



Control Number: 55959



Item Number: 22

OPEN MEETING COVER SHEET COMMISSIONER MEMORANDUM

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MEETING DATE: May 2, 2024

DATE DELIVERED: May 1, 2024

AGENDA ITEM NO.: 19

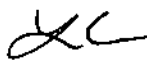
CAPTION: Docket No. 55959 – Joint Petition of Texas
Energy Association for Marketers and Alliance
for Retail Markets for Designation under 16
TAC § 25.475(b)(5)

DESCRIPTION: Commissioner Cobos Memorandum

Public Utility Commission of Texas

Memorandum

TO: Chairman Thomas J. Gleeson
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

FROM: Commissioner Lori Cobos 

DATE: May 1, 2024

RE: May 2, 2024 Open Meeting – Agenda Item No. 19
Docket No. 55959, *Joint Petition of Texas Energy Association for Marketers and Alliance for Retail Markets for Designation Under 16 TAC § 25.475(b)(5)*

Before the Commission is an Appeal of Interim Order No. 4, filed by Texas Energy Association for Marketers (TEAM) and Alliance for Retail Markets (ARM) (collectively, the REP¹ Coalition).² According to their appeal, the REP Coalition supports Commission Staff's original recommendation that notice of this proceeding should be provided through an Electric Reliability Council of Texas (ERCOT) market notice and the *Texas Register*. The REP Coalition, however, appeals the portions of Order No. 4 that would expand these notice requirements.³ Specifically, the REP Coalition appeals the additional notice requirements in Order No. 4, which provide that:

- TEAM and ARM must publish notice of the application at least once a week for two consecutive weeks in a newspaper of general circulation in each county in which a fixed rate product affected by the petition is offered. Such publication must be completed by March 8, 2024.
- TEAM and ARM must identify, by February 16, 2024, all of their member REPs that offer a fixed rate product affected by the petition.
- TEAM and ARM must post and maintain notice of the application on any websites they may have, commencing by March 1, 2024.
- Each REP that is a member of TEAM or ARM and that offers a fixed rate product affected by the petition must post and maintain notice of the application on its website, commencing by March 1, 2024.
- TEAM and ARM must provide proof of notice, including the notice required of their REP members, by March 22, 2024.⁴

¹ Retail Electric Provider.

² REP Coalition's Appeal of Interim Order No. 4 (Feb. 2, 2024).

³ *Id.* at 2.

⁴ *Id.* (hereinafter referred to as "additional notice requirements").

Based on my review of Order No. 4 and the parties' filings, I recommend that the Commission grant the REP Coalition's Appeal of Interim Order No. 4, which requires the additional notice requirements stated above. The additional notice requirements are based on the notice requirements applicable for a transmission and distribution utility (TDU) base rate case proceeding⁵ and are not applicable to this proceeding. This proceeding is distinguishable from a utility base rate proceeding, because the purpose and scope of this proceeding is a Commission determination on whether the ERCOT Contingency Reserve Service (ECRS) is an ancillary service incurring cost that is beyond a REP's control pursuant to 16 TAC § 25.475(b)(5).⁶ Therefore, the outcome of this proceeding will not necessarily result in a price change for customers on existing fixed rate contracts. Rather, the Commission's ultimate determination in this proceeding is one of general applicability and will provide the competitive retail market with guidance on whether a REP can pass through a charge to its customer on an existing fixed rate contract pursuant to 16 TAC § 25.475(b)(5). A REP *may choose not to* pass through the charge to its customers on an existing fixed rate contract. Consequently, the additional notice requirements in Order No. 4 would result in unnecessary customer confusion by implying that a customer on an existing fixed rate contract *is* subject to a price change as a result of the outcome in this proceeding.

Moreover, in further recognition of the difference between TDUs and REPs, the Commission has extensive customer protection rules that specifically govern the relationship between REPs and their customers.⁷ Under 16 TAC § 25.475(d)(2)(A), a REP can only change the price of a fixed rate product if the Commission expressly designates a specific type of ancillary service product as a charge that is incurred beyond the REP's control. If the REP chooses to pass through the ancillary service charge, the REP must follow the notice framework in the fixed rate product's Electricity Facts Label (EFL) to effect the price change to a customer's existing fixed rate contract.⁸ Furthermore, 16 TAC § 25.475(d)(2)(B) requires that a REP's bill for a customer on an existing fixed rate contract must either show the price changes on one or more separate line items, or must include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.

⁵ See Order No. 3 at 3 (Jan. 8, 2024) (requesting that the parties respond to whether they agree that the petition is analogous to a rate increase for fixed rate customers, and therefore, whether each REP that is a member of TEAM or ARM should be required to give notice by newspaper publication and mail as required by 16 TAC § 22.51(a)(1) and (2)); *see also* 16 TAC § 22.51(a)(1) and (2) (requiring publication of notice—in a proceeding seeking a rate increase—in a newspaper and by direct mail to the utility's customers).

⁶ Texas Energy Association for Marketers' and Alliance for Retail Markets' Joint Petition for Designation Addressing ERCOT Contingency Reserve Service at 1 (Dec. 8, 2023).

⁷ See *generally*, Subchapter R, Customer Protection Rules for Retail Electric Service (found in 16 TAC § 25.471-500).

⁸ See 16 TAC § 25.475 (d)(2)(A) ("A REP may only change the price of a fixed rate product or a variable product consistent with the definitions in this section and according to the product's EFL.").

Finally, the Commission has previously addressed notice requirements in a similar pending proceeding,⁹ where the Commission is being asked to interpret the definition of a fixed rate product in 16 TAC § 25.475(b)(5).¹⁰ In Docket No. 56168, the Commission issued an Order on Certified Issues, finding that the parties that could be affected by the Commission's interpretation of 16 TAC § 25.475(b)(5) are all REPs currently serving residential or small commercial customers under a fixed rate contract.¹¹ The Commission found that notice of the proceeding should be provided to ERCOT, the Office of Public Utility Counsel (OPUC), and ERCOT's Retail Market Subcommittee.¹² Therefore, consistent with the Commission's Order on Certified Issues in that docket, which did not impose additional notice requirements, I would recommend that the Commission find that the additional notice requirements in Order No. 4 are not reasonable.

I look forward to discussing this important matter with you at tomorrow's open meeting.

⁹ Similar to the current proceeding, in this pending docket, the Commission's ultimate determination will not necessarily result in a price change to a customer's existing fixed rate contract.

¹⁰ See *Commission Staff's Petition for a Declaratory Order Interpreting 16 TAC § 25.475(b)(5)*, Docket No. 56168, Petition for a Declaratory Order at 1 (Jan. 31, 2024) (requesting the Commission clarify that a REP may not vary the price of a fixed rate product to accommodate fluctuations in securitization charges incurred by the REP.).

¹¹ *Commission Staff's Petition for a Declaratory Order Interpreting 16 TAC § 25.475(b)(5)*, Docket No. 56168, Order on Certified Issues at 3 (Mar. 21, 2024).

¹² *Id.*