



## Filing Receipt

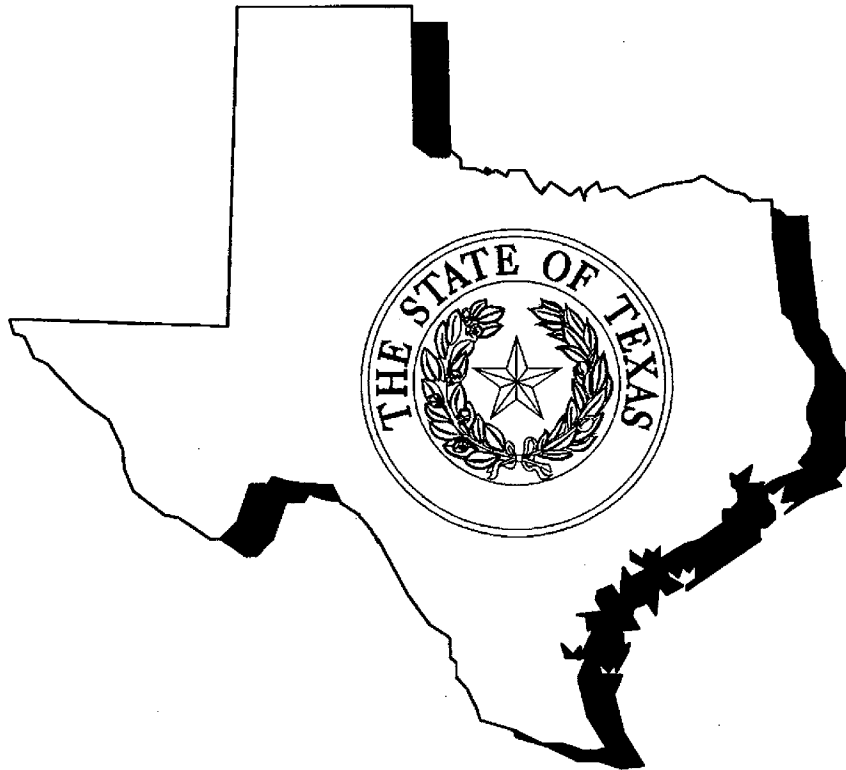
**Received - 2022-05-06 03:16:12 PM**  
**Control Number - 52929**  
**ItemNumber - 20**

**SOAH DOCKET NO. 473-22-1661  
PUC DOCKET NO. 52929**

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

§  
§  
§  
§  
§

**BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**



**DIRECT TESTIMONY OF JEFFREY WIRTH  
DIVISION OF COMPLIANCE AND ENFORCEMENT  
PUBLIC UTILITY COMMISSION OF TEXAS  
MAY 6, 2022**

## TABLE OF CONTENTS

<b>I.</b>	<b>STATEMENT OF QUALIFICATIONS.....</b>	<b>1</b>
<b>II.</b>	<b>PURPOSE AND SCOPE OF TESTIMONY.....</b>	<b>2</b>
<b>III.</b>	<b>MAXIMUM PENALTY AUTHORITY: INITIAL VIOLATIONS.....</b>	<b>3</b>
<b>IV.</b>	<b>MAXIMUM PENALTY AUTHORITY: CONTINUING VIOLATIONS.....</b>	<b>6</b>
<b>V.</b>	<b>APPLICATION OF PURA § 35.0021(g).....</b>	<b>7</b>
<b>VI.</b>	<b>APPLICATION OF PURA § 15.024(c) .....</b>	<b>9</b>
<b>VII.</b>	<b>OTHER VIOLATIONS.....</b>	<b>11</b>
<b>IX.</b>	<b>OTHER COMMENTS.....</b>	<b>16</b>
<b>X.</b>	<b>CONCLUSION .....</b>	<b>17</b>

## ATTACHMENTS

Attachment JW-1      Resume of Jeffrey Wirth

1    **I.        STATEMENT OF QUALIFICATIONS**

2    **Q.        Please state your name and business address.**

3    A.        My name is Jeffrey Wirth. My business address is 1701 N. Congress Avenue, Austin,  
4              Texas 78701.

5    **Q.        By whom are you employed and in what position?**

6    A.        I am employed by the Public Utility Commission of Texas (Commission) as an  
7              Enforcement Analyst in the Division of Compliance & Enforcement.

8    **Q.        On whose behalf are you testifying in this proceeding?**

9    A.        I am testifying on behalf of Commission Staff (Staff).

10   **Q.        What are your principal responsibilities at the Commission?**

11   A.        My responsibilities include conducting reviews and audits of information and reports to  
12              determine the need for outreach and compliance assistance. I am also responsible for  
13              conducting investigations through information gathering and analysis. Finally, I prepare  
14              enforcement actions, including describing and documenting violations, determining  
15              appropriate penalties, and recommending follow-up action.

