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PUBLIC UTILITY COMMISSION

OF TEXAS

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO CALPINE §
CORPORATION'S §
NONCOMPLIANCE WITH PURA §
§ 39.151, 16 TAC § 25.503(f)(2), ERCOT §
PROTOCOLS § 8.5.1.1, AND ERCOT §
OPERATING GUIDE §§ 2.2.8 AND §
2.3.1.2, REGARDING PRIMARY §
FREQUENCY RESPONSE §
§

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission or PUC) and Calpine Corporation (Calpine) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of Calpine and its Generation Resources for violations of the Public Utility Regulatory Act¹ § 39.151(j) (PURA) and 16 Tex. Admin. Code § 25.503(f)(2) (TAC), concerning alleged failures to adhere to Electric Reliability Council of Texas (ERCOT) Protocols § 8.5.1.1 and ERCOT Operating Guide §§ 2.2.8 and 2.3.1.2, relating to primary frequency response (PFR).

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. Calpine Corporation is the Resource Entity (RE) that represents the Generation Resources BTE_CC1, BE_CC1, CAL_CC1, CHE_CC1, DUKE_CC1, GUADG_CC1, NEDIN_CC1, and PSG_CC1.²
4. In the summer of 2012, the Texas Reliability Entity (TRE) initiated a broad compliance review of PFR performance data provided by ERCOT. TRE studied nine months of data for market participants providing PFR beginning with October 2011 and ending with June 2012

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

² Calpine Corporation acquired the Guadalupe Energy Center in February of 2014.

(the TRE Study Period).

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]."³
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.⁴ 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 Generation Resource BTE_CC1 failed to provide adequate PFR during one of 27 measurable events. During this failed measurable event, BTE_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
11. The Generation Resource BVE_CC1 failed to provide adequate PFR during one of 24 measurable events.
12. The Generation Resource CAL_CC1 failed to provide adequate PFR during one of 22 measurable events. During this failed measurable event, CAL_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
13. The Generation Resource CHE_CC1 failed to provide adequate PFR during one of 28 measurable events. During this failed measurable event, CHE_CC1 was providing RRS,

³ Additionally, ERCOT Operating Guide § 2.2.8 (July 2012) states that: "(1)...[a]ll generators (except nuclear and wind) must respond to frequency disturbances with a governor droop of 5% or less unless limited by a High Sustained Limit (HSL) or other limits filed with ERCOT including duct burning on combined-cycle units. (2) ERCOT shall make a regular report on selected system disturbances, documenting the response of individual QSEs, together with a summary. ... (3) To ensure compliance and improved performance, the Texas Reliability Entity (Texas RE) shall communicate with the Market Participants that are not meeting the current performance requirements."

⁴ ERCOT Protocols § 8.5.1.1.

- and was therefore required to reserve capacity to provide PFR.
14. The Generation Resource DUKE_CC1 failed to provide adequate PFR during one of 12 measurable events. During this failed measurable event, DUKE_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
 15. The Generation Resource GUADG_CC1 failed to provide adequate PFR during three of seven measurable events. In two of the three failed measurable events, GUADG_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
 16. The Generation Resource NEDIN_CC1 failed to provide adequate PFR during four of 27 measurable events. In two of the four failed measurable events, NEDIN_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
 17. The Generation Resource PSG_CC1 failed to provide adequate PFR during two of 12 measurable events.
 18. These failures were violations of ERCOT Protocols § 8.5.1.1 and Operating Guide §§ 2.2.8 and 2.3.1.2.
 19. In order to improve its PFR performance, Calpine has made expenditures to implement logic and control modifications to its control systems in accordance with the new ERCOT PFR operating standards, which Calpine implemented ahead of schedule. Calpine deployed operational changes related to its RRS offers and continues to review and improve its control systems to implement BAL-001-TRE.
 20. Commission Staff recommends, and Calpine agrees to pay, an administrative penalty of Sixty-Seven Thousand Five Hundred Dollars (\$67,500) in full and final settlement of the alleged violations described in the attached Proposed Order.
 21. This Agreement resolves all claims related to Calpine's obligations pursuant to PURA § 39.151(j) and 16 TAC § 25.503(f)(2) concerning failure to adhere to ERCOT Protocols § 8.5.1.1 and ERCOT Operating Guide §§ 2.2.8 and 2.3.1.2, relating to primary frequency response.
 22. Unless specifically provided for in this Agreement, Calpine waives any notice and procedures that might otherwise be authorized or required in this proceeding.
 23. Except as provided herein, 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.
 24. 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. This Agreement represents a compromise of claims and allegations, and the execution of this Agreement does not admit the truth or accuracy of any such disputed claims. 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.

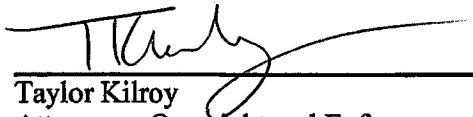
25. The Parties contemplate that this Agreement will be approved pursuant to 16 TAC § 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, 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.
26. This Agreement is the final and entire agreement between the Parties regarding its terms relating to the alleged non-compliances with the ERCOT Protocols relating to PFR through the date of this Agreement and supersedes all other communications among the Parties or their representatives regarding its terms.
27. 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.
28. Each person executing this Agreement 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.



W. Thaddeus Miller
EVP and Chief Legal Officer
Calpine Corporation
717 Texas St., Suite 1000 *JWT*
Houston, Texas 77002

Date: 10/22/15



Taylor Kilroy
Attorney – Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 10/13/15

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	
AND SETTLEMENT AGREEMENT	§	
RELATING TO CALPINE	§	PUBLIC UTILITY COMMISSION
CORPORATION'S	§	
NONCOMPLIANCE WITH PURA	§	
§ 39.151, 16 TAC § 25.503(f)(2), ERCOT	§	OF TEXAS
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2.3.1.2, REGARDING PRIMARY	§	
FREQUENCY RESPONSE	§	

PROPOSED ORDER

Pursuant to 16 Tex. Admin. Code § 22.246(g)(1)(C) (TAC), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Calpine Corporation (Calpine) regarding Commission Staff's investigation of Calpine and the Generation Resources BTE_CC1, BE_CC1, CAL_CC1, CHE_CC1, DUKE_CC1, GUADG_CC1, NEDIN_CC1, and PSG_CC1 for violation of PURA¹ § 39.151(j) and 16 TAC § 25.503(f)(2), concerning failures to adhere to Electric Reliability Council of Texas (ERCOT) Protocols § 8.5.1.1 and ERCOT Operating Guide §§ 2.2.8 and 2.3.1.2, relating to primary frequency response. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of Sixty-Seven Thousand Five Hundred Dollars (\$67,500), which Calpine agreed to pay. The Agreement is approved.

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

I. Findings of Fact

1. Calpine Corporation is an authorized Resource Entity (RE), as defined by ERCOT Protocols § 2.1.
2. BTE_CC1, BE_CC1, CAL_CC1, CHE_CC1, DUKE_CC1, GUADG_CC1, NEDIN_CC1, and PSG_CC1 are authorized Generation Resources, (and therefore are "All-Inclusive Generation Resources") as defined by ERCOT Protocols § 2.1.
3. Calpine Corporation is the RE for Generation Resources BTE_CC1, BE_CC1, CAL_CC1,

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

CHE_CC1, DUKE_CC1, GUADG_CC1, NEDIN_CC1, and PSG_CC1.²

4. In the summer of 2012, the Texas Reliability Entity (TRE) initiated a broad compliance review of PFR performance data provided by ERCOT. TRE studied nine months of data for market participants providing PFR beginning with October 2011 and ending with June 2012 (the TRE Study Period).
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. The Generation Resource BTE_CC1 failed to provide adequate PFR during one of 27 measurable events. During this failed measurable event, BTE_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
8. The Generation Resource BVE_CC1 failed to provide adequate PFR during one of 24 measurable events.
9. The Generation Resource CAL_CC1 failed to provide adequate PFR during one of 22 measurable events. During this failed measurable event, CAL_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
10. The Generation Resource CHE_CC1 failed to provide adequate PFR during one of 28 measurable events. During this failed measurable event, CHE_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
11. The Generation Resource DUKE_CC1 failed to provide adequate PFR during one of 12 measurable events. During this failed measurable event, DUKE_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
12. The Generation Resource GUADG_CC1 failed to provide adequate PFR during three of seven measurable events. In two of the three failed measurable events, GUADG_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.
13. The Generation Resource NEDIN_CC1 failed to provide adequate PFR during four of 27 measurable events. In two of the four failed measurable events, NEDIN_CC1 was providing RRS, and was therefore required to reserve capacity to provide PFR.

² Calpine Corporation acquired Guadalupe Energy Center in February of 2014.

14. The Generation Resource PSG_CC1 failed to provide adequate PFR during two of 12 measurable events. .
15. On or about January 12, 2015, Calpine 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.
16. Calpine fully cooperated with Commission Staff's investigation.
17. Calpine acknowledges the basis for the violations alleged by Commission Staff as detailed in this Order.
18. Calpine participated in one or more settlement discussions with Commission Staff to resolve this matter.
19. On October 12, 2015, the Parties entered into the Agreement resolving the alleged violations. Commission Staff recommended, and Calpine agreed to pay, an administrative penalty of Sixty-Seven Thousand Five Hundred Dollars (\$67,500).
20. 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 39.15 (j).
2. Calpine 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. PURA § 39.151(j) requires power generation companies to comply with ERCOT operating and reliability policies, rules, guidelines, and procedures or be subject to revocation, suspension, or amendment of their certification or to the imposition of administrative penalties. 16 TAC § 25.503(f)(2) requires market participants to comply with ERCOT Protocols and any official interpretation of the Protocols issued by ERCOT or the Commission.
4. At all times a 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

5. All 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.⁴
6. 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 ERCOT Protocols § 8.1.1, QSE Ancillary Service Performance Standards, shall be required to reserve capacity that may also be used to provide PFR.⁵
7. 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."
8. 16 TAC § 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.
9. The Agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(g).
10. This docket was processed in accordance with applicable statutes and Commission rules.
11. The requirements for informal disposition pursuant to 16 TAC § 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. Calpine shall pay an administrative penalty to the Commission in the amount of Sixty-Seven Thousand Five Hundred Dollars (\$67,500). Calpine 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

³ ERCOT Protocols § 8.5.1.1.

⁴ *Id.*

⁵ *Id.*

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. Calpine 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 resolved by the Agreement.
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