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PROJECT NO. 37897

PUC PROCEEDING RELATING TO  
RESOURCE AND RESERVE  
ADEQUACY AND SHORTAGE  
PRICING

PUBLIC UTILITY COMMISSION  
OF TEXAS

12 MAY 2011 2:39  
FILING CLERK

**COMMENTS OF DIRECT ENERGY, LP TO THE PROPOSAL FOR  
PUBLICATION OF NEW SEC. 25.508 AS APPROVED AT THE APRIL 12, 2012  
OPEN MEETING**

The Direct Energy REPs<sup>1</sup> (Direct Energy) appreciate the opportunity to comment on the commission's Proposal for Publication in this rulemaking, as well as the deliberate process undertaken to ensure the best result. As requested, Direct Energy responds to the question raised on page 3 of 5 in the Proposal related to implications for Subst. R. Sec. 25.475, altering rates in fixed price contracts as a result of a change to state laws.

Sec. 25.475 allows, inter alia, for a contract modification by REPs when changes to state laws are "beyond the REP's control."<sup>2</sup> Many scenarios could trigger the application of this law to protect REPs, as well as ERCOT customers, from consequences of governmental action. Future actions by the Legislature or Commission could trigger this rule, and Direct Energy in no way prejudices its right to avail itself of the protections

<sup>1</sup> Direct Energy, LP; Direct Energy Business, LLC; CPL Retail Energy, LP; WTU Retail Energy, LP; and First Choice Power Special Purpose, LP.

<sup>2</sup> §25.475 (b)(5) - **Fixed rate product** -- A retail electric product with a term of at least three months for which the price (including recurring charges) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in the Transmission and Distribution Utility (TDU) charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

(6) **Indexed product** -- A retail electric product for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. An indexed product may be for a term of three months or more, or may be a month-to-month contract.

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this rule, and Direct Energy in no way prejudices its right to avail itself of the protections afforded by Sec. 25.475. The facts, however, surrounding this project and the commission's recent history on this same topic do not merit application of Sec. 25.475 protections here.

The potential for changes to the system-wide offer cap has existed since at least 2005 when the commission discussed the appropriate scarcity pricing mechanism<sup>3</sup>. For example, "shame caps" were adopted and eliminated, offer caps have been imposed and raised, and adjustments to offer caps have been discussed for months in response to dwindling power generation reserves. The negative impacts, if any, on longer term, fixed price contracts are avoidable in a market where hedging all or a portion of sales is essential to prudent risk-taking and practice. In this liquid, stable and nimble market, REPs have the tools to manage forward risk in a controllable manner. Perhaps most importantly in this proposed regulatory change, all market participants in the chain of transactions are being held to the same, consistent standards by the commission.

Thank you for your consideration.

Respectfully submitted,



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<sup>3</sup> See, for example, PUCT Project 24255. Commissioner Barry Smitherman's Memo dated July 15, 2005, discusses the Australian market and its cap of \$10,000AUD in contrast with the then-current "shame cap" of \$300 and hard cap of \$1000. Market participants including REPs in this proceeding argued for caps from the status quo at \$1000 (see Reliant Energy, Inc.'s comments dated September 21, 2005) to a new cap "as low as \$5000 per MWh" (see Alliance for Retail Marketers comments dated September 21, 2005).