



Control Number: 47775



Item Number: 36

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**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**Thomas Gleeson**  
Executive Director



**Greg Abbott**  
Governor



## *Public Utility Commission of Texas*

TO: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Lorenzo Z. Garcia  
Commission Advising

RE: *Notice of Violation by the City of Bartlett of PURA §§ 39.151(d) and (j), Related to Market Structure; 16 TAC § 25.503(f)(2), Related to Oversight of the Wholesale Participants, and ERCOT Nodal Operating Guide § 1.4, Relating to Transmission Operator, Docket No. 47775, SOAH Docket No. 473-21-1198, Draft Preliminary Order, February 25 or February 26, 2021 Open Meeting, Item No. XX.*

DATE: February 17, 2021

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the February 25 or February 26, 2021 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the February 25 or February 26, 2021 open meeting.

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**PUC DOCKET NO. 47775**  
**SOAH DOCKET NO. 473-21-1198**

<b>NOTICE OF VIOLATION BY THE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CITY OF BARTLETT OF PURA</b>	<b>§</b>	
<b>§§ 39.151(d) AND (j), RELATED TO</b>	<b>§</b>	<b>OF TEXAS</b>
<b>MARKET STRUCTURE; 16 TAC</b>	<b>§</b>	
<b>§ 25.503(f)(2), RELATED TO</b>	<b>§</b>	
<b>OVERSIGHT OF THE WHOLESALE</b>	<b>§</b>	
<b>PARTICIPANTS, AND ERCOT NODAL</b>	<b>§</b>	
<b>OPERATING GUIDE § 1.4, RELATING</b>	<b>§</b>	
<b>TO TRANSMISSION OPERATOR</b>	<b>§</b>	

**DRAFT PRELIMINARY ORDER**

Commission Staff filed a notice of violation recommending the assessment of administrative penalties against the City of Bartlett. This preliminary order identifies the issues that must be addressed in this proceeding.

Commission Staff alleges Bartlett has failed to comply with Public Utility Regulatory Act (PURA)<sup>1</sup> § 39.151(d) and (j), 16 Texas Administrative Code (TAC) § 25.503(f)(2), and ERCOT Operating Guides § 1.4, relating to Transmission Operator (TO).<sup>2</sup> Bartlett is a distribution service provider (DSP) under ERCOT Nodal Protocols § 2.1.<sup>3</sup> Under ERCOT Operating Guides § 1.4, every transmission service provider (TSP) and DSP in the Electric Reliability Council of Texas (ERCOT) region must “either register as a transmission operator or designate a transmission operator as its representative and with the authority to act on its behalf.”<sup>4</sup> Commission Staff recommends the Commission find Bartlett has either failed to register as a transmission operator or failed to designate a transmission operator and conclude Bartlett is in violation of PURA, Commission rules, and the ERCOT Operating Guides.<sup>5</sup> Commission Staff states the alleged

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

<sup>2</sup> Notice of Violation at 1 (Nov. 13, 2017).

<sup>3</sup> *Id.*, Report on Violations at 2; ERCOT Nodal Protocols § 2.1.

<sup>4</sup> ERCOT Operating Guides § 1.4.

<sup>5</sup> Notice of Violation, Report on Violations at 2–3.

violations are Class A violations and recommends the assessment of a \$25,000 administrative penalty.<sup>6</sup>

On November 1, 2012, the Texas Reliability Entity provided Bartlett with a notice stating Bartlett was not in compliance with the requirements of ERCOT Operating Guides § 1.4, relating to transmission operators.<sup>7</sup> Commission Staff sent Bartlett a preliminary notice of violation asserting the same violation on October 21, 2015.<sup>8</sup> On September 11, 2015, Commission Staff, ERCOT, and the Texas Reliability Entity met with the Small Public Power Group of Texas, a group of municipality-owned stakeholders unaffiliated with Bartlett (the municipalities group).<sup>9</sup> It was agreed at that meeting that the municipalities group would be allowed the opportunity to file a Nodal Operating Guide Revision Request (NOGRR) to ERCOT that would exempt certain DSPs from the requirements of ERCOT Operating Guides § 1.4, relating to transmission operators and that Commission Staff would abate any formal enforcement actions until this matter could be addressed by ERCOT. While Bartlett was not a member of the municipalities group, Commission Staff similarly abated this enforcement action at that time.<sup>10</sup>

The municipalities group submitted NOGRR 149 to ERCOT on November 11, 2015.<sup>11</sup> On January 26, 2016, ERCOT's Operations Working Group recommended rejection of NOGRR 149.<sup>12</sup> ERCOT's Reliability and Operations Subcommittee rejected an appeal of the recommendation on March 3, 2016.<sup>13</sup> An appeal of this decision to ERCOT's Technical Advisory Commission was repeatedly tabled throughout the remainder of 2016 and the entirety of 2017.<sup>14</sup>

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<sup>6</sup> *Id.* at 1 (citing 16 Tex. Admin. Code § 25.8(b)).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Commission Staff filed this notice of violation on November 13, 2017, after the abatement period for Bartlett's enforcement action lapsed on September 11, 2017.<sup>15</sup> But the Commission administrative law judge (ALJ) abated this proceeding on December 27, 2017 after Bartlett filed a request to abate stating it had joined the municipalities group.<sup>16</sup>

On April 10, 2018, the ERCOT board of directors rejected NOGRR 149.<sup>17</sup> The municipalities group filed an appeal of the board of directors' decision with the Commission on May 14, 2018.<sup>18</sup> The Commission denied the appeal on November 5, 2020.<sup>19</sup> On November 13, 2020, the Commission ALJ lifted the abatement in this proceeding.<sup>20</sup>

On January 27, 2021, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH). Bartlett was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in this docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by February 10, 2021. Bartlett and Commission Staff timely filed lists of issues.

### **I. Issues to be Addressed**

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>21</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has Bartlett failed to observe any scheduling, operating, planning, reliability, and settlement polices, rules, guidelines, and procedures established by ERCOT in violation of PURA § 39.151(j)?

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<sup>15</sup> *Id*

<sup>16</sup> Order No. 1 (Dec. 27, 2017); Request for Abatement and in the Alternative for a Hearing and Formal Settlement Conference at 1 (Dec. 14, 2017).

<sup>17</sup> Commission Staff's Motion for Further Abatement at 1 n.3 (Sep. 12, 2018).

<sup>18</sup> *Appeal of the Small Public Power Group of Texas Regarding ERCOT's Definition of "Transmission Operator"*, Docket No. 48366, Appeal of the Small Public Power Group of Texas Regarding ERCOT's Definition of "Transmission Operator" (May 14, 2018).

<sup>19</sup> *Id.*, Order, Ordering Paragraph No. 1 (Nov. 5, 2020).

<sup>20</sup> Order No. 12 (Nov. 13, 2020).

<sup>21</sup> Tex. Gov't Code § 2003.049(e).

2. Has Bartlett failed to comply with ERCOT procedures or any official interpretation of the ERCOT Nodal Protocols or ERCOT Nodal Operating Guides issued by ERCOT or the Commission in violation of 16 TAC § 25.503(f)(2)?
3. Has Bartlett failed to apply for registration as a transmission operator and failed to designate a transmission operator as its representative and with the authority to act on its behalf in violation of ERCOT Nodal Operating Guides § 1.4? In answering this issue, please address the following sub-issues.
  - a. Has Bartlett installed or implemented all the necessary infrastructure, equipment, control systems, software, and processes for Bartlett to function as a transmission operator? If not, please specify what action, if any, Bartlett has taken to change or enhance its existing infrastructure, equipment, control systems, software, or processes to allow Bartlett to function as a transmission operator. For each item specified, please provide the cost and time necessary to install or implement the item.
  - b. Has Bartlett explored transfer of ownership of electric infrastructure assets with a load-shedding transmission service provider that would resolve its noncompliance with ERCOT Nodal Operating Guides § 1.4, relating to transmission operators?
    - i. If not, why not?
    - ii. If so, what efforts have been made to transfer Bartlett's ownership of its electric infrastructure assets to a load-shedding transmission service provider?
4. How many feeders does Bartlett maintain?
  - a. What substations are the feeders connected to?
  - b. Who owns the substations Bartlett's feeders are connected to?
  - c. Who operates the substations Bartlett's feeders are connected to?
  - d. Does Bartlett have access to the substations Bartlett's feeders are connected to?
5. Is Bartlett's load included in any transmission operator's load-share plan that is listed in ERCOT's load-shed plan?
6. Who supplies Bartlett with power?

7. Who is the directly-connected TSP for Bartlett?
  - a. Has Bartlett asked its directly-connected TSP to serve as its designated transmission operator?
    - i. If not, why not?
    - ii. If so and its directly-connected TSP refused, please identify each stated condition or objection upon which Bartlett's directly-connected TSP refused to be designated as Bartlett's transmission operator.
  - b. Has Bartlett communicated with any other TSPs about being Bartlett's designated transmission operator? If not, why not? If so, please answer the following sub-issues separately for each TSP Bartlett communicated with.
    - i. What efforts has Bartlett made to obtain a designated transmission operator?
    - ii. What is the status of Bartlett's communications with the TSP?
    - iii. Has the TSP refused to be designated as Bartlett's transmission operator? If so, please identify each stated condition or objection upon which the TSP refused.
    - iv. Has the TSP offered to be designated as Bartlett's transmission operator?
      - (1) If so, what is the quoted price range including any fixed costs, one-time upgrade costs, and annual or recurring costs?
      - (2) If so, what are the conditions under which the TSP stated it would agree to be designated as Bartlett's transmission operator?
    - v. What, if any, interconnection points or other infrastructure would have to be constructed to allow the TSP to be designated as Bartlett's transmission operator? How much would those facilities cost? Who would be responsible for paying those costs?
8. How many DSPs in ERCOT are not also TSPs? How many of these DSPs have a designated transmission operator? How many are registered as a transmission operator?
9. Is Bartlett currently in violation of the requirements of ERCOT Operating Guides § 1.4, relating to transmission operators? If so, when did the violation begin? If not, when did the violation begin and when did Bartlett cease to be in violation of the ERCOT Operating Guides?

10. What are Bartlett's overall gross and net annual revenues for each of the past five years?
11. What are Bartlett's gross and net annual revenues from providing electric service for each of the past five years?
12. If Bartlett is in violation of PURA, should a penalty be imposed under PURA § 15.023?
13. If Bartlett is in violation of PURA, what are the appropriate factors under PURA § 15.023(c) upon which to base the amount of the penalty, if any?
14. If Bartlett is in violation of PURA and the Commission's rules, what is the appropriate penalty amount under PURA § 15.023(a-b) and 16 TAC § 22.246(c)?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

## **II. Effect of Preliminary Order**

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.



Signed at Austin, Texas the \_\_\_\_\_ day of February 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**