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**NOTICE OF VIOLATION BY TEXAS BIG
SPRING, LLC FOR VIOLATIONS OF 16
TAC § 25.55 AND ERCOT NODAL
PROTOCOLS § 3.21(3), CONCERNING
FAILURE TO COMPLY WITH WINTER
WEATHER EMERGENCY
PREPAREDNESS REPORTING
REQUIREMENTS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

TEXAS BIG SPRING LLC LIST OF ISSUES

Pursuant to the January 13, 2022 Order Requesting Lists of Issues, Texas Big Spring LLC (“TBS”) hereby sets forth below the issues it believes should be addressed in this proceeding.

Background

On December 8, 2021, the PUC issued its formal Notice of a Report of Violation in Public Utilities Commission (“PUC” or the “Commission”) Docket No. 52931 titled “Notice of Violation by Texas Big Spring LP for violations of 16 TAC§ 25.55 and Electric Reliability Council of Texas (“ERCOT”) Nodal Protocols§ 3.21(3), Concerning Failure to Comply with Winter Weather Emergency Preparedness Reporting Requirements” (the “Notice of Violation”). The PUC recommended a penalty in the total amount of \$725,000. TBS provides the below brief background for context for the decision regarding issues to be addressed.

In accordance with PUC Substantive Rule 25.55(c) and ERCOT Protocol 3.21(3), TBS’s timely filing of the Winter Weather Readiness Report (“WWRR”) on November 29, 2021 included responses for the entire station and unit under TBS’s control, and timely confirmed and supplemented such confirmation that all Generation Resources have completed weather preparations required by the weatherization plan for equipment critical to the reliable operation of

the Generation Resources comprising the TBS wind generation facility during the winter Peak Load Season. The TBS Signal Mountain station/site is a single generation facility. TBS is comprised of multiple wind energy turbines tied to a single electrical substation, a single electrical meter for the purpose of measuring output from the Texas Big Spring facility, and a single generation interconnect with the ERCOT grid. The entirety of the physical plant comprising the TBS facility complied with all PUC- and ERCOT-directed weatherization program before December 1, 2021. Nonetheless, ERCOT distinguished Generation Resources SGM-TN-SIGNALMT and SGM-TN-SIGNLM2 in the ERCOT system in a manner untethered from the physical weatherization of the entire station/unit. There is no practical, physical (including winter weatherization and preparation), or electrical distinction between the SGM-TN-SIGNALMT and SGM-TN-SIGNLM2 Generation Resources—they comprise the same facility. Moreover, the WWRR was filed consistent with past practice of filing such reports in a single filing.

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 file timely 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 TBS submit its WWRR by December 1, 2021, as required by 16 TAC §25.55(c)(2)?
3. If TBS did not submit its WWRR by December 1, 2021, what were the reasons it was not submitted and do they excuse or remedy any failure to file the report on December 1, 2021?
4. Did TBS immediately file its WWRR on behalf of SGM-TN-SIGNLM2 with the Commission on December 8, 2021, immediately after being notified by Commission Staff of the December 1 filing requirement on December 8, 2021?
5. Did TBS's filing of a report under 16 TAC §25.55(c)(2) on the same day as the 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 TBS was in compliance with the requirements of 16 TAC §25.55(c)(2) before 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) require that the Commission may only impose an administrative penalty on an entity if it fails both of two separate criteria: (1) the entity violates a rule adopted under this section and (2) it does not remedy that violation within a reasonable period of time?
8. Did TBS remedy any violation within a reasonable period of time?
9. Did TBS provide proof in its WWRR filings on December 8, 2021 that it had fully satisfied the requirements of 16 TAC §25.55(c)(1)(A)-(E) by December 1, 2021?

10. Did TBS's filing of a timely and fully complaint WWRR prior to December 1, 2021 addressing the entire TBS Signal Mountain Station/Site achieve substantive compliance with PURA §35.0021 and 16 TAC § 25.55?
11. Was TBS exempt from or did it otherwise substantively satisfy the requirements of submitting the Declaration of Completion of Generation Resource Winter Weatherization Preparations based on its submissions of its WWRR on November 29, 2021 and/or December 8, 2021?

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

12. Does Texas law recognize that it is possible to remedy a failure to file a report on a specified day?
13. What legal standards apply to determining whether a failure to file a report on a specified day is capable of being remedied?
14. TBS filed winter weatherization readiness reports for both SGM-TN-SIGNALMT and SGM-TN-SIGNALM2 prior to the deadline by which ERCOT was required to provide the Commission with a list of non-compliant market participants—*i.e.*, TBS had filed, and supplemented, its report at least two days 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 TBS filed its report prior to the deadline by which ERCOT had to assess whether each Resource Entity had filed, and so report to the Commission, indicate that any alleged failure to file on December 1, 2021 did not prejudice ERCOT or the Commission in any regard?

- b. Does the fact that TBS filed its report(s) 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?
15. Does PURA § 15.024(c) mandate that a penalty may not be assessed if the alleged violation and/or continuing violation were 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?
16. Did TBS remedy the alleged original and/or continuing violations before the 31st day after the date the TBS received the notice of violation, and were such alleged violations accidental or inadvertent?

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

17. Does TBS's filing of the WWRR on November 29, 2021 provide evidence of TBS's commitment to the importance of winter weather preparations for its generation resources and should this filing be considered in weighing the amount of any penalty that is assessed?
18. Does TBS's filing of a WWRR on November 29, 2021, following by a supplemental filing to add clarity that such initial filing covered the entire Station / Unit on December 8, 2021, both of which establish that TBS 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 WWRR 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 TBS's WWRR was not on file at the Commission and/or supplemented or clarified 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, created solely by the possibility that TBS's SGMNTN-SIGNALM2 allegedly did not file a WWRR with the Commission on December 1, 2021, mitigated or eliminated by fact that TBS's SGMNTN-SIGNALMT WWRR was on file by December 1, 2021 covering the entire Station/Unit?
21. Is there any evidence that any accidental or inadvertent delay in filing a report covering TBS's entire Station/Unit in full compliance with 16 TAC §25.055(c)(2) caused economic harm to property or the environment?
22. Does TBS have any history of previous violations of Commission rules or PURA?
23. Does mere reference to the possibility of a prior investigation constitute a "history of previous violations" as set forth in 16 TAC § 22.246(c)(3)(C)?
24. Do TBS's actions upon being notified of the alleged failure to file the report demonstrate its responsiveness and attention to correcting this oversight?
25. Has TBS fully cooperated with Commission Staff in the course of the Staff's investigation of the issues involving the filing of TBS's WWRR?

Legal Issue: Authorized Amount of Penalty

26. 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?
27. 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?

28. Is a “Class C” violation under 16 TAC §25.8(b) the “highest class of violations in the classification system?”
29. 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?
30. 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)?
31. 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, or must the “notwithstanding” clause also reference Subsections (c) and (d) to render such Subsections inapplicable to PURA § 15.023(b-1)?
32. Is 16 TAC §25.8 the Commission’s penalty classification system that was in effect on December 1, 2021?
33. 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?

34. Does the Commission have authority from the Legislature to not apply the mandatory requirements of PURA §15.023(c) and (d)?
35. 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?
36. 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?

Dated this the 24th day of January, 2022.

Respectfully Submitted,

/s/ William W. Russell

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CERTIFICATE OF SERVICE

I certify that on January 24, 2022, a true copy of Texas Big Spring LLC's Request for Hearing and Settlement Conference was served by email, as directed in the July 16, 2020 Second Order Suspending Rules in Project No. 50664, on the following:

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/s/ William W. Russell
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