

Control Number: 47277



Item Number: 1

Addendum StartPage: 0

DOCKET NO. **47277**

RECEIVED

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO SENATE WIND, §
LLC'S VIOLATION OF PURA § §
39.151(d); 16 TAC § 25.503(f)(2); AND §
ERCOT PROTOCOLS § 16.12.3, §
RELATING TO MARKET §
PARTICIPANT AUDITS OF USER §
SECURITY ADMINISTRATORS AND §
DIGITAL CERTIFICATES. §

2017 JUN 12 PM 2:01
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Staff of the Public Utility Commission of Texas (Commission) and Senate Wind, LLC (Senate) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of Senate for its violation of PURA¹ § 39.151(d), 16 Tex. Admin. Code § 25.503(f)(2) (TAC), and Electric Reliability Council of Texas (ERCOT) Protocols § 16.12.3, concerning market participant audits of user security administrators and digital certificates.

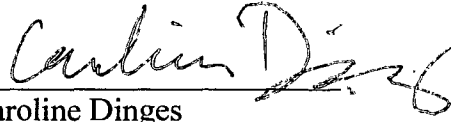
Staff respectfully requests that the Parties' Application for Approval of Settlement Agreement be granted.

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

DATE: June 12, 2017

Respectfully Submitted,

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



Caroline Dinges
Attorney-Oversight and Enforcement Division
State Bar No. 24101700
(512) 936-7065
(512) 936-7208 (facsimile)
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 12th day of June, 2017, in accordance with 16 TAC § 22.74.



Caroline Dinges

DOCKET NO. _____

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AND SETTLEMENT AGREEMENT	§	
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SECURITY ADMINISTRATORS AND	§	
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	§	

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Senate Wind, LLC (Senate) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of Senate for its violation of PURA¹ § 39.151(d), 16 Tex. Admin. Code § 25.503(f)(2) (TAC), and Electric Reliability Council of Texas (ERCOT) Protocols § 16.12.3, concerning market participant audits of user security administrators and digital certificates.

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. PURA § 39.151(d) authorizes the Commission to make and enforce rules related to the wholesale electricity market.
3. 16 TAC § 25.503(f)(2) states that “[a] market participant shall comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.”

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

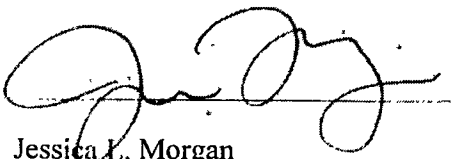
4. ERCOT Protocols § 16.12.3(1) states that “[d]uring September of each year, each Market Participant shall generate a list of its registered [User Security Administrator] and Certificate Holders. The Market Participant, through its User Security Administrator or another authorized third party, shall perform an audit by reviewing the list and noting any inconsistencies or instances of non-compliance (including, for example, any Certificate Holder that may have changed job functions and no longer requires the Digital Certificate).”
5. ERCOT Protocols § 16.12.3(2) states that each market participant is required to submit to ERCOT an attestation of compliance based on that audit (a Digital Certificate Audit Attestation or DCAA) by October 1 of each year. Attestations must be completed for each market participant type (e.g., counterparty, qualified scheduling entity, load serving entity, *etc.*).
6. Senate holds the following registration types and DUNS numbers: Resource Entity (DUNS number 8322475843000), Congestion Revenue Rights Account Holder (DUNS number 8322475000); and Counterparty (DUNS number 8322475849999). As such, Senate was required to file three DCAAs by October 1, 2015 and another three by October 1, 2016. Senate submitted its 2015 DCAAs for Resource Entity and Congestion Revenue Rights Account Holder, timely, on September 29, 2015. Senate submitted its 2015 DCAA for Counterparty on January 28, 2016, and as such, this filing was not timely made.
7. On August 31, 2015, ERCOT sent a Market Notice to all Market Participants informing them of the attestation requirements under the Protocols. On September 23, 2015, ERCOT sent a second reminder to all User Security Administrators regarding the attestation. ERCOT sent a third notice, in the form of individual emails, on or around January 22, 2016 to each Market Participant that failed to meet the attestation submission deadline and again requested the attestations be filed by February 15, 2016.
8. Upon notification of its inadvertent failure to submit an updated DCAA for Counterparty, Senate was in constant communication with its ERCOT Account Contact.
9. Senate failed to timely submit its calendar year 2015 DCAA filing for Counterparty and its calendar year 2016 DCAA filing for Congestion Revenue Rights Account Holder.

10. Previously, on December 5, 2014, Commission Staff issued a warning letter to Senate regarding a failure to submit DCAAs for calendar year 2013.
11. Commission Staff recommended, and Senate agrees to pay, an administrative penalty of five thousand dollars (\$5,000) for Senate's violations described in the attached Proposed Order.
12. In order to prevent future violations of this nature, Senate has developed and implemented a mitigation plan regarding the annual DCAA process. Additionally Senate has updated its procedures to include the yearly DCAA filing deadline as a regulatory requirement in its compliance system.
13. This Agreement resolves all claims related to Senate's obligations pursuant to PURA § 39.151(d), 16 TAC § 25.503(f)(2), and ERCOT Protocols § 16.12.3 regarding the untimely filing of Senate's calendar year 2015 DCAA for Counterparty and calendar year 2016 DCAA for Congestion Revenue Rights Account Holder.
14. Unless specifically provided for in this Agreement, Senate waives any notice and procedures that might otherwise be authorized or required in this proceeding.
15. 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.
16. 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.
17. 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.

