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PROJECT NO. 50664



ISSUES RELATED TO THE STATE OF §
DISASTER FOR CORONAVIRUS 2019 §

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**ALLIANCE FOR RETAIL MARKETS' REQUEST FOR CLARIFICATION
REGARDING THE COVID-19 ELECTRICITY RELIEF PROGRAM**

The Alliance for Retail Markets¹ (“ARM”) member companies are working diligently to implement the COVID-19 Electricity Relief Program (“ERP”) adopted by the Public Utility Commission of Texas (“Commission”) on March 26, 2020. The COVID-19 ERP, as adopted by the Commission, strikes the right conceptual balance to provide temporary protections for residential customers experiencing financial hardship as a result of the COVID-19 pandemic from disconnection and mitigate the financial strain that protection will impose on the retail electric providers (“REPs”) serving those customers.² However, implementation of the COVID-19 ERP has identified a spectrum of interpretations of that Order, which has caused some confusion and, in some instances, identified tensions between the Commission’s stated goals.

ARM supports the request for clarifications filed today by Texas Energy Association for Marketers (“TEAM”). To help ensure a successful and uniform implementation of the COVID-19 ERP and achieve the Commission’s stated goals of the program, ARM also respectfully requests that the Commission clarify the steps a REP must take before submitting requests to the transmission and distribution utility (“TDUs”) to cease an eligible customer’s delivery charges. Additionally, ARM requests that the Commission clarify the parameters of the reimbursement period to align with the Commission’s stated preference that REPs encourage customers to enter into deferred payment plans (“DPPs”). Both of these issues relate to the proposals filed by the Joint TDUs in this project on April 3 and 10, 2020. Although the Joint TDUs’ proposals may

¹ ARM is a trade association in which the following REPs are individual member companies: Calpine Energy Solutions and Champion Energy Services; Constellation NewEnergy, Inc.; Direct Energy, LP, CPL Retail Energy, LP, Direct Energy Business, LLC, First Choice Power, LLC, and WTU Retail Energy, LP; ENGIE Resources LLC; Gexa Energy, LP; the NRG Retail Companies, including Reliant, Cirro Energy, Discount Power, Green Mountain Energy, Stream, and XOOM Energy; and the Vistra Energy Retail Companies, including 4Change Energy, Ambit Energy, Express Energy, TriEagle Energy, and TXU Energy.

² Order Related to COVID-19 Electricity Relief Program (Mar. 26, 2020).

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appear operational at first glance, it makes implicit policy calls on critical issues that are best left for the Commission to decide.

I. Establish the Appropriate Reimbursement Period to Encourage DPPs

An appropriate reimbursement period would incentivize REPs and their customers to work together on favorable payment terms. However, the proposals filed by the Joint TDUs in this project would limit the reimbursement period to only *after* the date of delivery charge cessation, or possibly one invoice prior to the cessation date. ARM understands the need to have a defined period for which reimbursement requests will be accepted for the COVID-19 ERP to be functional and operational. A natural limit to the reimbursement date could be March 17, 2020, which is the date that the TDUs in ERCOT instituted their system wide disconnection moratorium.³ Both the proxy energy charge of \$0.04 per kilowatt hour (“kWh”) and associated delivery charges should be eligible for reimbursement beginning on that date.

A clear start date for reimbursement serves the Commission’s stated objectives in adopting the COVID-19 ERP:

- That it should reduce the “exposure of the competitive market from excessive COVID-19 related bad debt that could lead to industry upheaval and bankruptcies;”⁴
- That REPs should contact customers regarding the availability of deferred payment plans prior to submitting claims;⁵

³ Disconnections that would have occurred on or after March 17 were largely associated with unpaid bills dating back to at least February 2020, since under the Commission’s rules a bill cannot be due less than 16 days from the date that the bill is issued, and a effectively at least 11 days must pass between the date of the disconnect notice and the actual disconnect order can be sent (ignoring for simplicity whether the customer received any due date extensions or entered into a deferred payment plan). See 16 TAC §§ 25.480(b), 25.483(c), 25.483(1)(1) and 25.483(1)(3), which respectively require a due date no sooner than 16 days from the invoice date, that disconnect orders occur no sooner than 1 day after the noticed disconnection date, that disconnect notices be sent no sooner than 1 day after the invoice due date, and that the noticed disconnection date be no sooner than 10 days after the disconnect notice was issued (and not fall on a holiday, weekend, or date that the REP is unavailable to take payments).

⁴ Order Related to COVID-19 Electricity Relief Program at 5 (Mar. 26, 2020).

⁵ *Id.*

- That the COVID-19 ERP will reimburse for energy and delivery charges “related to eligible residential customers with an unpaid, past due electric bill subject to a disconnection for non-payment notice”;⁶
- That “reimbursements to the TDUs and REPs will continue after the COVID-19 [ERP] has ended ... to disburse all reimbursement amounts or remaining balances” and that “final claims for reimbursement must be submitted to TDUs not later than 90 days after the end of the COVID-19 [ERP]”;⁷ and
- That, because the cost of the COVID-19 ERP’s disconnection exemptions will be borne by fellow Texans (including other customers and REPs), the program’s measures “should be reserved for those in dire circumstances.”⁸

Under the Joint TDUs’ proposed implementation, eligible customers (and REPs) are effectively penalized if they enter into a DPP with REPs and REPs are penalized if they offer DPP terms that are more generous than minimum terms required by the Commission’s rules (i.e., down-payment less than 50% of the amount due, more than five installments) because the REP would only be allowed to submit a request for reimbursement of proxy energy charges for invoices following the delivery charge cessation date. The Joint TDUs’ proposed implementation of the reimbursement period is inconsistent with the words of the Commission’s order that specifies that the COVID-19 ERP will help to reimburse unpaid, past-due balances, and that REPs will have at least 90 days after the COVID-19 ERP ends to submit reimbursement claims. As a practical matter, it also would create untenable tension between the Commission’s policy objectives for the COVID-19 ERP (i.e., financial relief on unpaid bills and encouragement to enter into DPPs).

If REPs can only request COVID-19 ERP relief for customers after the delivery charge cessation date, then REPs are incentivized to request delivery charge cessation as soon as possible (and customers are incentivized to facilitate such action), which does not align with the program’s intent that REPs work with customers to enter into DPPs. ARM is concerned that this dynamic could result in early claims overwhelming the fund. In their most recent filing, the Joint TDUs

⁶ *Id* at 6-7.

⁷ *Id* at 7.

⁸ See “FAQ on the PUC’s Response to COVID-19” (<http://www.puc.texas.gov/images/facts/PUCTX-COVID19-FAQ-FAQ.pdf>).

appear to be open to also allowing reimbursement for one invoice immediately preceding the delivery charge cessation date, but that concept does not alleviate the concerns noted above due to the nearly month-long lag time that can occur between the time that a REP receives a TDU invoice and the time that a customer becomes past-due and subject to disconnection for non-payment.⁹ If a REP and customer agree to a DPP, then multiple months may pass before a customer becomes past-due and subject to disconnection for non-payment.

Accordingly, ARM respectfully requests that REPs have flexibility to request the TDUs refund delivery charges issued on or after an objective starting date through the duration of the COVID-19 ERP program. Additionally, ARM maintains that a REP's proxy energy charge reimbursement request should also be subject to that starting date but not be tied to the delivery charge suppression date as proposed by the Joint TDUs.

ARM's proposal better aligns the incentives for REPs to offer more lenient DPP terms, for customers to accept DPPs and then if customers default on the DPP, then relief is still available from the COVID-19 ERP fund (and the customer is no worse off than they would have been if they had not accepted a DPP). That relief is ultimately flowed back to the customer's account, which would provide them with the relief the Commission intended. For the Commission's convenience, ARM has attached simple timeline examples demonstrating the necessity for the reimbursement period recommended by ARM as compared to the Joint TDUs' proposal or the "one invoice back" concept referenced above.

II. Exception of Late Fee Rules

In its "Order Directing Certain Actions and Granting Certain Exceptions to Certain Rules," ("Exceptions Order") the Commission stated that it was granting a good cause exception to 16 TAC § 25.480(c), which relates to assessment of late fees on customers for delinquent bills. ARM respectfully requests that the Commission clarify the scope of this exception. ARM maintains that the context of this exception suggests that it should be read as suspending the application of late fees to customers on the Solix COVID-19 ERP or LILA eligibility lists. Waiving late fees for all customers unnecessarily increases the cost for REPs to serve customers and reduces the incentive for customers to timely pay their bills, which does not provide direct assistance to customers

⁹ See supra note 3.

struggling as a result of COVID-19 and could instead counteract the Commission's efforts to sustain the competitive retail market through this unprecedented public policy need to continue to provide power to non-paying customers.

Late fees are an effective tool to encourage customers who can pay on time to do so. REPs must timely pay delivery charges to the TDUs regardless of whether the REPs' customers pay on time. Waiving late fees for all customers may encourage them to delay payment, which would force REPs to manage a larger deficit of revenue coming in from customers compared to what must be paid to the TDUs, which would place a larger financial strain on the retail competitive market. A blanket late fee waiver unnecessarily increases the costs for REPs to serve customers and does not provide direct assistance to those customers experiencing financial hardship due to COVID-19. Applying the late fee waiver to those customers who need it (customers on the COVID-19 ERP list) best serves the public interest during this public emergency.

III. Prerequisites for Delivery Charge Cessation Request

ARM understands that on the first business day after the first Solix COVID-19 ERP list was distributed to REPs, the TDUs received numerous delivery charge cessation requests due to confusion about prerequisites for customer eligibility. On April 10, PUCT Staff issued an "FAQ" document to REPs with suggestions for aligning interpretations of the Commission's order, and TDUs announced a second workshop to discuss ERP wires suppression and reimbursement request mechanics. ARM appreciates the efforts to clarify the process and intends to participate in the TDU workshop on April 14, but has two concerns with some of the implied policies in the presentation materials for the workshop regarding reimbursement eligibility criteria:

1. The TDU-proposed form for REPs to request suppression of wires charges would allow TDUs to reject reimbursement requests if the customer has not indicated an inability to pay or the REP cannot specify a date that a DPP was offered; and
2. The implied requirement that a REP can only request proxy energy charge reimbursements for periods in which delivery charges have already been suppressed.

To be clear, ARM applauds additional efforts to ensure that the ERP funds are utilized as intended and protected from potential abuse. On the first item, however, there is no requirement in the Commission's ERP order that requires that a customer have indicated an inability to pay to

become eligible for ERP reimbursement.¹⁰ From a practical standpoint, customers do not always proactively contact their REPs when they have an inability to pay – and to the extent a customer has already enrolled in the ERP and understands that they will not be subject to disconnection for nonpayment or a late fee, there is very little incentive for the customer to do so. Additionally, and along the same lines, the implicit assumption regarding the DPP offer date is that the customer has contacted the REP. While REPs can and will be providing various forms of outreach to customers, the Commission’s rules for DPPs clearly recognize that entering into a DPP requires affirmative consent of both the customer and the REP. Therefore, while a REP should inform customers of the availability of DPPs and other payment arrangements or assistance, the REP cannot offer a DPP if the customer never contacts the REP. Accordingly, ARM respectfully requests that the Commission clarify that if a customer on the eligibility list contacts the REP with an expression of an inability to pay, the REP must offer a DPP and payment arrangements.

The second item ties back to the concerns raised above about establishing an appropriate reimbursement period that aligns customer and REP incentives with the ERP’s objectives. The Joint TDUs have proposed that a REP can only request proxy energy charge reimbursements for periods in which wires charges have already been suppressed. As recommended by ARM in Section I above, the eligible reimbursement period should be for unpaid invoices on or after a clear start date.

However, if the Commission disagrees with ARM’s proposed eligibility period, then ARM respectfully requests that the Commission clarify that the energy proxy reimbursement is decoupled from the wires suppression period. In other words, if the Commission decides that the wires suppression must be tightly limited to on or near the time period that the wires suppression request is submitted by the REP, there does not appear to be any practical or policy reason why the energy proxy reimbursement should be tied to the wires suppression period.

¹⁰ “Inability to pay” in this context appears to be something more than the customer merely not paying their bill from their REP. The only reference to “inability to pay” in the ERP order says that a REP must inform the customer of the ERP and provide instructions to contact Solix to self-enroll “when a customer contacts a REP and indicates an inability to pay a bill, or to make a deferred payment plan installment” – this necessarily assumes that the customer has contacted the REP in the first place, which does not always happen.

IV. Conclusion

ARM appreciates the Commission's time and attention to these important matters. The clarifications suggested by ARM in this filing are intended to better align the process of implementing the COVID-19 ERP with the goal of helping customers experiencing genuine financial hardship as a result of the COVID-19 pandemic in the most productive ways possible.

Dated: April 13, 2020

Respectfully submitted,



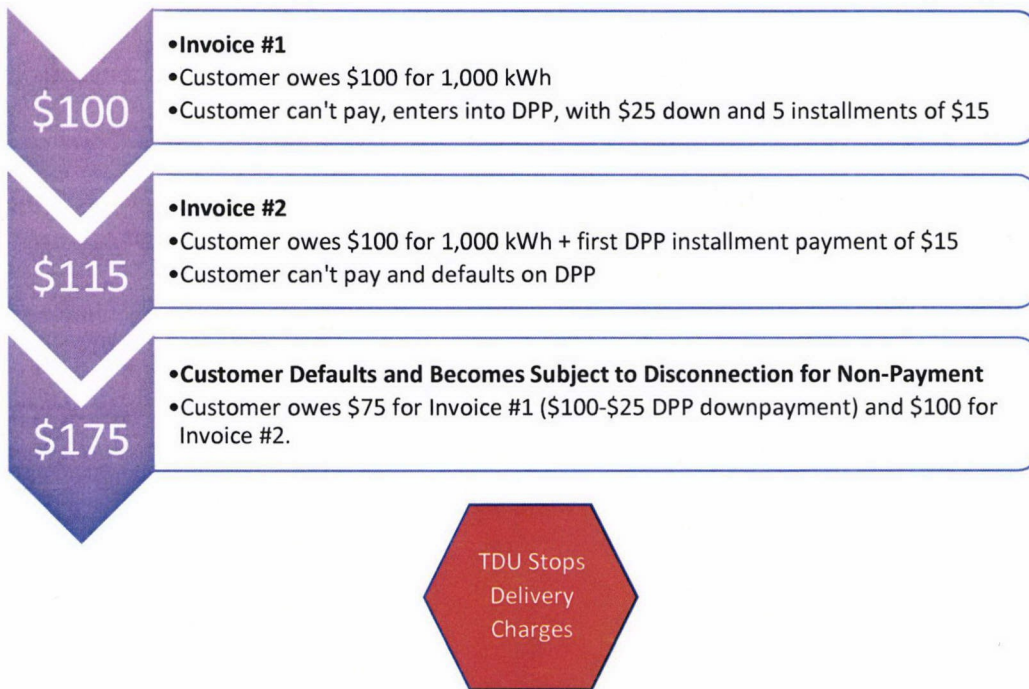
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ATTORNEYS FOR ALLIANCE FOR RETAIL MARKETS

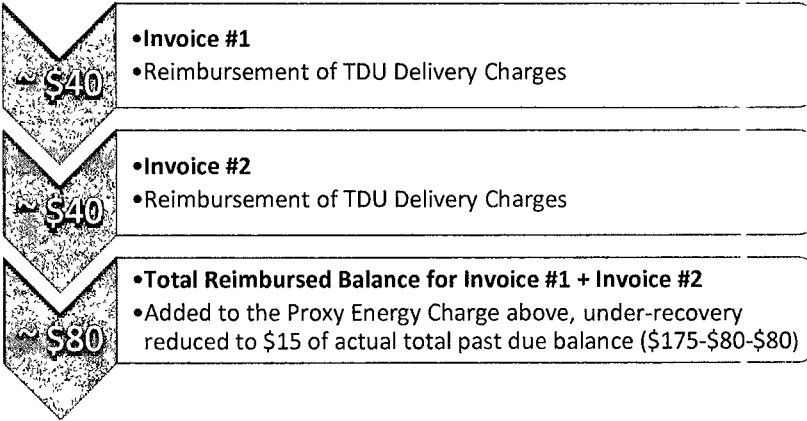
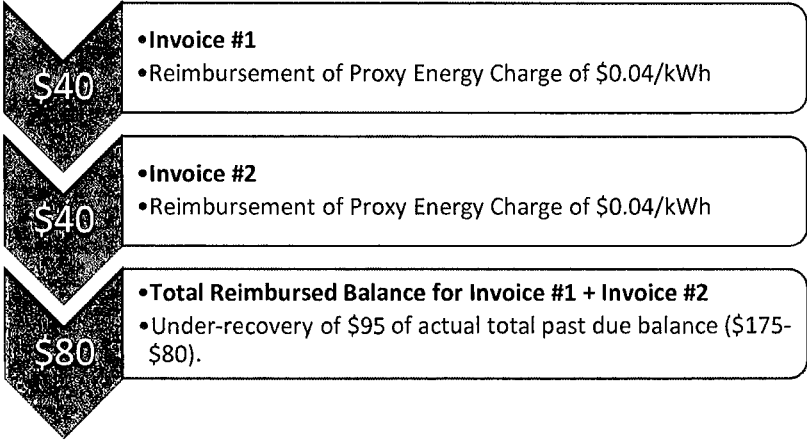
Sample Invoice Reimbursement Issues

Assume Customer Had Previous Good Payment History Up to This Point

- Invoice #1 = \$100 for 1,000 kWh, customer can't pay and enters into a deferred payment plan (DPP) with \$25 down, and 5 installments of \$15.
- Invoice #2 = \$100 for 1,000 kWh + \$15 first DPP installment (keep in mind customer still owes \$75 for DPP).
- Default on DPP because customer can't pay = customer owes \$75 from Invoice #1 and \$100 from Invoice #2.



- REP requests cessation of TDU delivery charges, reimbursement of proxy energy charge for Invoice # 1 and #2.
 - Energy charge reimbursed at 4 cents per kWh = \$80 total even though customer owes \$175 total, so shortfall of \$95.
 - If reimburse delivery charges for both invoices, REP would receive approximately \$80 more, leaving the shortfall at \$15.



- TDU proposal filed in Project No. 50664 would bar reimbursements of both the orange and gray amounts above. TDU proposal would only allow for reimbursement for invoices that occur after the delivery charge cessation date.