



## Filing Receipt

**Received - 2022-10-21 10:17:29 AM**  
**Control Number - 52930**  
**ItemNumber - 22**

**DOCKET NO. 52930**

<b>NOTICE OF VIOLATION BY SHELL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>OIL COMPANY FOR VIOLATIONS OF</b>	<b>§</b>	
<b>16 TAC § 25.55, CONCERNING</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WINTER WEATHER READINESS</b>	<b>§</b>	
<b>REPORTING REQUIREMENTS</b>	<b>§</b>	

**SETTLEMENT AGREEMENT**

The Staff of the Public Utility Commission of Texas (Commission) and Shell USA, Inc.<sup>1</sup> (Shell) enter into this settlement agreement and report to the Commission. This agreement resolves and concludes all matters related to Shell's failure to comply with certain requirements under 16 Texas Administrative Code (TAC) § 25.55(c)(2) and Electric Reliability Council of Texas, Inc. (ERCOT) Nodal Protocol § 3.21(3).

**The parties agree as follows:**

1. The parties stipulate to the facts contained in the attached proposed order and request approval of the order by the Commission.
2. The Commission has jurisdiction over this matter under PURA<sup>2</sup> §§ 14.051, 14.054, 15.023, and 35.0021.
3. On December 8, 2021, the Commission's executive director filed a notice of violation and report to the Commission (NOV) recommending that an administrative penalty be imposed against Shell for violations of 16 TAC § 25.55(c)(2) and ERCOT Nodal Protocol § 3.21(3).
4. For the reasons discussed herein, Commission Staff recommends, and Shell agrees to pay, an administrative penalty of \$200,000 in full settlement of the violations described below and in the attached proposed order.
5. The recommended penalty set forth in this agreement reflects consideration of significant mitigating circumstances, as described below in paragraphs 43 through 54.

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<sup>1</sup> At the time of the alleged violations, self-generator registration number 70025 was owned by and registered under the name Shell Oil Company. On March 1, 2022, Shell Oil Company was renamed "Shell USA, Inc."

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

**Description of Facilities & Commission Registration**

6. Shell USA, Inc. is a Delaware for-profit corporation registered with the Texas secretary of state under filing number 1320306.
7. Prior to March 1, 2022, Shell USA, Inc. did business and was registered with the Texas secretary of state under the name Shell Oil Company.
8. The Deer Park Refinery is an oil refinery located in Deer Park, Texas that is powered, in part, by four on-site generators with a combined nameplate capacity of approximately 268.2 megawatts (MW).<sup>3</sup>
9. Prior to January 20, 2022, the Deer Park Refinery—including the four on-site generators—was owned, in part, by Shell Oil Company.
10. On May 31, 2001, Shell Oil Company registered with the Commission as a self-generator and owner of the four Deer Park generators under self-generator registration number 70025.<sup>4</sup>
11. On November 10, 2021, Shell Oil Company filed an application to amend self-generator registration number 70025 to reflect the name change and change in control resulting from selling its ownership interest in the Deer Park facilities to P.M.I. Services North America, Inc. (PMI).<sup>5</sup>
12. On December 10, 2021, self-generator registration number 70025 was amended to reflect PMI as the owner of self-generator number 70025 and to rename the facilities as Deer Park Refining Limited Partnership.<sup>6</sup>
13. On January 20, 2022, Shell finalized the transfer of ownership, thereby making PMI the sole owner of the Deer Park Refinery and the four on-site generators.

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<sup>3</sup> Notice of Violation at Attachment A, Affidavit of Dwayne W. Rickerson (Dec. 8, 2021).

<sup>4</sup> *Application of Shell Oil Company for Registration for Power Generation Companies and Self-Generators Pursuant to Subst. R. 25.109*, Docket No. 24166, Notice of Approval (May 31, 2001);

<sup>5</sup> *Application of Deer Park Refining Limited Partnership to Amend its Self-Generator Registration*, Docket No. 52814, Application (Nov. 10, 2021). At the time the application to amend self-generator registration number 70025 was filed and approved, the sale of Shell's ownership interest to PMI was pending but not finalized.

<sup>6</sup> Docket No. 52814 at Notice of Approval (Dec. 10, 2021).

14. Although PMI is now the sole owner of the Deer Park Refinery and the four on-site generators, PMI was not responsible for the management, operation, or regulatory compliance of the four on-site generators at the time the violations discussed in this agreement occurred.
15. On December 1, 2021 and at all times relevant to the violations at issue in this proceeding, Shell Oil Company was the ERCOT-registered resource entity responsible for the management, operation, and regulatory compliance of the generation facilities registered under self-generator registration number 70025.
16. As of December 1, 2021 at all times relevant to the violations at issue in this proceeding, each of the four Deer Park generators was registered with ERCOT as a “generation resource.”
17. Shell asserts that, during its ownership and management of the Deer Park Refinery, the four Deer Park generators were predominately used to provide on-site generation to the refinery; however, the assets were occasionally settled for net excess energy exported onto the ERCOT transmission grid when available, including during the seven-day period between February 12, 2021 and February 19, 2021.<sup>7</sup> Shell asserts that, as self-generators, the Deer Park resources did not bid energy offers into the ERCOT energy markets, or participate in the ancillary services markets while under Shell’s ownership.<sup>8</sup>
18. On January 6, 2022, Shell updated each of the Deer Park generators’ registrations with ERCOT to reflect their actual function as “settlement-only generators” rather than “generation resources.”
19. Shell acknowledges its responsibility for ensuring timely filing of the winter weather readiness reports at issue in this proceeding and takes responsibility for the violations described in the NOV.

