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| REVIEW OF CERTAIN RETAIL | § | PUBLIC UTILITY COMMISSION |
| ELECTRIC CUSTOMER PROTECTION | § | |
| RULES | § | OF TEXAS |

**COMMENTS BY TXU ENERGY
IN RESPONSE TO PUBLISHED RULE PROPOSAL**

I. INTRODUCTION

TXU Energy Retail Company LLC (hereafter, “TXU Energy”) appreciates the opportunity to comment on the Public Utility Commission of Texas’s (“Commission’s”) published proposal to revise existing rules and add a new rule to implement House Bill (“HB”) 16 and certain sections of Senate Bill (“SB”) 3 of the 87th Texas Legislature.¹ TXU Energy joins the comments filed today by the Alliance for Retail Markets (“ARM”) and provides these additional supplemental comments to propose the following:

- 16 Tex. Admin. Code (“TAC”) § 25.43(i) should not be amended to allow the executive director to designate additional voluntary retail electric providers (“VREP”) at any time; instead, any REP that wishes to be designated as a VREP should be required, absent a showing of good cause, to make that request during the standard June 1 to July 31 timeframe that applies in the existing provider of last resort (“POLR”) rule.

II. COMMENTS

16 TAC § 25.43(i), VREP List Determination

The published proposed amendments would add a phrase to 16 TAC § 25.43(i) to allow the executive director to designate additional VREPs at any time, without regard for the filing deadline in the rule, which otherwise requires REPs to apply for VREP designation between June 1 and July 31 of each even-numbered year. TXU Energy urges the Commission not to add this phrase to the rule, for the reasons set out below.

¹ The Proposal for Publication was approved by the Commission at the July 29, 2021 open meeting and published in the *Texas Register* on August 13, 2021. 46 TEX. REG. 4937–4964 (Aug. 13, 2021).

REPs that volunteer to take on customers during a POLR event at market-based rates agree to take on an added degree of risk, and potentially forego opportunities, for the benefit of others. With any POLR event, VREPs take on risk (for the benefit of customers) by voluntarily accepting tranches of customers that are mass transitioned from a failed REP (or REPs). During an extreme market event, VREPs also may have to forego opportunities to purchase customers of distressed REPs—i.e., before an involuntary mass transition of those REPs' customers might otherwise occur—to conservatively ensure that they are able to take on customers in a potential POLR event, or more likely, events (plural), as was experienced during Uri with multiple REP failures in short succession. This represents a true opportunity cost to the VREP that primarily benefits others (i.e., customers that end up being dropped to POLR and competitor REPs that might not be similarly constrained).

Part of the risk-reward trade-off a REP must make in determining whether to be a VREP is the likelihood that the VREP may be able to competitively retain some customers assigned to it through a POLR event. However, any such calculation is rendered pointless if the VREP pool can be altered at any time by the executive director, as the published amendments propose. Counterintuitively, this flexibility proposed in the published rule may actually reduce REPs' willingness to provide POLR service as a VREP (especially under the normal timeline in the rule) and may encourage REPs to wait until the last minute during an extreme market event before deciding whether to volunteer (e.g., based on how many other REPs volunteer at the last minute), which presumably would be less optimal for the Commission than knowing in advance, under the normal June 1 to July 31 timeframe contemplated in the rule, how many customers can be transitioned to VREPs in a POLR event. Accordingly, TXU Energy recommends that the proposed change to § 25.43(i) not be incorporated into the final rule:

- (i) VREP list. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission will post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year ~~unless otherwise determined by the executive director~~. This filing must include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, will not be considered confidential information.

III. CONCLUSION

For the reasons stated herein, TXU Energy respectfully recommend that the Commission adopt amendments to the POLR rule in accordance with these comments.

Date: August 27, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ned Bonskowski', written over a horizontal line.

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On behalf of TXU Energy Retail Company LLC