



Control Number: 36546



Item Number: 3

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DOCKET NO. 36546

AGREED NOTICE OF VIOLATION
AND SETTLEMENT AGREEMENT
RELATING TO CONSTELLATION
ENERGY COMMODITIES GROUP
INC.'S VIOLATION OF PURA
§ 39.151(j) AND P.U.C. SUBST. R. 25.503,
RELATING TO FAILURE TO ADHERE
TO ERCOT PROTOCOL § 6.10.5.4
CONCERNING LOAD ACTING AS
RESOURCE SERVICE
REQUIREMENTS

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PUBLIC UTILITY COMMISSION
OF TEXAS

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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 Staff of the Public Utility Commission of Texas (Commission) and Constellation Energy Commodities Group Inc. (CCG) (collectively, Parties) regarding Commission Staff's investigation of CCG for violation of § 39.151(j) of PURA¹ and P.U.C. SUBST. R. 25.503, concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Protocol § 6.10.5.4, concerning Load acting as Resource (LaaR) service requirements. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all of the issues in this docket. Commission Staff recommended an administrative penalty of \$115,000. CCG 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. CCG is a registered power marketer pursuant to PURA § 35.032 and participates in the ERCOT market as a qualified scheduling entity (QSE).

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2008) (PURA).

2. PURA § 39.151(j) requires power marketers and other 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 12, 2007, ERCOT experienced a loss of generation resources that, as a result, caused the ERCOT system frequency to dip and led to the deployment of the majority of the LaaR load that was enabled and providing Responsive Reserve Service (RRS) at the time.
4. On December 12, 2007, at approximately 1:56 a.m., the ERCOT Operator issued a Verbal Dispatch Instruction (VDI) to all QSEs to deploy the balance of their LaaR obligations that were providing RRS.
5. CCG was the QSE for LaaRs that had a 46 MW RRS obligation at the time of the event on December 12, 2007.
6. In response to the December 12, 2007 VDI, CCG deployed (dropped) 0 MW within 10 minutes, which violated ERCOT Protocol § 6.10.5.4 requiring CCG to deploy 95% of its 46 MW scheduled LaaRs within 10 minutes of ERCOT instruction.
7. On September 26, 2008, CCG 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.
8. CCG fully cooperated with Commission Staff's investigation.
9. CCG participated in one or more settlement discussions with Commission Staff to resolve this matter.
10. CCG acknowledged the facts giving rise to the violations detailed in this Order.

11. CCG developed and instituted a mitigation plan designed to ensure that its LaaRs deploy as instructed.
12. On December 30, 2008, Commission Staff and CCG filed an Agreement in this docket in which Commission Staff recommended and CCG agreed to pay an administrative penalty of \$115,000 for the violations described herein.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.002, 14.051, 15.023, 15.024, 35.032 and 39.151(j).
2. CCG 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. Pursuant to PURA § 39.151(j), CCG 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 CCG to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
5. ERCOT Protocol § 6.10.5.4 requires the deployment of LaaRs within 10 minutes of an ERCOT instruction.
6. CCG violated PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2) when it failed to adhere to ERCOT Protocol § 6.10.5.4 on December 12, 2007, by not deploying 95% of its scheduled LaaR obligations within 10 minutes of ERCOT instruction as allowed by the Protocol.

7. The violations of § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), described herein are Class A violations pursuant to P.U.C. SUBST. R. 25.8(b)(3)(B).
8. P.U.C. PROC. R. 22.246(g)(1)(B) and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
9. The requirements for informal disposition pursuant to P.U.C. PROC. R. 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 order:

1. The Agreement attached to this Order as Attachment 1 is approved, and the Parties shall be bound by its terms.
2. CCG shall pay an administrative penalty to the Commission in the amount of \$115,000. CCG shall remit payment of the full amount of the administrative penalty on or before 30 calendar days after the date this Order is signed. Payment of the administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 36546. The check shall be sent to the following address:

Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711
ATTN: Fiscal Services
3. CCG shall file an affidavit of payment 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 endorsement or approval of any principal or methodology that may underlie the Agreement. Entry of an order consistent with the Agreement shall not be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.

- 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, are denied.

SIGNED AT AUSTIN, TEXAS on the 3rd day of ^{February} ~~January~~ 2009.

PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER

DOCKET NO. 310546

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| AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO CONSTELLATION ENERGY COMMODITIES GROUP INC.'S VIOLATION OF PURA § 39.151(j) AND P.U.C. SUBST. R. § 25.503; RELATING TO FAILURE TO ADHERE TO ERCOT PROTOCOL § 6.10.5.4 CONCERNING LOAD ACTING AS RESOURCE SERVICE REQUIREMENTS | § § § § § § § § § § § | <p style="text-align: center;">PUBLIC UTILITY COMMISSION</p> <p style="text-align: center;">OF TEXAS</p> |
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SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Staff) and Constellation Energy Commodities Group Inc. (CCG 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 § 39.151(j) of the Public Utility Regulatory Act¹ (PURA) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocol § 6.10.5.4, concerning Load acting as Resource (LaaR) 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. Staff recommends and CCG agrees to pay an administrative penalty of One Hundred Fifteen Thousand dollars (\$115,000.00) for CCG's violations described in the attached Proposed Order.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE §§ 11.001-66.017 (Vernon 2007 & Supp. 2008) (PURA).

3. CCG agrees to implement its mitigation plan designed to ensure its LaaRs deploy as instructed.
4. Unless specifically provided for in this Agreement, CCG waives any notice and procedures that might otherwise be authorized or required in this proceeding.
5. 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.
6. 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.
7. 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.

8. 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.

9. 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.

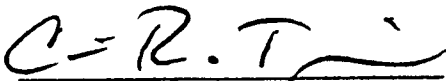
10. The Company warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties by their authorized representatives designated below.



Stuart Rubenstein
Chief Operating Officer
Constellation Energy Commodities Group Inc.
111 Market Place, Ste. 500
Baltimore, Md. 21202

Date: December 19, 2008



Carrie R. Tournillon
State Bar No. 24053062
Attorney - Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Date: Dec. 30, 2008