



Control Number: 38550



Item Number: 2

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**Barry T. Smitherman**  
Chairman

**Donna L. Nelson**  
Commissioner

**Kenneth W. Anderson, Jr.**  
Commissioner

**W. Lane Lanford**  
Executive Director




**Rick Perry**  
Governor

## *Public Utility Commission of Texas*

**TO:** Barry T. Smitherman, Chairman  
Donna L. Nelson, Commissioner  
Kenneth W. Anderson, Jr., Commissioner

All Parties of Record

**FROM:** Irene Montelongo   
Director, Docket Management

**RE:** **Open Meeting of September 29, 2010**  
Docket No. 38550 – *Agreed Notice of Violation and Settlement Agreement Relating to Accent Energy Texas, L.P.'s. Violation of PURA §§ 17.004 and 39.101 and P.U.C. SUBST. R. 25.475 and 25.479, Concerning Customer Protection Rules for Retail Electric Service*

**DATE:** September 2, 2010

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Thursday September 29, 2010, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Tuesday, September 21, 2010.

**If there are no corrections or exceptions, no response is necessary.**

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**DOCKET NO. 38550**

**AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO ACCENT ENERGY §  
TEXAS L.P.'S VIOLATION OF PURA §  
§§ 17.004 AND 39.101, AND P.U.C. SUBST. §  
R. 25.474 AND 25.479, CONCERNING §  
CUSTOMER PROTECTION RULES FOR §  
RETAIL ELECTRIC SERVICE §**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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PUBLIC UTILITY COMMISSION  
REG. CLERK

**PROPOSED ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff and Accent Energy Texas, L.P. (Accent) (collectively, Parties) regarding Commission Staff's investigation of Accent for violations of PURA<sup>1</sup> §§ 17.004 and 39.101 and P.U.C. SUBST. R. 25.474 and 25.479, concerning customer protection rules for retail electric service. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. The Agreement is unopposed and provides for a reasonable resolution to the issues in this docket. Commission Staff recommended an administrative penalty of \$50,000. Accent agreed to pay the recommended administrative penalty. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

1. Accent is a retail electric provider (REP), Certificate No. 10078, pursuant to P.U.C. SUBST. R. 25.107.
2. The Commission instituted a compliance audit program to determine each REP's compliance with the Commission's customer protection rules (P.U.C. SUBST. R. 25.471-25.498), as well as provisions of PURA (§§ 17.001-17.158 and 39.101-39.116).

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA).

Commission Staff reviewed each REP's business practices and supporting documentation to ensure compliance with the Commission's customer protection rules and PURA.

- 3. A compliance audit concluded by the Commission's Oversight and Enforcement Division in 2010 revealed Accent was not in compliance with several provisions of the Commission's customer protection rules for retail electric service, including the following:
  - a. P.U.C. SUBST. R. 25.474(c) relating to general contracting requirements. Accent's Terms of Service (TOS) document did not always contain applicable internet address/links and/or references to customer protection rules;
  - b. P.U.C. SUBST. R. 25.474(c) relating to general contracting requirements. Accent's TOS document did not utilize the prescribed terms in their entirety for its products;
  - c. P.U.C. SUBST. R. 25.475(d) relating to changes in contract and price and notice of changes. For variable price products, Accent's residential bill did not contain a statement informing the customer how to obtain information about the price that will apply on the next bills as required by P.U.C. SUBST. R. 25.475 (d)(2)(C);
  - d. P.U.C. SUBST. R. 25.475(e) relating to contract expiration and renewal offers. For original contracts containing a termination fee, Accent's expiration notice did not contain a statement that the termination penalty does not apply 14 days prior to the expiration date;
  - e. P.U.C. SUBST. R. 25.475(e)(1) relating to contract expiration and renewal offers. Accent's contract expiration notice did not include a statement that month-to-month default service can be cancelled at any time with no fee;
  - f. P.U.C. SUBST. R. 25.475(e)(2) relating to affirmative consent. Accent's affirmative consent recordings did not contain both the customer's billing and service addresses for instances where those items are different, and Electric Service Identifier (ESI ID);
  - g. P.U.C. SUBST. R. 25.475(e)(2) relating to affirmative consent. Accent's affirmative consent electronic recordings did not state the identification number(s) of the TOS or Electric Facts Label (EFL) under which customer will be served;
  - h. P.U.C. SUBST. R. 25.475(e)(2) relating to affirmative consent. Accent's affirmative consent electronic recordings state that the documents would be sent

