



## Filing Receipt

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**DOCKET NO. 52929**

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

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**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**OCI'S LIST OF ISSUES**

In compliance with the Commission Counsel's Order Requesting Lists of Issues dated January 13, 2022, OCI Alamo 1 LLC (OCI) hereby submits this list of issues that should be addressed in this docket.<sup>1</sup> This submission is timely, being filed by the January 24, 2022, deadline established by the Order.

**I. PROPOSED ISSUES**

OCI provides herein a threshold issue and other (non-threshold) issues. This docket involves a Notice of Violation (NOV) issued against OCI for alleged failure to timely file a report.

**A. Threshold Issue**

The relevant statute (PURA § 35.0021(b)) requires a power generation company to “implement measures to prepare the provider’s generation assets” to generate during a weather emergency. The NOV issued against OCI describes the alleged violation as failure to file a report — filing a report is not “implement[ing] measures to prepare the provider’s generation assets” as required by PURA § 35.0021(b). Importantly, the NOV does not allege OCI failed to implement any required weather-preparation measures at its generation facilities. If OCI has implemented all measures required by the statute and the Commission’s rule to physically prepare its generation assets to provide service during a weather emergency, that satisfies the mandate in PURA § 35.0021(b). Yet, the NOV issued by the Executive Director to OCI alleges only a violation for

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<sup>1</sup> On January 18, 2022, OCI filed in this docket a Request for Abatement of the proceeding seeking a delay in the process of initiating a hearing in order to allow time to discuss the possibility of settlement with the Commission Staff. No ruling has yet been made on that Request. In order to not waive its opportunity to identify issues that should be addressed at a hearing in this case, if settlement is not possible when attempted or if no time is allowed for settlement discussions, OCI is submitting its list of issues as required by, and in timely compliance with, the January 13, 2022, Order of Commission Counsel.

the alleged failure to timely file the report. OCI therefore submits the following as threshold legal issues:

**Threshold Legal Issue: Did a violation of PURA § 35.0021 or 16 TAC § 25.55 occur?**

1. PURA § 35.0021(b) directs the Commission to “by rule require each provider of electric generation service described by Subsection (a) *to implement measures* to prepare the provider’s generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the commission.” (emphasis added). The Notice of Violation is for an alleged failure to timely file a report and alleges no failures in implementing weather preparation measures at a generation facility. Is filing a report at the Commission included within the meaning of “implement[ing] measures to prepare the provider’s generation assets to provide adequate electric generation service during a weather emergency?”
2. Did OCI submit its winter weather readiness report to the Commission and ERCOT by December 1, 2021, as required by 16 TAC § 25.55(c)(2)?
3. If OCI did not submit its winter weather readiness report by December 1, 2021, what were the reasons it was not submitted and do the reasons excuse or remedy any failure to file the report on December 1, 2021?
4. Did OCI immediately file its winter weather readiness report with the Commission by December 9, within one day of being notified by Commission Staff of the alleged failure to file by December 1?
5. Did OCI’s filing of a report under 16 TAC § 25.55(c)(2) within one day after issuance by Commission Staff of a Notice of Violation alleging failure to submit such a report occur within a reasonable period of time as provided in PURA § 35.0021(g), particularly when the filing demonstrated that OCI was in compliance with the requirements of 16 TAC § 25.55(c)(2) on December 1?
6. Does PURA § 35.0021(c)(2), which requires ERCOT to give a generator “a reasonable period of time in which to remedy any violation,” mean that a late filing may be remedied, without constituting a violation of PURA § 35.0021?
7. Does PURA § 35.0021(g) provide that the Commission shall impose an administrative penalty on an entity that fails each of two separate criteria: (1) violates a rule adopted under this section and (2) does not remedy that violation within a reasonable period of time?
8. Did OCI remedy any violation within a reasonable period of time?
9. Did OCI provide proof in its Supplemental Winter Weather Readiness Report filing on December 29, 2021 in Project No. 52786 that it had fully satisfied the requirements of 16 TAC §25.55(c)(1)(A)-(E) by December 1, 2021?

B. Other (Non-Threshold) Issues

**Legal Issue: Did filing the Declaration of Compliance with winter weather preparation requirements achieve substantive compliance with PURA § 35.0021 and 16 TAC § 25.55, meaning that there was no violation?**

10. Did OCI make a timely filing on November 1, 2021, of the winter weather readiness report required by Section 3.21(3) of the ERCOT Protocols, which requires a generation entity to submit the Declaration of Completion of Generation Resource Winter Weatherization Preparations?
11. By filing that Declaration of Completion before December 1, 2021, and demonstrating compliance with the weather preparation requirements for its generation facilities, did OCI achieve substantive compliance with 16 TAC § 25.55(c)(2)?
12. Did OCI's filing of a timely and fully compliant Declaration of Completion prior to December 1, 2021, addressing the weather preparation measures it had completed, achieve substantive compliance with PURA § 35.0021 and 16 TAC § 25.55?

**Legal Issue: May any failure to file on December 1, 2021, be remedied, and if remedied, did any violation occur?**

13. Does Texas law recognize that it is possible to remedy a failure to file a report on a specified day?
14. What legal standards apply to determining whether a failure to file a report on a specified day is capable of being remedied?
15. OCI supplemented its November 1, 2021, Declaration of Completion of winter weatherization readiness on December 9, 2021, the day before the deadline by which ERCOT was required to provide the Commission with a list of non-compliant market participants—i.e., OCI filed its report the day before December 10, 2021, which is the day by which ERCOT was required to inform the Commission whether each entity had filed its report (per 16 TAC 25.55(c)(4)).
  - a. Does the fact that OCI filed its report before the deadline by which ERCOT had to assess whether each party had filed, and so report to the Commission, indicate that any failure to file on December 1, 2021, did not prejudice ERCOT or the Commission in any regard?
  - b. Does the fact that OCI filed its report before the deadline by which ERCOT had to assess whether each entity had filed, and so report to the Commission, indicate that there was no economic harm to property, the environment, or risk of a hazard or potential hazard to the health, safety, or economic welfare of the public, or to grid or system reliability?
16. Does PURA § 15.024(c) mandate that a penalty may not be assessed if the alleged violation and/or continuing violation is remedied before the 31st day after the date the person received

the notice of violation and the alleged original and/or continuing violations were accidental or inadvertent?

**Mixed Factual and Legal Issues: Mitigating Factors and Considerations Regarding Penalty Amount**

17. Does OCI's filing of the Declaration of Completion of winter weatherization readiness on November 1, 2021, provide evidence of OCI's commitment to the importance of winter weather preparations for its generation resources and should that filing be considered in weighing the amount of any penalty that is assessed?
18. Does OCI's filing at ERCOT of the Declaration of Completion of winter weatherization readiness on November 1, 2021, and its filing of a supplemental winter weather readiness report on December 29, 2021, in Project No. 52786, both of which establish that OCI was in full compliance with the weatherization requirements of 16 TAC § 25.055(c)(2) by December 1, 2021, mitigate risks that might otherwise have been created if its winter weather readiness report was not on file at the Commission by December 1?
19. Is there any evidence that a hazard or a potential hazard to the health, safety, or economic welfare of the public was created solely by the possibility that OCI's winter weather readiness report was not on file at the Commission on December 1, 2021?
20. Is the risk of a hazard or potential hazard to the health, safety, or economic welfare of the public, if any, that might have been created solely by the possibility that OCI's winter weather readiness report was not on file at the Commission on December 1, 2021, mitigated or eliminated by fact that OCI's Declaration of Completion of winter weatherization readiness was on file by December 1, 2021?
21. Is there any evidence that any accidental or inadvertent delay in filing a report under 16 TAC § 25.055(c)(2) caused economic harm to property or the environment?
22. Does OCI have any history of previous violations of Commission rules or PURA?
23. Do OCI's actions upon being notified of the alleged failure to file the report demonstrate its responsiveness to Commission Staff and its attention to compliance?
24. Has OCI fully cooperated with Commission Staff in the course of the Staff's investigation of the issues involving the filing of OCI's winter weather readiness compliance report?

**Legal Issue: Authorized Amount of Penalty**

25. Does PURA § 15.023(c) require the Commission, by rule, to establish a classification system for violations that includes a range of administrative penalties that may be assessed for each class of violation based on the seriousness of the violation?

26. Does the classification system established by the Commission under 16 TAC § 25.8(b)(1)(B)(i) that is currently in effect, and was in effect on December 1, 2021, provide that a failure to timely file a report is a Class C violation for which penalties may not exceed \$1,000 per violation per day?
27. Is a “Class C” violation under 16 TAC § 25.8(b) the “highest class of violations in the classification system”?
28. Does PURA § 15.023(d) require that the penalty classification system must allow for a penalty that exceeds \$5,000 *only* if the violation is included in the classification system’s highest class of violations?
29. Does reciting penalty assessment considerations in a Commission Notice of Violation constitute establishment of a classification system “by rule” as required by PURA § 15.023(c)?
30. Does the phrase “notwithstanding Subsection (b)” in PURA § 15.023(b-1) render Subsections (c) and (d) of Section 15.023 inapplicable to the assessment of a penalty in this proceeding?
31. Does 16 TAC § 25.8 constitute the Commission’s penalty classification system that was in effect on December 1, 2021?
32. If the Commission’s penalty classification system rule—16 TAC § 25.8—in effect on December 1, 2021, provides that failure to file a report or provide information required to be submitted is a Class C violation for which the penalty may not exceed \$1,000 per violation per day, is the maximum penalty permitted in this proceeding by that rule and PURA § 15.023(c) and (d) \$1,000 per violation per day?
33. Does the Commission have authority from the Legislature to not apply the mandatory requirements of PURA § 15.023(c) and (d)?
34. Does PURA § 15.023, as implemented by 16 TAC § 25.8, permit assessment of an administrative penalty in this proceeding that exceeds \$1,000 per violation per day?
35. Does any provision in PURA require the Commission to impose a penalty of more than \$1,000 per violation per day for the violation alleged in the NOV issued in this proceeding?

## **II. PRAYER**

OCI respectfully requests that the Commission issue a preliminary order that includes the threshold and non-threshold issues that OCI has identified in this pleading.

**Respectfully submitted,**

**ENOCH KEVER PLLC**  
Carolyn Shellman  
State Bar No. 18196200  
William A. Moore  
State Bar No. 00794330  
Mandy Kimbrough  
State Bar No. 24050613  
7600 N. Capital of Texas Hwy  
Building B, Suite 200  
Austin, Texas 78731  
(512) 615-1200 (phone)  
(512) 615-1198 (fax)  
[cshellman@enochkever.com](mailto:cshellman@enochkever.com)  
[bmoore@enochkever.com](mailto:bmoore@enochkever.com)  
[mkimbrough@enochkever.com](mailto:mkimbrough@enochkever.com)

By: Carolyn E. Shellman  
Attorneys for OCI Alamo 1 LLC

### **CERTIFICATE OF SERVICE**

I certify that on January 13, 2022, a true copy of OCI Alamo 1's List of Issues was served by email, as directed in the July 16, 2020 Second Order Suspending Rules in Project No. 50664, on the following:

Van Moreland  
Public Utility Commission of Texas  
Division of Compliance and Enforcement  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
[van.moreland@puc.texas.gov](mailto:van.moreland@puc.texas.gov)

/s/ Lynn Needles  
Lynn Needles