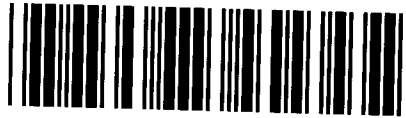


Control Number: 43457



Item Number: 1

Addendum StartPage: 0

DOCKET NO. 43457

RECEIVED
2014 OCT -2 PM 4:10
PUBLIC UTILITY COMMISSION
FILING CLERK

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO ENERGY §
CURTAILMENT SPECIALISTS, §
INC.'S VIOLATION OF PURA §
§ 39.151(d), P.U.C. SUBST. R. §
25.503(f)(2), AND ERCOT §
PROTOCOLS § 8.1.3.3.1(1)(b), §
RELATING TO PERFORMANCE §
CRITERIA FOR QUALIFIED §
SCHEDULING ENTITIES §
REPRESENTING EMERGENCY §
RESPONSE SERVICE RESOURCES §

PUBLIC UTILITY COMMISSION
OF TEXAS

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

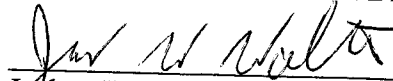
Staff of the Public Utility Commission of Texas (Commission) files this Application for Approval of Settlement Agreement and would show in support as follows:

Commission Staff and Energy Curtailment Specialists, Inc. (ECS) (together, Parties) have entered into a Settlement Agreement and Report to Commission (Agreement). The Agreement, attached to this motion, has been signed by representatives of both parties and includes a Proposed Order. This Agreement resolves and concludes Commission Staff's investigation of ECS for a violation of Section 39.151 (d) of the Public Utility Regulatory Act¹ (PURA); P.U.C. SUBST. R. 25.503(f)(2), related to oversight of wholesale market participants; and Electric Reliability Council of Texas (ERCOT) Protocols § 8.1.3.3.1(1)(b), relating to performance criteria for qualified scheduling entities representing emergency response service resources.

WHEREFORE, Commission Staff respectfully requests that its Application for Approval of Settlement Agreement be granted.

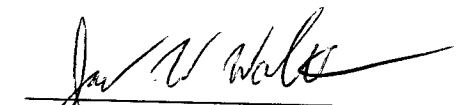
¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

Respectfully Submitted,
Robert M. Long
Division Director
Oversight and Enforcement Division


Joshua Walters
Attorney, Oversight and Enforcement Division
State Bar No. 24081198
(512) 936-7385
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
joshua.walters@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 2
of October, 2014 in accordance with P.U.C. Procedural Rule 22.74.


Joshua Walters

ATTACHMENT 1

DOCKET NO. 43457

AGREED NOTICE OF VIOLATION
AND SETTLEMENT AGREEMENT
RELATING TO ENERGY
CURTAILMENT SPECIALISTS,
INC.'S VIOLATIONS OF PURA
§ 39.151(d), P.U.C. SUBST. R.
25.503(f)(2), AND ERCOT
PROTOCOLS § 8.1.3.3.1(1)(b),
RELATING TO PERFORMANCE
CRITERIA FOR QUALIFIED
SCHEDULING ENTITIES
REPRESENTING EMERGENCY
RESPONSE SERVICE RESOURCES

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission or PUC) and Energy Curtailment Specialists, Inc. (ECS) (collectively, the Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of ECS for a violation of Section 39.151 (d) of the Public Utility Regulatory Act¹ (PURA); P.U.C. SUBST. R. 25.503(f)(2), related to oversight of wholesale market participants; and Electric Reliability Council of Texas (ERCOT) Protocols § 8.1.3.3.1(1)(b), relating to performance criteria for qualified scheduling entities representing emergency response service resources.

The Parties agree as follows:

1. The Parties stipulate to the facts contained herein and in the attached Proposed Order and request approval of the Order by the Commission.
2. ECS admits to the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Agreement.
3. Commission Staff recommends, and ECS agrees to pay, an administrative penalty of Fifteen Thousand Dollars (\$15,000) for ECS's violation described in the attached Proposed Order and herein.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

4. Emergency Response Service (ERS) is an emergency service required by P.U.C. SUBST. R. 25.507 that is designed to be deployed by ERCOT as an operational tool under EEA Level 1 or Level 2. ERS is designed to decrease the likelihood of depleting ERCOT operating reserves and the need for ERCOT to order firm Load shedding, which is EEA Level 3.²
5. Pursuant to P.U.C. SUBST. R. 25.507(f), “[a] QSE representing ERS resources is subject to administrative penalties for noncompliance, by the QSE or the ERS resources it represents, with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards.”
6. Pursuant to ERCOT Protocols § 8.1.3.3.1(1), “[a] QSE’s ERS performance will be evaluated based on its portfolio’s performance during ERS deployment events and on the overall availability of its portfolio in an ERS Standard Contract Term”
7. Pursuant to ERCOT Protocols § 8.1.3.3.1(1)(b)(iii), “[i]f a QSE’s portfolio-level event performance factor for an ERS Standard Contract Term is greater than or equal to 0.95, the QSE will be deemed to have met its event performance requirements for the ERS Standard Contract Term; otherwise, the QSE shall be deemed to have failed to meet this requirement.”
8. According to a Texas Reliability Entity (TRE) investigation, ECS failed to achieve an event performance factor of 0.95 during an EEA event on January 6, 2014. The event performance factor for ECS during this EEA event was 0.619.
9. TRE’s investigation concluded that ECS did achieve a passing score for its ten-minute deployment performance, as required by ERCOT Protocols § 8.1.3.3.1(1)(c).
10. This Agreement resolves all claims related to ECS’s obligations pursuant to PURA § 39.151(d); P.U.C. SUBST. R. 25.503(f)(2), related to oversight of wholesale market participants; and ERCOT Protocols § 8.1.3.3.1(1)(b), relating to performance criteria for qualified scheduling entities representing emergency response service resources.
11. Unless specifically provided for in this Agreement, ECS waives any notice and procedures that might otherwise be authorized or required in this proceeding.

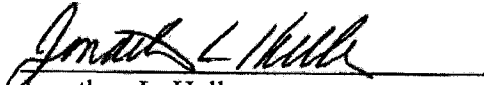
² See ERCOT Emergency Response Service Technical Requirements & Scope of Work February 1, 2014 through May 31, 2014 at 6.

12. Nothing in this Agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
13. This Agreement fully and finally resolves all issues related to alleged Commission rules violation arising out of the facts described herein. The Parties enter into this Agreement to resolve by compromise the issues related to this matter. This Agreement is entered into by the Parties in order to avoid the potential for expensive and protracted litigation, the outcome of which would be uncertain.
14. 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. 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.
15. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(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.
16. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.
17. 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.

18. ECS warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

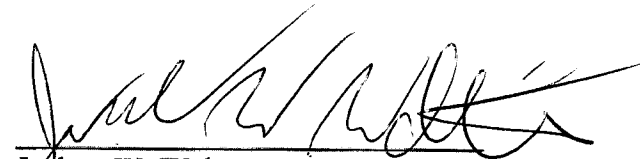
EXECUTED by the Parties by their authorized representatives designated below.



Jonathan L. Heller,
Assistant Regional General Counsel
State Bar No. 09394620
NRG Energy Inc.
1201 Fannin
Houston, Texas 77002
(713) 537-2254
(832) 584-2298 (Fax)

Date: 10/2/2014

On Behalf of Energy Curtailment Specialists, Inc.



Joshua W. Walters
Attorney
Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 10/2/14

ATTACHMENT

DOCKET NO. 43457

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO ENERGY §
CURTAILMENT SPECIALISTS, §
INC.'S VIOLATIONS OF PURA §
§ 39.151(d), P.U.C. SUBST. R. §
25.503(f)(2), AND ERCOT §
PROTOCOLS § 8.1.3.3.1(1)(b), §
RELATING TO PERFORMANCE §
CRITERIA FOR QUALIFIED §
SCHEDULING ENTITIES §
REPRESENTING EMERGENCY §
RESPONSE SERVICE RESOURCES §

PUBLIC UTILITY COMMISSION

OF TEXAS

PROPOSED ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Energy Curtailment Specialists, Inc. (ECS) (collectively, the Parties) regarding Commission Staff's investigation of ECS for a violation of Section 39.151(d) of the Public Utility Regulatory Act¹ (PURA); P.U.C. SUBST. R. 25.503(f)(2), related to oversight of wholesale market participants; and Electric Reliability Council of Texas (ERCOT) Protocols § 8.1.3.3.1(1)(b), relating to performance criteria for qualified scheduling entities representing emergency response service resources. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of Fifteen Thousand Dollars (\$15,000). ECS agreed to pay the recommended administrative penalty. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. ECS is an authorized Qualified Scheduling Entity (QSE), as defined by ERCOT Protocols § 2.1.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

2. Emergency Response Service (ERS) is an emergency service required by P.U.C. SUBST. R. 25.507 that is designed to be deployed by ERCOT as an operational tool under EEA Level 1 or Level 2. ERS is designed to decrease the likelihood of depleting ERCOT operating reserves and the need for ERCOT to order firm Load shedding, which is EEA Level 3. .
3. ECS failed to achieve an event performance factor of 0.95 during an EEA event on January 6, 2014. The event performance factor for ECS during this EEA event was 0.619.
4. ECS did achieve a passing score for its ten-minute deployment performance during the EEA event on January 6, 2014.
5. On or about September 12, 2014, ECS 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.
6. ECS fully cooperated with Commission Staff's investigation.
7. ECS acknowledges the violation detailed in this Order.
8. ECS participated in one or more settlement discussions with Commission Staff to resolve this matter.
9. On September ___, 2014, the Parties entered into the Agreement resolving the violation. Commission Staff recommended, and ECS agreed to pay, an administrative penalty of Fifteen Thousand Dollars (\$15,000).
10. The Agreement provides for a reasonable resolution of this dispute.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.003, 14.051, 15.023, 15.024, and 39.151(j).
2. ECS 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.
3. Pursuant to ERCOT Protocols § 8.1.3.3.1(1), "[a] QSE's ERS performance will be evaluated based on its portfolio's performance during ERS deployment events and on the overall availability of its portfolio in an ERS Standard Contract Term"

4. Pursuant to ERCOT Protocols § 8.1.3.3.1(1)(b)(iii), “[i]f a QSE’s portfolio-level event performance factor for an ERS Standard Contract Term is greater than or equal to 0.95, the QSE will be deemed to have met its event performance requirements for the ERS Standard Contract Term; otherwise, the QSE shall be deemed to have failed to meet this requirement.”
5. ECS failed to have an event performance requirements of at least 0.95 during the EEA event on January 6, 2014 as required by ERCOT Protocols § 8.1.3.3.1. Therefore, ECS violated PURA § 39.151(d) and the requirements of P.U.C. SUBST. R. 25.503(f)(2).
6. P.U.C. PROC. R. 22.246(g)(1)(A),(B), and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
7. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
8. The requirements for informal disposition pursuant to P.U.C. PROC. R. 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 order:

1. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. ECS shall pay an administrative penalty to the Commission in the amount of Fifteen Thousand Dollars (\$15,000). ECS shall remit payment of the full amount of the administrative penalty on or before thirty (30) calendar days after the date this Order is signed. Payment of the administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference this docket. The check shall be sent to the following address:

Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711
ATTN: Fiscal Services
3. ECS shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.

4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised herein.
5. Entry of this order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the ____ day of _____, 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER