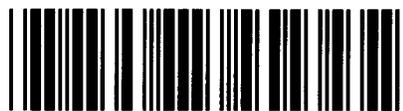




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DOCKET NO. **44757**

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PUBLIC UTILITY COMMISSION

**AGREED NOTICE OF VIOLATION
AND SETTLEMENT AGREEMENT
RELATING TO TONY C. MARSH
D/B/A MAMO ENTERPRISES'
VIOLATIONS OF PURA § 39.151(d)
AND P.U.C. SUBST. R. 25.503(f)(8),
RELATING TO OVERSIGHT OF
WHOLESALE MARKET
PARTICIPANTS**

**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:

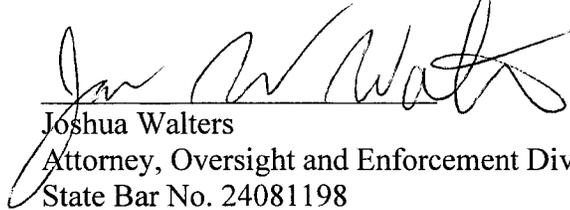
Commission Staff, Tony C. Marsh d/b/a MAMO Enterprises (MAMO), and Mr. Tony C. Marsh (together, Parties) have entered into a Settlement Agreement and Report to Commission (Agreement). The Agreement, attached to this motion, has been signed by representatives of both parties and includes a Proposed Order. This Agreement resolves and concludes Commission Staff's investigation of MAMO and Mr. Tony C. Marsh for violation of PURA¹ § 39.151(d) and 16 Tex. Admin. Code § 25.503(f)(8), related to oversight of wholesale market participants.

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

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.017 (West 2007 & Supp. 2014) (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 22nd of May, 2015 in accordance with 16 TAC § 22.74.


Joshua Walters

5. Effective January 1, 2013, ERCOT Protocol § 16.16.1(1)(c)(ii)(B)(2) imposed a new, and higher, minimum tangible net worth requirement (\$500,000) for certain market entities, including QSEs such as MAMO.
6. The MAMO financial statements submitted to ERCOT prior to the proposal of the new ERCOT collateral requirements in Protocol § 16.16.1(1)(c)(ii)(B)(2) did not reflect assets of sufficient value to satisfy the new requirements.
7. Staff alleges that MAMO filed audited and unaudited financial statements with ERCOT that were inaccurate and included false and misleading information and an omission of material information on four separate occasions beginning in December 2012 and continuing into 2013.
8. Staff alleges that the problematic assets listed by MAMO in these financial statements include:
 - a. a purported accounts receivable balance that Staff does not believe is a true receivable; and
 - b. land that was not owned by MAMO.
9. By listing these problematic assets, Staff alleges that Mr. Marsh intentionally increased the valuation of MAMO's balance sheet from substantially below the new \$500,000 minimum tangible net worth requirement to above it.
10. Mr. Marsh disputes that any of the audited or unaudited financial statements were inaccurate or included false or misleading information or an omission of material information.
11. Mr. Marsh contends that, as a sole proprietorship, he included certain personal assets in MAMO's financial statements only as needed to satisfy ERCOT's credit requirements, and MAMO's financial statements were compiled for ERCOT purposes only.
12. Mr. Marsh contends that in an effort to satisfy the new ERCOT collateral requirements, in the fall of 2012, Mr. Marsh changed the manner in which he prepared the financial statements for MAMO from a modified cash basis to an accrual basis of accounting. Mr. Marsh added assets that had not previously been recorded on financial statements submitted to ERCOT, including land, a personal retirement account, and a large accounts

receivable. Mr. Marsh did not amend the previously submitted unaudited quarterly financial statements for MAMO in 2012.

