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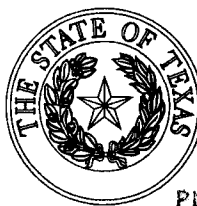
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Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brian H. Lloyd
Executive Director



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PUBLIC UTILITY COMMISSION
FILING CLERK

Public Utility Commission of Texas

Rick Perry
Governor

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

All Parties of Record

FROM: Irene Montelongo 
Director, Docket Management

RE: **Open Meeting of August 9, 2013**
PUC Docket No. 40090
SOAH Docket No. 473-12-5530 – *Notice of Violation of PURA § 39.352, Former P.U.C SUBST. R. § 25.107(g)(9)(A), § 25.107(g)(9)(B) and § 25.107(j)(1), and Current § 25.107(g)(1)(D) Related to Certification of Retail Electric Providers, and Current P.U.C SUBST. R. § 25.474, 25.475, 25.479, 25.480 and 25.483, Related to Customer Protection Rules for Retail Electric Service by Glacial Energy of Texas, Inc.*

DATE: July 10, 2013

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Friday, August 9, 2013, 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 Thursday, August 1, 2013.

On March 29, 2012, this proceeding was referred to the State Office of Administrative Hearings. Subsequently, an agreement was reached, the docket was returned to the Commission, and the Docket Management Section prepared this Proposed Order.

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

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**PUC DOCKET NO. 40090
SOAH DOCKET NO. 473-12-5530**

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PUBLIC UTILITY COMMISSION
FILING CLERK

**NOTICE OF VIOLATION OF PURA
§ 39.352, FORMER P.U.C SUBST. R.
§ 25.107(g)(9)(A), § 25.107(g)(9)(B) AND
§ 25.107(j)(1), AND CURRENT
§ 25.107(g)(1)(D) RELATED TO
CERTIFICATION OF RETAIL
ELECTRIC PROVIDERS, AND
CURRENT P.U.C SUBST. R. § 25.474,
25.475, 25.479, 25.480 AND 25.483,
RELATED TO CUSTOMER
PROTECTION RULES FOR RETAIL
ELECTRIC SERVICE BY GLACIAL
ENERGY OF TEXAS, INC.**

**§ PUBLIC UTILITY COMMISSION
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PROPOSED ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Glacial Energy of Texas, Inc. (Glacial Texas) (collectively, Parties) regarding Commission Staff's investigation of Glacial Texas for allegations set forth in the Commission's January 5, 2012, Report on Violations¹ by Glacial Energy of Texas, Inc. of PURA² § 39.352 and former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D), 25.475(g)(2) and 25.480(d), and Recommendation to Assess Administrative Penalties and Other Related Relief. The Agreement resolves all allegations contained in Commission Staff's Report on Violations.³ The Agreement is unopposed and provides for a reasonable resolution to the issues in this docket.

¹ See Report on Violations (Jan. 5, 2012).

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2012) (PURA).

³ Commission Staff has opened a separate investigation to address possible violations under P.U.C. SUBST. R. 25.475(g)(2) and 25.480(d), which are not contained in Commission Staff's Notice of Violation (NOV) and will therefore not be dismissed pursuant to this Order.

