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DOCKET NO. **44530**

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AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO CPS ENERGY'S §  
VIOLATION OF PURA § 39.151(d) §  
AND (j), P.U.C. SUBST. R. 25.503(f)(2), §  
AND ERCOT PROTOCOLS §  
§§ 6.5.7.6.2.3(4), RELATED TO NON- §  
SPINNING RESERVE SERVICE §  
(NSRS) DEPLOYMENT, AND §  
8.1.1.4.3(3), RELATED TO NON- §  
SPINNING RESERVE SERVICE §  
ENERGY DEPLOYMENT CRITERIA §

PUBLIC UTILITY COMMISSION  
FILING CLERK  
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 CPS Energy (CPS) (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 CPS for violation of Public Utility Regulatory Act<sup>1</sup> (PURA) § 39.151(d) and (j), and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols §§ 6.5.7.6.2.3(4), related to non-spinning reserve service (NSRS) deployment, and 8.1.1.4.3(3)(b), related to non-spinning reserve service (NSRS) energy deployment criteria on January 18, 2014.

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

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

Respectfully Submitted,

Robert M. Long  
Division Director  
Oversight and Enforcement Division

  
Taylor Kilroy  
Attorney, Oversight and Enforcement Division  
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1701 N. Congress Avenue  
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Austin, Texas 78711-3326  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 12<sup>th</sup> of March, 2015 in accordance with P.U.C. Procedural Rule 22.74.

  
Taylor Kilroy

**DOCKET NO.**

<b>AGREED NOTICE OF VIOLATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AND SETTLEMENT AGREEMENT</b>	<b>§</b>	
<b>RELATING TO CPS ENERGY'S</b>	<b>§</b>	<b>OF TEXAS</b>
<b>VIOLATION OF PURA § 39.151(d) AND</b>	<b>§</b>	
<b>(j), P.U.C. SUBST. R. 25.503(f)(2), AND</b>	<b>§</b>	
<b>ERCOT PROTOCOLS §§ 6.5.7.6.2.3(4),</b>	<b>§</b>	
<b>RELATED TO NON-SPINNING</b>	<b>§</b>	
<b>RESERVE SERVICE (NSRS)</b>	<b>§</b>	
<b>DEPLOYMENT, AND 8.1.1.4.3(3),</b>	<b>§</b>	
<b>RELATED TO NON-SPINNING</b>	<b>§</b>	
<b>RESERVE SERVICE ENERGY</b>	<b>§</b>	
<b>DEPLOYMENT CRITERIA</b>	<b>§</b>	

**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Commission or PUC) and CPS Energy (CPS) (collectively, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of CPS for violation of Section 39.151(d) and (j) of the Public Utility Regulatory Act<sup>1</sup> (PURA) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols §§ 6.5.7.6.2.3(4), related to non-spinning reserve service (NSRS) deployment, and 8.1.1.4.3(3)(b), related to non-spinning reserve service (NSRS) energy deployment criteria on January 18, 2014.

**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 the Parties to this proceeding and the subject matter of this Agreement.
3. On receipt of a deployment instruction, Load Resources providing Non-Spin must, at a minimum, provide the requested deployment energy within 30 minutes of the Dispatch Instruction. Within 30 minutes after receipt of the deployment instruction, the Qualified

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

Service Entity (QSE) shall reduce the Non-Spin Ancillary Service Schedule by the amount of the deployment to make the capacity available for SCED to dispatch.

4. Twenty-five minutes following ERCOT deployment instructions, a resource must have a resource status indicating that it is on-line with an Energy Offer Curve (EOC) and the telemetered generation must be greater than or equal to the resource's telemetered Low Sustained Limit (LSL) within 25 minutes following an ERCOT NSRS deployment instruction.
5. Each QSE is responsible for each resource's ability to meet its obligation to provide the ancillary service.<sup>2</sup>
6. CPS is an authorized QSE, as defined by ERCOT Protocols § 2.1.
7. CPS was the authorized QSE for the generation resources BRAUNIG\_VHB6CT5 and BRAUNIG\_VHB6CT6.
8. On January 18, 2014 at 9:00 AM, ERCOT declared an Energy Emergency Alert 1 (EEA1) and deployed 348 MW of Non-Spin Reserve Service.
9. On January 18, 2014 at 9:05:44 AM, CPS received NSRS deployment instructions for two generators for a total of 79.3 MW. CPS Energy obligated BRAUNIG\_VHB6CT5 to deploy 48 MW and BRAUNIG\_VHB6CT6 to deploy 31.3 MW.
10. Commission Staff reviewed Texas Reliability Entity, Inc.'s Notice of Investigation dated July 17, 2014 regarding possible protocol violations to CPS stating that CPS may have failed to comply with ERCOT Protocols §§ 6.5.7.6.2.3(4) and 8.1.1.4.3(3) in response to the NSRS deployments on January 18, 2014.
11. Staff alleges that the CPS resources did not reach 90% of the units' LSL with 25 minutes or dispatch its NSRS resources within 30 minutes as required; additionally, CPS did not properly update the Resources Status Code for BRAUNIG\_VHB6CT5 and BRAUNIG\_VHB6CT6 within 25 minutes, also a protocol requirement.
12. Pursuant to ERCOT Protocol 8.1.1.4.3(c), CPS Energy requested an exclusion for BRAUNIG\_VHB6CT5 and CT6. CPS alleged that both units should be excused from

