



Control Number: 42664



Item Number: 6

Addendum StartPage: 0

14 Jul 2014 9:07

COMPLAINT OF J.C. MORRIS §
AGAINST RELIANT ENERGY RETAIL §
SERVICES LLC AND ONCOR §
ELECTRIC DELIVERY COMPANY §
LLC §

PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S STATEMENT OF POSITION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Statement of Position. In support of its Statement of Position, Staff states the following:

I. BACKGROUND

On July 11, 2014, J.C. Morris filed a complaint against Oncor Electric Delivery Company LLC (Oncor) and Reliant Energy Retail Services LLC (Reliant Energy). J.C. Morris is the complainant in this proceeding, but Staff interprets his complaint as being filed on behalf of North American Equipment Company. J.C. Morris asserts that the bills he received from Reliant Energy do not correctly reflect the actual usage of North American Equipment Company and that Oncor's pass-through charges are incorrect.¹

On July 16, 2014, the Administrative Law Judge entered Order No. 1, requiring Oncor and Reliant Energy to file their responses by August 1. Order No. 1 also required Staff to file a statement of position by August 8, 2014. This Statement of Position is timely filed.

II. COMPLIANCE WITH THE REQUIREMENT OF INFORMAL RESOLUTION

The Commission's procedural rules require that a complaint against a utility must first be presented to the Commission for informal resolution. The Commission's procedural rules state: "A person who is aggrieved by the conduct of an electric utility or telecommunications utility or other person must present a complaint to the commission for informal resolution before presenting the complaint to the commission."² The Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (West 2007 & Supp. 2013) (PURA), provides the definition of an electric utility. PURA defines an electric utility as "a person . . . that owns or operates for

¹ *Complaint of J.C. Morris against Reliant Energy Retail Services LLC and Oncor Electric Delivery Company LLC*, Docket No. 42664, Complaint of J.C. Morris at 2-3 (Jul. 11, 2014).

² P.U.C. PROC. R. 22.242(c).

6

compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state.”³ Thus, Oncor is an electric utility because it provides transmission and distribution services in Texas, and Reliant Energy is not an electric utility because it is a retail electric provider.

Prior to filing his complaint against Oncor and Reliant Energy, J.C. Morris filed his informal complaint against Oncor with the Customer Protection Division. Staff has determined that J.C. Morris has complied with the requirement of informal resolution.

III. ONCOR’S RESPONSE

Oncor asserts that the property subject to J.C. Morris’s complaint is located within the boundaries of the City of Irving, Texas, which has not ceded original jurisdiction to the Commission.⁴ Oncor also asserts that J.C. Morris’s complaint relates to the metering system multiplier and the electricity delivery billing charges.⁵ With respect to the metering system multiplier, Oncor asserts that the meter at North American Equipment Company’s premises accurately records consumption and demand.⁶ Oncor tested the meter during the informal complaint process.⁷ The test results indicated that the average registration of the meter was within the required 98% to 102% registration requirement.⁸ With respect to electricity delivery billing charges, Oncor asserts that it made all the necessary adjustments to the charges that were inadvertently and incorrectly charged to North American Equipment Company.⁹ Given these adjustments, Oncor asserts that it correctly billed Reliant Energy for the delivery of electricity to North American Equipment Company.¹⁰

³ PURA § 31.002(6).

⁴ *Complaint of J.C. Morris against Reliant Energy Retail Services LLC and Oncor Electric Delivery Company LLC*, Docket No. 42664, Oncor Electric Delivery Company LLC’s Response to Order No. 1 at 1 (Aug. 1, 2014).

⁵ *Id.* at 1-4.

⁶ *Id.* at 1-3.

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

IV. RELIANT ENERGY'S RESPONSE

Reliant Energy asserts that the Commission has jurisdiction over this complaint pursuant PURA § 17.157.¹¹ Reliant Energy also asserts that, as a retail electric provider, it does not read meters.¹² It is Oncor, as the transmission and distribution service provider, that reads meters, calculates the appropriate consumption charges, and invoices the ratepayer.¹³ As such, Reliant Energy asserts that the amounts in the bills it submitted to North American Equipment Company are based upon meter information provided by Oncor.¹⁴

V. STAFF'S STATEMENT OF POSITION

Staff's position is that the Commission should dismiss, without prejudice, J.C. Morris's complaint against Oncor and Reliant Energy due to lack of jurisdiction.

With respect to jurisdiction over electric utilities, PURA states, "A municipality shall regulate all local utility service in the municipality until the commission assumes jurisdiction over a local utility under this subtitle."¹⁵ A municipality "may elect to have the commission exercise exclusive original jurisdiction over electric utility rates, operations, and services in the municipality"¹⁶ For those municipalities that have not ceded original jurisdiction to the Commission, the Commission's procedural rules require that a complainant present its complaint to the municipality prior to presenting the complaint to the commission.¹⁷ The Commission's rules state:

- (1) **Requirement to present complaint concerning electric utility to a city.**
If a person receives electric utility service or has applied to receive electric utility service within the limits of a city that has original jurisdiction over the electric utility providing service or requested to provide service, the

¹¹ *Complaint of J.C. Morris against Reliant Energy Retail Services LLC and Oncor Electric Delivery Company LLC*, Docket No. 42664, Reliant Energy Retail Services LLC's Response to Order No. 1 at 3 (Aug. 1, 2014).

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ PURA § 33.002(a).

¹⁶ PURA § 33.002(b).

¹⁷ P.U.C. PROC. R. 22.242(e)(1).

person must present any complaint concerning the electric utility to the city before presenting the complaint to the commission.

- (A) The person may present the complaint to the commission after:
 - (i) the city issues a decision on the complaint; or
 - (ii) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.

- (B) If the City does not act on the complaint within 30 days, the commission may send the city a letter requesting that the city act on the complaint. If the city does not respond or act within 30 days from the date of the letter, the complaint shall be deemed denied by the city and the commission shall consider the complaint.¹⁸

Staff has verified that the service address for North American Equipment Company is located within the City of Irving, and Staff has verified that the City of Irving has not ceded original jurisdiction to the Commission. Under PURA § 17.157, the Commission has jurisdiction over the complaint at the same time as the City of Irving (i.e., concurrent jurisdiction). However, the Commission's procedural rules, as explained above, require that J.C. Morris first present his complaint against Oncor to the City of Irving.¹⁹ Under the Commission's procedural rules, the City of Irving may either issue a decision on the complaint or a statement that it will not consider the complaint, in which case, J.C. Morris may choose to re-file the complaint with the Commission.²⁰ If the City of Irving does not act upon J.C. Morris's complaint within thirty (30) days, J.C. Morris may contact Jaci Caldwell, the paralegal to the undersigned attorney, at (512) 936-7284. Staff, on behalf of the Commission, may send the City of Irving a letter requesting action on the complaint.²¹ If the City of Irving does not respond to the Staff's request for action upon the complaint within thirty (30) days, the Commission will consider the complaint to have been denied and J.C. Morris may re-file his complaint with the Commission.²²

¹⁸ P.U.C. PROC. R. 22.242(e)(1)(A)-(B).

¹⁹ P.U.C. PROC. R. 22.242(e).

²⁰ P.U.C. PROC. R. 22.242(e)(1)(B).

²¹ *Id.*

²² *Id.*

Neither PURA nor the Commission's procedural rules require that J.C. Morris present his complaint against a retail electric provider (in this case, Reliant Energy) with the City of Irving prior filing it with the Commission. The Commission may therefore consider J.C. Morris's complaint against Reliant Energy pursuant to PURA §17.157, which authorizes the Commission to resolve disputes between a retail customer and a REP. However, it is unclear whether J.C. Morris has stated a claim against Reliant Energy for which relief could be granted. J.C. Morris's formal complaint and request for relief seem to relate to Oncor, though Reliant may be considered a necessary party in the formal complaint against Oncor.²³

Therefore, it is Staff's position that the Commission should dismiss, without prejudice, J.C. Morris's complaint in its entirety. A dismissal will permit J.C. Morris to present his complaint against Oncor to the City of Irving. In the event that the City of Irving issues a decision, states that it will not consider the complaint against Oncor, or does not act within the specified period of time under P.U.C. PROC. R. 22.242(e)(1)(B), J.C. Morris should then be permitted to re-file his complaint against Oncor and Reliant Energy which, at a minimum, may be a necessary party.

VI. CONCLUSION

The Commission should dismiss, without prejudice, J.C. Morris's complaint against Oncor and Reliant Energy in its entirety. A dismissal will permit J.C. Morris to present his complaint against Oncor with the City of Irving, as required by the Commission's procedural rules. In the event that the City of Irving either issues a decision, states that it will not consider the complaint against Oncor, or does not act within the specified period of time under P.U.C. PROC. R. 22.242(e)(1)(B), J.C. Morris should be permitted to re-file his complaint against Oncor and Reliant Energy for the Commission's consideration.

²³ See *Complaint of Kevin Ellis against Reliant Energy Retail Services, LLC and CenterPoint Energy Houston Electric, LLC*, Docket No. 40633, Order on Appeal of Order No. 4 (Jul. 9, 2013) ("Reliant's continued participation in this docket is required so that the Commission may order complete relief, should Mr. Ellis prevail in his complaint.").

Date: August 8, 2014

Respectfully Submitted,
Joseph P. Younger
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division



Sam Chang
State Bar No. 24078333
Attorney, Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
(512) 936-7268 (facsimile)
sam.chang@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on August 8, 2014, in accordance with P.U.C. Procedural Rule 22.74.



Sam Chang