

Control Number: 46479



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DOCKET NO. **46479**

RECEIVED

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO CPS ENERGY'S §
VIOLATION OF PURA § 39.151(j), 16 §
TAC § 25.503, AND ERCOT §
OPERATING GUIDE § 2.2.7, §
RELATING TO GOVERNOR TESTING §
REQUIREMENTS §

PUBLIC UTILITY COMMISSION
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PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

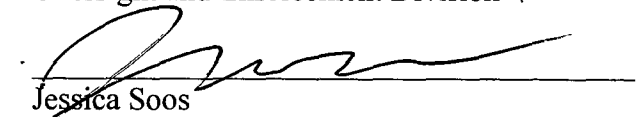
APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Commission Staff and CPS Energy, (CPS) 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 alleged violations of Section 39.151(j) of the Public Utility Regulatory Act¹ and 16 Tex. Admin. Code § 25.503(f)(2) (TAC), concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Operating Guide § 2.2.7, relating to Governor performance testing requirements.

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

Respectfully Submitted,
Robert M. Long
Division Director
Oversight and Enforcement Division

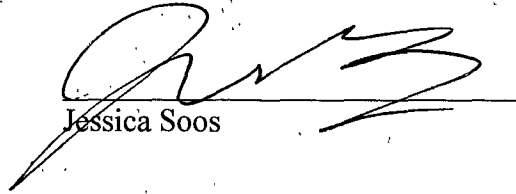


Jessica Soos
State Bar No. 24093183
Public Utility Commission of Texas
Oversight and Enforcement Division
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7132 T
(512) 936-7208 F

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA)

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 27th day of October, 2016 in accordance with 16 Tex. Admin. Code § 22.74.


Jessica Soos

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO CPS ENERGY'S	§	OF TEXAS
VIOLATION OF PURA § 39.151(j), 16	§	
TAC § 25.503, AND ERCOT	§	
OPERATING GUIDE § 2.2.7,	§	
RELATING TO GOVERNOR TESTING	§	
REQUIREMENTS	§	

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Commission Staff of the Public Utility Commission of Texas (Commission or PUC) and CPS Energy (CPS) (individually a Party and collectively, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of CPS for alleged violations of Section 39.151(j) of the Public Utility Regulatory Act¹ and 16 Tex. Admin. Code § 25.503(f)(2) (TAC), concerning failure to adhere to Electric Reliability Council of Texas, Inc. (ERCOT) Operating Guide § 2.2.7, relating to Governor performance testing requirements.

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. Pursuant to PURA § 39.151(j), CPS is required to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT or be subject to revocation, suspension, or amendment of a certificate, or the imposition of an administrative penalty.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA)

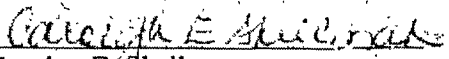
4. 16 TAC § 25.503(f)(2) requires CPS to comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.
5. ERCOT Operating Guide § 2.2.7 requires resources to conduct a Governor performance test “at least every two years.”
6. CPS is an authorized QSE, as defined by ERCOT Protocols § 2.1.
7. CPS is the authorized QSE for the generation resources BRAUNIG_VHB6CT5 and BRAUNIG_VHB6CT8 (the Units).
8. On November 14, 2012 CPS conducted Governor performance tests on BRAUNIG_VHB6CT5 and BRAUNIG_VHB6CT8 (the Units). The Units did not have a Governor performance test completed again until February 15 and 16, 2016.
9. Staff alleges that CPS violated ERCOT Operating Guide § 2.2.7, and in-turn PURA § 39.151(j) and 16 TAC § 25.503(f)(2).
10. Commission Staff recommends, and CPS agrees to pay, an administrative penalty of Thirty-Five Thousand Dollars (\$35,000) in full and final settlement of the alleged violations described in the attached Proposed Order.
11. This Agreement resolves this and all past claims related to CPS’s obligations pursuant to PURA § 39.151(j); 16 TAC § 25.503(f)(2), concerning failure to adhere to ERCOT Operating Guide § 2.2.7, related to Governor performance testing, for the Units.
12. Unless specifically provided for in this Agreement, CPS waives any notice and procedures that might otherwise be authorized or required in this proceeding.
13. 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.
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. 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
CPS Energy
Chief Legal & Administrative Officer
145 Navarro
Mail Drop #101012
San Antonio, TX 78205

Date: October 26, 2016


Jessica Soos
Attorney - Oversight and Enforcement
Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 10/26/16

DOCKET NO.

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO CPS ENERGY'S	§	OF TEXAS
VIOLATION OF PURA § 39.151(j), 16	§	
TAC § 25.503, AND ERCOT	§	
OPERATING GUIDE § 2.2.7,	§	
RELATING TO GOVERNOR TESTING	§	
REQUIREMENTS	§	

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 CPS Energy (CPS) (individually a Party and collectively, Parties) regarding Commission Staff's investigation of CPS for violation of PURA² § 39.151(j) and 16 TAC § 25.503(f)(2), concerning failure to adhere to Electric Reliability Council of Texas (ERCOT) Operating Guide § 2.2.7, related to Governor performance testing for BRAUNIG_VHB6CT5 and BRAUNIG_VHB6CT8 (the Units). The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of Thirty-Five Thousand Dollars (\$35,000), 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 is the authorized QSE for the generation resources BRAUNIG_VHB6CT5 and BRAUNIG_VHB6CT8.
3. On November 14, 2012 CPS conducted Governor performance tests on BRAUNIG_VHB6CT5 and BRAUNIG_VHB6CT8 (the Units). The Units did not have a Governor performance test completed again until February 15 and 16, 2016.

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA).

4. On or about June 21, 2016, CPS was provided notice of Commission Staff's investigation in this matter.
5. CPS fully cooperated with Commission Staff's investigation.
6. CPS understands the basis for the violations alleged by Commission Staff as detailed in this Order.
7. CPS participated in one or more settlement discussions with Commission Staff to resolve this matter.
8. On October 26, 2016, the Parties entered into the Agreement resolving the alleged violations. Commission Staff recommended, and CPS agreed to pay, an administrative penalty of Thirty-Five Thousand Dollars (\$35,000).
9. 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) and (j).
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. PURA § 39.151(j) requires market participants to comply with the 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.
4. 16 TAC § 25.503(f)(2) requires a market participant to comply with ERCOT Protocols and Guides and any official interpretation of the Protocols and Guides issued by ERCOT or the Commission.
5. ERCOT Operating Guide § 2.2.7 requires resources to conduct a Governor performance test "at least every two years."
6. Staff alleges that CPS violated ERCOT Operating Guide §2.2.7, and in turn PURA § 39.151(j) and 16 TAC § 25.503(f)(2).
7. The violations of PURA § 39.151(j) and 16 TAC 25.503(f)(2), alleged herein, are Class A violations pursuant to 16 TAC 25.8(b)(3)(B).

8. CPS was provided proper notice of Commission Staff's investigation into this matter, the results of Commission Staff's investigation, information about CPS's right to a hearing, and an opportunity to explain its activities.
9. 16 TAC § 22.246(g)(1) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
10. The Agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(g).
11. This docket was processed in accordance with applicable statutes and Commission rules.
12. 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. CPS shall pay an administrative penalty to the Commission in the amount Thirty-Five Thousand Dollars (\$35,000). 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 may be made by check payable to the Public Utility Commission of Texas and shall reference this docket. If 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. CPS shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. This Order disposes of all issues regarding CPS's failure to conduct Governor performance testing on the Units under PURA, the Commission's Substantive Rules and ERCOT Protocols through the date of this Agreement.
5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised or settled herein.

6. 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.
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 the _____ day of _____, 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER