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DOCKET NO. 52924

NOTICE OF VIOLATION BY BT	§	PUBLIC UTILITY COMMISSION
COOKE SOLAR LLC FOR	§	
VIOLATIONS OF 16 TAC § 25.55,	§	OF TEXAS
CONCERNING FAILURE TO COMPLY	§	
WITH WINTER WEATHER	§	
READINESS REPORTING	§	
REQUIREMENTS	§	

SETTLEMENT AGREEMENT

The Staff of the Public Utility Commission of Texas (Commission) and BT Cooke Solar LLC (BT Cooke) enter into this settlement agreement and report to the Commission. The agreement resolves and concludes all matters related to BT Cooke's failure to comply with certain requirements under 16 Texas Administrative Code (TAC) §§ 25.55 and 25.109.

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. The Commission has jurisdiction over this matter under PURA¹ §§ 14.051, 14.054, 15.023, and 35.0021.
3. On December 8, 2021, the executive director of the Commission filed a notice of violation and report to the Commission (NOV) recommending that an administrative penalty be assessed against BT Cooke for violations of 16 TAC § 25.55(c)(2).
4. For the reasons discussed herein, Commission Staff recommends, and BT Cooke agrees to pay, an administrative penalty of \$150,000 in full settlement of the violations described below and in the attached proposed order.
5. The recommended penalty set forth in this agreement reflects consideration of the significant and ongoing expenditures undertaken to improve BT Cooke's compliance efforts and prevent future violations of the applicable rules and protocols.²

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

² See paragraphs 38 through 44, *infra* (discussing new and recurring annual compliance-related expenditures undertaken by BT Cooke's parent company).

Registration and Description of Facilities

6. BT Cooke is a power generation company (PGC) that sells electric energy at wholesale in the ERCOT power region.
7. BT Cooke is registered with the Commission under PGC number 20590.
8. BT Cooke is the ERCOT-registered resource entity responsible for one ERCOT-registered generation resource with a nameplate generation capacity of 59.8 megawatts (MW).
9. BT Cooke was purchased by Adapture Renewables, Inc. (ARI) on November 9, 2020, and is now a subsidiary of ARI.
10. ARI manages and is responsible for BT Cooke's operations in the ERCOT power region, including maintaining compliance with ERCOT and Commission rules.

Winter Weather Preparation Standards & Reporting Requirements

11. From February 15, 2021 through February 19, 2021, the ERCOT power region experienced an unprecedented electric generation shortage caused by weather-related failures at generation facilities throughout the state during a period of extreme winter weather.
12. In response to the February 2021 generation crisis, the Texas Legislature enacted PURA § 35.0021, requiring the Commission to develop the weather preparation standards necessary to ensure the reliability of electric generation during future extreme winter weather events.
13. Under the authority of PURA § 35.0021(b), the Commission adopted 16 TAC § 25.55, which establishes a series of winter weather preparedness activities that each resource entity in the ERCOT power region was required to complete by December 1, 2021.
14. Under 16 TAC § 25.55(c)(2), each generation entity in the ERCOT power region was required to submit to ERCOT a winter weather readiness report (WWRR) for each of its generation resources no later than December 1, 2021. The purpose of the WWRR requirement was to advise ERCOT and the Commission of each generation resource's compliance with the weatherization requirements of 16 TAC § 25.55(c)(1) and, to the extent additional time was needed to complete the required preparations, to inform ERCOT

and the Commission of the progress and expected completion date for each generation resource's compliance activities.

15. ERCOT utilized an online service known as DocuSign to distribute the WWRR form for each generation resource to the associated resource entity, monitor the progress of each WWRR form, and receive each WWRR form upon completion.

WWRR Form Distribution

16. On November 12, 2021, ERCOT sent a DocuSign link for the BT Cooke generation resource's WWRR to the email address associated with BT Cooke's authorized representative in ERCOT's records at the time the DocuSign form was distributed.
17. At the time the WWRR distribution email was sent, the contact listed in ERCOT's records as BT Cooke's authorized representative was outdated, belonging to personnel of the prior owner of the resource entity.
 - a. Under ERCOT Nodal Protocols § 16.5.4(1), BT Cooke is required to provide ERCOT with updated information related to its designated authorized representative, including the authorized representative's email address.
 - b. At the time the WWRR form was distributed on November 12, 2021, the contact listed as BT Cooke's authorized representative in the ERCOT records had not been associated with BT Cooke since before the November 2020 acquisition of the resource entity.
 - c. Though BT Cooke contacted ERCOT to update its officers having binding authority over its ERCOT-registered resource entity following the change in control, BT Cooke did not realize it also needed to provide ERCOT with updated contact information for its newly designated authorized representative following the change in control. Therefore, BT Cooke did not update this contact information with ERCOT prior to the December 1, 2021 WWRR submission deadline.
 - d. BT Cooke became aware that the contact information associated with its authorized representative in the ERCOT records was outdated after learning of Commission Staff's NOV.

