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Filing Date - 2024-12-16 01:25:43 PM

Control Number - 54857

Item Number - 19

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Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Aaron Haas *A. H.*
Administrative Law Judge

RE: **Docket No. 54857** – *Complaint of Noris Rogers Against Gexa Energy, LP and Capital Energy PA LLC dba Value Power*

DATE: December 16, 2024

On October 4, 2024, I filed a Proposal for Decision (PFD) in the above-styled and numbered docket.

On November 25, 2024, Noris Rogers filed several exceptions to the PFD. I agree with his exception to the second sentence of the third paragraph on the third page, and I have revised the PFD to remove this sentence:

It may also be the case that CenterPoint no longer has a copy of the acknowledgement because, under 16 TAC § 24.133(d)(1)(D), it is only required to keep it on file for two years.

I do not recommend any other changes to the PFD in response to Mr. Rogers' exceptions.

No other party filed exceptions.

The Revised PFD is attached and ready for the Commission's consideration.

/s/
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DOCKET NO. 54857

COMPLAINT OF NORIS ROGERS	§	PUBLIC UTILITY COMMISSION
AGAINST GEXA ENERGY, LP AND	§	
CAPITAL ENERGY PA LLC DBA	§	OF TEXAS
VALUE POWER	§	

**REVISED PROPOSAL FOR DECISION
ON MOTIONS FOR SUMMARY DECISION**

This Proposal for Decision (PFD) addresses the April 14, 2023 complaint of Noris Rogers against Gexa Energy, LP and Capital Energy PA LLC dba Value Power regarding monthly charges for non-standard metering service. Mr. Rogers disputes Gexa's and Value Power's right to collect this fee and the process they followed in collecting the fee. Specifically, Mr. Rogers complains that he was not made aware of and did not agree to the inclusion of this fee in his billing.

In this PFD, the administrative law judge (ALJ) finds that there is no genuine issue of material fact as to the sole remaining issue in this case and that Gexa and Value Power are entitled to have the complaint denied as a matter of law. Accordingly, the ALJ proposes that the motions for summary decision filed by the respondents and Commission Staff should be granted, and the complaint should be denied.

I. Procedural History

Noris Rogers filed this complaint on April 14, 2023 against Gexa and Value Power, his current and former retail electric providers (REPs). Mr. Rogers did not include the electric utility servicing his residence, CenterPoint Energy Houston Electric, LLC, in the complaint. The ALJ dismissed four of the five allegations in response to the ALJ's unopposed motion to dismiss. Gexa and Value Power filed a joint motion for summary decision, which was joined by Commission Staff, on the remaining issue. Additional briefing was filed by Gexa and Value Power in response to questions posed by the ALJ in Order No. 4. No hearing was held on the motions for summary decision.

Mr. Rogers' complaint centers around the inclusion of a \$40 monthly fee on his electric bills because he has opted to use a non-standard meter. Mr. Rogers asserts that Gexa and Value Power did not properly inform him of this fee and that he did not agree to this fee. Gexa and Value Power argue that it is the responsibility of the utility, not the REP, to inform the customer if charges

of this nature will be applied and in what amount. Moreover, it appears that the utility in this case, CenterPoint, did in fact disclose this information to Mr. Rogers upon his enrollment in non-standard metering service.

II. Discussion and Analysis

Under 16 Texas Administrative Code (TAC) § 22.182(a), the ALJ may grant a motion for summary decision on any or all issues if the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion. Under 16 TAC § 22.182(d), a hearing on the motion is not required.

The process for a customer to request non-standard metering service is described in 16 TAC § 25.133(d)(1). Under 16 TAC § 25.133(d)(1)(C), upon receiving a customer's request for non-standard metering service, the *utility* (in this case, CenterPoint) must notify the customer of certain facts, including that the customer will be required to pay ongoing costs associated with the manual reading of the meter, the current monthly fee for non-standard metering service, and the date by which the customer must provide a signed, written acknowledgement of these facts.

