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SOAH DOCKET NO. 473-18-4476
DOCKET NO. 48387

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COMPLAINT OF DANA SCHMUKAL § PUBLIC UTILITY COMMISSION
AGAINST ONCOR ELECTRIC §
DELIVERY COMPANY LLC AND § OF TEXAS
CHAMPION ENERGY SERVICES, LLC §

COMMISSION STAFF'S RESPONSE TO MOTION TO DISMISS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Motion to Dismiss and would show the following:

I. BACKGROUND

On May 24, 2018, Dana Schmukal (complainant) filed a complaint against Oncor Electric Delivery Company LLC (Oncor) and Champion Energy Services LLC (Champion) regarding metering and related charges to a storage facility.¹ Complainant is requesting an exemption from the Commission-approved Oncor non-residential tariff 6.1.1.1.3 (Secondary Service Greater Than 10 kW) and to have Complainant's electric delivery charges calculated based on Oncor's non-residential tariff 6.1.1.1.2 (Secondary Service Less Than or Equal to 10 kW).² On June 14, 2018, Oncor filed a response to the complaint.³ Oncor stated that Complainant's request is without merit because Oncor has performed in accordance with the Commission-approved tariff and rules.⁴ Oncor states that it properly metered Complainant's load and consumption and billed Complainant's retail electric provider properly for delivery of service. The procedural schedule required the Complainant to file direct testimony by August 15, 2018; however, the Complainant has failed to file direct testimony.

¹ Complaint at 1 (May 24, 2018).

² *Id.*

³ Oncor Electric Delivery Company LLC's Response to Order No. 1 (June 14, 2018).

⁴ *Id.*

II. RESPONSE TO MOTION TO DISMISS

On August 28, 2018, Oncor filed a motion to dismiss, with prejudice, for failure to prosecute the complaint. In its motion, Oncor states that because the Complainant did not file direct testimony, Oncor believes that her Complaint should be dismissed for failure to prosecute. As the Complainant has failed to file direct testimony, Staff is unopposed to the dismissal of the complaint. However, Staff respectfully requests that the complaint be dismissed without prejudice as Oncor will be required to review Complainant's account in twelve months to determine the applicable tariff and to calculate the Complainant's electric delivery charges. There is a possibility that Complainant may need to refile the complaint to challenge the results of that review.

III. CONCLUSION

Staff respectfully requests that an order be issued consistent with this response.

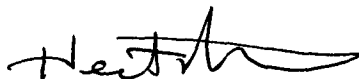
Dated: August 28, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney



Heath D. Armstrong
State Bar No. 24105048
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
(512) 936-7268 (facsimile)
Heath.armstrong@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 28, 2018, in accordance with 16 TAC § 22.74.



Heath D. Armstrong