16   **Q.        Please describe your professional and educational background.**

17   A.        I received a Bachelor of Arts degree with a major in Sociology from the University of  
18              Texas at Austin in 1995. For nearly 20 years I have investigated violations of state  
19              regulations and recommended corrective actions to resolve those violations.<sup>1</sup> For the past  
20              twelve years, I have worked at the Public Utility Commission. Prior to that, I worked one  
21              year as an Ombudsman at the Texas Residential Construction Commission. Before that, I  
22              worked for seven years at the Department of Insurance where, among other things, I  
23              reviewed complaints involving commercial and personal lines and insurance and  
24              administered a final resolution.

---

<sup>1</sup> Attachment JW-1.

1 **Q. Have you previously filed testimony in regulatory proceedings before the**  
2 **Commission?**

3 A. No. However, in my over 12 years of experience with the Commission, I have participated  
4 in the calculation of the recommended administrative penalties involved in hundreds of  
5 Commission investigations, notices of violation (NOVs) and preliminary notices of  
6 violation (PNOVs), and enforcement settlement agreements. I am extensively familiar  
7 with the range of penalties generally applied in Commission enforcement proceedings,  
8 the rationale underlying recommended amounts of administrative penalties, and the rules  
9 and procedures governing the imposition of administrative penalties for violations of  
10 applicable laws and regulations.  
11

12 **II. PURPOSE AND SCOPE OF TESTIMONY**

13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to present my expert opinion as to the reasonableness and  
15 appropriateness of the recommended administrative penalty amount to be assessed against  
16 OCI Alamo 1, LLC (Alamo 1) for violations of the winter weather readiness reporting  
17 requirements established under 16 TAC § 25.55(c)(2), as initially alleged in Commission  
18 Staff's December 8, 2021 NOV.<sup>2</sup> Specifically, I will address issues related to the  
19 maximum administrative penalty authorized for Alamo 1's violations under PURA and  
20 the Commission rules, and I will evaluate the circumstances of Alamo 1's violations as  
21 alleged in Commission Staff's NOV and as required under the factors established by  
22 PURA § 15.023(c). The answers to the following questions constitute my expert opinion  
23 based on the underlying facts of this case and my understanding of the application of the  
24 laws to the facts as they existed at the time of the occurrence of the administrative  
25 violations alleged in Commission Staff's NOV.

---

<sup>2</sup> Notice of Violation by OCI Alamo 1, LLC for Violations of 16 TAC § 25.55, Concerning Winter Weather Readiness Reporting Requirements, Docket No. 52929, Notice of Violation (Dec. 8, 2021).

1   **Q.     What is the scope of your review?**

2   A.     I have reviewed Commission Staff's December 8, 2021 NOV, other information collected  
3           as part of Commission Staff's investigation of the violations, the Direct Testimony of Staff  
4           Witness Ramya Ramaswamy filed on May 6, 2022, and other information available on  
5           the record of this docket.

6   **Q.     Please describe the applicable laws relevant to this proceeding.**

7   A.     While I am not an attorney, I believe that the following definitions, rules and laws are  
8           relevant to this calculation of administrative penalties in this proceeding:

- 9           • PURA § 35.0021(b), which requires the Commission to require, by rule, electric  
10           generators to prepare their generation assets to provide adequate electric  
11           generation service during a weather emergency.
- 12          • PURA § 35.0021(g), which requires the Commission to assess an administrative  
13           penalty for violations of provisions adopted under PURA § 35.0021 that are not  
14           remedied within a reasonable timeframe.
- 15          • PURA § 15.023(b-1), which authorizes penalties of up to \$1,000,000 per violation  
16           per day for violations of provisions of PURA § 35.0021.
- 17          • 16 TAC § 25.55(c), which was adopted under the authority of PURA § 35.0021  
18           and sets forth the Commission's winter preparation requirements applicable to  
19           generation entities and their resources in the ERCOT power region.
- 20          • 16 TAC § 25.8, which is the Commission's rule establishing a classification  
21           system for the assessment of administrative penalties.

22

23   **III.    MAXIMUM PENALTY AUTHORITY: INITIAL VIOLATIONS**

24   **Q.     Under PURA § 15.023, what is the maximum administrative penalty the Commission**  
25           **is authorized to assess against Alamo 1 for violating 16 TAC § 25.55(c)(2) by failing**  
26           **to timely submit a winter weather readiness report on December 1, 2021?**

1 A. Under 16 TAC § 25.55(c)(2), each generation entity in the Electric Reliability Council of  
2 Texas, Inc. (ERCOT) power region was required to submit to ERCOT a winter weather  
3 readiness report (WWRR) for each of its ERCOT-registered generation and energy  
4 storage resources no later than December 1, 2021. 16 TAC § 25.55(c)(2) was adopted by  
5 the Commission under PURA § 35.0021, which required the Commission to establish  
6 rules requiring electric generators in the ERCOT power region to prepare generation  
7 assets to provide adequate electric generation service during a weather emergency.

8 PURA § 15.023(b-1) states that “the penalty for a violation of a provision of  
9 Section 35.0021 or 38.075 may be in an amount not to exceed \$1,000,000 for a violation.”  
10 PURA § 15.023(b-1) further states that each day a violation continues or occurs is a  
11 separate violation for purposes of imposing a penalty. Because violations of 16 TAC  
12 § 25.55(c)(2) are violations of provisions adopted under the authority of PURA § 35.0021,  
13 violations of 16 TAC § 25.55(c)(2) are subject to a maximum administrative penalty of  
14 \$1,000,000 per violation per day.

15 Based on my review of the underlying information forming the basis of  
16 Commission Staff’s NOV and the authority granted to the Commission by PURA  
17 § 15.023(b-1), the maximum administrative penalty authorized against Alamo 1 for its  
18 initial December 1, 2021 violations of 16 TAC § 25.55(c)(2) is \$2,000,000, or \$1,000,000  
19 per resource.

20 **Q. Does the penalty system in 16 TAC § 25.8 apply to these violations?**

21 A. Yes. Under 16 TAC § 25.8, the Commission has established a range of administrative  
22 penalties to be applied to violations consistent with PURA § 15.023. Under 16 TAC  
23 § 25.8(b), the Commission has established a classification system for administrative  
24 penalties based on the type of violation at issue; however, on the date the NOV was issued,  
25 the penalty classification rules under 16 TAC § 25.8 had not yet been updated to reflect  
26 the amendment of PURA § 15.023. Senate Bill 3, adopted during the 87<sup>th</sup> Legislature,

1 amended PURA § 15.023 by adding new subsection (b-1), which established a new  
2 penalty category explicitly for violations of provisions of PURA §§ 35.0021 or 38.075.

3 Under the version of 16 TAC § 25.8 in effect on December 8, 2021, violations of  
4 rules established pursuant to PURA § 35.0021 were incorporated by 16 TAC § 25.8(c),  
5 which stated that “[t]o the extent that PURA or other rules in this chapter establish a range  
6 of administrative penalties that are inconsistent with the penalty ranges provided for in  
7 subsection (b) of this section, the other provisions control with respect to violations of  
8 those rules.” Therefore, 16 TAC § 25.8(c) made clear that PURA § 15.023(b-1) should be  
9 applied in this matter, and establishes a maximum administrative penalty amount of  
10 \$1,000,000 per violation per day.

11 **Q. Does the initial failure to timely file a winter weather readiness report under 16**  
12 **TAC § 25.55(c)(2) constitute a Class A violation under 16 TAC § 25.8?**

13 A. No. At the time the NOV was filed, 16 TAC § 25.8 had not been updated to address the  
14 amendments made to PURA § 15.023 during the 87<sup>th</sup> Legislature because a Class A  
15 violation did not recognize the new category of administrative penalty authority granted  
16 under PURA § 15.023(b-1). In my opinion, because the initial violation involved a  
17 provision of PURA § 35.0021, it was subject to the authority granted under PURA  
18 § 15.023(b-1). The violation would be considered a separate violation under 16 TAC  
19 § 25.8(c) under the version of the rule that existed at the time the NOV was filed.

20 In the time since the NOV was filed, the Commission amended 16 TAC  
21 § 25.8(b)(3)(A) to include violations of rules adopted under PURA § 35.0021 as Class A  
22 violations subject to a maximum administrative penalty of \$1,000,000 per violation per  
23 day. In my opinion, to the extent the violations are analyzed under the current version of  
24 the rule, rather than the version of the rule that existed at the time the NOV was filed, the  
25 violations would ,as of March 17, 2022, be considered Class A violations subject to a  
26 maximum penalty of \$1,000,000 per violation per day.

27



**IV. MAXIMUM PENALTY AUTHORITY: CONTINUING VIOLATIONS**

**Q. Under PURA § 15.023, what is the maximum administrative penalty the Commission is authorized to assess against Alamo 1 for continuing violations of 16 TAC § 25.55(c)(2) after December 1, 2021?**

A. Alamo 1 late-submitted the WWRR for OCI\_ALM1-UNIT1 on December 8, 2021, and the WWRR for OCI\_ALM1-ASTRO1 on December 9, 2021.<sup>3</sup> Based on the statutory authority provided under PURA § 15.023(b-1), the maximum penalty that may be assessed for Alamo 1's continuing violations of 16 TAC § 25.55(c)(2) would be \$13,000,000: \$1,000,000 for each of the six days from December 2, 2021 through December 7, 2021 that Alamo 1 failed to submit the WWRR for OCI\_ALM1-UNIT1, and \$1,000,000 for each of the seven days between December 2, 2021 and December 8, 2021 that Alamo 1 failed to submit the WWRR for OCI\_ALM1-ASTRO1. When calculated along with the \$2,000,000 maximum penalty for Alamo 1's initial violations, the total maximum administrative penalty that may be assessed against Alamo 1 for its violations of 16 TAC § 25.55(c)(2) is \$15,000,000.

**Q. Does the penalty system in 16 TAC § 25.8 apply to these continuing violations?**

A. Yes. As described above with respect to the initial violations, in my opinion, a violation of 16 TAC § 25.55 would be captured by 16 TAC § 25.8(c) because it is a violation of a provision adopted under the authority of PURA § 35.0021 and therefore is subject to the authority set out in PURA § 15.023(b-1).

**Q. 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?**

A. No. The continuing violations at issue here involve a provision of PURA § 35.0021. As described above, at the time the NOV was filed on December 8, 2021, 16 TAC § 25.8 had not been updated to address the amendments made to PURA § 15.023 during the 87<sup>th</sup>

---

<sup>3</sup> Direct Testimony of Ramya Ramaswamy at Attachment RR-3.

1       Legislature because a Class A violation did not recognize the new category of  
2       administrative penalty authority granted under PURA § 15.023(b-1). In my opinion,  
3       because the continuing violations involved a provision of PURA § 35.0021, they were  
4       subject to the authority granted under PURA § 15.023(b-1). The violation would be  
5       considered a separate violation under 16 TAC § 25.8(c) under the version of the rule that  
6       existed at the time the NOV was filed.

7               However, in the time since the NOV was filed, the Commission amended 16 TAC  
8       § 25.8(b)(3)(A) to include violations of rules adopted under PURA § 35.0021 as Class A  
9       violations subject to a maximum administrative penalty of \$1,000,000 per violation per  
10      day. In my opinion, to the extent the violations are analyzed under the current version of  
11      the rule, rather than the version of the rule that existed at the time the NOV was filed, the  
12      violations would now be considered Class A violations subject to a maximum penalty of  
13      \$1,000,000 per violation per day.

14

15   **V.     APPLICATION OF PURA § 35.0021(g)**

16   **Q.     Does PURA § 35.0021(g) apply to a violation of 16 TAC § 25.55(c)(2)?**

17   A.     PURA § 35.0021(g) states that the Commission shall impose an administrative penalty on  
18      an entity which violates a rule adopted under PURA § 35.0021 and does not remedy that  
19      violation within a reasonable period. Because 16 TAC § 25.55(c)(2) was adopted under  
20      PURA § 35.0021, based on the plain language of the statute, I believe that PURA  
21      § 35.0021(g) applies to a violation of 16 TAC § 25.55(c)(2) to the extent that it would  
22      require the Commission to impose an administrative penalty if a violation of 16 TAC  
23      § 25.55(c)(2) is not remedied within a reasonable time.

24               While the language of PURA § 35.0021(g) requires the Commission to impose a  
25      penalty under certain circumstances, it does not contain any language preventing the  
26      Commission from otherwise choosing to impose a penalty for a violation that has been  
27      remedied in a reasonable timeframe.

1 **Q. To the extent that Alamo 1 late-submitted the missing WRRs after the December**  
2 **1, 2021 submission deadline, does the late submission remedy the initial violations of**  
3 **16 TAC § 25.55(c)(2) for the purposes of applying PURA § 35.0021(g)?**

4 A. Alamo 1 late-submitted the missing WRRs on December 8, 2021 and December 9,  
5 2021.<sup>4</sup> It is my opinion that the late submission of the missing WRRs did not remedy  
6 Alamo 1's initial violations of 16 TAC § 25.55(c)(2) because late submission cannot  
7 retroactively remedy the fact that Alamo 1 missed the December 1, 2021 submission  
8 deadline, or the fact that the information provided in the WRRs was not available to the  
9 Commission or ERCOT on the date required. The December 1, 2021 submission deadline  
10 was a one-time deadline which, once missed, cannot be remedied.

11 Therefore, because PURA § 35.0021(g) requires the Commission to impose  
12 administrative penalties for violations that are not remedied within a reasonable  
13 timeframe, and because an initial failure to meet the deadline established under 16 TAC  
14 § 25.55(c)(2) cannot be remedied, in my opinion, PURA § 35.0021(g) applies and requires  
15 the Commission to impose an administrative penalty for Alamo 1's initial violations of 16  
16 TAC § 25.55(c)(2).

17 **Q. Does Alamo 1's late submission of the missing WRRs remedy the continuing**  
18 **violations of 16 TAC § 25.55(c)(2) for the purposes of applying PURA § 35.0021(g)?**

19 A. In my opinion, Alamo 1's late submission remedied the continuing violations for the  
20 purpose of PURA § 35.0021(g) in a reasonable time, but I do not interpret PURA  
21 § 35.0021(g) in a way that prohibits the Commission from imposing administrative  
22 penalties for the remedied violations. Rather, it is my opinion that, while PURA  
23 § 35.0021(g) requires the Commission to impose penalties related to violations that have  
24 not been remedied in a reasonable time, it does not prohibit the Commission from

---

<sup>4</sup> *Id.*

1 imposing penalties for violations that have been remedied in a reasonable time if otherwise  
2 authorized by another rule or statute.

