Control Number: 49332

Item Number: 1

Addendum StartPage: 0
APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Staff of the Public Utility Commission of Texas (Commission) and CPS Energy (CPS) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of CPS for alleged violations of the Public Utility Regulatory Act § 39.151(j) and 16 Texas Administrative Code (TAC) § 25.503, concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols § 8.1.1.4.3, relating to Non-Spinning Reserve Service (NSRS) Energy Deployment Criteria; and § 6.4.6, relating to Resource Status.

Staff respectfully requests that the Parties' Application for Approval of Settlement Agreement be granted.

DATE: March 13, 2019

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

Taylor Kilroy
Attorney-Oversight and Enforcement Division
State Bar No. 24087844
(512) 936 - 7127
(512) 936 - 7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this
the 13th day of March, 2019, in accordance with 16 TAC § 22.74.

Taylor Kilroy
SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and CPS Energy (CPS) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of CPS for alleged violations of the Public Utility Regulatory Act1 § 39.151(j) and 16 Texas Administrative Code (TAC) § 25.503, concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols § 8.1.1.4.3, relating to Non-Spinning Reserve Service (NSRS) Energy Deployment Criteria; and § 6.4.6, relating to Resource Status.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.

2. The Commission has jurisdiction over the Parties to this proceeding and the subject matter of this Agreement.

3. CPS is a municipally-owned utility.

4. CPS is a resource entity as that term is defined by ERCOT Nodal Protocols § 2.1. CPS owns and controls the generation resources BRAUNIG_VHB6CT5 (Braunig 5), BRAUNIG_VHB6CT6 (Braunig 6), BRAUNIG_VHB6CT7 (Braunig 7), BRAUNIG_VHB6CT8 (Braunig 8) (collectively, Braunig generation resources), LEON_CRK_LCPCT1 (Leon Creek 1), LEON_CRK_LCPCT2 (Leon Creek 2),

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LEON_CRK_LCPCT3 (Leon Creek 3), and LEON_CRK_LCPCT4 (Leon Creek 4) (collectively, Leon Creek generation resources).

5. CPS is a Qualified Scheduling Entity (QSE) as that term is defined by ERCOT Nodal Protocols § 2.1. CPS is the QSE for each of the eight Braunig and Leon Creek generation resources.

6. As a municipally-owned utility, CPS is required to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by ERCOT in accordance with PURA § 39.151(j).

7. As a municipally-owned utility, resource entity, and QSE, CPS is a market participant as that term is defined in 16 TAC § 25.503(c)(6) and ERCOT Nodal Protocols § 2.1.

8. As a market participant, CPS is required to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission in accordance with 16 TAC § 25.503(f)(2). By definition, ERCOT procedures include the ERCOT Nodal Protocols and operating guides.²

9. CPS is required to provide ERCOT with accurate telemetry of the current capability of each resource including the resource status, ramp rates, High Sustained Limit (HSL), and Low Sustained Limit (LSL) in accordance with ERCOT Nodal Protocols § 6.4.6.

10. CPS’s Braunig 6 and Braunig 7 generation resources are qualified to provide NSRS.

11. Within twenty-five minutes of receiving an NSRS deployment instruction from ERCOT, CPS must ensure that Braunig 6 and Braunig 7 are on-line with an energy offer curve, and the telemetered net generation for each resource must be greater than or equal to the resource’s telemetered LSL in megawatts (MW) multiplied by P₁, or 0.90.³ Once Braunig 6 and Braunig 7 have met that threshold, CPS must telemeter the resource status code “ON” to indicate that the resource is online.⁴

² 16 TAC § 25.503(c)(3).
³ P₁ is defined in the “ERCOT and QSE Operations Business Practices During the Operating Hour.” Currently and at the time of the violation, P₁ = 0.90.
⁴ ERCOT Nodal Protocols § 8.1.1.4.3(3)(b).
12. On October 22, 2015 at 14:13 PM, CPS received an NSRS deployment instruction from ERCOT for Braunig 6 and Braunig 7. CPS initially achieved net generation equal to or greater than 90% of its initial LSL (20 MW). However, at 14:37 PM, CPS changed the LSL for the Braunig 6 and Braunig 7 to 47 MW and did not achieve net generation equal to or greater than 90% of this updated LSL.

13. On October 22, 2015 at 14:40 PM, Braunig 6 and Braunig 7 were online; however, CPS changed the resource status code to indicate that Braunig 6 and Braunig 7 were in startup mode.

14. Commission Staff alleges that CPS telemetered an incorrect resource status code indicating that Braunig 6 and Braunig 7 were offline while the generation resources were online.

