whether a REP has violated Commission rules, particularly the more complex rules.

More importantly, allowing each municipality to apply its own views about what Commission rules require (or do not require) poses a grave threat to the Commission's ability to regulate the retail electric industry. Municipal authority to interpret Commission rules without needing to defer to Commission authority essentially allows municipalities to regulate through interpretation of Commission rules. For example, a municipality may determine that a REP cannot provide continuous and adequate service without opening a local office. If cities usurp the Commission's sole authority to prescribe the conditions by which competition will occur, and adopt their own competition rules, that could diminish the Commission's ability to implement a competitive retail electric market. The Commission decision to implement uniform rules applicable throughout the state has provided a major impetus to developing a competitive retail electric market. Rather than incurring the costs of designing systems to comply with numerous local systems, REPs have needed to comply with only one unified set of market rules. Municipal authority to regulate the retail market could turn a statewide retail market subject to one unified set of rules into hundreds of citywide retail markets in which thousands of different competition rules apply. The Legislature created this Commission in 1975 to introduce uniformity into the electric and telephone markets, recognizing that the former system of municipal regulation had failed to protect the public.<sup>3</sup> Accordingly, the Commission should reject Groesbeck and Cameron's views.

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<sup>3</sup> Pleitz & Little, *Municipalities and the Public Utility Regulatory Act*, 28 Baylor L. R. 977 (Fall 1976).



**13. What are the ramifications of a suspension or revocation of a REP's registration or authority to operate in a municipality? How may such suspension or revocation be cured? Must an ordinance adopted under PURA §39.358 specify the procedures to cure any suspensions or revocations?**

Groesbeck and Cameron's assertion that the municipality will impose whatever sanctions are in its citizens' best interest demonstrates why allowing municipalities to regulate the market imperils the market. SB7 established a statewide market. The Commission well knows the systems problems that immediately shutting down a REP would create at ERCOT. Municipalities, according to Groesbeck and Cameron, do not need to consider the broader market-wide implications that their orders would cause. This demonstrates the danger inherent in fashioning a balkanized retail electric market.

**14. Does the exclusive appellate jurisdiction of the Commission under PURA §32.001 (b) include the authority to stay a municipal order suspending or revoking a REP's registration or authority to operate pending resolution of an appeal of such an order?**

By granting the Commission "exclusive appellate jurisdiction" to review municipal ordinances, the Legislature conferred on the Commission the full powers that "appellate jurisdiction" entails. That includes the power to stay the underlying order's operation until the Commission has rendered its decision. Additionally, the Legislature conferred on the Commission all power necessary to implement powers expressly delegated to the Commission.<sup>4</sup> If the Commission cannot stay a suspension or revocation order, it cannot grant the appellant REP complete relief, because the REP may not be able to reclaim customers it had to drop to the POLR while unable to serve in the municipality. Separation of powers is not an issue because, as the Commission has previously found, municipalities may require registration only due to authority conferred in PURA. PURA therefore sets the bounds upon which municipalities may

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<sup>4</sup> PURA §14.001.

exercise such authority. Accordingly, the Commission has ample authority to stay a revocation or suspension order.

ARM, Tractebel, and NewPower request that the Commission issue rulings on these issues in accordance with the positions expressed herein.

RESPECTFULLY SUBMITTED,



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ATTORNEYS FOR ALLIANCE FOR RETAIL  
MARKETS, THE NEWPOWER COMPANY,  
AND TRACTEBEL NORTH AMERICA

**Certificate of Service**

I certify that a copy of this document was served on all parties of record in this proceeding on May 23, 2002, by regular mail, facsimile transmission or hand-delivery.



Chris Reeder