



Control Number: 38630



Item Number: 8

Addendum StartPage: 0

DOCKET NO. 38630

APPLICATION OF CITY OF DALLAS
FOR RETAIL ELECTRIC PROVIDER
CERTIFICATION PURSUANT TO
SUBST. R. 25.107

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PUBLIC UTILITY COMMISSION
OF TEXAS

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PUBLIC UTILITY COMMISSION
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COMMISSION STAFF'S REPLY TO MOTION FOR REHEARING¹

COMES NOW Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Reply to Motion for Rehearing filed by the City of Dallas and would show the following:

I. Background

On September 2, 2010, the City of Dallas filed an application for certification as a Retail Electric Provider (REP) in Texas. On September 17, 2010, in accordance with Order No. 1 Entering Protective Order, Establishing Procedural Schedule and Determining Filing and Service Procedures, Staff filed a recommendation that the City of Dallas' application for a REP certificate be denied on the basis that P.U.C. SUBST. R. 25.107 does not apply to municipal corporations. On September 27, 2010 Order No. 2 was issued, dismissing the application with prejudice. On October 6, 2010 the City of Dallas filed a Motion for Rehearing with Supporting Brief (Motion for Rehearing).

II. Notice

The City of Dallas asserts multiple times in its Motion for Rehearing that it has received no service of any order issued in this case or of Staff's response to Order No. 1 recommending dismissal of the application.¹ These assertions are incorrect.

In its application, the City of Dallas identifies its authorized company representative as Jack Ireland, Executive General Manager, with an address of 1500 Marilla St., Room 4 D North, Dallas, TX 75201, a phone number of 214-670-5349, a fax number of 214-670-6914, and an e-mail address of jack.ireland@dallascityhall.com. All of this information was correctly identified

¹ Applicant City of Dallas' Motion for Rehearing with Supporting Brief at 1-2 and 8.

in the PUC service list for this docket as shown in Attachment 1 to this pleading. No other authorized representative was identified in the application, nor was any legal counsel identified.

Prior to filing its Response to Order No. 1, Staff attempted to contact Mr. Ireland three separate times to discuss the City of Dallas' application by calling the number shown above (which connects to a directory, not a direct line to Mr. Ireland) and leaving voice-mail messages. None of Staff's calls to Mr. Ireland were returned.

As shown in Attachment 1, Staff attempted to right-fax its Response to Order No. 1 to Mr. Ireland numerous times at the e-mail address shown above, each time without success. Ultimately, on September 17, 2010, *the same day Staff's Response to Order No. 1 was filed*, Staff mailed a copy of its response to Mr. Ireland at the physical address shown above.

Commission Staff has complied with the notice requirements of the Commission's rules and the City of Dallas' complaints to the contrary are without merit.

III. Substantive Response to Motion for Rehearing

In its Motion for Rehearing, the City of Dallas makes three arguments for why the conclusions of Staff's Response to Order No. 1 and Order No. 2 are incorrect, as follows:

1. P.U.C. SUBST. R. 25.107(a) does not make municipal corporations ineligible for REP certification, rather it exempts them from compliance with the rule;
2. If Rule 25.107(a) makes municipal corporations ineligible to receive REP certification, the rule is invalid because it violates PURA² § 39.352(b); and,
3. PURA does not exclude municipal corporations from its definition of a "person," therefore P.U.C. SUBST. R. 25.107(a) cannot exclude municipal corporations as persons qualified to obtain a REP certificate.

The Commission should deny the motion because P.U.C. SUBST. R. 25.107 prohibits the issuance of a REP certificate to a municipal corporation such as the City of Dallas. P.U.C. SUBST. R. 25.107(a) states:

This section applies to all *persons* who provide or seek to provide electric service to retail customers in an area in which customer choice is in effect and to retail customers participating in a customer choice pilot project authorized by the commission. This section does not apply to the

² Public Utility Regulatory Act, Texas Utilities Code, Title II.

state, political subdivisions of the state, electric cooperatives or municipal corporations, or to electric utilities providing service in an area where customer choice is not in effect.....

(Emphasis added.) P.U.C. SUBST. R. 25.107(b)(10) expressly excludes a municipal corporation from the definition of person.

PURA § 17.051(a) required the Commission to adopt rules relating to the certification of REPs. The Commission has no other rules for the certification of entities as REPs. Thus, the Commission intended that P.U.C. SUBST. R. 25.107 address all possibilities for certification as a REP. Furthermore, it would have been incongruous for the Commission to establish detailed REP certification standards for certain types of entities and none for other types of entities. In contrast to P.U.C. SUBST. R. 25.107's exclusion of political subdivisions from certification as REPs, P.U.C. SUBST. R. 25.111 addresses the registration of aggregators and allows, with limitations, both persons and political subdivisions to be registered as aggregators.³ Thus, in P.U.C. SUBST. R. 25.107, the Commission intended to prohibit a political subdivision from obtaining certification as a REP, and the rule should be interpreted accordingly. Furthermore, P.U.C. SUBST. R. 25.107 is a competition rule and, pursuant to PURA § 39.101(f), its validity is no longer subject challenge.⁴

The Commission must comply with its own rules.⁵ Thus, Dallas's arguments that PURA requires certification of REPs are beyond the scope of this docket. If the Commission wants to revisit its interpretation of PURA, embodied in P.U.C. SUBST. R. 25.107, that municipal corporations and other political subdivision cannot be certified as REPs, it should do so in a rulemaking proceeding.⁶ Not only would a rulemaking proceeding be the legally proper means of reconsidering the issue, it would have the practical benefit of providing notice and opportunity for comment by all interested entities. Broad input on such an issue would be valuable because the certification of municipal corporations and possibly other political subdivisions could have major impacts on the Texas retail competitive market. Private entities that are currently certified as REPs would undoubtedly want to be heard on this issue.

³ See P.U.C. SUBST. R. 25.111(c)(2)(B) and (3) (defining person to exclude a political subdivision or political subdivision corporation and defining a Class II aggregator to include a person or municipality or other political subdivision that engages in certain activities).

⁴ *Rulemaking Relating to Certification of Retail Electric Providers*, Project No. 35767, Proposal for Publication of Repeal of §25.107 and New §25.107 as Approved at the October 23, 2008 (Oct. 24, 2008) at 1.

⁵ See *Power Resource Group, Inc. v. Public Utility Commission of Texas*, 73 S.W.3d 354, 358 (Tex. App. – Austin 2002, pet. denied).

⁶ Staff is not advocating revisiting this issue.

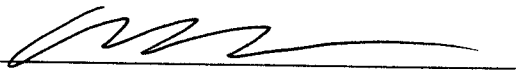
IV. Conclusion

For the reasons described above, Staff believes that Order No. 2 was correctly decided and that the City of Dallas' motion for rehearing should be denied.

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division


Andres Medrano
State Bar No. 24005451
Senior Attorney-Legal Division
(512) 936-7285
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 15th, 2010, 2010 in accordance with Order No. 1 in this docket.


Andres Medrano

ATTACHMENT 1

Miles, Janice

From: RightFax E-mail Gateway [Mail.Administrator@puc.state.tx.us]
Posted At: Friday, September 17, 2010 12:12 PM
Conversation: Fax to Jack Ireland (RightFax) abandoned after 5 attempts. RE: DOCKET NO 38630 COMMISSION STAFF'S RESPONSE TO ORDER NO 1
Posted To: Deleted Items
Subject: Fax to Jack Ireland (RightFax) abandoned after 5 attempts. RE: DOCKET NO 38630 COMMISSION STAFF'S RESPONSE TO ORDER NO 1

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SERVICE LIST

DOCKET NO. 38630

**APPLICATION OF CITY OF DALLAS FOR RETAIL ELECTRIC PROVIDER
CERTIFICATION, PURSUANT TO SUBST. R. §25.105**

PARTIES	REPRESENTATIVE/ADDRESS
PUBLIC UTILITY COMMISSION	LEGAL DIVISION PUBLIC UTILITY COMMISSION 1701 N CONGRESS AVE STE 8-110 AUSTIN TX 78711 512-936-7260 512-936-7268 FAX
CITY OF DALLAS TEXAS	JACK IRELAND CITY OF DALLAS TEXAS 1500 MARILLA ST ROOM 4 D NORTH DALLAS TX 75201 214-670-5349 214-670-6914 FAX Email: jack.ireland@dallascityhall.com

Verified by: 9/3/10 krw 9/27/10 krw
Intervention Deadline: 9/24/10

Public Utility Commission Tx

10/5/2010

List of Filings

Control No:	Item No:	Item Type:	Party:	Date Filed:	Description:
38630	1	PL	CITY OF DALLAS, TX	9/2/2010	APPLICATION OF CITY OF DALLAS TEXAS FOR RETAIL ELECTRIC PROVIDER CERTIFICATION, PURSUANT TO SUBST. R. §25.105
38630	2	PL	PUC CADM	9/3/2010	NOTICE OF APPLICATION FOR RETAIL ELECTRIC PROVIDED CERTIFICATION
38630	3	PL	PUC CADM	9/3/2010	ORDER NO. 1 ENTERING PROTECTIVE ORDER ESTABLISHING PROCEDURAL SCHEDULE AND DETERMINING FILING AND SERVICE PROCEDURES
38630	4	PL	PUC-CADM	9/9/2010	ACKNOWLEDGEMENT OF RECEIPT - FILE NAME 0908A.052
38630	5	PL	PUC LEGAL	9/17/2010	STAFF'S RESPONSE TO ORDER NO.1
38630	6	PL	PUC-CADM	9/27/2010	ORDER NO. 2: DISMISSION APPLICATION

Miles, Janice

From: Miles, Janice
Sent: Friday, September 17, 2010 12:21 PM
To: 'Jack Ireland (RightFax)'
Cc: Medrano, Andres
Subject: Docket No 38630 Commission Staff's REsponse to Order No. 1
Attachments: 38630DOC (5) pdf

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RFCreatePDF: 0
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RFDCOPPTFrameSlides: 0
RFDCOPPTOutputType: 0
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RFDCOXLSRemoveCellPatterns: 0
RFDelaySend: 0
RFDelaySendTime: 1284743976
RFFaxRes: 2
RFFaxServerName: Pucrfax
RFFCSFile: fcs pcl
RFPersonalVoiceNumber: (512) 936-7288
RFPreviewFax: 0
RFPriority: 1
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RFSDPDFAnnotate: 0
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RFSDUseCertifiedDelivery: 0
RFSecureDocsEnabled: 0
RFSendFCS: 1
RFSmartResume: 0
RFSTATE: RF_SAVED
RFUseCheap: 0

JACK IRELAND EXC GEN MGR
1500 MARILLA ST ROOM 4 D NORTH
DALLAS TX 75201

Mailed
9-17-10

DOCKET NO. 38630

RECEIVED
MAY 11 2009
PUBLIC UTILITY COMMISSION
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APPLICATION OF [insert applicant
name] FOR RETAIL ELECTRIC
PROVIDER CERTIFICATION §
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

[OR]

APPLICATION OF [insert REP name]
FOR AMENDMENT TO A RETAIL
ELECTRIC PROVIDER
CERTIFICATION §
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

TITLE PAGE

Name of Applicant: City of Dallas Texas

Authorized Company Representative:

Representative Name: Jack Ireland
Representative Title: Executive General Manager
Representative Address: 1500 Marilla St.
(Suite, Floor, Apartment Number, etc.): Room 4 D North
(City, State, Zip Code): Dallas, TX 75201
Representative Phone Number: 214 670-5349
Representative Fax Number: 214 670-6914
Representative Email Address: Jack.Ireland@dallascityhall.com

Miles, Janice

From: RightFax E-mail Gateway [Mail.Administrator@puc.state.tx.us]
Posted At: Friday, September 17, 2010 12:39 PM
Conversation: Fax to Jack Ireland (RightFax) abandoned after 5 attempts. RE: Docket No 38630 Commission Staff's REsponse to Order No. 1
Posted To: Inbox
Subject: Fax to Jack Ireland (RightFax) abandoned after 5 attempts. RE: Docket No 38630 Commission Staff's REsponse to Order No. 1

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Verified by: 9/3/10 krw

Intervention Deadline: 9/24/10

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From: Miles, Janice
Sent: Friday, September 17, 2010 11:52 AM
To: 'Jack Ireland (RightFax)'
Cc: Medrano, Andres
Subject: DOCKET NO 38630 COMMISSION STAFF'S RESPONSE TO ORDER NO 1
Attachments: 38630DOC (5) pdf

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