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<sup>2</sup> ERCOT Protocols § 8.1.1.2.1.3(5)

- compliance with ERCOT Protocols requirements under P.U.C. SUBST. R. 25.503(f)(2)(C) because of equipment failure beyond the reasonable control of CPS.
13. Pursuant to this provision, Staff elected to not pursue an administrative penalty against CPS for BRAUNIG\_VHB6CT5.
  14. Staff maintains that a penalty is warranted, because BRAUNIG\_VHB6CT6 failed to meet the performance criteria of ERCOT Protocols §§ 6.5.7.6.2.3(4) and 8.1.1.4.3(3)(b) on January 18, 2014, and therefore, CPS violated PURA § 39.151(d) and (j) and the requirements of P.U.C. SUBST. R. 25.503(f)(2).
  15. Commission Staff recommends, and CPS agrees to pay, an administrative penalty of Twenty-Two Thousand Five Hundred Dollars (\$22,500) in full and final settlement of the alleged violations described in the attached Proposed Order.
  16. This Agreement resolves all claims related to CPS's obligations pursuant to PURA § 39.151(j); P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to ERCOT Protocols §§ 6.5.7.6.2.3(4), related to non-spinning reserve service (NSRS) deployment, and 8.1.1.4.3(3)(b), related to non-spinning reserve service (NSRS) energy deployment criteria on January 18, 2014.
  17. Unless specifically provided for in this Agreement, CPS waives any notice and procedures that might otherwise be authorized or required in this proceeding.
  18. 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.
  19. 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.

20. 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.
21. 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.
22. 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.
23. CPS 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.

Carolyn E. Shellman  
Carolyn E. Shellman  
CPS Energy  
Executive Vice President & General Counsel  
145 Navarro  
Mail Drop #101012  
San Antonio, TX 78205

Date: March 12, 2015

Robert M. Long  
Robert M. Long  
Division Director  
Oversight and Enforcement Division  
Public Utility Commission of Texas

Date: March 12, 2015



**DOCKET NO.**

<b>AGREED NOTICE OF VIOLATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AND SETTLEMENT AGREEMENT</b>	<b>§</b>	
<b>RELATING TO CPS ENERGY'S</b>	<b>§</b>	<b>OF TEXAS</b>
<b>VIOLATION OF PURA § 39.151(d) AND</b>	<b>§</b>	
<b>(j), P.U.C. SUBST. R. 25.503(f)(2), AND</b>	<b>§</b>	
<b>ERCOT PROTOCOLS §§ 6.5.7.6.2.3(4),</b>	<b>§</b>	
<b>RELATED TO NON-SPINNING</b>	<b>§</b>	
<b>RESERVE SERVICE (NSRS)</b>	<b>§</b>	
<b>DEPLOYMENT, AND 8.1.1.4.3(3),</b>	<b>§</b>	
<b>RELATED TO NON-SPINNING</b>	<b>§</b>	
<b>RESERVE SERVICE ENERGY</b>	<b>§</b>	
<b>DEPLOYMENT CRITERIA</b>	<b>§</b>	

**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 CPS Energy (CPS) (collectively, Parties) regarding Commission Staff's investigation of CPS for violation of PURA<sup>3</sup> § 39.151(d) and (j) and P.U.C. SUBST. R. 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Protocols §§ 6.5.7.6.2.3(4), related to non-spinning reserve service (NSRS) deployment, and 8.1.1.4.3(3)(b), related to non-spinning reserve service (NSRS) energy deployment criteria on January 18, 2014. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of Twenty-Two Thousand Five Hundred Dollars (\$22,500), which CPS agreed to pay. The Agreement is approved.

