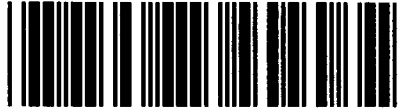




Control Number: 35650



Item Number: 5

Addendum StartPage: 0

DOCKET NO. 35650

AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO SUEZ ENERGY §  
MARKETING NA, INC.'S VIOLATIONS §  
OF PURA § 39.151(j) AND P.U.C. §  
SUBST. R. 25.503(f)(2), RELATING TO §  
FAILURE TO ADHERE TO ERCOT §  
PROTOCOLS § 6.5.4(2) CONCERNING §  
LOAD ACTING AS RESOURCE §  
SERVICE REQUIREMENTS §

PUBLIC UTILITY COMMISSION  
OF TEXAS

FILED  
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ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff and Suez Energy Marketing NA, Inc. (Suez) (collectively, Parties) regarding Commission Staff's investigation of Suez for violation of § 39.151(j) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2008) (PURA) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocol § 6.5.4(2), concerning Load acting as Resource (LaaR) service requirements. This docket was processed in accordance with applicable statutes and Commission rules. Commission Staff recommended an administrative penalty of \$116,000. Suez agreed to pay the recommended administrative penalty. The Agreement is approved.

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

I. Findings of Fact

1. Suez participates in the ERCOT market as a qualified scheduling entity (QSE).
2. PURA § 39.151(j) requires market participants to comply with the ERCOT operating and reliability policies, rules, guidelines and procedures or be subject to revocation, suspension, or amendment of their certification or to the imposition of administrative penalties.

3. On December 22, 2006, at approximately 2:55 a.m., ERCOT experienced a net loss of about 2,000 megawatts (MW) of generation resources which, as a result, caused the ERCOT system frequency to dip to a low point of 59.691 Hertz and led to the automatic deployment of the majority of the LaaR load that was enabled and providing Responsive Reserve Service (RRS) at the time.
4. On December 22, 2006, at 2:58 a.m., the ERCOT Operator initiated a hot line call to all QSEs to deploy the balance of their LaaR obligations that were providing RRS.
5. Suez was the QSE for LaaRs that had a 20 MW RRS obligation at the time of the event on December 22, 2006.
6. A preliminary review of telemetry data by ERCOT indicated that the Suez LaaRs on December 22, 2006, had deployed (dropped) approximately 13.2 MW, which did not meet the requirement for Suez to deploy 95% of its 20 MW scheduled LaaRs within 10 minutes of ERCOT instruction. The data indicated that Suez took 44 minutes and 20 seconds to deploy 95% of its scheduled LaaRs, or 34 minutes and 20 seconds more than the 10 minutes allowed by Protocol § 6.5.4(2).
7. On July 2, 2007, ERCOT experienced a shortage of power after two generators tripped off at 7:41 p.m. ERCOT instructed QSEs representing LaaR providers to deploy all LaaRs contracted to provide RRS within 10 minutes of ERCOT's deployment instruction.
8. Suez was the QSE for LaaRs that had a 19 MW RRS obligation at the time of the event on July 2, 2007.
9. A preliminary review of telemetry data by ERCOT indicated that the Suez LaaRs on July 2, 2007, had deployed approximately 13.75 MW, which did not meet the requirement for Suez to deploy 95% of its 19 MW scheduled LaaRs within 10 minutes of ERCOT instruction. The data indicated that Suez took 12 minutes to deploy 95% of its


- scheduled LaaRs, or two minutes more than the 10 minutes allowed by Protocol § 6.5.4(2).
10. In Docket No 34134,<sup>1</sup> Suez previously admitted to violating PURA § 39.151(j), P.U.C. SUBST. R. 25.503(f)(2) and ERCOT Protocols § 6.5.4(2) on April 17 and October 23, 2006.
  11. On March 11, 2008, Suez was provided proper 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.
  12. Suez fully cooperated with Commission Staff's investigation.
  13. Suez participated in one or more settlement discussions with Commission Staff to resolve this matter.
  14. Suez acknowledges the violations detailed in this Order.
  15. Commission Staff and Suez on May 6, 2008, filed an Agreement in this docket in which Commission Staff recommended and Suez agreed to pay an administrative penalty of \$73,375 for the violations described herein.
  16. At the Open Meeting on May 22, 2008, Commissioners directed Commission Staff to renegotiate the penalty amount with Suez.
  17. Commission Staff renegotiated the administrative penalty amount as directed and the parties agreed on a recalculated penalty amount.

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<sup>1</sup> *Agreed Notice of Violation and Settlement Agreement Relating to Suez Energy Marketing NA, Inc.'s Violations of PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), Relating to Failure to Adhere ERCOT Protocols § 6.5.4(2) and § 6.5.4(13) Concerning Load Acting As Resource Scheduling Requirements, Docket No. 34134, Order at 4 (June 11, 2007).*

18. The recalculated administrative penalty was developed as follows: (a) for Suez's third LaaR violation on December 22, 2006, the penalty is \$10,000 per MW (rounded to the nearest MW) that was not timely deployed. This amounts to a total penalty of \$70,000, subject to a 20% adjustment as noted below; and (b) for Suez's fourth LaaR violation on July 2, 2007, the penalty is \$15,000 per MW (rounded to the nearest MW) that was not timely deployed. This amounts to a total penalty of \$75,000, subject to a 20% adjustment as noted below.
  
19. In accordance with PURA § 15.023(c)(5) and (6), Commission Staff took into account the efforts that Suez has taken to correct the problems that led to its four LaaR-related violations. These efforts resulted in Suez meeting its LaaR obligations during each of the four frequency events requiring LaaR deployments that occurred since Suez's fourth violation on July 2, 2007. Specifically, Suez timely deployed at least 95% of its LaaR obligations within 10 minutes of being notified by ERCOT on September 5, 2007, December 12, 2007, February 26, 2008, and March 16, 2008. Because of these successful deployments, and because it appears that Suez has successfully addressed and corrected the problems that led to the violations addressed in the instant proceeding. Commission Staff recommended adjusting the recalculated administrative penalty to reflect a 20% reduction from the new, larger penalty amounts ( $\$145,000 \times 20\% = \$29,000$ ).
  
20. The total recalculated penalty which Commission Staff recommended and which Suez agreed to pay for the violations cited in this Order is \$116,000.

## II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.002, 14.051, 15.023, 15.024, and 39.151(j).
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2. Pursuant to P.U.C. PROC. R. 22.246, Suez was provided proper 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.
3. Under PURA § 39.151(j), Suez is required 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.
4. P.U.C. SUBST. R. 25.503(f)(2) requires Suez to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
5. ERCOT Protocols § 6.5.4 (2) requires the deployment of LaaRs within 10 minutes of an ERCOT instruction.
6. Suez violated PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), when it failed to adhere to ERCOT Protocol § 6.5.4.(2), on December 22, 2006, and on July 2, 2007, by not deploying 95% of its scheduled LaaR obligations within 10 minutes as allowed by the Protocol.
7. P.U.C. PROC. R. 22.246(g)(1)(B)-(C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.


### III. Ordering Paragraphs

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

1. The Agreement, provided with this Order as Attachment 1 is approved and the Parties shall be bound by its terms.

2. Suez shall pay an administrative penalty of \$116,000 before the expiration of 30 calendar days from the date this Order is signed. Payment shall be made payable to the Public Utility Commission of Texas and shall reference Docket No. 35650. A check for the administrative penalty shall be sent to the following address:

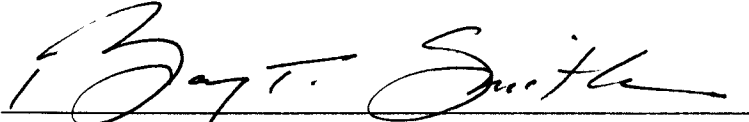
ATTN: Fiscal Services  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

3. Suez shall file an affidavit in this docket attesting to payment of the administrative penalty to the Commission imposed by the Agreement and this Order not later than five days after the payment is made.
  4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
  5. Entry of this Order does not indicate the Commission's or the Parties' endorsement or approval of any principal or methodology that may underlie the Agreement. Neither should the entry of an order consistent with the Agreement be regarded as a binding holding or legal precedent as to the appropriateness of any principle underlying the Agreement or the methodology for calculating any future penalty that may be assessed to Suez.
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- 6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the 29<sup>th</sup> day of October 2008.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**BARRY T. SMITHERMAN, CHAIRMAN**



**DONNA L. NELSON, COMMISSIONER**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



**DOCKET NO. 35650**

<p><b>AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO SUEZ ENERGY MARKETING NA, INC.'S VIOLATION OF PURA §39.151(j) AND P.U.C. SUBST. R. §25.503(f)(2); RELATING TO FAILURE TO ADHERE TO ERCOT PROTOCOLS § 6.5.4(2) CONCERNING LOAD ACTING AS RESOURCE SERVICE REQUIREMENTS</b></p>	<p>§ § § § § § § § § § § §</p>	<p><b>PUBLIC UTILITY COMMISSION</b>  <b>OF TEXAS</b></p>
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**REVISED SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Staff) and Suez Energy Marketing NA, Inc. (Suez or Company) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violation of PURA<sup>1</sup> § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols § 6.5.4(2) concerning Load acting as Resource service requirements.

**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. Commission Staff recommended and Suez agrees to pay an administrative penalty of One Hundred Sixteen Thousand Dollars (\$116,000) for Suez's violations described in the attached Proposed Order.

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL CODE §§ 11.001-66.016 (Vernon 2007 & Supp. 2007) (PURA).

*8*

3. Unless specifically provided for in this Agreement, Suez waives any notice and procedures that might otherwise be authorized or required in this proceeding.
4. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
5. 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 legal precedent for the method of calculating any penalty or 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.
6. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(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.
7. 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, including the original Settlement Agreement and Report to the Commission signed by parties on May 5 and 6, 2008.

8. Each person executing this Agreement represents that he or she has been 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.
9. The Company 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.

*Kenneth F. Lackey*  
Ken Lackey  
Vice President  
Suez Energy Marketing NA, Inc.  
1990 Post Oak Blvd., Ste. 1900  
Houston, TX 77056

Date: *Sep. 5, 2008*

*Michael E. Field*  
Michael E. Field  
Director  
Oversight and Enforcement Division  
Public Utility Commission of Texas

Date: *9/9/2008*