3

4 **VI. APPLICATION OF PURA § 15.024(c)**

5 **Q. Does PURA § 15.024(c) apply to a violation of 16 TAC § 25.55(c)(2)?**

6 A. PURA § 15.024(c) states that a penalty may not be assessed against a person who remedies  
7 a violation before the 31<sup>st</sup> day after the date the person receives notice of the violation.  
8 PURA § 15.024(c) further states that a person who claims to have remedied an alleged  
9 violation has the burden of proving to the Commission that the alleged violation was  
10 remedied and was accidental or inadvertent. PURA § 15.024(c) expressly states that it is  
11 not applicable to violations of provisions of PURA chapters 17, 55, or 64. 16 TAC  
12 § 25.55(c)(2) was adopted pursuant to PURA § 35.0021, which is in PURA chapter 35.

13 For PURA § 15.024(c) to apply to a violation of 16 TAC § 25.55(c)(2), the  
14 violation must, in the first instance, be remediable. If a person is unable to remedy the  
15 violation, then PURA § 15.024(c) cannot be applied. As I previously testified, in my  
16 opinion, Alamo 1's initial violations were not remediable, but the continuing violations  
17 were remediable.

18 Next, based on the plain language of PURA § 15.024(c), it is my understanding  
19 that the Commission is authorized to impose an administrative penalty for a violation of  
20 16 TAC § 25.55(c)(2) that has been remedied within 30 days if the person alleged to have  
21 committed the violation has not proven that the violation was accidental or inadvertent.  
22 If the person has not proven that the violation was accidental or inadvertent, PURA  
23 § 15.024(c) cannot be applied. To my knowledge, Alamo 1 has not provided any evidence  
24 to date that proves the continuing violations were accidental or inadvertent.

25 Therefore, I believe PURA § 15.024(c) can generally be applied to violations of  
26 16 TAC § 25.55(c)(2), yet the specific circumstances and nature of a violation will  
27 determine whether the statute is applicable in that specific case.

1 **Q. Did Alamo 1's late submission of the missing WRRs on December 8, 2021 and**  
2 **December 9, 2021 remedy either the initial violations or the continuing violations of**  
3 **16 TAC § 25.55(c)(2) under PURA § 15.024(c)?**

4 A. As stated above, I do not believe that the late submission of the WRRs after December  
5 1, 2021 can retroactively remedy the initial failure to meet the submission deadline.  
6 Rather, in my opinion, the late submission of the WRRs after December 1, 2021 stops  
7 the continuing violation. Because I do not believe the initial violations are remediable, it  
8 is my opinion that the late submission of the WRRs does not remedy the initial  
9 violations of 16 TAC § 25.55(c)(2) under PURA § 15.024(c).

10 Conversely, it is my opinion that Alamo 1's late submission of the WRRs did  
11 remedy the continuing violations of 16 TAC § 25.55(c)(2) by providing the Commission  
12 and ERCOT with the missing WRRs. However, I would also opine that remedying an  
13 continuing violation does not establish that the occurrence of the violation was accidental  
14 or inadvertent.

15 **Q. If Alamo 1 remedied the continuing violations of 16 TAC §25.55(c)(2) within 31 days**  
16 **of the date the NOV was received, were the violations accidental or inadvertent?**

17 A. Under PURA § 15.024(c) and 16 TAC § 22.246(g)(1)(C), Alamo 1 has the burden of  
18 proving that a violation was accidental or inadvertent. To my knowledge, Alamo has not  
19 submitted any information to prove that its violations of 16 TAC § 25.55(c)(2) were  
20 accidental or inadvertent, as required under PURA § 15.024(c) and 16 TAC  
21 § 22.246(g)(1)(C).

22 **Q. In your opinion, is it appropriate to impose an administrative penalty for the initial**  
23 **or continuing violations of 16 TAC § 25.55(c)(2) under the authority of PURA**  
24 **§ 15.024(c) and 16 TAC § 22.246(g)(1)(C)?**

25 A. In my opinion, consistent with PURA § 35.0021(g), the Commission must impose an  
26 administrative penalty for the initial violations of 16 TAC § 25.55(c)(2) because, as  
27 discussed above, the initial violations are not remediable. Additionally, in my opinion, it

1 is appropriate for the Commission to impose an administrative penalty for the continuing  
2 violations under the authority of PURA § 15.024(c) and 16 TAC § 22.246(g)(1)(C)  
3 because Alamo 1 has not asserted or provided any evidence that the continued violations  
4 were accidental or inadvertent.

5

6 **VII. OTHER VIOLATIONS**

7 **Q. Other than the above-described violations of 16 TAC § 25.55(c)(2), are you aware of**  
8 **any other violations by Alamo 1 that are at issue in this proceeding?**

9 A. I am not aware of any other violations by Alamo 1 that are at issue in this proceeding.

10

11 **IX. PENALTY CALCULATION**

12 **Q. What is the administrative penalty ultimately recommended by Commission Staff**  
13 **against Alamo 1 for the violations included in the December 8, 2021 NOV?**

14 A. In the NOV, Staff recommended that a \$250,000 administrative penalty be assessed for  
15 each initial failure to submit a winter weather readiness report by December 1, 2021 as  
16 required by 16 TAC § 25.55(c)(2). Additionally, Staff recommended that the penalty be  
17 increased by \$50,000 per day per resource for each day the violations of 16 TAC  
18 § 25.55(c)(2) persisted. Using that calculation, at the time of the NOV, Staff  
19 recommended each resource to be assessed a penalty of \$550,000, for a total penalty of  
20 \$1,100,000.

21 The NOV only accounted for accumulation of penalties through December 7,  
22 2021. Because Alamo 1 failed to submit the WWRR for OCI\_ALM1-ASTRO1 until  
23 December 9, 2021, an additional \$50,000 should be added to the total to account for the  
24 additional day the violation continued. This brings Staff's total recommended  
25 administrative penalty to \$1,150,000.

1   **Q.     Can you explain why Commission Staff believes a failure to timely submit a WWRR**  
2       **should be treated differently than a failure to file a report, as described in 16 TAC**  
3       **§ 25.8(b)(1)?**

4   A.   Under 16 TAC § 25.8(b)(1), a failure to file a report within the required timeline is treated  
5       as a Class C violation, the lowest level of violation categorized by the Commission. Class  
6       C violations typically include failures to file regularly scheduled reports, updated contact  
7       information, or other minor informational filings that, if not timely submitted, do not cause  
8       or create the potential for significant harm to the health, safety, or economic welfare of  
9       the public.

10           PURA § 15.023(b-1) creates a separate and most serious category of violation,  
11       limited to violations of provisions of PURA §§ 35.0021 and 38.075 due to the gravity of  
12       consequences caused by the generation shortage experienced during Winter Storm Uri  
13       and the impact it had on Texas. The WWRRs were not just a “filing,” but were intended  
14       by the Commission to serve as the required demonstration of completion of the substantive  
15       preparation requirements.<sup>5</sup> The WWRRs not only demonstrated completion of weather  
16       emergency preparation requirements for individual resources, but also were analyzed  
17       comprehensively to gauge fleet readiness as the state headed into the winter months. As a  
18       substantive demonstration of compliance, it is my opinion that the WWRRs should not be  
19       considered mere “filing violations.”

20           Because Alamo 1 did not timely submit its WWRRs, Staff had no way of knowing  
21       whether Alamo 1 had completed the substantive preparation requirements on time, and  
22       that uncertainty about Alamo 1’s readiness inherently created a reliability risk, which goes  
23       beyond the scope of “filing violations” usually encompassed by Class C violations.<sup>6</sup>  
24       Moreover, the WWRRs were required by 16 TAC § 25.55, a rule adopted under the  
25       provisions of PURA § 35.0021, and thus should be considered the most severe type of

---

<sup>5</sup> Direct Testimony of Ramya Ramaswamy at 6.

<sup>6</sup> *Id.* at 12.

1 violation considered under PURA and Commission rule. Therefore, it is my opinion that  
2 the failure to submit the WWRRs on time is particularly egregious and warrants  
3 significant penalties beyond what is normally assessed for Class C filing violations.

4 **Q. How does Alamo 1's failure to timely submit its WWRRs create a hazard or potential**  
5 **hazard to public health or safety?**

6 A. Alamo 1's failure to timely submit its WWRRs created a potential hazard by creating  
7 uncertainty about Alamo 1's preparation and readiness. The lack of information about  
8 Alamo 1's physical preparations and capabilities inherently posed a reliability risk, which  
9 created a potential hazard to public health and safety.

10 **Q. Why are the risks to reliability posed by the failure to timely submit a WWRR**  
11 **sufficient to justify the recommended penalties?**

12 A. Winter Storm Uri exposed the consequences of generation shortage, and, to the extent  
13 resources in the ERCOT power region were not prepared to handle winter weather, the  
14 potential hazard to public health, safety, and economic welfare that was demonstrated  
15 during Winter Storm Uri existed as winter approached in December 2021. Without the  
16 WWRRs, neither ERCOT nor the Commission had any way of knowing whether Alamo  
17 1 could be relied upon or would otherwise impact grid reliability in future winter weather  
18 events.<sup>7</sup> In my opinion, the risk to reliability and potential hazard to the health and safety  
19 of the public caused by the uncertainty and lack of information justifies Staff's  
20 recommended penalties.

21 **Q. In your opinion, is Commission Staff's recommended administrative penalty against**  
22 **Alamo 1 appropriate when considered in light of an analysis of the factors listed**  
23 **under PURA § 15.023(c)?**

24 A. Yes, in my opinion the recommended administrative penalty is appropriate and was  
25 calculated with an analysis of all required factors, as detailed below:

---

<sup>7</sup> *Id.* at 12.



1        *1. The seriousness of violation, including the nature, circumstances, extent, and*  
2        *gravity of a prohibited act and the hazard or potential hazard created to the health,*  
3        *safety, or economic welfare of the public.*<sup>8</sup> In the aftermath of Winter Storm Uri, the  
4        Texas Legislature passed Senate Bill 3, which amended PURA to require the Commission  
5        to develop weather emergency preparation rules that require generation facilities in the  
6        ERCOT power region to prepare for future winter weather events. Accordingly, the  
7        Commission adopted the winter weather preparation rules under 16 TAC § 25.55 in order  
8        to protect the health, safety, and economic welfare of the public.

9                As a market participant in the ERCOT power region, Alamo 1 had a duty to remain  
10        aware of and comply with applicable Commission rules. The Commission's  
11        implementation of weather emergency preparation requirements was heavily publicized  
12        in a process that included stakeholder comments and multiple meetings of the  
13        Commission open to the public.

14                Additionally, Alamo 1's failure to submit the required WWRs to ERCOT created  
15        a potential hazard to the health, safety and welfare to the public. Without the timely  
16        submission of the reports, ERCOT and the Commission were unable to know whether  
17        Alamo 1 had properly prepared its generation or energy storage resources for future  
18        weather events.<sup>9</sup> This lack of information created an inherent potential hazard to the  
19        health, safety, and economic welfare of the public by risking Commission Staff and  
20        ERCOT's ability to accurately and effectively address the needs of the grid in a timely  
21        manner. Additionally, each day Alamo 1's violations continued, the potential hazards  
22        caused by the uncertainty surrounding Alamo 1's reliability capabilities increased, as the  
23        state headed deeper into the winter season and the likelihood of severe winter weather  
24        grew.<sup>10</sup> Therefore, it is my opinion that Alamo 1's failure to comply with the requirements

---

<sup>8</sup> PURA § 15.023(c)(1).

<sup>9</sup> Direct Testimony of Ramya Ramaswamy at 12.

<sup>10</sup> *Id.* at 13.

1 are serious in light of the regulatory focus by the Commission, ERCOT, and the Texas  
2 Legislature on weather preparations.

3 **2. *Economic harm to property or the environment caused by the violations.***<sup>11</sup> The  
4 violation did not cause any immediate economic harm to property or the environment.  
5 However, failure to timely provide Alamo 1's WWRR carried an inherent risk of financial  
6 harm that could have occurred in the event of a loss of generation during the time period  
7 between the submission deadline and the date on which ERCOT and Commission Staff  
8 actually received the missing WWRRs.

9 **3. *History of previous violations***<sup>12</sup>. I am not aware of any history of violations by Alamo  
10 1 that have been confirmed through an enforcement proceeding.

11 **4. *The amount necessary to deter future violations.***<sup>13</sup> The fact that the Texas Legislature  
12 established a penalty amount of up to \$1,000,000 per day for violations of rules adopted  
13 under PURA § 35.0021 demonstrates legislative intent for significant penalties to be  
14 assessed for the purpose of deterring violations and encouraging compliance. With that in  
15 mind, the Commission has repeatedly and publicly emphasized its commitment to  
16 enhancing reliability and its willingness to assess significant penalties for violations that  
17 impact reliability. The fact that Alamo 1's violations at issue in this proceeding impact  
18 grid reliability supports significant penalties to deter future violations of reliability-  
19 focused requirements.

20 **5. *Efforts to correct the violations.***<sup>14</sup> On December 8, 2021 and December 9, 2021,  
21 Alamo 1 submitted to ERCOT the missing WWRRs for its two resources. While the late  
22 submission of the WWRRs addressed the then-ongoing failure to provide the Commission  
23 with the required information, the late submission cannot correct Alamo 1's initial

---

<sup>11</sup> PURA § 15.023(c)(2).

<sup>12</sup> PURA § 15.023(c)(3).

<sup>13</sup> PURA § 15.023(c)(4).

<sup>14</sup> PURA § 15.023(c)(5).

1 violations for failure to submit the WWRRs by the December 1, 2021 deadline.  
2 Additionally, Alamo 1 failed to demonstrate that the continuing violations of 16 TAC  
3 § 25.55(c)(2) were accidental or inadvertent, and, therefore, it is appropriate to assess an  
4 additional penalty for the continuing violations.

5 **6. Any other matter justice may require.**<sup>15</sup> The failure to submit its winter weather  
6 readiness report affected two resources with a cumulative capacity of 40.18 megawatts  
7 (MW),<sup>16</sup> which is enough generation to power an estimated 8,036 homes during periods  
8 of peak demand.<sup>17</sup> The failure to timely provide the WWRRs created a potential risk for  
9 weather-related failure at one or both resources and, therefore, merits the assessment of  
10 significant administrative penalties.

11

12 **IX. OTHER COMMENTS**

13 **Q. Has Alamo 1 timely complied with the Commission's requests for information?**

14 A. The nature of the investigation did not warrant any requests for information. Because  
15 Alamo 1 failed to meet the filing deadline of December 1, 2021, the occurrence of a  
16 violation was apparent and did not require additional information from Alamo 1.

17 **Q. In what manner has Alamo 1 cooperated with the Commission during the**  
18 **investigation of the violation?**

19 A. After being notified of the violation, Alamo 1 has cooperated with the Commission in a  
20 consistent manner to move the matter forward to hearing.

21

---

<sup>15</sup> PURA § 15.023(c)(6).

<sup>16</sup> Direct Testimony of Ramya Ramaswamy at Attachment RR-3.

<sup>17</sup> ERCOT Fact Sheet (Nov. 17, 2021) (stating that, during times of peak demand, 1 MW can power 200 homes).

1    **X.      CONCLUSION**

2    **Q.      Do you believe that Commission Staff's method for calculating an administrative**  
3           **penalty as set forth in the December 8, 2021 NOV is reasonable and appropriate in**  
4           **light of the governing legal authority?**

5    A.      Yes. In my opinion, Commission Staff's method for calculating an administrative penalty  
6           in this matter is reasonable with respect to the factors established in PURA § 15.023,  
7           required in light of the obligation described in PURA § 35.0021(g), and appropriate when  
8           considering the nature of the continuing violations under PURA § 15.024.

9    **Q.      Using the method for calculation included in Commission Staff's December 8, 2021**  
10           **NOV, in your opinion, what is the appropriate administrative penalty to be assessed**  
11           **against Alamo 1 for the violations at issue in this proceeding?**

12   A.      In my opinion, the appropriate administrative penalty should be \$1,150,000 or \$550,000  
13           for OCI\_ALM1-UNIT1 and \$600,000 for OCI\_ALM1-ASTRO1.

14   **Q.      Do you believe a total administrative penalty of \$1,150,000, or \$550,000 for**  
15           **OCI\_ALM1-UNIT1 and \$600,000 for OCI\_ALM1-ASTRO1, is reasonable and**  
16           **appropriate based on the facts and circumstances of this case?**

17   A.      Yes, it is my opinion that those amounts are reasonable and appropriate based on the facts  
18           and circumstances of this case.

19   **Q.      Does this conclude your direct testimony?**

20   A.      Yes. I reserve the right to supplement this testimony during the course of the proceeding  
21           if new evidence becomes available.

**ATTACHMENT JW-1**  
**RESUME OF JEFFREY WIRTH**

# Jeffrey Wirth

---

## **EDUCATION**

**The University of Texas**, Austin, TX  
BA in Sociology, May 1995

## **WORK EXPERIENCE**

**Public Utility Commission of Texas, Division of Compliance and Enforcement**, Austin, TX

*ENFORCEMENT ANALYST*, April 2016-Current

Conducts, reviews and audits of information and reports to determine the need for investigation. Initiates investigations through information gathering and analysis. Prepares recommendations memos regarding disposition of each review, audit, and/or investigation. Conducts enforcement actions, including describing and documenting violations, determining appropriate penalties and/or recommended action, and follow up on recommended action. Develops Pre-Notices of Violation and engages in negotiations. Participates in prosecution of Notices of Violation and Revocations.

*COMPETITIVE MARKETS ANALYST*, January 2014-March 2016

Participated in policy development and rule making activities in coordination with other divisions and prepares documents for Commission action. Analyzed issues and makes recommendations associated with competitive electric markets. Coordinated and leads workshops and project discussions. Prepared documents and makes recommendations in response to Commission or Legislative directives. Monitored and evaluated stakeholder meetings related to the efficient operation of a competitive electric market.

*ENFORCEMENT ANALYST*, January 2010-December 2013

Acquires and maintains knowledge of the electric and telecommunications industries as well as the PUC Substantive Rules. Prepares documents describing violations and recommends appropriate penalties and enforcement actions such as Notice of Violations or Notices of Non-Compliance. Monitors developments and issues in the electricity market to evaluate potential impacts on the retail electric markets. Reviews and analyzes complaints related to the telecommunications and electric industries.

**Texas Residential Construction Commission**, Austin, TX

*OMBUDSMAN*, June 2008-December 2009

Coordinated communication between homeowners and their builder to obtain resolution of disputes. Assisted in developing special administrative analyses, reports and summaries. Responded to inquiries and interpreted rules, regulations, policies and procedures. Managed the complaint process including documenting communications, offers or violation of commission rules. Developed, coordinated and maintained record keeping and filing system.

**Texas Department of Insurance**, Austin, TX

*INSURANCE SPECIALIST III*, October 2003-May 2008

Analyze complaints, including trends, regarding both personal and commercial lines. Administer a final resolution to the complaints utilizing the statutory requirements of the state. Correspond with professionals in the industry regarding practices and consumer interests. Research policy information to assemble comprehensive comparisons of company policies. Obtain current information concerning complex insurance issues. Make recommendations for legal action when appropriate.

# Jeffrey Wirth

## INSURANCE SPECIALIST II October 2001-October 2003

Reviewed property and casualty policy forms, endorsements and rules and recommended them approval or disapproval based on their compliance with statutes and agency rules. Responded to inquiries from the insurance industry and public regarding filing procedures. Evaluated and determined appropriate action on complaints.

## **Farmers Insurance Group, Richardson, TX**

### SENIOR CLAIMS ADJUSTER July 1996-December 1999

Inspected properties suffering loss in order to facilitate a successful conclusion of the claim. Interpreted legal policy terms and conditions to increase customer understanding. Conducted investigations regarding coverage issues and claim inconsistencies. Rendered coverage decisions based on available information and facts of loss.