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

**OFFICE OF PUBLIC UTILITY COUNSEL’S
RECOMMENDATIONS ON NOTICE**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, files this pleading in response to the Public Utility Commission of Texas (“Commission”) Administrative Law Judge (“ALJ”) Order No. 3, requiring additional input from all parties as to the notice in this case.¹ The ALJ set a January 22, 2024, deadline for filing a response to that order.² Therefore, this pleading is timely filed.

I. NOTICE TO CUSTOMERS ON FIXED RATE CONTRACTS

OPUC agrees with the ALJ’s position in Order No. 3 that a “one-time publication of notice in the Texas Register is insufficient to provide adequate notice to customers receiving service under fixed rate products” whose rates will be increased by the outcome of this proceeding.³ OPUC also agrees that mailed notice as suggested by the ALJ will be more calculated to give notice to customers with fixed rate contracts whose source of information is generally not the Texas Register.⁴ OPUC further agrees with the ALJ that this proceeding is analogous to a rate

¹ Order No. 3 (Jan. 8, 2024).

² *Id.* at 3.

³ Order No.3 at 3.

⁴ *Id.*

increase for fixed rate customers and therefore (1) the Texas Energy Association of Marketers (“TEAM”) and Alliance for Retail Markets (“ARM”) should each be required to provide notice by publication, and (2) each REP that is a member of TEAM or ARM should be required to give notice by mail to customers with fixed rate contracts, as required in 16 TAC § 22.51(a)(1) and (2).⁵

Both petitioners are comprised of individual REPs who ostensibly administer some portion of the fixed-rate contracts implicated in this case. The petitioners’ membership is in the best position to distribute that information to affected customers through monthly bills, similar to other notices that may be periodically provided. While other REPs ought to provide notice to potentially impacted customers, OPUC recognizes that not all REPs may be a member of either TEAM or ARM. For customers of these REPs, notice in the Texas Register, although less effective, represents one alternative. OPUC believes Staff’s originally proposed contents for notice in the Texas Register would also provide clear guidance for individuals who may be interested in intervening in or monitoring the outcome of this case.⁶ And, while OPUC appreciates Staff’s original intent to cast a wide net by publication in the Texas Register, OPUC agrees with the ALJ that this is not the most efficient method to notify the affected customers of the potential rate increase that would occur if this petition is approved. OPUC recommends mail notice be provided directly to residential and small commercial consumers who have fixed rate contracts that may be affected by the outcome of this case. In effect, this will ensure that not only are REPs and those who read the Texas Register informed of these proceedings, but also those Texans whose electricity bills are impacted.

⁵ *Id.*

⁶ *Commission Staff’s Recommendations and Proposed Procedural Schedule*, at Part III, Section b, Contents of Notice.

II. TEAM AND ARM PROPOSE THE SAME ARGUMENTS REJECTED BY THE COMMISSION IN PROJECT NO. 51830

OPUC notes that this case reflects discussions from previous rulemaking wherein the Commission clearly stated that “the price of a fixed rate product is not permitted to vary based on changes in ancillary service charges, unless determined by the commission.”⁷ Petitioners now seek to relitigate that matter in such a way that would increase the charges for some customers with fixed-rate contracts in place prior to the active implementation of the Electric Reliability Council of Texas (“ERCOT”) Contingency Reserve Service (“ECRS”). OPUC believes the situation has not changed since the commission concluded that rulemaking: “Ancillary service charges are a necessary cost that is required to maintain the safety and reliability of the electric grid, and while the commission recognizes that these costs may be challenging to REPs to predict with accuracy, REPs are in a significantly better position to do so than residential or small commercial customers.”⁸

In Project No. 51830, in response to comments by TEAM, ARM, and other commenters regarding “new or modified ancillary service charges,” the Commission specifically provided the following detailed response which should guide the ALJ in this proceeding:

[T]he commission finds that allowing REPs to modify the price of a fixed rate product based on changes in costs associated with ancillary service charges does not ensure that customers are entitled to reliable and reasonably priced electricity, nor by the REPs' own admission do customers have sufficient information to make an informed choice of provider if individual REPs may elect to pass these costs through to customers directly. Lastly, while the commission recognizes that REPs are not misleading or deceptive in attempting to pass through ancillary service charges or modify the rate of fixed rate products in response to changes in ancillary service costs, it is fundamentally unfair for customers to bear an

⁷ Order Adopting Amendments to 16 TAC §25.43, 25.471, 25.475, 25.479, and 25.498 and New 16 TAC §25.499 as Approved at the December 16, 2021 Open Meeting at 43, Project No. 51830 (Dec. 16, 2021).

⁸ *Id.* at 47.

unexpected, unknown cost that could be exponentially higher than what is expected upon signing of a contract for a fixed-rate product. Including ancillary service charges in the definitions of “fixed rate product” and “price,” and thus preventing ancillary service charges from being passed through to customers, is neither a ban on REPs offering fixed-rate products nor an unreasonable restraint on cost recovery by REPs. The commission finds that these proposed definitional changes and resulting effects on fixed-rate products are “both practical and limited so as to impose the least impact on competition” as required by PURA § 39.001(d).⁹

A determination that ECRS should be passed through would require consumers to manage the risk and financial impact of ancillary services.¹⁰ OPUC intends to fully address these issues throughout the proceeding and believes consumers should be aware that these issues are resurfacing from a previous proceeding.

CONCLUSION

OPUC respectfully supports the ALJ’s recommendation that each REP that is a member of TEAM or ARM be required to give notice of this proceeding by mail to all affected customers, and that TEAM and ARM also be required to give notice by publication, as required in by 16 TAC § 22.51(a)(1) and (2).

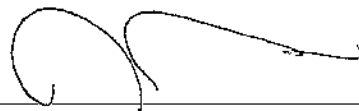
⁹ *Id.* at 47-49 (emphasis added).

¹⁰ *Id.* at 47.

Date: January 22, 2024

Respectfully submitted,

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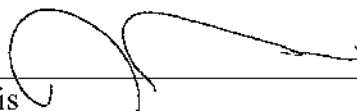
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ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

PUC DOCKET NO. 55959

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 22nd day of January 2024 by facsimile, electronic mail, and/or first class, U.S. Mail.



Julie Davis