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

**I. Findings of Fact**

1. CPS is an authorized Qualified Scheduling Entity (QSE), as defined by ERCOT Protocols § 2.1.
2. CPS was the authorized QSE for the generation resources BRAUNIG\_VHB6CT5 and BRAUNIG\_VHB6CT6.
3. NSRS is an ancillary service that provides additional generating capacity in the event that scheduled electricity generation in the ERCOT region is inadequate to meet demand.

<sup>3</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

- Scheduled generation may be inadequate for reasons such as unexpected generating unit trips or weather-related increases in demand relative to forecast levels.
4. On January 18, 2014 at 9:00 AM, ERCOT declared an Energy Emergency Alert 1 (EEA1) and deployed 348 MW of Non-Spin Reserve Service.
  5. On January 18, 2014 at 9:05:44 AM, CPS received NSRS deployment instructions for two generators for a total of 79.3 MW. CPS obligated BRAUNIG\_VHB6CT5 to deploy 48 MW and BRAUNIG\_VHB6CT6 to deploy 31.3 MW.
  6. Commission Staff reviewed Texas Reliability Entity, Inc.'s Notice of Investigation dated July 17, 2014 regarding possible protocol violation to CPS stating that CPS may have failed to comply with ERCOT Protocols § 8.1.1.4.3(3) in response to the NSRS deployments on January 18, 2014.
  7. Staff alleges that the CPS resources did not reach 90% of the units Low Sustainable Limit (LSL) with 25 minutes or dispatch its NSRS resources within 30 minutes as required and CPS did not properly update the Resources Status Code for BRAUNIG\_VHB6CT5 and BRAUNIG\_VHB6CT6 within 25 minutes, also a protocol requirement.
  8. On or about August 14, 2014, CPS 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.
  9. Pursuant to ERCOT Protocol 8.1.1.4.3(c), CPS requested an exclusion for BRAUNIG\_VHB6CT5 and CT6. CPS alleged that both units should be excused from compliance with ERCOT Protocols requirements under P.U.C. SUBST. R. 25.503(f)(2)(C) because of equipment failure beyond the reasonable control of CPS.
  10. Pursuant to this provision, Staff elected to not pursue an administrative penalty against CPS for BRAUNIG\_VHB6CT5.
  11. Staff maintains that a penalty is warranted, because BRAUNIG\_VHB6CT6 failed to meet the performance criteria of ERCOT Protocols §§ 6.5.7.6.2.3(4) and 8.1.1.4.3(3)(b) on January 18, 2014, and therefore, CPS violated PURA § 39.151(d) and (j) and the requirements of P.U.C. SUBST. R. 25.503(f)(2).
  12. CPS fully cooperated with Commission Staff's investigation.
  13. CPS understands the basis for the violations alleged by Staff as detailed in this Order.

14. CPS participated in one or more settlement discussions with Commission Staff to resolve this matter.
15. The Parties agree to resolve this matter and desire to compromise, settle, and fully resolve the claims asserted, without admission by either Party.
16. On March 12, 2015, the Parties entered into the Agreement resolving the alleged violations. Commission Staff recommended, and CPS agreed to pay, an administrative penalty of Twenty-Two Thousand Five Hundred Dollars (\$22,500).
17. 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(d).
2. CPS 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 Protocol § 6.5.7.6.2.3(4), on receipt of a deployment instruction, Load Resources providing Non-Spin must, at a minimum, provide the requested deployment energy within 30 minutes of the Dispatch Instruction. Within 30 minutes after receipt of the deployment instruction, the QSE shall reduce the Non-Spin Ancillary Service Schedule by the amount of the deployment to make the capacity available for SCED to dispatch.
4. Pursuant to ERCOT Protocol § 8.1.1.4.3(3)(b), a resource must have a resource status indicating that it is on-line with an Energy Offer Curve (EOC) and the telemetered generation must be greater than or equal to the resource's telemetered LSL within 25 minutes following an ERCOT NSRS deployment instruction.
5. 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.
6. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
7. This docket was processed in accordance with applicable statutes and Commission rules.
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. CPS shall pay an administrative penalty to the Commission in the amount of Twenty-Two-Thousand Five Hundred Dollars (\$22,500). CPS 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 electronic funds transfer or 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. CPS 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 here.
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 or methodology 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 April, 2015.

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**DONNA L. NELSON, CHAIRMAN**

\_\_\_\_\_  
**KENNETH W. ANDERSON, JR., COMMISSIONER**

\_\_\_\_\_  
**BRANDY D. MARQUEZ, COMMISSIONER**