

**DOCKET NO. 25638**

<b>PETITION OF CONSTELLATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC ENERGY SERVICES LIMITED</b>	<b>§</b>	
<b>PARTNERSHIP FOR DECLARATORY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>ORDER</b>	<b>§</b>	

**ORDER**

This Order clarifies the application of P.U.C. SUBST. R. 25.474 in the event that customers are acquired by one retail electric provider (REP) from another REP and when no material changes to terms of service result for the affected customers. To the extent that the transfer of customers from Enron Energy Services, Inc. (EES) to Constellation Electric Energy Services Limited Partnership (the Petitioner or Constellation) does not result in a material change of service for the affected customers, this Order approves Constellation's proposed form of notice, with slight modification, as compliant with P.U.C. SUBST. R. 25.474.

**I. Findings of Fact**

**Background**

1. On February 8, 2002, Constellation Electric Energy Services Limited Partnership (the Petitioner or Constellation) filed an application for certification as a retail electric provider (REP) in Texas. That application was assigned Docket No. 25436, and was approved on March 19, 2002.<sup>1</sup>

2. On February 27, 2002, Enron Energy Services, Inc. (EES), Commission Staff, and the Office of Public Utility Counsel, filed a stipulation in Docket No. 25272 which provided, among other things, that EES would work diligently to seek from the U.S. Bankruptcy Court for the

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<sup>1</sup> *Application of Constellation Electric Energy Services Limited Partnership for Retail Electric Provider (REP) Certification*, Docket No. 25436, Notice of Approval (Mar. 19, 2002).

Southern District of New York (Bankruptcy Court) the necessary approvals for the sale of the Texas retail contracts by EES to the Petitioner.<sup>2</sup>

3. On March 13, 2002, the Bankruptcy Court entered an order approving the stipulation in its entirety. On March 21, 2002, the Commission approved an interim order in Docket No. 25272 that reflects the material terms of the stipulation, other than those provisions requiring Bankruptcy Court approval.

3A. On March 18, 2002, Constellation entered into an agreement with EES, subject to certain bankruptcy court approvals and other closing conditions, under which Constellation will purchase the Texas retail contracts of EES.<sup>3</sup>

**Petitioner's Request**

4. In order to preserve the economics of the transaction between the Petitioner and EES, a closing condition was included in the agreement which calls for a declaratory order from the Commission verifying that the only notice requirements to customers are contained in P.U.C. SUBST. R. 25.474(m), and that the provisions of P.U.C. SUBST. R. 25.474(a)-(i) do not apply to this transaction.

5. The Petitioner contended that P.U.C. SUBST. R. 25.474(m) establishes the totality of notice requirements when customer contracts are obtained by one REP from another in a bankruptcy proceeding. According to the Petitioner, therefore, the more extensive notice and authorization requirements contained in P.U.C. SUBST. R. 25.474(a)-(i) should not be deemed applicable to the Petitioner's purchase of the EES contracts and the Petitioner's compliance with only P.U.C. SUBST. R. 25.474(m) should be conclusively determined to not give rise to a future slamming complaint pursuant to P.U.C. SUBST. R. 25.474(n).

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<sup>2</sup> *Petition to Suspend and/or Revoke Enron Energy Services, Inc. and Enron Power Marketing, Inc. Retail Electric Provider Certificates*, Docket No. 25272 (pending), Stipulation and Agreement (Feb. 27, 2002).

<sup>3</sup> See Petition for Declaratory Order at 2 (Mar. 22, 2002).

6. The Petitioner contended that a declaratory order is appropriate given the fact that P.U.C. SUBST. R. 25.474 is a new rule, has never been interpreted before, and its application, if different than anticipated by the Petitioner, would have a profound impact on the Petitioner/EES transaction. Also, to the Petitioner's knowledge, this is the first transaction of this nature to be entered into in Texas. A declaratory order as requested would not only facilitate the completion of this transaction but also all such future transactions. The completion of this transaction would result in the orderly transfer of the EES customers, which clearly is in the public interest.

7. The Petitioner requested that the Commission enter an order approving the notice attached to its original petition as Exhibit C, and that the Commission enter a declaratory order stating that so long as there are no material changes to the terms of service of the EES customer contracts, P.U.C. SUBST. R. 25.474(m)(1)(A), (B), (F), (G), and (H) applies to their contracts, that the provisions of P.U.C. SUBST. R. 25.474(a)-(i) do not apply, and that, accordingly, failure to comply with P.U.C. SUBST. R. 25.274(a)-(i) in this transaction does not give rise to a complaint pursuant to P.U.C. SUBST. R. 25.474(n).<sup>4</sup> The Petitioner also requested that the petition be processed on an expedited basis.

### **Procedural History**

8. On March 22, 2002, the Petitioner filed a petition for declaratory relief that includes a request for approval of the notice to be given to the acquired customers by Constellation.

9. On March 26, 2002, the administrative law judge (ALJ) issued Order No. 1, notifying the Office of Public Utility Counsel of this proceeding, seeking comments from Commission Staff and all interested parties, and requesting a proposed procedural schedule.

10. Commission Staff and the Petitioner filed their responses to Order No. 1 providing a proposed procedural schedule on March 28, 2002, and April 1, 2002, respectively.

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<sup>4</sup> A copy of the Petitioner's proposed notice is attached to this Order as Exhibit 1.

11. On April 2, 2002, the ALJ issued Order No. 2 providing for notice of this proceeding to be published in the *Texas Register* and establishing an expedited procedural schedule, pursuant to which comments and the Staff's recommendation would be due April 24, 2002.

12. On April 24, 2002, Reliant Resources, Inc. (Reliant), the Petitioner, and the Alliance for Retail Markets (ARM) filed their comments to the Commission's Order No. 2. Both Reliant and ARM supported the Petitioner's requested relief.

13. On April 25, 2002, Commission Staff filed its recommendation in response to Order No. 2, stating that it had reviewed the Petitioner's form of notice and, to the extent that there are no material changes to the terms of service by the Petitioner for the affected customers, the form of notice satisfies the requirements of P.U.C. SUBST. R. 25.474(m)(3) and, under these circumstances, the Petitioner should not be required to comply with P.U.C. SUBST. R. 25.474(a)-(i).

**Evidence of Record**

14. The evidentiary record in this proceeding consists of the following: (1) Constellation's Petition for Declaratory Order, filed March 22, 2002; (2) Notice to *Texas Register*, filed March 26, 2002; and (3) Commission Staff's recommendation on final disposition, filed April 25, 2002.

**Informal Disposition**

15. More than 15 days have passed since completion of notice provided in this docket.

16. No issues of fact or law have been disputed by any party; therefore, no hearing is necessary.

**Good Cause Exception to P.U.C. PROC. R. 22.35(b)**

17. Good cause exists for waiving the 20 day requirement of P.U.C. PROC. R. 22.35(b).

## II. Conclusions of Law

1. Constellation Electric Energy Services Limited Partnership (Petitioner or Constellation) is a retail electric provider as defined in PURA §39.352 and, therefore, is subject to Commission jurisdiction and authority.
2. The Commission has jurisdiction and authority over the application pursuant to §§ 11.002(c), 11.003(13), 14.051(5), 14.053, 17.052(1) and (3), and 39.352(c) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2002) (PURA).
3. Constellation is subject to the requirements of P.U.C. SUBST. R. 25.474(m) in its acquisition of customers from Enron Energy Services, Inc. (EES).
4. Provided the transfer of customers to Constellation does not result in a material change to the terms of service for the transferred customers, P.U.C. SUBST. R. 25.474(m)(3) specifies the notice requirements that apply to Constellation's acquisition of the affected customers.
5. To the extent the transfer of customers to Constellation does not result in a material change to the terms of service for the transferred customers, Constellation's proposed customer notice satisfies the requirements of P.U.C. SUBST. R. 25.474(m)(3).
6. To the extent the transfer of customers to Constellation does not result in a material change to the terms of service for the transferred customers, the provisions of P.U.C. SUBST. R. 25.474(a)-(i) are not applicable.

### III. Ordering Paragraphs

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

1. To the extent that the acquisition of customers by Constellation Electric Energy Services Limited Partnership (the Petitioner or Constellation) from Enron Energy Services, Inc. (EES) does not result in a material change to the terms of service for the affected customers:
  - (a) the provisions of P.U.C. SUBST. R. 25.474(m)(1)(A), (B), (F), (G), and (H) do apply to those contracts and the provisions of P.U.C. SUBST. R. 25.474(a)–(i) do not apply;
  - (b) failure of the Petitioner to comply with P.U.C. SUBST. R. 25.474(a)-(i) in this transaction will not serve as a basis for a slamming complaint against it pursuant to P.U.C. SUBST. R. 25.474(n); and
  - (c) the Petitioner’s proposed form of notice, with its opening address modified to read, “To Texas Customer of Enron Energy Services, Inc.:", complies with these rules.
2. The Petitioner will provide notice to its customers in compliance with P.U.C. SUBST. R. 25.474(m), providing the Commission with a copy when it is sent to customers.
3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

**SIGNED AT AUSTIN, TEXAS the 6th day of JUNE 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**REBECCA KLEIN, CHAIRMAN**

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**BRETT A. PERLMAN, COMMISSIONER**

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