15. The LSL of a generation resource is the limit established by the QSE, continuously updateable in real time that describes the minimum sustained energy production capability of the resource.\(^5\)

16. As indicated in the Resource Asset Registration Form (RARF) for each of the eight Braunig and Leon Creek generation resources, the LSL, representing the minimum sustained energy production capability, is 20 MW.

17. Between January 6, 2016 and July 25, 2016, CPS routinely telemetered an LSL of 40-48 MW for each of the eight Braunig and Leon Creek generation resources, representing a minimum sustained energy production capability that is double the minimum sustained energy production capability indicated in the RARF, and near or equal to the HSL for each generation resource (48 MW).

18. The higher LSL values were telemetered a combined 48 times, and each condition persisted for an average of 78 minutes. In each of the 48 instances, the eight Braunig and Leon Creek generation resources were self-committed and online with an energy offer curve, under normal operating conditions. The eight Braunig and Leon Creek resources did not have ancillary service obligations during these instances, and no operating condition existed that would require a telemetered LSL at or near the HSL of each resource.

\(^5\) ERCOT Nodal Protocols § 2.1.
19. Commission Staff alleges that CPS failed to provide ERCOT with accurate LSL telemetry of the current capability of each resource including the resource status and LSL in accordance with ERCOT Nodal Protocols § 6.4.6.

20. Critical ERCOT systems, such as the Load Frequency Control and Security-Constrained Economic Dispatch systems, utilize telemetered data regarding resource status, ramp rates, HSL, and LSL to calculate solutions, issue base points, and deploy ancillary services. Inaccurate telemetry impacts ERCOT's ability to dispatch resources based on economics and reliability.

21. CPS implemented the following measures to mitigate the reoccurrence of the practice of temporarily modifying the LSL in these types of situations:
   i. Change in business practice approach communicated verbally between manager and all employees who dispatch CPS generation resources;
   ii. Automated email generated to notify supervision and compliance personnel when the LSL has been modified for any one of the eight Braunig or Leon Creek generation resources;
   iii. Real Time Operator visual displays updated to provide immediate situational awareness regarding a modified LSL value; and
   iv. Post-shift review process implemented as a formal review of the Real Time Desk activities by supervision and compliance personnel.

22. PURA § 15.023 authorizes the Commission to impose an administrative penalty against a person who violates PURA or a rule or order adopted under PURA. The penalty for a violation may be in an amount not to exceed $25,000 per violation.

23. Commission Staff recommends, and CPS agrees to pay, an administrative penalty of $125,000 in full and final settlement of the alleged violations described in the attached Proposed Order.

24. This Agreement resolves these and all claims occurring up to the date of this Agreement relating to CPS's failure to comply with ERCOT's NSRS deployment of its Braunig 6 and Braunig 7 generation resources in accordance with ERCOT Nodal Protocols § 8.1.1.4.3(3) and CPS' failure to provide accurate telemetry of the current capability of eight Braunig
and Leon Creek resources including the resource status and LSL in accordance with ERCOT Nodal Protocols § 6.4.6.

25. Unless specifically provided for in this Agreement, CPS waives any notice and procedures that might otherwise be authorized or required in this proceeding.

26. Except as provided herein, nothing in this Agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.

27. 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. This Agreement represents a compromise of claims and allegations, and the execution of this Agreement does not admit the truth or accuracy of any such disputed claims. 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.

28. The Parties contemplate that this Agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). In the event the Commission 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 providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

29. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.
30. Each person executing this Agreement represents that he or she is authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

31. CPS 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.

Cristopher Eugster  
CPS Energy  
Chief Operating Officer  
145 Navarro  
Mail Drop #101007  
San Antonio, TX 78205  

Date: 3/9/19

Taylor Kilroy  
Managing Attorney • Oversight and Enforcement  
Oversight and Enforcement Division  
Public Utility Commission of Texas  

Date: 3/13/19
DOCKET NO._______

AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO CPS ENERGY’S VIOLATION OF PURA § 39.151(j), 16 TAC § 25.503, AND ERCOT NODAL PROTOCOLS §§ 8.1.1.4.3 AND 6.4.6

PROPOSED ORDER

This Order approves the Settlement Agreement and Report to Commission (Agreement) between Commission Staff and CPS Energy (CPS) relating to Commission Staff’s investigation of CPS for alleged violations of PURA\(^\text{1}\) § 39.151(j) and 16 Texas Administrative Code (TAC) § 25.503, concerning compliance with ERCOT Protocols § 8.1.1.4.3(3) relating to Non-Spinning Reserve Service (NSRS) Energy Deployment Criteria; and § 6.4.6, relating to Resource Status. The Agreement resolves and concludes all of the issues between Commission Staff and CPS. Commission Staff recommends an administrative penalty of $125,000. CPS agrees to pay the recommended administrative penalty. The Commission approves the Agreement.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

