

ORDINANCE NO. 01-39

AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS, TO PROVIDE FOR THE REGISTRATION OF RETAIL ELECTRIC PROVIDERS, REQUIRING LOCAL REGISTRATION OF RETAIL ELECTRIC PROVIDERS PURSUANT TO SECTION 39.358 OF THE TEXAS UTILITIES CODE; PROVIDING FOR A REGISTRATION FEE; PROVIDING FOR THE SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE WITH THIS ORDINANCE OR CHAPTER 39 OF THE TEXAS UTILITIES; AND PROVIDING A SEVERABILITY CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, in the 76th Legislative Session, the Texas Legislature adopted Senate Bill 7 and thereby set in motion electric deregulation, and the competitive retail electricity market is scheduled to open in Texas on January 1, 2002; and

WHEREAS, under the provisions of Senate Bill 7 and the rules of the Public Utility Commission of Texas ("PUC") adopted to implement Senate Bill 7, customers will deal directly with a retail electric provider ("REP") in order to obtain electricity for their premises and accounts; and

WHEREAS, Section 39.358 of the Texas Utilities Code specifically provides for local registration of REPs, as well as the assessment of a reasonable administrative fee for such registration; and

WHEREAS, Section 39.358 of the Texas Utilities Code further provides for the suspension or revocation of a REP's registration and operation within a city for significant violations of Chapter 39 of the Texas Utilities Code or the rules adopted by the PUC to implement Senate Bill 7; and

WHEREAS, registration will facilitate the City of Commerce having accurate information concerning each REP that will be serving Commerce residents and businesses in the event that Commerce customers experience problems with a REP; and

WHEREAS, the City Council of the City of Commerce, Texas, hereby finds that REPs should be registered by the City of Commerce and that an initial administrative fee of \$25 should be charged for each REP registration and that similar fees should be assessed annually; and

WHEREAS, the City Council also finds it in the best interest of the City of Commerce and its citizens to allow the City to monitor REPs to ensure compliance with PUC certification and timely resolution of customer complaints; and

WHEREAS, the City Council finds that the REP serving as electric provider for the City of Commerce's electric accounts should be exempt from registration requirements unless that REP is serving end use customers within municipal limits other than the municipality and that the REP serving the municipality should be exempt from the registration fee; and

WHEREAS, the City Council further finds that a REP should be permitted to appeal to the City Council the decision of the City Manager to revoke registration.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS, THAT:

Section 1. Registration, Fees, Annual Renewal.

- (a) Registration. No retail electric provider, without first registering with the municipality and then paying the registration fee required by this section, may serve residents of the municipality.
- (b) Form. Registration under this section shall be submitted on a form provided by the municipality. The registration shall be accompanied by any additional documents required therein or in rules issued by the city manager. These forms shall include, but not be limited to, the following:
 - (1) The name and legal status of the registrant, including any affiliates who are required to register pursuant to this section;
 - (2) The name, address and telephone number of an officer, agent or employee who will serve as the contact point for the registrant;
 - (3) The name(s), address(es), and telephone number(s) of the individual(s) designated to receive, process, and resolve customer complaints.
- (c) Registration Fee. Each retail electric provider required to register under this section shall pay to the municipality an initial registration fee in the amount of \$25. The subsequent annual registration fee shall be initially set at \$20 but may be changed from time to time by the City Manager based upon the City Manager's assessment of the amount necessary to recover all of the municipality's costs incurred in processing the registration.
- (d) Registration Fee Requirements. Each retail electric provider registered in the municipality shall pay an annual registration fee comprised of administrative costs as set forth in subsection (c) for maintenance of its registration.
 - (1) Unless otherwise specified, the annual registration fee shall be paid to the municipality by January 31 of each year.
 - (2) For good cause, the municipality may extend for not to exceed one month, the time for making payment.
 - (3) No acceptance by the municipality of any payment hereunder shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the municipality may have for additional sums payable.
 - (4) The payments hereunder are not a payment in lieu of any tax, fee or other assessment except as specifically provided in this section, or as required by applicable law.
 - (5) Notwithstanding the foregoing, in the event a registrant that is obligated to pay a fee ceases to provide service for any reason, such registrant shall make a final payment of any amounts owed to the municipality within ninety (90) calendar days of the date its operations in the municipality cease.
- (e) Exemption. The REP serving as electric provider for the City of Commerce's municipal electric needs is exempt from the filing requirement during the term of service unless that REP serves

end users within municipal limits other than the municipality. The REP serving municipal accounts is exempt from the registration fee.

Section 2. Monitoring

- (a) The municipality may, in its discretion, monitor the registration and certification status of an REP. Monitoring may include:
 - (1) Confirming with the PUC every six (6) months that certification is current; and
 - (2) Referring all customer complaints to both the REP and the PUC.
- (b) All registered REPs must file a quarterly report regarding each complaint from a resident of Commerce until resolution is achieved. Such report shall include:
 - (1) the name and address of the complainant;
 - (2) the date the complaint originated;
 - (3) the nature of the complaint;
 - (4) resolved matters; and
 - (5) unresolved matters.

Section 3. Penalties.

- (a) Any registrant who has not been granted an extension of time for remittance of a fee due and who fails to remit any fee imposed under subsection (d) of Section 1 prior to January 31 shall pay a penalty of \$10.
- (b) Any registrant who has not been granted an extension of time for remittance of a fee due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of \$15 plus the amount of the fee and the amount of the penalty first imposed.
- (c) Any REP that remains delinquent in the payment of annual registration fees after March 31 shall be subject to having registration suspended.

Section 4. Suspension and Revocation.

- (a) The municipality may suspend or revoke a retail electric provider's registration and operation in the municipality for significant violations of PURA Chapter 39 or the rules of the Public Utility Commission of Texas adopted under that chapter, or for the retail electric provider's failure to comply with any provision of this section.
- (c) Significant violations include, but are not limited to, the following:
 - (1) Providing false or misleading information to the PUCT or the City of Commerce;

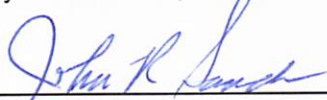
- (2) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive business practices or unlawful discrimination;
 - (3) Switching, or causing to be switched, the retail electric provider for a customer without first obtaining the customer's permission;
 - (4) Billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill;
 - (5) Failure to maintain continuous and reliable electric service to its customers pursuant to this section;
 - (6) Failure to maintain the minimum level of financial resources as required by the PUCT;
 - (7) Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;
 - (8) Failure to timely remit payment for invoiced charges to a transmission and distribution utility pursuant to the terms of the statewide standardized tariff adopted by the PUCT;
 - (9) Failure to observe any scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator of the transmission grid;
 - (10) A pattern of not responding to PUCT or City of Commerce inquiries or customer complaints in a timely fashion;
 - (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
 - (12) Conviction of a felony by the registrant or principal employed by the registrant, of any crime involving fraud, theft or deceit related to the registrant's service;
 - (13) Not providing retail electric service to customers within 24 months of the certificate being granted by the PUCT;
 - (14) Failure to serve as a provider of last resort if required to do so by the PUCT pursuant to PURA § 39.106(f); and
 - (15) Failure, or a pattern of failures to meet the conditions of this ordinance or PUCT rules or orders.
- (d) Initiation of Revocation Process.
- (1) Upon information and belief, the City Manager or a designated representative may give notice to a registrant that, based upon alleged or perceived violations of this ordinance, registration is to be revoked in not less than 30 days from the date the notice is deposited in the U.S. Mail. The registrant will have not less than 10 days from the date the notice is mailed to respond to the notice and show why revocation should not occur.
 - (2) Notice. The notice letter shall specifically identify the alleged or perceived violations and indicate the scheduled date for revocation.

- (3) Not less than 7 days prior to the date scheduled for revocation, the City Manager or his designated representative will issue a written ruling that revokes the registration, dismisses the action or extends the process of review of registration according to an identified schedule.
- (4) Appeal. If registration is to be revoked, a registrant may file an appeal to the City Council with the City Manager. If the appeal is filed prior to the date scheduled for revocation, the action will be stayed for 30 days to provide an opportunity for the City Council to consider the appeal. If the Council agrees to entertain the appeal, the registrant may submit written materials to the Council prior to the Council's consideration of the matter in a noticed public hearing. However, oral presentations related to the appeal are a matter of Council discretion and not a matter of the REP's right.

Section 5 Severability. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

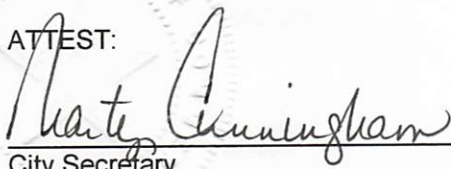
Section 6. Effective Date. This Ordinance shall become effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 18th day of December, 2001.



MAYOR

ATTEST:



City Secretary