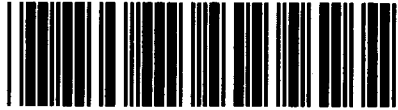




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PUBLIC UTILITY COMMISSION
OF TEXAS
CLERK

COMMENTS OF RELIANT ENERGY, INC. IN RESPONSE TO COMMISSION
STAFF'S QUESTIONS

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August 12, 2008

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COMMENTS OF RELIANT ENERGY, INC. IN RESPONSE TO COMMISSION
STAFF'S QUESTIONS

Reliant Energy, Inc. (Reliant) appreciates this opportunity to provide comments on the Commission Staff's questions published in the *Texas Register* on August 1, 2008.¹ The Commission has opened this project to review P.U.C. SUBST. R. 25.107 in response to the recent failures of a handful of REPs. The fact that this rule is being reviewed suggests that some parties may believe that the REP certification rule has failed. Reliant disagrees. The rule has provided effective guidelines for certification of REPs since the prior to market opening, when REPs were first being certified.² To be sure, some REPs have failed along the way, but failures of REPs are to be expected; with a robust retail electric market, REPs will leave, and there will be others to replace them. Nevertheless, the failures of individual REPs should not be viewed as a failure of the REP certification rule or of the market itself.

Besides fair market rules, perhaps the most important element of a successful competitive market is availability of information to the consumer. Consumers need access to information about REPs so they can make informed choices. To that end, Reliant proposes that any changes to Commission rules focus not on changing the standards by which REPs are judged for certification, but rather on making more information available to consumers. The Commission has already taken steps in the right direction through its recent changes to the powertochoose.org website, where REP financial information and complaint statistics are now being provided. It is Reliant's view that by choosing a few key financial metrics for publication on the powertochoose.org website – metrics that are understood by the average consumer and do not

¹ 33 *TexReg* 6241-6242.

² The rule was modified in 2007, however, to impose additional requirements on REPs that serve more than one million residential customers and to clarify certain requirements concerning transfers of REP certificates. See Project No. 34039, *Rulemaking Proceeding to Amend PUC Substantive Rule 25.107, Relating to Certification of Retail Electric Providers*.

require specialized financial training to understand – customers will be armed with the information they need to make a choice.

In this document, Reliant offers some ideas on how to provide useful information to customers. Then we respond to the questions posed by the Commission.

Providing Information to Customers

As noted above, the Commission has already moved in the right direction by enhancing its Electric Choice website located at powertochoose.org. The updated website contains new sections called “Retail Electric Provider Information” and “Customer Complaint Statistics.” The REP Information section could be improved substantially, with the focus on providing more useful information to customers. Currently, in this part of the website, there is information listed for each REP which has been pulled from the REPs’ certification dockets. There are also links to the REP certification documents on the PUC Interchange, and, in some cases, links to REPs’ corporate websites. Although this information may be useful to some customers, it probably is not all that helpful to most customers. For it to be meaningful, customers would have to understand the REP certification requirements and be willing to sift through PUC filings to make any sense of the information.

A better approach would be to choose a few key metrics that are understandable to the average person and make that information readily available through powertochoose.org. Reliant proposes the following list of potential metrics:

- Total assets
- Net worth (assets minus liabilities)
- Amount of cash on hand
- Amount of customer deposits currently held
- How many years the REP has been certified
- Number of customers

These are straightforward facts that a customer can understand and use for comparison among REPs it is considering choosing. Because retail customers manage their own personal finances, they can understand concepts such as assets, net worth, and cash on hand. The amount of customer deposits currently held provides a benchmark to compare against the cash on hand, which should provide customers (and the Commission) with some indication of whether a REP is

using customer deposits for working capital, which seems to be a significant concern of the Commission, based on the nature of some of the questions posed in the Request for Comments. The last two metrics, amount of time the REP has been certified and number of customers, provide additional information concerning size and experience, without requiring the customer to go read the REP certification application to discern that information.³ Reliant further recommends that the information be provided on a parent company (guarantor) basis, which will simplify compliance requirements for REPs. For example, Reliant makes quarterly filings with the Securities and Exchange Commission (SEC) for Reliant Energy, Inc., and would propose that this publicly-filed information be used for the powertochoose.org website.

Responses to Questions

1. Should the financial qualifications for REPs require cash-like assets that can be readily applied to the REP's obligations to refund customer deposits and advance payments and obligations to TDUs, such as posting letters of credit (LOC) or obtaining surety bonds? Should creditworthy REPs (investment-grade) be exempt from any LOC or surety bond requirements, and allowed to continue to maintain customer deposits in restricted cash accounts?

Reliant does not believe that it is necessary to make any changes to the financial standards by which REPs are certified. P.U.C. Subst. R. 25.107(f)(2) requires that financial obligations to customers be payable by the REP within 30 days from the time that the REP notifies the Commission it intends to withdraw its certification or is deemed by the Commission unable to meet its current customer obligations. REPs should have flexibility for how to demonstrate compliance with this provision, and the existing rules provide sufficient flexibility for doing so. To the extent that the Commission decides to modify the rules, it should be only to provide additional options for demonstrating compliance, not to create additional restrictions on how REPs manage their businesses.

2. The commission has drawn funds from a LOC through the contested-case process. In one case, it took approximately six months to draw on the LOC and return deposits to customers. By comparison, ERCOT has the ability to draw on an LOC and distribute the funds to damaged parties in a matter of days. How could the commission expedite a draw of funds from an LOC? Is additional authority required for the commission to draw funds from a LOC immediately?

³ It would also be helpful to include customer count information in the Complaint Statistics section of the website to provide additional context for a customer's review of complaint data.

The ability of a beneficiary to draw on a letter of credit is tied to the terms agreed upon in the LOC. Reliant has not used an LOC to satisfy its certification requirements so is unfamiliar with this particular issue. The Commission may be able to draw funds from a LOC immediately if it is the beneficiary of a LOC that is used by a REP to obtain certification and the Commission requires that any such LOC terms include the beneficiary's ability to immediately draw funds when the appropriate conditions are met.

3. Are there mechanisms or instruments other than LOCs and surety bonds that provide at least the same level of security as an LOC or surety bond? If so, please identify and describe the mechanism or instrument and how the commission can use it to protect customer deposits.

The LOC is the most practical option available to REPs. Reliant does not believe that there are any other methods that would provide the security that the Commission is seeking, while allowing a REP to be able to enter and operate in this market.

4. (a) Should TDUs be given greater latitude in managing REP credit risks, such as by allowing them to collect deposits from REPs? If so, should the TDUs' latitude to manage REP credit risk be limited in any way? If a REP is unable to pay a TDU, under current business processes, the TDU can be exposed to providing approximately 85 days of unpaid service. How much of this exposure should the TDU be allowed to mitigate? Should creditworthy REPs be exempt from TDU deposit requirements? Should TDUs offer unsecured credit based on payment history? (b) Alternatively, should the financial requirements of REPs be modified to so that TDUs are better protected from REP credit risks?

As cost-of-service regulated companies, TDUs already are the most protected entities in this market and do not require further protections. For example, PURA §39.107(d) provides that REPs are required to pay TDUs for charges (regardless of whether the REP ultimately gets paid by the customer). P.U.C. SUBST. R. 25.107(f)(1)(B) allows a TDU to impose additional credit conditions on a REP that has defaulted on one or more payments to the TDU. Further, P.U.C. SUBST. R. 25.108 provides additional protections to TDUs (by imposing additional financial standards obligations on REPs) specifically for the billing and collection of transition charges. Of course, the TDUs also have the ultimate protection that REPs do not have: they can obtain a rate increase from the Commission to cover their costs.

Nearly all REPs in the ERCOT market would be considered below "investment-grade." Therefore, if the TDUs could set their own credit standards, they would most likely require 90 days' charges for collateral, or some similar requirement. These kinds of collateral requirements

would put REPs at risk, and the costs associated with obtaining this collateral would be passed on to consumers.

In short, establishing additional protections for the TDUs provides little incremental value to the market or to retail customers, while likely increasing costs to REPs and their customers.

Although, the standards should not be changed, one possibility for improving the effectiveness of the existing rule would be to provide an additional information check on when REPs have exceeded \$250,000 in TDU billings. P.U.C. SUBST. R. 25.107(f)(1)(A)(iii) provides, as one option for meeting credit quality standards, the ability to maintain unused cash resources to enable the REP to incur TDU billings; as the monthly TDU billings increase, the REP is required to have additional unused cash resources. When the \$250,000 in TDU billings is exceeded, the REP must file a sworn affidavit demonstrating compliance. Enforcement of this provision could be improved by having the TDUs report periodically to the Commission for those REPs that have surpassed the \$250,000 threshold, so that the Commission can verify that the showing of resources is appropriately updated.

5. Should the billing cycle in the standard delivery tariff be shortened to limit exposure? If so, should REPs be permitted to use shorter billing cycles?

There is no need to shorten the billing cycle in the standard delivery tariff to limit TDU exposure. As noted previously, REPs are obligated to pay those charges regardless of whether the REP ultimately gets paid by the customer.

6. Based on your market experience, what is the appropriate minimum capital required for the initial start-up operation of a REP? The response should consider initial and near term liquidity needs for the purchase of wholesale electricity, collateral requirements, computer software and infrastructure, personnel, contract services, commodity risk management, marketing, and legal expenses. The response may include one scenario or a range of scenarios based on different market conditions, and should be supported with data where possible.

Reliant Energy has no response to this question at this time.

7. Should the financial standards for REP certification be divided into tiers, such that the creditworthiness of each REP and applicant is categorized into successive tiers of qualification with higher financial requirements for companies with higher levels of exposure to market risks? Should such a tier system employ incentives for lower tier REPs to apply for and obtain higher tier status (or qualify for an automatic upgrade based on a periodic review) when warranted? Should exposure limits (load limits, customer deposit restrictions, etc.) be imposed on lower tier REPs?

Reliant does not support changes in the rules that will further stratify the certification requirements for REPs based on business plans or characteristics of the companies. There is already a provision in P.U.C. SUBST. R. 25.107(f)(1)(G) requiring higher standards for REPs that serve more than one million residential customers. The Commission should refrain from getting deep into the business of the REPs as if they were cost-of-service regulated entities.

8. Should the revised rule incorporate limits on changes in exposure to market risks (load growth, restrictions on the offering of fixed price contracts to customers, or other restrictions designed to mitigate exposure to risk)? What requirements, including timing, should the rule set for updating financial qualifications consistent with growth in customer deposits and prepayments?

Again, the Commission should refrain from trying to regulate the REPs as if they were cost-of-service regulated entities. The Commission should not be in the business of trying to influence hedging or supply strategies of REPs or controlling their market risks. REPs should be required to meet a uniform set of financial standards, and then be free to operate under their chosen business plan. Rather than trying to "protect" REPs as if they were utilities, the better approach is to provide additional information to consumers and then let consumers make informed choices in a competitive market.

9. Should there be separate financial standards for pre-pay REPs?

There is no need to modify existing standards for certification to create different requirements for pre-pay REPs. The REP certification requirements should be the same regardless of business plan. Existing P.U.C. SUBST. 25.107(f)(2) appropriately includes advance payments received along with deposits as customer obligations that must be payable within 30 days of notice that the REP does not intend to continue to operate, or when the Commission has deemed the REP no longer can meet customer obligations.

10. Should the commission consider key elements of a REP applicant's business plan, such as power acquisition, risk management, and retail pricing, in evaluating the financial requirements in an application for certification?

The Commission should use uniform financial and technical criteria and not try to impose additional requirements based on a proposed business plan. Customers, not the Commission, should determine whether a business plan is successful. It would be inappropriate, and stifling to

market innovation, if the Commission were to pre-judge the quality or likely success of a proposed business plan.

11. Should REPs be required to submit quarterly financial reports? Should REPs be required to submit quarterly reports on power acquisition, risk management and their current retail contracts?

Reliant does not generally support additional reporting requirements, which increase administrative costs on REPs (and ultimately customers) without a corresponding benefit to the public. It is doubtful that the Commission would have the resources to actually review reports filed each quarter by thirty-plus REPs serving residential customers, so it would serve no purpose to require such reporting. Further, it would not serve any purpose to require REPs to report to the Commission on their supply contracts, hedging strategies, and retail contracts, given that REPs are not cost-of-service regulated. Additionally, such information is highly sensitive, trade secret information.

However, to the extent that the Commission adopts Reliant's proposal to provide information on certain key metrics, as discussed earlier in these comments, then Reliant would not oppose providing that information to the Commission, consistent with SEC reporting schedules.

12. Should the commission disqualify owners, principals, and Board members of a company that has defaulted with ERCOT or a TDU or whose customers have been transferred in a mass transition from being an owner, principal, or Board member of another REP?

Reliant does not support disqualifying a potential REP on the basis of the REP employing specific individuals who might have worked previously for a REP that failed. Rarely does a company fail due to the actions of an individual.

13. Should the technical requirements for REP certification be modified? What standards are appropriate?

Reliant does not believe it is necessary to modify current requirements for REP certification. The current standards are appropriate.

14. Should the standards and procedures for certificate amendments and/or transfers be modified? If so, how?

Reliant does not believe it is necessary to modify current standards and procedures for certificate amendments or transfers.

15. Does the commission have the ability to prescribe by rule conditions that would result in automatic suspensions or revocations of REP Certificates? If so, should the rule allow for automatic suspensions or revocations of REP Certificates? Under what circumstances would an automatic suspension or revocation be appropriate? What process should the commission use to confirm automatic suspensions or revocations?

The Commission does not have the authority to prescribe by rule conditions that would result in automatic suspensions or revocations of REP certificates. PURA §39.356(a) provides that:

- (a) The commission may suspend, revoke, or amend a retail electric provider's certificate for significant violations of this title or the rules adopted under this title or of any reliability standard adopted by an independent organization certified by the commission to ensure the reliability of a power region's electrical network, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the independent organization. The commission may also suspend or revoke a retail electric provider's certificate if the provider no longer has the financial or technical capability to provide continuous and reliable electric service.

The statutory language clearly states that suspension, revocation, or amendment of a certificate can occur only for significant violations of PURA, the Substantive Rules, or ERCOT reliability protocols. For such an action to take place, there would have to be Commission findings that significant violations occurred, and pursuant to administrative procedure, such findings could be entered only after notice and opportunity for hearing. While a rule could establish examples of significant violations that could lead to suspension, before a REP loses its right to conduct business, it is entitled to be heard on any alleged violations. To deny a REP that right would be to deny it due process.

The statutory language also gives the Commission authority to suspend or revoke a REP certificate if the REP no longer has the financial or technical capability to provide continuous and reliable electric service. Again, there would have to be findings that the REP did not meet the standards in order for the Commission to take this very serious step of revoking or suspending a certificate. REPs must be afforded due process. Reliant opposes any rule that imposes automatic suspensions, revocations, or amendments to a REP certificate without first affording the REP an opportunity for hearing.

16. If the commission adopts more stringent certification requirements, should it grandfather existing REPs for a limited period, to permit them to demonstrate that they are in compliance with the new standards?

Although Reliant disagrees with adopting of more stringent requirements, if the Commission does so, it should allow existing REPs at least 6 months to demonstrate compliance with the new standards.

Conclusion

Reliant appreciates the opportunity to offer comments on the questions posed by the Commission Staff. Although the questions focus on ways to change the REP certification standards, it is Reliant's view that a better approach would be to choose a few key metrics that are understandable to the average person and make that information readily available through powertochoose.org. Reliant respectfully requests that the Commission moved forward with this project consistent with this approach. We look forward to working with the Commission and interested parties to develop ways to provide customers with practical information they can use to make informed choices in the competitive retail market.

Respectfully submitted,

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