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PUBLIC UTILITIES COMMISSION  
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Chairman Rebecca Klein  
Commissioner Brett Perlman  
Public Utility Commission of Texas  
1701 North Congress Avenue  
Austin, Texas 78701

Re: Project No. 26091, *Texas Legal Services' Request for Emergency Rule to Protect Customers from POLR Transfers (Severed from Project 25360)*

July 11, Open Meeting POLR Proposal for Low-Income Customers

Dear Commissioners:

American Electric Power Company ("AEP"), parent of affiliated retail electric providers Mutual Energy CPL, Mutual Energy WTU, and POLR Power, LP, has followed with great interest the developments related to the request of Texas Legal Services Center (TLSC) regarding an emergency rulemaking on Provider of Last Resort service.

As reflected in comments filed on Friday, July 12, AEP agrees with Chairman Klein that TLSC has failed to meet the standard for emergency rulemaking set forth in § 2001.034 of the Texas Government Code for "imminent peril to public health, safety or welfare." Further, as AEP noted in its filed comments, TLSC failed to follow the proper procedure for adoption of new rules.

Notwithstanding the deficiencies in TLSC's request, at the July 11 Open Meeting, it was suggested that all POLRs voluntarily serve low-income POLR customers at the Price to Beat of the affiliated REP serving that territory. Commissioner Perlman assumed that, according to figures provided by Staff, since POLR Power has only six low-income POLR customers, AEP would not object to implementing the Chairman's suggestion.

To begin with, the six customers referred to by Commissioner Perlman were the number of low-income customers reported to be transferred to POLR Power in May 2002. In fact, POLR Power currently serves 228 POLR ESI IDs who receive the low-income discount, which represents 1.8 percent of POLR Power's ESI IDs. AEP believes that fully 20 percent or more of its POLR ESI IDs may be eligible for the low-income discount, which means that by year end there may be several thousand customers who would qualify for the PTB proposal suggested at the July 11 Open Meeting. As a result, a commitment by AEP to consent to the request represents a substantial obligation on the part of POLR Power, much greater than the discussion at the Open Meeting would suggest.

Nevertheless, AEP, on behalf of POLR Power, is agreeable to serving low-income POLR customers at the PTB rate of the REPs affiliated with the TDUs' service territories with the following qualifications:

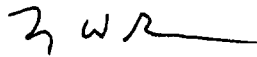
- (1) Since, operationally, it will be extremely difficult to charge more than one PTB rate for the TXU/SESCO service territories, POLR Power will charge low-income POLR customers the PTB rate charged by the TXU Energy Retail Company to the greatest number of its residential customers;
- (2) POLR Power will rely on TXU Energy Retail Company to provide the necessary billing determinants/components for the "dominant" PTB rate to the POLR;
- (3) If, pursuant to Commission order or court proceeding, the TXU Energy Retail Company PTB rate changes, the POLR rate will similarly change;
- (4) The provisions of the settlement agreement will continue in effect allowing POLR Power, at its option, to request an adjustment of its POLR rates upon a showing that it will experience a net financial loss in providing POLR service;
- (5) Implementation of the new POLR rate for low-income customers will be effective no earlier than September 1, 2002; and
- (6) The other POLRs consent to serve low-income customers in a similar manner.

In order to accomplish the objective of providing electric service to low-income POLR customers at the PTB, a revised order should be issued in Docket No. 24840 changing the POLR rate for low-income customers and incorporating the qualifications listed above. Otherwise, POLR Power will not be in compliance with Finding of Fact No. 36 and will be in violation of Ordering Paragraph No. 3 of the Commission's Final Order in Docket No. 24840.

AEP is concerned that, by asking POLRs to voluntarily change the rates they charge POLR customers, the Commission exhibits a lack of faith in its own rules and rulemaking process, which will have a negative effect on the development of a robust retail competitive market in Texas. As all parties no doubt remember, the current POLR rule is the result of intense discussion and negotiations among various REP, consumer, and TDU interests. Many issues, such as eligibility for providing POLR service and the terms for providing POLR service, were discussed and decided in Project No. 21408. Pursuant to the adopted rule, the Commission accepted bids for POLR service for many portions of the state and initiated POLR appointment proceedings for the remaining portions of the state. Again, pursuant to the adopted POLR rule, the Commission entered into contracts with REPs to provide POLR service and, in areas of the state where POLRs were appointed, issued final orders approving POLR rates. Now, the Commission seeks to put aside the terms of executed POLR contracts and its own POLR orders in an attempt to address the questionable claims put forth by TLSC. Every entity with a stake in the success of a viable retail market for electricity in Texas should be concerned about the approach to the competitive market being taken by the Commission in this proceeding and its effect on future new participants in the Texas market.

In closing, AEP would request that the Commission recognize the extraordinary action it is asking POLR Power and other POLR REPs to undertake and work diligently with those entities to achieve a swift resolution of this issue with a minimum of disruption to other retail market remediation efforts. The development of a viable retail competitive market in Texas being the ultimate goal of this action and all other Senate Bill 7 related activity, AEP submits that failure to abide by the requirements of valid Commission rules and orders may not be the best way to engender faith in the Texas retail electric market.

Very truly yours,

A handwritten signature in black ink, appearing to read "L W Brewer", with a horizontal line extending to the right.

Larry W. Brewer  
Assistant General Counsel