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DOCKET NO. 55959

JOINT PETITION OF TEXAS ENERGY	§	PUBLIC UTILITY COMMISSION
ASSOCIATION FOR MARKETERS	§	
AND ALLIANCE FOR RETAIL	§	OF TEXAS
MARKETS FOR DESIGNATION	§	
UNDER 16 TAC § 25.475(B)(5)	§	

**COMMISSION STAFF’S RECOMMENDATIONS AND
PROPOSED PROCEDURAL SCHEDULE**

On December 8, 2023, Texas Energy Association for Marketers (TEAM) and Alliance for Retail Markets (ARM) (collectively, REP Coalition) filed a petition to have the Electric Reliability Council of Texas, Inc. (ERCOT) Contingency Reserve Service (ECRS) designated as an “ancillary service incurring a cost beyond a retail electric provider’s (REP) control” under 16 Texas Administrative Code (TAC) § 25.475(b)(5).

On December 11, 2023, the administrative law judge (ALJ) filed Order No. 1, directing Commission Staff to file comments on the appropriate method for processing this proceeding, recommendations on administrative completeness and notice, if appropriate, and a proposed schedule, by January 4, 2023. Therefore, this pleading is timely filed.

I. APPROPRIATE METHOD TO PROCESS THE PETITION

REP Coalition’s request for an order from the Commission designating certain ECRS charges as beyond a REP’s control and, therefore, eligible to be passed through on a fixed rate contract customer’s bill must be processed as a contested case.¹ The Commission’s determination in this proceeding will inarguably affect the legal rights of each REP that has incurred ECRS charges. Additionally, a REP’s decision to pass-through those ECRS charges will impact the legal and financial obligations of the retail customers under fixed rate contract with the REP. Parties should, therefore, be provided an opportunity for an adjudicative hearing prior to the Commission’s ultimate consideration of the petitioner’s request.

It may be likely that there will be no issue of material fact for the Commission to consider in this proceeding. As such, the Commission may determine that briefing and oral argument are sufficient to weigh the legal principles and consider each party’s argument supporting or opposing the REP Coalition’s request.

¹ See 16 TAC § 22.2(16).

II. ADMINISTRATIVE COMPLETENESS

The REP Coalition's petition presents a novel issue for the Commission to decide. Because there is no corresponding rule to guide Commission Staff's review of administrative completeness in this proceeding, the general requirements for filing an application, as found in 16 TAC §§ 22.72 and 22.73, are applicable. Commission Staff has reviewed the petition and recommends that it meets all applicable requirements under 16 TAC §§ 22.72 and 22.73. Therefore, Commission Staff recommends that the petition be found administratively complete.

This recommendation does not address the merits of the petition, including whether the specific relief sought has been sufficiently identified. Thus, Commission Staff recommends below an additional procedural step of a final recommendation to address the substantive merit of the REP Coalition's application.

III. RECOMMENDATION REGARDING SUFFICIENCY OF NOTICE

a. Method of Notice

Notice in this proceeding is governed by the general notice requirements under 16 TAC § 22.55, which states that the presiding officer may require a party to provide reasonable notice to affected persons. The REP Coalition's petition states that the persons affected by the outcome of this proceeding are "any REP that implements a price adjustment to reflect the cost of ECRS and any residential or small commercial customer whose fixed price is adjusted."² Although the petition presents a case of first impression, Commission Staff recommends that the group of affected persons that may be impacted by the outcome of this case is similar to the group of affected persons impacted by ERCOT's petitions to securitize debt under Docket Nos. 52321³ and 52322.⁴ There, the Commission determined that a Market Notice provided to affected market participants satisfied applicable notice requirements.⁵ Here, Commission Staff recommends that the ALJ direct

² Petition at 3 (Dec. 8, 2023).

³ *Application of the Electric Reliability Council of Texas, Inc. for a Debt Obligation Order Under PURA Chapter 39, Subchapter M, and Request For a Good Cause Exception*, Docket No. 52321, Order No. 2 (July 29, 2021).

⁴ *Application of the Electric Reliability Council of Texas, Inc. for a Debt Obligation Order to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, and For a Good Cause Exception*, Docket No. 52322, Order No. 2 (July 29, 2021).

⁵ See notes 3 and 4, *supra*. See also Commission Counsel's Memo and Corrected Debt Obligation Order, Docket No. 52321, Findings of Fact Nos. 8 and 9 (October 14, 2021).

the REP Coalition to provide notice via an ERCOT Market Notice that will be served by ERCOT on all load serving entities (LSEs) and qualified scheduling entities (QSEs). Additionally, because customers will likely be impacted by the outcome of this case, Commission Staff recommends that notice be published in the Texas Register.

b. Contents of Notice

Further, Commission Staff recommends that the notice contain:

1. the date the petition was filed;
2. a general description of the customers, customer classes, and territories affected by the petition;
3. the relief requested;
4. the docket number;
5. the intervention deadline;
6. the statement, "Persons with questions or who want more information on this petition may contact (TEAM and ARM respectively) at (their respective addresses), or visit (their respective website), or call (their respective toll-free telephone number) during normal business hours. A complete copy of this petition is available for inspection at the address listed above"; and
7. the statement, "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782- 8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989."

c. Proof of Notice

Commission Staff recommends that proof of notice must be filed within 45 days of the date of the order.

IV. PROCEDURAL SCHEDULE

As this docket features a novel legal issue and process, Commission Staff respectfully recommends a procedural schedule that incorporates briefing from all parties. Thus, in

consideration of public interest, transparency, and efficient judicial economy in this process, Commission Staff proposes the following procedural schedule:

Event	Date
Deadline for REP Coalition to file proof of notice	45 days from the date of the order finding the petition administratively complete and ordering notice
Deadline for Commission Staff to file recommendation on sufficiency of notice	10 days from the filing date of petitioner's proof of notice
Deadline to file a request to intervene	30 days from proof of notice filing
Deadline for Commission Staff's final recommendation, and for any party to request a hearing	30 days from the order finding notice sufficient
<i>If hearing is requested:</i>	
Deadline for parties to file list of issues and proposed preliminary order	30 days after deadline to request a hearing
<i>If no hearing is requested:</i>	
Deadline for initial briefs and proposed order	30 days after the deadline to request a hearing has passed
Deadline to file reply briefs	14 days after initial briefing deadline

V. CONCLUSION

Staff respectfully request entry of an order consistent with this pleading.

Date: January 4, 2024

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS**

**DIVISION OF COMPLIANCE AND
ENFORCEMENT**

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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 4, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Rachel Seshan
Rachel Seshan