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Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner



Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Grace Lager
Commission Advising

RE: *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, Docket No. 52931, Draft Preliminary Order, February 10, 2022 Open Meeting, Item No. 19.*

DATE: February 3, 2022

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the February 10, 2022 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the February 10, 2022 open meeting.

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DOCKET NO. 52931

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

DRAFT PRELIMINARY ORDER

On December 8, 2021, the executive director of the Commission filed a notice of violation recommending the assessment of administrative penalties against Texas Big Spring LP. Commission Staff asserts that Texas Big Spring violated 16 Texas Administrative Code (TAC) § 25.55 and Electric Reliability Council of Texas (ERCOT) Nodal Protocol § 3.21(3) by failing to comply with winter weather readiness reporting requirements.¹ This preliminary order identifies the issues that must be addressed.

Texas Big Spring is a wind power producer registered with the Commission as a power generation company under registration number 20126.² Commission Staff alleges that Texas Big Spring operates a generation resource in the ERCOT region under the designation SGM-TN-SIGNALM 2, with a capacity of 6.6 megawatts.³ Commission Staff alleges that Texas Big Spring violated 16 TAC § 25.55(c)(2) by failing to submit a winter weather emergency readiness report to ERCOT for SGM-TN-SIGNALM 2 by December 1, 2021.⁴ Additionally, Commission Staff alleges that Texas Big Spring violated ERCOT Nodal Protocol § 3.21(3) by failing to submit a declaration of completion of generation resource winter weatherization preparations to ERCOT by December 1, 2021. Commission Staff notes that under 16 TAC § 25.55(c)(5), Texas Big Spring would have been exempt from the requirement in ERCOT Nodal

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

² *Registration Request of Texas Big Spring, L.P. as a Power Generation Company, Pursuant to P.U.C. Subst. R. 25.109*, Project No. 30825 (Mar. 9, 2005).

³ Notice of Violation, Attachment A, Affidavit of Dwayne W. Rickerson (Dec. 8, 2021).

⁴ *Id.*

Protocol § 3.21(3) for the 2021 calendar year had Texas Big Spring filed the winter weather readiness report under 16 TAC § 25.55(c)(2).

In the notice of violation, Commission Staff recommends assessing an administrative penalty against Texas Big Spring in the amount of \$725,000. Commission Staff asserts that this amount includes: a \$250,000 penalty for failure to submit a winter weather readiness report by December 1, 2021, as required under 16 TAC § 25.55(c)(2); \$50,000 for each day that a violation of 16 TAC § 25.55(c)(2) has persisted; \$25,000 for failure to submit the declaration required under ERCOT Nodal Protocol § 3.21(3) by December 1, 2021; and \$25,000 for each day that a violation of ERCOT Nodal Protocol § 3.21(3) has persisted.⁵ Commission Staff further recommends that the penalty be increased by \$50,000 per day for each day the violation of 16 TAC § 25.55(c)(2) continued and \$25,000 per day for violation of ERCOT Nodal Protocol § 3.21(3).⁶ Commission Staff asserts that this penalty amount is reasonable and appropriate when considered in light of the factors in PURA⁷ § 15.023(c). On January 24, 2021, Commission Staff updated the recommended penalty amount to \$2,375,000.⁸

Commission Staff notes that under PURA § 15.023(b-1), the Commission is authorized to assess an administrative penalty of up to \$1,000,000 per day against an entity that violates a rule adopted under PURA § 35.0021.⁹ Further, Commission Staff notes that under PURA § 15.023(b) and 16 TAC §§ 22.246(c)(2) and 25.8(b)(3)(B)(xi), the Commission is authorized to impose administrative penalties of up to \$25,000 per violation per day for a violation that causes a risk to the reliability of a transmission or distribution system. Commission Staff asserts that while Texas Big Spring's continuing violations may eventually be remedied once Texas Big Spring submits the required information, the initial failure to meet the December 1, 2021 deadlines is not remediable.¹⁰

⁵ Notice of Violation, Attachment A, Report on Violations at 3 (Dec. 8, 2021).

⁶ Notice of Violation at 2.

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

⁸ Commission Staff's Proposed List of Issues at 1 (Jan. 24, 2022).

⁹ Notice of Violation, Attachment A, Report on Violations at 3 (Dec. 8, 2021).

¹⁰ *Id.* at 2.

Texas Big Spring contends that it timely filed a winter weather readiness report on November 29, 2021 for the entire station and unit under its control.¹¹ Texas Big Spring asserts that despite being comprised of multiple wind turbines, the Signal Mountain Station facility at issue is a single generation facility with a single generation interconnect with the ERCOT grid. Texas Big Spring asserts that ERCOT erroneously distinguishes between generation resources SGM-TN-SIGNALMT and SGM-TN-SIGNLM2 but that they comprise the same facility. Texas Big Spring further contends that its winter weather readiness report was made in a single filing, and that this was consistent with its past practice of filing reports.

Concurrent with the filing of the notice of violation, Commission Staff filed a petition requesting that the Commission issue an order under 16 TAC § 22.246(g)(4) approving the violation amount and imposing the penalty if Texas Big Spring did not exercise its right to request a hearing within 20 days. On December 27, 2021, Texas Big Spring requested a hearing under 16 TAC § 22.246(g)(3) on both the alleged violation and penalty amount.¹² Texas Big Spring further requested a settlement conference under 16 TAC § 22.246(h).

Texas Big Spring was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by January 24, 2022. Texas Big Spring and Commission Staff timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹³ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Texas Big Spring's classification

1. Is Texas Big Spring a power generation company in the ERCOT region under PURA § 35.0021?

¹¹ Texas Big Spring LLC List of Issues at 1-2 (Jan. 24, 2022).

¹² Texas Big Spring's Request for a Hearing and Settlement Conference at 1.

¹³ Tex. Gov't Code Ann. § 2003.049(e).

2. Is Texas Big Spring a generation entity, as defined in 16 TAC § 25.55(b)(3)?
 - a. If yes, what are the ERCOT-registered generation resources, as defined in 16 TAC § 25.55(b)(4), that were under Texas Big Spring's control as of December 1, 2021?
3. What do the acronyms SGM-TN-SIGNALMT AND SGM-TN-SIGNLM2 stand for?
4. What generation capacity constitutes SGM-TN-SIGNALMT and what generation capacity constitutes SGM-TN-SIGNLM2?
5. Did Texas Big Spring register SGM-TN-SIGNALMT and SGM-TN-SIGNLM2 as a single or separate generation resources?
6. Do SGM-TN-SIGNALMT and SGM-TN-SIGNLM2 constitute a single or two separate generation resources?
7. Are SGM-TN-SIGNALMT and SGM-TN-SIGNLM2 jointly 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?

Weather emergency preparedness requirements

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

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

9. Was Texas Big Spring required under 16 TAC § 25.55(c)(2) to submit a winter weather readiness report to ERCOT by December 1, 2021?
10. If yes, did Texas Big Spring comply with the requirements of 16 TAC § 25.55(c)(2) by submitting a winter weather readiness report? In answering this issue, please address the following sub-issues:
 - a. Did Texas Big Spring timely submit a winter weather readiness report to ERCOT by December 1, 2021, as required by 16 TAC § 25.55(c)(2)?
 - b. Did the report describe all Texas Big Spring's activities to complete the emergency preparation requirements outlined in 16 TAC § 25.55(c)(1), as required by 16 TAC § 25.55(c)(2)(A)?

- c. Did the report address Texas Big Spring's activities with respect to each resource under its control?
 - d. Did Texas Big Spring's winter weather readiness report address SGMTN-SIGNALMT and SGMTN-SIGNLM2?
 - e. Did the report include any applicable assertions of good cause for noncompliance, as required by 16 TAC § 25.55(c)(2)(A)?
 - f. Did the report include a notarized attestation from Texas Big Spring's highest-ranking representative, official, or officer with binding authority, as required by 16 TAC § 25.55(c)(2)(B)?
11. If Texas Big Spring violated 16 TAC § 25.55(c)(2) by failing to timely submit a winter weather readiness report to ERCOT by December 1, 2021, did Texas Big Spring submit a report that otherwise complied with the requirements of 16 TAC § 25.55(c)(2)(A) and (B) at a later date?

ERCOT Nodal protocol reporting requirements

12. Is Texas Big Spring required to comply with ERCOT's operating and reliability policies, rules, guidelines, and procedures under PURA § 39.151(j)?
13. Is Texas Big Spring required to comply with ERCOT's Nodal Protocols and any official interpretation of those protocols issued by ERCOT or the Commission under 16 TAC § 25.503(f)(2)?
14. Was Texas Big Spring required under ERCOT Nodal Protocol § 3.21(3) to submit a declaration of completion of generation resource winter weatherization preparations to ERCOT by December 1, 2021?
15. If yes, did Texas Big Spring comply with the requirements of ERCOT Nodal Protocol § 3.21(3) by submitting a declaration of completion of generation resource winter weatherization preparations to ERCOT by December 1, 2021?
- a. If not, was Texas Big Spring eligible for an exemption under 16 TAC § 25.55(c)(5)?
16. If Texas Big Spring is in violation of ERCOT instructions or protocols, is there an excuse for Texas Big Spring's non-compliance under 16 TAC § 25.503(f)(2)(C)?

Administrative penalties

17. If Texas Big Spring violated 16 TAC § 25.55(c)(2), what is the appropriate penalty under PURA or Commission substantive rules? In answering this issue, please address the following sub-issues:
- a. What is the maximum administrative penalty under PURA § 15.023 that the Commission is authorized to assess against Texas Big Spring for violating 16 TAC § 25.55(c)(2) by failing to submit a timely report on December 1, 2021?
 - i. Does the penalty system in 16 TAC § 25.8 apply to these violations?
 - ii. Does the failure to timely file a winter weather readiness report under 16 TAC § 25.55(c)(2) constitute a Class A violation under 16 TAC § 25.8?
 - b. What is the maximum administrative penalty under PURA § 15.023 that can be assessed for continuing violations of 16 TAC § 25.55(c)(2) after December 1, 2021?
 - i. Does the penalty system in 16 TAC § 25.8 apply to these violations?
 - ii. Does the continued failure to timely file a winter weather readiness report under 16 TAC § 25.55(c)(2) constitute a Class A violation under 16 TAC § 25.8?
 - c. Does PURA § 35.0021(g) apply to a violation of 16 TAC § 25.55(c)(2)?
 - i. If Texas Big Spring violated 16 TAC § 25.55(c)(2) by failing to submit a timely report, but later submitted an untimely report that otherwise complied with the requirements of 16 TAC § 25.55(c)(2), did Texas Big Spring remedy either the initial or continued rule violation for penalty purposes under PURA § 35.0021(g)?
 - d. Does PURA § 15.024(c) apply to a violation of 16 TAC § 25.55(c)(2)?
 - i. If Texas Big Spring submitted an untimely report within 31 days of receipt of the notice of violation and the report otherwise complied with the requirements of 16 TAC § 25.55(c)(2), did Texas Big Spring remedy either the initial or continued rule violation under PURA § 15.024(c)?
 - ii. If Texas Big Spring remedied a violation of 16 TAC § 25.55(c)(2) within 31 days, was the violation accidental or inadvertent?

18. If Texas Big Spring violated ERCOT Nodal Protocol § 3.21(3), what is the appropriate penalty under PURA or Commission substantive rules? In answering this issue, please address the following sub-issues:
- a. What is the maximum administrative penalty the Commission is authorized to assess against Texas Big Spring under PURA § 15.023 for failure to timely submit a declaration of completion of generation resource winter weatherization preparations to ERCOT on December 1, 2021, as required by ERCOT Nodal Protocol § 3.21(3)?
 - i. Does the penalty system in 16 TAC § 25.8 apply to these violations?
 - ii. Does the failure to timely file the declaration under ERCOT Nodal Protocol § 3.21(3) constitute a Class A violation under 16 TAC § 25.8?
 - b. What is the maximum administrative penalty that can be assessed for continuing violations of ERCOT Nodal Protocol § 3.21(3) after December 1, 2021?
 - i. Does the penalty system in 16 TAC § 25.8 apply to these violations?
 - ii. Does the continued failure to timely file the declaration under ERCOT Nodal Protocol § 3.21(3) constitute a Class A violation under 16 TAC § 25.8?
 - c. Does PURA § 35.0021(g) apply to a violation of ERCOT Nodal Protocol § 3.21(3)?
 - i. If Texas Big Spring submitted an untimely declaration that otherwise complied with the requirements of ERCOT Nodal Protocol § 3.21(3), did this late submission remedy either the initial or continued protocol violation for penalty purposes under PURA § 35.0021(g)?
 - d. Does PURA § 15.024(c) apply to a violation of ERCOT Nodal Protocol § 3.21(3)?
 - i. If Texas Big Spring submitted an untimely declaration within 31 days of receipt of the notice of violation and the declaration otherwise complied with the requirements of ERCOT Nodal Protocol § 3.21(3), did Texas Big Spring remedy either the initial or continued protocol violation under PURA § 15.024(c)?
 - ii. If Texas Big Spring remedied a violation of ERCOT Nodal Protocol § 3.21(3) within 31 days, was the violation accidental or inadvertent?

19. If Texas Big Spring violated other provisions of PURA, Commission substantive rules, or ERCOT protocols, what is the appropriate remedy or penalty under PURA and Commission substantive rules?
20. What is Texas Big Spring's prior history of similar violations? In particular, when did any similar violations occur and what penalty did Texas Big Spring incur, if any, as a result of any prior, similar violations?
21. What efforts has Texas Big Spring undertaken to correct the violations? If Texas Big Spring has committed similar violations in the past, what efforts has it undertaken to correct those violations?
22. Has Texas Big Spring timely complied with the Commission's requests for information? Has Texas Big Spring's response to such requests been complete?
23. In what manner has Texas Big Spring cooperated with the Commission during the investigation of the violations?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER