

CAUSE NO. _____

THE STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT

v.

GRIDDY ENERGY LLC and
GRIDDY HOLDINGS LLC,
Defendants.

____ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

NOW COMES Plaintiff, THE STATE OF TEXAS (State), acting by and through the Attorney General KEN PAXTON and on behalf of the public interest, complaining of Defendants GRIDDY ENERGY LLC and GRIDDY HOLDINGS LLC (Griddy). In this action, the State alleges that Defendants engaged in false, misleading, and deceptive acts and practices in violation of § 17.46 of the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA), Tex. Bus. & Com. Code §§ 17.41–17.63. In support hereof, the State will respectfully show the Court the following:

NATURE OF THE STATE’S CASE

During the 2021 Winter Storm, millions of Texans spent days in the frigid cold with rolling blackouts and stretches of no water or heat. But Texans who relied on the electric provider Griddy to heat their homes and protect their families were unfortunately shocked to learn that they were incurring astronomical electricity bills. Griddy, the company that promised Texans cheap “wholesale” prices that would consistently beat traditional energy costs, blatantly contradicted these promotional representations as it auto-debited hundreds of dollars from Texans’ checking accounts daily. Griddy was fully aware of the reality of the risk in its pricing scheme -- sky-high energy rates at a time when consumers are the most vulnerable. When combined with Griddy’s auto-billing system, these vulnerable consumers who were promised savings were instead shocked

by overdrawn accounts, overdraft fees, and an inability to pay their other bills, simply because they tried to protect their families from the bitter cold.

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the potential relief sought by the State in this action includes non-monetary injunctive relief and monetary relief for consumer redress in excess of \$250,000, and is within the jurisdictional limits of the Court.

DEFENDANTS

2. Griddy Energy LLC is a foreign limited liability company doing business in Texas, with an office in Houston. Griddy Energy LLC directly contracted with consumers in Texas to provide retail electric services (as further described below). It may be served through its registered agent, CT Corporation System, at 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

3. Griddy Holdings LLC, a Delaware corporation, owns and operates Griddy Energy LLC. Griddy Holdings LLC also owns, controls, and developed the software Texans used when transacting business with Griddy Energy LLC. Griddy Holdings LLC holds the patent application for the Griddy app, central to the operation of Griddy (as further described below) that Texas consumers used to manage their accounts. As described below, Griddy Energy LLC and Griddy Holdings LLC collectively operate under the name “Griddy” including on www.griddy.com. Griddy Holdings LLC may be served through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

JURISDICTION AND VENUE

4. This enforcement action is brought by the Attorney General of Texas, Ken Paxton,

through his Consumer Protection Division (CPD), in the name of the State of Texas and in the public interest, pursuant to the authority granted to him by section 17.47 of the DTPA upon the ground that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, sections 17.46 (a) and (b) of the DTPA.

5. In enforcement suits filed pursuant to section 17.47 of the DTPA, the Attorney General is authorized to seek civil penalties, redress for consumers, and injunctive relief.

6. Venue of this suit lies in Harris County, Texas, pursuant to section 17.47(b) of the DTPA because transactions made part of this suit occurred in Harris County, Texas. Further, Griddy maintains an office at 11811 North Freeway, Suite 546, Houston, Texas 77060.

PUBLIC INTEREST

7. The State of Texas has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in the unlawful acts or practices set forth below; that Defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons; and that Defendants adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

8. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by section 17.45(6) of the DTPA.

CONDITIONS PRECEDENT

9. All conditions precedent to the State’s claim for relief have been performed or have

occurred.

ACTS OF AGENTS

10. Whenever in this petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or that the officers, agents, or employees of Defendants performed or participated in the act on behalf of and under the authority of Defendants.

BACKGROUND

11. Griddy, unlike traditional electric retail providers, did not own power generation capability nor did it enter into long-term pricing contracts with power generators. Instead, Griddy purchased electricity on the open, spot market. Griddy charged customers a flat monthly rate, and then passed the price at which it purchased electricity directly on to the consumer. During times of stability and low demand on the grid, Griddy was able to purchase electricity cheaply and pass those savings to consumers. But instability in the market can expose its customers to enormous risk, resulting in massive losses to consumers. Despite that very real risk, Griddy's marketing persistently misled its customers about the nature and extent of this risk and the costs consumers could expect when utilizing Griddy's services.¹

¹ In the aftermath of the recent disaster, some are questioning whether these risky plans should be offered to consumers, for whom reliable, uninterrupted power can quite literally be a matter of life and death. Unlike businesses, consumers may not be in the position to simply "switch off" the power when extreme price spikes occur in the energy markets. Testimony from a hearing held by Texas House Committees State Affairs and Energy Resources on February 25, 2021 included the following statements about variable rate plans based on the spot market wholesale price of energy: "...the residential consumer shouldn't be exposed to real-time, wholesale electric prices...that is effectively what that plan does...These plans...shouldn't be allowed in the marketplace...[T]he risk is skewed in a way that the consumer can get hurt...the skew is not in favor of the consumer...it doesn't take long at \$9000.00 a megawatt hour to build up [a \$13,000.00 bill]...I don't care how much boilerplate you put into it, people just don't fully understand it, and the people that understand it, are the people that built the product and sold it. The people that don't understand it are the ones that are buying it, and we shouldn't expose our people to that. This makes absolutely no sense to me...when you do that, and you have to bill your customer \$13,000.00, you are never going to be with that customer again...why would you put your customer into that situation? It makes no sense to me whatsoever...that's just not in the best interests of the public...you're selling it [to the customer] on a low-price promise, and that's what they think they're going to get, and one day they wake up, and you're taking all their savings, in a power bill...we should never do that....It is a completely unfair product." A full recording of the hearing is available at https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=19369; portions

12. Indeed, February 2021 was not the first time that Griddy surprised its customers with astronomical charges, and yet, Griddy’s representations about its program did not prepare its customers for this eventuality. In August 2019, a heat wave in Texas brought increased demand on the energy market, resulting in Griddy customers paying as much as \$9.00 per kilowatt hour (kWh) or \$9,000 per megawatt hour for electricity—the very same rate customers would pay in February 2021 during the Winter Storm. As a result, consumers in 2019 were surprised and angered at charges—up to \$1,200 for three days—that were highly inconsistent with the advertising that had lured them to Griddy. At the time, Griddy’s response to the harm to its consumers was dismissive. Moreover, as discussed further below, Griddy did not make notable changes to its advertising based on this price spike. To the contrary, it downplayed the event on its website.

13. On Friday, February 12, 2021, Governor Greg Abbott issued a Disaster Declaration for all counties in Texas. News stations across Texas warned Texans of a series of impending winter storms which would bring record snow, ice, and frigid temperatures for an extended period. On Monday, February 15, 2021, the Electronic Reliability Council of Texas (ERCOT) declared its highest state of emergency, an Emergency Energy Alert Level 3 (EEA3), due to exceptionally high electricity demand exceeding supply. Based on the emergency energy situation, ERCOT directed energy providers in its region to curtail customer load by instituting system-wide rolling blackouts. In response to the emergency level of consumer demand, on Tuesday, February 16, 2021, the Public Utility Commission of Texas (PUCT) issued an order directing ERCOT to start using the high system-wide offer cap (HCAP), which would raise the cap for energy prices to \$9.00 per

addressing variable rate plans based on the wholesale market price, including the portions quoted here, are between timestamp 3:24:20 and 3:29:36.

kWh, as outlined in the Texas Administrative Code. 16 TAC § 25.505(g)(6)(B). This increase reflected an approximately 10,000% increase in pricing from the preceding three-month average. While most electricity customers in Texas were protected from the immediate consequence of this increase, Griddy customers began receiving significant and overwhelming bills while the dangerous weather conditions continued. This jump would prove unaffordable and devastating, as many consumers were receiving electricity bills in the thousands of dollars for only a few days of electricity.

SPECIFIC FACTUAL ALLEGATIONS

14. Griddy is a California-based retail electric provider, managed out of the greater New York area, and offered residential electricity only in Texas. Griddy advertised only one service to Texans and one purpose for its existence—cost savings over traditional retail electric providers to consumers looking to reduce their electricity bill. In reality, Griddy’s residential electricity customers in Texas were being charged at egregiously high price levels during and in the wake of the February 2021 winter storm.

15. As a result, the Office of the Attorney General received over 400 consumer complaints against Griddy in less than two weeks. The majority of these complainants were from Houston area residents who allege that they were billed thousands of dollars for only a few days of electricity. For example, one Houston resident stated in her complaint that Griddy debited her credit card \$4,677 in one week for electricity in her 800 square foot, one-bedroom apartment. She stated in her complaint: “I do not have the money to pay this bill. We need help.”

16. Leaving these consumers especially vulnerable, Griddy used auto-debiting to withdraw *hundreds*, if not *thousands*, of dollars from consumers’ checking accounts in a period of *days*. These massive daily withdrawals resulted in some Texas consumers receiving overdraft

charges from their bank.² Further, the practice prevented consumers from taking any type of protective measures to prevent overdrafts or otherwise save money to assist them to pay off the bill. A consumer in Fort Worth who saw his normal rate of .02 to .07 cents increase to \$9.00 per kWh reported to the Office of the Attorney General that: “They extracted money out of my bank account. \$500.00 yesterday alone and a [total of] over \$950 for February.” CPD received his complaint on February 19, 2021. These dramatic price increases, combined with the daily direct withdrawals, are also placing some Texas seniors who live on fixed incomes in a precarious position. A senior Arlington consumer stated that her typical electric bill with Griddy had been \$49 to \$61 per month. She reported that she lives off of her social security checks, and that Griddy had debited over a thousand dollars from her bank account in a matter of days, leaving her account overdrawn. She stated that she emailed Griddy on February 16, 2021, asking for leniency and stating: “My account is overdrawn. I cannot make it to the bank until Friday. My car is snow and iced . . . I believe that there is an error on my account. We normally keep our thermostat at 60 degrees. Since Sunday we have kept it at 50 degrees . . . I have to wear gloves inside it’s so cold. Please give me until Monday when I can safely go out and take care of my balance. If I can safely go out before then, I shall. I’m 67. It’s a safety hazard to go out at this time.” On February 19, her plea for mercy having gone unheeded, she filed a complaint with CPD after hundreds of dollars more in charges had been added to her Griddy account over the ensuing few days.

17. One reason consumers have been surprised by the recent price spike to \$9 per kWh is because Griddy’s advertising was misleading and failed to adequately disclose the risks of its pricing model to its customers. The Griddy.com website offered: “For only \$9.99 a month, get

² <https://www.chicagotribune.com/nation-world/ct-aud-nw-cb-texas-winter-storm-electric-bills-griddy-20210222-fbm3ge6yynnhhpm3w7pjrwy24i-story.html>

access to the wholesale price of electricity.” However, there is no officially indexed wholesale price of electricity in Texas. Instead, Griddy passed the price it pays on to the consumer along with its monthly \$9.99 fee. The Better Business Bureau issued a consumer alert in 2019 about Griddy’s advertising claims, writing that this usage of “wholesale” should not be used unless a business “actually owns and operates or directly and completely controls a wholesale or distribution facility which primarily sells products to retailers for resale,” which is not the case here.³ Their repeated representation of their prices as being the “wholesale” price was thus misleading.

18. Griddy’s representations emphasized potential savings and downplayed the effects of fluctuations in the electricity market. Their homepage includes this chart:

³ <https://www.bbb.org/us/ca/playa-vista/profile/electric-companies/griddy-energy-llc-1216-1084540>

Wholesale beats the TX average 96% of the time

Average wholesale prices

Price spike occurrence

No mark ups

Number of fees

Price spikes happen only 0.6% of the time

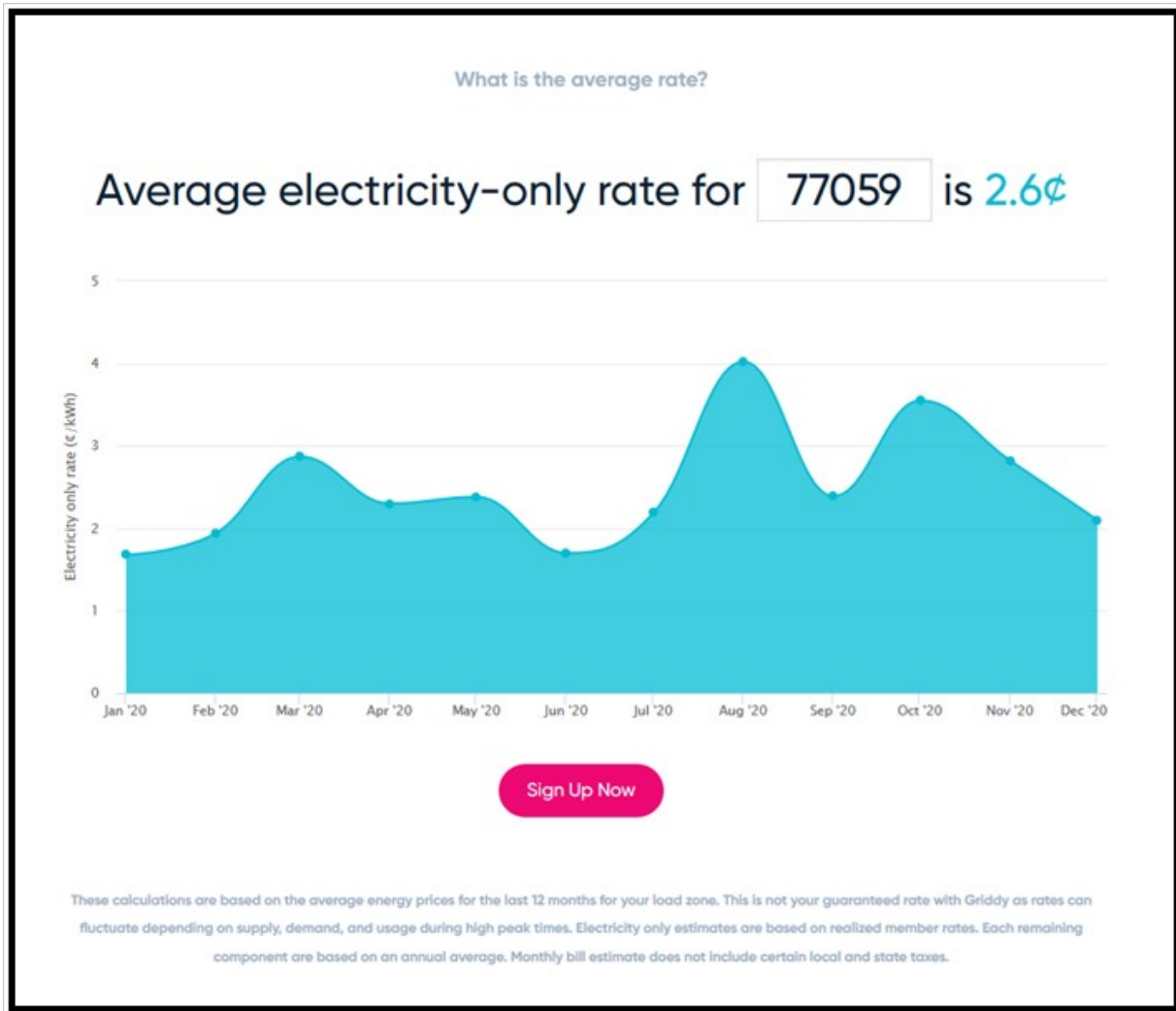
Price Range (kWh)	Frequency
Below 0¢	1.4%
Between 0¢ - 6¢	94.7%
Between 6¢ - 30¢	3.3%
Between 30¢ - \$1	0.5%
Above \$1	0.1%

This chart above failed to disclose the actual exposure to consumers—an increase to \$9 per kWh—a price which Griddy charged its customers during two separate incidents within less than two years of each other. In addition, this maximum exposure amount is specifically listed in the Texas Administrative Code (capping energy prices at \$9,000 per mWh—which equates to \$9 per kWh).⁴ Despite having this knowledge, Griddy failed to disclose this potential exposure to the consumer in its advertising, and instead created the impression that spikes in energy prices are both unlikely and can be measured in pennies instead of dollars. When Griddy did mention the Texas Administrative Code cap, it was not in its advertising materials and was misleadingly dismissed

⁴ 16 TAC § 25.505(g)(6)(B).

as an extreme unlikelihood: one FAQ page dismissed it as an event “that happens 0.005% of the time.”⁵ Instead, Griddy’s advertising and marketing materials emphasized low pricing, fluctuating between pennies per kWh.

19. Graphics appearing on Griddy.com furthered this misrepresentation that the potential exposure to consumers involved changes in mere cents:



20. Both on its own website and through social media advertising, Griddy featured

⁵ Web.archive.org capture of the site, archived September 19, 2020, https://web.archive.org/web/2020091910493920200919102257mp_/https://www.griddy.com/faqtxas/learn-more#learn-pricing.

favorable testimonial endorsements from customers pulled from comments on Twitter, Google, or Facebook. Social media testimonials mentioned specific amounts that the consumer has supposedly saved over their previous retail electricity provider but were provided without context and implied that atypical consumer savings are representative of what consumers can generally expect. One such comment featured on Griddy.com’s homepage said: “I use griddy at my business locations. My average cost for the year is much lower than previous (i’m averaging 7¢ at one location and 4¢ at another) and that is with being open during ‘peak’ hours and having to heat and cool at those times...you will end up saving a ton!” As shown above, this experience was not consistent among other consumers. On social media platforms, Griddy also publicized their “Top Savers” in the state, but these numbers were provided without the context of what is included in this comparison. For example, in January 2020, Griddy claimed on its Facebook page that customers throughout the state enjoyed significant savings that ranged from \$302 to \$2,497.⁶

⁶ Griddy, Our Top Savers in December 2020, FACEBOOK (Posted Jan. 14, 2020, 10:01 AM), https://www.facebook.com/story.php?story_fbid=2827717124133522&substory_index=0&id=1751844651720780.



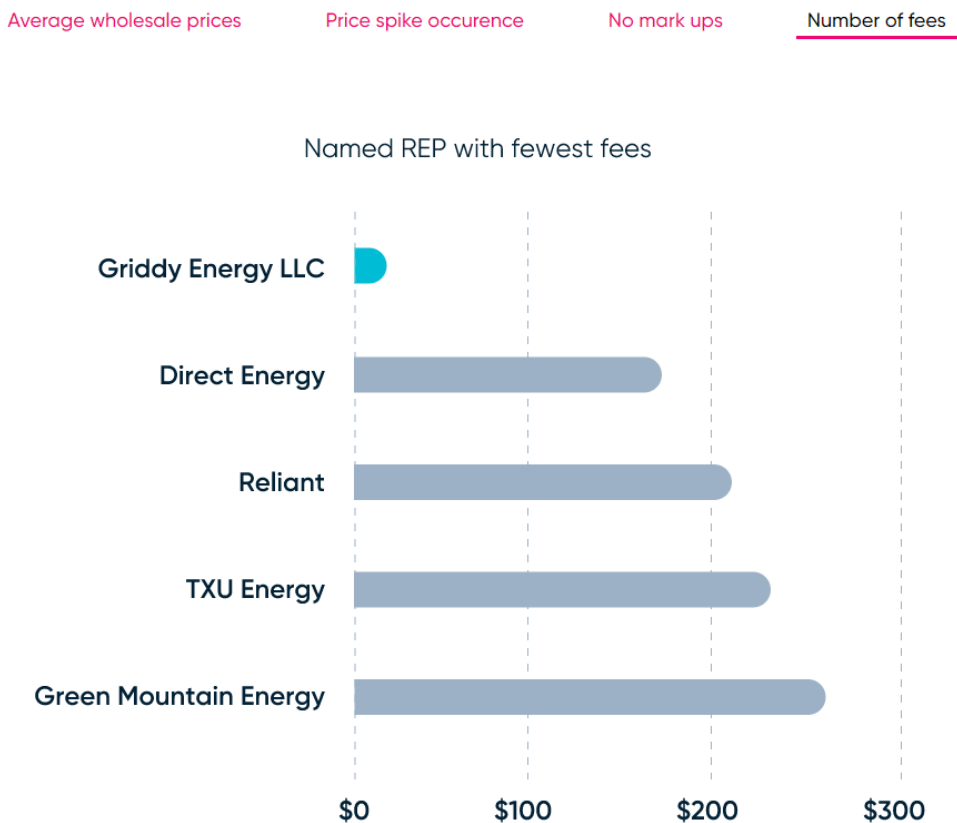
21. Throughout its advertising, Griddy emphasized the savings that can be realized with false or misleading comparisons to traditional retail electricity providers' pricing. Griddy's website claimed that they were "**20% cheaper than the Texas Average.**"⁷ They claimed to base this on a comparison to data from the U.S. Energy Information Administration (EIA). However, the most recent publicly available annual report from the EIA is 2019 data that shows Griddy's average price in cents per kWh for 2019 to be 12.01 while the total for the State of Texas 2019

⁷ Web.archive.org capture of the site, archived December 18, 2020, <https://web.archive.org/web/20201218165822/https://www.griddy.com>

Average Monthly Bill in cents per kWh is 11.76.⁸

22. As another example, Griddy compared its monthly membership fee (\$9.99 a month / \$120 a year) to fees from traditional retail electricity providers (REPs):

Wholesale beats the TX average 96% of the time



But this chart compared apples to oranges. The fees of other REPs included in this chart include disconnection or reconnection fees or fees for late payments. Because Griddy did not charge a disconnection fee, comparing their ongoing, mandatory membership fees to potential one-time fees that REP customers may never be charged is misleading.

23. Griddy instructed consumers to use the Griddy smartphone app to monitor their electricity usage and make adjustments. This feature included forecasted future pricing and was

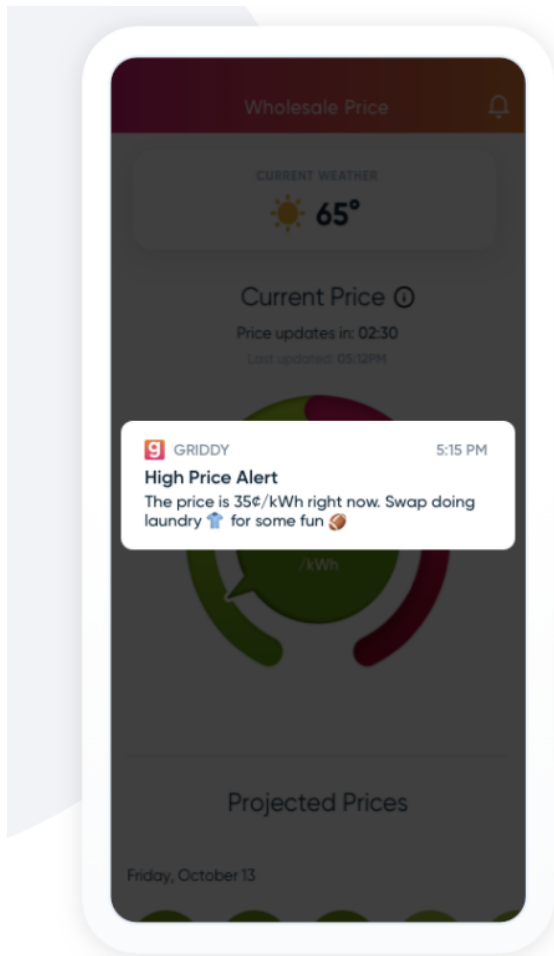
⁸ <https://www.eia.gov/electricity/data.php#sales>

marketed as protection for consumers from the effects of increases in the market. But in times of dramatic increases in electricity prices, the app’s monitoring feature proved to be of little help to consumers because of the magnitude of the price change and the related extreme weather conditions driving those changes. A 10,000% price increase cannot be remedied with consumers merely conserving energy and changing their thermostat setting. One consumer left her thermostat at 60 degrees but still found her checking account being debited hundreds of dollars a day until she was overdrawn.⁹

24. In describing this app feature, Griddy assured consumers that “Prices spike only 0.6% of the time,”¹⁰ and, in another place on their site claims that “Price spikes only happen .06% of the time”—thus consistently downplaying the risk to the consumer in the electricity spot market, and deploying confusing and contradictory statistics.

⁹ <https://6abc.com/griddy-gridy-texas-power-bills-what-is-energy/10350795/>

¹⁰ Web.archive.org capture of the site, archived December 18, 2020, <https://web.archive.org/web/20201218165822/https://www.griddy.com>.



Will you let me know?

Real-time alerts for high and low prices

Prices spike only 0.6% of the time, but with our real-time alerts you will never be caught off guard. You'll get price notifications when:

- Prices go high, so you can adjust usage
- Prices go low, so you can take advantage of cheap or free electricity

Further, Griddy represented here that this feature would keep consumers from being “caught off guard.” As described herein, consumers were in fact caught off guard when their charges skyrocketed.

25. Griddy appeared to have been aware of this impending problem when leading into the February storm, as it sent its customers warnings that price increases were on the way and advised consumers to switch providers.¹¹ One consumer told TV station ABC13 that she received the email from Griddy advising her to switch providers on Sunday, February 14, but of course no

¹¹ <https://www.wsj.com/articles/texas-blackout-boosts-australian-bank-by-up-to-215-million-11613997617>

retail electric providers were then open for business.¹² When ABC13 reached out to other REPs, they found that none were taking new customers due to the storm and related outages.¹³ As a result, customers were stuck with Griddy and had no option other than to spend thousands of dollars for a few days of electricity.

26. A disabled veteran in Royse City who is on a fixed income tried to switch providers after receiving those emails from Griddy the same weekend. He found a retail electricity provider who could take him, but only after a seven-day waiting period. Before he could switch providers, he was billed over \$13,000 by Griddy in six days followed by Griddy locking his meter to prevent him from switching providers even after the waiting period.

27. Following the storm, rather than take responsibility for the harm it had caused Texans, Griddy brazenly pointed the blame elsewhere and claimed to share in consumers' anger at the situation.¹⁴ Griddy's website added a page for storm-related questions and answered the question "Why is my bill so high?" by referring to the "unprecedented weather across the country."¹⁵ However, as noted above, the skyrocketing prices were not unprecedented: Griddy and its customers had endured a similar spike just 18 months ago.

28. Specifically, it was in August 2019 that Griddy customers had experienced a dramatic increase in their bills. As a result, consumers filed complaints reporting surprise at the charges that were inconsistent with the advertising that had lured them to sign up. One complainant reported that after seeing Griddy's advertisement of an average of 8.8 cents per kWh,

¹² <https://6abc.com/griddy-gridy-texas-power-bills-what-is-energy/10350795/>

¹³ *Id.*

¹⁴ Web.archive.org capture of the site, archived February 24, 2021, https://web.archive.org/web/20210224025429mp_/https://www.griddy.com/post/griddy-update-why-energy-prices-were-sky-high-week.

¹⁵ Web.archive.org capture of the site, archived February 24, 2021, https://web.archive.org/web/20210224032011mp_/https://www.griddy.com/storm-faqs.

he signed up only to be charged “almost 20 times their advertised rate,” \$1.50 per kWh in August 2019. Other complainants stated that they were charged \$9 per kWh, including a Richardson complainant who reported charges of \$400 for only three days, and a Fort Worth complainant reporting charges of \$1,200 for three days.

29. Yet, Griddy did not change its advertising to adequately disclose to consumers that these dramatic increases could and would happen again. Griddy’s tweeted response to the public outrage over the August 2019 charges was that, “[u]nfortunately that is just the ride that is the wholesale market . . . there’s gotta be some highs.”¹⁶ Instead of changing how the company represented its service, the company appeared to place the blame on its customers.¹⁷ The Houston Chronicle reported on the incident at the time and summarized the Griddy CEO’s explanation of the loss of some customers due to the August 2019 incident as customers who “were new customers who were not yet familiar with how to use Griddy’s on-line notifications to cut consumption during anticipated times of peak demand and peak pricing.”¹⁸ “Yes, we stubbed our toe,” said [the CEO]. “We’ll get it right.”¹⁹

30. Following this, the Griddy website continued to misrepresent a small likelihood for high prices. Griddy posted the chart below on its website in a March 2020 article on the site entitled “Are variable-rate plans a good alternative to fixed-rate plans”:

¹⁶ [www.Twitter.com/GoGriddy](https://www.twitter.com/GoGriddy)

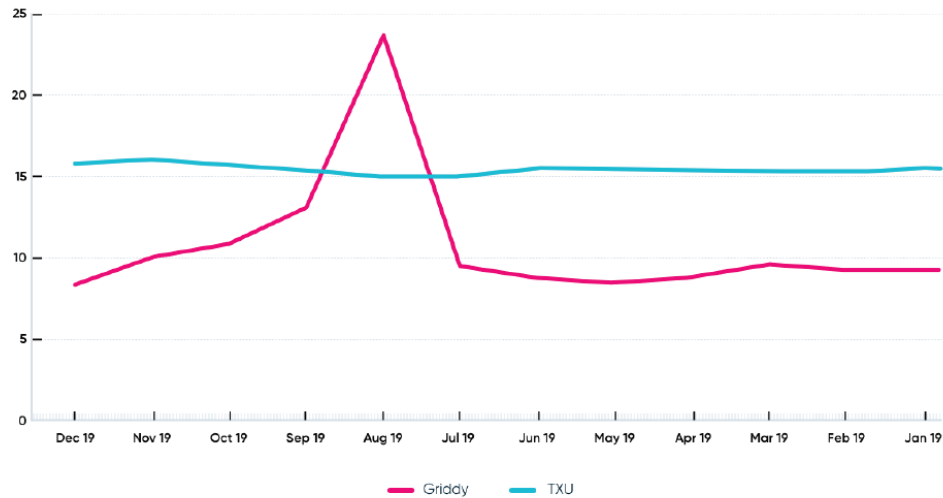
¹⁷ <https://www.houstonchronicle.com/business/texas-inc/article/Griddy-CEO-Greg-Craig-rewinds-the-price-spikes-of-14896833.php> CEO Greg Craig speaking to the Chronicle: “Broadly speaking, the vast majority of Griddy customers validated the model because we had a lot of members who suffered no unusual bills. If you followed the guidance and reduced consumption during the peak periods you did extraordinary well. If you just joined Griddy and you weren’t quite up to speed about reducing consumption and following the alerts it was more challenging.”

¹⁸ <https://www.chron.com/business/energy/article/Griddy-CEO-feels-sick-over-big-August-bills-but-14839184.php>

¹⁹ *Id.*

TXU's Flex Rewards: 15.4¢/kWh monthly average rate.

TXU Flex Rewards vs. Griddy Wholesale



The graphic above and the accompanying article failed to disclose to consumers that the price peaked at \$9.00 per kWh in August 2019 (instead of \$0.24 shown here) and misrepresented the risks that a prospective customer was taking on as a Griddy customer. Instead, the Y axis only shows charges in cents.

31. The February 2021 crisis presented a second opportunity for Griddy to reconsider how it represented its services to consumers and how it would respond in the wake of these emergencies. Instead, Griddy blamed the Public Utility Commission, ERCOT, and power generators for their customers paying a much higher rate than most other retail electricity providers, while accepting no responsibility for its actions.²⁰ Rather than rethinking how it advertised its service, Griddy told press outlets that it would be willing to accept payments in

²⁰ Web.archive.org capture of the site, archived February 24, 2021, https://web.archive.org/web/20210224025429mp_/https://www.griddy.com/post/griddy-update-why-energy-prices-were-sky-high-week.

installments.²¹

32. On February 26, 2021, Griddy took down the bulk of its website and replaced it with a notice to consumers that it has “no choice but to power down.” Again, without accepting any responsibility for the misrepresentations that led to the consumer outrage Griddy simply pointed the finger at others, claiming that, “ERCOT took our members and have effectively shut down Griddy.”²² And despite having customers who had every last cent of their bank accounts withdrawn by Griddy via its deceptive practices, Griddy ignored the hundreds of negative complaints and instead continued to fill its website with positive testimonials, painting itself as the victim, claiming, “. . . [ERCOT] decided to take this action against only one company that represents a tiny fraction of the market.”²³ In an updated FAQ, in answer to the question, “[a]re we getting relief from the high energy costs?” Griddy again shifted the blame and stated, “[w]e are hopeful that the state and federal governments will do the right thing and provide relief for all Texans.”

DTPA VIOLATIONS

33. The State brings this action to hold Griddy accountable for its illegal conduct and provide that very relief Griddy speaks of for Texans. Defendants, as alleged above, have in the course of trade and commerce engaged in false, misleading, and deceptive acts and practices declared unlawful in sections 17.46(a) and (b) of the DTPA, as follows:

- a. Engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of DTPA § 17.46 (a);

²¹ <https://www.foxnews.com/us/texas-utility-customer-sues-griddy-after-electric-bill-tops-9000>

²² <https://www.griddy.com/> (last visited Feb. 28, 2021).

²³ *Id.*

- b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have in violation of DTPA § 17.46 (b)(5);
- c. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have in violation of DTPA § 17.46 (b)(12); and
- d. Failing to disclose information concerning services which was known at the time of the transaction, if such failure to disclose information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24).

TRIAL BY JURY

34. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code § 51.604.

WRIT TO ISSUE WITHOUT BOND

35. Plaintiff requests that the Clerk of the Court issue such Writs of Injunction pursuant to any Injunction issued by this Court in conformity with the law, and that same be issued and be effective without the execution and filing of a bond as Plaintiff, the State of Texas, is exempt from such bonds under Tex. Bus. & Com. Code §17.47(b).

PRAYER

36. Plaintiff prays that Defendants be cited according to law to appear and answer herein; and that after due notice and hearing a TEMPORARY INJUNCTION be issued, and that upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Griddy Energy LLC and Griddy Holdings LLC, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants who receive actual notice of

the injunction by personal service or otherwise from the following acts and practices:

- a. Advertising electricity rates that are false or misleading;
- b. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions by advertising electricity prices as indexed to a wholesale price if such index does not exist;
- c. Using false, misleading, or unsubstantiated testimonial endorsements to promote Defendants' services;
- d. Misrepresenting the savings consumers can expect to receive as a result of using Defendants' services;
- e. Misrepresenting the reason for any price increase, disruption of service, or transfer of service;
- f. Disparaging the services of another retail electricity provider by making misleading comparison representations;
- g. Failing to maintain accurate, up-to-date information concerning the likelihood and extent of fluctuations in electricity prices, including any increases;
- h. Failing to disclose, in a clear and conspicuous²⁴ manner, the likelihood and extent of electricity price increases;
- i. Collecting fees or payments for services without clearly and conspicuously disclosing on internet websites, advertisements, and any other marketing and promotional materials offered by Defendants that electricity prices may increase to the high system-wide offer cap (currently \$9.00/kWh) during severe weather or

²⁴ "Clear and conspicuous" here and throughout this petition shall mean that all disclosures shall be in bold type and not less than size 12-point font. Internet-based disclosures shall not be contained in a hyperlink and shall not be located in a place that requires a consumer to scroll to the bottom of the page to view the disclosure. Disclosures shall be contained on every page for which the disclaimer applies.

other disasters;

- j. Failing to immediately honor any requests by consumers to cancel service agreements or contracts without further obligation;
 - k. Failing to cease any and all collection efforts for energy use from February 12 through February 21, 2021; and
 - l. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials relating to Griddy's business, currently or hereafter, in its possession, custody, or control except in response to further orders or subpoenas in this cause.
37. Plaintiff further prays that this Court will:
- a. Order Defendants to pay civil penalties not to exceed \$10,000 per violation of the DTPA to the State of Texas, and an additional amount of not more than \$250,000 per violation for each violation calculated to acquire or deprive money or other property from consumers 65 years of age or older;²⁵
 - b. Grant a Judgment against Defendants and order Defendants to restore all money or other property acquired by means of unlawful acts or practices, including but not limited to all amounts debited from consumers for services provided from February 12-21, 2021;
 - c. Order the disgorgement of Defendants' assets, as provided by law and equity;
 - d. Order Defendants to pay pre-judgment and post-judgment interest on all awards of restitution or civil penalties, as provided by law; and
 - e. Grant a Judgment against the Defendants and order the Defendants to pay the

²⁵ Remedies provided under the DTPA are cumulative pursuant to Tex. Bus. & Com. Code § 17.43.

State's attorneys' fees and costs of Court, as provided by the laws of the State of Texas, including but not limited to, Tex. Gov't Code § 402.006(c).

38. Plaintiff prays that the State receive such other and further relief to which it is justly entitled.

Respectfully submitted,

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