13. Following ERCOT's review of MAMO's 2012 audited financial statements, ERCOT informed MAMO on May 7, 2013 that based on the adverse opinion of MAMO's accountant, its financial statements could not be relied upon for purposes of the counterparty capital requirements and, therefore, MAMO's tangible net worth was below the \$500,000 required by ERCOT Protocol § 16.16.1(1)(c)(ii)(B)(2).
14. On May 9, 2013, MAMO informed ERCOT that MAMO was withdrawing from the ERCOT market and was terminating its market participant agreement with ERCOT.
15. On May 10, 2013, ERCOT informed MAMO that its notice of termination would not go into effect until June 8, 2013, and that since MAMO was in material breach of its market participant agreement, a collateral payment was due within two business days.
16. On May 13, 2013, MAMO notified ERCOT that it had wire transferred to ERCOT the cash necessary to satisfy the collateral requirement.
17. On June 8, 2013, MAMO's termination of its market participant agreement with ERCOT became effective.
18. In an effort to compromise and to resolve O&E's investigation of the alleged rule violations, on February 10, 2015, MAMO relinquished its registration as a power marketer in the ERCOT market.²
19. In addition, Commission Staff recommends, and Mr. Marsh agrees to, the following:
 - a. Mr. Marsh will pay an administrative penalty to the Commission in the amount of \$10,000 for the alleged violations described herein and in the Proposed Order; and
 - b. Neither Mr. Marsh nor MAMO will serve as a "principal" for any entity regulated by the Commission for a period of 10 years from the date of the Commission's order approving this Agreement. For the purposes of this Agreement, "principal" is defined as an executive officer, partner, owner, director, shareholder of a privately held company, shareholder of a publicly traded company who owns more than 10% of a class of equity securities, or a person that controls the person

² P.U.C. Docket No. 14406, Item No. 642.

in question.³ As long as Mr. Marsh does not fit the definition of principal above, he may serve as an employee of or consultant for any entity regulated by the Commission, including serving as a provider of commodity risk management services as permitted under P.U.C. SUBST. R. 25.107(g)(1)(E).

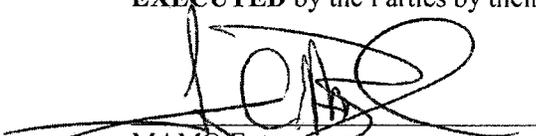
20. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
21. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested 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.
22. This Agreement fully and finally resolves all matters and issues, asserted or unasserted, related to alleged Commission rules violations 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.
23. 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

³ This definition of principal is the definition found in P.U.C. SUBST. R. 25.107(b)(11) as of March 16, 2015.

time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

24. 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.
25. 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.
26. Mr. Marsh warrants that he has read this Agreement carefully, knows the contents thereof, and signs the same as a free act.

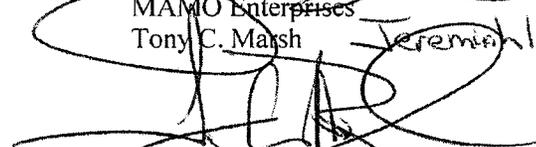
EXECUTED by the Parties by their authorized representatives designated below.



MAMO Enterprises
Tony C. Marsh

Jeremiah 17:7

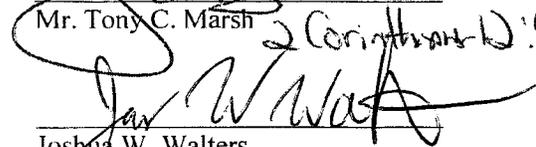
Date: 5/20/15



Mr. Tony C. Marsh

2 Corinthians 12:9-10

Date: 5/20/15



Joshua W. Walters
Attorney
Oversight & Enforcement Division
State Bar No. 24081198
(512) 936-7385 T
(512) 936-7208 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Date: 5/21/15

AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO TONY C. MARSH D/B/A MAMO ENTERPRISES' VIOLATIONS OF PURA § 39.151(d) AND P.U.C. SUBST. R. 25.503(f)(8), RELATING TO OVERSIGHT OF WHOLESALE MARKET PARTICIPANTS § **PUBLIC UTILITY COMMISSION** § **OF TEXAS**

PROPOSED ORDER

This Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission), Tony C. Marsh d/b/a MAMO Enterprises (MAMO), and Mr. Tony C. Marsh (together, Parties) regarding Commission Staff's investigation of MAMO for alleged violations of PURA⁴ § 39.151(d) and P.U.C. SUBST. R. 25.503(f)(8), related to oversight of wholesale market participants. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. The Agreement is unopposed and provides for a reasonable resolution to the issues in this docket. The Agreement is approved.

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

I. Findings of Fact

1. MAMO Enterprises (MAMO) is a sole proprietorship of Tony C. Marsh that served as a Commission-registered power marketer and a qualified scheduling entity (QSE) in the Electric Reliability Council of Texas, Inc. (ERCOT).
2. At the time of the alleged violations, Tony C. Marsh d/b/a MAMO was a QSE pursuant to a standard ERCOT market participant agreement and a power marketer pursuant to P.U.C. SUBST. R. 25.105.
3. Accordingly, MAMO was a market entity and a market participant as those terms are defined in P.U.C. SUBST. R. 25.503(c)(5) and (6), respectively.
4. Mr. Marsh and MAMO admitted to the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Agreement.

⁴ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (West 2007 & Supp. 2014) (PURA).

5. Effective January 1, 2013, ERCOT Protocol § 16.16.1(1)(c)(ii)(B)(2) imposed a new, and higher, minimum tangible net worth requirement (\$500,000) for certain market entities, including QSEs such as MAMO.
6. Financial statements submitted by MAMO to ERCOT prior to the proposal of the new ERCOT collateral requirements in Protocol § 16.16.1(1)(c)(ii)(B)(2) did not reflect assets of sufficient value to satisfy the new requirements.
7. Staff alleged that MAMO filed audited and unaudited financial statements with ERCOT that were inaccurate and included false and misleading information and an omission of material information on four separate occasions beginning in December 2012 and continuing into 2013.
8. Staff alleged that the problematic assets listed by MAMO in these financial statements included:
 - (a) A purported accounts receivable balance that Staff did not believe was a true receivable; and
 - (b) Land that was not owned by MAMO.
9. By listing these problematic assets, Staff alleged that Mr. Marsh intentionally increased the valuation of MAMO's balance sheet from substantially below the new \$500,000 minimum tangible net worth requirement to above it.
10. Mr. Marsh disputed that any of the audited or unaudited financial statements were inaccurate or included false or misleading information or an omission of material information.
11. Mr. Marsh contended that, as a sole proprietorship, he included certain personal assets in MAMO's financial statements only as needed to satisfy ERCOT's credit requirements, and MAMO's financial statements were compiled for ERCOT purposes only.
12. Mr. Marsh contended that in an effort to satisfy the new ERCOT collateral requirements, in the fall of 2012, Mr. Marsh changed the manner in which he prepared the financial statements for MAMO from a modified cash basis to an accrual basis of accounting. Mr. Marsh added assets that had not previously been recorded on financial statements submitted to ERCOT, including land, a personal retirement account, and a large accounts

receivable. Mr. Marsh did not amend the previously submitted unaudited quarterly financial statements for MAMO in 2012.

13. Following ERCOT's review of MAMO's 2012 audited financial statements, ERCOT informed MAMO on May 7, 2013 that based on the adverse opinion of MAMO's accountant, its financial statements could not be relied upon for purposes of the counterparty capital requirements and, therefore, MAMO's tangible net worth was below the \$500,000 required by ERCOT Protocol § 16.16.1(1)(c)(ii)(B)(2).
14. On May 9, 2013, MAMO informed ERCOT that MAMO was withdrawing from the ERCOT market and was terminating its market participant agreement with ERCOT.
15. On May 10, 2013, ERCOT informed MAMO that its notice of termination would not go into effect until June 8, 2013, and that since MAMO was in material breach of its market participant agreement, a collateral payment was due within two business days.
16. On May 13, 2013, MAMO notified ERCOT that it had wire transferred to ERCOT the cash necessary to satisfy the collateral requirement.
17. On June 8, 2013, MAMO's termination of its market participant agreement with ERCOT became effective.
18. MAMO relinquished its registration as a power marketer in the ERCOT market on February 10, 2015.⁵
19. Commission Staff recommended, and Mr. Marsh agreed to pay an administrative penalty to the Commission in the amount of \$10,000 for the alleged violations described herein and in the Agreement.
20. Mr. Marsh further agreed that neither Mr. Marsh nor MAMO will serve as a "principal" for any entity regulated by the Commission for a period of 10 years from the date of the Commission's order approving this Agreement.

(a) For the purposes of the Agreement, "principal" is defined as an executive officer, partner, owner, director, shareholder of a privately held company, shareholder of a publicly traded company who owns more than 10% of a class of equity securities, or a person that controls the person in question.⁶

⁵ P.U.C. Docket No. 14406, Item No. 642.

⁶ This definition of principal is the definition found in P.U.C. SUBST. R. 25.107(b)(11) as of March 16, 2015.

(b) The Parties agreed that as long as Mr. Marsh does not fit the definition of principal above, Mr. Marsh may serve as an employee of or consultant for any entity regulated by the Commission, including serving as a provider of commodity risk management services as permitted under P.U.C. SUBST. R. 25.107(g)(1)(E).

21. Mr. Tony C. Marsh and MAMO acknowledge the alleged violations detailed in this Order.
22. Mr. Tony C. Marsh and MAMO participated in one or more settlement discussions with O&E, the purpose of which was to amicably resolve this matter, the subject of the investigation described herein.
23. On May 21, 2015, the Parties entered into the Agreement resolving the alleged violations as described herein and in the Agreement.
24. The Agreement provides for a reasonable resolution of this matter.

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. Mr. Marsh was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about his right to a hearing, and an opportunity to explain his activities.
3. P.U.C. SUBST. R. 25.503(f)(8) imposes an obligation on market entities to provide accurate and factual information, and prohibits a market entity from submitting false or misleading information or omitting material information in any communication with ERCOT or with the Commission.
4. P.U.C. PROC. R. 22.246(g)(1)(A), (B), and (C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
5. The Agreement is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
6. 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. Mr. Marsh shall pay an administrative penalty to the Commission in the amount of Ten Thousand Dollars (\$10,000). The administrative penalty shall be paid to Commission in three installments. The first installment shall be in the amount of Four Thousand Dollars (\$4,000) and shall be remitted by Mr. Marsh on or before thirty (30) calendar days after the date this Order is signed. The second installment shall be in the amount of Three Thousand Dollars (\$3,000) and shall be remitted by Mr. Marsh on or before sixty (60) calendar days after the date this Order is signed. The third installment shall be in the amount of Three Thousand Dollars (\$3,000) and shall be remitted by Mr. Marsh on or before ninety (90) calendar days after the date this Order is signed. Payments of the administrative penalty may be made by check payable to the Public Utility Commission of Texas 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. MAMO shall file an affidavit of payment in this docket no later than five calendar days after each payment is made.
4. Neither Mr. Marsh nor MAMO will serve as a principal, as that term is defined in Finding of Fact 20(a) and Paragraph 19(b) in the Agreement, for any entity regulated by the Commission for a period of 10 years from the date of this order approving the Agreement. As long as Mr. Marsh does not fit the definition of principal, Mr. Marsh may serve as an employee of or consultant for any entity regulated by the Commission, including serving as a provider of commodity risk management services as permitted under P.U.C. SUBST. R. 25.107(g)(1)(E).
5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.

6. Entry of this order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Neither should the entry of an order consistent with the Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
7. 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 on the ____ day of _____, 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER