

PROJECT NO. 31590

EMERGENCY RULEMAKING TO	§	PUBLIC UTILITY COMMISSION
WAIVE DEPOSIT REQUIREMENTS	§	
UNDER PUC SUBST. R. 25.24, 25.478,	§	OF TEXAS
AND 26.24 FOR VICTIMS OF	§	
HURRICANE KATRINA	§	

**PETITION FOR EMERGENCY RULEMAKING TO WAIVE DEPOSIT
REQUIREMENTS UNDER PUC SUBST. R. 25.24, 25.478, AND 26.24
FOR VICTIMS OF HURRICANE KATRINA**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Texas Legal Services Center (TLSC), Texas Ratepayers' Organization to Save Energy (Texas ROSE), the Office of Public Utility Counsel, the United Ways of Texas, AARP, Consumers Union Southwest Regional Office, the Texas Association of Community Action Agencies, the United Way of the Concho Valley, Public Citizen Texas, the Texas AIDS Network, and the Texas Tenants' Union (Petitioners) hereby file this Petition for Emergency Rulemaking to Waive Deposit Requirements under PUC Subst. R. 25.24, 25.478, and 26.24 for Victims of Hurricane Katrina.¹ This rule would modify current credit and deposit requirements to allow those persons who were living in those areas of Alabama, Louisiana, and Mississippi affected by Hurricane Katrina that have been declared federal disaster areas and who are now residing in Texas to be able to establish satisfactory credit for electric and telephone service simply by demonstrating that they are a victim of the disaster and without having to pay a security deposit.

¹ TLSC and Texas ROSE have previously petitioned for emergency rules prohibiting the disconnection of electric service for nonpayment during a declared heat emergency, which posed an imminent threat to the health, safety, and welfare of residential customers. The Commission adopted such a rule in August of 1998 and again in August of 2000. This led to the adoption of the current prohibition on disconnection during extreme weather PUC Subst. R. 25.483(j).

I. Evacuation of Katrina Victims to Texas has created an Imminent Peril to Public Health, Safety, and Welfare

The recent destruction of large areas of the U.S. Gulf Coast by Hurricane Katrina has caused tens of thousands of displaced residents to be evacuated to Texas. Currently, Texas is housing 123,000 evacuees in 97 shelters around the state, and another 100,000 evacuees are estimated to be staying in hotels and motels around the state. Many of these evacuees will begin to arrive at shelters in the coming days and weeks once they have run out of funds.

Given the dire plight of most evacuees, what is needed is to begin transitioning evacuees from shelters, many of which are very crowded, to more suitable housing as soon as possible. Efforts are already underway to do this. The Internal Revenue Service has granted a waiver for the use of Housing Tax Credit units to be used for transitional housing for evacuees, with approximately 18,000 units having been identified so far. In addition, the state of Texas is working with the Texas Apartment Association to identify vacant units, which evacuees will be able to pay for with FEMA vouchers. However, more assistance is needed.

A major hurdle for evacuees trying to transition from shelters to more permanent housing will be deposits for electric and telephone service, which can equal two and a half months of service for electric and two months of service for telephone.² Many evacuees who might otherwise have had the means to pay a deposit have been cut off from bank accounts and other financial resources. Many of those on fixed incomes have been temporarily cut off from retirement and other benefits such as Social Security and Veteran's benefits. Finally, many of the evacuees are low-income and simply do not have the financial means to pay a service deposit now that they are homeless and unemployed.

² Petitioners have also filed a petition for emergency rulemaking with the Railroad Commission of Texas, asking that deposits for residential gas service be waived for victims of Hurricane Katrina.

The basis for adopting this emergency rule should be obvious. Hurricane Katrina is the largest natural disaster in U.S. history. It already has already had an enormous impact on millions of people and in turn, it will have a profound impact on Texas. Already, Governor Rick Perry has issued a disaster declaration for Texas, and Texas has been made eligible for federal disaster aid from the Federal Emergency Management Agency (FEMA) to assist the state and local governments in their efforts to assist evacuees. While state and local agencies, in conjunction with American Red Cross and other relief organizations, are doing their best to house and care for the evacuees in a dignified manner, it is clear that even under the best of conditions that these shelters cannot be used to house people on a long-term basis as they are not equipped to provide permanent housing. To attempt do so would be detrimental to the health and welfare of the evacuees and would create an imminent peril to the public health, safety, and welfare. Moreover, trying to house large numbers of evacuees in these temporary shelters for long periods of time will put a strain on local, state, and federal resources.

Most shelters around the state are already filled to capacity, and Governor Perry has asked FEMA to begin redirecting additional evacuees to shelters in other states. Waiving deposit requirements at this time and allowing evacuees to establish satisfactory credit simply by demonstrating their status as a victim of this disaster is a reasonable and necessary step to help these stranded people get out of the shelters and regain control of their lives.

II. Explanation of the Proposed Rules

The emergency rules being proposed would allow persons who previously resided in those areas of Alabama, Louisiana, and Mississippi affected by Hurricane Katrina to establish satisfactory credit when applying for residential electric or telephone service for the duration of these emergency provisions. The proposed rule is modeled after PUC rules that provide similar

protections for persons displaced by family violence.³ For purposes of this rule, applicants would be able to demonstrate that they have been a victim of Hurricane Katrina by providing proof of prior residency in an affected area of Louisiana, Mississippi, or Alabama, proof of application for federal, state, or local disaster assistance, or by showing that they are residing or have resided in a designated emergency shelter. For electric service, these provisions would apply to competitive and noncompetitive retail electric providers as well as unbundled utilities in noncompetitive areas of the state. For telephone service, these provisions would apply to both dominant certificated telecommunications utilities (DCTUs) and non-dominant certificated telecommunications utilities (NCTUs). In short, the rule would apply to all providers of residential electric and telephone service other than municipal utilities and cooperatives, and would require providers to notify potential customers at the time they apply for service of the ability to establish satisfactory credit and avoid paying a deposit and how to do so. Finally, the rule specifies the types of documentation that will substantiate victim status.

III. Statutory Authority

The Commission has the authority to adopt an emergency rule allowing victims of Hurricane Katrina to establish satisfactory credit for electric and telephone service without paying a security deposit pursuant to the following statutes:

- Section 14.002 of the Public Utilities Regulatory Act (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction;

³ See PUC Subst. R. 25.478(a)(3)(D) and 26.24(a)(1)(B)(iv).

- PURA § 32.001, which grants the Commission exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas outside a municipality and areas inside a municipality that has surrendered its jurisdiction to the Commission;
- PURA § 39.101, which grants the Commission authority to establish various, specific protections for retail customers;
- PURA § 39.102, which provides for retail customer choice;
- PURA § 64.004, which grants the Commission authority to establish various, specific protections for buyers of telecommunications services;
- PURA § 64.001, which establishes customer protection standards and confers on the Commission authority to adopt and enforce its customer protection rules; and
- PURA Chapter 17, Subchapters A, C, and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges; and
- Section 2001.034 of the Administrative Procedure Act, which provides that a state agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice.

III. Proposed Text of Rule

§25.24. Credit Requirements and Deposits.

- (a) Credit requirements for permanent residential applicants.
 - (1) (No change.)
 - (2) A residential applicant can demonstrate satisfactory credit using any one of the criteria listed in subparagraphs (A) through (~~C~~D) of this paragraph.

(A)-(C) (No change.)

(D) The residential applicant has been determined to be a victim of Hurricane Katrina who resided within affected areas within federally declared disaster areas within Louisiana, Mississippi, or Alabama, as evidenced by proof of prior residency within one of these affected areas, proof of application for or receipt of federal disaster assistance from the Federal Emergency Management Agency or other federal, state or local disaster assistance related to damages suffered in one of these affected areas, or proof of residing or having resided in a designated emergency shelter within Texas or one of these affected areas. All electric utilities shall notify all applicants for residential service of this provision. In determining whether an applicant qualifies as a victim of Hurricane Katrina for purposes of establishing satisfactory credit, the electric utility shall accept as proof any documentation submitted by the applicant from a federal, state, or local government agency or the American Red Cross that substantiates one of the conditions listed herein.

(3) (No change.)

(b)-(m) (No change.)

§25.478. Credit Requirements and Deposits.

(a) **Credit requirements for residential customers.**

(1)-(5) (No change.)

(6) An applicant seeking to establish residential service with a REP shall be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of Hurricane Katrina who resided within affected areas within federally declared disaster areas within Louisiana, Mississippi, or Alabama. This determination may be evidenced by proof of prior residency within one of these affected areas, proof of application for or receipt of federal disaster assistance from the Federal Emergency Management Agency or other federal, state or local disaster assistance related to damages suffered in one of these affected areas, or proof of residing or having resided in a designated emergency shelter within Texas or one of these affected areas. All REPs shall notify all applicants for residential service of this provision. In determining whether an applicant qualifies as a victim of Hurricane Katrina for purposes of establishing satisfactory credit, the REP shall accept as proof any documentation submitted by the applicant from a federal, state, or local government agency or the American Red Cross that substantiates one of the conditions listed herein.

(b)-(m) (No change.)

§26.24. Credit Requirements and Deposits.

(a) Dominant certificated telecommunications utility (DCTU).

(1) Credit requirements for permanent residential applicants.

(A) (No change.)

(B) A residential applicant can demonstrate satisfactory credit using one of the criteria listed in clauses (i) - ~~(iv)~~ of this subparagraph.

(i)-(iv) (No change.)

(v) Victims of Hurricane Katrina. The residential applicant has been determined to be a victim of Hurricane Katrina who resided within affected areas within federally declared disaster areas within Louisiana, Mississippi, or Alabama., as evidenced by proof of prior residency within one of these affected areas, proof of application for federal disaster assistance from the Federal Emergency Management Agency or other federal or state disaster assistance related to damages suffered in one of these affected areas, or proof of residing or having resided in a designated emergency shelter within Texas or one of these affected areas. All DCTUs shall notify all residential applicants of this provision. In determining whether an applicant qualifies as a victim of Hurricane Katrina for purposes of establishing satisfactory credit, the DCTU shall accept as proof any documentation submitted by the applicant from a federal, state, or local government agency or the American Red Cross that substantiates one of the conditions listed herein.

(C) (No change.)

(2)-(13) (No change.)

(b) Non-dominant certificated telecommunications utility (NCTU).

(1) Credit requirements for permanent residential applicants.

(A)-(B) (No change.)

(C) A residential applicant shall be deemed as having established satisfactory credit if the applicant has been determined to be a victim of Hurricane Katrina who resided within affected areas within federally declared disaster areas within Louisiana, Mississippi, or Alabama. This determination may be evidenced by proof of prior residency within one of

these affected areas, proof of application for federal disaster assistance from the Federal Emergency Management Agency or other federal or state disaster assistance related to damages suffered in one of these affected areas, or proof of residing or having resided in a designated emergency shelter within Texas or one of these affected areas. All NCTUs shall notify all residential applicants of this provision, In determining whether an applicant qualifies as a victim of Hurricane Katrina for purposes of establishing satisfactory credit, the NCTU shall accept as proof any documentation submitted by the applicant from a federal, state, or local government agency or the American Red Cross that substantiates one of the conditions listed herein.

IV. Conclusion

Officials are still uncertain as to the extent of loss of life and economic damage caused by Hurricane Katrina in Louisiana, Mississippi, and Alabama. Relief organizations, non-profit organizations and individuals are banding together to help those who have sought refuge in Texas. Over time, the emphasis on immediate assistance, such as emergency shelter and food, will shift to providing longer term assistance such as relocating the victims to permanent housing. Requiring providers of electric and telephone service to waive security deposit requirements for victims would remove a significant hurdle for individuals struggling to move out of shelters. We respectfully ask the Commission to adopt this rule on an emergency basis as soon as possible.

Respectfully submitted:

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