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

I. Findings of Fact

1. Glacial Texas is a Nevada corporation that was formed on May 23, 2005, and is registered to do business in Texas.
2. On January 27, 2006, Glacial Texas submitted an application to the Commission for a retail electric provider (REP) certification.
3. Glacial failed to disclose Gary Mole's ownership interest in Franklin Power Company (Franklin) in its initial application for REP certification. Franklin experienced a mass transition of its customers to the Provider of Last Resort (POLR) in 2005.
4. Glacial also failed to disclose pending complaints against Franklin by TXU Electric Delivery Company and CenterPoint Energy Houston Electric LLC to revoke Franklin's REP certificate for failure to satisfy its financial obligations. These complaints were consolidated in *Complaint of CenterPoint Energy Houston Electric LLC Regarding Retail Electric Provider Energy West Resources, Ltd.*, Docket No. 31166, Order No. 3, Consolidating Dockets and Requiring Response (Jul. 13, 2005) and a hearing on the merits was held on February 28, 2006. Franklin's REP certificate was subsequently revoked by Order on July 17, 2006.
5. Glacial Texas' REP certification, No. 10123, was administratively approved by the Commission in *Application of Glacial Energy of Texas, Inc. for Retail Electric Provider Certification*, Docket No. 32342, Notice of Approval (Mar. 6, 2006).
6. In 2009, in response to REP defaults that imposed substantial costs on the Electric Reliability Council of Texas, Inc. (ERCOT), customers, and other market participants, the Commission implemented improved REP credit quality standards, stronger protections for customer deposits and transmission and distribution utilities (TDU) charges, better and more frequent financial reporting, and stronger managerial experience requirements. The revisions to P.U.C. SUBST. R. 25.107 were made, *inter alia*, in order to better protect customers, TDUs, and other REPs from the insolvency of REPs and other harmful market conditions and activities of REPs.

7. Specifically, P.U.C. SUBST. R. 25.107(g)(1)(D) (hereinafter, the 10% Limitation Rule) states that "[a]n individual that was a principal of a REP that experienced a mass transition of the REP's customers to [a Provider of Last Resort (POLR)] ... shall not be considered for purposes of satisfying this requirement, and shall not own more than 10% of a REP or directly or indirectly control a REP." REPs were provided a grace period to achieve compliance with this rule after its adoption.
8. On January 6, 2012, Commission Staff issued a NOV asserting that Glacial Texas was not in compliance with PURA § 39.352 and former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and current P.U.C. SUBST. R. 25.475, 25.479, 25.480, 25.483 and 25.107.
9. On January 9, 2012, Commission Staff filed a petition for revocation (Petition) of Glacial Texas' REP certification for the following reasons: (a) Glacial Texas' initial REP application had material omissions, which violated P.U.C. SUBST. R. 25.107(j)(1) and former P.U.C. SUBST. R. 25.107(g)(9)(A) and 25.107(g)(9)(B) and, if properly disclosed, would likely have resulted in the rejection of Glacial Texas' REP application; and (b) Glacial Texas failed to comply with and continues to remain out of compliance with the 10% ownership restriction for principals that have experienced a POLR event pursuant to current P.U.C. SUBST. R. 25.107(g)(1)(D).
10. On January 19, 2012, Glacial Texas filed a lawsuit in the District Court of Travis County, Texas (State Court Action) against the Commission, Cause No. D-1-GN-12-000148, alleging, among other things, that the Commission is acting outside the scope of its authority in applying the 10% Limitation Rule because such application violates the Texas Constitution's prohibition on the retroactive application of laws and the United States Constitution's similar prohibition on the retroactive application of laws.
11. Glacial Texas has fully cooperated with Commission Staff's investigation.
12. Glacial Texas participated in one or more settlement discussions with Commission Staff, the purpose of which was to amicably resolve this matter, which was the subject of the investigation and is described herein.

13. The Agreement fully resolves the matters that were the subject of the investigation described herein.
14. The Agreement provides for a reasonable resolution of this dispute.
15. 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, 15.025, 32.001, and 39.357.
2. Glacial Texas is a REP under PURA § 17.002(6) and P.U.C. SUBST. R. 25.5(115).
3. Glacial Texas was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
4. This docket was processed in accordance with the requirements of PURA, the Texas Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2012), and Commission rules.
5. P.U.C. PROC. R. 22.246(g)(1)(B)-(C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
6. 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, provided with this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. Glacial Texas shall retain its REP certification, and the Commission hereby dismisses all allegations contained in the Report on Violations in this proceeding against Glacial Texas. Commission Staff's current investigation of possible Commission rule violations

under P.U.C. SUBST. R. 25.475(g)(2) and 25.480(d) are not included in Commission Staff's NOV and will therefore not be dismissed pursuant to this Agreement.⁴

3. Glacial Texas shall dismiss the State Court Action with prejudice as part of the Agreement and in light of an Agreement by the Texas Attorney General to support the Agreement at the open meeting before the Commission.
4. Glacial Texas shall not collect state sales tax on any customer payment for residential electric service. To the extent it has not already done so, Glacial Texas shall refund to its customers all state sales taxes previously collected on any residential service by ERCOT, and shall file a report with the Commission identifying and describing such refunds within one week after the refunds have been dispersed. Glacial Texas shall comply with applicable state law for collection of sales tax on meters for which the customer has signed a contract for commercial service.
5. Glacial Texas shall procure an annual regulatory internal audit by a third party in an effort to continue to improve its corporate control environment and regulatory compliance in accordance with the terms of the Agreement.
6. Glacial Texas shall establish and maintain a \$1.5 million letter of credit for a two-year period following the date of the Commission Order approving the settlement, after which Glacial Texas' financial assurance requirements shall be the same as any other REP.
7. Gary Mole shall resign as an officer and director of Glacial Texas and shall not serve as an officer or director, or otherwise participate in the management of Glacial Texas.
8. Gary Mole shall relinquish all control of Glacial Texas, through his interest in Glacial Holdings or otherwise. Glacial Texas shall amend its certificate of incorporation to, among other things, (i) designate all of the issued and outstanding shares of its capital stock as "Class A Common Stock," (ii) authorize a new class of stock which will be classified as "Class B Common Stock," and (iii) provide that the Class A Common Stock shall have no voting rights with respect to any matter for which a stockholder vote is required and the Class B Common Stock shall have sole voting power with respect to all

⁴ Commission Staff has opened a separate investigation to address any potential violations under SIR No. 2013040031.

matters for which a stockholder vote is required, including the election and removal of the directors of Glacial Texas. Class A Stock shall not provide any means of governance or control to the Class A stockholder.

9. Glacial Texas shall issue one or more shares of Class B Common Stock to a newly formed entity (Newco), of which neither Glacial Energy Holdings nor Mr. Mole or any of his family members are an owner, officer, director manager or member.
10. Within one week of forming Newco, Glacial Texas shall file an affidavit verifying the following information: (a) Gary Mole has resigned as an officer and director of Glacial Texas and agrees not to serve as an officer or director of Glacial Texas or otherwise participate in the management of Glacial Texas in the future; (b) Glacial Texas has amended its certificate of incorporation to (i) designate all of the issued and outstanding shares of its capital stock as "Class A Common Stock," (ii) authorize a new class of stock which will be classified as "Class B Common Stock," and (iii) the Class A Common Stock shall have no voting rights with respect to any matter for which a stockholder vote is required and the Class B Common Stock shall have sole voting power with respect to all matters for which a stockholder vote is required, including the election and removal of the directors of Glacial Texas; and (c) Class A Stock provides no means of governance or control to the Class A stockholder.
11. Glacial Texas shall pay an administrative penalty to the Commission in the aggregate amount of \$100,000 in full and complete satisfaction of any fines identified in the NOV.
12. Glacial Texas will pay the administrative penalty no later than 30 calendar days after the date of entry of this Commission Order approving the Agreement. Payment shall be made by check payable to the Commission with this Docket number referenced and sent to: ATTN: Fiscal Services, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711.
13. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
14. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Neither should the entry of

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

15. 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 the _____ day of August 2013.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

SOAH DOCKET NO. 473-12-5530
PUC DOCKET NO. 40090

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|--|---|-------------------------|
| NOTICE OF VIOLATION OF PURA § | § | |
| 39.352, FORMER P.U.C. SUBST. R. | § | |
| 25.107(g)(9)(A); 25.107(g)(9)(B) and | § | BEFORE THE STATE OFFICE |
| 25.107(j)(1), and CURRENT P.U.C. | § | |
| SUBST. R. 25.474, 25.475, 25.479, 25.480 | § | OF |
| AND 25.483, RELATED TO CUSTOMER | § | |
| PROTECTION RULES FOR RETAIL | § | ADMINISTRATIVE HEARINGS |
| ELECTRIC SERVICE BY GLACIAL | § | |
| ENERGY OF TEXAS, INC. | § | |

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (hereafter "Staff") and Glacial Energy of Texas, Inc. (hereafter "Glacial Texas"), (each a "Party" and, together, "the Parties") hereby enter into this Settlement Agreement and Report to Commission (hereafter "Agreement"). This Agreement resolves and concludes the investigation of Glacial Texas for the alleged violation of Public Utility Regulatory Act (PURA) § 39.352 and former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and current P.U.C. SUBST. R. 25.475, 25.479, 25.483, 25.107(g)(1)(D), and 25.107(j)(1), as set forth in Commission Staff's Notice of Violation and Petition for Revocation filed in the above styled proceeding.

