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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Isaac Ta *I. T.*
Administrative Law Judge

RE: **Docket No. 52925** – *Notice of Violation by Bull Creek Wind LLC for Violations of 16 TAC § 25.55, Concerning Failure to Comply with Winter Weather Emergency Preparedness Reporting Requirements*

DATE: October 31, 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 November 14, 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. 52925

**NOTICE OF VIOLATION BY BULL
CREEK WIND LLC FOR VIOLATIONS
OF 16 TAC § 25.55, CONCERNING
FAILURE TO COMPLY WITH WINTER
WEATHER EMERGENCY
PREPAREDNESS REPORTING
REQUIREMENTS**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

PROPOSED ORDER

This Order addresses the agreement between Commission Staff and Bull Creek Wind LLC relating to Commission Staff's investigation of Bull Creek for violations of 16 Texas Administrative Code (TAC) § 25.55(c)(2), relating to failure to comply with winter weather emergency preparedness reporting requirements. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that Bull Creek pay to the Commission an administrative penalty of \$100,000. Bull Creek 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 Bull Creek stipulated to the following facts.

Respondent

1. Bull Creek is a Delaware limited liability corporation registered with the Texas secretary of state under filing number 800794974.
2. Bull Creek is a power generation company (PGC) that sells electric energy at wholesale in the Electric Reliability Council of Texas (ERCOT) region.
3. Bull Creek is registered with the Commission under PGC number 20228.

Violations: Winter Weather Readiness Reports

4. Bull Creek is the ERCOT-registered resource entity responsible for two ERCOT-registered generation resources: BULLCRK — WND1 and BULLCRK — WND2.

5. Bull Creek did not submit to the Commission and ERCOT a winter weather readiness report for either of its generation resources by December 1, 2021.
6. Bull Creek asserts that its failure to timely submit its winter weather readiness reports was unintentional and caused by a mistaken belief that the submission of Bull Creek's declaration on December 1, 2021, would also satisfy the winter weather readiness reporting requirement.
7. Bull Creek late-submitted the winter weather readiness reports for both of its generation resources on December 8, 2021.

Notice

8. 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 for Bull Creek listed in the Commission's records.

Corrective Action

9. Bull Creek cooperated with Commission Staff's investigation.
10. Bull Creek acknowledges the basis for the violations described in this Order.
11. Bull Creek asserts that it was compliant with all physical winter weather preparation requirements by December 1, 2021, as confirmed by a physical site inspection conducted by ERCOT on December 9, 2021.
12. On December 1, 2021, Bull Creek submitted to ERCOT a declaration of completion of generation resource winter weatherization preparations in compliance with ERCOT Nodal Protocol § 3.21(3).
13. To correct the internal deficiencies that led to the violations at issue in this proceeding, Bull Creek and its parent company contracted with consultants and hired additional compliance personnel to expand existing compliance programs, monitor and respond to changes in the regulatory landscape, and increase internal understanding of the Commission rules and ERCOT Nodal Protocols.

14. Bull Creek states that it intends to maintain additional compliance efforts consistent with those described in the agreement discussed below, to continue for the foreseeable future, with an annual, recurring cost of at least approximately \$285,500 per year.

Agreement

15. On October 7, 2022, Commission Staff and Bull Creek entered into an agreement in which Commission Staff recommended, and Bull Creek agreed to pay, an administrative penalty of \$100,000 for the violations described in this Order.
16. On October 7, 2022, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

The Commission makes the following findings of fact.

Evidentiary Record

17. In Order No. 8 filed on October 14, 2022, the administrative law judge admitted the following evidence into the record of this proceeding: (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) Bull Creek's request for a hearing filed on December 23, 2021; (d) the agreed motion to abate the proceeding pending settlement discussions filed on January 7, 2022; and (e) the settlement agreement, including all attachments and confidential attachments, filed on October 7, 2022.

Informal Disposition

18. At least 15 days have passed since the completion of notice requirements.
19. No person filed a protest or motion to intervene.
20. Bull Creek and Commission Staff are the only parties to this proceeding.
21. By agreement of the parties, no hearing is needed.
22. Commission Staff recommended approval of the agreement.
23. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this matter under PURA¹ §§ 14.051, 14.054, 15.023, and 35.0021.
2. Bull Creek is a PGC registered with the Commission under PURA § 39.351 and 16 TAC § 25.109.
3. Bull Creek is a generation entity in the ERCOT region, as the term generation entity is defined under 16 TAC § 25.55(b)(3).
4. BULLCRK — WND1 and BULLCRK — WND2 are generation resources in the ERCOT 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 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 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. Bull Creek violated 16 TAC § 25.55(c)(2), by failing to submit to the Commission and ERCOT winter weather readiness report for its generation resources by December 1, 2021.
8. Bull Creek continued to violate 16 TAC § 25.55(c)(2) on each day from December 2 through December 7, 2021, by failing to submit the winter weather readiness reports for its generation resources.
9. Under PURA § 15.023, the Commission has authority to impose administrative penalties for violations of PURA and rules adopted under the authority of PURA.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

10. 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
11. 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).
12. 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).
13. The Commission processed this docket in accordance with applicable statutes and Commission rules.
14. 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. Bull Creek must comply with the terms of the agreement and this Order.
3. Bull Creek must pay an administrative penalty in the amount of \$100,000 to the Commission. Bull Creek 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
P.O. Box 13326
Austin, Texas 78711

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.

4. Bull Creek must file an affidavit of payment of the administrative penalty in this docket no later than five calendar days after remitting the 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 violations 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 that have not been 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