

Control Number: 37634



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OPEN MEETING COVER SHEET

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MEETING DATE: January 14, 2010

DATE DELIVERED: January 13, 2010

AGENDA ITEM NO.: 16

CAPTION: Docket No. 37634 - Agreed Notice of Violation and Settlement Agreement Relating to Luminant Energy Company, LLC Violation of PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(j)(2), Relating to Failure to Adhere to ERCOT Protocol § 6.10.5.4(1) Concerning Load Acting as Resource Service Requirements.

ACTION REQUESTED: **Chairman Smitherman Memo**


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Public Utility Commission of Texas

Memorandum

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PUBLIC UTILITY COMMISSION
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TO: Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

FROM: Chairman Barry T. Smitherman 

DATE: January 13, 2010

RE: January 14, 2010 Open Meeting; Docket No. 37634 –*Agreed Notice of Violation and Settlement Agreement Relating to Luminant Energy Company, LLC Violation of PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(j)(2), Relating to Failure to Adhere to ERCOT Protocol § 6.10.5.4(1) Concerning Load Acting as Resource Service Requirements.*

The ability of QSEs to deploy LaaRs in a timely manner in response to a request from ERCOT is a very important step in ensuring the reliability of the grid in emergency situations. This requirement is also a contractual obligation by the QSEs. In this respect, I am sympathetic to Staff's argument that QSEs should be sufficiently penalized when the LaaR obligations are not met. However, I am not persuaded that the penalty should be assessed on a per MW basis. Rather, the appropriate penalty should be based on the single act of failing to meet the 95% response requirement within the 10 minute deadline.

The issue of whether a violation should be based on a per MW or MWh basis was addressed by two ALJs in a previous case, also involving Luminant, Docket No. 34061. In that docket, the ALJs ultimately concluded that the action which created the violation was the submission of each bid curve, not each MW of the bid.¹ (The Commission ultimately reversed Order No. 26, but not on the basis of the ALJ's discussion on this point. Luminant settled with the Commission by paying \$15,000,000.) While this analysis may not be appropriate for every situation, I find the current situation sufficiently analogous that the same reasoning should apply. In Docket No. 34061, the ALJs, looking at the appropriate statutes and rules, PURA §§ 15.023 and 39.157 and P.U.C SUBST. R. 25.505(g), determined that it was each separate action by Luminant that resulted in a violation. Each action was the submission of a bid curve, and not each MW of the bid. This analysis was supported by language P.U.C SUBST. R. 25.505(g) which specifically refers to an "act or practice," and looking at the specific act by Luminant of submitting a bid curve.

In the current case, the violation is based on PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), which contain no such language describing an "act or practice." Therefore, one

¹ Order No. 26 Ruling on Cross Motions for Summary Decision (July 22, 2008).

must look to the original administrative penalty provision, PURA § 15.023 for guidance. This section only refers to the “penalty for a violation,” and the only qualification on the number of violations is that “each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.”² A determination of what is a violation can be found in ERCOT Protocol 6.10.5.4, which includes compliance measures for LaaR deployment. A LaaR response must be not less than 95% of the RRS requested within 10 minutes of ERCOT’s Deployment Dispatch Instruction, and that LaaRs providing a RRS response shall return to their committed operating levels of RRS service as soon as practical. In order to be in compliance with the protocol, either the LaaR response meets the criteria, or it does not. This is the basis of the violation, not the number of MWs by which a QSE failed to meet its obligation.

I want to emphasize the importance that QSEs meet the LaaR deployment criteria. LaaR deployment is an important tool for ERCOT in addressing reliability situations, and, in the worst case situations, could help prevent load-shedding events. I would welcome rule or protocol revisions that would help the Commission and/or ERCOT impose appropriate penalties to address egregious and repeated LaaR deployment violations.

I look forward to discussing this matter at the open meeting.

² PURA § 15.023(b).