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DOCKET NO. 56248

SETTLEMENT AGREEMENT AND	§	PUBLIC UTILITY COMMISSION
REPORT TO THE COMMISSION	§	
REGARDING VALUE BASED BRANDS,	§	OF TEXAS
LLC’S VIOLATIONS OF 16 TAC	§	
§ 25.475, RELATED TO GENERAL	§	
RETAIL ELECTRIC PROVIDER	§	
REQUIREMENTS AND	§	
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RESIDENTIAL AND SMALL	§	
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SETTLEMENT AGREEMENT AND REPORT TO THE COMMISSION

The Staff of the Public Utility Commission of Texas (Commission) and Value Based Brands LLC dba 4Change Energy (VBB) (collectively, the parties) enter into this settlement agreement and file this report to the Commission under 16 Texas Administrative Code (TAC) § 22.246(h)(1). The agreement resolves and concludes Commission Staff’s investigation of VBB concerning violations of 16 TAC § 25.475, related to requirements for issuing contract expiration notices.

The parties agree as follows:

1. The parties stipulate to the assertions and agree to the facts contained in the agreement and respectfully request entry of a Commission order consistent with the parties’ agreed proposed order, attached below.¹
2. The Commission has jurisdiction over this matter under PURA² §§ 14.051, 14.054 15.023, 15.024 and 16 TAC §§ 25.475(e) and 25.475(e)(1)(A).³
3. VBB is a limited liability company registered with the Texas secretary of state under filing number 802552914.

¹ See Attachment A.

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

³ Herein, citation to 16 TAC § 25.475(e) refers to the rule as it existed prior to the Sept. 1, 2021 effective date of PURA § 39.112(b) as amended by Acts 2021, 87th Leg., R.S., ch 132 (HB 16), § 2. Citation to 16 TAC § 25.475(e)(1)(A) refers to the rule as it existed on and after the effective date of PURA § 39.112(b).

4. VBB is an Option 1 retail electric provider (REP) registered with the Commission under REP certificate number 10041.
5. On August 18, 2023, Commission Staff notified VBB of the results of its investigation and provided information about VBB's opportunity to explain its activities and rights to a hearing.
6. VBB cooperated with Commission Staff's investigation.

Violations related to contracts entered into before September 1, 2021

7. Under 16 TAC § 25.475(e), for contracts entered into prior to September 1, 2021, the REP shall send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration, for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer.
8. Between May 14, 2022, and August 11, 2022, VBB violated 16 TAC § 25.475(e), 9,947 times by failing to timely issue a contract expiration notice for customer contracts entered prior to September 1, 2021.

Violations related to contracts entered into on or after September 1, 2021

9. Under 16 TAC § 25.475(e)(1)(A), for fixed rate contracts entered into after September 1, 2021, the REP must provide the customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the fixed rate contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the fixed rate contract period.
10. Between May 14, 2022, and August 11, 2022, VBB violated 16 TAC § 25.475(e)(1)(A), 995 times by failing to timely issue contract expiration notices for customer contracts entered on or after September 1, 2021.

Corrective Action

11. VBB asserts that the violations resulted from the suppression of contract expiration notices from a cohort of customers who consented to receive notices electronically. The

suppression of these notices was not intentional and occurred due to an IT project with a customer service focus. Specifically, VBB maintains that the code change was intended to improve the customer experience and to suppress any emailed contract expiration notices for only those customers who had proactively renewed on a new plan during the current renewal window. The code change initially had an unintended broader scope that included in the suppression any customer who had renewed at any point in the customer life cycle instead of only including those proactive renewals during the current expiration window.

