



Control Number: 42383



Item Number: 20

Addendum StartPage: 0

SOAH DOCKET NO. 473-14-4036
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COMPLAINT OF WAYNE D. MANNING § PUBLIC UTILITY COMMISSION
AGAINST CIRRO ENERGY AND §
TEXAS-NEW MEXICO POWER § OF TEXAS
COMPANY §

PRELIMINARY ORDER

On April 11, 2014, Mr. Wayne D. Manning filed a formal complaint against Cirro Energy and Texas-New Mexico Power Company (TNMP). Mr. Manning alleges that he was improperly charged commercial demand-meter charges for residential electric service.

On October 22, 2013, Mr. Manning contracted for residential electric service through retail electric provider Cirro Energy, and TNMP, the transmission and distribution utility (TDU), turned on service. Prior to Mr. Manning's occupancy, Mr. Manning's residence was used for commercial purposes and electric usage was recorded with a commercial demand meter. After Mr. Manning questioned Cirro Energy and TNMP about demand-meter charges on his electric bill, TNMP replaced the demand meter with a residential meter. Mr. Manning complains that he contracted with Cirro Energy for residential service and so should not have been charged commercial demand-meter charges, and he is seeking a refund of the demand-meter charges and related fees.

On April 14, 2014, the Commission administrative law judge issued Order No. 1 requiring a response to the complaint from Cirro Energy and TNMP, and requiring a statement of position from Commission Staff. Cirro Energy maintains that it acted consistently with the Commission's substantive rules by billing Mr. Manning based on the established terms of service and the usage reported by TNMP. Cirro Energy contends that Mr. Manning's complaint addresses the TDU rate schedule and therefore should be directed at TNMP.

TNMP asserts that it is not responsible for determining the appropriate rate schedule for a retail customer. Moreover, TNMP argues that it is not properly included in this formal complaint because Mr. Manning did not first informally present his complaint against TNMP; Mr. Manning filed an informal complaint only against Cirro Energy.

20

In its statement of position, Commission Staff finds that Mr. Manning complied with the Commission's informal complaint resolution procedures with regard to Cirro Energy, and that good cause exists to waive informal complaint resolution requirements with regard to TNMP. Commission Staff takes the position regarding the substance of the complaint that additional facts are necessary to determine whether charges were billed in accordance with Mr. Manning's residential service contract with Cirro Energy.

This docket was referred to the State Office of Administrative Hearings (SOAH) on June 11, 2014. Mr. Manning, Cirro Energy, TNMP, and Commission Staff timely filed lists of issues by June 24, 2014.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Does good cause exist to waive informal complaint resolution procedures with regard to Mr. Manning's complaint against TNMP?
2. Did TNMP violate Commission rules, PURA,² or its tariff when it sent Cirro Energy commercial demand-meter-usage data and charges for Mr. Manning's address?
3. Did Cirro Energy violate Commission rules, PURA, or the terms of its service contract with Mr. Manning when Cirro Energy billed Mr. Manning for commercial demand-meter charges and related fees?
4. Was Mr. Manning improperly billed for demand-meter charges and related fees?

¹ TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000).

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007 & Supp. 2008).

5. If Mr. Manning was improperly billed for demand-meter charges and related fees, which party, Cirro Energy or TNMP, is responsible for the improper billing?
 - A. Which party had the responsibility to note the change in service at Mr. Manning's address from commercial to residential service to establish the rate schedule?
 - B. If improper charges occurred, which party is obligated to refund Mr. Manning, and in what amount?

6. If a refund is owed to Mr. Manning, is he entitled to interest under either P.U.C. SUBST. R. 25.480(d)(3) or P.U.C. SUBST. R. 25.481(c)(1)(C) and, if so, in what amount?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 11th day of July, 2014.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY D. MARTY, COMMISSIONER