Under 16 TAC § 25.133(d)(1)(F), the utility must not initiate the process to provide non-standard metering service before it has received the signed, written acknowledgement referenced above. Within three days after this acknowledgement and an initiation fee are received, the utility must notify the REP of the request for this service. Within 30 days of receiving the signed acknowledgement and initiation fee, the utility must notify the REP of the date the non-standard metering service began.

The monthly fee for non-standard metering service is mandatory and is established in CenterPoint's Commission-approved Tariff for Retail Delivery Service. Specifically, CenterPoint's tariff, which was approved by the Commission in Docket No. 49421,¹ prescribes a \$40 monthly non-standard metering fee.

¹ *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 49421, Order (Mar. 9, 2020) and Stipulation and Settlement Agreement (Jan. 23, 2020).

Upon enrolling in electric service from a REP, the customer receives two documents: a terms of service document and an Electricity Facts Label (EFL). These documents inform the customer that there may be additional pass-through charges from their utility included in their billing depending on what additional services the customer requests from the utility. The REP would not know that a specific customer has enrolled in non-metered utility service until the notification process described above has occurred.

In this case, Mr. Rogers requested retail electric service from Gexa in September 2020 and from Value Power in September 2022. In both cases, Gexa and Value Power each provided to Mr. Rogers the terms of service document and the EFL, informing Mr. Rogers that his billing could include additional pass-through charges from the utility.

The utility, CenterPoint, has not taken a position in this case because it was never made a party to the case. However, Mr. Rogers has acknowledged that he signed an agreement with CenterPoint to initiate non-standard metering service, writing:

I entered a unilateral contract with CenterPoint Energy Houston Electric ("CPEHE"), whereby I elected to retain the electro-mechanical ("non-standard") meter that had and has been installed at my property since moving into the house on April 30, 1997. Immediately thereafter I paid CPEHE the one-time fee of \$91.00 to retain the existing non-standard meter. See Attachment 1 (The "opt-out" agreement). The opt-out agreement also contained a clause that required me to pay CenterPoint a monthly meter reading fee of \$32.80, which would be included on my monthly electric bill.²

Mr. Roger's description of what happened closely resembles the process described in 16 TAC § 25.133(d)(1).

Mr. Rogers' billing appears to have been handled in the standard and appropriate fashion. Upon enrolling for electricity service with his REPs, he received the terms of service documents and EFLs informing him of the possibility of pass-through charges from his utility. Mr. Rogers opted to enroll in non-standard metering service with his utility, CenterPoint. Once CenterPoint received the fee and signed acknowledgement from Mr. Rogers to initiate the non-standard

² Noris Rogers' Plea to the Jurisdiction and First Supplement to Formal Complaint and Response to Gexa Energy, LP and Capital Energy PA LLC dba Value Power's Motion for Summary Decision, filed July 31, 2023 at 8.

metering service, it notified the REPs to include the mandatory monthly fee on his billing. The REPs then added the \$40 charge to Mr. Rogers' bills, without markup.

For the foregoing reasons, the ALJ concludes that the motions for summary decision filed by Gexa and Value Power and by Commission Staff should be granted.

III. Findings of Fact

The ALJ makes the following findings of fact.

Background

1. Gexa is a Texas limited partnership registered with the Texas secretary of state under filing number 800520642.
2. Gexa is a REP operating under certificate of convenience and necessity (CCN) number 10027.
3. Value Power is a foreign limited liability company registered with the Texas secretary of state under filing number 803553951.
4. Value Power is a REP operating under CCN number 10293.
5. CenterPoint is a Texas limited liability company registered with the Texas secretary of state under filing number 900119842.
6. CenterPoint is a utility that owns and operates for compensation equipment and facilities for the transmission and distribution of electricity in Texas.
7. Mr. Rogers resides at 14506 Berrington Drive, Houston, Fort Bend County, Texas 77083.
8. Mr. Rogers received retail electric service from Gexa from September 2020 to September 2022. He has received retail electric service from Value Power from September 2022 to the present.
9. CenterPoint has been the utility providing electricity to Mr. Rogers throughout the entire time covered by this complaint.
10. Mr. Rogers has opted to use a non-standard metering device throughout the entire time covered by this complaint.
11. Mr. Rogers enrolled in non-standard metering service with CenterPoint.

12. At all times relevant to this proceeding, Gexa, and then Value Power passed through to Mr. Rogers, on his monthly bills, the \$40 non-standard metering fee charged by CenterPoint.

Complaint

13. On April 14, 2023, Mr. Rogers filed a formal complaint with the Commission regarding the monthly fees for non-standard metering service on his billing.
14. Before filing his formal complaint, Mr. Rogers presented the complaint to the Commission for informal resolution.
15. Mr. Rogers does not reside within the corporate limits of any municipality.
16. Gexa and Value Power filed their joint response to the complaint on June 5, 2023.
17. Commission Staff filed their statement of position in response to the complaint on June 12, 2023.
18. In his complaint, Mr. Rogers makes the following five allegations:
- a. the non-standard monthly metering fee is unconstitutional;
 - b. the Commission's approval of CenterPoint's non-standard monthly metering fee was improper;
 - c. CenterPoint's advanced meter is dangerous and not in compliance with national standards;
 - d. the non-standard monthly metering fee should be waived for low-income and elderly users; and
 - e. the non-standard monthly metering fee should not have been billed to him because it was not included in the opt-out agreement he signed when he elected non-standard metering, the service contract he signed with Gexa, or the service contract he signed with Value Power.

Partial Dismissal

19. On August 27, 2024, the ALJ moved to dismiss four of the five allegations in the complaint for lack of jurisdiction.
20. Specifically, the ALJ moved to dismiss the following allegations in the complaint:
- a. the non-standard monthly metering fee is unconstitutional;

- b. the Commission's approval of CenterPoint's non-standard monthly metering fee was improper;
 - c. CenterPoint's advanced meter is dangerous and not in compliance with national standards; and
 - d. the non-standard monthly metering fee should be waived for low-income and elderly users.
21. The parties were ordered to file any response to the motion to dismiss by September 16, 2024. No response was filed.
22. In Order No. 6 filed on September 25, 2024, the ALJ granted the motion to dismiss, and the four allegations addressed by the motion were dismissed.

Motion for Summary Decision

23. As a result of Order No. 6, the only remaining allegation in the complaint was Mr. Rogers' contention that the non-standard monthly metering fee should not have been billed to him because it was not included in his contracts with Gexa and Value Power.
24. Gexa and Value Power filed a joint motion for summary decision on this issue on June 5, 2023.
25. Commission Staff joined the motion for summary decision on June 12, 2023.
26. On July 31, 2023, Mr. Rogers filed a response to the motions for summary decision.
27. On October 24, 2023, Commission Staff filed a renewed request for summary decision.
28. In Order No. 4 issued on July 22, 2024, the ALJ requested additional briefing on the applicability of 16 TAC § 25.133(d)(1)(C), (D), and (F) to this case.
29. Gexa and Value Power filed their additional briefing on August 9, 2024. Mr. Rogers did not file any additional briefing.
30. No hearing was held on the motion for summary decision.

Grounds for Summary Decision

31. Both Gexa and Value Power provided Mr. Rogers with a terms of service document when he initiated service with them. The terms of service documents disclosed the possibility of

pass-through charges from the utility but did not specify the amount of the non-standard metering service fee or whether it would apply in his case.

32. Both Gexa and Value Power provided Mr. Rogers with an EFL when he initiated service with them. The EFL disclosed the possibility of pass-through charges from the utility but did not specify the amount of the non-standard metering service fee or whether it would apply in his case.
33. Mr. Rogers opted to use a non-standard meter for electric service rather than the standard advanced meter.
34. Mr. Rogers signed an agreement with CenterPoint to initiate non-standard metering service.
35. There is a mandatory monthly fee of \$40 for non-standard metering service from CenterPoint.
36. This mandatory monthly fee of \$40 for non-standard metering service is included in CenterPoint's Tariff for Retail Delivery Service and was approved by the Commission in Docket No. 49421.
37. Upon Mr. Rogers' enrollment in the non-standard metering service, CenterPoint informed him in a signed, written document that he would be charged an additional monthly fee on his electric bills for this service and the amount of that fee.
38. After Mr. Rogers enrolled in the non-standard metering service, CenterPoint informed his REPs to begin including the monthly fee for such service in his billing.
39. The bills from both Gexa and Value Power included the \$40 fee from CenterPoint for non-standard metering service.

IV. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this matter under PURA³ §§ 17.001, 17.157, and 39.101.
2. Under 16 TAC § 22.242(c), a complainant generally must submit a complaint to the informal resolution process before presenting a formal complaint to the Commission.
3. Mr. Rogers complied with 16 TAC § 22.242(c).
4. Under 16 TAC § 22.242(e)(1), a complainant generally must submit a complaint to a city that has original jurisdiction over the utility requested to provide service before presenting the complaint to the Commission.
5. Because Mr. Roger's service address is not within the limits of a city that has original jurisdiction over electric service, he was not required to present the complaint to a city before presenting it to the Commission under 16 TAC § 22.242(e)(1).
6. Under 16 TAC § 22.182(a), summary decision on all issues in a proceeding may be granted if the pleadings and evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law.
7. Under 16 TAC § 22.182(d), a hearing on a motion for summary decision is not required.
8. Under 16 TAC § 22.182(f), if all issues will be resolved by granting a motion for summary decision, the ALJ must issue a PFD.
9. Under 16 TAC § 25.475(f), an REP is required to provide a terms of service document to a customer upon initiating new service. The terms of service document is not required to specify the amount of the non-standard metering service fee or whether it will apply in a particular customer's case.
10. Gexa and Value Power provided terms of service documents that complied with 16 TAC § 25.475(f).

³ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

11. Under 16 TAC § 25.475(g), an REP is required to provide an EFL to a customer upon initiating new service. The EFL is not required to specify the amount of the non-standard metering service fee or whether it will apply in a particular customer's case.
12. Gexa and Value Power provided EFLs that complied with 16 TAC § 25.475(g).
13. Under 16 TAC § 25.133(f), a customer receiving non-standard metering service must be charged a recurring monthly fee by the utility that serves that customer, and that fee is included in the utility's service tariff.
14. The fee charged in this case by CenterPoint and passed through to Mr. Rogers in his bills from Gexa and Value Power for non-standard metering service was the correct fee based on CenterPoint's current tariff.
15. The process for a customer to request non-standard metering service from the utility is described in 16 TAC § 25.133(d)(1). Under subparagraph (C), the utility is required to inform the customer through a signed, written acknowledgment that he will be charged a monthly fee for manual reading of the meter and the amount of that monthly fee. Under subparagraph (F), the utility must not initiate the process to provide non-standard metering service or to notify the customer's REP before it has received the signed, written acknowledgement.
16. CenterPoint, Gexa and Value Power complied with 16 TAC § 25.133(d)(1) in initiating non-standard metering service for Mr. Rogers.
17. Under 16 TAC § 25.133(d)(1), CenterPoint was required to disclose to Mr. Rogers that he would be charged a monthly non-standard metering fee and the amount of that fee prior to initiating service.
18. Under 16 TAC § 25.133(d)(1), Gexa and Value Power were not required to disclose to Mr. Rogers that he would be charged a monthly non-standard metering fee and the amount of that fee prior to initiating service.
19. Gexa and Value Power have established that there is no genuine issue of material fact, and they are entitled to summary decision in their favor as a matter of law.
20. The monthly non-standard metering fee was charged in the correct amount based on the utility's tariff, and the correct method was used in the billing process.

21. This PFD was issued in accordance with Texas Government Code § 2001.062 and 16 TAC § 22.182(f).

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the ALJ recommends the following ordering paragraphs.

1. The Commission grants the motions for summary decision of Gexa and Value Power and of Commission Staff.
2. The Commission denies the complaint of Mr. Rogers.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas, the 16th day of December 2024.

PUBLIC UTILITY COMMISSION OF TEXAS



AARON HAAS
ADMINISTRATIVE LAW JUDGE