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DOCKET NO. 56181

SETTLEMENT AGREEMENT AND	§	PUBLIC UTILITY COMMISSION
REPORT TO THE COMMISSION	§	
REGARDING BEARKAT WIND	§	OF TEXAS
ENERGY 1, LLC'S VIOLATIONS OF	§	
16 TAC § 25.55(c)(3)(A) AND (B),	§	
RELATED TO WEATHER	§	
PREPAREDNESS DECLARATION	§	
REQUIREMENTS IN CALENDAR	§	
YEARS 2022 AND 2023	§	

SETTLEMENT AGREEMENT AND REPORT TO THE COMMISSION

The Staff of the Public Utility Commission of Texas (Commission) and Bearkat Wind Energy 1, LLC (Bearkat) enter into the following settlement agreement, which resolves and concludes Commission Staff's investigation of Bearkat for violations of weather preparedness declaration requirements under 16 Texas Administrative Code (TAC) § 25.55(c)(3)(A) and (B) for calendar years 2022 and 2023. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h).

The parties agree as follows:

1. The parties stipulate to the facts set forth in this agreement and respectfully request entry of a Commission order consistent with the parties' attached agreed proposed order.¹
2. The Commission has jurisdiction over this matter under PURA² § 14.051, 14.054, 15.023, 15.024, and 35.0021.
3. Bearkat violated 16 TAC § 25.55(c)(3)(A) and (B) by failing to timely submit to ERCOT the required weather preparedness declarations for winter 2022 and summer 2023.
4. Commission Staff recommends, and Bearkat agrees to pay, an administrative penalty of \$12,500 for the violations detailed in this agreement.
5. Bearkat has made, and agrees to continue to make, efforts to ensure timely compliance with all applicable reporting requirements in the future.

¹ See Attachment A.

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (PURA).

6. This agreement resolves all matters related to Bearkat's violations of 16 TAC § 25.55(c)(3)(A) and (B) for winter 2022 and summer 2023.

Applicable Requirements

7. Under PURA § 35.0021, the Commission by rule shall require each municipally owned utility, electric cooperative, power generation company, or exempt wholesale generator that sells electric energy at wholesale in the Electric Reliability Council of Texas (ERCOT) power region to implement measures to prepare the provider of electric generation service's generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the Commission.
8. Under 16 TAC § 25.55(C)(3), a generation entity must annually submit to ERCOT declarations of weather preparedness for winter and summer weather. Generation entities are required to annually submit to ERCOT a declaration of winter weather preparedness no earlier than November 1 and no later than December 1 for the upcoming winter season.³ Generation entities are required to annually submit to ERCOT a declaration of summer weather preparedness no earlier than May 1 and no later than June 1 for the upcoming summer season.⁴

Bearkat

9. Bearkat is a Delaware limited liability company registered with the Texas secretary of state under filing number 802481860.
10. Bearkat is a "power generation company" as that term is defined in PURA § 31.002(10) and 16 TAC § 25.5(82).
11. Bearkat is a "generation entity" as that term is defined in 16 TAC § 25.55(b)(2).
12. Bearkat generates electricity to be sold at wholesale in the ERCOT region under power generation company registration number 20447.

³ 16 TAC § 25.55(c)(3)(A).

⁴ 16 TAC § 25.55(c)(3)(B).

Submission of Weather Preparedness Declarations**Calendar Year 2022 Winter Weather Preparedness Declaration**

13. Under 16 TAC § 25.55(c)(3)(A), for calendar year 2022, Bearkat was required to submit to ERCOT a winter weather preparedness declaration no earlier than November 1, 2022, and no later than December 1, 2022.
14. Bearkat did not submit to ERCOT its winter weather preparedness declaration for calendar year 2022 until December 21, 2022, which was 20 days late.

Calendar Year 2023 Summer Weather Preparedness Declaration

15. Under 16 TAC § 25.55(c)(3)(B), for calendar year 2023, Bearkat was required to submit to ERCOT a summer weather preparedness declaration no earlier than May 1, 2023, and no later than June 1, 2023.
16. Bearkat did not submit to ERCOT its summer weather preparedness declaration for calendar year 2023 until June 2, 2023, which was one day late.

Investigation and Corrective Action

17. On August 29, 2023, Commission Staff provided Bearkat with notice of and the results of its investigation, as well as information about Bearkat's right to a hearing and an opportunity to explain its activities, via certified mail, return receipt requested.
18. On September 5, 2023, Bearkat received Commission Staff's notice.
19. Bearkat asserts that its failure to timely submit to ERCOT its winter weather preparedness declaration for calendar year 2022 was due to a turnover in personnel with regulatory compliance responsibilities leading to the submission deadline being missed. Additionally, Bearkat asserts that its failure to timely submit to ERCOT its summer weather preparedness declaration for calendar year 2023 was caused by unforeseen technical issues with its DocuSign submission; namely, Bearkat was unable to timely access the correct DocuSign links due to its ERCOT Authorized Representative having multiple accounts under the same email address.
20. Bearkat has taken corrective action to prevent future violations of 16 TAC § 25.55(c)(3)(A) and (B) by instituting internal regulatory compliance policies that will identify key

deadlines and require appropriate personnel to ensure timely submission of weatherization reports to ERCOT. For example, both operating limitation and weather preparedness declaration submission deadlines have been added to Bearkat's internal obligations calendar, including additional background information on the submission requirements. This calendar is shared among multiple personnel to ensure adequate coverage. This will prevent Bearkat from missing this deadline again in the future, should regulatory compliance personnel change within the organization. Additionally, Bearkat has instituted an early submission policy, whereby it will make best efforts to submit these declarations at least two days prior to the deadline to avoid any last-minute technological issues.

Violations and Administrative Penalty

21. Bearkat violated 16 TAC § 25.55(c)(3)(A) by failing to submit its winter weather preparedness declaration for calendar year 2022 by December 1, 2023.
22. Bearkat continued to violate 16 TAC § 25.55(c)(3)(A) on each day from December 2, 2023, through December 21, 2023, by failing to submit its winter weather preparedness declaration for calendar year 2022.
23. Bearkat violated 16 TAC § 25.55(c)(3)(B) by failing to submit its summer weather preparedness declaration for calendar year 2023 by June 1, 2023.
24. Bearkat continued to violate 16 TAC § 25.55(c)(3)(B) until June 2, 2023, by failing to submit its summer weather preparedness declaration for calendar year 2023.
25. Under PURA § 15.023 and 16 TAC § 25.8(b), the Commission is authorized to impose an administrative penalty of up to \$25,000 per day for Class A violations, up to \$5,000 per day for Class B violations, and up to \$1,000 per day for Class C violations.
26. Under 16 TAC § 25.8(b)(3)(A), each separate violation of a Commission rule adopted under PURA § 35.0021 is a class A violation carrying an administrative penalty of up to \$1,000,000 per violation per day.
27. The violations described in this agreement are Class A violations under 16 TAC § 25.8(b)(3)(A).
28. Commission Staff recommends, and Bearkat agrees to pay, an administrative penalty of \$12,500 for the violations described in this settlement agreement.

29. The parties agree that the recommended administrative penalty of \$12,500 is reasonable.
30. Consistent with 16 TAC § 22.246(c)(3), and in support of the agreed administrative penalty, Commission Staff provides the following analysis of factors required for consideration when determining a reasonable and appropriate administrative penalty:
- a. ***The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public.*** Commission Staff recommends that the \$12,500 agreed administrative penalty appropriately reflects the nature of the violations described in this agreement. The annual reporting requirements under 16 TAC § 25.55(c)(3) are designed to ensure that the Commission and ERCOT have access to annually updated information about whether generation entities are prepared to withstand extreme winter and summer weather events. The information contained in the declarations, in turn, informs the Commission's efforts to oversee and regulate matters that impact public safety. Commission Staff notes that a failure to timely submit a weather preparedness declaration is not indicative of a failure to comply with any specific preparation requirement. Additionally, in this case, there is no evidence that Bearkat failed to comply with any applicable weather preparation requirement or otherwise created any physical or economic hazard to the public. However, because any failure to timely submit a weather preparedness declaration inherently interferes with the Commission's ability to oversee and regulate matters related to public safety, Commission Staff recommends that the \$12,500 agreed administrative penalty appropriately reflects the potential consequences of the violation.
 - b. ***The economic harm to property or the environment caused by the violation.*** Commission Staff is not aware of any harm to property or the environment caused by Bearkat's violations.
 - c. ***The history of previous violations.*** Commission staff's records do not indicate a history of similar violations involving Bearkat.

- d. *The amount necessary to deter future violations.* Commission Staff recommends that the agreed administrative penalty is an appropriate amount to deter future violations of this nature.
- e. *Efforts to correct the violation.* Commission Staff recommends that Bearkat's efforts to prevent reoccurrences of the violations, set forth above in paragraph 20, supports the agreed administrative penalty of \$12,500.
- f. *Any other matter that justice may require.* Commission Staff recommends that no other matters warrant consideration.


Settlement Terms

- 31. Bearkat agrees to make continuing efforts to ensure timely compliance with the reporting requirements set forth under 16 TAC § 25.55(c)(3).
- 32. Unless specifically provided for in this agreement, Bearkat waives any notice and procedures that might otherwise be authorized or required in this proceeding.
- 33. Nothing in this agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission rules.
- 34. 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 any such disputed claims. 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.
- 35. The parties contemplate that this agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). If, however, the Commission issues an order that 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 filing a written notice in the proceeding within seven calendar days of the date the Commission files the order acting on this agreement. Failure to file a notice of withdrawal within the specified time period constitutes acceptance of the material changes to this agreement made by the Commission.

36. This agreement is the final and entire agreement between the parties regarding Bearkat's violations of 16 TAC § 25.55(c)(3)(A) and (B) for calendar years 2022 and 2023, as described herein, and supersedes all other communications among the parties or their representative regarding its terms.
37. Each person executing this agreement represents that he or she has been authorized to sign on behalf of the party represented. Electronic signatures and 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.
38. Bearkat 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.

DocuSigned by:

D9FA00E0BA55440...
Sean Toland
Associate Partner
Bearkat Wind Energy 1, LLC
412 W 15th Street, Floor 15
New York, NY 10011

February 29, 2024 | 02:54:23 CET
Date: _____


Van Moreland
Attorney
Division of Compliance and Enforcement
Public Utility Commission of Texas

Date: 02/29/2024

**ATTACHMENT A:
AGREED PROPOSED ORDER**

DOCKET NO. 56181

**SETTLEMENT AGREEMENT AND
REPORT TO THE COMMISSION
REGARDING BEARKAT WIND
ENERGY 1, LLC'S VIOLATIONS OF
16 TAC §§ 25.55(c)(3)(A) AND (B),
RELATED TO WEATHER
PREPAREDNESS DECLARATION
REQUIREMENTS IN CALENDAR
YEARS 2022 AND 2023**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

PROPOSED ORDER

This Order addresses the agreement between Commission Staff and Bearkat Wind Energy 1, LLC relating to Commission Staff's investigation of Bearkat Wind Energy 1 for violations of Texas Administrative Code (TAC) §§ 25.55(c)(3)(A) and (B), related to weather preparedness declaration requirements for calendar years 2022 and 2023. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that Bearkat Wind Energy 1 pay to the Commission an administrative penalty of \$12,500. Bearkat Wind Energy 1 agrees to pay the administrative penalty recommended by Commission Staff. The Commission approves the administrative penalty to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Respondent

1. Bearkat Wind Energy 1 is a Delaware limited liability company registered with the Texas secretary of state under filing number 802481860.
2. Bearkat Wind Energy 1 is registered with the Commission under power generation company registration number 20447.
3. Bearkat Wind Energy 1 generates electricity to be sold at wholesale in the Electric Reliability Council of Texas (the ERCOT) region.

Violations of 16 TAC §§ 25.55(c)(3)(A) and (B)

4. Bearkat Wind Energy 1 was required to submit to ERCOT a winter weather preparedness declaration under 16 TAC § 25.55(c)(3)(A) for calendar year 2022 no earlier than November 1, 2022, and no later than December 1, 2022.
5. Bearkat Wind Energy 1 did not submit to ERCOT its winter weather preparedness declaration for calendar year 2022 until December 21, 2022, which was 20 days late.
6. Bearkat Wind Energy 1 was required to submit to ERCOT a summer weather preparedness declaration under 16 TAC § 25.55(c)(3)(B) for calendar year 2023 no earlier than May 1, 2023, and no later than June 1, 2023.
7. Bearkat Wind Energy 1 did not submit to ERCOT its summer weather preparedness declaration for calendar year 2023 until June 2, 2023, which was one day late.

Bearkat Wind Energy 1's Corrective Actions

8. Bearkat Wind Energy 1 asserts that its failure to timely submit to ERCOT its winter weather preparedness declaration for calendar year 2022 was due to a turnover in personnel with regulatory compliance responsibilities leading to the submission deadline being missed.
9. Bearkat Wind Energy 1 asserts that its failure to timely submit to ERCOT its summer weather preparedness declaration for calendar year 2023 was caused by unforeseen technical issues with the DocuSign submission; namely, Bearkat Wind Energy 1 was unable to timely access the correct DocuSign links due to its ERCOT Authorized Representative having multiple accounts under the same email address.
10. Bearkat Wind Energy 1 has instituted internal regulatory compliance policies that will identify key deadlines and require appropriate personnel to ensure timely submission of weatherization reports to ERCOT. For example, both operating limitation and weather preparedness declaration submission deadlines have been added to Bearkat Wind Energy 1's internal obligations calendar, including additional background information on the submission requirements. This calendar is shared among multiple personnel to ensure adequate coverage. This will prevent Bearkat Wind Energy 1 from missing this deadline

again in the future, should regulatory compliance personnel change within the organization. Additionally, Bearkat Wind Energy 1 has instituted an early submission policy, whereby it will make best efforts to submit these declarations at least two days prior to the deadline to avoid any last-minute technological issues.

Seriousness of Violations

11. Failure to timely submit weather preparedness declarations causes a hazard or potential hazard to the health and safety of the public by interfering with the Commission's and ERCOT's ability to obtain the information necessary to properly regulate and oversee public safety matters related to the preparedness and reliability of generation resources providing generation service within the ERCOT region.

