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OPEN MEETING COVER SHEET

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MEETING DATE: July 2, 2009

DATE DELIVERED: July 2, 2009

AGENDA ITEM NO.: 30

CAPTION: Project No. 37142 - Petition of State Representative Sylvester Turner, AARP, One Voice Texas, Texas Legal Services Center, Texas Ratepayers' Organization to Save Energy for Adoption of Emergency Disconnection Rule.

ACTION REQUESTED: **Chairman Smitherman Memo**

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

FROM: Chairman Barry T. Smitherman BTS

DATE: July 2, 2009

RE: July 2, 2009 Open Meeting; Project No. 37142 - *Petition of State Representative Sylvester Turner, AARP, One Voice Texas, Texas Legal Services Center, Texas Ratepayers' Organization to Save Energy for Adoption of Emergency Disconnection Rule*

Last week, State Representative Sylvester Turner, along with several other organizations, filed a petition for the Commission to adopt an emergency rule prohibiting the disconnection of low income, elderly, and critical care consumers. I understand the concern to protect vulnerable consumers from disconnections during the summer. Fortunately, electric rates and market conditions this year are better than in previous summers and Commission rules already put protections in place to help low income, elderly, and critical care consumers avoid disconnection. In addition, aside from the slightly higher than normal temperatures during the past week, the temperatures during May and June have been typical compared to past years, which is to say "hot," and are normal for Texas in the summer. It is also going to be hot during July and August. The fact that the temperature, and with it, electric bills, increase in the summer months should come as no surprise to anyone. Therefore, I do not believe that the situation is an emergency that requires immediate action by the Commission at this time.

First, electric rates this year are significantly lower than in previous years. Last summer, rates were 15¢-20¢/kWh. Rates in 2007 were generally in the 12¢-16¢/kWh range. Looking at the current rates on www.powertochoose.com, the lowest rates in all service areas are in the 10¢-11¢ range, with some areas seeing rates as low as 9¢/kWh. Compared to last summer, rates are down 30%-50%. If people are looking for an immediate impact on their electric bills, I strongly encourage them to take advantage of the competitive retail electric market and shop around for a new retail electric provider (REP). If customers are at the end of a contract term, or are on a month-to-month plan, they should shop around for the best deal. It may also be advantageous to leave your current REP and pay a termination fee if the savings will outweigh the fee. Consumers should choose the plan that is right for them, and can often see a dramatic drop in their electric bills.

Second, the system benefit fund discount has been funded by the Legislature, and combined with the low electric rates, provides relatively larger support for low-income customers. This is an important difference between this summer and the summer of 2006, when an emergency disconnection rule was implemented. In 2006, the Commission was not authorized to fund the discount, and as a result, the discount was not available to consumers. However, the Commission is currently authorized to fund the low-income discount, which is set at 15.5% and will increase to 17% on August 1, 2009, based on the average POLR rate last year of approximately 19¢/kWh. This gives about a 3¢/kWh discount to low-income residents. If a customer is paying electric rates of 12¢/kWh, the discount is effectively a 25% reduction in their electric bill. If a customer is only paying 10¢/kWh, the effective discount would be approximately 30%. With the lower electric prices and the system benefit fund discount, a low-income customer that switches from a REP offering 16¢/kWh rates to a REP offering 11¢/kWh rates will effectively see a drop in their electric bills by 50% after including the discount.

Third, TXU and Reliant, the two largest retail electric providers in the state, have committed to a moratorium on disconnecting electricity service for elderly, low-income, and critical-care residential customers who contact the companies and agree to a payment plan. These plans, which were also implemented last year, are similar to the plans proposed by Representative Turner in the petition. I believe, as described in my memos on this issue last year in Project Nos. 26793, 35937 and 35984, that the Commission has the authority to enforce the commitments made by the retail electric providers when they offer these types of programs. In the memos, I also described that this is how I believe the market should operate, with retailers differentiating themselves based on the products, services, and prices that each offers. If the disconnection option is important to a customer, then that customer can switch to a REP that offers the service.