18. This Agreement is the final and entire agreement between the Parties regarding the untimely filing of Senate's calendar year 2015 DCAA for Counterparty and calendar year 2016 DCAA for Congestion Revenue Rights Account Holder and supersedes all other communications among the Parties or their representatives regarding its terms.
19. 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.
20. The Company 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.



Jessica L. Morgan
Husch Blackwell LLP
111 Congress Avenue, Suite 1400
Austin, Texas 78701

Date: 6/9/2017



Caroline G. Dinges
Attorney, Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 6/9/2017

ATTACHMENT

DOCKET NO.

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO SENATE WIND,	§	OF TEXAS
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DIGITAL CERTIFICATES	§	
	§	

PROPOSED ORDER

Pursuant to 16 TAC § 22.246(g)(1)(C), this Order approves the settlement agreement and report to Commission between the Staff of the Public Utility Commission of Texas (Commission) and Senate Cooperative, Inc. (Senate) (together, Parties) regarding Commission Staff's investigation of Senate for its violation of PURA¹ § 39.151(d), 16 Tex. Admin. Code § 25.503(f)(2) (TAC), and Electric Reliability Council of Texas (ERCOT) Protocols § 16.12.3, concerning market participant audits of user security administrators and digital certificates. The agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of \$5,000. Senate agreed to pay the recommended administrative penalty. The Agreement is approved.

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

I. Findings of Fact

1. Senate is registered with ERCOT as Resource Entity as defined in ERCOT Protocols § 2.1.

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-58.303 (West 2016), §§ 59.00166.017 (West 2007 & Supp. 2016) (PURA).

2. Senate failed to timely submit its calendar year 2015 Digital Certificate Audit Attestations (DCAAs) for Counterparty (DUNS number 8322475849999) by October 1, 2015 and its calendar year 2016 DCAA for Congestion Revenue Rights Account Holder (DUNS number 8322475000) by October 1, 2016.
3. Previously, on December 5, 2014, Commission Staff issued a warning letter to Senate regarding a failure to submit DCAAs for calendar year 2013.
4. On or about March 22, 2017, Senate 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.
5. Senate fully cooperated with Commission Staff's investigation.
6. Senate acknowledges the violation detailed in this Order, but does not admit or deny any liability.
7. Senate participated in one or more settlement discussions with Commission Staff to resolve this matter.
8. On June 9, 2017, the Parties entered into the Agreement resolving the violations. Commission Staff recommended, and Senate agreed to pay, an administrative penalty of five thousand dollars (\$5,000).
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.
2. Senate 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(d) authorizes the Commission to make and enforce rules related to the wholesale electricity market.

4. 16 TAC § 25.503(f)(2) states that “[a] market participant shall comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the Commission.”
5. Senate is a market participant as defined in 16 TAC § 25.503(c)(6).
6. ERCOT Protocols § 16.12.3(1) states that “[d]uring September of each year, each Market Participant shall generate a list of its registered [User Security Administrator] and Certificate Holders. The Market Participant, through its User Security Administrator or another authorized third party, shall perform an audit by reviewing the list and noting any inconsistencies or instances of non-compliance (including, for example, any Certificate Holder that may have changed job functions and no longer requires the Digital Certificate).”
7. ERCOT Protocols § 16.12.3(2) states that each market participant is required to submit to ERCOT an attestation of compliance based on that audit (a Digital Certificate Audit Attestation or DCAA) by October 1 of each year. Attestations must be completed for each market participant type (e.g., counterparty, qualified scheduling entity, load serving entity, etc.).
8. Senate holds the following registration types and DUNS numbers: Resource Entity (DUNS number 8322475843000), Congestion Revenue Rights Account Holder (DUNS number 8322475000), and Counterparty (DUNS number 8322475849999). As such, Senate was required to file three DCAAs by October 1, 2015 and another three by October 1, 2016. Senate submitted its 2015 DCAAs for Resource Entity and Congestion Revenue Rights Account Holder, timely, on September 29, 2015. Senate submitted its 2015 DCAA for Counterparty on January 28, 2016, and as such, this filing was not timely made.
9. Senate did not comply with PURA § 39.151 and the requirements of 16 TAC § 25.503(f)(2) as well as ERCOT Protocols § 16.12.3 because it failed to timely submit its calendar year 2015 DCAA for Counterparty and calendar year 2016 for Congestion Revenue Rights Account Holder by the October 1 deadline.

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. Senate shall pay an administrative penalty to the Commission in the amount of \$5,000. Senate shall remit payment of the full amount of the administrative penalty on or before thirty 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. Senate shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. Senate shall timely file all future DCAAs.
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. Entry of this Order shall not 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 _____

PUBLIC UTILITY COMMISSION OF TEXAS

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARQUEZ, COMMISSIONER