

Control Number: 46597



Item Number: 6

Addendum StartPage: 0

DOCKET NO. 46597

RECEIVED

**SETTLEMENT AGREEMENT AND
REPORT TO COMMISSION
RELATING TO STAFF'S
INVESTIGATION OF RELIANT
ENERGY RETAIL SERVICES, LLC,
EVERYTHING ENERGY, LLC,
GREEN MOUNTAIN ENERGY
COMPANY, AND U.S. RETAILERS,
LLC CONCERNING REMOVAL OF
SWITCH-HOLDS UNDER PURA
§ 39.101(b) AND 16 TAC § 25.480** §
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PUBLIC UTILITY COMMISSION

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OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK

ORDER

This Order approves the settlement agreement and report to Commission between Commission Staff and Reliant Energy Retail Services, LLC (Reliant), Everything Energy, LLC (EE), Green Mountain Energy Company (GMEC), and U.S. Retailers, LLC (US Retailers) (collectively, Companies) concerning Staff's investigation of Companies under PURA § 39.101(b)¹ and 16 Texas Administrative Code (TAC) §§ 25.480(m) and (j)(8) regarding removal of switch-holds. The agreement resolves all issues in this docket. Commission Staff recommended, and Companies agreed to pay, an administrative penalty of \$900,000. Commission Staff further recommended, and Companies also agreed to contribute, an additional \$600,000 to their bill payment assistance programs, thereby providing a minimum of \$1,256,000 in 2016 to their bill payment assistance programs. The agreement is approved.

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

I. Findings of Fact

1. Companies are certificated retail electric providers (REPs) as defined in PURA § 31.002(17) with REP certificate numbers 10007 (Reliant), 10009 (GMEC), 10177 (US Retailers), and 10178 (EE).

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-58.303 (West 2016), §§ 59.001- 66.017 (West 2007 & Supp. 2016) (PURA).

2. In June of 2014, Oversight and Enforcement (O&E) opened an investigation of GMEC as a result of an increase in customer complaints relating to switch-holds and other billing issues related to GMEC's conversion to a new billing system.
3. O&E sent informal requests for information (RFIs) to GMEC about their internal processes regarding GMEC's conversion to a new billing system and switch-holds for the period beginning June 1, 2013 and ending July 1, 2014. GMEC's response included data regarding all switch-holds that were released during that year, the date of the customer's final deferred payment plan (DPP) payment, and the date a market transaction was sent to request release of the switch-hold.
4. In the course of the investigation, GMEC stated that during a portion of the requested time period, it employed a policy of waiting ten business days after the final DPP payment posted to the customer's account before requesting the transmission and distribution utility (TDU) to remove the switch hold. On May 24, 2014, GMEC reduced this waiting period to five business days after payment posted to the customer's account. GMEC asserts that it employed these waiting periods as a safeguard against a customer's payment being returned or otherwise dishonored.
5. On October 28, 2014, O&E sent informal RFIs to Reliant, EE, and US Retailers requesting switch-hold data for the period beginning November 1, 2013 and ending October 31, 2014. The response included data regarding all switch-holds that were released during that year, the date of the customer's final DPP payment, and the date a market transaction was sent to release the switch-hold.
6. EE, Reliant, and U.S. Retailers also employed a policy of waiting ten business days after the final DPP payment posted to the customer's account before requesting the TDU to remove the switch hold. On May 24, 2014, Reliant, EE, and US Retailers reduced this waiting period to five business days after payment posted to the customer's account. Reliant, EE and US Retailers employed these waiting periods as a safeguard against a customer's payment being returned or otherwise dishonored.
7. In response to O&E's informal RFIs, Companies reported more than 55,000 switch-holds were removed during the requested time periods. Of these switch-holds, 7,902 were

released because Companies received final payments from the customers that fulfilled the customers' DPPs.²

8. O&E's review determined that for all 7,902 of these switch-holds, Companies waited at least two business days to send a market transaction to request release of a switch-hold after payment posted to the customer's account. Companies waited at least ten business days to send the market transaction for 4,264 of these switch-holds, or 53.97% of the 7,902 switch-holds.
9. O&E asserts these 7,902 switch-holds across all four Companies were violations of 16 TAC §§ 25.480(m) and (j)(8).
10. Companies assert that Commission rules do not establish a specific time frame within which REPs must request the TDU to release switch-holds; that the date a payment obligation is satisfied is not a clear standard and is subject to interpretation; that their waiting periods were intended to allow enough time to pass to presume whether customer payments would not be dishonored; that of the customers for whom the Companies provided switch-hold data to O&E, approximately 4% switched away from the Companies within 90 days after release of their switch-holds; and that approximately 78% of these switching customers left the Companies with an unpaid balance. Based on these factors, Companies assert that they did not violate § 25.480(m).
11. Commission Staff asserts that Companies did not attempt to determine when a customer's obligation was satisfied. Instead Companies used a blanket five- or ten-day waiting period. Commission Staff asserts that application of this policy resulted in the majority of customers remaining on a switch-hold for multiple days beyond their satisfaction of the DPP. Commission Staff asserts that Companies did not remove switch-holds when payments may have been processed before the waiting period lapsed, particularly if the customer paid with cash. Commission Staff also asserts that the small number of customers who ultimately switched away have no bearing as to Companies' failure to request release of switch-holds when a customer's obligation is satisfied.