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<sup>7</sup> From February 12, 2021 through February 19, 2021, the Deer Park generation resources sold a total of 2,801 MW of electricity into the ERCOT wholesale market. Shell was able to export excess energy produced during this time due to various refinery processes being “down,” or nonoperational.

<sup>8</sup> As discussed in this settlement agreement, Shell sold its interest in the Deer Park generators and cannot provide insight on the current owner’s operation of these resources.

**Winter Weather Preparation Standards & Reporting Requirements**

20. From February 15, 2021 through February 19, 2021, the ERCOT power region experienced an unprecedented electric generation shortage caused by weather-related failures at generation facilities throughout the state during a period of extreme winter weather.
21. In response to the February 2021 generation crisis, the Texas Legislature enacted PURA § 35.0021, requiring the Commission to develop the weather preparation standards necessary to ensure the reliability of the electric generation during future extreme winter weather events.
22. Under the authority of PURA § 35.0021(b), the Commission adopted 16 TAC § 25.55, which established a series of winter weather preparation activities to be completed for each generation resource in the ERCOT power region no later than December 1, 2021.
23. Under 16 TAC § 25.55(c)(2), each generation entity in the ERCOT power region was required to submit to ERCOT a winter weather readiness report (WWRR) for each of its generation resources no later than December 1, 2021. The purpose of the WWRR requirement was to advise ERCOT and the Commission of each generation resource's compliance with the weatherization requirements of 16 TAC § 25.55(c)(1) and, to the extent additional time was needed to complete the required preparations, to inform ERCOT and the Commission of the progress and expected completion date for each generation resource's compliance activities.
24. ERCOT utilized an online service known as DocuSign to distribute the WWRR form for each generation resource to the associated resource entity, monitor the progress of each WWRR form, and receive each WWRR form upon completion.
25. At the time the WWRR forms were distributed by ERCOT, Shell was registered with ERCOT as the resource entity for each of the four Deer Park generation resources.
26. On November 12, 2021, ERCOT sent a WWRR DocuSign link for each of the four Deer Park generation resources to the email address associated with Shell's authorized representative in ERCOT's records.

**Violations of 16 TAC § 25.55(c)(2)**

27. On December 1, 2021, Shell was the ERCOT-registered resource entity responsible for the four ERCOT-registered generation resources located at the Deer Park Refinery: SL – SL\_G1, SL – SL\_G2, SL – SL\_G3, and SL – SL\_G4.
28. On December 1, 2021, Shell was a generation entity, as that term is defined under 16 TAC § 25.55(b)(3).
29. On December 1, 2021, SL – SL\_G1, SL – SL\_G2, SL – SL\_G3, and SL – SL\_G4 each qualified as a separate generation resource, as that term is defined under 16 TAC § 25.55(b)(4).
30. Under 16 TAC § 25.55(c)(2), Shell was required to submit to ERCOT a WWRR for each of the four Deer Park generation resources no later than December 1, 2021.
31. Shell did not submit the required WWRRs for the four Deer Park generation resources to ERCOT by December 1, 2021.
32. Shell late-submitted the WWRRs for each of the four Deer Park generation resources to ERCOT on December 8, 2021.
33. Shell admits that, because Shell had mistakenly registered its generators with ERCOT as generation resources, it was required to comply with the December 1, 2021 WWRR submission deadline for the Deer Park resources and therefore failed to comply with 16 TAC § 25.55(c)(2) on December 1, 2021 by failing to do so.
34. Shell admits that it continued to not comply with 16 TAC § 25.55(c)(2) from December 2, 2021 through December 8, 2021 by failing to submit the WWRR for each of the four Deer Park generation resources.
35. Shell asserts that its failure to timely submit the WWRRs for the four Deer Park generation resources as required under 16 TAC § 25.55(c)(2) does not reflect a failure to substantively prepare the generation facilities as required under 16 TAC § 25.55(c)(1). Shell asserts that, but for its mistaken registration of the Deer Park facilities as generation resources, the weatherization standards of 16 TAC § 25.55 would not have applied to these resources as settlement-only generators; however, all four Deer Park resources were, in fact, in

compliance with the substantive winter weather preparedness requirements established under 16 TAC § 25.55(c)(1) by the December 1, 2021 deadline.

**Violations of ERCOT Nodal Protocol § 3.21(3)**

36. Under ERCOT Nodal Protocol § 3.21(3), each resource entity in the ERCOT region is required to submit to ERCOT a Declaration of Completion of Generation Resource Winter Weatherization Preparations (Declaration) stating that, at the time of submission, each generation resource under the resource entity's control has completed or will complete all weather preparations required by the weatherization plan for equipment critical to the reliable operation of the generation resource during the winter peak load season.
37. Under 16 TAC § 25.55(c)(5), a generation entity that timely submitted a WWRR to ERCOT by December 1, 2021 was exempt from the Declaration requirement under ERCOT Nodal Protocol § 3.21(3) for the 2021 calendar year.
38. Shell did not submit a Declaration to ERCOT by December 1, 2021.
39. Shell was not exempt from the requirement to submit a Declaration by December 1, 2021 because Shell did not timely submit a WWRR to ERCOT for each of the four Deer Park generation resources.
40. Shell admits that it failed to comply with ERCOT Nodal Protocol § 3.21(3) on December 1, 2021 by failing to submit its Declaration to ERCOT by December 1, 2021.
41. Shell admits that it continued to be out of compliance with ERCOT Nodal Protocol § 3.21(3) from December 2, 2021 through December 7, 2021 by failing to submit its Declaration to ERCOT.
42. For the purposes of this settlement only, Commission Staff stipulates that Shell's December 8, 2021 submission of the required WWRRs also satisfied Shell's obligation to submit a Declaration. Commission Staff reserves the right to take a different position on this issue in other proceedings that are unrelated to the December 8, 2021 NOV.

**Registration of Resources & Communication with ERCOT**

43. Shell asserts that, at the time the WWRRs were distributed and due for submission, Shell mistakenly believed that each of the four Deer Park generation resources was registered with ERCOT as a settlement-only generator, rather than as a generation resource.
44. Shell asserts, and Commission Staff acknowledges, that generation resources registered with ERCOT as settlement-only generators on or before December 1, 2021 were not required to submit WWRRs to ERCOT because a settlement-only generator does not meet the definition of “generation resource” under 16 TAC § 25.55(b)(4).
45. Shell asserts, and Commission Staff acknowledges, that generation resources registered with ERCOT as settlement-only generators on or before December 1, 2021 were not required to submit a Declaration to ERCOT under ERCOT Nodal Protocols § 3.21(3).
46. On November 1, 2021, Shell contacted ERCOT by email to inquire whether self-generators were required to submit WWRRs under 16 TAC § 25.55(c). On November 8, 2021, a representative from ERCOT confirmed by email to Shell that settlement-only generators were not required to submit WWRRs.
  - a. Shell asserts that, because Shell believed the Deer Park generation resources to be registered as settlement-only generators, Shell interpreted this answer to confirm that Shell was not required to submit WWRRs on behalf of the four Deer Park generation assets.
47. On November 12, 2021, after receiving WWRR DocuSign links for each of the four Deer Park generators, Shell again emailed ERCOT to confirm Shell’s understanding that Shell was not required to submit the WWRRs for the Deer Park generation resources. At this time, a representative from ERCOT emailed to indicate that Shell was required to submit the WWRRs for the Deer Park resources as required under 16 TAC § 25.55(c)(2).
48. After receiving conflicting information from ERCOT regarding whether Shell was required to submit WWRRs for the four Deer Park resources, Shell again emailed ERCOT for clarification on November 12, 2021. On November 15, 2021, Shell received an email from an ERCOT representative stating “[a]s initially indicated, Deer Park is exempt from the WWRR because[.]” The ERCOT representative sent the email before completing the entire

explanation within the email. Shell interpreted the email to be consistent with prior communication from ERCOT that Shell had understood to confirm that WWRRs were not required for the four Deer Park resources registered as self-generators with the Commission under 16 TAC § 25.55(c)(2).<sup>9</sup>

- a. In an attempt to further confirm Shell's understanding that it was not required to submit WWRRs for the Deer Park resources, Shell replied to the November 15, 2021 email by thanking the ERCOT representative for confirming that the Deer Park resources were exempt from the WWRR requirement. ERCOT did not respond to or contradict Shell's statement, which led Shell to believe its understanding of the November 15, 2021 emailed message was correct.
49. In an abundance of caution, on November 30, 2021—the day before the WWRR submission deadline—Shell again emailed ERCOT to confirm its understanding that the Deer Park resources were exempt from the WWRR requirement and to solidify its understanding of the November 15, 2021 email it had received from ERCOT. ERCOT did not respond to Shell's November 30, 2021 email.
50. Shell asserts that it also attempted to communicate with ERCOT by phone on November 30, 2021 but was unable to connect with an ERCOT representative that day.
51. On December 3, 2021, before Staff's NOV was filed, Shell received a call from ERCOT personnel indicating that Shell was required to submit WWRRs for the Deer Park generation resources, and that ERCOT had not received the requisite WWRRs.
52. Shell asserts that on December 7, 2021, Shell met with ERCOT to receive clarification on whether it was required to submit WWRRs for the Deer Park generation resources. Shell asserts that during this meeting Shell was informed that the Deer Park resources were registered with ERCOT as generation resources, rather than as settlement-only generators, which contributed to Shell's misunderstanding of whether the WWRR requirement applied to the Deer Park generators.

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<sup>9</sup> See paragraph 46(a), *supra*.

53. Shell also asserts that, during the December 7, 2021 meeting, ERCOT stated that regardless of any potential conflicting information in its prior correspondence with Shell, compliance with 16 TAC § 25.55(c)(2) was ultimately Shell's responsibility.
54. Shell asserts that upon learning from ERCOT that it was required to submit the WWRs, Shell immediately began preparing the WWRs for the Deer Park resources on December 7, 2021 (before Staff's NOV was issued) and that Shell submitted the four WWRs to ERCOT on December 8, 2021, the same day that Staff's NOV was issued.
55. Shell acknowledges its responsibility to be aware of how its generation assets are registered with ERCOT and to be aware of its obligations under the Commission's rules and ERCOT Nodal Protocols associated with its various registrations.
56. Because PMI is now the sole owner of the Deer Park generation resources, Shell has no future compliance responsibilities with respect to the Deer Park generation resources and is no longer affiliated with the Commission self-generator registration number 70025.
57. Currently, Shell, excluding Shell affiliates, does not directly own and control any generation resources in the ERCOT power region, is no longer registered in its own right with ERCOT as a resource entity, and is no longer affiliated with the Commission's Self-Generator registration number 70025.<sup>10</sup>

### **Administrative Penalty**

58. Under PURA § 15.023, the Commission has authority to impose administrative penalties for violations of PURA and Commission Rules.
59. Under PURA § 15.023(b-1), the Commission may assess administrative penalties of up to \$1,000,000 per violation per day for violations of 16 TAC § 25.55(c)(2).<sup>11</sup>

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<sup>10</sup> Shell has "affiliates" as defined by 16 TAC § 25.5(3) who directly own and control resources operating in ERCOT (the reference to 16 TAC § 25.5(3) is intended to describe a successive chain of ownership and not to suggest affiliation with a public utility). By virtue of its affiliate status, Shell has indirect ownership interest in such resources but does not have direct control over their operations and is not responsible for ensuring the compliance of these resources with ERCOT and PUCT rules. Staff and Shell agree for purposes of this settlement that Shell's affiliation with other entities that directly own such resources is irrelevant to this proceeding.

<sup>11</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

60. Under 16 TAC § 25.8(b)(3)(B)(i), Commission Staff asserts that the violations of ERCOT Nodal Protocol § 3.21(3) described herein are Class A violations.
61. Under 16 TAC § 25.8(b)(3)(A), the Commission may impose a penalty of up to \$25,000 per violation per day for a Class A violation.
62. Commission Staff recommends, and Shell agrees to pay, a total administrative penalty of \$200,000 in full and final settlement of its violations of 16 TAC § 25.55(c)(2) and ERCOT Nodal Protocols § 3.21(3).

**Factors to Determine Penalty**

63. In support of the agreed administrative penalty, Commission Staff provides the following analysis of factors to be considered when determining a reasonable and appropriate administrative penalty, as required under PURA § 15.023(c) and 16 TAC § 22.246(c)(3). Shell acknowledges Staff's assertion of the factors' applicability to the underlying violations but does not admit to the accuracy of the analysis, including but not limited to whether the late-filing constitutes a non-remediable violation. Additionally, Shell acknowledges the below facts as presented by Commission Staff, but does not admit that its untimely filing of the WRRs caused the harm described herein:

- a. ***The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public.*** Shell's failure to timely submit the required WRRs is a serious violation of the highest degree. Commission Staff recommends that the nature, circumstances, and gravity of the violations support the imposition of significant penalties. As discussed above, Shell does not admit to the accuracy of Staff's analysis herein but does acknowledge its late filing of the WRRs and agrees to resolve Commission Staff's investigation of this case in accordance with the settlement agreement.

During the week of February 14, 2021, extreme winter weather throughout the state led to an unprecedented electric generation shortage in the ERCOT power region,

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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.

leaving millions of Texans without power for days at a time. The widespread and long-lasting power outages in sub-freezing temperatures caused human suffering and pervasive property damage for Texans throughout the ERCOT region.

After the February 2021 winter storm, the Commission adopted 16 TAC § 25.55 to protect the health, safety, and economic welfare of the public and to prevent the recurrence of a winter weather public emergency. The primary purpose of the WWRR requirement under 16 TAC § 25.55(c)(2) was to ensure ERCOT and the Commission that each generation resource had completed all preparation requirements and would be a reliable source of electric generation in the event of another winter storm. However, to the extent there were delays in completing the preparations for certain resources, the WWRRs were necessary to inform regulators of each resource's progress, outstanding activities, expected maintenance outages, and estimated date of completion. Therefore, the information provided in each WWRR was critical for ERCOT and Commission reliability planning operations.

Shell's failure to timely submit the required reports delayed regulators' ability to accurately account for the resources' generation capabilities and interfered with the Commission and ERCOT's mission to ensure the reliability of the electric grid. When reliability of the electric grid is threatened, there is an inherent risk to the health, safety, and welfare of the public. Therefore, Commission Staff believes that the nature and gravity of Shell's violations in this proceeding warrant the imposition of a significant administrative penalty.

- b. ***The economic harm to property or the environment caused by the violation.*** Shell's failure to timely submit its WWRRs and Declaration did not cause any actual economic harm to property or the environment. However, because the failure to timely submit the information interfered with reliability planning operations, the violations potentially carried a risk of causing economic harm until the violations were cured.
- c. ***The history of previous violations.*** Commission records do not indicate a prior history of investigations of Shell for violations of PURA, the Commission rules, or ERCOT Nodal Protocols.

