



OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

CIVIL INVESTIGATIVE DEMAND

TO: Griddy Energy LLC
c/o C T Corporation System
1999 Bryan St., Ste. 900
Dallas, TX 75201-3136

via CMRRR: 7018 0040 0000 6257 2060
Return Date: March 15, 2021

Pursuant to this office's specific authority under article IV, section 22 of the Texas Constitution and section 17.61 of the Texas Deceptive Trade Practices – Consumer Protection Act, sections 17.41-.63, Texas Business and Commerce Code ("DTPA"), Griddy Energy LLC is hereby directed to produce the items listed in Exhibit "A" attached hereto. Such production is governed by the instructions and definitions on this page and subsequent pages.

You are to make available the documentary material described in Exhibit "A" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of Attorney General, 808 Travis St., Ste 1520, Houston, TX and is due on March 15, 2021. If providing documents electronically, please provide them to Charlene Gale at Charlene.Gale@oag.texas.gov. **Please contact one of the persons listed below upon receipt in order to discuss the return date and the logistics of producing the requested documents to the Consumer Protection Division.**

Pursuant to this office's specific authority under article IV, section 22 of the Texas Constitution and section 17.61 of the Texas Deceptive Trade Practices – Consumer Protection Act, sections 17.41-.63, Texas Business and Commerce Code, the Division believes that Griddy Energy LLC may be in possession, custody, or control of documentary material relevant to an investigation of possible violations of DTPA sections 17.46(a) and/or 17.46(b) with respect to the retail and/or wholesale electricity industry in the State of Texas during the month of February 2021.

TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 19th day of February, 2021.

Jennifer Jackson, Division Chief
Consumer Protection Division

/s/ Rick Berlin

Rick Berlin

Assistant Attorney General

T: (713) 225-8917 | F: (713) 223-5821

Email: rick.berlin@oag.texas.gov

Other Authorized Agent:

Charlene Gale, Investigator

T: (713) 225-8914

Email: charlene.gale@oag.texas.gov

Instructions

1. **Read These Instructions/Definitions Carefully.** Your production must comply with these instructions and definitions.
2. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this Civil Investigative Demand must be preserved. *Any ongoing, scheduled or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.* Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.
3. **Relevant Time Period.** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from **February 1, 2021**, to the date of delivery of this Civil Investigative Demand, herein called “the Relevant Time Period.”
4. **Custody and Control.** In responding to this Civil Investigative Demand, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control. A document is in your custody and control if it is the possession of another person and you have a right to possess that document that is equal or superior to that other person’s right of possession. On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:
 - a. The name of each author, sender, creator, and initiator of such document;
 - b. the name of each recipient, addressee, or party for whom such document was intended;
 - c. the date the document was created;
 - d. the date(s) the document was in use;
 - e. a detailed description of the content of the document;
 - f. the reason it is no longer in your possession, custody or control; and
 - g. the document’s present whereabouts.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.
5. **Non-identical Copies to be Produced.** Any copy of a document that differs in any manner, including but not limited to the presence of handwritten notations, different senders or recipients, etc. must be produced.
6. **No Redaction.** All materials or documents produced in response to this Civil Investigative Demand shall be produced in complete unabridged, unedited and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final editions of a document.
7. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

8. **Production of Documents.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, codes and programs necessary for translating it into usable form, or the information shall be produced in a finished usable form. For any questions related to the production of documents, you may consult with the Office of the Attorney General representatives above.

Definitions

1. **“You,” “your,” “the business,” “Griddy Energy LLC”** means the entity named on page one of this Civil Investigative Demand and includes, its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is total or partial ownership (25 percent or more) or control between the company and any other person or entity.
2. **“Document”** means the original and all non-identical copies (whether different from the original because of notes, underlining, attachments, or otherwise) of all computer files, and all written, printed, graphic or recorded material of every kind, regardless of authorship. It includes communications in words, symbols, pictures, photographs, sounds, films, and tapes, as well as electronically stored information, computer files, together with all codes and/or programming instructions and other materials necessary to understand and use such systems.
3. **“Communication”** is to be broadly construed and includes but is not limited to e-mails, notes, faxes, memos, text messages, social media posts, letters, notes of conversations and meetings and recordings of conversations and meetings, whether in text or audio form.
4. **“Complaint”** is to be broadly construed. It includes any documentation commemorating expressions of dissatisfaction with you, your business, or goods or services provided by you, dissatisfaction with your employees or agents, or the procedures or services utilized by them. The term includes complaints received directly by you from consumers, or complaints which have been forwarded to you from any entity, private or governmental.
5. **“Identify”** for an individual means providing the individual’s name and all contact information. For an entity it means providing the entity’s name and all contact information. For any other tangible thing it means providing a reasonably detailed description of the item and all contact information for the custodian or person who has possession, custody or control thereof.
6. **“Including”** means including, but not limited to.
7. **“Person”** includes you and means any entity or natural person.
8. **“Any”** means any and all.
9. **“Advertisement”** means any act to bring to the public’s attention the availability of goods and/or services and includes but is not limited to, brochures, newspaper advertisements, yellow pages, internet, web or social media advertisements, websites, signs posted in or outside the business and radio or television advertisements.
10. **“Relate,” “related,” and “relating”** mean being in any way legally, logically, or factually connected with the subject matter of the request at issue.
11. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.

12. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.
13. **“ERCOT”** means the Electric Reliability Council of Texas.
14. **“PUCT”** means the Public Utility Commission of Texas.

EXHIBIT A: DOCUMENTS TO BE PRODUCED

1. Documents that show the official legal name of your business, including your LLC operating agreement, as amended, and the LLC operating agreement of any entities which are managing members of you.
2. Copies of all contracts, Terms of Use, Terms of Service, or other agreements on file with the PUCT and in effect from **January 1, 2016 to the present**.
3. Copies of all contracts, Terms of Use, Terms of Service, or other agreements with your consumers from **January 1, 2016 to the present**.
4. Documents demonstrating the identity of your consumers from **January 1, 2016 through April 2021**, including their membership dates, contact information, and payment method. This request is continuing in nature and includes any additions, removals, or changes made to the available options for payment methods.
5. Documents showing the prices per kilowatt hour charged to your consumers for electricity during the Relevant Time Period, including any changes made during that time.
6. Documents relating to any increase in your costs of delivering energy to your consumers during the Relevant Time Period.
7. Documents showing how prices are determined under “Griddy Price Protection.”
8. Copies of all contracts which governed your purchase of electricity during the Relevant Time Period. This request specifically includes pricing agreements which purport to set prices or the methodology of calculating prices for other electricity purchases.
9. Documents relating to any increase in your costs of purchasing energy for resell or delivery to your consumers during the relevant time period.
10. Copies of all contracts with Generators of electricity in effect during the Relevant Time Period, including without limitation all correspondence and communications related to same during the relevant time period.
11. Copies of all contracts with Distributors of electricity in effect during the Relevant Time Period, including without limitation all correspondence and communications related to same during the relevant time period.
12. All communications to and from your consumers regarding price changes, including daily market updates, and text messages and emails discussing price changes during the week beginning on February 14, 2021.
13. Copies of all public statements made regarding price increases or membership during the Relevant Time Period, including any claims you have made regarding ERCOT, such as claims that ERCOT

made forecasting errors, that ERCOT under-forecasted system load, and/or that ERCOT forecasted the wrong temperatures.

14. All communications occurring internally and with third parties, regarding the increasing, changing, limiting, preventing, or restricting prices occurring during the Relevant Time Period, including communications discussing the purported market price of electricity and energy pricing.
15. All advertisements of any goods or services relating to your business that were made, published, or disseminated from **January 1, 2016 to the present**.
16. All communications to and from the PUCT, regarding complaints you have received from the PUCT during the Relevant Time Period.
17. All communications to and from consumers, regarding customer complaints you have received during the Relevant Time Period.
18. Documents reflecting any requests or recommendations you received during the Relevant Time Period that pertain to you posting additional collateral for purposes of maintaining your eligibility to purchase electricity. The scope of this request includes requests or recommendations that you obtain additional financing, post additional bond(s) or security, or otherwise demonstrate your ability to pay for future electricity purchases.
19. Documents relating to any other investigations, litigation, or administrative inquiries or actions from **January 1, 2016 to the present**, including any state, local, or federal governmental investigations of you.
20. All documents and court filings in any lawsuit in which you are a party relating to weather occurring during the week of February 14, 2021.