



Control Number: 40320



Item Number: 5

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DOCKET NO. 40320

AGREED NOTICE OF VIOLATION AND	§	PUBLIC UTILITY COMMISSION
SETTLEMENT AGREEMENT	§	
RELATING TO GDF SUEZ ENERGY	§	OF TEXAS
MARKETING NA, INC.'S VIOLATION	§	
OF PURA §39.151 AND PUC SUBST. R.	§	
§ 25.503(f)(2), RELATING TO FAILURE	§	
TO ADHERE TO ERCOT PROTOCOL	§	
§§ 8.1.1, 8.1.2.1.3, AND 8.1.1.4.3	§	
RELATING TO NON-SPINNING	§	
RESERVE SERVICE	§	

RECEIVED  
 12 MAY 23 AM 10:09  
 PUBLIC UTILITY COMMISSION  
 FILING CLERK

ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and GDF Suez Energy Marketing NA, Inc. (GDF Suez), a Qualified Scheduling Entity (QSE), (together, Parties) regarding Commission Staff's investigation of GDF Suez 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, Inc. (ERCOT) Protocols §§ 8.1.1, 8.1.1.2.1.3, and 8.1.1.4.3, relating to failure of resource providing Non-Spinning Reserve Service (NSRS) that it controls to meet its Low Sustained Limit (LSL) output within 25 minutes of deployment on February 2, 2011. The Agreement resolves all of the issues of this docket. Commission Staff recommended an administrative penalty of \$20,000, which GDF Suez 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. GDF Suez is a registered power marketer pursuant to PURA § 35.032 and participates in the ERCOT market as a registered QSE.

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

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2. On February 2, 2011, ERCOT issued a Verbal Dispatch Instruction (VDI) to all QSEs with Load Resources (LR) to deploy their NSRS resources. The official start time of the deployment was 04:26:20 a.m.
3. GDF Suez's generator, with unit code name TGF\_TGFGT\_1 and common name Texas Gulf Sulphur, was deployed by ERCOT and failed to meet its minimum LSL with 25 minutes.
4. GDF Suez confirmed that it did not meet its non-spin obligation on February 2, 2011, because unit TGF\_TGFGT\_1 failed to start due to the severe cold weather freezing instrumentation lines.
5. This failure to perform occurred during deteriorating grid conditions that ultimately worsened to an Energy Emergency Alert (EEA)<sup>2</sup> Level 3 event.<sup>3</sup>
6. In response to the failure to start, plant operations personnel used scaffolding, plywood, and tarps to construct wind breaks around the affected area and installed portable diesel heaters. Additionally plant management sought bids from contractors to evaluate and upgrade existing heat trace equipment and insulation to better prepare for future cold weather events.
7. Additionally, GDF Suez completed several other winterization actions and implemented additional procedures to improve extreme cold weather operations.
8. On or about December 6, 2011, GDF 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.
9. GDF Suez fully cooperated with Commission Staff's investigation.
10. GDF Suez acknowledges the violations detailed in this Order.
11. GDF Suez participated in one or more settlement discussions with Commission Staff to resolve this matter.

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<sup>2</sup> See ERCOT Protocol § 2.1, Definitions.

<sup>3</sup> ERCOT deployed NSRS at 4:26 a.m. At 5:20, ERCOT declared EEA Level 2A. At 5:43, ERCOT declared EEA Level 3 and began shedding firm load.

12. On April 13, 2012, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and GDF Suez agreed to pay an administrative penalty of \$20,000.
13. The Agreement provides for a reasonable resolution of this dispute and should be approved.

## **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 38.005.
2. GDF 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. GDF Suez 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 §§ 8.1.1, 8.1.1.2.1.3, and 8.1.1.4.3, relating to the failure of a resource providing NSRS that it controls to meet its LSL output within 25 minutes of deployment.
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. GDF Suez shall pay an administrative penalty to the Commission in an amount of \$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. 40320. The check shall be sent to either of the following addresses:  

Public Utility Commission of Texas	Public Utility Commission of Texas
P.O. Box 13326	1701 N. Congress Ave., 7 <sup>th</sup> Floor
Austin, Texas 78711	Austin, Texas 78711
ATTN: Fiscal Services	ATTN: Fiscal Services
3. GDF Suez 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.
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 23<sup>rd</sup> day of May 2012.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
**DONNA L. NELSON, CHAIRMAN**

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

  
\_\_\_\_\_  
**ROLANDO PABLOS, COMMISSIONER**

PUC DOCKET NO. 40320

AGREED NOTICE OF VIOLATION	§	
AND SETTLEMENT AGREEMENT	§	
RELATING TO GDF SUEZ ENERGY	§	BEFORE THE PUBLIC UTILITY
MARKETING NA, INC'S VIOLATION	§	
OF PURA § 39.151 AND P.U.C. SUBST.	§	
R. § 25.503(f)(2); RELATING TO	§	COMMISSION OF TEXAS
FAILURE TO ADHERE TO ERCOT	§	
PROTOCOL §§ 8.1.1, 8.1.1.2.1.3, AND	§	
8.1.1.4.3 RELATING TO NON-	§	
SPINNING RESERVE SERVICE	§	

### SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Staff) and GDF Suez Energy Marketing NA, Inc. (GDF Suez or Company), a qualified scheduling entity (QSE), (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of GDF Suez for violation of Section 39.151(j) of the Public Utility Regulatory Act<sup>1</sup> (PURA) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols §§ 8.1.1, 8.1.1.2.1.3, and 8.1.1.4.3, relating to the failure of a resource providing Non-Spinning Reserve Service (NSRS) to meet its Low Sustained Limit (LSL) output within 25 minutes of deployment on February 2, 2011. This failure to perform occurred during deteriorating grid conditions that ultimately worsened to an Energy Emergency Alert (EEA)<sup>2</sup> Level 3 event.<sup>3</sup>

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 GDF Suez agrees to pay an administrative penalty of

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

<sup>2</sup> See ERCOT Protocol § 2.1, Definitions.

<sup>3</sup> ERCOT deployed NSRS at 4:26 a.m. At 5:20, ERCOT declared EEA Level 2A. At 5:43, ERCOT declared EEA Level 3 and began shedding firm load.

Twenty Thousand dollars (\$20,000.00) for GDF Suez's violations described below and in the attached Proposed Order.

3. In response to declining grid conditions, on February 2, 2011 ERCOT issued a Verbal Dispatch Instruction (VDI) to all QSEs with Load Resources (LR) to deploy their NSRS resources. The official start time of the deployment was 04:26:20AM.
4. GDF Suez's generator, with unit code name TGF\_TGFGT\_1 and common name Texas Gulf Sulphur, was deployed by ERCOT and failed to meet its minimum LSL within 25 minutes.
5. GDF Suez confirmed that it did not meet its non-spin obligation on February 2, 2011 because unit TGF\_TGFGT\_1 failed to start due to the severe cold weather freezing instrumentation lines.
6. In response to the failure to start, plant operations personnel used scaffolding, plywood, and tarps to construct wind breaks around the affected area and installed portable diesel heaters. Additionally, plant management sought bids from contractors to evaluate and upgrade existing heat trace equipment and insulation to better prepare for future cold weather events.
7. Additionally, GDF Suez completed the following winterization actions and implemented the following procedures to improve extreme cold weather operations.
  - a. Conducted audits of existing heat trace circuits, power supplies, and insulation on piping and critical plant instrumentation performed by a third party;
  - b. Performed any repairs to heat trace circuits, power supplies, and insulation identified by audits;
  - c. Added additional heat trace circuits, power supplies, and insulation identified by audits;
  - d. Installed additional heat trace and insulation on Boiler Level transmitter;
  - e. Installed wind break on North side of boiler and at the chlorination skid;
  - f. Staged a portable heater in the North side of boiler enclosure. Staged gas and electric portable heaters in the emergency response heat trace locker;

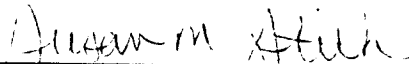


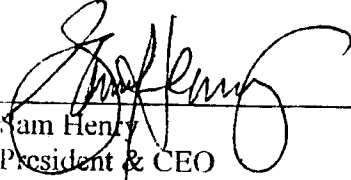
- g. Installed a permanent platform to access the boiler level transmitter;
  - h. Purchased spare emergency supplies for extreme cold weather conditions including: heat trace, portable heaters, wind breaks, spare critical instrumentation, insulation, and tarps;
  - i. Monitor heat trace circuits on an hourly basis in extreme cold weather conditions;
  - j. Increase plant staffing during extreme cold weather events to increase from two people per shift to three people per shift;
  - k. Created written procedure for winterization and extreme cold weather operations;
  - l. Provided refresher training on extreme cold weather procedures to plant operating staff; and,
  - m. Trained two temporary operators on extreme cold weather procedures and ensured they were available if needed.
8. Unless specifically provided for in this Agreement, GDF Suez waives any notice and procedures that might otherwise be authorized or required in this proceeding.
9. 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 issues related to GDF Suez's performance in this investigation under PURA, the Commission's Substantive Rules and the ERCOT Protocols in effect on February 2, 2011.
10. 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.

11. 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.
12. This Agreement represents the effort by GDF Suez and Staff to avoid the future expenditure of significant resources in litigating this matter.
13. 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.
14. 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.
15. GDF Suez 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.

  
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Susan M. Stith  
Attorney-Oversight & Enforcement Division  
State Bar No. 24014269

  
\_\_\_\_\_  
Sam Henry  
President & CEO  
GDF Suez Energy Marketing NA, Inc., *me*

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