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NOTICE OF VIOLATION BY OCI § PUBLIC UTILITY COMMISSION
ALAMO 1, LLC FOR VIOLATIONS OF §
16 TAC § 25.55 CONCERNING WINTER §
WEATHER READINESS REPORTING §
REQUIREMENTS § OF TEXAS

PRELIMINARY ORDER

On December 8, 2021, the executive director of the Commission filed a notice of violation recommending the assessment of administrative penalties against OCI Alamo 1 LLC. Commission Staff asserts that Alamo 1 violated 16 Texas Administrative Code (TAC) § 25.55(c)(2) by failing to comply with winter weather readiness reporting requirements.¹ This preliminary order identifies the issues that must be addressed.

Alamo 1 is registered with the Commission as a power generation company in the Electric Reliability Council of Texas (ERCOT) region under registration number 20301. Alamo 1 asserts that Alamo 1 is a photo-voltaic module solar facility of approximately 39.2 megawatts (MW) in southeast Bexar County, Texas. Astro is a small, approximately 1 MW, 250 kilowatt-hours, energy storage system built as a pilot project within the Alamo 1 project boundary.² Commission Staff asserts that Alamo 1 is a generation entity as defined under 16 TAC § 25.55(b)(3). Commission Staff alleges that Alamo 1 failed to comply with its obligation under 16 TAC § 25.55(c)(2) to submit a winter weather readiness report to ERCOT by December 1, 2021 for two generation resources with a combined capacity of 4.19 MW.³ Commission Staff asserts that while Alamo 1's continuing violations may eventually be remedied once Alamo 1 submits the required information, the initial failure to meet the December 1, 2021 deadline is not remediable.⁴

¹ Notice of Violation at 1 (Dec. 8, 2021).

² OCI Alamo 1's Request for a Hearing and Settlement Conference (Dec. 22, 2021).

³ Notice of Violation, Attachment A, Report on Violations at 2 (Dec. 8, 2021).

⁴ *Id.* at 2.

Commission Staff recommends assessing an administrative penalty against Alamo 1 of \$1,100,000, or \$550,000 for each generation resource.⁵ According to Commission Staff, this includes a \$250,000 penalty for failure to submit a winter weather readiness report by December 1, 2021, and a \$50,000 penalty for each day that a violation of 16 TAC § 25.55(c)(2) continued since December 1, 2021.⁶ Commission Staff asserts that this penalty amount is reasonable and appropriate when considered in light of the factors in PURA⁷ § 15.023(c). Commission Staff further notes that under PURA § 15.023(b-1), the Commission is authorized to assess an administrative penalty of up to \$1,000,000 per day against an entity that violates a rule adopted under PURA § 35.0021.⁸

Concurrent with the filing of the notice of violation, Commission Staff filed a petition requesting that the Commission issue an order under 16 TAC § 22.246(g)(4) approving the violation amount and imposing the penalty if Alamo 1 did not exercise its right to request a hearing within 20 days. On December 22, 2021, Alamo 1 requested a hearing on both the alleged violation and the penalty amount.⁹

Alamo 1 was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by January 24, 2022. On January 18, 2022, Alamo 1 filed a request for abatement to facilitate settlement discussions. Commission Staff filed a response opposing Alamo 1's request.

On January 24, 2022, Alamo 1 and Commission Staff each timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings

⁵ *Id.*

⁶ *Id.*

⁷ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

⁸ Notice of Violation, Attachment A, Report on Violations at 3 (Dec. 8, 2021).

⁹ OCI Alamo 1's Request for a Hearing and Settlement Conference (Dec. 22, 2021).

(SOAH).¹⁰ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Alamo 1's classification

1. Is Alamo 1 a power generation company in the ERCOT region under PURA § 35.0021?
2. Is Alamo 1 a generation entity, as defined in 16 TAC § 25.55(b)(3)?
 - a. If yes, what are the ERCOT-registered generation resources, as defined in 16 TAC § 25.55(b)(4), that were under Alamo 1's control as of December 1, 2021?

Weather emergency preparedness requirements

3. Was Alamo 1 required under 16 TAC § 25.55(c)(1) to complete winter weather emergency preparation measures for each generation resource under its control by December 1, 2021?

Winter weather readiness reporting requirements under 16 TAC § 25.55(c)(2)

4. Was Alamo 1 required under 16 TAC § 25.55(c)(2) to submit a winter weather readiness report to ERCOT by December 1, 2021?
5. If yes, did Alamo 1 comply with the requirements of 16 TAC § 25.55(c)(2) by submitting a winter weather readiness report? In answering this issue, please address the following sub-issues:
 - a. Did Alamo 1 timely submit a winter weather readiness report to ERCOT by December 1, 2021, as required by 16 TAC § 25.55(c)(2)?
 - b. Did the report describe all Alamo 1's activities to complete the emergency preparation requirements outlined in 16 TAC § 25.55(c)(1), as required by 16 TAC § 25.55(c)(2)(A)?
 - i. Did the report address Alamo 1's activities with respect to each resource under its control?
 - c. Did the report include any applicable assertions of good cause for noncompliance, as required by 16 TAC § 25.55(c)(2)(A)?

¹⁰ Tex. Gov't Code § 2003.049(e).

- d. Did the report include a notarized attestation from Alamo 1's highest-ranking representative, official, or officer with binding authority, as required by 16 TAC § 25.55(c)(2)(B)?
6. If Alamo 1 violated 16 TAC § 25.55(c)(2) by failing to timely submit a winter weather readiness report to ERCOT by December 1, 2021, did OCI Alamo 1 submit a report that otherwise complied with the requirements of 16 TAC § 25.55(c)(2)(A) and (B) at a later date?

Administrative penalties

7. If Alamo 1 violated 16 TAC § 25.55(c)(2), what is the appropriate penalty under PURA or Commission substantive rules? In answering this issue, please address the following sub-issues:
 - a. What is the maximum administrative penalty under PURA § 15.023 that the Commission is authorized to assess against Alamo 1 for violating 16 TAC § 25.55(c)(2) by failing to submit a timely report on December 1, 2021?
 - i. Does the penalty system in 16 TAC § 25.8 apply to these violations?
 - ii. Does the failure to timely file a winter weather readiness report under 16 TAC § 25.55(c)(2) constitute a class A violation under 16 TAC § 25.8?
 - b. What is the maximum administrative penalty under PURA § 15.023 that can be assessed for continuing violations of 16 TAC § 25.55(c)(2) after December 1, 2021?
 - i. Does the penalty system in 16 TAC § 25.8 apply to these violations?
 - ii. Does the continued failure to timely file a winter weather readiness report under 16 TAC § 25.55(c)(2) constitute a class A violation under 16 TAC § 25.8?
 - c. Does PURA § 35.0021(g) apply to a violation of 16 TAC § 25.55(c)(2)?
 - i. If Alamo 1 violated 16 TAC § 25.55(c)(2) by failing to submit a timely report, but later submitted an untimely report that otherwise complied with the requirements of 16 TAC § 25.55(c)(2), did Alamo 1 remedy either the initial or continued rule violation for penalty purposes under PURA § 35.0021(g)?

- d. Does PURA § 15.024(c) apply to a violation of 16 TAC § 25.55(c)(2)?
 - i. If Alamo 1 submitted an untimely report within 31 days of receipt of the notice of violation and the report otherwise complied with the requirements of 16 TAC § 25.55(c)(2), did Alamo 1 remedy either the initial or continued rule violation under PURA § 15.024(c)?
 - ii. If Alamo 1 remedied a violation of 16 TAC § 25.55(c)(2) within 31 days, was the violation accidental or inadvertent?
8. If Alamo 1 violated other provisions of PURA, Commission substantive rules, or ERCOT protocols, what is the appropriate remedy or penalty under PURA and Commission substantive rules?
9. What is Alamo 1's prior history of similar violations? In particular, when did any similar violations occur, and what penalty did Alamo 1 incur, if any, as a result of any prior, similar violations?
10. What efforts has Alamo 1 undertaken to correct the violations? If Alamo 1 has committed similar violations in the past, what efforts has it undertaken to correct those violations?
11. Has Alamo 1 timely complied with the Commission's requests for information? Has Alamo 1's response to such requests been complete?
12. In what manner has Alamo 1 cooperated with the Commission during the investigation of the violations?

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 23rd day of February 2022.

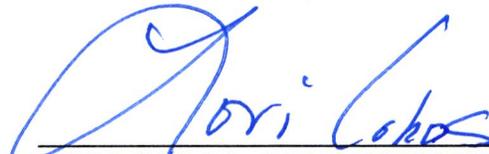
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JIMMY GLOTFELTY, COMMISSIONER