



Control Number: 50874



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50874

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	
AND SETTLEMENT AGREEMENT	§	
RELATING TO VIRIDITY ENERGY,	§	PUBLIC UTILITY COMMISSION
INC'S NONCOMPLIANCE WITH	§	
PURA § 39.151, 16 TAC §§ 25.503(f)(2),	§	OF TEXAS
AND 25.507(f), ERCOT PROTOCOLS	§	
§ 8.1.3.3.1 AND ERCOT PROTOCOLS	§	
§ 8.1.3.3.3	§	

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Commission Staff and Viridity Energy, Inc. (Viridity) (together, Parties) 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 Viridity for violation of PURA § 39.151 and 16 Tex. Admin. Code (TAC) §§ 25.503, related to oversight of wholesale market participants, and 25.507, related to Electric Reliability Council of Texas (ERCOT) emergency response service (ERS).

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

DATE: May 22, 2020

Respectfully Submitted,

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

**Taylor
Kilroy**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 22, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

**Taylor
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§ 8.1.3.3.3.	§	

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Viridity Energy, Inc. (Viridity) (collectively, the "Parties") enter into this settlement agreement and report to Commission (agreement). This agreement resolves and concludes Commission Staff's investigation of Viridity for violations of the Public Utility Regulatory Act (PURA)¹ § 39.151(d) and 16 Texas Administrative Code (TAC) §§ 25.503(f)(2) and 25.507(f) concerning failures to adhere to Electric Reliability Council of Texas (ERCOT) Protocols § 8.1.3.3.1, relating to Suspension of Qualification of Non-Weather-Sensitive Emergency Response Service Resources and/or their Qualified Scheduling Entities, and ERCOT Protocols § 8.1.3.3.3, relating to Performance Criteria for Qualified Scheduling Entities (QSEs) Representing Non-Weather Sensitive Emergency Response Service (ERS) Resources.

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. Viridity is a Qualified Scheduling Entity (QSE) and an Emergency Response Service (ERS) Resource must be represented by a QSE.
4. ERS 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. ERS is a demand response tool and can be used to decrease load, which provides a corresponding increase in system frequency.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

5. Viridity was contracted to provide ERS-30 during the June 1 to September 30, 2019 contract period.
6. Under ERCOT Protocols § 8.1.3.3.1, if a QSE submits an offer during the ERS contract period and ERCOT accepts that offer, the QSE must be ready to dispatch the ERS Resources in its portfolio for the applicable ERS service types. If dispatched by ERCOT, each ERS Resource in the QSE's ERS portfolio must deploy consistent with its obligations and must remain deployed until recalled by ERCOT.²
7. To assess a QSE's portfolio-level ERS event performance, ERCOT Protocols § 8.1.3.3.1(1) requires QSEs to achieve at least 0.95 event performance factors on the event performance requirements set forth in ERCOT Protocols § 8.1.3.3.3. If a QSE does not achieve 0.95 event performance factors on the designated ERCOT Protocols § 8.1.3.3.3 event performance requirements, the QSE is subject to suspension from participating in ERS as well as Commission-ordered administrative penalties.³
8. ERCOT Protocols § 8.1.3.3.3 in turn specifies two applicable ERS performance requirements. First, ERCOT will calculate a portfolio-level ERS Performance Factor (ERSPF) for each QSE for the contract period. ERCOT accomplishes this by first calculating a QSE's ERSPF for each ERS deployment event pursuant to the criteria set forth in ERCOT Protocols § 8.1.3.3.3(1)(b)(i). For an ERS contract period with multiple ERS deployments, ERCOT will then calculate the QSE's overall contract period ERSPF by averaging the QSE's ERSPFs for each ERS deployment during the contract period, weighted according to the duration of the events and capacity obligations by interval. The QSE must achieve a 0.95 ERSPF for the applicable ERS contract period.⁴
9. Second, ERCOT Protocols § 8.1.3.3.3(1)(d) requires a QSE to deploy the ERS Resources participating in its portfolio in accordance with their obligations within 30 minutes of ERCOT's issuance of a Verbal Dispatch Instruction (VDI) to deploy ERS-30. The performance of each QSE is determined by calculating a capacity-weighted QSE portfolio-level interval performance factor (EIPF) for the first full interval of the Sustained Response Period. If a QSE does not achieve a 0.95 EIPF for the first full interval of the Sustained

² 16 TAC § 25.507(d)(6).

³ ERCOT Protocols § 8.1.3.3.1(2)(b).

⁴ ERCOT Protocols §§ 8.1.3.3.1(2)(b) and 8.1.3.3.3(1)(b)(iii).

Response Period, the QSE is again subject to suspension from participating in ERS as well as Commission-ordered administrative penalties.⁵

10. If, following ERCOT's initial calculation a QSE's portfolio-level ERSPF or EIPF for the first full interval of the Sustained Response Period, the QSE in question fails to achieve the required 0.95 ERSPF or EIPF score, ERCOT will adjust a QSE's final ERSPF or EIPF for the first full interval of the Sustained Response Period.⁶ To do this, ERCOT will evaluate the initial ERSPF and EIPF for each ERS Resource in the QSE's portfolio. If ERS Resource achieves an ERSPF and an EIPF or the first full interval of the Sustained Response Period of less than 0.95, ERCOT will multiply the baseline for that ERS Resource by a reduction factor that results in the final ERSPF being equal to 0.75 times the square of its original ERSPF.⁷ ERCOT then uses this adjusted score to reduce the QSE's portfolio-level ERSPF and EIPF for the first full interval of the Sustained Response Period.
11. On August 15, 2019, ERCOT instructed Viridity to deploy ERS Resources as required by ERCOT via VDI in a manner consistent with ERCOT Protocols. Pursuant to the calculations set forth in ERCOT Protocols § 8.1.3.3.1(4)(a), ERCOT calculated a 0.714 final portfolio-level ERSPF for Viridity. In addition, ERCOT calculated a final 0.34637 EIPF for the first full interval of the Sustained Response Period for Viridity's ERS portfolio. As a result, Viridity did not comply with ERCOT Protocols §§ 8.1.3.3.1 and 8.1.3.3.3.
12. Viridity previously resolved three ERS violations with settlements. The Commission approved a \$40,000 penalty to resolve the most recent violation in Docket No. 46946.
13. Commission Staff recommends, and Viridity agrees to pay, an administrative penalty of \$45,000 for final settlement of the alleged violations described in the attached Proposed Order.
14. This agreement resolves all claims related to Commission Staff's investigation into Viridity's failure to meet its obligations during the July 1 to September 30, 2019 ERS contract period under PURA § 39.151(j) and 16 TAC §§ 25.503(f)(2) and 25.507(f) as well as ERCOT Protocols § 8.1.3.3.1, related to Emergency Response Service Performance. Unless specifically provided for in this agreement, Viridity waives any notice and

⁵ ERCOT Protocols § 8.1.3.3.1(2)(b).

⁶ ERCOT Protocols § 8.1.3.3.1(4)(a).

⁷ ERCOT Protocols § 8.1.3.3.1(4)(a)(iv).

procedures that might otherwise be authorized or required in this proceeding.

15. Except as otherwise provided, nothing in this agreement limits Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
16. This agreement represents the effort by Viridity and Commission Staff to avoid the future expenditure of significant resources in litigating this matter. 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 anything contained in this agreement, the Proposed Order, or any such disputed claims. Because this is a settlement agreement and not an admission of any nature, each party reserves the right 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 according to 16 TAC § 22.246(h). 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 parties also agree that, under such circumstance, neither this agreement nor the related negotiations/discussions will be considered as evidence or an admission or acknowledgement of any wrongdoing, non-compliance, failure to perform or violation of its' obligations. 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 must 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 its terms

relating to Viridity's violation of ERCOT Protocols relating to ERS performance and supersedes all other communications between 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. 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.

Shatzir

Date: May 21, 2020

Shimon Hatzir
General Manager Energy Storage and Solutions
Viridity Energy Solutions Inc.
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§ 8.1.3.3.3.	§	

PROPOSED ORDER

This Order addresses the agreement between Commission Staff and Viridity Energy, Inc. (Viridity) relating to Commission Staff's investigation of Viridity for violations of PURA¹ § 39.151(j), 16 Texas Administrative Code (TAC) §§ 25.503(f)(2) and 25.507(f), and Electric Reliability Council of Texas (ERCOT) Nodal Protocols § 8.1.3.3.3, relating to emergency response service (ERS) performance and testing. This agreement also serves as a report to the Commission under 16 TAC § 22.246(h). Commission Staff recommended an administrative penalty of \$45,000. Viridity agreed to pay the recommended administrative penalty. The Commission approves the agreed penalty to the extent provided in this Order.

I. Findings of Fact

Commission Staff and Viridity stipulated to the following findings of fact.

Respondent

1. Viridity is a Qualified Scheduling Entity (QSE) as defined in 16 TAC § 25.5(95).

Violation

2. ERS is a reliability tool used by ERCOT to ensure that the electrical grid within the ERCOT region is operating at the required system-wide frequency of 60 hertz.
3. ERS is a demand response tool and can be used to decrease load, which provides a corresponding increase in system frequency.
4. ERCOT procures ERS by selecting qualified loads and generators to make themselves available for deployment in an electric grid emergency. Customers meeting ERS criteria may offer to provide the service through their respective QSE.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

5. ERCOT procures ERS three times annually for four-month contract terms.
6. Viridity submitted an offer to provide ERS-30 during the ERS contract period for July 1 to September 30, 2019, which was accepted by ERCOT.
7. ERCOT deployed ERS-30 on August 15, 2019.
8. Under ERCOT Protocols § 8.1.3.3.1, if a QSE submits an offer during the ERS contract period and ERCOT accepts that offer, the QSE must be ready to dispatch the ERS Resources in its portfolio for the applicable ERS service types. If dispatched by ERCOT, each ERS Resource in the QSE's ERS portfolio must deploy consistent with its obligations and must remain deployed until recalled by ERCOT.
9. To assess a QSE's portfolio-level ERS event performance, ERCOT Protocols § 8.1.3.3.1(1) requires QSEs to achieve at least 0.95 event performance factors on the event performance requirements set forth in ERCOT Protocols § 8.1.3.3.3. If a QSE does not achieve 0.95 event performance factors on the designated ERCOT Protocols § 8.1.3.3.3 event performance requirements, the QSE is subject to suspension from participating in ERS as well as Commission-ordered administrative penalties.
10. ERCOT Protocols § 8.1.3.3.3 in turn specifies two applicable ERS performance requirements. First, ERCOT will calculate a portfolio-level ERS Performance Factor (ERSPF) for each QSE for the contract period. ERCOT accomplishes this by first calculating a QSE's ERSPF for each ERS deployment event pursuant to the criteria set forth in ERCOT Protocols § 8.1.3.3.3(1)(b)(i). For an ERS contract period with multiple ERS deployments, ERCOT will then calculate the QSE's overall contract period ERSPF by averaging the QSE's ERSPFs for each ERS deployment during the contract period, weighted according to the duration of the events and capacity obligations by interval. The QSE must achieve a 0.95 ERSPF for the applicable ERS contract period.
11. Second, ERCOT Protocols § 8.1.3.3.3(1)(d) requires a QSE to deploy the ERS Resources participating in its portfolio in accordance with their obligations within 30 minutes of ERCOT's issuance of a Verbal Dispatch Instruction (VDI) to deploy ERS-30. The performance of each QSE is determined by calculating a capacity-weighted QSE portfolio-level interval performance factor (EIPF) for the first full interval of the Sustained Response Period. If a QSE does not achieve a 0.95 EIPF for the first full interval of the Sustained Response Period, the QSE is again subject to suspension from participating in ERS as well

as Commission-ordered administrative penalties.

12. If, following ERCOT's initial calculation a QSE's portfolio-level ERS PF or EIPF for the first full interval of the Sustained Response Period, the QSE in question fails to achieve the required 0.95 ERS PF or EIPF score, ERCOT will adjust a QSE's final ERS PF or EIPF for the first full interval of the Sustained Response Period. To do this, ERCOT will evaluate the initial ERS PF and EIPF for each ERS Resource in the QSE's portfolio. If ERS Resource achieves an ERS PF and an EIPF for the first full interval of the Sustained Response Period of less than 0.95, ERCOT will multiply the baseline for that ERS Resource by a reduction factor that results in the final ERS PF being equal to 0.75 times the square of its original ERS PF. ERCOT then uses this adjusted score to reduce the QSE's portfolio-level ERS PF and EIPF for the first full interval of the Sustained Response Period.
13. On August 15, 2019, ERCOT instructed Viridity to deploy ERS Resources as required by ERCOT via VDI in a manner consistent with ERCOT Protocols. Pursuant to the calculations set forth in ERCOT Protocols § 8.1.3.3.1(4)(a), ERCOT calculated a 0.714 final portfolio-level ERS PF for Viridity. In addition, ERCOT calculated a final 0.34637 EIPF for the first full interval of the Sustained Response Period for Viridity's ERS portfolio. As a result, Viridity did not comply with ERCOT Protocols §§ 8.1.3.3.1 and 8.1.3.3.3.
14. Viridity failed to achieve the required performance factor level of 0.95 or greater for the August 15, 2019 ERS-30 deployment at both ERS PF and EIPF levels.
15. Prior to the current investigation, Viridity had three previous ERS availability failures addressed in two prior proceedings before the Commission. First, Viridity failed to meet ERS-30 availability requirements during the October 2014 – January 2015 ERS contract period. On April 25, 2016, the Commission issued a \$15,000 penalty in connection with this investigation.² Second, Viridity failed to meet ERS-30 availability requirements for both the October 2015 – January 2016 ERS contract period and then again for the February – May 2016 ERS contract period. On July 28, 2017, the Commission issued a \$40,000 penalty in connection with Viridity's two additional failures.³

² *Agreed Notice of Violation and Settlement Agreement Relating to Viridity Energy Inc.'s Noncompliance with PURA § 39.151, 16 TAC §§ 25.503(f)(2) and 25.507(f) and ERCOT Protocols § 8.1.3.3.1, related to Emergency Response Service Performance and Testing*, Docket 45714, Order (Apr. 25, 2016).

³ *Notice of Violation by Viridity Energy, Inc. of PURA § 29.151(d); 16 TAC § 25.503(f)(2); and ERCOT Nodal Protocols § 8.1.3.3.1 regarding Suspension of Qualification of Non-Weather Sensitive Emergency Response Service Resources and/or Their Qualified Scheduling Entities*, Docket 46946, Order (July 28, 2017).

16. To prevent future similar ERS violations, Viridity is reevaluating all existing ERS participants and thoroughly assessing the customer's capabilities and commitment to meet the ERS performance requirements. Some customers have been eliminated from future participation, while others have reduced their level of capacity commitment to better safeguard against future non-compliance. Moving forward, all future Viridity prospective customers considered for the ERS program will undergo the same thorough evaluation the Viridity is undertaking with our existing customers.

Notice

17. On or about March 25, 2020, Commission Staff provided Viridity proper notice of the investigation, the results of the investigation, information about Viridity's right to a hearing, and an opportunity to explain its activities.

Settlement Agreement

18. Viridity cooperated with Commission Staff's investigation.
19. Viridity acknowledges the bases for the violations alleged by Commission Staff as detailed in this Order.
20. Viridity participated in one or more settlement discussions with Commission Staff to resolve this matter.
21. On May 22, 2020, the parties entered into an agreement resolving the violations. Commission Staff recommended, and Viridity agreed to pay, an administrative penalty of \$45,000.
22. On May 22, 2020, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

Informal Disposition

23. At least 15 days have passed since the completion of notice provided in this docket.
24. No person filed a protest or motion to intervene.
25. Viridity and Commission Staff are the only parties to this proceeding.
26. No party requested a hearing, and no hearing is needed.
27. Commission Staff requested approval of the agreement.
28. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under PURA §§ 14.002, 14.051, 14.054, 15.023, 15.024, and 39.151.
2. Viridity is a QSE as defined in 16 TAC § 25.5(95) and ERCOT Nodal Protocols § 2.1.
3. Viridity is a market participant as defined in 16 TAC § 25.503(c)(6) and ERCOT Nodal Protocols § 2.1.
4. Under PURA § 15.023, the Commission has authority to impose administrative penalties for violations of PURA § 39.151, Commission rules, or both.
5. Under PURA § 39.151(d), the Commission is required to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the productivity and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules.
6. Under PURA § 39.151(j), Viridity 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 the revocation, suspension, or amendment of a certificate, or the imposition of an administrative penalty.
7. Under 16 TAC § 25.503(f)(2), Viridity is required to comply with ERCOT procedures and any official interpretation of the ERCOT nodal protocols issued by ERCOT or the Commission.
8. Under ERCOT Nodal Protocols § 8.1.3.3.1(1), a QSE shall be deemed to have met its ERS performance requirements for its contract term if its portfolio-level availability factor and event performance factors both equal or exceed 0.95; otherwise, the QSE shall be deemed to have failed to meet the requirement.
5. Viridity violated ERCOT Nodal Protocols § 8.1.3.3.1 by failing to achieve a final ERSPF of 0.95 during the ERS-30 deployment on August 15.
6. Viridity violated ERCOT Nodal Protocols § 8.1.3.3.1 by failing to achieve a final EIPF of 0.95 during the ERS-30 deployment on August 15.
7. Viridity violated PURA § 39.151(j) during the ERS-30 deployment on August 15 by failing to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by ERCOT.
8. Under 16 TAC § 25.507(f), a QSE representing ERS resources is subject to administrative

penalties for noncompliance, by the QSE or the ERS resources it represents, with 16 TAC § 25.507 (concerning procurement of ERS by ERCOT) or any related ERCOT protocols, operating guides, or other ERCOT standards.

9. Under 16 TAC § 25.507(f) and ERCOT Protocols § 8.1.3.3.1(2)(b), Viridity is subject to administrative penalties for noncompliance with ERCOT Nodal Protocols § 8.1.3.3.3.
9. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
10. The Commission processed this docket in accordance with applicable statutes and Commission rules.
11. The parties have met the requirements for informal disposition in 16 TAC § 22.35.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the agreement.
2. Viridity must comply with the terms of the agreement and this Order.
3. Viridity must pay an administrative penalty to the Commission in the amount of \$45,000. Viridity is required to remit payment of the full amount of the administrative penalty on or before 30 calendar days after the date the Commission signs this Order. Payment of the administrative penalty may be made by check payable to the Public Utility Commission of Texas. The check must reference this docket and must be sent to the following address:
Public Utility Commission of Texas
ATTN: Fiscal Services
P.O. Box 13326
Austin, Texas 78711
4. Viridity must file an affidavit of payment in this docket no later than five calendar days after remitting the payment.
5. This Order resolves only the claims identified in this Order related to Viridity's failure to provide non-weather sensitive ERS-30 during the August 15 deployment.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.

7. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

Signed at Austin, Texas the _____ day of _____, 2020

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER