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Public Utility Commission of Texas

Commissioner Memorandum

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TO: Chairman Peter M. Lake
Commissioner Lori Cobos
Commissioner Kathleen Jackson

FROM: Commissioner Will McAdams *WMA*
Commissioner Jimmy Glotfelty *JG*

DATE: November 29, 2022

RE: Project No. 53911 – *Aggregate Distributed Energy Resources ERCOT Pilot Project*

In a joint memo filed July 13, 2022, the Commission established the Aggregate Distributed Energy Resources Pilot Task Force, which was comprised of market stakeholders, ERCOT staff, OPUC, and PUC staff. One of the intended purposes of the Task Force was to “develop business procedures such as an ADER Pilot Program Load-Serving Entity (LSE) Enrollment Guide.” The purpose behind this collaboration was to identify potential hurdles to timely implementation of the pilot and appropriate business practices that comply with established safeguards for retail and consumer engagement. Additionally, within our joint memo, we laid out the guiding principles for the ADER pilot project including the direction to “ensure adequate customer protection is in place and information is anonymized.”

PUC staff has since engaged with the ADER Pilot Task Force and identified areas of customer protection that we believe should be published as guidance to the market underscoring our expectation that established customer protection policies are applicable to the interactions between the distributed energy resource aggregators and their premise level customers.

In the first phase of the pilot, the distributed energy resource aggregator must be a Load Serving Entity – either a Retail Electric Provider (REP) or a Non Opt-in Entity (NOIE). Under 16 Texas Administrative Code § 25.471(a), the application of general provisions of customer protection rules for retail electric services “applies to aggregators and retail electric providers.” Therefore, applicable sections of Subchapter R would apply to REPs participating in the pilot project. Those engaging in the ADER pilot project must comply with the following customer protection guidelines to support customer satisfaction as the ADER pilot project progresses and expands.

An ADER provider (ADER) must comply with each contract it enters into with an electric account holder participating in the ADER pilot program (“participant”). Any communications made by the ADER must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. At a minimum, the following information must be included in all contracts:

- (1) **Identity and contact information of the ADER.** The contract must include the ADER certified name, mailing address, e-mail, internet address, and a toll-free telephone number (with hours of operation and time-zone reference).
- (2) **Language preference of the participant.** The ADER must provide the participant information about the pilot in English or Spanish as selected by the participant. The ADER must provide the participant a means of selecting a participant's language preference.
- (3) **Terms of service for the ADER using the participant's devices.** An ADER must provide a participant with a written copy of the terms of service under which the ADER will control the participant's device.
 - (A) The terms of service must be complete, be written in language that is clear, plain, and easily understood, and be printed in paragraphs of no more than 250 words in a font no smaller than 10 point.
 - (B) The terms of service must identify any and all penalties associated with how the participant may choose to participate or not participate throughout the service.
- (4) **Benefit to the participant.** The ADER must clearly disclose in the contract:
 - (A) the benefit for participating in the pilot; and
 - (B) a description of how a participant will receive any benefit for participation in the pilot.
- (5) **Ability for participant to terminate the contract.** The ADER must clearly disclose in the contract:
 - (A) any and all early termination fees, applicable amounts, and explain how the participant can terminate the contract early;
 - (B) a description of a participant's right to rescind the contract without fee or penalty within three federal business days after receiving a copy of the contract and detailed instructions for rescinding the contract, including the telephone number and, if available, facsimile number or e-mail address that the participant may use to rescind the contract;
 - (C) a statement of the participant's ability to terminate the contract without penalty if the participant moves to another premise and provides evidence that it is moving, if required, and a forwarding address; and
 - (D) a statement that when a participant no longer receives retail electric service from the retail electric provider it received retail electric service from when the contract was initiated, then the contract is void and no termination fee or penalty will be assessed on the participant.
- (6) **The contract term must be conspicuously disclosed.**
- (7) **The contract must describe the conditions under which the ADER can change the contract and the notice that the ADER must provide to the participant if there is a change.**

We look forward to discussing this matter with you at the upcoming Open Meeting.