- e. BT Cooke provided ERCOT with updated authorized representative contact information through submission of ERCOT Protocols Section 23 Form E: Notice of Change of Information for its authorized representative on December 13, 2021.
- 18. Because BT Cooke failed to update the contact information associated with its authorized representative in the ERCOT records prior to December 1, 2021, no employee associated with BT Cooke or ARI received a copy of the WWRR form for the BT Cooke generation resource from ERCOT before the WWRR submission deadline. The former owner of BT Cooke received the WWRR form from ERCOT but did not forward it to ARI before the submission deadline.

Violations of 16 TAC § 25.55(c)(2)

- 19. BT Cooke is the ERCOT-registered resource entity responsible for one generation resource registered with ERCOT under the resource name RIPPEY – UNIT1.
- 20. BT Cooke is a generation entity, as that term is defined under 16 TAC § 25.55(b)(3).
- 21. RIPPEY – UNIT1 is a generation resource, as that term is defined under 16 TAC § 25.55(b)(4).
- 22. Under 16 TAC § 25.55(c)(2), BT Cooke was required to submit to ERCOT a WWRR for RIPPEY – UNIT1 no later than December 1, 2021.
- 23. BT Cooke did not submit a WWRR for RIPPEY – UNIT1 to ERCOT by December 1, 2021.
- 24. BT Cooke late-submitted the WWRR for RIPPEY – UNIT1 to ERCOT on December 23, 2021.
- 25. BT Cooke admits that it violated 16 TAC § 25.55(c)(2) on December 1, 2021 by failing to submit the WWRR for the RIPPEY – UNIT1 generation resource by the December 1, 2021 submission deadline.
- 26. BT Cooke admits that it continued to violate 16 TAC § 25.55(c)(2) from December 2, 2021 through December 22, 2021 by failing to submit the WWRR for the RIPPEY – UNIT1 generation resource. BT Cooke asserts that a significant portion of this time was spent by

BT Cooke taking care to properly fill out the WWRR, including conferring repeatedly with ERCOT to clarify questions.

27. With regard to its violations of 16 TAC § 25.55(c)(2), BT Cooke asserts the following:

- a. Under ERCOT Nodal Protocol § 3.21(3), each resource entity in the ERCOT region is required to submit to ERCOT a Declaration of Completion of Generation Resource Winter Weatherization Preparations (Declaration) stating that, at the time of submission, each generation resource under the resource entity's control has completed or will complete all weather preparations required by the weatherization plan for equipment critical to the reliable operation of the generation resource during the winter peak load season.
- b. BT Cooke timely and proactively submitted a Declaration to ERCOT before the December 1, 2021 deadline. BT Cooke mistakenly believed the Declaration to be all that was required under the applicable rules and protocols.
- c. Because BT Cooke had not updated the contact information for its authorized representative in ERCOT's records prior to the date ERCOT distributed the WWRR form, BT Cooke did not receive a DocuSign link for the WWRR form before the WWRR submission deadline.
- d. BT Cooke became aware of its failure to timely submit a WWRR on December 9, 2021, when ARI's Compliance Manager received a copy of the NOV from the prior owner of BT Cooke, who had received service of the NOV because the contact information for BT Cooke listed in the PGC registration on file with the Commission was outdated following the November 2020 acquisition.³
- e. BT Cooke's failure to submit the WWRR by the December 1, 2021 deadline was not indicative of a failure to timely prepare its generation facilities for winter weather. As demonstrated by the WWRR submitted on December 23, 2021, the RIPPEY – UNIT1 generation resource was fully compliant with all preparation requirements on or before December 1, 2021, had no weather-related failures

³ See paragraphs 28 through 37, *infra*.

during the Winter 2020-2021 season, and operated as usual during the February 2021 winter storm.

Violation of 16 TAC § 25.109(h)

28. On December 8, 2021, Commission Staff sent notice of the NOV by certified mail, return receipt requested, to the designated contact listed in BT Cooke's PGC registration in the Commission's records, in compliance with the notice requirements under 16 TAC § 22.246.
29. On December 21, 2021, the notice sent to BT Cooke on December 8, 2021 was returned to the Commission as "undeliverable."
30. On January 11, 2022, Commission Staff sent BT Cooke a second notice of the NOV by certified mail, return receipt requested, to an address confirmed to be current by ARI's general counsel.
31. Under 16 TAC § 25.109(e)(4), a PGC must submit all information required on the Commission's approved PGC registration form.
32. Under 16 TAC § 25.109(h), a PGC is required to report any change in the information provided on the PGC registration form within 45 days of the change.
33. Section C-2 of the Commission's approved PGC registration form requires a PGC to identify an individual as the designated contact for all communications and provide that individual's contact information.
34. BT Cooke acknowledges that, under 16 TAC § 25.109(h), BT Cooke was required to report the changed information for its designated contact to the Commission within 45 days after the effective date of its November 2020 acquisition by ARI.
35. BT Cooke admits that it violated 16 TAC § 25.109(h) by failing to timely report a change in the contact information associated with its PGC registration.
36. BT Cooke asserts that its failure to timely report the change in contact information was inadvertent and unintentional.

37. BT Cooke reported all changes to its PGC registration resulting from the November 2020 acquisition to the Commission on January 31, 2022.⁴

Corrective Action

38. To address the deficiencies in BT Cooke's internal compliance process that led to the violations of 16 TAC §§ 25.55(c)(2) and 25.109(h), and in an effort to ensure that BT Cooke is fully compliant with all applicable regulatory requirements going forward, ARI has taken the following corrective action:
- a. On January 26, 2022, ARI hired a new Vice President of Development for the Mid-Continent Region, which includes Texas. ARI made this hire, in part, to address BT Cooke's process deficiencies that led to Commission Staff's NOV, which prompted ARI to identify a lack of in-region expertise and experience as a factor that contributed to the violations. This position's oversight of the specific regional regulatory landscape will ensure that newly developed or acquired projects are compliant with region-specific regulations. In the case of ERCOT, for example, this includes ensuring compliance with the ERCOT Protocols and Commission rules related to project planning, interconnection, and operation, such as the ERCOT study and registration processes, as well as the Commission's PGC certification rules and related, ongoing PGC compliance requirements. ARI's new Vice President of Development for the Mid-Continent Region will be paid a base salary of at least \$ [REDACTED] per year.
 - b. On February 16, 2022, ARI hired a Director of Interconnection and Transmission. The duties associated with this position will, in part, address the internal deficiencies that led to ARI's failure to update BT Cooke's registration information following the November 2020 acquisition. The responsibilities of this position will ensure there is greater internal familiarity with rules and regulations governing post-interconnection and post-acquisition registration updates for ARI's generation resources, including existing and future-acquired resources in Texas and the

⁴ *Application of BT Cooke Solar LLC to Amend its Power Generation Company Registration*, Docket No. 53172, Application (Jan. 31, 2022).

ERCOT region. ARI's Director of Interconnection and Transmission will be paid a base salary of at least \$[REDACTED] per year. Duties of this position include:

- i. Providing expertise and oversight on transmission and interconnection processes and compliance responsibilities, especially in the ERCOT power region;
 - ii. Actively updating and maintaining applicable market registrations. This responsibility directly corresponds to ARI's failure to update BT Cooke's registration information with ERCOT and the Commission after the November 2020 acquisition; and
 - iii. Managing the generation interconnection process with applicable independent system operators, including ERCOT, and public utility commissions as necessary for post-interconnection and post-acquisition compliance operations.
- c. ARI is in the process of negotiating a monthly retainer with outside counsel to assist with regulatory compliance efforts. ARI is also in the process of recruiting an in-house paralegal whose responsibilities will include serving a research compliance role to supplement the assistance of outside counsel and the efforts of ARI's asset management firm (discussed in the next section). The decision to hire a paralegal and retain outside counsel in this manner was prompted by the violations giving rise to the NOV, and specifically in response to ARI's lack of awareness of the rules and regulations addressed in this proceeding. The paralegal position will be responsible for keeping up with region-specific legislative changes and regulatory rulemakings in jurisdictions where ARI has projects in development and in commercial operation, such as in ERCOT. The arrangement with outside counsel will include advising ARI on regional compliance responsibilities and requirements and managing corporate filings (including those submitted to ERCOT and the Commission). Once finalized, ARI expects the outside counsel arrangement to result in an annual expenditure of at least \$[REDACTED] (\$[REDACTED] per month) and for the paralegal to be paid a base salary of at least \$[REDACTED] per year, plus an automatic [REDACTED]% bonus, resulting in an annual expenditure of \$[REDACTED] per year.

- d. ARI has executed a contract with a national asset management firm, effective July 1, 2022. The firm will be responsible for carrying out various regulatory compliance tasks, including tasks for ARI's assets located in the ERCOT region. This contract represents an expected annual expenditure of approximately \$ [REDACTED].
39. It is ARI's intention to continue to contract with the above-described national asset management firm and to retain the above-described employees, or to engage others to perform the same or similar compliance-related functions, on an annual basis for the foreseeable future.
40. BT Cooke agrees to file status reports regarding recruitment progress for the in-house paralegal position described above in paragraph 38(c), beginning 90 days after the date of a final order in this proceeding and continuing every 90 days thereafter until the position is filled. Within ten days of the date the position is filled, BT Cooke agrees to file a final status report detailing that the position has been filled and the amount of annual salary. The status reports will be filed in a compliance docket to be opened by the Commission in accordance with this settlement.
41. BT Cooke asserts that the corrective actions implemented by ARI in response to the violations at issue in this proceeding will result in a total recurring cost of at least \$650,000 per year, which ARI anticipates in good faith that it will continue to pay on an ongoing basis to maintain the compliance functions described above in paragraph 38. ARI reserves the right to modify its regulatory compliance positions and contracts as necessary for its business operations but commits that it will use best efforts to ensure BT Cooke's compliance with ERCOT and Commission rules.
42. BT Cooke acknowledges that the above-described positions are not entirely ERCOT-specific and will also include similar responsibilities in other regions. However, the above-described positions were created or modified in response to the circumstances giving rise to the NOV, with responsibilities designed to prevent future similar violations.
43. The parties have attached to this settlement agreement an affidavit executed by Thomas J. Houghton, CEO of ARI, attesting to the accuracy of BT Cooke's representations set forth in this settlement and confirming that ARI expects to continue undertaking the above-described compliance-related costs on an annual basis for the foreseeable future.

