



Control Number: 45520



Item Number: 1

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DOCKET NO. **45520**

<p><b>AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT REGARDING SPARK ENERGY, LLC'S VIOLATION OF 16 TAC § 25.454, RELATING TO RATE REDUCTION PROGRAM, 16 TAC § 25.480, RELATING TO BILL PAYMENT AND ADJUSTMENTS, AND 16 TAC § 25.483 RELATING TO DISCONNECTION OF SERVICE</b></p>	<p>§ § § § § § § §</p>	<p><b>PUBLIC UTILITY COMMISSION</b></p> <p><b>OF TEXAS</b></p>
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 PUBLIC UTILITY COMMISSION  
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**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Commission) and Spark Energy, LLC (Spark) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violation of 16 Tex. Admin Code § 25.454 (TAC), relating to rate reduction program, 16 TAC § 25.480, relating to bill payment and adjustments, and 16 TAC § 25.483, relating to disconnection of service.

**The Parties agree as follows:**

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommended, and Spark agrees to pay, an administrative penalty of One Hundred and Sixty Thousand Dollars (\$160,000) for Spark's violations described in the attached Proposed Order.
3. Spark failed to apply low-income rate reduction program discounts in a manner consistent with 16 TAC § 25.454(g)(3).
4. Spark disconnected 92 customers for non-payment pursuant to 16 TAC § 25.483(c). However, if the low-income rate reduction program discount is applied correctly, six of the

92 customers would not have been delinquent. Therefore, Spark did not have authority to disconnect six customers for non-payment. Spark violated 16 TAC § 25.483.

5. Spark assessed late fees on 392 customer accounts that were eligible for the low-income rate reduction program discount in violation of 16 TAC § 25.480(c).
6. This Agreement resolves all claims related to Spark's compliance with 16 TAC § 25.454(g)(3), § 25.483(c), and § 25.480(c) and violations that occurred between May 1, 2014 and August 31, 2014.
7. Unless specifically provided for in this Agreement, Spark waives any notice and procedures that might otherwise be authorized or required in this proceeding.
8. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
9. 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.
10. The Parties contemplate that this Agreement will be approved pursuant to 16 TAC § 22.246(g)(1)(C). 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.

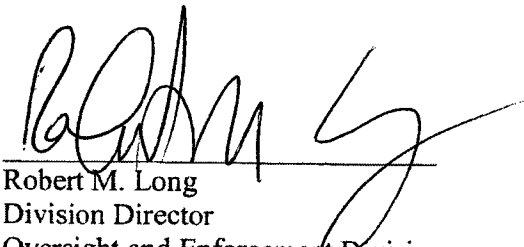
11. This Agreement is the final and entire agreement between the Parties regarding the alleged violations related to Spark's billing system migration issues that occurred between May 1, 2014 and August 31, 2014, and supersedes all other communications among the Parties or their representatives regarding its terms.
12. 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.
13. Spark 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.

  
\_\_\_\_\_

Gil Melman  
Vice President, General Counsel  
Spark Energy, LLC  
12140 Wickchester Ln., Ste. 100  
Houston, TX 77079

Date: 1-12-2016

  
\_\_\_\_\_

Robert M. Long  
Division Director  
Oversight and Enforcement Division  
Public Utility Commission of Texas

Date: 1/12/16

**ATTACHMENT**

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

<b>AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT REGARDING SPARK ENERGY, LLC'S VIOLATION OF 16 TAC § 25.454, RELATING TO RATE REDUCTION PROGRAM, 16 TAC § 25.480, RELATING TO BILL PAYMENT AND ADJUSTMENTS, AND 16 TAC § 25.483 RELATING TO DISCONNECTION OF SERVICE</b>	§ § § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**PROPOSED ORDER**

Pursuant to 16 Tex. Admin. Code § 22.246(g)(1)(C) (TAC), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Spark Energy, LLC (Spark) (together, Parties) regarding Commission Staff's investigation of Spark for violation of 16 TAC § 25.454, relating to rate reduction program, 16 TAC § 25.480, relating to bill payment and adjustments, and 16 TAC § 25.483 relating to disconnection of service.

This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of \$160,000. Spark 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. Spark is a retail electric provider as defined in PURA<sup>1</sup> § 31.002(17) and 16 TAC § 25.5.
2. In May of 2014, migration to a new billing system and human error resulted in Spark's failure to apply low-income rate reduction program discounts in the correct billing cycle

<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§11.001-66.016 (West 2007 & Supp. 2014) (PURA).

in accordance with 16 TAC § 25.454(g)(3). These errors resulted in Spark improperly disconnecting customers and improperly assessing customers disconnection fees and late payment fees.

3. Six customers were disconnected for non-payment that would not have been disconnected if the low-income rate reduction program discount was applied in the correct billing cycle.
4. 392 customers enrolled in the low-income rate reduction program were assessed a late fee. 16 TAC § 25.480(c) expressly prohibits charging late fees for customers receiving the low-income rate reduction program discount.
5. Spark attests that it completed the implementation of and migration to a new billing system in August of 2014, and the new system resolves the issues that were the subject of Commission Staff's investigation.
6. Spark attests that it reversed the disconnection fees charged to the six customers that were wrongfully disconnected.
7. Spark attests that it has reversed the late fees charged to 392 customers enrolled in the low-income rate reduction program.
8. Spark fully cooperated with Commission Staff's investigation.
9. Commission Staff did not find evidence of willful intent to wrongfully disconnect customers or assess improper late fees.
10. Spark's mistakes were corrected in approximately 90 days.
11. Spark acknowledges the violations detailed in this Order.
12. Spark participated in one or more settlement discussions with Commission Staff to resolve this matter.
13. On October 28, 2015, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and Spark agreed to pay, an administrative penalty of One Hundred and Sixty Thousand Dollars (\$160,000).
14. The Agreement provides for a reasonable resolution of this dispute.

15. The Agreement is in the public interest.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 15.023, 15.024, 17.004, and 39.101.
2. Spark is a retail electric provider as defined in PURA §§ 31.002(17) and 16 TAC § 25.5. Spark's retail electric provider certification number is 10046.
3. PURA § 39.903 establishes the system benefit fund and identifies programs to be funded by the system benefit fund, including a rate reduction program. PURA § 39.903(h) and (j) require that the Commission adopt rules for retail electric providers to enroll eligible customers in a rate reduction program and determine a reduced rate.
4. 16 TAC § 25.454 defines the low-income electric rate reduction program, establishes the rate reduction calculation, and specifies enrollment options and processes.
5. Spark provides electric service in an area that has been opened to customer choice, or an area for which the Commission has issued an order applying the system benefit fund rate reduction; therefore, 16 TAC § 25.454 is applicable.
6. Pursuant to 16 TAC § 25.454(g)(3)(D), Spark was required to apply rate reductions to the electricity bills of eligible customers identified by the Low Income Discount Administrator within the first billing cycle in which it was notified of a customer's eligibility.
7. A retail electric provider that chooses to have a customer's electric service disconnected shall comply with 16 TAC § 25.483, which establishes disconnection authority for REPs, the parameters for disconnection with or without notice, and the circumstances when disconnection is prohibited.
8. Spark did not correctly apply rate reductions to the electricity bills of eligible customers in May of 2014. This led to customers accruing false delinquent balances and ultimately resulted in the improper disconnection of customers for non-payment pursuant to 16 TAC § 25.483(c) between June 1, 2014 and August 22, 2014.

9. Six customers were disconnected for non-payment that, if the rate reductions were applied correctly, should not have been disconnected. For each of these customers, Spark violated 16 TAC § 25.483(c).
10. 16 TAC § 25.480(c) authorizes retail electric providers to charge a one-time penalty not to exceed five percent on a delinquent bill for electric service, and prohibits retail electric providers from applying the penalty to residential or small commercial customers served by a provider of last resort or customers receiving a low-income rate reduction program discount pursuant to PURA § 39.903(h).
11. Spark billed the one-time penalty to 392 customers that were eligible for the rate reduction program, in violation of 16 TAC § 25.480(c).
12. Spark 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.
13. 16 TAC § 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.
14. The Agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(g).
15. The requirements for informal disposition pursuant to 16 TAC § 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. Spark shall pay an administrative penalty to the Commission in the amount of One Hundred Sixty Thousand Dollars (\$160,000). Spark 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 electronic



funds transfer or 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. Spark 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 here.
5. Entry of this order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Neither should the entry of an order consistent with the Agreement 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 on the \_\_\_\_ day of \_\_\_\_\_**

**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 MARTY MARQUEZ, COMMISSIONER**