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immediately, the recordings did not state an approximate time period during which the customer is expected to receive copies of the TOS, EFL and Your Rights as A Customer (YRAC) as required by P.U.C. SUBST. R. 25.475(e)(3)(C);

- i. P.U.C. SUBST. R. 25.475(e)(2) relating to affirmative consent. Accent's affirmative consent recordings for renewals did not state the estimated start and end dates of the renewal contract;
- j. P.U.C. SUBST. R. 25.475(f) relating to TOS document. Accent's TOS document did not include an internet address and hours of operation of toll-free telephone number;
- k. P.U.C. SUBST. R. 25.475(f) relating to TOS document. Accent's TOS document did not contain a complete description of payment arrangements, bill payment assistance programs, or low income energy efficiency program(s) offered by the company;
- l. P.U.C. SUBST. R. 25.475(f) relating to TOS document. Accent's TOS document did not contain a comprehensive list of all Commission-prescribed conditions under which a customer may establish satisfactory credit;
- m. P.U.C. SUBST. R. 25.475(f) relating to TOS document. Accent's TOS document did not contain a statement informing the residential customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less;
- n. P.U.C. SUBST. R. 25.475(g) relating to EFL. The required EFL statements are not verbatim and not in 12 point font;
- o. P.U.C. SUBST. R. 25.475(h)(4) relating to YRAC disclosure. Accent's YRAC did not inform the customer of the right to be instructed on how to read a meter;
- p. P.U.C. SUBST. R. 25.475(h)(6) relating to YRAC disclosure. Accent's YRAC did not fully inform the customer of each of the protections relating to disconnection as required by P.U.C. SUBST. R. 25.483;
- q. P.U.C. SUBST. R. 25.475(h)(7) relating to YRAC disclosure. Accent's YRAC did not disclose hours of operation or the toll-free telephone number;

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- r. P.U.C. SUBST. R. 25.479(g) relating to bill content. Accent's billing term for its monthly fee was not the same as that disclosed in its EFL.
4. On or about March 26, 2010, Accent was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about the right to a hearing, and an opportunity to explain its activities.
  5. Accent fully cooperated with Commission Staff's investigation.
  6. Accent acknowledged the violations detailed in this Order.
  7. Accent participated in one or more settlement discussions with Commission Staff to resolve this matter.
  8. Prior to settlement of this matter, Accent took action to correct all of the deficiencies that form the basis of this Agreement. Commission Staff will not initiate any further inquiry or enforcement action related to the subject matter of this Agreement that occurred on or before the date the Agreement was executed.
  9. On August 12, 2010, the Parties filed an Agreement, in this docket, in which Commission Staff recommended and Accent agreed to pay an administrative penalty of \$50,000 for the violations described herein.
  10. The Agreement provides for a reasonable resolution of this dispute.
  11. The Agreement is in the public interest and should be approved.

## II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 15.023, 15.024, 17.004, and 39.101.

2. Accent is a REP for purposes of PURA §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.475 and 25.479.
3. As a REP, Accent is required to comply with the customer protection standards established by PURA §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.475 and 25.479.
4. The Agreement referenced in Finding of Fact Nos. 9-11 is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
5. Accent was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about the right to a hearing, and an opportunity to explain its activities.
6. PURA § 17.004 establishes customer protection standards stating, among other things, that all buyers of retail electric services are entitled to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.
7. PURA § 39.101 establishes customer safeguards stating, among other things, that a customer is entitled to be protected from unfair, misleading, or deceptive practices.
8. Pursuant to this legislative mandate, the Commission implemented the customer protection standards found in P.U.C. SUBST. R. 25.475 and 25.479.
9. An audit conducted during 2010 revealed that Accent violated PURA §§ 17.004, and 39.101, as well as P.U.C. SUBST. R. 25.475 and 25.479.
10. The violations at issue are not considered "significant" for purposes of P.U.C. SUBST. R. 25.107(j).
11. P.U.C. PROC. R. 22.246(g)(1)(A), (B), and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.

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12. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. Accent shall pay an administrative penalty to the Commission in the amount of \$50,000. Accent shall remit payment of the full amount of the administrative penalty on or before 30 calendar days after the date this Order is signed. Payment of this administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 38550. The check shall be sent to the following address:

Public Utility Commission of Texas,  
P.O. Box 13326,  
Austin, Texas 78711  
ATTN: Fiscal Services

3. Accent shall continue to make efforts to comply with the Commission's customer protection requirements.
4. Accent shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not



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be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.

- 7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_\_ day of September 2010.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**BARRY T. SMITHERMAN, CHAIRMAN**

\_\_\_\_\_  
**DONNA L. NELSON, COMMISSIONER**

\_\_\_\_\_  
**KENNETH W. ANDERSON, JR., COMMISSIONER**

DOCKET NO. 38550

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO ACCENT ENERGY	§	OF TEXAS
TEXAS LP'S VIOLATION OF PURA	§	
§§ 17.004 AND 39.101 AND P.U.C.	§	
SUBST. R. 25.475 AND 25.479,	§	
CONCERNING CUSTOMER	§	
PROTECTION RULES FOR RETAIL	§	
ELECTRIC SERVICE	§	

**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Commission) and Accent Energy Texas LP (Accent or Company) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violations of PURA<sup>1</sup> §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.475 and 25.479, concerning customer protection rules for retail electric service. This investigation was initiated by the Commission as part of a compliance audit of all retail electric providers.

**The Parties agree as follows:**

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Staff recommended, and Accent voluntarily agrees to pay, an administrative penalty of \$50,000.00 for the deficiencies committed by Accent as described in the attached Proposed Order.
3. Since receiving the results of the Commission's compliance audit which revealed the violations that form the basis of the settlement agreement, Accent has voluntarily taken

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL CODE §§ 11.001-66.016 (Vernon 2007& Supp. 2009) (PURA).

corrective actions to come into compliance with the Commission's statutory and regulatory requirements relating to customer protection.

4. Unless specifically provided for in this Agreement, Accent waives any notice and procedures that might otherwise be authorized or required in this proceeding.

5. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.

6. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

7. This Agreement fully and finally resolves all issues related to Commission rules violations arising out of the facts described herein or that may be said to exist from the facts described herein. The Parties enter into this Agreement to resolve by compromise the issues related to this matter. This Agreement is entered into by the Parties in order to avoid the potential for expensive and protracted litigation, the outcome of which would be uncertain. Neither the payment of the penalty amount by the Company nor anything in this Agreement shall be construed as an admission of liability by the Company.

8. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.2-46(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under

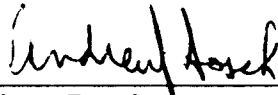
law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

9. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.

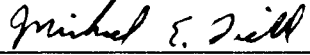
10. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

11. The Company warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

**EXECUTED** by the Parties by their authorized representatives designated below.

  
\_\_\_\_\_  
Andrew Dosch  
Chief Financial Officer  
Accent Energy  
6065 Memorial Dr.  
Dublin, OH 43017

Date: Aug 6, 2010

  
\_\_\_\_\_  
Michael E. Field  
Director  
Oversight and Enforcement Division  
Public Utility Commission of Texas

Date: Aug 10, 2010