Fourth, PURA and the Commission rules currently address disconnections in a variety of situations. PURA §39.101(h) and P.U.C. Subst. R. 25.483(i) prohibit disconnections during an "extreme weather emergency," which (for the summer) is when the national Weather Service issues a heat advisory in any county, or when such an advisory has been issued during the previous two days. The National Weather Service Criteria for a heat advisory is when the heat index is at least 105 degrees or if nighttime lows are above 80 degrees for two consecutive days. Therefore, this is equivalent to the language request in the petition. Disconnection is also prohibited under 25.483(f) on a holiday or weekend, or the day before a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service. Disconnection is also prohibited under 25.483(h) for a residential customer that provides notification of receiving energy assistance and commits either to pay or make a payment arrangement to pay any outstanding debt not covered by the energy assistance provider.

In addition, P.U.C. Subst. R. 29.497 and 25.483(g) directly addresses the additional requirements that the retail electric providers and transmission and distribution utilities must meet to address disconnection issues for critical care customers. The rules essentially require that any disconnection request for a critical care customer will be deferred at least 63 days. However, market participants often go far beyond these rules, with some companies having additional, internal prerequisites that must be met before a customer is disconnected, while other companies go the extreme and will not disconnect critical care customers. With the Commission's rules and the market participant's actions, critical care customers are already one of the most protected classes of customers.

Another Commission rule, P.U.C. Subst. R. 25.480, addresses deferred payment plans, which requires a REP to inform the customer of all payment options and payment assistance programs that are available to the customer. If the REP issues a disconnection notice before a payment arrangement is made, that disconnection should be suspended until after the due date for the payment arrangement. A REP must offer a deferred payment plan to customers, upon request, for bills that become due during an extreme weather emergency, or for customers who have expressed an inability to pay, unless the customer has been issued more than two termination or disconnection notices during the preceding 12 months, or has received service from the REP for less than three months and lacks sufficient credit or payment history from a previous REP. Through a deferred payment plan, under 25.480(j), a REP may require an initial payment not to exceed 25% of the delinquent amount of the outstanding balance to initiate the agreement, with the remainder to be paid in equal installments over at least the next three billing cycles. These customer protections that are already in Commission rules already prohibit disconnections in different situations and seek to help customers avoid the situation.

Fifth, Texas Department of Housing and Community Affairs (TDHCA) administers the weatherization assistance program, which helps improve the energy efficiency of homes and ultimately lowers customers' electric bills for the entire year, not only during the summer. In addition, stimulus funds will provide for an expanded weatherization program. The stimulus funding legislation allows for an increase in the income limit for the population that may be served from 150% to 200% of federal poverty guidelines and raises the monetary cap that may be spent on each household from $2,500 to $6,500. With the stimulus funds, TDHCA expects to have a total of $326,975,732 for its weatherization program. Further information TDHCA's administration of the program can be found on their website at http://www.tdhca.state.tx.us/ea/wap.htm or by calling (888) 606-8889.

Finally, the legislature has attempted to address this issue during the past two legislative sessions; several bills in each session were filed that addressed the issue of customer disconnections during the summer. During the 2007 session, bills introduced on this issue, on both the House and Senate side, failed to pass out of committee in the chamber in which the bills were introduced. During this past session, although the legislation proceeded further in the process, no bill on this issue passed out of the chamber in which it was introduced. Like other arguably worthy legislation (additional energy efficiency goals (H.B. 280, S.B. 546) and electric cooperative reform(H.B. 1390, S.B. 921), to name two) which may have appeared to have broad support, this legislation failed to pass and therefore has no greater standing than any other of the 7275 bills which were introduced but did not become law.

The Commission did open a rulemaking, Project No. 36131, last September to address this issue on a permanent basis. However, because of a variety of factors, including a meltdown in the financial markets, a precipitous decline in natural gas prices, a decline in retail electric prices, and the fact that the Legislature was to convene four months later and was expected to address this issue, the Commission did not move forward. Now that the Legislature has not acted on the issue (again), the Commission can go forward to address all the issues involved with customer disconnections during the summer months.

Based on the all these reasons, I do not believe that the facts require the implementation of the rule on an emergency basis. Of course, should the situation or any of the conditions described above change, I would immediately evaluate whether additional protections should be implemented for consumers. However, at this point, I believe that the Commission should go forward with a standard rulemaking in Project No. 36131 to address this issue on a permanent basis.

I look forward to discussing this matter at the open meeting.