Compliance History and Deterrence of Future Violations

12. Commission staff's records do not indicate a history of similar violations involving Bearkat Wind Energy 1.
13. The agreed administrative penalty of \$12,500 is sufficient and necessary to deter future recurrences of similar events related to the timely submission of required weather preparedness declarations.

Notice

14. On August 29, 2023, Commission Staff provided Bearkat Wind Energy 1 with notice of its investigation, the results of the investigation, information about Bearkat Wind Energy 1's right to a hearing, and an opportunity to explain its activities.

Agreement

15. Bearkat Wind Energy 1 cooperated with Commission Staff's investigation.
16. Bearkat Wind Energy 1 acknowledges the bases for the violations detailed in this Order.
17. On February 29, 2024, Commission Staff and Bearkat Wind Energy 1 entered into an agreement in which Commission Staff recommended, and Bearkat Wind Energy 1 agreed to pay, an administrative penalty of \$12,500 for the violations described in this Order.
18. On February 29, 2024, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

Evidence

19. In Order No. ___ filed on _____, 2024, the administrative law judge admitted the February 29, 2024 settlement agreement, including all attachments, as evidence into the record of this proceeding.

Informal Disposition

19. More than 15 days have passed since the completion of all notice requirements.
20. No person filed a protest or motion to intervene.
21. Bearkat Wind Energy 1 and Commission Staff are the only parties to this proceeding.
22. No party requested a hearing and no hearing is needed.
23. Commission Staff recommended approval of the settlement agreement.
24. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this matter under PURA¹ §§ 14.051, 14.054, 15.023, 15.024 and 35.0021.
2. Bearkat Wind Energy 1 is a power generation company as that term is defined in PURA § 31.002(10) and 16 TAC § 25.5(82).
3. Bearkat Wind Energy 1 is a generation entity as that term is defined in 16 TAC § 25.55(b)(2).
4. Bearkat Wind Energy 1 violated 16 TAC § 25.55(c)(3)(A) by failing to submit to ERCOT a declaration of winter weather preparedness for calendar year 2022 no earlier than November 1, 2022, and no later than December 1, 2022.
5. Bearkat Wind Energy 1 continued to violate 16 TAC § 25.55(c)(3)(A) by failing to submit to ERCOT a declaration of winter weather preparedness for calendar year 2022 on each day from December 2, 2022 through December 21, 2022.

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

6. Beginning December 2, 2022, each day that Bearkat Wind Energy 1 failed to submit to ERCOT a declaration of winter weather preparedness for calendar year 2022 constitutes a separate violation.
7. Bearkat Wind Energy 1 violated 16 TAC § 25.55(c)(3)(B) by failing to submit to ERCOT a declaration of summer weather preparedness for calendar year 2023 no earlier than May 1, 2023, and no later than June 1, 2023.
8. Bearkat Wind Energy 1 continued to violate 16 TAC § 25.55(c)(3)(B) by failing to submit to ERCOT a declaration of summer weather preparedness for calendar year 2023 until June 2, 2023.
9. Beginning June 2, 2023, each day that Bearkat Wind Energy 1 failed to submit to ERCOT a declaration of summer weather preparedness for calendar year 2023 constitutes a separate violation.
10. Under PURA § 15.023, the Commission has authority to impose administrative penalties against Bearkat Wind Energy 1 for violations of PURA or Commission rules adopted under PURA.
11. Commission rules 16 TAC §§ 25.55(c)(3)(A) and (B) were adopted under PURA § 35.0021.
12. Under 16 TAC § 25.8(b)(3)(A), each separate violation of a Commission rule adopted under PURA § 35.0021 is a Class A violation carrying an administrative penalty of up to \$1,000,000 per violation per day.
13. Bearkat Wind Energy 1's violations of 16 TAC § 25.55(c)(3)(A) and (B) were Class A violations carrying an administrative penalty of up to \$1,000,000 per violation per day.
14. Bearkat Wind Energy 1 was provided proper notice of Commission Staff's investigation into this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities, as required under 16 TAC §§ 22.241(a)(2) and 22.246(f)(2).
15. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).

16. The Commission processed this docket in accordance with applicable statutes and Commission rules.
17. The requirements for informal disposition in 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 orders:

1. The Commission approves the agreed administrative penalty to the extent provided in this Order.
2. Bearkat Wind Energy 1 must comply with the terms of the settlement agreement and this Order.
3. Bearkat Wind Energy 1 must pay an administrative penalty to the Commission in the amount of \$12,500. Bearkat Wind Energy 1 must 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. Bearkat Wind Energy 1 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 violations identified in this Order.
6. The Commission is not constrained in any manner from requiring additional action or penalties from matters that are not resolved by this Order.
7. 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.

8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER