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Addendum StartPage: 0



OPEN MEETING COVER SHEET

COMMISSION STAFF'S RECOMMENDATION ON THE PETITION FOR AN EMERGENCY RULEMAKING

MEETING DATE: May 14, 2020

DATE DELIVERED: May 7, 2020

AGENDA ITEM NO.: 26

CAPTION: Project No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019*

DESCRIPTION: Discussion and possible action with respect to Memorandum and Order (Staff Recommendation)

Distribution List:
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Public Utility Commission of Texas

Memorandum

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Kristin Abbott, Market Analysis Divisions
Rashmin Asher, Legal Division

DATE: May 7, 2020

RE: Project No. 50664: *Issues Related to the State of Disaster for Coronavirus Disease 2019*

On March 20, 2020, the Texas Legal Services Center, Disability Rights Texas, Legal Aid of Northwest Texas, Lone Star Legal Aid, People's Community Clinic, Texas Health Action, and Texas Rio Grande Legal Aid (collectively, "Petitioners") filed a petition ("Petition") in the above-titled project for an emergency rulemaking to provide customer protection rules for temporary support to victims of the Coronavirus disease ("COVID-19").¹ In this memorandum, Commission Staff provides a summary of the Petition and comments, its recommendation to the Commission, a procedural deadline. Additionally, attached to this memorandum is a draft order for the Commission's consideration at its May 14, 2020 open meeting.

Summary of Petition and Comments

In the Petition, the Petitioners request the Commission to suspend rules permitting disconnections of service for electric, telephone, and water; prohibiting late fees; and restoring services for those previously disconnected.² Petitioners also proposed a new rule, applicable to any electric, water, or telephone provider, or any company providing a combination of these services. This proposed rule would: (1) prohibit these entities from terminating the service of a customer whose service is used, in whole or in part, in a dwelling unit or a residence; (2) prohibit these entities from billing or collecting, on an account that serves a dwelling unit or residence, any down payment, fee, or charge imposed for a late or otherwise untimely payment that becomes due after the rule is effective; (3) require these entities to make reasonable attempts to reconnect service to any occupied dwelling unit or residence that has been terminated or disconnected without a reconnection fee, to be effective until 30 days after the latter of the termination of the state of emergency and the proclamation of the catastrophic health emergency. The proposed rule would also suspend the effect of any rule or regulation of the Commission that is inconsistent with the rule text as proposed by Petitioners.³

¹ Petition for Emergency Rulemaking to Provide Customer Protection Rules for Temporary Support to Victims of COVID-19 (Mar. 20, 2020).

² *Id.* at 4.

³ *Id.* at 6.

Project No. 50664

Comments on the Petition were filed by a single party, AARP of Texas (AARP).⁴ AARP supported the Petition as filed to prevent electric, water, and telephone providers from charging down payments, fees, late charges, or effectuating terminations until 30 days after the state of emergency has been terminated.⁵

Staff Recommendation

Staff notes that the Commission may choose from several possible courses of action with respect to the Petition: (1) deny the Petition and reject the proposed rule or (2) initiate a rulemaking to address the issues raised in the Petition.

Commission Staff recommends that the Commission deny the Petition, as well as the request to initiate an emergency rulemaking proceeding, for several reasons. The Commission has already taken actions to address the effects of COVID-19 on utility consumers in Texas, including: (1) opening the instant project; (2) establishing by Commission order the COVID-19 Electricity Relief Program (“ERP”) as a customer assistance program to protect eligible residential customers of retail electric service in the areas of Texas open to customer choice, through July 17, 2020, to be extended by the Commission if it determines that the need for the program continues to exist;⁶ (3) ordering Retail Electric Providers (“REPs”) to cease disconnections of eligible residential customers;⁷ (4) requiring ERCOT Transmission and Distribution Utilities (“TDUs”) to file reports required by the Order and opening a project for that purpose;⁸ (5) requiring by Commission order that REPs offer deferred payment plans to customers who have experienced financial hardship due to COVID-19;⁹ (6) directing REPs to inform customers who indicate an inability to pay or make a deferred payment plan installment of the ERP and instruct them on how to self-enroll;¹⁰ (7) ordering a moratorium on disconnections for non-payment implemented by the TDUs through March 29, 2020; (8) granting exceptions to certain water and sewer rules relating to the assessment of late fees on customers with delinquent bills, the authorization for a water utility to charge interest on deferred payment plans, requirements for estimated bills, allowing a retail public utility to disconnect water or sewer service for nonpayment; authorization of a utility to disconnect water service for non-payment of a solid waste charge, requiring a retail public utility to disconnect water service for nonpayment of sewer charges;¹¹ (9) granting exceptions to certain electric rules that relate to the assessment of late fees on customers for delinquent bills, disconnection of service for nonpayment, and assessment of late fees for customers with delinquent bills.¹²

⁴ Requesting Approval of Petition for an Emergency Rule (Mar. 24, 2020).

⁵ *Id.*

⁶ Order Related to COVID-19 Electricity Relief Program at 2 (Mar. 26, 2020).

⁷ Order Related to COVID-19 Electricity Relief Program at 2 (Mar. 26, 2020).

⁸ Project No. 50703, *Reports of Transmission and Distribution Utilities on the COVID-19 Electricity Relief Program*.

⁹ Order Related to COVID-19 Electricity Relief Program at 5 (Mar. 26, 2020).

¹⁰ Order Related to COVID-19 Electricity Relief Program at 5-6 (Mar. 26, 2020).

¹¹ *See* Order Directing Certain Actions and Granting Exceptions to Certain Rules (Mar. 26, 2020); *see also* Second Order Directing Certain Actions and Granting Exceptions to Certain Rules (Apr. 17, 2020).

¹² *See* Order Directing Certain Actions and Granting Exceptions to Certain Rules (Mar. 26, 2020); *see also* Second Order Directing Certain Actions and Granting Exceptions to Certain Rules (Apr. 17, 2020).

Project No. 50664

Commission Staff has attached to this memorandum its proposed order consistent with this recommendation.

Procedural Deadline

Pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.021 (West 2016), not later than the 60th day after the date of submission of a petition for adoption of rules, the Commission shall either deny the petition in writing, stating reason for denial, or initiate a rulemaking proceeding. The 60th day after the date of submission of the Petition is May 19, 2020.

PROJECT NO. 50664

**ISSUES RELATED TO THE STATE OF
DISASTER FOR CORONAVIRUS
DISEASE 2019**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**(STAFF RECOMMENDATION)
ORDER DENYING PETITION FOR RULEMAKING**

On March 20, 2020, Texas Legal Services Center (TLSC), Disability Rights Texas, Legal Aid of Northwest Texas, Lone Star Legal Aid, People’s Community Clinic, Texas Health Action, and Texas Rio Grande Legal Aid (collectively, Petitioners) filed a petition seeking the an emergency rule that would prohibit the disconnection of residential electric, water, or telephone service prohibit the billing or collection of charges, including late fees, for residential utility service, and require reasonable attempts to reconnect utility service without a fee.¹ The emergency rule would remain in effect 30 days after the termination of the state of emergency declared by the governor.² The proposed emergency rule would also suspend any Commission rule that is inconsistent with the emergency rule.³

The petitioners state that the Commission should adopt the emergency rule proposed in the petition to assure that all Texans have sufficient opportunity to obtain and maintain residential utility services during the COVID-19 disaster and to guarantee uniform protections to Texans regardless of where they live or their chosen retail provider.⁴

¹ Petition for Emergency Rulemaking to Provide Customer Protection Rules for Temporary Support to Victims of COVID-19 at 6 (Mar. 20, 2020).

² *Id.*

³ *Id.*

⁴ *Id.* at 4, 6.

The Texas director of AARP filed a letter on March 24, 2020 in which she expressed support for the proposed emergency rule noting that older Texans are venerable to increased utility costs due to fixed incomes and are also particularly vulnerable to contracting COVID-19.⁵

The Commission Staff recommended denial of the petition for an emergency rule.⁶

The Commission has already taken significant action to provide consumer protections for utility customers in Texas who are affected by COVID-19, including ordering retail electric providers (REPs) to cease disconnections of eligible residential customers,⁷ ordering that REPs offer deferred payment plans to eligible residential customers,⁸ granting exceptions to certain water and sewer rules relating to assessment of late fees and allowing disconnection for nonpayment, establishing a COVID-19 Electricity Relief Program for all eligible residential consumers, and granting exceptions to certain electric rules that relate to assessment of late fees or disconnection of services as a result of delinquent bills or nonpayment.⁹ The Commission is continuing to monitor these action and will take further steps if necessary to provide sufficient protections for the citizens of Texas. In light of these actions by the Commission, the proposed emergency rules is not necessary.

ORDERING PARAGRAPH

For the reasons discussed in this Order, the Commission denies the petition.

⁵ Requesting Approval of Petition for an Emergency Rule (Mar. 24, 2020).

⁶ Recommendation of Commission Staff (May 7, 2020).

⁷ Order Related to COVID-19 Electricity Relief Program at 2 (Mar. 26, 2020).

⁸ Order Related to COVID-19 Electricity Relief Program at 5 (Mar. 26, 2020).

⁹ *See* Order Directing Certain Actions and Granting Exceptions to Certain Rules (Mar. 26, 2020); *see also* Second Order Directing Certain Actions and Granting Exceptions to Certain Rules (Apr. 17, 2020).

Signed at Austin, Texas the _____ day of May 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA COMMISSIONER

SHELLY BOTKIN, COMMISSIONER