- d. ***The amount necessary to deter future violations.*** Since the February 2021 winter storm, the Commission has repeatedly emphasized the importance of compliance with *all* requirements related to grid reliability. Additionally, the Commission has expressed concern that, in some cases, administrative penalties may not serve a deterrent purpose if they do not have a financial impact that exceeds what may be considered as the cost of doing business. It is Commission Staff's position that the \$200,000 agreed administrative penalty in this proceeding is necessary and appropriate given the facts at issue in this proceeding.
- e. ***Efforts to correct the violation.*** Shell cured the continuing violations at issue in this proceeding on December 8, 2021.
- Additionally, as discussed above, Shell is no longer the owner of the Deer Park Refinery or the four on-site generation resources, Shell does not directly own and control any other generation assets in ERCOT, and Shell's affiliated generation resources timely submitted the required WWRRs under existing regulatory compliance processes and procedures. Therefore, there is no risk of these or similar violations reoccurring at a later date.
- f. ***Any other matter that justice may require.*** Commission Staff recommends that an agreed administrative penalty of \$200,000 is an appropriate, fair, and reasonable outcome given the facts at issue in this case. As detailed above in paragraphs 46 through 52, Shell received several written and verbal communications from ERCOT, both before and after the December 1, 2021 Declaration and WWRR submission deadlines, which incorrectly indicated that the winter weather readiness reporting requirements did not apply to the Deer Park generation resources. Once it became clear to Shell that the requirements did apply to the Deer Park generation resources, Shell quickly prepared and submitted the WWRRs for the four Deer Park generation resources.

Commission Staff has verified the above-described correspondence between Shell and ERCOT and acknowledges that Shell's reliance on ERCOT's misstatements, in addition to Shell's quick turnaround of the missing reports, warrants a significant reduction of the original administrative penalty recommended in the December 8,

2021 NOV. Additionally, Commission Staff acknowledges that if the Deer Park resources had been registered with ERCOT as “settlement-only generators” rather than “generation resources” on December 1, 2021, the resources would not have been included in the scope of 16 TAC § 25.55(c) and Shell would not have been required to submit WRRRs for the resources. However, as an ERCOT market participant, it is Shell’s responsibility to be aware of the registration status of its generation assets and how the rules and protocols apply to each resource’s registration category. Here, it was Shell’s responsibility to be aware that the Deer Park generation resources were registered with ERCOT as generation resources—not as settlement-only generators—and, therefore, were expressly subject to the requirements under 16 TAC § 25.55(c)(2). Commission Staff recommends that the agreed administrative penalty of \$200,000 is a fair and reasonable outcome that appropriately strikes the balance required by PURA § 15.023(c) and 16 TAC § 22.246(c)(3).

**Settlement Terms**

64. Shell acknowledges the basis for the violations described in this settlement agreement and attached Proposed Order.
65. Shell 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.
66. Shell fully cooperated with Commission Staff’s investigation.
67. Shell participated in one or more settlement discussions with Commission Staff, the purpose of which was to resolve this matter, which was the subject of the investigation
68. To facilitate Commission approval of this agreement, Shell agrees to withdraw its request for a hearing.
69. Unless specifically provided for in this agreement, Shell waives any notice and procedures that might otherwise be authorized or required in this proceeding.
70. Nothing in this agreement shall limit Commission Staff’s ability to perform its enforcement functions as set forth in PURA and the Commission rules.

71. A party's support of the resolution of this docket in accordance with this agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. This agreement represents a compromise of claims and allegations, and the execution of this agreement does not admit the truth or accuracy of any such disputed claims. Because this is a settlement agreement, a party is under no obligation to take the same position as set out in this agreement in other proceedings not referenced in this agreement whether those dockets present the same or a different set of circumstances. The parties' agreement to entry of a final order of the Commission consistent with this agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this agreement.
72. The parties contemplate that this agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). In the event the Commission materially changes the terms of this agreement, the parties agree that any party adversely affected by that material alteration has the right to withdraw from this agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other party written notice within 20 calendar days of the date the Commission files the final order acting on this agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this agreement made by the Commission.
73. This agreement is the final and entire agreement between the parties regarding Shell's violations of the provisions described herein and supersedes all other communications among the parties or their representatives regarding its terms.
74. Each person executing this agreement represents that he or she has been authorized to sign on behalf of the party represented. Copies of signatures are valid to show execution. If this agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same agreement.
75. Shell warrants that it has read this agreement carefully, knows the contents thereof, and signs the same as its free act.

**EXECUTED** by the parties by their authorized representatives designated below:

DocuSigned by:



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Courtney Dean

Attorney- Division of Compliance & Enforcement  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, Texas 78711

Date: October 21, 2022

DocuSigned by:



11895B181184463...  
James Cowan

Shell USA, Inc.  
Vice President Legal

Date: October 20, 2022

**DOCKET NO. 52930**

<b>NOTICE OF VIOLATION BY SHELL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>OIL COMPANY FOR VIOLATIONS OF</b>	<b>§</b>	
<b>16 TAC § 25.55, CONCERNING</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WINTER WEATHER READINESS</b>	<b>§</b>	
<b>REPORTING REQUIREMENTS</b>	<b>§</b>	

**MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER**

On October 21, 2022, the Staff (Commission Staff) of the Public Utility Commission of Texas (Commission) and Shell USA, Inc.<sup>1</sup> (Shell) filed a settlement agreement resolving all matters related to Shell's failure to comply with certain requirements under 16 Texas Administrative Code (TAC) § 25.55 and ERCOT Nodal Protocol § 3.21(3).

**I. MOTION TO ADMIT EVIDENCE**

For the purpose of supporting the Commission's Order in this proceeding, Commission Staff, on behalf of itself and Shell, moves to admit the following items into the record of this proceeding as evidence:

- a) The notice of violation and report to the Commission filed on December 8, 2021 (Interchange Item No. 2);
- b) Commission Staff's petition to determine a violation and impose an administrative penalty filed on December 8, 2021 (Interchange Item No. 3);
- c) Shell's request for a hearing and settlement conference filed on December 23, 2021 (Interchange Item No. 4);
- d) The parties' agreed request to abate the proceeding filed on January 7, 2022 (Interchange Item No. 5); and
- e) The settlement agreement, including all attachments, filed on October 21, 2022.

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<sup>1</sup> At the time of the alleged violations, self-generator registration number 70025 was owned by and registered under the name Shell Oil Company. On March 1, 2022, Shell Oil Company was renamed "Shell USA, Inc."

## **II. PROPOSED ORDER**

Attached to this pleading is the parties' proposed order. If adopted, the proposed order would resolve all matters at issue in this proceeding. Commission Staff, on behalf of the parties, respectfully requests that a final order be issued consistent with the settlement agreement.

## **III. CONCLUSION**

Commission Staff, on behalf of the signatories, respectfully requests that the above-listed items be admitted as evidence into the record of this proceeding and that a final order be issued consistent with the evidence.

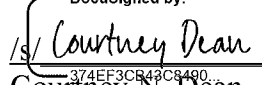
Dated: October 21, 2022

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS**

**DIVISION OF COMPLIANCE AND  
ENFORCEMENT**

Barksdale English  
Division Director

DocuSigned by:  
  
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**DOCKET NO. 52930**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 21, 2022 in accordance with the Order Suspending Rules, issued in Project No. 50664.

DocuSigned by:  
  
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Courtney N. Dean

**DOCKET NO. 52930**

<b>NOTICE OF VIOLATION BY SHELL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>OIL COMPANY FOR VIOLATIONS OF</b>	<b>§</b>	
<b>16 TAC § 25.55, CONCERNING</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WINTER WEATHER READINESS</b>	<b>§</b>	
<b>REPORTING REQUIREMENTS</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the agreement between Commission Staff and Shell USA, Inc.<sup>1</sup> regarding Shell's failure to comply with winter weather readiness reporting requirements established under 16 Texas Administrative Code (TAC) § 25.55 and ERCOT Nodal Protocol § 3.21(3). Commission Staff recommends that Shell pay an administrative penalty of \$200,000. Shell agrees to pay the recommended penalty. The Commission approves the administrative penalty to the extent provided in this Order.

**I. Findings of Fact**

Commission Staff and Shell USA stipulated to the following findings of fact.

**Respondent**

1. Shell USA, Inc. is a Delaware for-profit corporation registered with the Texas secretary of state under filing number 1320306.
2. Prior to March 1, 2022, Shell USA, Inc. did business and was registered with the Texas secretary of state under the name Shell Oil Company.
3. From May 31, 2001 until December 10, 2021, Shell was registered with the Commission as a self-generator under self-generator registration number 70025.<sup>2</sup>

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<sup>1</sup> At the time of the alleged violations, self-generator registration number 70025 was owned by and registered under the name Shell Oil Company. On March 1, 2022, Shell Oil Company was renamed "Shell USA, Inc."

<sup>2</sup> *Application of Shell Oil Company for Registration for Power Generation Companies and Self-Generators Pursuant to Subst. R. 25.109*, Docket No. 24166, Notice of Approval (May 31, 2001); *Application of Deer Park Refining Limited Partnership to Amend its Self-Generator Registration*, Docket No. 52814, Notice of Approval (Dec. 10, 2021).

4. On November 10, 2021, Shell filed an application to amend self-generator registration number 70025 to reflect a name change and change in control resulting from Shell selling its interest in the generation facilities to P.M.I. Services North America, Inc. (PMI).<sup>3</sup>
5. On December 10, 2021, self-generator registration number 70025 was amended to reflect PMI as the owner of self-generator number 70025 and to rename the facilities as Deer Park Refining Limited Partnership.<sup>4</sup>
6. On December 1, 2021 and at all times relevant to the violations at issue in this proceeding, Shell was the ERCOT-registered resource entity responsible for the management, operation, and regulatory compliance of the generation facilities registered under self-generator registration number 70025.

### **Facilities**

7. The generation facilities registered with the Commission under self-generation registration number 70025 are located at the Deer Park Refinery in Deer Park, Texas and are comprised of four on-site electric generators with a combined nameplate capacity of 268.2 megawatts (MW).<sup>5</sup>
8. On December 1, 2021 and at all times relevant to the violations at issue in this proceeding, each of the four Deer Park generators was registered with ERCOT as a “generation resource.”

### **Procedural History and Notice**

9. On December 8, 2021, the executive director filed a notice of violation and report to the Commission, determining that Shell violated 16 TAC § 25.55(c)(2) and ERCOT Nodal Protocol § 3.21(3) on December 1, 2021 by failing to timely submit required winter weather preparation documentation and that Shell continued to violate 16 TAC § 25.55(c)(2) and ERCOT Protocol § 3.21(3) each day after December 1, 2021 until the requisite documentation was submitted.

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<sup>3</sup> See *Application of Deer Park Refining Limited Partnership to Amend its Self-Generator Registration*, Docket No. 52814, Application (Nov. 10, 2021).

<sup>4</sup> Docket No. 52814 at Notice of Approval (Dec. 10, 2021).

<sup>5</sup> Notice of Violation at Attachment A, Affidavit of Dwayne W. Rickerson (Dec. 8, 2021).

10. The executive director recommended that administrative penalties be imposed for the violations of 16 TAC § 25.55(c)(2) and ERCOT Nodal Protocol § 3.21(3).
11. Also on December 8, 2021, Commission Staff filed a petition to determine Shell's violations and impose the recommended administrative penalties, consistent with the executive director's report.

### **Notice**

12. 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 then-listed in Shell's self-generator registration in the Commission's records.

### **Proceeding Before the Commission**

13. On December 23, 2021, Shell filed a request for hearing on the amount of the recommended administrative penalty.
14. On January 7, 2022, Shell filed an agreed request to abate the proceeding pending settlement discussions between the parties.
15. On January 13, 2022, the administrative law judge (ALJ) filed Order No. 1, granting the agreed request and abating the proceeding.
16. On October 21, 2022, Commission Staff and Shell filed an executed settlement agreement in this docket.

### **Evidence**

17. In Order No. \_\_ filed on \_\_\_\_\_, 2022, the ALJ admitted the following items into the evidentiary record: (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) Shell's request for a hearing and settlement conference filed on December 23, 2021; (d) the parties' agreed request to abate the proceeding filed on January 7, 2022; and (e) the settlement agreement, including all attachments, filed on October 21, 2022.

**Winter Weather Readiness Report Requirement**

18. On December 1, 2021, Shell was the ERCOT-registered resource entity responsible for the four ERCOT-registered generation resources located at the Deer Park Refinery: SL – SL\_G1, SL – SL\_G2, SL – SL\_G3, and SL – SL\_G4.
19. Shell did not submit winter weather readiness reports for the four Deer Park generation resources to ERCOT by December 1, 2021.
20. Shell submitted winter weather readiness reports for each of the four Deer Park generation resources to ERCOT on December 8, 2021.
21. Shell asserted that its failure to timely file the required winter weather readiness reports was unintentional and caused, in part, by a miscommunication with ERCOT and, in part, by a mistaken registration of the four Deer Park generators as “generation resources” rather than “settlement only generators” in the ERCOT records. Shell asserted that the four Deer Park generators functioned as settlement only generators, that Shell mistakenly believed that the four Deer Park generators were registered as settlement only generators accordingly, and that settlement only generators were exempt from the reporting requirements under 16 TAC § 25.55(c)(2).
22. Settlement-only generators are not subject to the reporting requirements under 16 TAC § 25.55(c)(2). Shell asserted that each of the four Deer Park generators was fully compliant with all physical preparation measures required under 16 TAC § 25.55(c)(1) by December 1, 2021.

**Declaration Submission Requirement**

23. Shell did not submit a declaration of completion of generation resource winter weatherization preparations to ERCOT by December 1, 2021.
24. As part of the settlement filed on October 21, 2022, Commission Staff and Shell stipulated that Shell’s December 8, 2021 submission of winter weather readiness reports for the four Deer Park generators also satisfied Shell’s obligation to submit a declaration of completion of generation resource winter weatherization preparations under ERCOT Nodal Protocol § 3.21(3).

**Contributing Factors**

25. Shell asserted that its violations of 16 TAC § 25.55(c)(2) and ERCOT Protocol § 3.21(3) were caused, in part, by a miscommunication with ERCOT and, in part, by the mistaken registration of the four Deer Park generators as “generation resources” rather than “settlement only generators” in the ERCOT records.
26. Shell was alerted that it was, in fact, required to submit winter weather readiness reports for each of the four Deer Park generators on December 7, 2021 and immediately began preparing the reports for submission.
27. Shell submitted the winter weather readiness reports for the four Deer Park generators on December 8, 2021, which was the same day the notice of violation in this proceeding was filed.

**Corrective Actions**

28. On January 6, 2022, the ERCOT registration for each of the four Deer Park generators was amended to reclassify each of the generation resources as “settlement only generators.”
29. Shell no longer has any ownership interest in the four Deer Park generators, has no future compliance responsibilities related to the four Deer Park generators, and is no longer affiliated with Commission self-generator registration number 70025.
30. Shell no longer directly owns or controls any generation resource in the ERCOT power region and is no longer registered in its own right with ERCOT as a resource entity.<sup>6</sup>

**Settlement Agreement**

31. Shell cooperated with Commission Staff’s investigation.
32. Shell acknowledges the basis for the violations as detailed in this Order.

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<sup>6</sup> Shell has “affiliates,” as defined by 16 TAC § 25.5(3), which directly own and control resources operating in ERCOT (the reference to 16 TAC § 25.5(3) is intended to describe a successive chain of ownership and not to suggest affiliation with a public utility). By virtue of its affiliate status, Shell has an indirect ownership interest in its affiliates’ resources but does not have direct control over the resources’ operations and is not responsible for ensuring the compliance of these resources with PURA, the Commission rules, or ERCOT Protocols.

33. On October 21, 2022, Commission Staff and Shell entered into a settlement agreement in which Commission Staff recommended, and Shell agreed to pay, an administrative penalty of \$200,000 for the violations described in this Order.
34. On October 21, 2022, Commission Staff filed a copy of the executed settlement agreement with the Commission's filing clerk.

The Commission makes the following findings of fact.

**Informal Disposition**

35. More than 15 days have passed since the completion of notice provided in this docket.
36. No person filed a protest or motion to intervene.
37. Shell USA and Commission Staff are the only parties to this proceeding.
38. By agreement, no hearing is needed.
39. Commission Staff recommended approval of the agreement.
40. 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 §§ 14.051, 14.054, 15.023, and 35.0021.
2. On December 1, 2021, Shell was a self-generator registered with the Commission under 16 TAC § 25.109.
3. On December 1, 2021, Shell was a generation entity, as the term generation entity is defined under 16 TAC § 25.55(b)(3).
4. On December 1, 2021, each of the four Deer Park generators was a generation resource, 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 to implement measures to prepare the provider's 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 a winter weather readiness report for each of its generation resources no later than December 1, 2021.
7. Shell violated 16 TAC § 25.55(c)(2) on December 1, 2021 by failing to timely submit the winter weather readiness reports for each of the four Deer Park generation resources.
8. Shell continued to violate 16 TAC § 25.55(c)(2) on each day from December 2, 2021 through December 7, 2021 by failing to submit the winter weather readiness reports for each of the four Deer Park generation resources.
9. Under ERCOT Protocol § 3.21(3), each resource entity in the ERCOT region is required to submit to ERCOT a declaration of completion of generation resource winter weatherization preparations stating that, at the time of submission, each generation resource under the resource entity's control has completed or will complete all weather preparations required by the weatherization plan for equipment critical to the reliable operation of the generation resource during the winter peak load season.
10. Shell violated ERCOT Protocol § 3.21(3) on December 1, 2021 by failing to timely submit a declaration of completion of generation resource winter weatherization preparations or winter weather readiness report.
11. Shell continued to violate ERCOT Protocol § 3.21(3) on each day from December 2, 2021 until December 7, 2021 by failing to submit a declaration of completion of generation resource winter weatherization preparations or winter weather readiness report.
12. As stipulated by the October 21, 2022 settlement agreement, Shell's December 8, 2021 submission of the winter weather readiness reports for each of the four Deer Park generators remedied the continuing violations of both 16 TAC § 25.55(c)(2) and ERCOT Protocol § 3.21(3).
13. Under PURA § 15.023, the Commission has authority to impose administrative penalties for violations of PURA and rules adopted under the authority of PURA.

14. Under PURA § 15.023(b-1), the Commission may assess administrative penalties of up to \$1,000,000 per violation per day for violations of TAC § 25.55(c).<sup>7</sup>
15. Under 16 TAC § 25.8(b)(3)(B)(i), the violations of ERCOT Nodal Protocol § 3.21(3) described herein are Class A violations.
16. Under 16 TAC § 25.8(b)(3)(A), the Commission may impose a penalty of up to \$25,000 per violation per day for a Class A violation.
17. 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).
18. The December 8, 2021 notice of violation and report to the Commission, as supplemented by the settlement agreement, satisfies the requirements of 16 TAC § 22.246(h)(1).
19. The Commission processed this docket in accordance with applicable statutes and Commission rules.
20. 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. Shell must comply with the terms of this Order.
2. The Commission approves the agreed administrative penalty to the extent provided in this Order.
3. Within 30 days of this Order, Shell must pay an administrative penalty of \$200,000. Payment of the administrative penalty must be made by check payable to the Public

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<sup>7</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.

Utility Commission of Texas. The check must reference this docket number and must be sent to the following address:

Public Utility Commission of Texas  
ATTN: Fiscal Services  
P.O. Box 13326  
Austin, Texas 77711

4. No later than five calendar days after remitting payment of the \$200,000 administrative penalty, Shell must file an affidavit and supporting documentation demonstrating that the payment was made.
5. This Order resolves only the claims identified in this Order.
6. The Commission is not constrained in any manner from requiring additional action or penalties for matters that are not resolved by this agreement.
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**