**Respondent**

1. CPS is a municipally-owned utility.
2. CPS is a resource entity as that term is defined by ERCOT Nodal Protocols § 2.1. CPS owns and controls the generation resources BRAUNIG_VHB6CT5 (Braunig 5), BRAUNIG_VHB6CT6 (Braunig 6), BRAUNIG_VHB6CT7 (Braunig 7), BRAUNIG_VHB6CT8 (Braunig 8) (collectively, Braunig generation resources), LEON_CRK_LCPCT1 (Leon Creek 1), LEON_CRK_LCPCT2 (Leon Creek 2), LEON_CRK_LCPCT3 (Leon Creek 3), and LEON_CRK_LCPCT4 (Leon Creek 4) (collectively, Leon Creek generation resources).

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3. CPS is a Qualified Scheduling Entity (QSE) as that term is defined by ERCOT Protocols § 2.1. CPS is the QSE for each of the eight Braunig and Leon Creek generation resources.

4. As a municipally-owned utility, CPS is required to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by ERCOT in accordance with PURA § 39.151(j).

5. As a municipally-owned utility, resource entity, and QSE, CPS is a market participant as that term is defined in 16 TAC §25.503(c)(6) and ERCOT Nodal Protocols § 2.1.

6. As a market participant, CPS must comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission in accordance with 16 TAC § 25.503(f)(2). By definition, ERCOT procedures include the ERCOT Nodal Protocols and operating guides.²

**NSRS Performance**

7. CPS’s Braunig 6 and Braunig 7 generation resources are qualified to provide NSRS.

8. Within twenty-five minutes of receiving an NSRS deployment instruction from ERCOT, CPS must ensure that Braunig 6 and Braunig 7 are on-line with an energy offer curve, and the telemetered net generation for each resource must be greater than or equal to the resource’s telemetered LSL in megawatts (MW) multiplied by P₁, or 0.90.³ Once Braunig 6 and Braunig 7 have met that threshold, CPS must telemeter the resource status code “ON” to indicate that the resource is online.⁴

9. On October 22, 2015 at 14:13 PM, CPS received a NSRS deployment instruction from ERCOT for Braunig 6 and Braunig 7. CPS initially achieved net generation equal to or greater than 90% of its initial LSL (20 MW). However, at 14:37 PM, CPS changed the LSL for the Braunig 6 and Braunig 7 to 47 MW and did not achieve net generation equal to or greater than 90% of this updated LSL.

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² 16 TAC § 25.503(c)(3).

³ P₁ is defined in the “ERCOT and QSE Operations Business Practices During the Operating Hour.” Currently and at the time of the violation, P₁ = 0.90.

⁴ ERCOT Nodal Protocols § 8.1.1.4.3(3)(b).
10. On October 22, 2015 at 14:40 PM, Braunig 6 and Braunig 7 were online; however, CPS changed the resource status code to indicate that Braunig 6 and Braunig 7 were in startup mode.

11. Commission Staff alleges that CPS telemetered an incorrect resource status code indicating that Braunig 6 and Braunig 7 were offline while the generation resources were online.

**LSL Telemetry**

12. The LSL of a generation resource is the limit established by the QSE, continuously updateable in real time that describes the minimum sustained energy production capability of the resource.

13. As indicated in the Resource Asset Registration Form (RARF) for each of the eight Braunig and Leon Creek generation resources, the LSL, representing the minimum sustained energy production capability, is 20 MW.

14. Between January 6, 2016 and July 25, 2016, CPS routinely telemetered an LSL of 40-48 MW for each of the eight Braunig and Leon Creek generation resources, representing a minimum sustained energy production capability that is double the minimum sustained energy production capability indicated in the RARF, and near or equal to the HSL for each generation resource (48 MW).

15. The higher LSL values were telemetered a combined 48 times, and each condition persisted for an average of 78 minutes. In each of the 48 instances, the eight Braunig and Leon Creek generation resources were self-committed and online with an energy offer curve, under normal operating conditions. The eight Braunig and Leon Creek resources did not have ancillary service obligations during these instances, and no operating condition existed that would require a telemetered LSL at or near the HSL of each resource.

16. Commission Staff alleges that CPS failed to provide ERCOT with accurate telemetry of the current capability of each resource including the resource status and LSL in accordance with ERCOT Nodal Protocols § 6.4.6.

17. Critical ERCOT systems, such as the Load Frequency Control and Security-Constrained Economic Dispatch systems, utilize telemetered data regarding resource status, ramp rates, HSL, and LSL to calculate solutions, issue base points, and deploy ancillary services.
Inaccurate telemetry impacts ERCOT’s ability to dispatch resources based on economics and reliability.

18. CPS implemented the following measures to mitigate the reoccurrence of the practice of temporarily modifying the LSL in these types of situations.

i. Change in business practice approach communicated verbally between manager and all employees who dispatch CPS generation resources;

ii. Automated email generated to notify supervision and compliance personnel when the LSL has been modified for any one of the eight Braunig or Leon Creek generation resources;

iii. Real Time Operator visual displays updated to provide immediate situational awareness regarding a modified LSL value; and

iv. Post-shift review process implemented as a formal review of the Real Time Desk activities by supervision and compliance personnel.

Notice

19. On or about February 16, 2017, CPS was provided notice of Commission Staff’s investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.

Settlement Agreement

20. CPS fully cooperated with Commission Staff’s investigation.

21. CPS understands the basis for the violations alleged by Commission Staff as detailed in this Order.

22. CPS participated in one or more settlement discussions with Commission Staff to resolve this matter.

23. On March 13, 2019, the Parties entered into an agreement resolving all the alleged violations. Commission Staff recommended, and CPS agreed to pay, an administrative penalty of $125,000.

24. On March 13, 2019, Commission Staff filed a copy of the executed Agreement with the Commission’s filing clerk.

Informal Disposition

25. At least 15 days have passed since the completion of all notice requirements.
26. CPS and Commission Staff are the only parties to this proceeding.
27. No party requested a hearing.

II. Conclusions of Law

2. PURA § 39.151(j) requires CPS to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT or be subject to revocation, suspension, or amendment of a certificate, or the imposition of an administrative penalty.
3. 16 TAC § 25.503(f)(2) requires CPS to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
4. ERCOT Nodal Protocols § 8.1.1.4.3(3) provides three specific requirements that must be satisfied:
   a. Within 20 minutes following a deployment instruction, CPS must update the telemetered Ancillary Service Schedule to reflect the NSRS deployment amount
   b. Within 25 minutes following a deployment instruction, CPS’s generation resource’s net generation must equal or exceed 90% of its telemetered LSL.
   c. Within 25 minutes following a deployment instruction, CPS must change the telemetered resource status for the generation resource to indicate that the resource has come on-line.
5. Commission Staff alleges that with both Braunig 6 and Braunig 7, CPS failed to meet two of the three requirements: CPS’s generation resource’s net generation failed to equal or exceed 90% of its telemetered LSL within 25 minutes, and that CPS failed to change the telemetered resource status for the generation resource to indicate that the resource has come on-line.
6. ERCOT Nodal Protocols § 6.4.6 requires CPS to provide ERCOT with accurate telemetry of the current capability of each resource, including the resource status, ramp rates, HSL, and LSL.
7. Commission Staff alleges that CPS failed to provide accurate telemetry of the current capability of its resources in the 48 instances where it telemetered a LSL of 40 MW or higher during normal operating conditions.

8. Commission Staff alleges that CPS violated PURA § 39.151(j) because CPS failed to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by ERCOT.

9. Commission Staff alleges that CPS violated 16 TAC § 25.503(f)(2) because CPS failed to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.

10. The Commission has authority to impose penalties for violations of PURA § 39.151(j) or Commission rules. The violations of PURA § 39.151(j) and 16 TAC 25.503(f)(2), described herein, are Class A violations under 16 TAC § 25.8(b)(3)(B).

11. CPS was provided proper notice of Commission Staff's investigation into this matter, the results of Commission Staff's investigation, information about CPS's right to a hearing, and an opportunity to explain its activities.

12. The filing of the Agreement meets the requirements of 16 TAC § 22.246(h)(1).

13. The Commission processed this docket in accordance with applicable statutes and Commission rules.

14. The parties have met the requirements for informal disposition in 16 TAC § 22.35.

III. Ordering Paragraphs

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

1. The Commission approves the Agreement.

2. CPS must comply with the terms of the Agreement and this Order.

3. CPS must pay an administrative penalty to the Commission in the amount of $125,000. CPS is required to remit payment of the full amount of the administrative penalty 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
4. CPS must file an affidavit of payment in this docket no later than five calendar days after remitting the payment.

5. This Order resolves these and all claims occurring up to the date of the Agreement relating to CPS’s failure to comply with ERCOT’s NSRS deployment of its Braunig 6 and Braunig 7 generation resources in accordance with ERCOT Nodal Protocols § 8.1.1.4.3(3) and CPS’ failure to provide accurate telemetry of the current capability of eight Braunig and Leon Creek resources including the resource status and LSL in accordance with ERCOT Nodal Protocols § 6.4.6.

6. Entry of this Order does not indicate the Commission’s endorsement or approval of any principle or methodology that may underlie the agreement and will not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.

7. 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 __________, 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D’ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER