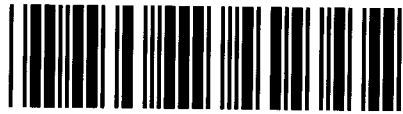




Control Number: 44594



Item Number: 1

Addendum StartPage: 0

2016 MAR 30 PM 2:00
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO AIR LIQUIDE LARGE §
INDUSTRIES U.S., LP'S VIOLATION §
OF PURA § 39.151(j); P.U.C. SUBST. R. §
§ 25.503(f)(2); ERCOT PROTOCOL §
§ 8.5.1.1; ERCOT OPERATING GUIDE §
§§ 2.2.8 AND 2.3.1.2, RELATING TO §
PRIMARY FREQUENCY RESPONSE; §
AND ERCOT OPERATING GUIDE §
§ 2.2.7, RELATING TO GOVERNOR §
TESTING CRITERIA §

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:

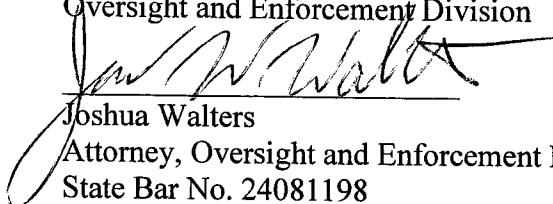
Commission Staff and Air Liquide Large Industries U.S., LP (ALLI) (together, Parties) have entered into a Settlement Agreement and Report to Commission (Agreement). The Agreement, attached to this motion, has been signed by representatives of both parties and includes a Proposed Order. This Agreement resolves and concludes Commission Staff's investigation of ALLI for violations of PURA § 39.151(j) of the Public Utility Regulatory Act¹ (PURA); P.U.C. SUBST. R. 25.503(f)(2), concerning Electric Reliability Council of Texas (ERCOT) Protocol § 8.5.1.1 and ERCOT Operating Guide §§ 2.2.8 and 2.3.1.2, related to primary frequency response; and ERCOT Operating Guide § 2.2.7, related to governor testing criteria.

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 (West 2007 & Supp. 2014) (PURA).

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division

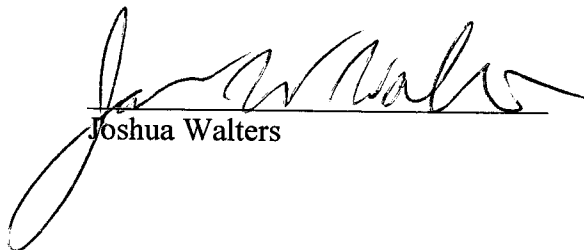


Joshua Walters

Attorney, Oversight and Enforcement Division
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Public Utility Commission of Texas
1701 N. Congress Avenue
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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 30th of March, 2015 in accordance with P.U.C. Procedural Rule 22.74.



Joshua Walters

5. PFR is a reliability tool used by ERCOT to ensure that the electrical grid is operating at the required system-wide target frequency of 60 Hz.
6. PFR is the initial reliability tool used by ERCOT during a frequency event. PFR occurs automatically and immediately through the use of a governor mechanism, often in the first 12 to 14 seconds following a measurable frequency event.
7. Measurable frequency events are determined by the ERCOT Performance Disturbance Compliance Working Group pursuant to ERCOT Operating Guide § 2.2.8.
8. Pursuant to ERCOT Protocols § 8.5.1.1, “[a]ll Generation Resources that have capacity available to either increase output or decrease output in Real-Time must provide [PFR], which may make use of that available capacity.”²
9. If a Generation Resource is providing ancillary services, including Responsive Reserve Service (RRS), that Generation Resource must reserve capacity that may be used to provide PFR.³ For Generation Resources providing RRS, ERCOT Protocols § 8.1.1.4.2(2) states that “[s]atisfactory performance must be measured by comparing actual [PFR] to the expected [PFR] as required in the Operating Guides.”
10. The ERCOT Operating Guides require Generation Resources providing PFR to “respond to frequency disturbances with a Governor droop of 5% or less.”⁴
11. The Generation Resource BYU_CC1 failed to sustain a Governor droop of 5% or less during 7 of 26 measurable events during the TRE Study Period, including 5 events during which it was providing RRS.
12. ALLI has modified the control logic of BYU_CC1 so that the units with available capacity will respond to a frequency event with a sustained Governor droop of 5% or less.
13. The Parties agree that the most recent primary frequency response data from ERCOT demonstrates that BYU_CC1 has provided sustained frequency response with a droop of 5% or less.

² Additionally, ERCOT Operating Guide § 2.2.8 states that “all generators (except nuclear and wind) must respond to frequency disturbances...unless limited by a High Sustained Limit (HSL) or other limits filed with ERCOT including duct burning on combined-cycle units.”

³ ERCOT Protocols § 8.5.1.1.

⁴ ERCOT Operating Guides § 2.2.8(1).

14. REs must also conduct a governor performance test for each generation resource at least every two years.⁵
15. ALLI failed to provide proper documentation to show that it completed governor testing on BYU_CC1 within the required two-year interval prior to 2011. The Parties have worked together to confirm that the necessary governor testing has been conducted and that future testing will be properly documented for the BYU_CC1 facility.
16. Commission Staff recommends, and ALLI agrees to pay, an administrative penalty of Fifty Thousand Dollars (\$50,000) in full and final settlement of the alleged violations described in the attached Proposed Order.
17. This Agreement resolves all claims related to ALLI's obligations pursuant to PURA § 39.151(j); P.U.C. SUBST. R. §25.503(f)(2), concerning ALLI's alleged failure to adhere to ERCOT Protocols § 8.5.1.1 and ERCOT Operating Guide §§ 2.2.8 and 2.3.1.2, related to PFR; and ERCOT Operating Guide § 2.2.7, related to governor testing criteria.
18. Unless specifically provided for in this Agreement, ALLI waives any notice and procedures that might otherwise be authorized or required in this proceeding.
19. 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.
20. 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.
21. 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


⁵ ERCOT Operating Guide § 2.2.7, related to governor testing.

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.

- 22. 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.
- 23. 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.
- 24. ALLI warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

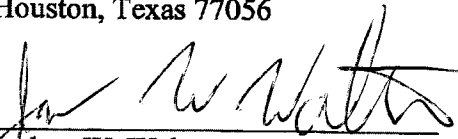
EXECUTED by the Parties by their authorized representatives designated below.

LAG



Terry Humphrey
Air Liquide Large Industries U.S. LP
2700 Post Oak Blvd, Suite 325
Houston, Texas 77056

Date: 3/27/15



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

Date: 3/30/15

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO AIR LIQUIDE LARGE	§	OF TEXAS
INDUSTRIES U.S. LP'S VIOLATION OF	§	
PURA § 39.151(j); P.U.C. SUBST. R.	§	
§ 25.503(f)(2); ERCOT PROTOCOL	§	
§ 8.5.1.1; ERCOT OPERATING GUIDE	§	
§§ 2.2.8 AND 2.3.1.2, RELATING TO	§	
PRIMARY FREQUENCY RESPONSE;	§	
AND ERCOT OPERATING GUIDE §	§	
2.2.7, RELATING TO GOVERNOR	§	
TESTING CRITERIA	§	

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 Air Liquide Large Industries U.S. LP (ALLI) (collectively, Parties) (collectively, Parties) regarding Commission Staff's investigation of ALLI and the generation resource BYU_CC1 for alleged violations of PURA¹ § 39.151(j); P.U.C. SUBST. R. 25.503(f)(2), concerning Electric Reliability Council of Texas (ERCOT) Protocol § 8.5.1.1 and ERCOT Operating Guide §§ 2.2.8 and 2.3.1.2, related to Primary Frequency Response (PFR); and ERCOT Operating Guide § 2.2.7 related to governor testing criteria. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of Fifty Thousand Dollars (\$50,000), which ALLI agreed to pay. The Agreement is approved.

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

I. Findings of Fact

1. ALLI is an authorized Resource Entity (RE), as defined by ERCOT Protocols § 2.1.
2. BYU_CC1 is an authorized All-Inclusive Generation Resource and a Generation Resource, as defined by ERCOT Protocols § 2.1.
3. ALLI is the RE for Generation Resource BYU_CC1.
4. PFR is a reliability tool used by ERCOT to ensure that the electrical grid is operating at the required system-wide target frequency of 60 Hz.

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

5. PFR is the initial reliability tool used by ERCOT during a frequency event. PFR occurs automatically and immediately through the use of a governor mechanism, often in the first 12 to 14 seconds following a measurable frequency event.²
6. In the summer of 2012, the Texas Reliability Entity (TRE) initiated a review of PFR performance data provided by ERCOT. TRE studied nine months of data beginning with October 2011 and ending with June 2012 (the TRE Study Period).
7. The Generation Resource BYU_CC1 failed to sustain a Governor droop of 5% or less during 7 of 26 measurable events during the TRE Study Period, including 5 events during which it was providing RRS.
8. ALLI also failed to provide proper documentation to show that it completed governor testing on BYU_CC1 within the required two year intervals prior to 2011.
9. On or about October 30, 2014, ALLI 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.
10. ALLI fully cooperated with Commission Staff's investigation.
11. ALLI acknowledges the alleged violations detailed in this Order.
12. ALLI participated in one or more settlement discussions with Commission Staff to resolve this matter.
13. ALLI asserts that it has modified the control logic of BYU_CC1 so that the units with available capacity will respond to a frequency event with a Governor droop of 5% or less. The Parties agreed that the most recent primary frequency response data from ERCOT demonstrated that BYU_CC1 provided sustained frequency response.
14. The Parties agreed that the necessary governor testing has been conducted and that future testing will be properly documented for the BYU_CC1 facility.
15. On March 30 2015, the Parties entered into the Agreement resolving the alleged violations. Commission Staff recommended, and ALLI agreed to pay, an administrative penalty of Fifty Thousand Dollars (\$50,000).
16. The Agreement provides for a reasonable resolution of this dispute.

² Measurable frequency events are determined by the ERCOT Performance Disturbance Compliance Working Group (PDCWG) pursuant to ERCOT Operating Guide § 2.2.8.

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. ALLI 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. At all times an All-Inclusive Generation Resource is On-Line, its Governor must remain in service and be allowed to respond to all changes in system frequency except during startup, shutdown, or testing.³
4. Pursuant to ERCOT Protocols § 8.5.1.1, "[a]ll Generation Resources that have capacity available to either increase output or decrease output in Real-Time must provide [PFR], which may make use of that available capacity."
5. Only Generation Resources providing Regulation Up (Reg-Up), Regulation Down (Reg-Down), Responsive Reserve (RRS), or Non-Spinning Reserve (Non-Spin) from On-Line Resources, as specified in § 8.1.1, QSE Ancillary Service Performance Standards, shall be required to reserve capacity that may also be used to provide PFR.⁴
6. For Generation Resources providing RRS, ERCOT Protocols § 8.1.1.4.2(2) states that "[s]atisfactory performance must be measured by comparing actual [PFR] to the expected [PFR] as required in the [ERCOT] Operating Guides." Operating Guide § 2.2.8(1) requires Generation Resources to "respond to frequency disturbances with a Governor droop of 5% or less."
7. The Generation Resource BYU_CC1 failed to sustain a Governor droop of 5% or less during 7 of 26 measurable events during the TRE Study Period, including 5 events during which it was providing RRS..
8. Pursuant to ERCOT Operating Guide § 2.2.7, RE's must conduct a governor performance test for each generation resource at least every two years.

³ ERCOT Protocols § 8.5.1.1.

⁴ *Id.*

9. ALLI violated PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2) because it failed to provide proper documentation to show that it completed governor testing on BYU_CC1 within the required two year intervals prior to 2011.
10. 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.
11. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
12. This docket was processed in accordance with applicable statutes and Commission rules.
13. 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. ALLI shall pay an administrative penalty to the Commission in the amount of Fifty Thousand Dollars (\$50,000). ALLI 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 or by Electric Funds Transfer and shall reference this docket. When paying by check, 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. ALLI 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.
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 _____, 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER