



Control Number: 32695



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DOCKET NO. 32695

**PETITION OF TXU ENERGY  
RETAIL COMPANY LP FOR  
DECLARATORY JUDGMENT OR,  
IN THE ALTERNATIVE, FOR  
APPROVAL OF A NEW TIME OF  
USE SCHEDULE**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**PETITION OF TXU ENERGY FOR DECLARATORY JUDGMENT OR, IN THE  
ALTERNATIVE, FOR APPROVAL OF A NEW TIME OF USE SCHEDULE**

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE PUBLIC  
UTILITY COMMISSION OF TEXAS:

NOW COMES TXU Energy Retail Company LP ("TXU Energy") and files this  
petition for declaratory judgment or, in the alternative, for Commission approval of a new  
retail time-of-use schedule to be implemented by the Electric Reliability Council  
of Texas ("ERCOT") in the TXU Electric Delivery service territory, and in support thereof would show  
the following:

**I. The Petitioner**

The party seeking a declaratory order or approval of a new time of use schedule is  
TXU Energy, whose principal office is located at 1601 Bryan Street, Dallas, Texas 75201.  
TXU Energy's authorized legal representative in this proceeding is:

Marc H. Burns  
Senior Counsel  
TXU Energy  
1005 Congress Avenue, Suite 750  
Austin, Texas 78701  
512.349.6409  
512.349.6471 (fax)

All pleadings, orders, and other documents in this proceeding should be served on  
TXU Energy's legal representative.

6-17-00  
-9  
10-21-00

## II. Jurisdiction

The Commission has jurisdiction over this Petition pursuant to Sections 14.002, and 39.151 of the Public Utility Regulatory Act ("PURA"), which is found at TEX. UTIL. CODE ANN. Title 2 (Vernon Supp. 2005).

## III. Summary of Petition

TXU Energy respectfully requests that the Commission issue a declaratory order that neither the Commission's rules nor ERCOT's Protocols require the Commission's approval of a new time of use schedule ("TOUS")<sup>1</sup> prior to its implementation. However, if the Commission disagrees with TXU Energy's assessment that Commission approval is unnecessary, and the Commission exercises authority to approve or reject a new TOUS, TXU Energy asks, in the alternative, that the Commission approve the TOUS described herein.

It is TXU Energy's understanding that neither TXU Electric Delivery nor ERCOT oppose the implementation of the proposed TOUS.<sup>2</sup> The sole issue is whether Commission approval of the new TOUS is necessary and, if so, obtaining that approval. Although TXU Energy makes no representation regarding whether or not ERCOT will contend that prior Commission approval of a new TOUS is required, TXU Energy does represent that ERCOT joins TXU Energy in seeking a declaration from the Commission of *whether* prior Commission approval of a new TOUS is required.

## IV. TXU Energy's New Time-of-Use Plan

On April 20, 2006, TXU Energy announced its new residential Time of Use Plan ("Plan"). Under the Plan, all hours are treated as off-peak, except the hours of 1:00 p.m. – 6:00 p.m. on weekdays during the months of May-October.<sup>3</sup> All other hours and all other times of year are off-peak. The Plan gives customers the opportunity to save money by

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<sup>1</sup> A TOUS is a schedule identifying the Time-of-Use period associated with each Settlement Interval. These schedules may include on-peak, off-peak, and shoulder periods. See ERCOT Load Profile Guides, Glossary at 124 (Dec. 1, 2005).

<sup>2</sup> See Exhibit B, for a letter from TXU Electric Delivery, expressing TXU Electric Delivery's willingness to implement the TOUS.

<sup>3</sup> Under the Plan, Memorial Day, July 4<sup>th</sup>, and Labor Day are treated as off-peak all day.

shifting their electricity usage from higher cost, “on-peak” hours to lower cost, “off-peak” hours. The Plan is also a great option for those customers whose electricity usage primarily occurs during the lower cost, “off-peak” hours. Off-peak prices will be substantially lower than the current price to beat and will apply to more than 90 percent of the hours of the year. TXU Energy hopes to implement the Plan by July 2006, so that customers can take advantage of the benefits of the Plan this summer.

The benefits of the Plan flow not only to the customer but also to the entire ERCOT system, by providing an economic incentive to customers to reduce load during peak hours of the day. Currently, essentially all residential customers in ERCOT pay average prices that do not take into account the individual consumer’s time of use of electricity. Consequently, consumers have little or no incentive to limit their consumption during, and/or to shift their consumption away from, peak hours. Under the Plan, on the other hand, consumers are presented with a price per kilowatt-hour difference between on-peak and off-peak that is sufficiently large enough in TXU Energy’s estimation to provide an incentive to consumers to conserve and/or shift energy use from peak demand hours to off-peak demand hours. Thus, the pricing of the Plan encourages peak demand time conservation and/or usage shifting by allowing customers to make informed choices about when and how much they will use electricity. However, the Plan proposes different peak and off-peak period definitions than those currently available through TXU Electric Delivery. For the Plan to work, a new TOUS must be implemented by ERCOT and the TXU Electric Delivery so that TXU Energy, the retailer, can accurately settle with ERCOT and bill customers on the Plan for electricity usage based on the actual time of use. If TXU Energy cannot settle with ERCOT based on time-of-use i.e. peak vs. off-peak, it will have little or no economic incentive to continue or expand the Plan, and the demand-side management effects of the Plan will not be distinguishable from other residential offers.

#### **V. TXU Energy’s Request for Declaratory Judgment**

The simple question posed by this Petition is whether Commission approval is required before ERCOT may implement a new TOUS. The Commission’s rules address the creation of new load profiles by providing that: “ERCOT *may* establish new load profiles at the

request of a REP or another person.”<sup>4</sup> The Commission’s rules do not specifically address the conditions under which ERCOT may establish a new TOUS. However, every Profile ID includes a TOUS code and the TOUS is therefore a part of the profile.<sup>5</sup>

The relevant ERCOT Protocol addresses the implementation of an additional TOUS, rather than a profile, and provides that:

Within every TDSP service territory, additional TOUS shall be implemented if approved by the PUCT. The implementation of any new or modified TOUS would be subject to the ERCOT and Texas SET change control process.<sup>6</sup>

On its face, the ERCOT Protocol does not require prior Commission approval. In fact, the ERCOT Protocol does not even address the question of whether prior Commission approval is required. Instead, the Protocol only addresses what ERCOT will do with respect to implementing a TOUS that has been approved by the Commission, which is that ERCOT shall implement a new TOUS if the Commission has approved the new TOUS. The Protocol is silent with respect to whether or not ERCOT can or may implement a TOUS that has not been previously approved by the PUCT. Thus, TXU Energy submits that the Protocol is consistent with the Commission’s rule that *permits* ERCOT to establish new profiles, and therefore new TOUSs, at the request of a REP or another person.

However, the Protocol has not always been interpreted by ERCOT Staff in this way and there is now confusion and a difference of opinion as to whether the Commission must approve a new TOUS before ERCOT *may* implement it. Notably, ERCOT’s Load Profiling Guides state that:

For use within an investor-owned TDSP service territory, any new TOU schedule requires PUCT approval....Any requested TOU schedule failing to have appropriate regulatory approval shall not be implemented by ERCOT.<sup>7</sup>

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<sup>4</sup> P.U.C. SUBST. R. 25.131(e) (unless otherwise noted, all emphasis is supplied).

<sup>5</sup> See ERCOT Profile Decision Tree. Transmission and Distribution Providers are directed to assign to a customer profile the code NOTOU, if the customer is not served under a TOUS.

<sup>6</sup> ERCOT Protocol § 18.7.1.4(2).

<sup>7</sup> ERCOT Load Profiling Guides § 16.1.2. The Commission approval process is also noted in an informational document developed for Competitive Retailers interested in Time-of-Use Schedules. “Time-of-Use Schedules in Competitive Choice Areas of ERCOT,” Profiling Working Group, January 2004, see <http://www.ercot.com/mktinfo/loadprofile/index.html>.

TXU Energy submits that neither the Commission's rules, nor ERCOT's Protocols, require prior Commission approval of a new TOUS before implementation by ERCOT. Read together, the Commission's rules and ERCOT's Protocols both *require* ERCOT to implement a new TOUS that has been approved by the Commission and *allow* ERCOT to implement a new TOUS on the request of a REP or another person. TXU Energy has announced its intention to make the Plan available to customers by July 2006. However, without a new TOUS to match that Plan, TXU Energy will not be able to offer the Plan to customers or accurately settle the Plan. TXU Energy would not be able to offer the Plan to customers because it would not be able to receive meter data consistent with the peak and off peak period definitions. Likewise, TXU Energy could not receive proper settlement. If TXU Energy attempted to use a different TOUS such as TOU1 or TOU2, both of which are available in TXU Electric Delivery territory and inconsistent with the Plan, the result would be overcharging participants for their usage and overcharging TXU Energy for its load due to the fact that neither TOU1 nor TOU2 reflect the on-peak and off-peak periods of the Plan.

TXU Energy submits that there is genuine confusion as to whether prior Commission approval is required. To eliminate the confusion regarding whether or not prior Commission approval is required before the implementation of the TOUS needed for implementation of the Plan, TXU Energy asks that the Commission grant declaratory judgment that neither the Commission's rules nor ERCOT's Protocols require prior Commission approval of a new TOUS before implementation by ERCOT.

#### **VI. In the Alternative, TXU Energy Requests PUC Approval of a New TOUS**

In the alternative, and if the Commission determines that the law requires prior Commission approval of a new TOUS, TXU Energy requests that the Commission approve a new TOUS, Time-of-Use Schedule TOU13, and direct ERCOT to implement it pursuant to the requirements of the ERCOT Protocols and the ERCOT Load Profiling Guides.<sup>8</sup> A copy of the new TOUS is attached as Exhibit A.<sup>9</sup>

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<sup>8</sup> In particular, Load Profiling Guide § 16.1.2.1.

<sup>9</sup> See Time-of-Use Schedule: TOU13.

**VII. Request for Relief**

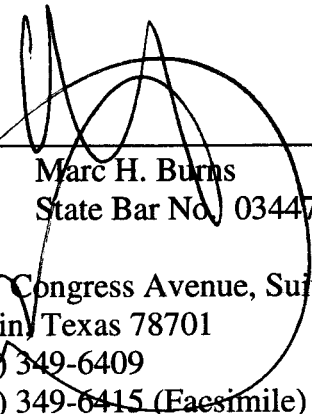
TXU Energy requests that the Commission interpret P.U.C. SUBST. R. 25.131(e) and ERCOT Protocol § 18.7.1.4(2) and find that neither the Commission’s rules, nor ERCOT’s Protocols, require prior Commission approval of a new TOUS before implementation by ERCOT. TXU Energy asks that the Commission clarify that the Commission’s rules and ERCOT’s Protocols *require* ERCOT to implement a new TOUS that has been approved by the Commission, and *allow* ERCOT to implement a new TOUS on the request of a REP or another person.

TXU Energy submits that expeditious resolution of this issue is necessary to ensure accurate settlement at ERCOT and accurate end user customer billing. Therefore, TXU Energy is amenable to whatever procedure the Commission determines will result in the most rapid resolution of this issue. Particularly because there are no disputed facts to be resolved, TXU Energy asks that the question be put before the Commissioners as soon as possible.

If however, the Commission declines to issue a declaratory judgment as requested, TXU Energy requests that the Commission expeditiously approve the TOUS Plan attached to this Petition as Exhibit A. TXU Energy also requests such other and further relief to which it shows itself to be entitled.

**Respectfully submitted,**

**TXU LEGAL**

By:   
\_\_\_\_\_  
Marc H. Burns  
State Bar No. 03447480

1005 Congress Avenue, Suite 750  
Austin, Texas 78701  
(512) 349-6409  
(512) 349-6415 (Facsimile)

**ATTORNEYS FOR TXU ENERGY RETAIL  
COMPANY LP**

**Time-Of-Use Schedule: TOU03**

Time-Of-Use Schedule Code TOU03 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	May 15 - October 15		All Other Days	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	11am-7pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU03, July 4th and Labor Day are Holidays and are considered OffPeak.

If July 4th occurs on Sunday, the following Monday shall be considered OffPeak.

Note: TOU03 is presently offered only in the CenterPoint Energy TDSP service area.

**Time-Of-Use Schedule: TOU04**

Time-Of-Use Schedule Code TOU04 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	July - October		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	1pm-7pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU04, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU04 is presently offered only in the AEP TX Central TDSP service area.

**Time-Of-Use Schedule: TOU05**

Time-Of-Use Schedule Code TOU05 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	July & October		August & September		All Other Months	
	Weekday	Weekend	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	3pm-5pm	-	-	-
OnPeak	1pm-7pm	-	1pm-3pm, 5pm-7pm	-	-	-
MidPeak	-	-	-	-	-	-
OffPeak	All Other Hours		All Other Hours		All Hours	

For TOU05, July 4th and Labor Day are Holidays and are considered OffPeak.

**Time-Of-Use Schedule: TOU06**

Time-Of-Use Schedule Code TOU06 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	June - September		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	1pm-7pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU06, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU06 is presently offered only in the AEP TX North TDSP service area.



**Time-Of-Use Schedule: TOU07**

Time-Of-Use Schedule Code TOU07 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	June - September		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	3pm-7pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU07, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU07 is presently offered only in the AEP TX Central and AEP TX North TDSP service areas.

**Time-Of-Use Schedule: TOU08**

Time-Of-Use Schedule Code TOU08 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	June - September		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	2pm-8pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU08, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU08 is presently offered only in the AEP TX Central and AEP TX North TDSP service areas.

**Time-Of-Use Schedule: TOU09**

Time-Of-Use Schedule Code TOU09 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	June - September		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	1pm-8pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU09, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU09 is presently offered only in the AEP TX Central and AEP TX North TDSP service areas.

**Time-Of-Use Schedule: TOU10**

Time-Of-Use Schedule Code TOU10 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	June - September		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	4pm-8pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU10, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU10 is presently offered only in the AEP TX North TDSP service area.

**Time-Of-Use Schedule: TOU11**

Time-Of-Use Schedule Code TOU11 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	May - October		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	Noon-8pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU11, Memorial Day, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU11 is presently offered only in the TNMP TDSF service area.

**Time-Of-Use Schedule: TOU12**

Time-Of-Use Schedule Code TOU12 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	All Months	
	Weekday	Weekend
SuperPeak	-	-
OnPeak	Noon-8pm	-
MidPeak	-	-
OffPeak	All Other Hours	

Note: TOU12 is presently offered only in the TNMP TDSF service area.

**Time-Of-Use Schedule: TOU13**

Time-Of-Use Schedule Code TOU13 shall only be assigned to ESI IDs served through a TOU meter programmed to store kWh data exactly as listed in the following schedule:

	May - October		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	1 pm - 6 pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

For TOU13, Memorial Day, July 4th and Labor Day are Holidays and are considered OffPeak.

Note: TOU13 is presently offered only in the TEP Electric Delivery TDSF service area.

**TOU Schedules to be Used in Assigning the Time-Of-Use Schedule Codes**

Time-Of-Use Schedule Codes other than NOTOU shall only be assigned to ESI IDs with a Meter Data Type of MW or for which kWh data will be submitted for the specified periods.

Presently, within every TDSP service area, Time-Of-Use schedules can be developed based on agreement between the TDSP and the customer. However, the customer must agree to the Time-Of-Use schedule in advance of the TDSP implementing the SEI charge control program.

**Time-Of-Use Schedule: None**

Time-Of-Use Schedule Code NOTOU shall be assigned to all ESI IDs not served under a Time-Of-Use schedule.

**Time-Of-Use Schedule: TOU01**

Time-Of-Use Schedule Code TOU01 shall only be assigned to ESI IDs served through a TDSP meter programmed to store kWh data exactly as listed in the following schedule.

	June - September		All Other Months	
	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-
OnPeak	Noon-8pm	-	-	-
MidPeak	-	-	-	-
OffPeak	All Other Hours		All Hours	

Note: TOU01, MidPeak and SuperPeak are considered OnPeak.

Note: TOU01 is presently offered only in the TXU Electric Delivery TDSP service area.

**Time-Of-Use Schedule: TOU02**

Time-Of-Use Schedule Code TOU02 shall only be assigned to ESI IDs served through a TDSP meter programmed to store kWh data exactly as listed in the following schedule.

	December - March		April, October, & November		May & September		June - August	
	Weekday	Weekend	Weekday	Weekend	Weekday	Weekend	Weekday	Weekend
SuperPeak	-	-	-	-	-	-	2pm-8pm	-
OnPeak	-	-	-	-	2pm-8pm	-	10am-2pm, 8pm-10pm	2pm-10pm
MidPeak	6am-Noon, 6pm-10pm	-	-	-	10am-2pm, 8pm-10pm	2pm-10pm	8am-10am, 10pm-Midnight	10am-2pm, 10pm-Midnight
OffPeak	All Other Hours							

Note: TOU02 is presently offered only in the TXU Electric Delivery TDSP service area.

**TXU Electric Delivery**

500 N. Akard Street  
Dallas, Texas 75201  
Tel: 214-486-4981  
Fax: 214-486-3221  
Mike.Sherburne@txued.com

**J. Michael Sherburne**

Rates Manager  
Rates and Regulatory

May 3, 2006

Ms. B. J. Flowers  
Retail Advocacy  
TXU Energy  
1717 Main Street  
Dallas, TX 75201

Dear Ms. Flowers:

I am in receipt of your e-mail regarding a new ERCOT Time-of-Use Profile (TOU13) to be used by TXU Energy in Electric Delivery's service area. Electric Delivery has reviewed the profile and is able to support its use. The earliest date that Electric Delivery will be able to send usage data and transactions using the new TOU13 profile is June 15, 2006.

I would like to advise you that any set-up costs and/or system change costs incurred by Electric Delivery in support of the use of the new profile will be billed to TXU Energy.

If you have any questions, please do not hesitate to call me or your CR Relations representative.

Sincerely,