12. VBB asserts that it exceeded the requirements of 16 TAC § 25.475(e)(1)(C) for impacted customers who rolled onto a default renewal product at contract expiration. First, VBB issued five contract expiration notices when 16 TAC § 25.475(e)(1)(C) and (e)(1)(A) require that customers be sent three contract expiration notices. Second, 16 TAC § 25.475(e)(2)(C)(v and vi) provides that only the final notice is required to provide the TOS, EFL and YRAC for the month-to-month default renewal product while VBB provided these contract documents with all five notices. Next, 16 TAC § 25.475(e)(2)(C)(vi) provides that only the final notice is required to disclose that if the customer takes no action, service will continue on the default renewal month-to-month product. VBB included this disclosure in all five notices. Finally, 16 TAC § 25.475(e)(2)(C)(vii) provides that only the final notice is required to include a statement that the default service is month-to-month and may be cancelled at any time with no fee.⁴ VBB included this disclosure in all five notices.
13. VBB issued over \$1.4 million in credits and refunds to affected customers whose contracts expired and were charged a higher variable rate as a result. VBB identified the issue itself and initiated efforts to make customers whole through these refunds in compliance with 16 TAC § 25.475(e)(1)(C) on its own initiative prior to any outreach by Commission Staff.
14. VBB asserts it has implemented the following measures to prevent future violations of 16 TAC §§ 25.475(e) and 25.475(e)(1)(A) from occurring, and will continuously work to implement measures designed to prevent errors going forward:

⁴ This information was bolded and provided in 12-point font (i.e., larger than the 10-point font contained in the contracting requirements of 16 TAC §25.475(c)(2)(A)).

- a. Processing of contract expiration notices has been moved to a more robust and reliable SaaS platform that identifies real-time anomalies between customers that are expected to receive a contract expiration notice and notices that are actually sent.
- b. In addition to the more robust system controls, a manual weekly audit is also conducted as a redundancy to verify that the emails sent match the targeted segment. If there is any discrepancy further investigation is initiated.
- c. Expiration segments (i.e., the group of customers whose contracts are expiring within each month) along with detailed email activities (sends, deliveries, opens, clicks, bounces, etc.) are consolidated into a comprehensive Tableau Dashboard that provides a detailed view of performance metrics that can be viewed down to the customer level which assist in identifying suppression of notices.

Administrative Penalties

15. Under PURA § 15.023, the Commission is authorized to impose administrative penalties against VBB for violations of PURA or rules adopted under PURA.
16. Under 16 TAC § 25.8(b)(2)(B), all violations not specifically enumerated as a Class C or Class A violation are Class B violations. The maximum penalty for a Class B violation may not exceed \$5,000 per violation per day.
17. The violations described herein are Class B violations under 16 TAC § 25.8(b)(2)(B).
18. Commission Staff recommends, and VBB agrees to pay, an administrative penalty of \$93,007 in resolution of the violations discussed in this agreement and in the attached proposed order.
19. The parties agree that the recommended administrative penalty of \$93,007 is reasonable.
20. In support of the agreed administrative penalty, Commission Staff provides the following analysis of factors to be considered when determining a reasonable and appropriate administrative penalty, as required under PURA § 15.023(c) and 16 TAC § 22.246(c)(3):
 - a. *The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the*

health, safety, or economic welfare of the public. The violations are serious in nature because they create a potential hazard to the economic welfare of the public. Without being informed of impending contract expiration, customers are at risk of falling into variable rate plans once their contracts expire which are often higher priced plans. Furthermore, customers have a right to be informed of the date they may switch to another provider without an early termination penalty.

- b. *The economic harm to property or the environment caused by the violation.* Commission Staff is not aware of economic harm to property, or the environment caused by the violation.
- c. *The history of previous violations.* Commission Staff is not aware of a history of similar violations involving VBB.
- d. *The amount necessary to deter future violations.* Commission Staff finds that the recommended administrative penalty is the appropriate amount to deter future violations of this nature.
- e. *Efforts to correct the violations.* VBB indicates that they have taken the following steps to correct the violations:
 - A. Processing contract expiration notices has been moved to a more robust and reliable SaaS platform that identifies real-time anomalies between customers that are expected to receive a contract expiration notice and notices that are actually sent.
 - B. A manual weekly audit is conducted as a redundancy to verify that the emails sent match the targeted segment. If there is any discrepancy further investigation is initiated.
 - C. Expiration segments along with detailed email activities (sends, deliveries, opens, clicks, bounces, etc.) are consolidated into a comprehensive Tableau Dashboard that provides a detailed view of performance metrics that can be viewed down to the customer level.

- f. *Any other matter that justice may require.* Commission Staff is not aware of any other matter that should be considered in the determination of a reasonable administrative penalty.

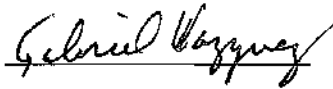
Settlement Terms

21. VBB agrees to maintain compliance with statutes and Commission rules related to issuance of contract expiration notices.
22. This agreement resolves all claims related to Commission Staff's investigation of VBB concerning violations of 16 TAC §§ 25.475(e) and 25.475(e)(1)(A), as described in this agreement and in the attached proposed order.
23. Unless specifically provided for in this agreement, VBB waives any notice and procedures that might otherwise be authorized or required in this proceeding.
24. Nothing in this agreement shall limit Staff's ability to perform its enforcement functions as set forth in PURA and the Commission rules.
25. 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.
26. The parties contemplate that this agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). If, however, the Commission issues an order that 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 filing a written notice in the proceeding within seven calendar days of the date the Commission files the

final order acting on this agreement. Failure to file a notice of withdrawal within the specified time period constitutes acceptance of the material changes to this agreement made by the Commission.

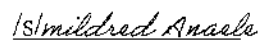
27. This agreement is the final and entire agreement between the parties regarding Commission Staff's investigation of VBB concerning the violations described herein and supersedes all other communications among the parties or their representatives regarding its terms.
28. Each person executing this agreement represents that he or she has been authorized to sign on behalf of the party represented. Copies of signatures, as well as electronic signatures, are valid to show execution. If this agreement is executed in multiple counterparts, each is deemed an original, but all of which will constitute the same agreement.
29. VBB warrants that it has read this agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the parties by their authorized representatives designated below.



Date: 2/26/2024

Gabriel Vazquez
Vice President & Associate General Counsel
Value Based Brands LLC dba 4Change Energy
6555 Sierra Dr.
Irving, TX 75039



Date: 2/27/24

Mildred Anaele
Staff Attorney
Division of Compliance and Enforcement
Public Utility Commission of Texas

**ATTACHMENT A:
AGREED PROPOSED ORDER**

DOCKET NO. 56248

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PROPOSED ORDER

This Order addresses the agreement between Commission Staff and Value Based Brands LLC dba 4Change Energy (VBB) relating to Commission Staff's investigations of VBB for violations of 16 Texas Administrative Code (TAC) § 25.475,¹ related to requirements for issuing contract expiration notices. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that VBB pay to the Commission an administrative penalty of \$93,007. VBB agrees to pay the administrative penalty recommended by Commission Staff. The Commission approves the administrative penalty to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Respondent

1. VBB is a limited liability company registered with the Texas secretary of state under filing number 802552914.
2. VBB is registered with the Commission as an Option 1 retail electric provider (REP) under REP certificate number 10041.

¹ Herein, citation to 16 TAC § 25.475(e) refers to the rule as it existed prior to the Sept. 1, 2021 effective date of PURA § 39.112(b) as amended by Acts 2021, 87th Leg., R.S., ch 132 (HB 16), § 2. Citation to 16 TAC § 25.475(e)(1)(A) refers to the rule as it existed on and after the effective date of PURA § 39.112(b).

Violations related to contracts entered into before September 1, 2021

3. As a REP, for contracts entered into prior to September 1, 2021, VBB is required to send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration, for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer.
4. Between May 14, 2022, and August 11, 2022, VBB failed to timely issue 9,947 contract expiration notices for customer contracts entered prior to September 1, 2021.

Violations related to contracts entered into on or after September 1, 2021

5. As a REP, for fixed rate contracts entered into after September 1, 2021, VBB is required to provide the customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the fixed rate contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the fixed rate contract period.
6. Between May 14, 2022, and August 11, 2022, VBB failed to timely issue 995 contract expiration notices for customer contracts entered on or after September 1, 2021.

Notice

7. On August 18, 2023, Commission Staff provided VBB with notice of the results of its investigation and provided information about VBB's right to a hearing and an opportunity to explain its activities.

Evidentiary Record

8. In Order No. ___ filed on _____, 2024, the administrative law judge admitted into evidence the application for approval of a settlement agreement and all attachments filed on February 28, 2024.

Agreement

9. VBB cooperated with Commission Staff's investigation.
10. VBB acknowledges the bases for the violations detailed in this Order.

11. On February 28, 2024, Commission Staff and VBB entered into an agreement for final settlement of the violations described in this Order. Commission Staff recommended, and VBB agreed to, the following:
 - a. VBB will pay an administrative penalty of \$93,007.00.
 - b. VBB has implemented the following protective measures to prevent violations of 16 TAC §§ 25.475(e) and 25.475(e)(1)(A) from occurring, and will continuously work to implement measures designed to prevent errors going forward:
 1. Processing contract expiration notices has been moved to a more robust and reliable SaaS platform that identifies real-time anomalies between customers that are expected to receive a contract expiration notice and notices that are actually sent.
 2. A manual weekly audit is conducted as a redundancy to verify that the emails sent match the targeted segment. If there is any discrepancy further investigation is initiated.
 3. Expiration segments along with detailed email activities (sends, deliveries, opens, clicks, bounces, etc.) are consolidated into a comprehensive Tableau Dashboard that provides a detailed view of performance metrics that can be viewed down to the customer level.
12. On February 28, 2024, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

Seriousness of Violations

13. The violations described herein are serious in nature. VBB's failure to send contract expiration notices can create a hazard or potential hazard to the economic welfare of the public. Without being informed of impending contract expiration, customers are at risk of being served on a variable rate plan once their contracts expire which are often higher priced plans. Furthermore, customers have a right to be informed of the date they may switch to another provider without an early termination penalty. The contract expiration notice is a critical consumer protection communication from the REP.

Compliance History and Deterrence of Future Violations

14. Commission Staff records do not indicate a history of investigations of VBB involving similar violations.
15. The agreed administrative penalty of \$93,007 is sufficient and necessary to deter future violations.

Informal Disposition

16. More than 15 days have passed since completion of all notice requirements.
17. No person filed a protest or motion to intervene.
18. VBB and Commission Staff are the only parties to this proceeding.
19. No party requested a hearing, and no hearing is needed.
20. Commission Staff recommended approval of the agreement.
21. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Commission has jurisdiction over this matter under PURA §§ 14.051, 14.054 15.023, 15.024 as well as 16 TAC §§ 25.475(e) and 25.475(e)(1)(A).
2. VBB is a REP as that term is defined under PURA § 17.002(6) and 16 TAC § 25.5(114).
3. Between May 14, 2022, and August 11, 2022, VBB violated 16 TAC § 25.475(e) 9,947 times by failing to timely issue a contract expiration notice for customer contracts entered prior to September 1, 2021.
4. Between May 14, 2022, and August 11, 2022, VBB violated 16 TAC § 25.475(e)(1)(A), 995 times by failing to timely issue contract expiration notices for customer contracts entered on or after September 1, 2021.
5. Under PURA § 15.023, the Commission has authority to impose administrative penalties against VBB for violations of PURA and Commission rules.
6. Under 16 TAC § 25.8(b)(2)(B), the violations of 16 TAC §§ 25.475(e) and 25.475(e)(1)(A) are Class B violations.

7. Under 16 TAC § 25.8(b)(2)(A), the Commission may impose a penalty against VBB of up to \$5,000 per violation per day for a Class B violation.
8. VBB was provided proper notice of Commission Staff's investigation into this matter, the results of the investigation, information about VBB's right to a hearing, and an opportunity to explain its activities, as required by 16 TAC §§ 22.241(a)(2) and 22.246(f)(2).
9. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
10. The Commission processed this docket in accordance with the requirements of applicable statutes and Commission rules.
11. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

1. The Commission approves the administrative penalty to the extent provided in this Order.
2. VBB must comply with the terms of the agreement and this Order.
3. VBB must pay an administrative penalty in the amount of \$93,007.00 to the Commission on or before 30 calendar days after the date the Commission signs this Order. Payment of the administrative penalty may be made by check payable to the Public Utility Commission of Texas. The check must reference this docket and must be sent to the following address:

Public Utility Commission of Texas
ATTN: Fiscal Services
PO Box 13326
Austin, TX 78711-3326
4. VBB must file, in this docket, an affidavit of payment of the administrative penalty no later than five calendar days after remitting final payment.
5. The Commission is not constrained in any matters from requiring additional action or penalties from matters that are not resolved by this Order.
6. This Order resolves only the claims identified in this Order.

7. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the Agreement.
8. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the _____ day of _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS J. GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER