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**AGREED NOTICE OF VIOLATION  
AND SETTLEMENT AGREEMENT  
RELATING TO TXU ENERGY RETAIL  
COMPANY LP'S VIOLATION OF  
P.U.C. SUBSTANTIVE RULE 25.41 AND  
PURA § 39.202(e)**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**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 Notice of Violation & Settlement Agreement ("Agreement"). This Agreement terminates an investigation by the LED into an alleged violation by the Company of the price to beat provisions of the Public Utility Commission's ("Commission") rules and the Public Utility Regulatory Act ("PURA"). PURA § 39.202(e) and P.U.C. SUBST. R. 25.41 prohibit affiliated retail electric providers ("REPs") from offering or charging residential customers within the affiliated electric utility's service area rates that are different from the price to beat ("PTB") until the earlier of 36 months after the date customer choice is introduced, or until the Commission has determined that 40% or more of the electric power consumed by residential customers within the affiliated electric utility's certificated service area before the onset of customer choice is committed to be served by nonaffiliated REPs.

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 retail electric provider (“REP”) providing retail electric service in Texas pursuant to REP Certificate No. 10004 issued by the Commission. TXUE serves as the affiliated REP in Oncor Electric Delivery Company’s service territory (“the Oncor area”) and provides PTB service to eligible residential and small commercial customers in the Oncor area. As an affiliated REP, TXUE is subject to the PTB provisions of PURA § 39.202(e) and P.U.C. SUBST. R. 25.41(h), which provide that until the earlier of January 1, 2005, or the date the Commission determines that 40% or more of the electric power consumed by residential customers in the Oncor area is committed to be served by non-affiliated REPs, the Company is prohibited from offering or charging a rate to residential customers different from the PTB.
2. In November 2003, TXUE initiated a marketing campaign (“the Campaign”) directed at approximately 67,000 former PTB customers in the Oncor area. The Campaign consisted of letters mailed to former customers inviting them to return to TXUE and offering them a \$25 movie gift certificate if they switched back to TXUE. At least 540 former customers who responded to the letter and switched back to TXUE (“Enrolled Customers”) were given the promised movie gift certificate.
3. The LED believes that offering the \$25 movie gift certificate in the Campaign was an offer of a rate other than the PTB in violation of P.U.C. SUBST. R. 25.41(h). Further, the LED contends that the provision of the gift certificate to Enrolled Customers constituted charging these customers a rate different from the PTB in violation of PURA § 39.202(e).
4. The LED learned of the Campaign and initiated an investigation into its occurrence.
5. Upon being notified of the LED investigation, TXUE voluntarily stopped the Campaign, cooperated fully with the LED’s investigation, and participated in multiple settlement

discussions with the LED, the purpose of which was to amicably resolve the allegations which were the subject of the investigation.

6. TXUE contends that it has charged no rate to the Enrolled Customers other than the PTB and that the gift certificates were unrelated to electric service and provided no financial value to customers unless they were redeemed.

7. In the course of the settlement discussions, TXUE and LED have reached a settlement of the issues as set out herein.

### **STIPULATIONS & AGREEMENTS**

8. **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.

9. **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.

10. **Considerations.** The Parties desire to compromise and settle the alleged violations that were the subject of the investigation referred to in paragraphs 4 and 5 above 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.

11. **Administrative Penalty.** In order to avoid the time, effort, expense and uncertainties of litigation, the Company agrees to pay an administrative penalty of two hundred twenty thousand and no/100 dollars (\$220,000.00). Payment of this administrative penalty resolves any and all issues, complaints, or alleged violations against Company arising out of the Campaign. 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.

12. **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.

13. **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.

14. **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 that it rescinds this Agreement in accord with Texas Rule of Civil Procedure 21a. 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.

15. **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 described in this Agreement. Accordingly, the Parties hereby request that the Commission approve this Agreement.

16. **Exclusive Benefit.** The Parties mutually agree that they have entered 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.

17. **No Admission of Liability.** By entering into this Agreement, paying the administrative penalty provided for herein, and performing its other obligations under the Agreement, TXUE does not admit to any violation of law or rule.

18. **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.

19. **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.

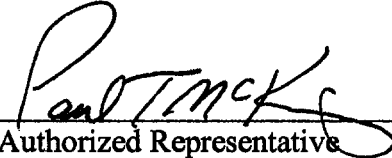
20. **Effective Date.** The Parties agree that this Agreement shall become effective on the date the Commission enters its final order approving it.

21. **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.

22. **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.

23. **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 \_\_\_\_\_ day of May, 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: 5/3/04

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

**AGREED NOTICE OF VIOLATION  
AND SETTLEMENT AGREEMENT  
RELATING TO TXU ENERGY RETAIL  
COMPANY LP'S VIOLATION OF  
P.U.C. SUBSTANTIVE RULE 25.41 AND  
PURA § 39.202(e)**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**PROPOSED AGREED ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this order approves the Agreement reached between the Legal and Enforcement Division (the "LED") and TXU Energy Retail Company LP ("TXUE") (collectively referred to as "Parties") regarding an investigation into TXUE's violation of Section 39.202(e) of the Public Utility Regulatory Act ("PURA") and P.U.C. SUBST. R. 25.41 (relating to Price to Beat).

**I. FINDINGS OF FACT**

1. TXUE is a certified retail electric provider ("REP") as defined by PURA §31.002(17)<sup>1</sup>.
2. TXUE is the affiliated REP in the Oncor Electric Delivery Company's ("Oncor") service territory ("the Oncor area"). As such, until the earlier of January 1, 2005, or the date the Commission determines that 40% or more of the electric power consumed by residential customers in the Oncor area is committed to be served by non-affiliated REPs, the Company is prohibited from offering or charging a rate to residential customers in the Oncor area different from the price to beat ("PTB").
3. In November 2003, TXUE initiated a marketing campaign ("the Campaign") directed at approximately 67,000 former PTB customers in the Oncor area. The Campaign consisted



of letters mailed to former customers inviting them to return to TXUE and offering them a \$25 movie gift certificate if they switched back to TXUE. At least 540 former customers who responded to the letter and switched back to TXUE (“Enrolled Customers”) were given the promised movie gift certificate.

4. The LED asserted that offering the \$25 movie gift certificate in the Campaign was an offer of a rate other than the PTB in violation of P.U.C. SUBST. R. 25.41(h). Further, the LED contended that the provision of the gift certificate to Enrolled Customers constituted charging those customers a rate different from the PTB in violation of PURA § 39.202(e).
5. The LED learned of the Campaign and initiated an investigation into its occurrence.
6. Upon being notified of the LED investigation, TXUE voluntarily stopped the Campaign, cooperated fully with the LED’s investigation, and participated in multiple settlement discussions with the LED, the purpose of which was to amicably resolve the matters which were the subject of the investigation.
7. TXUE contended that it charged no rate to the Enrolled Customers other than the PTB and that the gift certificates were unrelated to electric service and provided no financial value to customers unless they were redeemed.
8. The Signatories reached a settlement of the issues which was reduced to writing and is attached to this Agreed Order as Attachment 1.

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

## **II. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to §§14.001, 14.002, 14.003, 15.023, 15.024, and 39.202 of PURA.
2. PURA § 39.202(e) and P.U.C. SUBST. R. 25.41(h) prohibit an affiliated REP from offering or charging residential customers within the affiliated electric utility's service area rates that are different from the PTB until the earlier of January 1, 2005 or until the Commission determines that 40% or more of the electric power consumed by residential customers within the affiliated electric utility's service area is committed to be served by non-affiliated REPs.
3. The Commission has authority pursuant to PURA §15.023 to impose administrative penalties.
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 two hundred twenty thousand and no/100 dollars (\$220,000.00) 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 Campaign, as described herein. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised in the Agreement and this Agreed Order.
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**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**