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Executive Director

## *Public Utility Commission of Texas*

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TO: Stephen Journeay  
Commission Counsel

All Parties of Record



FROM: Hunter Burkhalter  
Chief Administrative Law Judge

RE: **Docket No. 52924** – *Notice of Violation by BT Cooke Solar LLC for Violations of 16 TAC §§ 25.55, Concerning Winter Weather Readiness Reporting Requirements, and 25.109(h), Relating to Post-Registration Requirements for Power Generation Companies*

DATE: September 21, 2022

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by October 5, 2022.

**If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.**

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

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**DOCKET NO. 52924**

<b>NOTICE OF VIOLATION BY BT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COOKE SOLAR LLC FOR</b>	<b>§</b>	
<b>VIOLATIONS OF 16 TAC §§ 25.55,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONCERNING WINTER WEATHER</b>	<b>§</b>	
<b>READINESS REPORTING</b>	<b>§</b>	
<b>REQUIREMENTS, AND 25.109(h),</b>	<b>§</b>	
<b>RELATING TO POST-REGISTRATION</b>	<b>§</b>	
<b>REQUIREMENTS FOR POWER</b>	<b>§</b>	
<b>GENERATION COMPANIES</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the agreement between Commission Staff and BT Cooke Solar LLC relating to Commission Staff's investigation of BT Cooke for violations of 16 Texas Administrative Code (TAC) §§ 25.55 (relating to weather emergency preparedness) and 25.109(h) (relating to post-registration requirements for power generation companies). The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that BT Cooke pay to the Commission an administrative penalty of \$150,000. BT Cooke agrees to pay the administrative penalty recommended by Commission Staff. The Commission approves the administrative penalty to the extent provided in this Order.

**I. Findings of Fact**

Commission Staff and BT Cooke stipulated to 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 Electric Reliability Council of Texas (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.

### **Violations**

#### **Weather Emergency Preparedness Report Requirement**

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

#### **PGC Registration Reporting Requirement**

10. BT Cooke experienced a change in ownership and control when it was acquired by ARI in November 2020.
11. BT Cooke did not report to the Commission the change in ownership and control, and corresponding change in contact information, within 45 days of the effective date of the change.
12. 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.<sup>1</sup>

### **Notice**

13. 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.

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

14. On December 21, 2021, the notice sent to BT Cooke on December 8, 2021 was returned to the Commission as undeliverable.
15. 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).
16. 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.
17. On January 11, 2022, 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.

**Corrective Actions**

18. BT Cooke cooperated with Commission Staff's investigation.
19. BT Cooke acknowledges the basis for the violations as detailed in this Order.
20. BT Cooke asserts that, except for the requirement to file a winter weather readiness report, BT Cooke was compliant with all other winter weather preparation requirements on or before December 1, 2021.
21. 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.
22. 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.
23. To correct the internal deficiencies that led to the violations at issue in this proceeding, BT Cooke and ARI 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.

24. BT Cooke states that it intends to maintain additional compliance efforts consistent with those described in the agreement discussed below, 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.

#### **Agreement**

25. On September 16, 2022, Commission Staff and BT Cooke entered into an 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.
26. On September 16, 2022, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

#### **Evidence**

27. In Order No. 3 filed on September 20, 2022, the administrative law judge admitted the following evidence into the record of this proceeding: (a) Commission Staff's notice of violation and all attachments filed on December 8, 2021; (b) Commission Staff's petition to determine violation and impose an administrative penalty filed on December 8, 2021; (c) Commission Staff's second petition to determine violation and impose an administrative penalty filed on January 11, 2022; (d) BT Cooke's request for a hearing, for a settlement conference, and for abatement filed on January 25, 2022; (e) the redacted version of the agreement, including all attachments, filed on September 16, 2022; and (f) the confidential, unredacted version of the agreement, including all attachments, filed on September 16, 2022.

The Commission makes the following findings of fact.

#### **Informal Disposition**

28. At least 15 days have passed since completion of all notice requirements.
29. No person filed a protest or motion to intervene.
30. BT Cooke and Commission Staff are the only parties to this proceeding.

31. No party requested a hearing and no hearing is needed.
32. Commission Staff recommended approval of the agreement.
33. This decision is not adverse to any party.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under PURA<sup>2</sup> §§ 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 in the ERCOT power region, including power generation companies, 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 to the Commission and ERCOT a winter weather readiness report for each of its generation resources by no later than December 1, 2021.
7. BT Cooke violated 16 TAC § 25.55(c)(2) by failing to submit to the Commission and ERCOT a winter weather readiness report for its generation resource by December 1, 2021.
8. BT Cooke continued to violate 16 TAC § 25.55(c)(2) on each day from December 2 through 22, 2021 by failing to submit the required winter weather readiness report for its generation resource.

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<sup>2</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

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).<sup>3</sup>
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 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.

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<sup>3</sup> 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.



19. The requirements for informal disposition under 16 TAC § 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 orders.

1. The Commission approves the administrative penalty to the extent provided in this Order.
2. BT Cooke must comply with the terms of the agreement and this Order.
3. BT Cooke must pay an administrative penalty in the amount of \$150,000 to the Commission. BT Cooke is required to remit payment of the full amount of the administrative penalty on or before 30 calendar days after the date the Commission signs this Order. Payment of the administrative penalty may be made by check payable to the Public Utility Commission of Texas. The check must reference this docket and must be sent to the following address:

Public Utility Commission of Texas  
ATTN: Fiscal Services  
PO Box 13326  
Austin, TX 78711-3326

4. BT Cooke must file, in this docket, an affidavit of payment of the administrative penalty no later than five calendar days after remitting payment.
5. The Commission is not constrained in any manner from requiring additional action or penalties for matters that are not resolved by this Order.
6. This Order resolves only the claims identified in this Order.
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**

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**PETER M. LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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**KATHLEEN JACKSON, COMMISSIONER**