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Filing Date - 2024-01-08 12:22:44 PM

Control Number - 55959

Item Number - 6

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)	§	

ORDER NO. 3
FINDING PETITION ADMINISTRATIVE COMPLETE AND
REQUIRING CLARIFICATION REGARDING NOTICE

This Order addresses the December 8, 2023, joint petition of Texas Energy Association for Marketers (TEAM) and Alliance for Retail Markets (ARM).

On January 4, 2023, Commission Staff filed recommendations and a proposed procedural schedule for further processing.

The administrative law judge (ALJ) finds the petition administratively complete and appropriate for further processing.

The ALJ requires additional input from the parties as to the issue of notice. TEAM and ARM are non-profit industry associations whose members are retail electric providers (REPs) certificated by the Commission to provide competitive retail electric service in the areas of Texas that are open to competition. In this proceeding, TEAM and ARM ask the Commission to designate a specific type of ancillary service product as incurring charges beyond a REP's control for a customer's existing contract. The ancillary service product in question is Electric Reliability Council of Texas, Inc. (ERCOT) Contingency Reserve Service (ECRS). As the ALJ understands it at this time, if the petition of TEAM and ARM is granted, the result will be that, under 16 Texas Administrative Code (TAC) § 25.475(b)(5), any REP providing electric service to certain customers under a "fixed rate product" with a term of at least three months will be allowed to pass along to those customers the cost of ECRS even if it results in exceeding the price stated in the fixed rate product. TEAM and ARM state that, since implementation, ECRS has had the highest cost of any ancillary service, at more than \$600,000,000. Thus, the ALJ presumes that, if the petition is granted, the cost impact to fixed rate product customers will be meaningful.

TEAM and ARM concede that if the petition is granted, all REPs who are serving residential or small commercial customers under a fixed rate product with a contract term that began before June 9, 2023, will be permitted to adjust the price of the fixed rate product to reflect the cost of ECRS. In other words, the persons potentially impacted by the petition are: (1) all REPs that are providing service to residential or small commercial customers under a fixed rate product with a contract term that began before June 9, 2023; and (2) all the customers of those products.

Commission Staff recommends that notice in this proceeding is governed by 16 TAC § 22.55, which authorizes the presiding officer to require “reasonable notice to affected persons.” The ALJ agrees that 16 TAC § 22.55 governs the notice requirements.

Commission Staff recommends that TEAM and ARM should be required to satisfy the following notice requirements: (1) provide notice via an ERCOT market notice that will be served on all load serving entities (LSEs) and qualified scheduling entities (QSEs); and (2) provide a one-time publication of notice in the Texas Register.

Proposed Market Notice

The ALJ is receptive to the idea that an ERCOT market notice, as suggested by Commission Staff, could be a useful and effective method for notifying the REP segment of potentially affected persons. But the ALJ does not fully understand the mechanisms by which an ERCOT market notice is accomplished. Commission Staff states that the market notice “will be served by ERCOT” on all LSEs and QSEs. The ALJ is concerned whether he has the authority to impose notice obligations upon ERCOT, which is not the petitioner, or even a party, in this case. Commission Staff recommends a market notice because that is how notice was achieved in Docket Nos. 52321 and 52322, but ERCOT was the petitioner in both of those cases. Further, it is unclear to the ALJ whether a market notice to all LSEs and QSEs captures all REPs who are serving residential or small commercial customers under a fixed rate product with a contract term that began before June 9, 2023.

By January 22, 2024, the parties must respond to the questions raised above regarding ERCOT market notice. Among other options, the parties are free to negotiate directly with ERCOT to attempt to obtain its voluntary agreement to provide the market notice. Alternatively,

the parties must identify the legal authority under which the ALJ can order ERCOT to provide such notice.

Proposed Texas Register Notice

The ALJ concludes that one-time publication of notice in the Texas Register is insufficient to provide adequate notice to customers receiving service under a fixed rate product that their costs may increase. At this time, the ALJ is of the opinion that the relief sought in the petition is analogous to a rate increase for fixed rate customers and, therefore, each REP that is a member of TEAM or ARM should be required to give notice by publication and mail as required by 16 TAC § 22.51(a)(1) and (2). However, the ALJ would benefit from input from the parties on this issue. By January 22, 2024, the parties must respond whether they agree with the type of notice proposed by the ALJ and, if not, why not.

Signed at Austin, Texas on the 8th day of January 2024.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE