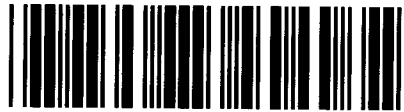




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DOCKET NO. 39573

COMPLAINT OF CELISTINO
MARINA AGAINST TXU ENERGY

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§

PUBLIC UTILITY COMMISSION
OF TEXAS

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ORDER NO. 2
DISMISSING COMPLAINT

On July 8, 2011, Celistino Marina on behalf of his Fuddruckers Restaurant franchise (Complainant) filed a formal Complaint regarding an early termination fee billed by TXU Energy. Complainant alleged execution of a Letter of Authorization (LOA) directing TXU Energy to begin electric service at his Fuddruckers restaurant on November 21, 2007. Among other provisions, the LOA provided that Complainant would be charged an early cancellation fee if service was cancelled before the minimum term of two years, and that TXU Energy would provide a Terms of Service Agreement explaining all of the terms of the agreement and how to exercise the right of rescission. Complainant further alleged he cancelled service because TXU Energy did not begin providing electric service until January 8, 2008. As a result, TXU Energy billed Complainant an early termination fee. Complainant argued TXU Energy breached the LOA by failing to begin service and by failing to provide the Terms of Service Agreement as required by the LOA.

This complaint was docketed by the Commission as a formal complaint pursuant to P.U.C. PROC. R. 22.242.

On August 1, 2011, TXU Energy filed a general denial of the allegations made by Complainant. In addition, TXU Energy filed a motion to abate this matter due to pending litigation in the Dallas County District Court addressing the same issues, and a motion to dismiss due to unnecessary duplication of proceedings as well as certain issues not in dispute.

On August 5, 2011, Complainant replied to TXU Energy's response and motions to abate and dismiss.

On August 8, 2011, Commission Staff filed a position statement in this docket. Commission Staff confirmed that on April 25, 2011, Complainant filed an informal complaint with the Customer Protection Division (CPD) of the Commission. Complainant was

subsequently notified on May 19, 2011, that CPD was unable to resolve the dispute to his satisfaction. Accordingly, pursuant to P.U.C. SUBST. R. 25.485(e)(4), this formal complaint was filed within two years of the date on which CPD closed the informal complaint.

Commission Staff stated that this dispute is essentially a contract claim which will be decided by the Dallas County District Court, in a proceeding to commence on September 12, 2011, brought by TXU Energy in March 2010 to recover the early termination fee.

Commission Staff recommended dismissal, without prejudice, for unnecessary duplication of the suit in Dallas County District Court pursuant to P.U.C. PROC. R. 22.181(a)(1)(e).

Consistent with Commission Staff's recommendation, this complaint is dismissed, without prejudice, pursuant to P.U.C. PROC. R. 22.181(a)(1)(e), due to unnecessary duplication of proceedings.

SIGNED AT AUSTIN, TEXAS the 30th day of August 2011.

PUBLIC UTILITY COMMISSION OF TEXAS



ANDREW KANG
ADMINISTRATIVE LAW JUDGE