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Public Utility Commission of Texas

Memorandum

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FILED CLERK

To: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Brian Lloyd, Executive Director

From: Joshua W. Walters
 Attorney
Oversight and Enforcement Division

Date: August 12, 2013

Re: **Referral to Office of Attorney General; PUC Docket No. 41106; EBC Energy Today, LLC**

Pursuant to instructions in Chairman Nelson's memorandum filed in P.U.C. Docket No. 41106, Staff has referred the EBC Energy Today, LLC matter to the Consumer Protection Division of the Office of Attorney General (OAG) for further investigation.¹ Staff's letter of referral and a letter from the OAG confirming that this matter has been referred to the Consumer Protection Division are attached to this memorandum as Attachment 1 and Attachment 2, respectively.

¹ *Memorandum of Chairman Nelson*, Docket No. 41106 (June 19, 2013).

Attachment 1

Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brian H. Lloyd
Executive Director



Rick Perry
Governor

Public Utility Commission of Texas

July 29, 2013

Mr. David Mattax
Deputy Attorney General for Defense Litigation
Office of the Attorney General
209 West 14th St.
P.O. Box 12548
Austin 78711-2548

RE: PUC Docket No. 41106; EBC Energy Today, LLC

Dear Mr. Mattax:

The Public Utility Commission of Texas (Commission) recently adopted an Order approving \$1.5 million in fines against EBC Energy Today, LLC (EBC Energy Today).¹ A Commission Staff investigation determined that EBC Energy Today acted as a retail electric provider (REP) through the use of misleading practices without obtaining the proper certification from the Commission or the Electric Reliability Council of Texas (ERCOT). Staff became aware of this scheme after investigating complaints by customers related to an illegal fee charged to customers. Pursuant to instructions in a memorandum filed by Chairman Nelson of the Commission, Staff hereby refers this matter to the Consumer Protection Division of the Office of the Attorney General (OAG) for further investigation of possible violations of other rules or laws, including the Deceptive Trade Practices-Consumer Protection Act. Staff also notes that PURA² § 15.030, which makes "willful and knowing" violations third degree felonies, may be applicable.³

Prior Energy, Inc. (Prier) was a certificated REP (No. 10147).⁴ EBC Energy Today and Prier entered into an agreement that appeared designed to aid and enable EBC Energy Today to purchase and sell electricity without a certificate.⁵ In essence, EBC Energy Today used Prier's certification through Prier's d/b/a Today's Energy to conduct electric transactions with ERCOT without disclosing the relationship to ERCOT or the Commission. EBC Energy Today operated as a REP without a certificate.

¹ Commission Docket No. 41106.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2011) (PURA).

³ PURA § 15.030(a) states that a person commits an offense if the person willfully and knowingly violates PURA. An offense under this section is a felony of the third degree pursuant to PURA § 15.030(c).

⁴ Pursuant to a settlement agreement with Staff, the ownership of Prier and its REP Certificate were recently transferred to a new entity. Commission Docket No. 41048.

⁵ "[A] person . . . may not provide retail electric service in this state unless the person is certified by the commission as a retail electric provider, in accordance with this section." PURA § 39.352. See also P.U.C. SUBST. R. 25.107(a)(1) ("A person must obtain a certificate pursuant to this subsection before purchasing, taking title to, or reselling electricity in order to provide retail electric service.").



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Mr. Mark Angell is the sole managing member of EBC Energy Today. Prior to forming EBC Energy Today, Mr. Angell was a principal and Executive Vice President of the REP Abacus Resources Energy, LLC (Abacus). In Docket No. 39192, the Commission revoked Abacus' certificate after Abacus suffered a POLR event and failed to refund customer deposits in the amount of \$529,225. EBC Energy Today's arrangement with Prier provided Mr. Angell the opportunity to operate a new retail electric provider by bypassing the Commission's approval process.

At the time that EBC Energy Today entered into the agreement with Prier, Prier was serving its customers under the d/b/a General Power & Light. The separate Prier d/b/a Today's Energy was not conducting business. EBC Energy Today and Prier entered into an agreement to "lease" the DUNS +4 number for Prier's d/b/a Today's Energy. The DUNS +4 number is a unique identifier used by ERCOT to identify the market participant in the ERCOT system. In effect, this "lease" arrangement meant that Prier was transferring control of its d/b/a Today's Energy to EBC Energy Today. With that transfer of control, EBC Energy Today had the ability to interface with ERCOT, as well as use the Commission certification of Prier that was associated with the Today's Energy d/b/a. Neither the Commission nor ERCOT was made aware of this arrangement. In fact, affirmative steps were taken by both parties to conceal the arrangement.

When ERCOT and/or the Commission communicated concerns or inquiries to Today's Energy, Prier forwarded the concerns or inquiries to EBC Energy Today. EBC Energy Today then provided the appropriate response to Prier, who in turn forwarded the information to ERCOT and/or the Commission as though they were the point of contact for Today's Energy. While Prier played a role in this deception, it was EBC Energy Today that performed the essential functions of a REP, including the purchase of power and sale of such power to the customers of the d/b/a Today's Energy. Clearly, this practice represented a substantial threat to the delivery of safe and reliable electricity in Texas because it allowed an entity to act as a REP without meeting the requirements for certification as required by statute and rule and without registering with ERCOT as required by the ERCOT Protocols.

Additionally, the customers of the d/b/a Today's Energy were not aware that they were being served by a different company from that identified in marketing and billing documents. Upon the termination of the agreement with Prier, EBC Energy Today transferred approximately 2,015 customers from the d/b/a Today's Energy to another, unaffiliated REP.⁶ EBC Energy Today transferred these customers without the permission of the customers involved.

Commission Staff requests that the OAG examine this case to determine if there are additional violations of state law. Attached is the Final Order with the settlement agreement and stipulation of facts in this matter. Additional information is available to the OAG upon request. Contact Joshua Walters, Attorney, Oversight & Enforcement Division with any questions at 512-936-7385 or Joshua.walters@puc.texas.gov.

Sincerely,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

⁶ Staff investigated this unaffiliated REP and does not believe at this time that the REP purchasing the customers violated any Commission rules.

Attachment 2



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2013

JOHN B. SCOTT
DEPUTY ATTORNEY GENERAL FOR
CIVIL LITIGATION
DIRECT DIAL: (512) 463-0150

Mr. Robert M. Long
Division Director
Oversight and Enforcement Division
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

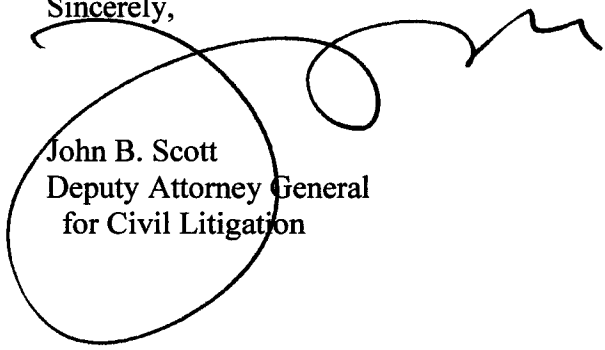
Re: PUC Docket No. 41106; *EBC Energy Today, LLC*

Dear Mr. Long:

We are in receipt of your letter dated July 31, 2013, requesting that the Attorney General investigate the above-referenced matter. Please be advised that this matter has been referred to the Consumer Protection Division with the Office of the Attorney General.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,



John B. Scott
Deputy Attorney General
for Civil Litigation

JBS/lr

cc: Tommy Prud'Homme, Chief, Consumer Protection Division