



Control Number: 26793



Item Number: 23

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OPEN MEETING COVER SHEET

MEETING DATE: August 14, 2008

DATE DELIVERED: August 13, 2008

AGENDA ITEM NO.: 6

CAPTION: Project No. 26793 - PUC Proceeding
Related to Retail Market Oversight
Activities

ACTION REQUESTED: Memo from Chairman Smitherman

2008 AUG 13 PM 4:37
PUBLIC FILED
FILING CLERK

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Paul Hudson
Commissioner Julie Caruthers Parsley

FROM: Chairman Barry T. Smitherman *BTS*

DATE: August 13, 2008

RE: August 14, 2008 Open Meeting, Item No. 6, Project No. 26793 – PUBLIC UTILITY COMMISSIONS
Proceeding Related to Retail Market Oversight Activities

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Recently, concerns have been expressed that residential customers should be protected from disconnections during the summer months. I understand these concerns and fully agree that certain vulnerable customers need protection. Fortunately, several REPs are already providing services that address this problem in ways very similar to the emergency disconnection rule that was adopted in the summer of 2006 in Project No. 32874. I also believe the Commission is able to enforce the commitments made by these REPs, if necessary.

TXU Energy, Reliant, and Direct Energy, the three largest REPs, with a combined market share of 77%, have committed to offer assistance to low income, elderly, and critical-care customers by allowing customers who participate in a deferred payment plan to avoid having their electricity disconnected this summer. Through these programs, customers already have the ability to avoid disconnections by working with the REPs on a deferred payment plan. As these companies have publically advertised these programs, if for some reason they do not follow through with their commitments, the Commission has the authority to enforce the REP's commitment. PURA §§ 17.001(a) and (b), 17.004(a)(1), and 39.101(b)(6) and the Commission's substantive rules 25.471(b)(4) and 25.475 (b)(2) prohibit deceptive or misleading business practices by market participants. If a REP advertises the availability of a program for residential customers, the REP is required to follow through on its commitment or face potential enforcement action from the Commission.

In 2006, the Commission adopted emergency rules that prohibited disconnections for low-income elderly, low income, and critical care customers. The programs rolled out by TXU Energy, Reliant, and Direct Energy this summer contain features that are very similar to the 2006 rule. The programs by Reliant and TXU, in particular, contain protections for low-income seniors and critical care customers that are virtually identical to the 2006 rule, and allow these customers to avoid disconnection and the payment of any bills until after October 1, 2008 if these customers agree to a deferred payment plan.

Customers who are receiving the benefit of deferred payment plans and are not getting disconnected during the summer months should honor their end of the bargain and pay off their commitments before switching to another provider. With Reliant's plan, low-income customers who are not seniors or critical care will not qualify for extended payment plans if they have unpaid amounts from the previous disconnect moratoriums or unpaid balances from prior service with Reliant. Customers for TXU and Direct, on the other hand, can replace an existing deferred payment plan with a new plan under their summer program.

Under the Commission's current disconnection rule, P.U.C. Subst. R. 25.483, residential customers are prohibited from being disconnected if they are ill or disabled, if the customer is currently receiving energy assistance, or if a heat advisory has been issued in the county during the previous two days. A REP is also prohibited from disconnecting a customer on a holiday or weekend unless the REP has personnel that can take payment and request a reconnection on those days. Also, as required by Commission and ERCOT rules, critical-care customers require greater notice before disconnection to allow the REP and the customer time to coordinate a deferred payment plan or other option to resolve the disconnection. Essentially, critical care customers are not to be disconnected under current rules.

Finally, at the July 3, 2008 Open Meeting, the Commission authorized an increase in the discount factor for the low-income discount paid out of the system benefit fund. While the discount is typically limited to 20% of the minimum POLR rate, due to the large transfer of customers to the POLR earlier this summer and POLR rates that are higher than the POLR minimum, the Commission authorized an exception to the discount rule that set the discount to 20% of the expected POLR rate, rather than the minimum POLR rate. This increased the amount available this summer to customers participating in the low-income discount program. It is also important to note that the system benefit fund was not funded for the 2006/2007 biennium, and no benefits were provided through this program during the summer of 2006.

While some residential customers are at greater risk for disconnections during the summer due to high bills, there are presently protections in place and programs that customers can use to avoid the disconnection of their electric service. The three largest REPs within ERCOT are offering programs that protect the most vulnerable consumers from disconnections, and the Commission can enforce the implementation of these programs. Current Commission rules also protect certain groups of customers from disconnections. Finally, the discount rate for the low-income discount program was increased significantly in July, with customers already receiving the benefit of this increase. With these supports in place, certain vulnerable customers that may be in danger of having their electricity disconnected can and should take advantage of these opportunities.