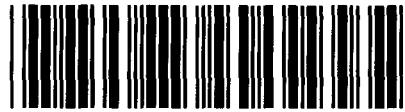
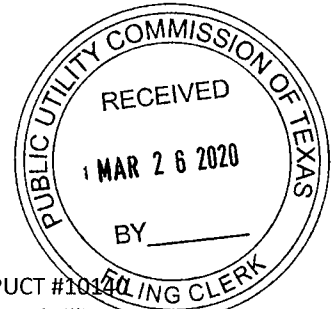


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VIA ELECTRONIC FILING

Public Utility Commission of Texas
1701 N. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326

March 25, 2020

Re: Project No. 50664: Issues Related to the State of Disaster for Coronavirus 2019

TO THE HONORABLE COMMISSION:

Brilliant Energy, LLC ("**Brilliant Energy**"), a Texas-certificated retail electric provider ("**REP**"), certificate number 10140, respectfully submits this Amicus Filing Regarding Issues Related to the State of Disaster for Coronavirus 2019 ("**Filing**"):

I. Introduction

First and foremost, Brilliant Energy would like to thank the Honorable Public Utility Commission of Texas ("**Commission**") for its swift and judicious action in establishing this Project.

For the first time in many of our lives, we as a global human collective find ourselves face-to-face with unprecedented and uncertain circumstances as the severe acute respiratory syndrome coronavirus 2, also known as the coronavirus disease 2019 or COVID-19, infects almost half a million people around the world and tens, if not hundreds, of thousands throughout the United States of America. Coordinated efforts on international, national, local, and individual levels, both large and small, are being taken by a collective humanity throughout the world to slow the rate of infection so that healthcare needs do not exceed healthcare capacity and/or such time that science and medicine can discover a prophylactic or treatment mechanism to safeguard humanity.

As part of those coordinated local efforts, many companies, like Brilliant Energy and others who have made filings in this Project, have made commitments to our customers to ensure that their humanity and its needs, along with a sense of moral, ethical, and social responsibility, will take priority over short-term economic concerns.

On March 16, 2020, the Commission established this Project suspending the operation of certain of the Commission's rules and inviting interested parties wishing to inform the Commission of their initiatives related to COVID-19 response to file such information in this Project.

Patrick L. Woodson, President of ATG Clean Energy Holdings Inc., filed a letter with the Commission dated March 20, 2020 ("**March 20 Letter**") detailing some of the more unique hardships and related risks faced by smaller REPs and REPs whose business model is credit-facility-based (collectively, "**REPs**"), and the potential consequences of not considering these hardships and risks when addressing the issues related to the state of disaster for coronavirus 2019.

The Commission has proposed a program that consumers themselves, in coordination with utilities and REPs and in reliance on the Commission's mandates, may ensure their continued receipt of certain services, specifically, retail electric service in Brilliant Energy's case, while at the same time establishing reimbursement mechanisms meant to mitigate the economic impacts of those mandates. This proposal was set forth in writing by the Honorable Chairman DeAnn T. Walker in her March 24, 2020, memorandum to Commissioners Arthur C. D'Andrea and Shelly Botkin ("**March 24 Memo**").

Brilliant Energy again thanks the Commission for its proposals and, by this Filing, requests respectfully that the Commission consider further some of the concerns raised in the March 20 Letter when adopting any final measures in response to this global pandemic. The additional considerations set forth in this Filing, if satisfied, will provide more meaningful assurances for REPs and thereby preserve the competitive nature of the market.

II. Commission Authority

As a principal matter, Brilliant Energy would like to affirm the Commission's authority to take action under the circumstances. Pursuant to 16 Texas Admin. Code § 25.3, the Commission is not prohibited from requiring "any other or additional service, equipment, facility, or standard . . . upon its own motion," and "The [Commission] may make exceptions to [Chapter 25 of the Texas Administrative Code] for good cause."

Further, on March 13, 2020, the Governor of the State of Texas issued "A proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas." ("**March 13 Proclamation**"). The March 13 Proclamation provides, in part, that the Commission may seek written approval from the Office of the Governor to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster." See March 13, 2020 Proclamation and Tex. Gov't Code § 418.016(a).

III. March 20 Letter

The March 20 Letter estimates nonpayment rates of up to 30%, but Brilliant Energy considers this estimate to be conservative and the impacts of nonpayment in the summertime to be understated. If the consequences of failing to take measures in addition to those proposed by the Commission in its March 24 Memo are revealed to be at least as dire as predicted, then the employees and customers of REPs, not to mention the REPs themselves, would be left to founder and ruin.

While certain contingencies and other benefits might be available to those customers and employees, *i.e.*, in the case of customers, interim service from a Provider of Last Resort until a new REP can be selected or, in the case of employees, unemployment benefits, those contingencies and benefits

come at a high cost to both groups and, in the case of employees, at a dollar amount and duration that would pale in comparison to the wages, benefits, and sense of self-worth that come from employment.

The added result of the failure of these REPs would be the absorption of customers and load by larger REPs or such REPs' affiliates, thus shrinking and homogenizing what was once a robust and competitive market.

While subsidizing the retail electric service costs of certain Texans at the consumer level alleviates consumer anxiety and consumer financial strain, REPs are laid bare by such a consumer-focused, one-size-fits all solution. Specifically, REPs face operational standards and financial obligations that persist without regard to whether customers pay their bills on time or in-full. The energy expenses, credit fees, interest rates, and other financial obligations faced by REPs during summer months are insurmountable at \$0.04 per kilowatt hour, and the long-term financial jeopardy that results from those shortcomings will be a death sentence for many. This is particularly the case where amounts in excess of \$0.04 per kilowatt hour are collected over time through the use of deferred payment plans or other arrangements.

The March 20 Letter suggests several assistance mechanisms that could be made available to market participants, and avers further that these additional assistance mechanisms would stabilize an increasingly uncertain market and help maintain the competitive nature of a market that has provided untold billions of dollars in savings and other benefits to Texas' retail electricity customers.

While the voluntary efforts that that have been implemented in response to this global pandemic are good and necessary first steps, the March 20 Letter rightly refers to and requests "a market standard of conduct" prescribed by the Commission. While certain standards of conduct are prescribed by the Commission's rules, such as deferred payment plans during extreme-weather months, these standards are not meant to sustain the types or scales of accommodations required by the immediate circumstances. Any standards adopted therefore should be uniform for the market and adapted to the scale of the circumstances.

Adjusting the amount of time available for REPs to satisfy transmission and distribution utility ("TDU") invoices would align REPs' TDU payment obligations with the REPs' cashflows. This will increasingly become the case as we head into the year's hottest months, when customers' energy demands invariably increase as the weather demands additional cooling load. REPs' energy and TDU invoices will increase concurrently, but REPs cash flows will be forward-shifted. This forward shift will occur for those customers who avail themselves of Commission-prescribed subsidies to the extent their charges exceed \$0.04 per kilowatt hour, and a different forward shift will occur for other customers who receive payment arrangements, deferred payment plans, and other available assistance. The most dramatic impact on cash flows, however, will come from those customers who simply do not pay, which Brilliant Energy estimates can exceed 30% of customers.

Likewise, payment extensions and payment-netting allowances for REPs' ERCOT obligations, especially for those REPs whose business model is credit-facility-based, would align REPs' financial obligations to ERCOT with REPs' cash flow.

In addition to aligning some of REPs' TDU and ERCOT payment obligations with REPs' cashflow capabilities, REPs should also have access to their own cash reserves currently held by TDUs and ERCOT as collateral and deposits to make more cash on hand available. In addition to freeing up cash reserves

that already belong to REPs, unsecured low- and no-interest working capital loans should also be made available through local, state, and federal funds, if available.

In short, the more money REPs can have available on-hand and the more their payment obligations to TDUs and ERCOT can be aligned with cash flow constraints caused by increases in bad debt and forward shifts in accounts receivable, the more likely REPs, along with their employees and customers, will be spared needless further impact from issues related to the coronavirus.

Like the March 20 Letter, it is not Brilliant Energy's intention in this letter to urge the Commission to adopt specific measures of any kind; rather, it is our hope that the Commission, after or congruent with its efforts to mitigate the anxiety and strain associated with consumer-level financial obligations, will take steps to alleviate the similar and related anxiety and strain that ultimately will be faced by the market and market participants.

Brilliant Energy appreciates the Commission's attention to all of these matters and is sincerely hopeful for a bright future for all of us here in Texas and throughout the world.

Be well and take care,

Brilliant Energy, LLC