² The larger remaining balance of switch-holds were removed when the customer defaulted on the DPP, the bill was revised, a subsequent payment or credit was received outside of any action by the customer fulfilled the DPP, or the customer moved out.

12. Companies warranted that they have eliminated their waiting period and now process the switch-hold on the same day payment posts to the customer's account.
13. Companies agree to continue to request removal of switch-holds the same day the customer's final DPP payment posts to the customer's account going forward.
14. On September 3, 2015, Companies were provided proper notice of Commission Staff's investigation in this matter, that Commission Staff asserted that the Companies' implementation of internal switch-hold removal policies resulted in violations of 16 TAC §§ 25.480(m) and (j)(8), information about their right to a hearing, and an opportunity to respond to Commission Staff's assertions.
15. Companies participated in one or more settlement discussions with Commission Staff to resolve this matter.
16. On November 18, 2016, the parties entered into the agreement resolving Commission Staff's investigation concerning the Companies' removal of switch-holds under PURA § 39.101(b) and 16 TAC § 25.480(m) and (j)(8). Commission Staff recommended, and Companies agreed to pay, an administrative penalty of \$900,000. Commission Staff further recommended, and Companies agreed to contribute, an additional \$600,000 to their bill payment assistance programs, thereby providing a minimum of \$1,256,000 in 2016 to their bill payment assistance programs.
17. The agreement provides for a reasonable resolution of this dispute.
18. The Commission finds that facilitating implementation of the bill payment assistance component of the agreement in 2016 by considering this docket at the next regularly scheduled open meeting is good cause to waive the notice requirement in 16 TAC 22.35(b)(2).

II. Conclusions of Law

1. The Commission has jurisdiction over this matter under PURA §§ 14.001, 14.002, 14.003, 14.051, 15.023, 15.024, and 38.005.
2. Companies are REPs for purposes of PURA § 31.002(17) and for purposes of PURA § 39.101(b) and 16 TAC § 25.480.

3. As REPs, Companies are required to comply with all applicable customer protection provisions, disclosure requirements, and marketing guidelines established by the Commission and by PURA.
4. Companies were provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about their right to a hearing, and an opportunity to explain their activities.
5. Under PURA § 39.101(b) a customer is entitled to be protected from unfair, misleading, or deceptive practices.
6. Under 16 TAC § 25.480 a REP may request that a TDU create a switch-hold, under certain conditions, for a customer that fails to pay a REP for electric service already provided.
7. Under 16 TAC § 25.480(m) a REP is required to request removal of the switch-hold by the TDU "after the customer's obligation to the REP relating to the switch-hold is satisfied."
8. Under 16 TAC § 25.480(j)(8) a REP "shall submit a request to remove the switch-hold, under subsection (m) of this section, after the customer's payment of the deferred balance owed to the REP."
9. Under 16 TAC §25.480(j)(5)(B) a REP is required to inform the customer that "The switch-hold will be removed after your final payment on this past due amount is processed."
10. Under 16 TAC §25.480(h)(7) the REP is required to inform the customer that a switch-hold "...will be removed after your deferred balance is paid and processed."
11. The agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(g).
12. This docket was processed in accordance with applicable statutes and Commission rules.
13. As authorized by 16 TAC § 22.5(b), the 20-day notice requirement in 16 TAC § 22.35(b)(2) is waived for good cause.

III. Ordering Paragraphs

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

1. The agreement, provided with this Order as Attachment 1, is approved, and the parties shall be bound by its terms.
2. Companies shall pay an administrative penalty to the Commission in the amount of \$900,000. Companies shall remit payment of the full amount of the administrative penalty before thirty calendar days after the date this Order is signed. Payment of the administrative penalty may be made by check payable to the Public Utility Commission of Texas and shall reference this docket. If paying by check, 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. Companies shall file an affidavit of payment in this docket no later than five calendar days after the penalty payment is made.
4. Companies shall contribute an additional \$600,000 to their bill payment assistance programs in 2016. Companies warranted that they collectively provided approximately \$656,000 in bill payment assistance in 2015 as a baseline. With a similar baseline, Companies shall provide a minimum of \$1,256,000 in bill payment assistance in 2016.
5. Companies shall make the contributions to their respective bill payment assistance programs before thirty calendar days after the date this Order is signed.
6. No later than five calendar days after complying with ordering paragraph 5, Companies shall file an affidavit in this docket detailing that the full amount of the bill payment assistance contribution has been paid.
7. If this contribution is not exhausted before the Companies' next fiscal year, Companies shall roll over the remaining amount to the subsequent fiscal year. No later than five calendar days after a rollover, Companies shall file an affidavit in this docket detailing for each year, any amounts that are rolled over.

- 8. Companies shall continue to request removal of switch-holds the same day the customer's final DPP payment posts to the customer's account going forward.
- 9. The Commission shall not be constrained in any manner from requiring additional action or penalties for compliance issues that are not raised here.
- 10. 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 or methodology underlying the agreement.
- 11. 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 11th day of December 2016.

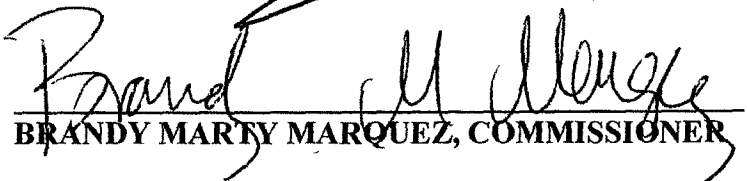
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

DOCKET NO. 46597

SETTLEMENT AGREEMENT AND	§	PUBLIC UTILITY COMMISSION
REPORT TO COMMISSION	§	
RELATING TO STAFF'S	§	OF TEXAS
INVESTIGATION CONCERNING	§	
RELIANT ENERGY RETAIL	§	
SERVICES, LLC, EVERYTHING	§	
ENERGY, LLC, GREEN MOUNTAIN	§	
ENERGY COMPANY, AND U.S.	§	
RETAILERS, LLC'S REMOVAL OF	§	
SWITCH-HOLDS PURSUANT TO		
PURA § 39.101(b) AND 16 TAC		
§ 25.480, REGARDING REMOVAL OF		
SWITCH-HOLDS		

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Reliant Energy Retail Services, LLC (Reliant), Everything Energy, LLC (EE), Green Mountain Energy Company (GMEC), and U.S. Retailers, LLC (US Retailers) (collectively, Companies) (together with Commission Staff, Parties) enter into this Settlement Agreement and Report to Commission, (Agreement) resolving and concluding Commission Staff's investigation concerning the Companies' removal of switch-holds pursuant to PURA¹ § 39.101(b) and 16 Tex. Admin. Code §§ 25.480(m) and (j)(8) (TAC), concerning removal of switch-holds.

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. In June of 2014, Oversight and Enforcement (O&E) opened an investigation of GMEC as a result of an increase in the number of customer complaints relating to switch-holds and other billing issues related to GMEC's conversion to a new billing system.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA).

3. O&E sent GMEC informal Requests for Information (RFIs) about their internal processes regarding GMEC's conversion to a new billing system and switch-holds for the period beginning June 1, 2013 and ending July 1, 2014. GMEC's response included data regarding all switch-holds that were released during that year, the date of the customer's deferred payment plan (DPP) final payment, and the date a market transaction was sent to request release of the switch-hold.
4. 16 TAC § 25.480(m) requires that the retail electric provider (REP) request removal of the switch-hold by the transmission and distribution utility (TDU) "after the customer's obligation to the REP relating to the switch-hold is satisfied."
5. 16 TAC § 25.480(j)(8) provides that a REP "shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, after the customer's payment of the deferred balance owed to the REP."
6. Other sections of 16 TAC § 25.480 address switch-hold removal.
 - a. 16 TAC § 25.480(j)(5)(B) requires the REP to inform the customer that "The switch-hold will be removed after your final payment on this past due amount is processed."
 - b. 16 TAC § 25.480(h)(7) requires a REP to inform the customer that a switch-hold "...will be removed after your deferred balance is paid and processed."
7. In the course of the investigation, GMEC stated that during a portion of the requested time period, it employed a policy of waiting ten business days after the customer's final DPP payment posted to the customer's account before requesting the TDU to remove the switch hold. On May 24, 2014, GMEC reduced this waiting period to five business days after payment posted to the customer's account. GMEC asserts that it employed these waiting periods as a safeguard against a customer's payment being returned or otherwise dishonored.
8. On October 28, 2014, O&E sent informal RFIs to Reliant, EE, and US Retailers requesting switch-hold data for the period beginning November 1, 2013 and ending October 31, 2014. The response included data regarding all switch-holds that were released during that year,

the date of the customer's final DPP payment, and the date a market transaction was sent to release the switch-hold.

9. Reliant, EE, and US Retailers also employed a policy during a portion of the requested time period of waiting ten business days after the customer's final DPP payment before requesting the TDU to remove the switch-hold. On May 24, 2014, Reliant, EE, and US Retailers reduced this waiting period to five business days after payment posted to the customer's account. Reliant, EE, and US Retailers employed these waiting periods as a safeguard against a customer's payment being returned or otherwise dishonored.
10. In response to O&E's informal RFIs, Companies reported more than 55,000 switch-holds were removed during the requested time periods. Of these switch-holds, 7,902 were released because Companies received final payments from the customers that fulfilled the customers' DPPs.¹
11. O&E's review determined that for all 7,902 of these switch-holds, Companies waited at least two business days to send a market transaction to request release of a switch-hold after payment posted to the customer's account. Companies waited at least ten business days to send the market transaction for 4,264 of these switch-holds, or 53.97% of the 7,902 switch-holds.
12. O&E asserts these 7,902 switch-holds across all four Companies were violations of 16 TAC §§ 25.480(m) and (j)(8).
13. Companies assert that Commission rules do not establish a specific time frame within which REPs must request the TDU to release switch holds; that the date a payment obligation is "satisfied" is not a clear standard and is subject to interpretation; that their waiting periods were intended to allow enough time to pass to presume customer payments would not be dishonored; that of the customers for whom the Companies provided switch-hold data to O&E, approximately 4% switched away from the Companies within 90 days after release of the switch-holds; and that approximately 78% of these switching customers left the Companies with an unpaid balance. Based on these factors the Companies assert that they did not violate §25.480(m).

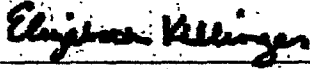
¹ The larger remaining balance of switch-holds were removed when the customer defaulted on the DPP, the bill was revised, a subsequent payment or credit was received outside of any action by the customer fulfilled the DPP, or the customer moved out.

14. Commission Staff asserts that Companies did not attempt to determine when a customer's obligation was satisfied. Instead, Companies used a blanket five- or ten-day waiting period. Commission Staff asserts that application of this policy resulted in the majority of customers remaining on a switch-hold for multiple days beyond their satisfaction of the DPP. Commission Staff asserts that Companies did not remove switch-holds when payments may have been processed before the waiting period lapsed, particularly if the customer paid with cash. Commission Staff also asserts that the number of customers who ultimately switched away have no bearing as to Companies' failure to request release of switch-holds when a customer's obligation is satisfied.
15. Companies warrant that they have eliminated their waiting period and now process a switch-hold on the same day a customer's final DPP payment posts to the customer's account.
16. Commission Staff recommended, and Companies agree to pay, an administrative penalty of \$900,000 in order to settle Commission Staff's pending investigation of the Companies' switch-hold practices.
17. Commission Staff also recommended, and Companies also agreed to contribute, an additional \$600,000 to their bill payment assistance programs in 2016. Companies warrant that they collectively provided approximately \$656,000 in bill payment assistance in 2015. Companies agree to provide a minimum of \$1,256,000 in bill payment assistance in 2016.
18. Companies agree to continue to request removal of switch-holds the same day the customer's final DPP payment posts to the customer's account going forward.
19. This Agreement resolves all claims pursuant to PURA § 39.101(b) and 16 TAC § 25.480 concerning Companies' request for removal of switch-holds for the time period between June 1, 2013, through the date this Agreement is executed.
20. Unless specifically provided for in this Agreement, Companies waive any notice and procedures that might otherwise be authorized or required in this proceeding.
21. Nothing in this Agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
22. 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.

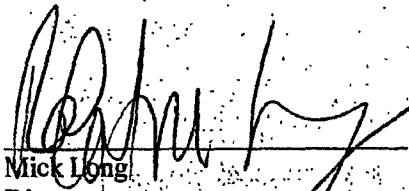
23. The Parties contemplate that this Agreement will be approved pursuant to 16 TAC § 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, 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.
24. 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.
25. 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.
26. Each of the Companies warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.
27. Each of the Companies is jointly and severally liable for any obligations regarding payment of a penalty or contribution to a payment assistance fund.

EXECUTED by the Parties by their authorized representatives designated below.



Date: 11/18/2016

Elizabeth R. Killinger
President of:
Reliant Energy Retail Services, LLC
Everything Energy, LLC
Green Mountain Energy Company
U.S. Retailers, LLC
1201 Fannin
Houston, Texas 77002



Date: 11/18/2016

Mick Long
Director
Oversight and Enforcement Division
Public Utility Commission of Texas