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PUC DOCKET NO. 29646

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AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO TXU ENERGY RETAIL §  
COMPANY LP'S VIOLATION OF §  
PUBLIC UTILITY COMMISSION §  
SUBSTANTIVE RULE §25.474 §

PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**AGREED NOTICE OF VIOLATION & SETTLEMENT AGREEMENT**

NOW COME the Legal & Enforcement Division ("LED") of the Public Utility Commission of Texas and TXU Energy Retail Company LP ("TXUE" or the "Company") (collectively referred to herein as "Parties"), who hereby enter into and agree upon the terms of this Agreed Notice of Violation & Settlement Agreement ("Agreement"). This Agreement terminates an investigation by the LED into an alleged violation by the Company of Section 25.474 of the Public Utility Commission of Texas' ("P.U.C." or "Commission") Substantive Rules. Section 25.474 prohibits retail electric providers ("REPs") from enrolling and switching a customer without first obtaining that customer's authorization and having that authorization verified. The LED's investigation resulted in an allegation that TXUE violated P.U.C. SUBST. R. 25.474 by enrolling approximately 58 customers without obtaining proper authorization and verification of that authorization from those customers.

In consideration of the background, recitals, mutual covenants and commitments set forth below, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the LED and the Company hereby stipulate and agree as follows:

## BACKGROUND & RECITALS

1. TXUE is a REP. As such, the Company is prohibited from enrolling a customer without obtaining the customer's authorization and having that authorization verified consistent with the methods specified by Commission rules.
2. TXUE contracted with Call Center Concepts ("CCC") to provide direct marketing at select Cinemark movie theater locations in the Houston and Corpus Christi areas. CCC in turn contracted with, among others, Mr. Anil Rathanaaj and Mr. Roberto Pinales to represent TXUE in Cinemark theaters in Harris County and Hidalgo County, respectively.
3. In June and July, 2003, Mr. Rathanaaj and Mr. Pinales submitted customer enrollments to TXUE through CCC, some of which contained signatures allegedly falsified by Mr. Rathanaaj and Mr. Pinales. TXUE learned of these customer enrollment irregularities through its internal quality control process and took immediate action.
4. TXUE was able to identify the suspect enrollments, and suspend or cancel switches that had not yet been completed. Fifty-eight (58) of the enrollments, however, had completed the switch process.
5. TXUE took the necessary action to reverse the unauthorized, completed switches.
6. CCC subsequently terminated the employment of Mr. Rathanaaj and Mr. Pinales.
7. P.U.C. SUBST. R. 25.474 requires a REP to obtain a customer's authorization for enrolling with the REP and to verify that authorization using one of the methods specified in the rule.
8. P.U.C. SUBST. R. 25.107(a) permits REPs to outsource business functions to contractors or agents, but the REP remains accountable for all activities conducted on its behalf by its contractors, subcontractors, agents, or any other entity. As a REP, therefore, TXUE is

responsible for the violations of P.U.C. SUBST. R. 25.474 that resulted from the unauthorized switching of 58 customers.

9. TXUE moved promptly after discovering the unauthorized switches to: (1) suspend or cancel any suspect enrollments; (2) reverse the 58 switches that had been completed; (3) implement steps to prevent future occurrences; and (4) notify the Commission. TXUE performed in the manner expected by LED upon discovering suspect enrollments.

10. Upon learning of these switches from TXUE, the LED initiated an investigation into their occurrence.

11. TXUE cooperated fully with the LED's investigation, and participated in one or more settlement discussions with the LED, the purpose of which was to amicably resolve the LED's allegations which were the subject of the investigation and described herein.

#### **STIPULATIONS & AGREEMENTS**

12. **Jurisdiction.** TXUE admits the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Agreement, and the jurisdiction and authority of the Commission to enter a final order approving this Agreement.

13. **Waiver.** Unless specifically provided for in this Agreement, TXUE expressly waives any notice and procedures that might otherwise be authorized or required in this proceeding in the interest of a more timely resolution of this matter.

14. **Considerations.** The Parties desire to compromise and settle the violations that were the subject of the investigation and alleged by the LED in order to avoid the time, effort, and expense of administrative litigation before the State Office of Administrative Hearings ("SOAH") and the Commission and of any appeals from the Commission's final order or orders deciding said issues.

15. **Administrative Penalty.** In order to avoid the time, effort, expense and uncertainties of litigation, the Company agrees to pay an administrative penalty of twenty nine thousand and no/100 dollars (\$29,000.00). Payment of this administrative penalty resolves any and all issues, complaints, or alleged violations against Company that were the subject of the investigation and alleged herein. Payment of this amount shall be due no later than thirty days after the Commission has entered an order consistent with this Agreement. This amount shall be tendered in the form of a check or wire transfer payable to the Public Utility Commission of Texas. Upon payment of this amount, Company shall file an affidavit attesting that this payment has been timely made. This affidavit shall be filed in this docket no later than forty-five days after the Commission has entered an order consistent with this Agreement.

16. **Reliance.** The Parties stipulate and agree that all of the facts and matters stated in this Agreement, including those in the Background & Recitals above, are true, accurate, and correct, and may be relied upon by the Commission in resolving this matter.

17. **Final Approval.** The Parties have entered into this Agreement in the interest and spirit of negotiation, settlement, and compromise, and therefore agree that the provisions of this Agreement shall be subject to final approval by the Commission. The Parties, moreover, agree to entry of a final order of the Commission consistent with this Agreement.

18. **Right to Rescind.** The Parties contemplate that this Agreement will be approved, as contemplated by P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially alters the terms of this Agreement, the Parties agree that any party adversely affected by that material alteration has the right to withdraw its consent from this Agreement, thereby becoming released from its commitments and obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. Such a right to rescind must be

exercised, within 20 calendar days of the date the Commission signs the final order approving this Agreement, by providing the other party written notice in accord with Texas Rule of Civil Procedure 21a of the rescinding party's intent to rescind this Agreement. Failure to provide such notice within the specified time period shall be deemed and considered a waiver of the right to rescind and, therefore, approval of any modifications to this Agreement made by the Commission.

19. **Resolution of Issues.** This Agreement fully and finally resolves, pursuant to the terms and conditions set forth herein, any and all claims, allegations, and customer complaints arising out of the matters described in this Agreement. Accordingly, the Parties hereby request that the Commission approve this Agreement.

20. **Exclusive Benefit.** The Parties mutually agree that they enter into this Agreement for their exclusive benefit and the benefit of their respective lawful successors. The Parties agree that nothing in this Agreement confers, or shall be construed to confer, any right, privilege or benefit on any person or entity other than the Parties and their respective lawful successors.

21. **Place for Suit.** The Parties stipulate and agree that any suit arising from this Agreement, including but not limited to any action to enforce or interpret this Agreement, shall be brought in Travis County, Texas.

22. **Severability.** The provisions of this Agreement are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreement unenforceable, the remaining provisions shall be valid and enforceable.

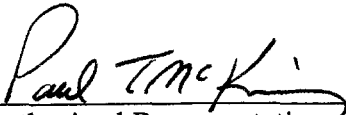
23. **Effective Date.** The Parties agree that this Agreement shall become effective on the date the Commission enters its final order approving it.

24. **Entire Agreement.** This Agreement contains the entire agreement between the LED and TXUE as to the matters addressed herein. Moreover, this Agreement supercedes all other written and oral exchanges, or negotiations among the Parties or their representatives with regard to the subjects contained herein.

25. **Authority and Multiple Counterparts.** Each person executing this Agreement represents that he or she has authorization to sign on behalf of the party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Agreement may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.

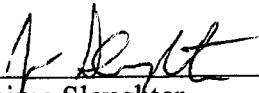
26. **Assurance.** TXUE warrants that it has read the foregoing document carefully, knows the contents thereof, and signs the same as its free act.

**ENTERED & EXECUTED** by the Parties on this 30<sup>th</sup> day of April, 2004, by and through their authorized representatives designated below.

  
\_\_\_\_\_  
Authorized Representative  
TXU Energy Retail Company LP

Date: 4-30-2004

PAUL T MCKAIG  
Printed name

  
\_\_\_\_\_  
Jaime Slaughter  
Attorney  
Legal & Enforcement Division  
Public Utility Commission of Texas

Date: 4/30/04

PUC DOCKET NO. \_\_\_\_\_

**AGREED NOTICE OF VIOLATION § PUBLIC UTILITY COMMISSION  
AND SETTLEMENT AGREEMENT §  
RELATING TO TXU ENERGY RETAIL § OF TEXAS  
COMPANY LP'S VIOLATION OF §  
PUBLIC UTILITY COMMISSION §  
SUBSTANTIVE RULE §25.474 §**

**PROPOSED AGREED ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this order approves the Agreed Notice of Violation & Settlement Agreement (“Agreement”) reached between the Legal and Enforcement Division and TXU Energy Retail Company LP (“TXUE” or the “Company”)(collectively referred to as “Parties”) regarding the investigation into TXUE’s violation of P.U.C. SUBST. R. 25.474 (relating to Selection or Change of Retail Electric Provider).

**I. FINDINGS OF FACT**

1. TXUE is a certified retail electric provider (“REP”) as defined by PURA §31.002(17).
2. TXUE contracted with Call Center Concepts (“CCC”) to provide direct marketing at select Cinemark movie theater locations in the Houston and Corpus Christi areas. CCC in turn contracted with, among others, Mr. Anil Rathanaaj and Mr. Roberto Pinales to represent TXUE in Cinemark theaters in Harris County and Hidalgo County, respectively.
3. In June and July, 2003, Mr. Rathanaaj and Mr. Pinales submitted customer enrollments to TXUE through CCC, some of which contained signatures allegedly falsified by Mr. Rathanaaj and Mr. Pinales. TXUE learned of these customer enrollment irregularities through its internal quality control process and took immediate action.
4. TXUE was able to identify the suspect enrollments, and suspend or cancel switches that



had not yet been completed. Fifty-eight (58) of the enrollments, however, had completed the switch process.

5. TXUE took the necessary action to reverse the unauthorized, completed, switches.
6. CCC subsequently terminated the employment of Mr. Rathanaaj and Mr. Pinales.
7. P.U.C. SUBST. R. 25.474 prohibits a REP from enrolling a customer without first obtaining the customer's authorization for enrollment and verifying the authorization using one of the methods specified in the rule.
8. P.U.C. SUBST. R. 25.107(a) permits REPs to outsource business functions to contractors or agents, but the REP remains accountable for all activities conducted on its behalf by its contractors, subcontractors, agents, or any other entity. As a REP, therefore, TXUE is responsible for the violations of P.U.C. SUBST. R. 25.474 that resulted from the unauthorized switching of 58 customers.
9. TXUE moved promptly after discovering the unauthorized switches to: (1) suspend or cancel any suspect enrollments; (2) reverse the 58 switches that had been completed; (3) implement steps to prevent future occurrences; and (4) notify the Commission. TXUE performed in the manner expected by LED upon discovering suspect enrollments.
10. Upon learning of these switches from TXUE, the LED initiated an investigation into their occurrence.
11. TXUE cooperated fully with the LED's investigation, and participated in one or more settlement discussions with the LED, the purpose of which was to amicably resolve the allegations which were the subject of the investigation and described in the Agreement.
12. The Signatories reached a settlement which was reduced to writing and is attached to this Agreed Order as Attachment 1.

## **II. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to §§14.001, 14.002, 14.003, 15.023, 15.024, 17.156, and 39.101 of the Public Utility Regulatory Act;'
2. P.U.C. SUBST. R. 25.474 prohibits a REP from enrolling a customer without first obtaining the customer's authorization for the enrollment and verifying the enrollment using one of the methods specified in the rule;
3. Failure to comply with the customer enrollment protections specified by the Texas Utilities Code and the Commission's rules subjects a REP to administrative penalties, procedures and factors as set forth in P.U.C. PROC. R. 22.246 and PURA §§ 15.023 – 15.028; and
4. P.U.C. PROC. R. 22.246(g)(1)(B)-(C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.

## **III. ORDERING PARAGRAPHS**

In accordance with these findings of fact and conclusions of law, it is ordered that:

1. The Agreement attached hereto as Attachment 1 is approved and the Signatories shall be bound by its terms;
2. TXUE shall pay an administrative penalty in the amount of twenty nine thousand and no/100 dollars (\$29,000.00) before the expiration of 30 calendar days of the effective date of this Agreed Order. Administrative penalty payments shall be made payable to the Public Utility Commission of Texas;
3. As provided in the Agreement, TXUE shall file an affidavit in this docket attesting to

payment of the administrative penalty imposed by that Agreement and this order;

4. The imposition of this administrative penalty and TXUE's compliance with all of the terms and conditions set forth in the Agreement and this Agreed Order resolve all matters arising out of the allegations described here. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here; and
5. This Agreed Order is effective upon the date approved in open meeting by the Commission.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of May, 2004.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

\_\_\_\_\_  
**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2004)(PURA).