

Control Number: 43151



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DOCKET NO. 43151

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PUBLIC UTILITY COMMISSION  
FILING CLERK

OF TEXAS

AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO E-NOW, LP'S §  
VIOLATIONS OF PURA § 39.352(c), §  
AND P.U.C. SUBST. R. 25.107(f)(2), §  
AND 25.485(e), RELATED TO §  
CERTIFICATION OF RETAIL §  
ELECTRIC PROVIDERS AND §  
CUSTOMER PROTECTION RULES §

**APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT**

Staff of the Public Utility Commission of Texas (Commission) files this Application for Approval of Settlement Agreement and would show in support as follows:

Commission Staff and E-Now, LP (E-Now) (together, Parties) have entered into a Settlement Agreement and Report to Commission (Agreement). The Agreement, attached to this application, has been signed by representatives of both parties and includes a Proposed Order. This Agreement resolves and concludes Commission Staff's investigation of E-Now for violations of Public Utility Regulatory Act<sup>1</sup> (PURA) § 39.352(c), P.U.C. SUBST. R. 25.107(f)(2), and P.U.C. SUBST. R. 25.485(e), concerning the failure of a retail electric provider (REP) to maintain an escrow account, segregated cash account or letter of credit in an amount sufficient to cover 100% of customer deposits, and to investigate all informal complaints and advise the Commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP by the Commission, respectively.

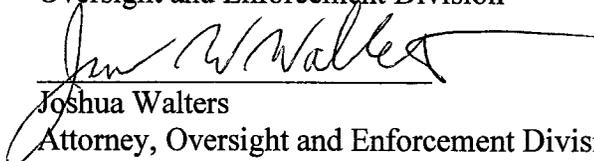
WHEREFORE, Commission Staff respectfully requests that its Application for Approval of Settlement Agreement be granted.

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

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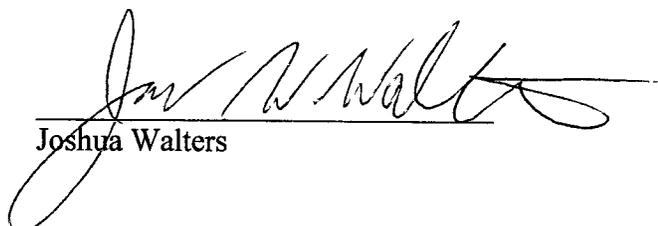
Respectfully Submitted,

Robert M. Long  
Division Director  
Oversight and Enforcement Division

  
Joshua Walters  
Attorney, Oversight and Enforcement Division  
State Bar No. 24081198  
(512) 936-7385  
(512) 936-7208 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
joshua.walters@puc.texas.gov

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 16<sup>th</sup>  
of September, 2014 in accordance with P.U.C. Procedural Rule 22.74.

  
Joshua Walters

DOCKET NO. \_\_\_\_\_

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AND SETTLEMENT AGREEMENT	§	
RELATING TO E-NOW, LP'S	§	
VIOLATIONS OF PURA § 39.352(c),	§	
AND P.U.C. SUBST. R. 25.107(f)(2),	§	
AND 25.485(e), RELATED TO	§	
CERTIFICATION OF RETAIL	§	
ELECTRIC PROVIDERS AND	§	OF TEXAS
CUSTOMER PROTECTION RULES	§	

**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Commission), and E-Now, LP (E-Now) (collectively, the Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of E-Now for violations of Section 39.352(c) of the Public Utility Regulatory Act<sup>1</sup> (PURA) and P.U.C. SUBST. R. 25.107(f)(2) and P.U.C. SUBST. R. 25.485(e), concerning the failure of a retail electric provider (REP) to maintain an escrow account, segregated cash account or letter of credit in an amount sufficient to cover 100% of customer deposits, and to investigate all informal complaints and advise the Commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP by the Commission, respectively.

**The Parties agree as follows:**

1. The Parties stipulate to the facts contained herein and in the attached Proposed Order and request approval of the Order by the Commission.
2. E-Now admits to the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Agreement.
3. Commission Staff recommends, and E-Now agrees to pay, an administrative penalty of Forty-Two Thousand Five hundred Dollars (\$42,500) for E-Now's violations described in the attached Proposed Order and herein.

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

4. As a separate matter, and not as a part of this settlement, E-Now's voluntary relinquishment of its REP Certificate No. 10084 was administratively approved on July 9, 2014 in Docket No. 42603. Therefore, the reason for E-Now's noncompliance in this instance cannot occur again in the future. Moreover, the relinquishment did not involve any customer transfers to POLR and as such, the prohibition in P.U.C. SUBST. R. 25.107(g)(1)(D) does not apply.
5. P.U.C. SUBST. R. 25.107(f)(2)(B) requires that a REP keep customer deposits in an escrow account or segregated cash account or provide an irrevocable stand-by letter of credit payable to the commission in an amount sufficient to cover 100% of the REP's outstanding customer deposits held at the close of each month.
6. Beginning in August 2013 and extending through December 2013, E-Now held customer deposits and pre-paid amounts over \$50 in an amount ranging from \$328,463.65 to \$636,061.19. For the time period of August through December, 2013, the escrow account established to cover deposits and prepaid amounts over \$50 (Escrow Account) lacked funds sufficient to do so. In January of 2014, E-now asserts that it discovered this error and funded the Escrow Account in an amount sufficient to cover all of its outstanding customer deposits and advance payments.
7. P.U.C. SUBST. R. 25.107(f)(2)(C) requires a REP providing prepaid service to keep all deposits and an amount sufficient to cover the credit balance that exceeds \$50 for all customer accounts that have a credit balance exceeding \$50 at the close of each month in an escrow account, or to provide an irrevocable stand-by letter of credit payable to the commission in an amount equal to or greater than the amount required to be deposited in the escrow account.
8. From January 2012 until July 2013, E-Now held pre-paid amounts over \$50 in an amount ranging from \$16,714.42 to \$49,101.97. During this time period, E-Now had an escrow account of only \$12,000 to cover the pre-paid amounts over \$50. E-Now asserts that it did, however, have \$50,000 set aside in a non-segregated account that was set aside to cover pre-paid amounts over \$50.

9. P.U.C. SUBST. R. 25.485(e)(1)(D) states that a REP shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP by the Commission.
10. With respect to 53 informal complaints filed between August 2011 and May 2014, E-Now failed to advise the Commission in writing of the results of the investigation within 21 days after the complaints were forwarded to the REP by the Commission.
11. E-Now asserts that it did in fact investigate customer complaints, and that E-Now had worked with the Commission in an attempt to identify outstanding customer complaints.
12. On or about June 4, 2014, E-Now was provided proper notice of Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
13. This Agreement resolves all claims related to E-Now's obligations pursuant to PURA § 39.352(c) and P.U.C. SUBST. R. 25.107(f)(2)(B), P.U.C. SUBST. R. 25.107(f)(2)(C), and P.U.C. SUBST. R. 25.485(e)(1)(D), concerning the protection of customer deposits, advance payments, and customer complaints, respectively.
14. E-Now warrants that it currently has no customers.
15. E-Now warrants that it has refunded or transferred all customer deposits or advance payments. E-Now also warrants that as of the date of this Agreement, it is no longer holding any customer deposits or advance payments.
16. Unless specifically provided for in this Agreement, E-Now waives any notice and procedures that might otherwise be authorized or required in this proceeding.
17. This Agreement fully and finally resolves all issues related to alleged Commission rules violations arising out of the facts described herein. The Parties enter into this Agreement to resolve by compromise the issues related to this matter. This Agreement is entered into by the Parties in order to avoid the potential for expensive and protracted litigation, the outcome of which would be uncertain.
18. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement

agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

19. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C).
20. In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.
21. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.
22. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.
23. E-Now warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

**EXECUTED** by the Parties by their authorized representatives designated below.

  
\_\_\_\_\_

Date: 9-16-14

Todd Gibson  
Executive Vice President and Chief Financial Officer  
E-Now, LP

  
\_\_\_\_\_

Date: 9-16-14

Joshua W. Walters  
Attorney  
Oversight and Enforcement Division  
Public Utility Commission of Texas

**ATTACHMENT**

**DOCKET NO. \_\_\_\_\_**

<b>AGREED NOTICE OF VIOLATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AND SETTLEMENT AGREEMENT</b>	<b>§</b>	
<b>RELATING TO E-NOW, LP'S</b>	<b>§</b>	
<b>VIOLATIONS OF PURA § 39.352(c),</b>	<b>§</b>	
<b>AND P.U.C. SUBST. R. 25.107(f)(2)</b>	<b>§</b>	
<b>AND 25.485(e), RELATED TO</b>	<b>§</b>	
<b>CERTIFICATION OF RETAIL</b>	<b>§</b>	
<b>ELECTRIC PROVIDERS AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CUSTOMER PROTECTION</b>	<b>§</b>	

**PROPOSED ORDER**

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and E-Now, LP (E-Now) regarding Commission Staff's investigation of E-Now for violations of Section 39.352(c) of the Public Utility Regulatory Act<sup>1</sup> (PURA) and P.U.C. SUBST. R. 25.107(f)(2) and P.U.C. SUBST. R. 25.485(e), concerning the failure of a retail electric provider (REP) to maintain an escrow account, segregated cash account or letter of credit in an amount sufficient to cover 100% of customer deposits and advance payments, and to investigate all informal complaints and advise the Commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP by the Commission, respectively. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of \$42,500, and E-Now agreed to pay the recommended administrative penalty. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

1. E-Now was an authorized REP as defined by P.U.C. SUBST. R. 25.107.
2. E-Now voluntarily relinquished REP Certificate No. 10084 on July 9, 2014 in Docket No. 42603.

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL CODE Ann. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

3. Pursuant to P.U.C. SUBST. R. 25.107(f)(2)(B), E-Now was required to keep deposits in an escrow account or segregated cash account, or provide an irrevocable stand-by letter of credit payable to the commission in an amount sufficient to cover the REP's outstanding customer deposits held at the close of each month.
4. Beginning in August 2013 and extending through December 2013, E-Now held deposits and pre-paid amounts over \$50 in an amount ranging from \$36,000 to \$636,061.19. For the time period of August through December, 2013, E-Now did not have an account established to cover deposits and prepaid amounts over \$50 (Escrow Account) and lacked funds sufficient to do so. In January of 2014, E-now asserts that it discovered the error and funded the Escrow Account in an amount sufficient to cover the outstanding customer deposits and advance payments.
5. Pursuant to P.U.C. SUBST. R. 25.107(f)(2)(C), E-now was required keep all deposits in an amount sufficient to cover the credit balance that exceeded \$50 for all accounts that had a credit balance exceeding \$50 at the close of each month in an escrow account, or to provide an irrevocable stand-by letter of credit payable to the commission in an amount equal to or greater than the amount required to be deposited in the escrow account.
6. From January 2012 until July 2013, E-Now held pre-paid amounts over \$50 in an amount ranging from \$16,714.42 to \$49,101.97. During this time period, E-Now had an escrow account of only \$12,000 to cover the pre-paid amounts over \$50. E-Now asserts that it did, however, have \$50,000 set aside in a non-segregated account that was used to cover pre-paid amounts over \$50.
7. Pursuant to P.U.C. SUBST. R. 25.485(e)(1)(D), E-Now was required to investigate all informal complaints and advise the Commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the Commission.
8. With respect to 53 informal complaints filed between August 2011 and March 2013, E-Now failed to advise the Commission in writing of the results of the investigation within 21 days after the complaints were forwarded to the REP by the Commission.

9. E-Now cooperated with Commission Staff's investigation.
10. E-Now acknowledges the violations detailed in this Order.
11. E-Now participated in one or more settlement discussions with Commission Staff to resolve this matter.
12. On September 16, 2014, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and E-Now agreed to pay, an administrative penalty of Forty-Two Thousand Five hundred Dollars (\$42,500).
13. The Agreement provides for a reasonable resolution of this dispute.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.003, 14.051, 15.023, 15.024, and 39.352(c).
2. E-Now was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
3. E-Now failed to maintain an escrow account, segregated cash account or letter of credit in an amount sufficient to cover 100% of customer deposits and advance payments. Therefore, E-Now violated PURA § 39.352(c) and the requirements of P.U.C. SUBST. R. 25.107(f)(2).
4. E-Now failed to advise the Commission in writing of the results of the investigation of informal complaints within 21 days after the complaint was forwarded to the REP by the Commission. Therefore, E-Now violated PURA § 39.352(c) and the requirements of P.U.C. SUBST. R. 25.485(e).
5. P.U.C. PROC. R. 22.246(g)(1)(A),(B), and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
6. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
7. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

### III. ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. E-Now shall pay an administrative penalty to the Commission in the amount of Forty Two Thousand Five hundred Dollars (\$42,500). E-Now shall remit payment of the full amount of the administrative penalty on or before thirty (30) calendar days after the date this Order is signed. Payment of the administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference this docket. The check shall be sent to the following address:  
  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711  
ATTN: Fiscal Services
3. E-Now shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised herein.
5. Entry of this order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY D. MARTY, COMMISSIONER**