



Control Number: 39963



Item Number: 2

Addendum StartPage: 0

Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Rolando Pablos
Commissioner

Brian H. Lloyd
Executive Director




Rick Perry
Governor

Public Utility Commission of Texas

TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner
Rolando Pablos, Commissioner

All Parties of Record

FROM: Irene Montelongo 
Director, Docket Management

RE: **Open Meeting of January 12, 2012**
Docket No. 39963 – *Agreed Notice of Violation & Settlement Agreement Relating to BP Energy Company's Violation of PURA § 39.151(j) and P.U.C. SUBST. R. § 25.503(f)(2); Relating to ERCOT Protocol § 6.3.2(2) Concerning Ancillary Service Requirements*

DATE: December 9, 2011

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Thursday, January 12, 2012, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before, Wednesday, January 4, 2012.

If there are no corrections or exceptions, no response is necessary.

Q:\CADM\Docket Management\Electric\MISCELLANEOUS\39xxx\39963novpomemo.docx

RECEIVED
11 DEC -9 PM 2:24
PUBLIC UTILITY COMMISSION
FILING CLERK



Printed on recycled paper

An Equal Opportunity Employer 

DOCKET NO. 39963

**AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO BP ENERGY §
COMPANY'S VIOLATION OF PURA §
§ 39.151(j) AND P.U.C. SUBST. R. §
25.503(f)(2), RELATING TO ERCOT §
PROTOCOL § 6.3.2(2) CONCERNING §
ANCILLARY SERVICE §
REQUIREMENTS §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

RECEIVED
1/26/08 - 9 PM 2:24
PUBLIC UTILITY COMMISSION
FILING CLERK

PROPOSED 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 BP Energy Company (BPEC) (together, Parties) regarding Commission Staff's investigation of BPEC for violation of PURA¹ § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Protocol § 6.3.2(2), concerning Ancillary Service provider obligations. Commission Staff recommended an administrative penalty of \$20,000, which BPEC has agreed to pay. The Agreement is approved.

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

I. Findings of Fact

1. The ERCOT Operations Staff declared an Emergency Energy Curtailment Plan (EECP) Step 2 Event on February 26, 2008, which lasted from 18:41 to 20:08.
2. Commission Staff asserts that BPEC did not provide and deploy, in total, sufficient Responsive Reserves, Up Regulation, and Non-Spin Ancillary Services based on the Texas Regional Entity's (TRE) examination of real-time operating data, a violation of Protocol § 6.3.2 (Alleged Violations). The TRE concluded that BPEC maintained an insufficient ancillary service capacity in the amount of 13 megawatts (MW) during the interval of 18:45, and in the amount of 14 MW during the interval of 19:00.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE §§ 11.001-66.016 (Vernon 2007 & Supp. 2011) (PURA).

3. On or about July 8, 2011, BPEC 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.
4. BPEC fully cooperated with Commission Staff's investigation.
5. BPEC acknowledges the Alleged Violations detailed in this Order.
6. BPEC participated in one or more settlement discussions with Commission Staff to resolve this matter.
7. On December 5, 2011, the Parties entered into an Agreement resolving the violations. Commission Staff recommended, and BPEC agreed to pay an administrative penalty of \$20,000.00 for the Alleged Violations.
8. The Agreement provides for a reasonable resolution of this dispute.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.003, 14.051, 15.023, 15.024, and 39.151(j).
2. BPEC 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. BPEC violated PURA § 39.151(j) and the requirements of P.U.C. SUBST. R. 25.503(f)(2) concerning failure to adhere to ERCOT Protocol § 6.3.2(2), concerning Ancillary Service provider obligations on February 26, 2008.
4. P.U.C. PROC. R. 22.246(g)(1)(A)(B) and (C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
5. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
6. 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. BPEC shall pay an administrative penalty to the Commission in an amount totaling \$20,000 no later than 30 calendar days after the date of this Order. Payment shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 39963. 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. BPEC shall file an affidavit of payment in this docket no later than five calendar 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. This order disposes of all claims regarding BPEC's performance on February 26, 2008 under PURA, the Commission's Substantive Rules and the ERCOT Protocols.
5. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as 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 herein, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of January 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER

PUC DOCKET NO. 39963

AGREED NOTICE OF VIOLATION	§	
AND SETTLEMENT AGREEMENT	§	
RELATING TO B P ENERGY	§	BEFORE THE PUBLIC UTILITY
COMPANY'S (QSE) VIOLATION OF	§	
PURA § 39.151(j) AND P.U.C. SUBST.	§	
R. § 25.503; RELATING TO ERCOT	§	COMMISSION OF TEXAS
PROTOCOL § 6.3.2(2)	§	
CONCERNING ANCILLARY	§	
SERVICE REQUIREMENTS	§	

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Staff) and BP Energy Company (QSE) (BPEC or Company), (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of BPEC for violation of Section 39.151(j) of the Public Utility Regulatory Act² (PURA) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Protocol § 6.3.2(2), concerning Ancillary Service provider obligations on February 26, 2008.

The Parties agree as follows:

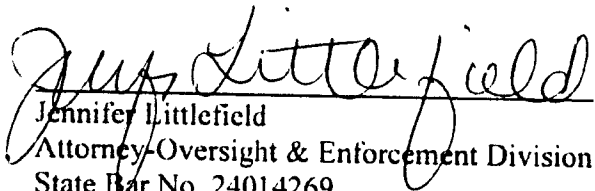
1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff recommends and BPEC agrees to pay an administrative penalty of Twenty Thousand dollars (\$20,000.00) for BPEC's alleged violations described in the attached Proposed Order.
3. BPEC had already implemented a mitigation plan designed to ensure that it meets its obligations regarding provision of ancillary services consistent with ERCOT protocols before Staff initiated this investigation.

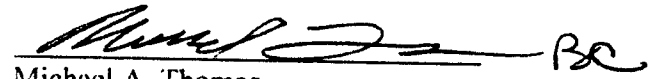
² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

4. Unless specifically provided for in this Agreement, BPEC 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 for violations that are not raised in this Commission Staff investigation. This settlement disposes of all claims related to BPEC's performance under PURA, the Commission's Substantive Rules and the ERCOT Protocols in effect on February 26, 2008.
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 represents the effort by BPEC and Staff to avoid the future expenditure of significant resources in litigating this matter.

9. 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.
10. 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.
11. BPEC warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties through their authorized representatives designated below.


Jennifer Littlefield
Attorney-Oversight & Enforcement Division
State Bar No. 24014269
(512) 936-7285
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326


Michael A. Thomas
Chief Operating Officer - Power
BP Energy Company
201 Helios Way
Houston, TX 77079
(BPEC) (QSE)