BACKGROUND AND RECITALS

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommended, and Glacial Texas agrees to pay, an administrative penalty of One Hundred Thousand Dollars (\$100,000) for Glacial Texas' violations described in the attached Proposed Order.

3. Glacial Texas also warrants that it will incur the following costs to implement compliance measures agreed to and ordered by the Commission:
 - a. Approximately \$100,000 to procure an annual regulatory internal audit by a third party for a two (2) year period.
 - b. Approximately \$100,000 to establish and maintain an additional \$1 million letter of credit (for a total of a \$1.5 million letter of credit) for a two (2) year period.
 - c. Approximately \$50,000 to assign and maintain an individual to liaison directly with Commission Staff regarding customer complaint issues for a five (5) year period.
4. Glacial Texas is a retail electric provider (REP), Certificate Number 10123, pursuant to P.U.C. SUBST. R. 25.107.
5. Glacial Texas' agent for service in this matter is Blumberg Excelsior Corporate Services, Inc., 814 San Jacinto Blvd., Suite 303, Austin, Texas 78701.
6. In 2009, in response to REP defaults that imposed substantial costs on ERCOT, customers, and other market participants, the Commission implemented improved REP credit quality standards, stronger protections for customer deposits and TDU charges, better and more frequent financial reporting, and stronger managerial experience requirements. The revisions to P.U.C. SUBST. R. 25.107 were made, *inter alia*, in order to better protect customers, transmission and distribution utilities (TDUs), and other REPs from the insolvency of REPs and other harmful market conditions and activities of REPs.
7. Specifically, P.U.C. SUBST. R. 25.107(g)(1)(D) (hereinafter, the "10% Limitation Rule") states that "[a]n individual that was a principal of a REP that experienced a mass

transition of the REP's customers to [a Provider of Last Resort ("POLR")] . . . shall not be considered for purposes of satisfying this requirement, and shall not own more than 10% of a REP or directly or indirectly control a REP." The rule amendments provided a twelve-month grace period for compliance with the revised requirements.

8. On January 6, 2012, Commission Staff issued a Notice of Violation (NOV) asserting that Glacial Texas was not in compliance with PURA § 39.352 and former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and current P.U.C. SUBST. R. 25.475, 25.479, 25.480, 25.483 and 25.107.
9. In the NOV, Staff alleged that Glacial Texas violated these provisions by: (1) providing false or misleading information to the Commission when it applied for a REP certificate in 2006; (2) failing to achieve and maintain compliance with the Commission's newly adopted ownership and experience requirements for principals of a REP that experienced a mass transition of its customers to the POLR by the effective date of the rule, May 21, 2010; (3) failing to disclose pricing information on its Electricity Facts Label (EFL); (4) overbilling its customers; and, (5) failing to comply with the Commission's customer protection requirements.
10. On January 9, 2012, Commission Staff filed a Petition for Revocation (Petition) of Glacial Texas' REP certification for the following reasons: (1) Glacial Texas' initial REP application had material omissions, which violated P.U.C. SUBST. R. 25.107(j)(1) and former P.U.C. SUBST. R. 25.107(g)(9)(A) and 25.107(g)(9)(B) and, if properly disclosed, would likely have resulted in the rejection of Glacial Texas' REP application; (2) Glacial Texas failed to comply with and continues to remain out of compliance with the 10%

ownership restriction for principals that have experienced a POLR event pursuant to current P.U.C. SUBST. R. 25.107(g)(1)(D).

11. On January 19, 2012, Glacial Texas filed a lawsuit in the District Court of Travis County, Texas (the State Court Action), against the Commission, Cause No. D-1-GN-12-000148, alleging, among other things, that the Commission is acting outside the scope of its authority in applying the 10% Limitation Rule because such application violates the Texas Constitution's prohibition on the retroactive application of laws and the United States Constitution's similar prohibition on the retroactive application of laws.
12. The Office of the Attorney General of Texas (OAG), representing the Commission in the State Court Proceeding, asserts that the rule is designed to be applied prospectively, rather than retroactively to all REPs. The OAG also maintains that Staff's Notice of Violation and Petition for Revocation strictly relate to Glacial Texas' failure to come into compliance with the Commission's rules after the end of the twelve-month grace period and seek no penalty for matters arising prior to the expiration of the grace period.
13. The State Court Action remains pending in the District Court on cross-motions for summary judgment.
14. The Parties wish to settle the Commission Staff's NOV and Petition, and enter into this Agreement to resolve those disputed matters. Glacial Texas further agrees to dismiss the pending State Court Action as part of this settlement.

STIPUATIONS AND AGREEMENTS

The Parties hereby agree that within thirty (30) days of the Effective Day set forth in paragraph 14 below:

1. Gary Mole shall resign as an officer and director of Glacial Texas and agrees not to serve as

an officer or director of Glacial Texas or otherwise participate in the management of Glacial Texas.

2. Gary Mole is currently the majority stockholder of Glacial Energy Holdings (hereafter, "Glacial Holdings"). Glacial Holdings owns 100% of the common stock of Glacial Texas. Gary Mole agrees to relinquish all control of Glacial Texas, through his interest in Glacial Holdings or otherwise. Glacial Texas shall amend its certificate of incorporation to, among other things, (i) designate all of the issued and outstanding shares of its capital stock as "Class A Common Stock," (ii) authorize a new class of stock which will be classified as "Class B Common Stock," and (iii) provide that the Class A Common Stock shall have no voting rights with respect to any matter for which a stockholder vote is required and the Class B Common Stock shall have sole voting power with respect to all matters for which a stockholder vote is required, including the election and removal of the directors of Glacial Texas. Class A Stock shall not provide any means of governance or control to the Class A stockholder.
3. Glacial Texas shall issue one or more shares of Class B Common Stock to a newly formed entity ("Newco"), of which neither Glacial Holdings nor Gary Mole or any of his family members are an owner, officer, director manager or member.
4. Within one week of forming "Newco," Glacial Texas shall file an affidavit verifying the following information: 1) Gary Mole has resigned as an officer and director of Glacial Texas and agrees not to serve as an officer or director of Glacial Texas or otherwise participate in the management of Glacial Texas in the future; 2) Glacial Texas has amended its certificate of incorporation to (i) designate all of the issued and outstanding shares of its capital stock as

"Class A Common Stock," (ii) authorize a new class of stock which will be classified as "Class B Common Stock," and (iii) the Class A Common Stock shall have no voting rights with respect to any matter for which a stockholder vote is required and the Class B Common Stock shall have sole voting power with respect to all matters for which a stockholder vote is required, including the election and removal of the directors of Glacial Texas; and 3) Class A Stock provides no means of governance or control to the Class A stockholder.

5. Glacial Texas shall notify the Commission of all capital stock transactions or changes, including but not limited to the designation of Glacial Texas' issued and outstanding capital stock as "Class A Common Stock," the issuance of "Class B Common Stock," the issuance of any other classes of common or preferred stock, and changes in stock ownership, within three working days of such changes or transactions. The notice shall include adopted meeting minutes, stock certificates, or other relevant supporting documentation.
6. Glacial Texas shall retain its REP certification.
7. The Commission shall dismiss with prejudice all allegations against Glacial Texas as set forth in Commission Staff's NOV and Petition. Staff's current investigation of possible Commission rule violations under P.U.C. SUBST. R. 25.475(g)(2) and 25.480(d) are not included in Staff's NOV and will therefore not be dismissed pursuant to this agreement.¹
8. Glacial Texas shall dismiss the State Court Action as part of this settlement upon approval of the settlement by the Commission.
9. Glacial Texas agrees that it will not collect state sales tax on any customer payment for

¹ Staff has opened a separate investigation to address any potential violations under SIR. No. 2013040031.

residential electric service. To the extent it has not already done so, Glacial Texas agrees to refund to its customers all state sales taxes previously collected on any residential service by ERCOT, and to file with the Commission a report identifying and describing such refunds. Furthermore, Glacial Texas agrees that it will promptly report to the appropriate electric utility and ERCOT authority for reclassification any meter being predominantly used for delivery of electric service inconsistent with the meter's classification as either residential or commercial service. Glacial Texas shall comply with applicable state law for collection of sales tax on meters for which the customer has signed a contract for commercial service.

10. Glacial Texas shall agree to procure an annual regulatory internal audit by a third party for a two (2) year period in an effort to continue to improve its corporate control environment and regulatory compliance. Part of the annual internal audit plan will include conducting an annual assessment of Glacial Texas' internal controls and processes in place for compliance with Commission consumer protection regulations. The results shall be reported to the Commission Staff not more than ninety (90) days after the end of each calendar year commencing with 2013. The Commission and Staff shall maintain the confidentiality of any such report received. This annual assessment requirement shall continue for two (2) years following the settlement. Glacial Texas warrants that it will incur approximately \$100,000 over the two (2) year period to procure this audit.

11. Glacial Texas shall establish and maintain a \$1.5 million letter of credit for a two (2) year period following the date of the Commission order approving the settlement set forth in this Agreement. This letter of credit may be used to satisfy existing financial obligations necessary to maintain compliance with the Commission's REP certification requirements. Glacial Texas warrants that the annual increased cost of the increased security will be

approximately \$100,000 annually at current rates. Within ten (10) business days following the execution of the increased letter of credit, Glacial Texas shall provide to the Commission Staff a confidential copy of the receipt of payment for such letter of credit. Glacial Texas shall assign and maintain an individual to liaison directly with Commission Staff regarding customer complaint and other regulatory compliance issues for a two (2) year period following the date of entry of the Commission order approving this Agreement. Glacial Texas warrants that it will incur approximately \$50,000 in additional costs to provide the Commission Staff liaison over the two year period.

12. Glacial Texas will consult with Commission Staff prior to the offer of any new products or services to the public for a period of two (2) years following the date of entry of the Commission order approving this Agreement.

13. As a result of a compliance audit conducted by the Commission's Oversight and Enforcement Division, Staff concluded that Glacial Texas was not in compliance with provisions of the Commission's customer protection rules for retail electric service, as disclosed below. In settlement of those alleged violations, Glacial Texas agreed to pay a penalty (to be included in the administrative penalty described in paragraph 14 below) and to correct the deficiencies as listed.

- a. P.U.C. SUBST. R. 25.474(e)(5)(D), relating to required authorization disclosures. Glacial Texas' Letter of Authorization (LOA) did not disclose the price of the product or plan in cents per kWh.
- b. P.U.C. SUBST. R. 25.474(e)(6)(E), relating to verification of authorization of written enrollment. Glacial Texas' LOA did not request proper access verification data.

- c. P.U.C. SUBST. R. 25.475(c)(1)(B), relating to general disclosure requirements. Glacial Texas' Terms of Service (TOS) document references rules without providing proper access to the rule being referenced.
- d. P.U.C. SUBST. R. 25.475(c)(2)(A), relating to general contracting requirements. Glacial Texas' TOS did not meet the font and formatting requirements of the rule.
- e. P.U.C. SUBST. R. 25.475(c)(2)(D), relating to general contracting requirements. Glacial Texas' TOS did not identify the type of product using the required terms.
- f. P.U.C. SUBST. R. 25.475(c)(2)(G), relating to general contracting requirements. Glacial Texas' website did not contain the current as well as historical pricing for its variable rate product.
- g. P.U.C. SUBST. R. 25.475(d)(2)(C), relating to general changes in contract price and notice of changes. Glacial Texas' billing did not include a statement informing the customer how to obtain information about the price that will apply on the next bill.
- h. P.U.C. SUBST. R. 25.475(e), relating to contract expiration and renewal offers. Glacial Texas failed to issue a contract expiration notice for fixed rate accounts.
- i. P.U.C. SUBST. R. 25.475(f)(1), relating to identity and contact information on the TOS. Glacial Texas did not include required contact information on its TOS.
- j. P.U.C. SUBST. R. 25.475(f)(2)(C), relating to pricing and payment arrangements. Glacial Texas' TOS did not include a description and amount of a non-recurring charge.
- k. P.U.C. SUBST. R. 25.475(f)(2)(E), relating to pricing and payment arrangements. Glacial Texas' TOS did not contain a description of any payment arrangements or bill payment assistance programs.
- l. P.U.C. SUBST. R. 25.475(f)(3)(D), relating to deposits. Glacial Texas' TOS did not provide an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).
- m. P.U.C. SUBST. R. 25.475(f)(4)(A)(ii), relating to rescission, termination and disconnection. Glacial Texas' TOS did not contain instructions and contact numbers for rescission purposes.

- n. P.U.C. SUBST. R. 25.475(f)(5), relating to antidiscrimination. Glacial Texas' TOS did not contain the required antidiscrimination language.
- o. P.U.C. SUBST. R. 25.475(f)(9), relating to version number for the TOS. Glacial Texas' TOS did not contain a proper version number.
- p. P.U.C. SUBST. R. 25.475(g), relating to electricity facts label (EFL). Not all of Glacial Texas' EFLs were unique for each product offered.
- q. P.U.C. SUBST. R. 25.475(g)(1), relating to identity and contact information for the EFL. Glacial Texas' EFL did not include required contact information.
- r. P.U.C. SUBST. R. 25.475(g)(2)(F)(iii), relating to pricing disclosures on the EFL. Glacial Texas' EFL did not contain a required statement regarding pricing information.
- s. P.U.C. SUBST. R. 25.475(g)(4), relating to term disclosure on the electricity facts label. Not all of Glacial Texas' EFLs included a specific term for each product.
- t. P.U.C. SUBST. R. 25.475(g)(7), relating to version number for the EFL. Glacial Texas' EFLs did not contain a unique version number.
- u. P.U.C. SUBST. R. 25.475(h)(5), relating to your rights as a customer disclosure (YRAC). Glacial Texas' YRAC did not mention discount or energy assistance programs available to qualifying customers.
- v. P.U.C. SUBST. R. 25.475(h)(7), relating to identify and contact information for the YRAC. Glacial Texas' YRAC did not contain all required contact information.
- w. P.U.C. SUBST. R. 25.479(c)(1)(A), relating to bill content. Glacial Texas' billing did not contain its license number issued by the Commission.
- x. P.U.C. SUBST. R. 25.479(c)(1)(B), relating to bill content. Glacial Texas' toll free number was not in required font.
- y. P.U.C. SUBST. R. 25.479(c)(1)(I), relating to bill content. Glacial Texas' billing did not contain a required calculation for the average price paid during the billing period.
- z. P.U.C. SUBST. R. 25.479(c)(1)(L), relating to bill content. Glacial Texas' billing did not use the required term regarding the amount due.

- aa. P.U.C. SUBST. R. 25.479(c)(1)(M), relating to bill content. Glacial Texas' billing did not contain a required notice regarding the ability to voluntarily donate money to the bill payment assistance program.
 - bb. P.U.C. SUBST. R. 25.479(c)(1)(N), relating to bill content. Glacial Texas' billing did not use proper terms regarding the meter reading.
 - cc. P.U.C. SUBST. R. 25.479(c)(2), relating to bill content and the use of proper terms. Glacial Texas' billing did not properly identify charges defined by one of the terms required by the rule.
 - dd. P.U.C. SUBST. R. 25.479(c)(3), relating to bill content and the use of proper terms. Glacial Texas did not include required definitions of billing terms on its website.
 - ee. P.U.C. SUBST. R. 25.479(d), relating to public service notices. Glacial Texas was unable to verify compliance by including a copy of a prior public service notice.
 - ff. P.U.C. SUBST. R. 25.483(l)(4), relating to disconnection notices. Glacial Texas' disconnection notice did not include a required statement regarding payment assistance programs or deferred payment plans available.
 - gg. P.U.C. SUBST. R. 25.483(m)(5), relating to contents of disconnection notice. Glacial Texas' disconnection notice did not include a required statement regarding the option of filing a complaint with the Commission if the customer is not satisfied with Glacial Texas' response to an inquiry.
 - hh. P.U.C. SUBST. R. 25.483(m)(6), relating to contents of disconnection notice. Glacial Texas' disconnection notice did not include a statement regarding the use of a customer's deposit against the balance on a final bill.
 - ii. P.U.C. SUBST. R. 25.483(m)(7), relating to contents of disconnection notice. Glacial Texas' disconnection notice did not contain information on the availability of deferred payment or other billing arrangements as well as the availability of any state or federal energy assistance programs.
14. Glacial Texas will pay an administrative penalty of \$100,000 in settlement of all matters contained in the NOV and Petition no later than thirty (30) calendar days after the date of entry of the Commission order approving this Agreement (the "Effective Date"). For avoidance of doubt, this amount includes the penalty referenced in paragraph 13 above.

Payment shall be made by check payable to the Public Utility Commission of Texas with this Docket number referenced and sent to: ATTN: Fiscal Services, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711.

15. On November 10, 2010, Glacial Texas was provided proper notice of Staff's investigation in this matter including a list of certain violations of Commission rules alleged to have been violated by Glacial Texas, and on January 6, 2012, Glacial Texas was provided notice of the results of the investigation, including a list of certain violations of Commission rules alleged to have been violated by Glacial Texas, information about its right to a hearing, and an opportunity to explain its activities.
16. Glacial Texas fully cooperated with Staff's investigation.
17. Glacial Texas participated in one or more settlement discussions with Staff, the purpose of which was to amicably resolve all matters which were the subject of the investigation and are described herein.
18. Glacial Texas and Staff enter into this Agreement to resolve a disputed matter. This Agreement is entered into by Glacial Texas and Staff in order to avoid the potential for expensive and protracted litigation, the outcome of which would be uncertain. Both Staff and Glacial Texas acknowledge that neither the payment of the penalty amount by Glacial Texas nor anything in this Agreement shall be construed as or represented to be an admission of liability by Glacial Texas, which such liability Glacial Texas expressly denies.
19. All of the statements in this Agreement are correct, and may be relied upon by the Commission in resolving this docket.

20. Unless specifically provided for in this Agreement, Glacial Texas waives any notice and procedures that might otherwise be authorized or required in this proceeding.
21. 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 for any separate or subsequent violations by Glacial Texas.
22. 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 Agreement is a settlement agreement, neither Party is under any 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 the 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.
23. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by such material change has the right to withdraw from this Agreement. In such event, the Parties shall thereby be released from their obligations arising hereunder, restored to the position they would be in had this Agreement not been entered, and able 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.

24. This Agreement is the final and entire agreement between the Parties regarding the matters addressed herein and supersedes all other communications among the Parties or their representatives with regard to the subjects contained herein, and this Agreement binds the Parties' successors and assigns.
25. 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.
26. Glacial Texas warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.
27. This Agreement fully and finally resolves, pursuant to the terms and conditions set forth herein, all matters described herein, save as reserved in footnote number 1, related to Staff's investigation. Accordingly, the Parties hereby request that the PUCT approve this Agreement.

EXECUTED by the Parties on this 25th day of June, 2013, by their authorized representatives designated below.



John McGahren
PATTON BOGGS LLP.
The Legal Center
One Riverfront Plaza
Newark, NJ 07102
(973) 848-5610 (Telephone)
(973) 848-5601 (Facsimile)
jmcgahren@pattonboggs.com

ATTORNEY FOR
GLACIAL ENERGY OF TEXAS, INC.



Susan M. Stith
Oversight and Enforcement Division
State Bar No. 24014269
(512) 936-7307
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326