44. Commission Staff recommends that the expenses undertaken by BT Cooke and ARI to hire additional compliance personnel, expand existing compliance programs, and enhance internal familiarity with current and evolving regulatory requirements in the ERCOT power region represent corrective action directly tailored to address the cause of the violations at issue in this proceeding and prevent future violations from occurring.

Administrative Penalty

45. Under PURA § 15.023, the Commission has authority to impose administrative penalties for violations of PURA and Commission Rules.
46. Under PURA § 15.023(b-1), the Commission may assess administrative penalties of up to \$1,000,000 per violation per day for violations of 16 TAC § 25.55(c)(2).⁵
47. Under 16 TAC § 25.8(b)(1), the violations of 16 TAC § 25.109(h) described herein are Class C violations.
48. Under 16 TAC § 25.8(b)(1)(A), the Commission may impose a penalty of up to \$1,000 per violation per day for a Class C violation.
49. Commission Staff recommends, and BT Cooke agrees to pay, a total administrative penalty of \$150,000 in full and final settlement of the violations described in this order.

Factors to Determine Penalty

50. In support of the agreed administrative penalty, Commission Staff provides the following analysis of factors to be considered when determining a reasonable and appropriate administrative penalty, as required under PURA § 15.023(c) and 16 TAC § 22.246(c)(3). BT Cooke acknowledges Staff's assertion of the factors' applicability to the underlying violations but does not admit to the accuracy of the analysis, including but not limited to whether the late filing of either its WWRR or PGC amendment constitutes a non-remediable violation. Additionally, BT Cooke acknowledges the below facts as presented

⁵ Prior to March 17, 2022, the penalty classification system under 16 TAC § 25.8(b) categorized Class A violations—the highest class of violations contemplated under the then-existing classification system—as violations subject to a maximum penalty of \$25,000 per violation per day. However, under PURA § 15.023(b-1), violations of rules adopted under PURA § 35.0021 are subject to a maximum penalty of \$1,000,000 per violation per day. On March 17, 2022, 16 TAC § 25.8(b) was amended to include violations of rules adopted under PURA § 35.0021 as Class A violations subject to an enhanced penalty of \$1,000,000 per violation per day.

by Commission Staff, but does not admit that its untimely filing of the WWRR caused the harm described herein.

- a. ***The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public.*** BT Cooke's failure to timely submit the required WWRR is a serious violation of the highest degree. Commission Staff recommends that the nature, circumstances, and gravity of the violations support the imposition of significant penalties. As discussed above, BT Cooke does not admit to the accuracy of Staff's analysis herein but does acknowledge its late filing of the WWRR and agrees to resolve Commission Staff's investigation of this case in accordance with the settlement agreement.

During the week of February 14, 2021, extreme winter weather throughout the state led to an unprecedented electric generation shortage in the ERCOT power region, leaving millions of Texans without power for days at a time. The widespread and long-lasting power outages in sub-freezing temperatures caused human suffering and pervasive property damage for Texans throughout the ERCOT region.

After the February 2021 winter storm, the Commission adopted 16 TAC § 25.55 to protect the health, safety, and economic welfare of the public and to prevent the recurrence of a winter weather public emergency. The primary purpose of the WWRR requirement under 16 TAC § 25.55(c)(2) was to ensure ERCOT and the Commission that each generation resource had completed all preparation requirements and would be a reliable source of electric generation in the event of another winter storm. However, to the extent there were delays in completing the preparations for certain resources, the WWRRs were necessary to inform regulators of each resource's progress, outstanding activities, expected maintenance outages, and estimated date of completion. Therefore, the information provided in each WWRR was critical for ERCOT and Commission reliability planning operations.

BT Cooke's failure to timely submit its WWRR posed a potential hazard to regulators' ability to accurately account for the resource's generation capabilities, which could interfere with the Commission and ERCOT's mission to ensure the

reliability of the electric grid. When reliability of the electric grid is threatened, there is an inherent risk to the health, safety, and welfare of the public. Therefore, Commission Staff believes that the nature and gravity of BT Cooke's violations in this proceeding warrant the imposition of a significant administrative penalty.

- b. ***The economic harm to property or the environment caused by the violation.*** BT Cooke's failure to timely submit its WWRR did not cause any actual economic harm to property or the environment. However, having a lack of information about the winter weather readiness of any resource inherently poses a potential risk to ERCOT's reliability planning operations, which could result in costs passed onto businesses, consumers, and the general public. Therefore, Staff asserts that the violations did carry a risk of causing economic harm until the violations were cured.
- c. ***The history of previous violations.*** Commission records do not indicate a prior history of investigations of BT Cooke for violations of PURA, the Commission rules, or ERCOT Nodal Protocols.
- d. ***The amount necessary to deter future violations.*** Since the February 2021 winter storm, the Commission has repeatedly emphasized the importance of compliance with *all* requirements related to grid reliability. Additionally, the Commission has expressed concern that, in some cases, administrative penalties may not serve a deterrent purpose if they do not have a financial impact that exceeds what may be considered as the cost of doing business. It is Commission Staff's position that the \$150,000 agreed administrative penalty in this proceeding is significant enough and necessary to deter future violations of rules governing weather preparation and other reliability-focused requirements, particularly given BT Cooke's post-NOV compliance efforts as discussed above.
- e. ***Efforts to correct the violation.*** Although BT Cooke failed to meet the December 1, 2021 deadline to submit its WWRR, BT Cooke late-submitted its WWRR to ERCOT on December 23, 2021. Similarly, although BT Cooke cannot retroactively remedy its initial failure to timely update its PGC registration as required under 16 TAC § 25.109(h), BT Cooke ultimately updated its PGC registration on January 31, 2022.

Additionally, as detailed above in paragraphs 38 through 42, ARI has proactively undertaken significant expense to correct the internal deficiencies that resulted in BT Cooke's violations of 16 TAC §§ 25.55(c)(2) and 25.109(h) and prevent similar violations in the future. These expenditures were directly targeted to guide ARI's and BT Cooke's operations in the ERCOT market by ensuring, at a corporate level, that those responsible for BT Cooke's operations are aware of the practical impact of Commission rulemakings and other changes in the regulatory landscape. In addition to the \$150,000 agreed administrative penalty, ARI expects to spend annually, on a recurring basis, at least \$650,000 to address and resolve the underlying factors that contributed to the violations at issue in this proceeding. It is Commission Staff's position that these corrective measures have been made in the public interest and will address the internal deficiencies that resulted in the violations at issue, and therefore warrant a reduction of the original recommended administrative penalty.

- f. *Any other matter that justice may require.* Commission Staff's December 8, 2021 NOV recommended a total administrative penalty be assessed of \$550,000 plus \$50,000 per day that the WWRR was not submitted beyond the December 1, 2022 deadline for BT Cooke's violations of 16 TAC § 25.55(c)(2). The NOV did not address the violations of 16 TAC § 25.109(h). In light of the \$650,000 per year ARI has committed toward hiring and contracting with experienced personnel with responsibilities intended to address and prevent future compliance issues, Commission Staff recommends that an administrative penalty of \$150,000 is a reasonable and fair outcome in this proceeding.

Settlement Terms

51. BT Cooke acknowledges the basis for the violations described in this settlement agreement and attached Proposed Order.
52. BT Cooke 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.
53. BT Cooke fully cooperated with Commission Staff's investigation.


54. BT Cooke participated in one or more settlement discussions with Commission Staff, the purpose of which was to amicably resolve this matter, which was the subject of the investigation.
55. Unless specifically provided for in this agreement, BT Cooke waives any notice and procedures that might otherwise be authorized or required in this proceeding.
56. Nothing in this agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission rules.
57. 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. This agreement represents a compromise of claims and allegations, and the execution of this agreement does not admit the truth or accuracy of any such disputed claims. 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.
58. The parties contemplate that this agreement will be approved pursuant to 16 TAC § 22.246(h)(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.

59. This agreement is the final and entire agreement between the parties regarding BT Cooke's violations of the provisions described herein and supersedes all other communications among the parties or their representatives regarding its terms.
60. 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.
61. BT Cooke 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:

/s/Courtney Dean
Courtney Dean
Attorney- Division of Compliance & Enforcement
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78711

Date: September 16, 2022


Donald J. Miller
COO and General Counsel
Adapture Renewables, Inc.
1901 Harrison Street, Suite 1630
Oakland, CA 94612

Date: September 15, 2022

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COOKE SOLAR LLC FOR	§	
VIOLATIONS OF 16 TAC § 25.55,	§	OF TEXAS
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MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER

On September 16, 2022, the Staff of the Public Utility Commission of Texas (Commission) and BT Cooke Solar LLC (BT Cooke) filed a settlement agreement resolving all matters at issue concerning BT Cooke's failure to comply with requirements established under 16 Texas Administrative Code (TAC) §§ 25.55 and 25.109(h).

I. MOTION TO ADMIT EVIDENCE

For the purpose of supporting the Commission's Order in this proceeding, Commission Staff, on behalf of itself and BT Cooke, moves to admit the following items into the record of this proceeding as evidence:

- a) The notice of violation and report to the Commission filed on December 8, 2021 (Interchange Item No. 2);
- b) Commission Staff's petition to determine a violation and impose an administrative penalty filed on December 8, 2021 (Interchange Item No. 3);
- c) Commission Staff's second petition to determine a violation and impose an administrative penalty filed on January 11, 2022 (Interchange Item No. 4);
- d) BT Cooke's request for a hearing and to abate the proceeding pending settlement discussions filed on January 25, 2022 (Interchange Item No. 5);
- e) Order No. 1, abating the proceeding, filed on February 7, 2022 (Interchange Item No. 6);
- f) The redacted settlement agreement, including all attachments, filed on September 16, 2022; and
- g) The confidential version of the settlement agreement, including all confidential attachments, filed on September 16, 2022.

II. PROPOSED ORDER

Attached to this pleading is the parties' proposed order. If adopted, the proposed order would resolve all matters at issue in this proceeding. Commission Staff, on behalf of the parties, respectfully requests that a final order be issued consistent with the settlement agreement.

III. CONCLUSION

Commission Staff, on behalf of the signatories, respectfully requests that the above-listed items be admitted as evidence into the record of this proceeding and that a final order be issued consistent with the evidence.

Dated: September 16, 2022

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS

**DIVISION OF COMPLIANCE AND
ENFORCEMENT**

Barksdale English
Division Director

/s/Courtney Dean
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 16, 2022 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean
Courtney N. Dean

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PROPOSED ORDER

This Order addresses the agreement between Commission Staff and BT Cooke Solar LLC regarding BT Cooke's failure to comply with requirements established under 16 Texas Administrative Code (TAC) §§ 25.55 and 25.109(h). Commission Staff recommends that BT Cooke pay an administrative penalty of \$150,000. BT Cooke agrees to pay the recommended penalty. The Commission approves the administrative penalty to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Respondent

1. BT Cooke is a Delaware limited liability corporation registered with the Texas secretary of state under filing number 802952595.
2. BT Cooke is a power generation company (PGC) that sells electric energy at wholesale in the ERCOT power region.
3. BT Cooke is registered with the Commission under PGC number 20590.
4. BT Cooke was purchased by Adapture Renewables, Inc. (ARI) on November 9, 2020 and is now a subsidiary of ARI.
5. ARI manages and is responsible for BT Cooke's operations in the ERCOT power region, including maintaining compliance with ERCOT and Commission rules.

Notice of Violation and Report to the Commission

6. On December 8, 2021, the Commission's executive director filed a notice of violation and report to the Commission determining that BT Cooke violated 16 TAC § 25.55(c)(2) on December 1, 2021 by failing to timely submit a winter weather readiness report and that

BT Cooke continued to violate 16 TAC § 25.55(c)(2) each day thereafter until the requisite winter weather readiness report was submitted.

7. The executive director recommended that administrative penalties be imposed for the initial and continuing violations of 16 TAC § 25.55(c)(2).
8. Also on December 8, 2021, Commission Staff filed a petition to determine BT Cooke's violations and impose the recommended administrative penalties, consistent with the executive director's report.

Notice

9. On December 8, 2021, Commission Staff mailed notice of the executive director's notice of violation and report and of Commission Staff's petition to determine violations and impose administrative penalties by certified mail, return receipt requested, to the designated contact of BT Cooke listed in BT Cooke's PGC registration in the Commission's records.
10. On December 21, 2021, the notice sent to BT Cooke on December 8, 2021 was returned to the Commission as "undeliverable."
11. On January 11, 2022, Commission Staff filed a second petition to determine violations and impose administrative penalties, this time including additional violations for BT Cooke's failure to report a change in its PGC registration information to the Commission as required under 16 TAC § 25.109(h).
12. Also on January 11, 2022, Commission Staff mailed notice of the executive director's notice of violation and report and of Commission Staff's second petition to determine violations and impose administrative penalties by certified mail, return receipt requested, to an address confirmed to be current by ARI personnel.

Proceeding Before the Commission

13. On January 25, 2022, BT Cooke filed a request for hearing, for a settlement conference, and for abatement of the proceeding pending settlement negotiations between the parties.
14. On February 7, 2022, the administrative law judge (ALJ) issued Order No. 1, abating the proceeding.

15. On September 16, 2022, Commission Staff and BT Cooke filed an executed settlement agreement in this docket.

Evidence

16. In Order No. __ filed on _____, 2022, the ALJ admitted the following items into the evidentiary record: (a) the notice of violation and report to the Commission filed on December 8, 2021; (b) Commission Staff's petition to determine a violation and impose an administrative penalty filed on December 8, 2021; (c) Commission Staff's second petition to determine a violation and impose an administrative penalty filed on January 11, 2022; (d) BT Cooke's request for a hearing and to abate the proceeding pending settlement discussions filed on January 25, 2022; (e) Order No. 1, abating the proceeding, filed on February 7, 2022; (f) a redacted version of the parties' settlement agreement, including all attachments, filed on September 16, 2022; and (g) a confidential version of the parties' settlement agreement, including all confidential attachments, filed on September 16, 2022.

Winter Weather Readiness Report Requirement

17. BT Cooke is the ERCOT-registered resource entity responsible for one generation resource registered with ERCOT under the resource name RIPPEY – UNIT1.
18. BT Cooke did not submit a winter weather readiness report for the RIPPEY – UNIT1 generation resource by December 1, 2021.
19. BT Cooke asserts that its failure to timely submit the winter weather readiness report for the RIPPEY – UNIT1 generation resource was unintentional and inadvertent.
20. BT Cooke late-submitted the winter weather readiness report for the RIPPEY – UNIT1 generation resource on December 23, 2021.

PGC Registration Reporting Requirement

21. BT Cooke experienced a change in ownership and control when it was acquired by ARI in November 2020.
22. BT Cooke did not report the change in ownership and control within 45 days of the effective date of the change.

23. On January 31, 2022, BT Cooke reported the November 2020 change in ownership and control and corresponding change in contact information associated with its PGC registration to the Commission.¹

Corrective Action

24. BT Cooke asserts that its violations of 16 TAC §§ 25.55(c)(2) and 25.109(h) resulted from internal process deficiencies related to regulatory compliance efforts.
25. To correct the internal deficiencies that led to the violations at issue in this proceeding, BT Cooke and its parent company have contracted with consultants and hired, or are in the process of hiring, additional in-house compliance personnel to increase internal awareness of region-specific rules and regulations, improve familiarity with post-acquisition registration processes, manage and update asset registrations, keep up with region-specific legislative changes and regulatory rulemakings, and carry out regulatory compliance tasks for ARI's generation assets.
26. BT Cooke intends to maintain additional compliance efforts consistent with those described in the settlement agreement, to continue for the foreseeable future, at an annual expense of approximately \$650,000, which BT Cooke anticipates will recur on an ongoing basis to maintain the corresponding compliance functions.

Settlement Agreement

27. BT Cooke cooperated with Commission Staff's investigation.
28. BT Cooke acknowledges the basis for the violations as detailed in this Order.
29. BT Cooke asserts that it was compliant with all winter weather preparation requirements on or before December 1, 2021.
30. BT Cooke asserts that corrective action has been taken to address the cause of the violations and to help ensure that BT Cooke is fully compliant with all applicable rules and regulations moving forward.

¹ *Application of BT Cooke Solar LLC to Amend its Power Generation Company Registration*, Docket No. 53172, Application (Jan. 31, 2022).

31. On September 16, 2022, Commission Staff and BT Cooke entered into a settlement agreement in which Commission Staff recommended, and BT Cooke agreed to pay, an administrative penalty of \$150,000 for the violations described in this Order.
32. On September 16, 2022, Commission Staff filed a copy of the executed settlement agreement with the Commission's filing clerk.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under PURA §§ 14.051, 14.054, 15.023, and 35.0021.
2. BT Cooke is a PGC registered with the Commission under PURA § 39.351 and 16 TAC § 25.109.
3. BT Cooke is a generation entity in the ERCOT power region, as the term generation entity is defined under 16 TAC § 25.55(b)(3).
4. RIPPEY – UNIT1 is a generation resource in the ERCOT power region, as the term generation resource is defined under 16 TAC § 25.55(b)(4).
5. Under PURA § 35.0021(b), the Commission is required to establish rules requiring providers of electric generation service, including power generation companies, in the ERCOT power region to prepare generation assets to provide adequate electric generation service during a weather emergency.
6. Under 16 TAC § 25.55(c)(2), a generation entity in the ERCOT power region was required to submit a winter weather readiness report for each of its generation resources no later than December 1, 2021.
7. BT Cooke violated 16 TAC § 25.55(c)(2) on December 1, 2021 by failing to timely submit a winter weather readiness report for its generation resource.
8. BT Cooke continued to violate 16 TAC § 25.55(c)(2) on each day from December 2, 2021 through December 22, 2021 by failing to submit the required winter weather readiness report for its generation resource.

9. Under 16 TAC § 25.109(h), a power generation company is required to report any change in ownership or control to the Commission within 45 days of the change.
10. BT Cooke violated 16 TAC § 25.109(h) by failing to report the November 9, 2020 change in ownership and control to the Commission within 45 days of the effective date of the change.
11. BT Cooke continued to violate 16 TAC § 25.109(h) on each day that it failed to report the November 9, 2020 change in ownership and control to the Commission after the applicable deadline.
12. Under PURA § 15.023, the Commission has authority to impose administrative penalties for violations of PURA and rules adopted under the authority of PURA.
13. The Commission has the authority to impose administrative penalties of up to \$1,000,000 per violation per day for violations of 16 TAC § 25.55(c)(2).²
14. Under 16 TAC § 25.8(b)(1), the violations of 16 TAC § 25.109(h) described herein are Class C violations.
15. Under 16 TAC § 25.8(b)(1)(A), the Commission may impose a penalty of up to \$1,000 per violation per day for a Class C violation.
16. Commission Staff provided notice of the December 8, 2021 Notice of Violation and Report to the Commission in accordance with 16 TAC § 22.246(f).
17. The December 8, 2021 Notice of Violation and Report to the Commission, as supplemented by the settlement agreement, satisfies the requirements of 16 TAC § 22.246(h)(1).
18. The Commission processed this docket in accordance with applicable statutes and Commission rules.

² Prior to March 17, 2022, the penalty classification system under 16 TAC § 25.8(b) categorized Class A violations—the highest class of violations contemplated under the then-existing classification system—as violations subject to a maximum penalty of \$25,000 per violation per day. However, under PURA § 15.023(b-1), violations of rules adopted under PURA § 35.0021 are subject to a maximum penalty of \$1,000,000 per violation per day. On March 17, 2022, 16 TAC § 25.8(b) was amended to include violations of rules adopted under PURA § 35.0021 as Class A violations subject to an enhanced penalty of \$1,000,000 per violation per day.

III. Ordering Paragraphs

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

1. BT Cooke must comply with the terms of this Order.
2. The Commission approves the agreed administrative penalty to the extent provided in this Order.
3. Within 30 days of this Order, BT Cooke must pay an administrative penalty of \$150,000. Payment of the administrative penalty must be made by check payable to the Public Utility Commission of Texas. The check must reference this docket number and must be sent to the following address:

Public Utility Commission of Texas
ATTN: Fiscal Services
P.O. Box 13326
Austin, Texas 77711

4. No later than five calendar days after remitting payment of the \$150,000 administrative penalty, BT Cooke must file an affidavit and supporting documentation demonstrating that the payment was made.
5. This Order resolves only the claims identified in this Order.
6. The Commission is not constrained in any manner from requiring additional action or penalties for matters that are not resolved by this agreement.
7. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of _____, 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

AFFIDAVIT

Before me, the undersigned notary public, on this day personally appeared Thomas J. Houghton, to me known to be the person whose name is subscribed to the foregoing instrument, who being duly sworn according to law, deposes and says:

“1. My name is Thomas J. Houghton. I am over the age of eighteen years and am a resident of the State of California. I am competent to testify to all the facts stated in this Affidavit, and I have the authority to make this Affidavit on behalf of Adapture Renewables, Inc. (“ARI”), on behalf of its subsidiary BT Cooke Solar, LLC (“BT Cooke”).

2. I swear or affirm in my capacity as CEO and President of ARI, I have personal knowledge of the facts as stated in this Affidavit which is given in support of the Settlement Agreement and Report to the Commission (“SAPO”) in Public Utility Commission of Texas (“PUCT” or “Commission”) Docket No. 52924. I further swear or affirm that all of the statements and/or representations made in this affidavit are true, complete, and correct to the best of my knowledge.

3. I swear or affirm that BT Cooke is the ERCOT-registered Resource Entity and PUCT-registered Power Generation Company for solar generation resource RIPPEY – UNIT1.

4. I further swear or affirm that BT Cooke did not submit the Winter Weather Readiness Report (“WWRR”) for RIPPEY – UNIT1 by December 1, 2021 as required by 16 Tex. Admin. Code (“TAC”) § 25.55. I further swear or affirm that the WWRR was submitted on December 23, 2021.

5. I further swear or affirm that the facts describing BT Cooke’s actions and inactions giving rise to the violations as described in paragraphs 17 – 37 in the SAPO for PUCT Docket No. 52924 are true and correct.

6. I further swear or affirm that the description of numerous compliance measures ARI and BT Cooke have adopted, as discussed in the SAPO, to prevent future similar violations of Commission Rules, is true and correct, and that ARI and BT Cooke will work in good faith to carry out the compliance efforts referenced therein. I further swear or affirm that ARI and BT Cooke will file the required status reports as discussed in the SAPO.

7. I further swear or affirm that the job descriptions and projected expenditures described in SAPO paragraph 38(a) – (d) are true and correct to the best of my knowledge and that any estimate of expenditure has been made as the result of ARI’s financial analysis of the likely projected cost to ARI and BT Cooke.

8. I swear or affirm that any assertions of confidentiality regarding this response have been made with a good faith belief that an exception to public disclosure under Chapter 552 of the Texas Government Code applies to the information provided.”

Further affiant sayeth not.



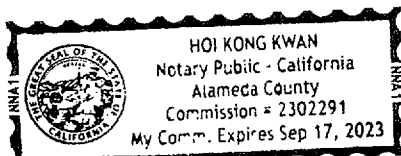
Thomas J. Houghton
CEO and President
Adapture Renewables, Inc.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

Subscribed and sworn to (or affirmed) before me on this 15th
day of September, 2022, by Thomas J. Houghton

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Hoi K Kwan