



Control Number: 45495



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DOCKET NO. **45495**

AGREED NOTICE OF VIOLATION §  
AND SETTLEMENT AGREEMENT §  
RELATING TO FPL ENERGY TEXAS §  
KEIR, LLC'S VIOLATIONS OF PURA §  
§ 39.151(j) AND 16 TAC § 25.503(f)(2), §  
RELATED TO OVERSIGHT OF §  
WHOLESALE MARKET §  
PARTICIPANTS AND ERCOT §  
PROTOCOLS § 6.4.6(1), RELATED TO §  
TELEMETRY OF STATUS CODES §

PUBLIC UTILITY COMMISSION  
OF TEXAS

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**APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT**

Staff of the Public Utility Commission of Texas (Commission) enters into this Settlement Agreement and Report to Commission (Agreement) with FPL Energy Texas Keir, LLC (Forney QSE) (together, Parties). The Agreement, attached to this request, has been signed by representatives of both Parties and includes an attached Proposed Order. This Agreement resolves and concludes Staff's investigation of Forney QSE for alleged violations of Section 39.151(j) of the Public Utility Regulatory Act;<sup>1</sup> 16 Tex. Admin. Code § 25.503(f)(2), related to oversight of wholesale market participants; and Electric Reliability Council of Texas (ERCOT) Protocols § 6.4.6(1), related to telemetry of status codes.

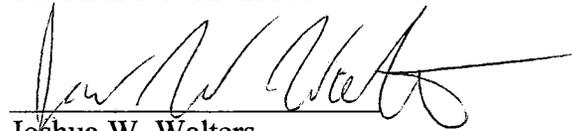
Staff respectfully requests that the Parties' Application for Approval of Settlement Agreement be granted.

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

DATE: January 5, 2016

Respectfully Submitted,

Robert M. Long  
Division Director  
Oversight and Enforcement Division  
State Bar No. 12525500

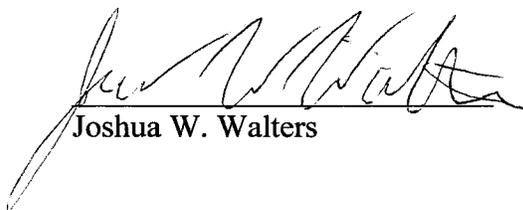


Joshua W. Walters  
Attorney-Oversight and Enforcement Division  
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Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**DOCKET NO. \_\_\_\_\_**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 5th day of January, 2016 in accordance with 16 TAC § 22.74.



Joshua W. Walters

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 FPL ENERGY TEXAS</b>	<b>§</b>	
<b>KEIR, LLC'S VIOLATIONS OF PURA</b>	<b>§</b>	
<b>§ 39.151(j) AND 16 TAC § 25.503(f)(2),</b>	<b>§</b>	
<b>RELATED TO OVERSIGHT OF</b>	<b>§</b>	
<b>WHOLESALE MARKET</b>	<b>§</b>	
<b>PARTICIPANTS AND ERCOT</b>	<b>§</b>	
<b>PROTOCOLS § 6.4.6(1), RELATED TO</b>	<b>§</b>	
<b>TELEMETRY OF STATUS CODES</b>	<b>§</b>	
	<b>§</b>	<b>OF TEXAS</b>

**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Commission or PUC) and FPL Energy Texas Keir, LLC (Forney QSE) (collectively, the Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of Forney QSE for alleged violations of Section 39.151(j) of the Public Utility Regulatory Act<sup>1</sup> (PURA); 16 Tex. Admin. Code § 25.503(f)(2) (TAC), related to oversight of wholesale market participants; and Electric Reliability Council of Texas (ERCOT) Protocols § 6.4.6(1), related to telemetry of status codes.

**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. Forney QSE admits to the jurisdiction of the Commission over the Parties to this proceeding and the subject matter of this Agreement.

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

3. ERCOT Protocols provide that “QSEs shall provide ERCOT with accurate telemetry of the current capability of each Resource including the Resource Status, Ramp Rates, HSL, and LSL.”<sup>2</sup>
4. Forney QSE asserts that on July 13, 2015, the Real Time Operator for Forney QSE intended to set the FRNYPP\_CC2\_6 RST code to ONREG, but incorrectly selected ONRUC.
5. The Independent Market Monitor (IMM) and O&E determined that Forney QSE failed to accurately telemeter the current capability of the resource FRNYPP\_CC2\_6 on July 13, 2015 as required by ERCOT Protocols § 6.4.6(1).
6. ERCOT used this ONRUC status in two SCED intervals (14:00 and 14:05). The IMM calculated that this caused the real-time reliability adder created pursuant to NPRR 626 to be charged to the market with a total cost of approximately \$23,600.
7. As a result of the use of the ONRUC code, FRNYPP\_CC2\_6 was dispatched below its expected output resulting in a negative financial impact to La Frontera Generation, LLC, an affiliate of Forney QSE. The IMM estimates that La Frontera Generation, LLC suffered a loss of approximately \$2,600 due to the inaccurate telemetry.
8. Commission Staff recommends, and Forney QSE agrees to pay, an administrative penalty of Twenty-One Thousand Dollars (\$21,000) for full and final settlement of the alleged violations described in the attached Proposed Order and herein.
9. Forney QSE has taken corrective action to ensure that the reason for its failure in this instance will not happen in the future. The Forney QSE Real-Time Desk is no longer using the internal RST Scheduling Tool for inter-hour RST changes. The QSE now utilizes an automated program (SCADA-COP Processor) for inter-hour updates. At the top of each hour, the SCADA-COP Processor sets the resource’s RST code telemetry value (ICCP Point) to the RST code that is active in the resources’ Current Operating Plan (COP).

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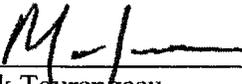
<sup>2</sup> ERCOT Protocols § 6.4.6(1).

10. This Agreement resolves all claims related to Forney QSE's obligations pursuant to PURA § 39.151(j) and 16 TAC § 25.503(f)(2), related to oversight of wholesale market participants, and ERCOT Protocols § 6.4.6(1), relating to telemetry of status codes, on July 13, 2015.
11. Unless specifically provided for in this Agreement, Forney QSE waives any notice and procedures that might otherwise be authorized or required in this proceeding.
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 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.
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 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.

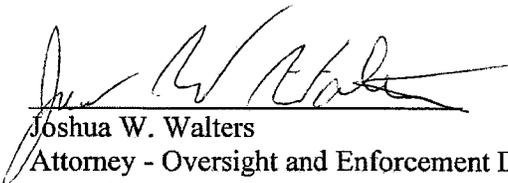
16. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.
17. Each person executing this Agreement represents that he or she has been authorized to sign on behalf 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. Forney QSE 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.



Mark Tourangeau  
Vice President, FPL Energy Texas Keir, LLC

Date: 1/4/16



Joshua W. 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

Date: 1/4/16

DOCKET NO. \_\_\_\_\_

<b>AGREED NOTICE OF VIOLATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
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<b>KEIR, LLC'S VIOLATIONS OF PURA</b>	<b>§</b>	
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<b>PARTICIPANTS AND ERCOT</b>	<b>§</b>	
<b>PROTOCOLS § 6.4.6(1), RELATED TO</b>	<b>§</b>	
<b>TELEMETRY OF STATUS CODES</b>	<b>§</b>	
	<b>§</b>	<b>OF TEXAS</b>

**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 FPL Energy Texas Keir, LLC (Forney QSE) (collectively, the Parties) regarding Commission Staff's investigation of Forney QSE for alleged violations of Section 39.151(j) of the Public Utility Regulatory Act<sup>1</sup> (PURA); 16 TAC § 25.503(f)(2), related to oversight of wholesale market participants; and Electric Reliability Council of Texas (ERCOT) Protocols § 6.4.6(1), related to telemetry of status codes. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of Twenty-One Thousand Dollars (\$21,000), which Forney QSE agreed to pay. The Agreement is approved.

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

**I. FINDINGS OF FACT**

1. Forney QSE is an authorized Qualified Scheduling Entity (QSE), as defined by ERCOT Protocols § 2.1 for the generation resource FRNYPP\_CC2\_6.

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

2. Forney QSE asserts that on July 13, 2015, the Real Time Operator for Forney QSE intended to set the FRNYPP\_CC2\_6 RST code to ONREG, but incorrectly selected ONRUC.
3. The Independent Market Monitor and the Oversight & Enforcement Division of the Commission determined that Forney QSE failed to accurately telemeter the current capability of the resource FRNYPP\_CC2\_6 on July 13, 2015.
4. ERCOT used this ONRUC status in two SCED intervals (14:00 and 14:05). The IMM calculated that this caused the real-time reliability adder created pursuant to NPRR 626 to be charged to the market with a total cost of approximately \$23,600.
5. As a result of the use of the ONRUC code, FRNYPP\_CC2\_6 was dispatched below its expected output resulting in a negative financial impact to La Frontera Generation, LLC, an affiliate of Forney QSE. The IMM estimated that La Frontera Generation, LLC suffered a loss of approximately \$2,600 due to the inaccurate telemetry.
6. On or about November 12, 2015, Forney QSE 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.
7. Forney QSE fully cooperated with Commission Staff's investigation.
8. Forney QSE understands the basis for the violations alleged by Commission Staff as detailed in this Order.
9. Forney QSE participated in one or more settlement discussions with Commission Staff to resolve this matter.
10. On January 4, 2016, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and Forney QSE agreed to pay, an administrative penalty of Twenty-One Thousand Dollars (\$21,000).
11. 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. Forney QSE 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 § 6.4.6(1), each QSE must provide ERCOT with accurate telemetry of the current capability of each Resource including the Resource Status, Ramp Rates, HSL, and LSL.
4. PURA § 39.151(j) requires compliance with all ERCOT scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures.
5. 16 TAC § 25.503(f)(2) requires market participants to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
6. 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.
7. The Agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(g).
8. 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. Forney QSE shall pay an administrative penalty to the Commission in the amount of Twenty-One Thousand Dollars (\$21,000). Forney QSE 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 may be made by check payable to the Public Utility Commission of Texas and shall reference this docket. If paid 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. Forney QSE 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 on the \_\_\_\_ day of \_\_\_\_\_, 2016.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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

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**BRANDY MARTY MARQUEZ, COMMISSIONER**