

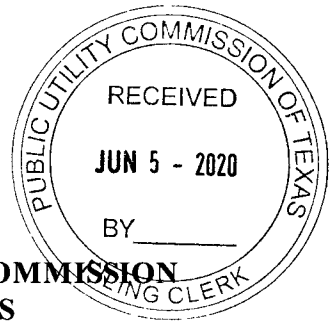


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DOCKET NO. 49673

**COMPLAINT OF ASPIRE
COMMODITIES, LLC AGAINST THE
ELECTRIC RELIABILITY COUNCIL
OF TEXAS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.'S AND
STAFF OF THE PUBLIC UTILITY COMMISSION OF TEXAS'S
JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and Staff of the Public Utility Commission of Texas (PUCT) and jointly file these Proposed Findings of Fact and Conclusions of Law pursuant to *Order No. 9 Soliciting Proposed Findings of Fact and Conclusions of Law*, issued on May 11, 2020.

I. FINDINGS OF FACT

A. Procedural History

1. On June 25, 2019, Aspire Commodities, LLC (Aspire) filed this Complaint against ERCOT with the PUCT.
2. On June 27, 2019, *Order No. 1 Establishing Procedural Schedule* was entered requiring ERCOT to file a Response. ERCOT filed a Motion to Dismiss and Response on July 24, 2019. On August 2, 2019, Aspire filed its Reply and Response to the Motion to Dismiss. On August 9, 2019, ERCOT filed a Motion for Leave to file a Reply to the Response to the Motion to Dismiss and the Reply. PUCT Staff filed Comments on August 23, 2019, to which Aspire replied on September 3, 2019.
3. As required by *Order No. 1 Establishing Procedural Schedule*, ERCOT sent notice of Aspire's Complaint to all Qualified Scheduling Entities (QSEs), the Technical Advisory Committee (TAC) and Wholesale Market Working Group (WMWG) on July 3, 2019.

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4. 3S Real Estate Investments, LLC, V247 Power Corporation, and Aspire Power Ventures filed Motions to Intervene. All three motions were denied by *Order No. 4 Denying Motions to Intervene* on September 19, 2019, due to the Motions being untimely filed. No other entities filed Motions to Intervene.
5. On December 5, 2019, *Order No. 6 Denying Motion to Dismiss and Addressing Other Procedural Matters* issued and denied ERCOT's Motion to Dismiss. Thereafter, the parties submitted proposed procedural schedules requesting disposition of this matter through the filing of Motions for Summary Decision.
6. Aspire filed a Motion for Summary Decision on February 18, 2019, which requested that it be granted the relief sought in its Complaint, and requested a hearing on its motion.
7. On February 20, 2020, *Order No. 8 Establishing Procedural Schedule* issued and set deadlines for filing Motions for Summary Decision by any other party and response deadlines.
8. ERCOT filed a Motion for Summary Decision on March 5, 2020, requesting that Aspire's request for relief be denied in its entirety. Aspire and ERCOT filed Responses to the other party's Motion for Summary Decision on March 27, 2020. PUCT Staff filed a Response to Aspire's Motion for Summary Decision on March 27, 2020, and to ERCOT's Motion for Summary Decision on April 3, 2020. PUCT staff asserted that Aspire's request for relief should be denied.
9. On May 11, 2020, *Order No. 9 Soliciting Proposed Findings of Fact and Conclusions of Law* issued and requested the parties file proposed Findings of Fact and Conclusions of Law on or before June 5, 2020.

B. Background

10. The event that forms the basis for Aspire's Complaint occurred during the 14:50 Security-Constrained Economic Dispatch (SCED) interval on Operating Day (OD) May 30, 2019. At approximately 14:49 on that day, Calpine Power Management LLC (Calpine), a QSE registered with ERCOT, sent incorrect telemetry to ERCOT for a fleet of Resources, which was captured in the 14:50 SCED run. Calpine telemetered a zero MW value to ERCOT for the High Sustainability Limit (HSL) and Low Sustainability Limit (LSL) of these Resources for the 14:50 SCED run.
11. Per ERCOT Protocol Section 6.5.7.2, ERCOT's Resource Limit Calculator automatically determined a new High Dispatch Limit (HDL) for the Calpine Resources based on this changed telemetry. This resulted in the total HDL for the Calpine Resource fleet decreasing from 6,388 MW to 5,125 MW. Consequently, for the 14:50 SCED interval, the calculated total instantaneous capacity available for dispatch was approximately 220 MW less than the total instantaneous demand. Per ERCOT's Other Binding Document (OBD), Methodology for Setting Maximum Shadow Prices for Network and Power Balance Constraints, this constituted a violation of the Power Balance Penalty Curve and caused ERCOT System Lambda to reach \$9,001.00/MWh.
12. ERCOT acted in conformance with the ERCOT Protocols when SCED utilized Calpine's telemetered data for the 14:50 SCED run. Although ERCOT's systems are designed to automatically disregard certain telemetered data that is outside of acceptable ranges, the data telemetered by Calpine on May 30, 2019, was within the range of values deemed presumptively valid by ERCOT's systems.
13. SCED runs automatically every five minutes; however, the ERCOT Real-Time Operating Procedure Manual gives ERCOT operators discretion to run SCED manually in certain

circumstances. At 14:52 on the OD at issue, ERCOT operators executed a manual SCED run and captured updated Calpine telemetry. Based on this updated telemetry, the Resource Limit Calculator determined a new total HDL for Calpine's Resource fleet of 6,433 MW; this resulted in a decrease of the System Lambda to \$38.04/MWh.

14. Within an hour of the telemetry error, ERCOT investigated and determined that SCED properly executed the 14:50 interval. Further, ERCOT determined that a price correction was not appropriate, because ERCOT has interpreted the ERCOT Protocols as not granting ERCOT the authority to correct prices when a market solution is attributable to an external data error caused by a Market Participant—in this case, inaccurate telemetry submitted by Calpine. Accordingly, ERCOT issued a public notice at 15:44 on May 30, 2019, stating that it would not be performing a price correction for the 14:50 SCED interval.
15. For the 14:50 SCED interval on OD May 30, 2019, there was no failure of the SCED process, no identified internal data errors caused by ERCOT, and no failure of ERCOT's hardware or software.
16. Aspire asserts in its Complaint that ERCOT's decision to not correct prices was contrary to the ERCOT Protocols. Aspire alleges that: 1) due to the price spike on May 30, 2019, Aspire "lost money on ERCOT futures contracts [Aspire] had transacted on the Intercontinental Exchange [ICE]"; 2) ERCOT's decision to not correct prices "capriciously resulted in a massive increase in the cost of electricity" on OD May 30, 2019; 3) prices on May 30, 2019, for the 14:50 SCED interval were invalid because they were impacted by a "data error," as that term is used in ERCOT Protocol Section 6.3(4); 4) ERCOT should have corrected prices for OD May 30, 2019, because the data error led to an "invalid market solution"; and 5) ERCOT's failure to correct prices for OD May 30, 2019, was contrary to and in violation of ERCOT Protocol Section 6.3.

17. Aspire requests that “ERCOT be ordered to re-price the published settlement prices” for the 14:50 SCED interval on May 30, 2019.

C. Relevant ERCOT Protocols

18. ERCOT Protocol Section 6.3(4), provides as follows:

ERCOT shall correct prices when: (i) a market solution is determined to be invalid, (ii) invalid prices are identified in an otherwise valid market solution, (iii) the Base Points received by Market Participants are inconsistent with the Base Points of a valid market solution, unless accurate prices cannot be determined, or (iv) the Security-Constrained Economic Dispatch (SCED) process experiences a failure as described in Section 6.5.9.2, Failure of the SCED Process. The following are some reasons that may cause these conditions.

- (a) Data Input error: Missing, incomplete, stale, or incorrect versions of one or more data elements input to the market applications may result in an invalid market solution and/or prices.
- (b) Data Output error: These include: (i) incorrect or incomplete data transfer, (ii) price recalculation error in post-processing, and (iii) Base Points inconsistent with prices due to the Emergency Base Point flag remaining activated even when the SCED solution is valid.
- (c) Hardware/Software error: These include unpredicted hardware or software failures, planned market system or database outages, planned application or database upgrades, software implementation errors, and failure of the market run to complete.
- (d) Inconsistency with the Protocols or Public Utility Commission of Texas (PUCT) Substantive Rules: Pricing errors may occur when specific circumstances result in prices that are in conflict with such Protocol language or the PUCT Substantive Rules.

19. ERCOT Protocol Section 6.3(5), provides as follows:

If it is determined that any Real-Time Settlement Point Prices, Settlement Point LMPs, Electrical Bus LMPs, Real-Time prices for energy metered, Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reliability Deployment Prices, Real-Time On-Line Reserve Price Adders, Real-Time Off-Line Reserve Price Adders, Real-Time Reserve Prices for On-Line Reserves, Real-Time Reserve Prices for Off-Line Reserves, and/or constraint Shadow Prices are erroneous, ERCOT shall correct the prices before the prices are considered final in [ERCOT Protocol Section 6.3(6)]. Specifically:

- (a) If it is determined that correcting the Real-Time Settlement Point Prices will not affect the Base Points that were received by Qualified Scheduling Entities (QSEs), then ERCOT shall correct the prices before the prices are considered final in paragraph (6) below.
- (b) If it is determined that correcting the Real-Time Settlement Point Prices will affect the Base Points that were received by QSEs, then ERCOT shall correct the prices before the prices are considered final and settle the SCED executions as failed in accordance with Section 6.5.9.2.
- (c) If the Base Points received by QSEs are inconsistent with the Real-Time Settlement Point Prices reduced by the sum of the Real-Time On-Line Reliability Deployment Prices and the Real-Time Reserve Prices for On-Line Reserves averaged over the 15-minute Settlement Interval, then ERCOT shall consider those Base Points as due to manual override from the ERCOT Operator and settle the relevant Settlement Interval(s) in accordance with Section 6.6.9, Emergency Operations Settlement.

20. ERCOT Protocol Section 6.3(6), provides as follows:

All Real-Time LMPs, Real-Time Settlement Point Prices, Real-Time prices for energy metered, Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reliability Deployment Prices, Real-Time Reserve Prices for On-Line Reserves, Real-Time Reserve Prices for Off-Line Reserves, Real-Time On-Line Reserve Price Adders, Real-Time Off-Line Reserve Price Adders and SASM MCPCs are final at 1600 of the second Business Day after the Operating Day.

- (a) However, after Real-Time LMPs, Real Time Settlement Point Prices, Real-Time prices for energy metered, Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reliability Deployment Prices, Real-Time Reserve Prices for On-Line Reserves, Real-Time Reserve Prices for Off-Line Reserves, Real-Time On-Line Reserve Price Adders, Real-Time Off-Line Reserve Price Adders and SASM MCPCs are final, if ERCOT determines that prices are in need of correction and seeks ERCOT Board review of such prices, it shall notify Market Participants and describe the need for such correction as soon as practicable but no later than 30 days after the Operating Day. Failure to notify Market Participants within this timeline precludes the ERCOT Board from reviewing such prices. However, nothing in this section shall be understood to limit or otherwise inhibit any of the following:
 - (i) ERCOT's duty to inform the PUCT of potential or actual violations of the ERCOT Protocols or PUCT Rules and its right to request that the PUCT authorize correction of any

prices that may have been affected by such potential or actual violations;

- (ii) The PUCT's authority to order price corrections when permitted to do so under other law; or
 - (iii) ERCOT's authority to grant relief to a Market Participant pursuant to the timelines specified in Section 20, Alternative Dispute Resolution Procedure.
- (b) The ERCOT Board may review and change Real-Time LMPs, Real-Time Settlement Point Prices, Real-Time prices for energy metered, Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reliability Deployment Prices, Real-Time Reserve Prices for On-Line Reserves, Real-Time Reserve Prices for Off-Line Reserves, Real-Time On-Line Reserve Price Adders, Real-Time Off-Line Reserve Price Adders and SASM MCPCs if ERCOT gave timely notice to Market Participants and the ERCOT Board finds that such prices are significantly affected by an error.
- (c) In review of Real-Time LMPs, Real Time Settlement Point Prices, Real-Time prices for energy metered, Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reliability Deployment Prices, Real-Time Reserve Prices for On-Line Reserves, Real-Time Reserve Prices for Off-Line Reserves, Real-Time On-Line Reserve Price Adders, Real-Time Off-Line Reserve Price Adders and SASM MCPCs, the ERCOT Board may rely on the same reasons identified in paragraph (4) above to find that the prices are significantly affected by an error.

D. ERCOT's Implementation of Price Correction Protocol Language

21. If ERCOT determines that a condition set out in Protocol Section 6.3(4) has occurred and requires a price correction, ERCOT Protocol Section 6.3(5) requires that ERCOT correct prices by 16:00 on the second Business Day after the impacted OD. If ERCOT fails to correct prices within that time, but believes that a condition set out in Protocol Section 6.3(4) has occurred and requires a price correction, then ERCOT Protocol Section 6.3(6) requires that ERCOT issue a Market Notice within 30 days of the impacted OD stating that it will seek ERCOT Board of Directors (Board) approval to correct prices. If ERCOT fails to issue a Market Notice within in this time period, the Board is precluded from reviewing

and changing prices. In this case, ERCOT did not issue any such Market Notice because it did not find that that a condition set out in Protocol Section 6.3(4) had occurred that required a price correction.

22. ERCOT Protocol Section 6.3(4) does not include any language that authorizes ERCOT to consider the significance of an error's impact on prices when determining whether the error qualifies as a condition requiring a price correction. ERCOT is also not authorized to consider the significance of an error's impact on prices when performing a price correction under ERCOT Protocol Section 6.3(5). The ERCOT Board, pursuant ERCOT Protocol Section 6.3(6), may consider whether "prices are significantly affected by an error" when deciding whether to vote to authorize a price correction; however, ERCOT Protocol Section 6.3(6), is not applicable to this matter.
23. Aspire argues that ERCOT was required to correct prices for the 14:50 SCED interval on May 30, 2019, per ERCOT Protocol Section 6.3(4), because the incorrect Calpine telemetry constituted a "data input error" that resulted in an "invalid" "market solution," and was therefore a condition requiring a price correction.
24. ERCOT, however, has interpreted the phrase "data input error" in ERCOT Protocol Section 6.3(4) to refer to internal data input errors caused by ERCOT, and to not refer to external telemetry errors cause by Market Participants, such as the Calpine telemetry error at issue in this matter. Accordingly, ERCOT determined that the Calpine telemetry error was not a qualifying reason for conducting a price correction under ERCOT Protocol Section 6.3(4).
25. ERCOT has never conducted a price correction pursuant to ERCOT Protocol Section 6.3(4) when prices were impacted by incorrect telemetry sent to ERCOT by a QSE. Further, ERCOT has no record of ever granting relief through the Alternative Dispute Resolution

(ADR) process when an entity complained that prices were erroneous due to the impact of an external telemetry error.

26. Since the filing of Aspire's Complaint on June 25, 2019, ERCOT has discussed the May 30, 2019, pricing event at multiple ERCOT stakeholder meetings. No ERCOT Market Participant filed an ADR to dispute ERCOT's decision to not correct prices on May 30, 2019. Further, since May 30, 2019, no ERCOT Market Participant has proposed a Protocol revision to require ERCOT to correct prices when prices are impacted by external telemetry errors.

E. Relevant PUCT Rules

27. Pursuant to 16 TAC § 22.251(b), "any affected entity may complain to the commission in writing, setting forth any conduct that is in violation or claimed violation of any law that the commission has jurisdiction to administer, of any order or rule of the commission, or of any protocol or procedure adopted by ERCOT pursuant to any law that the commission has jurisdiction to administer."
28. Pursuant to 16 TAC § 22.251(o), if the PUCT finds merit in a complaint filed against ERCOT under 16 TAC § 22.251, the PUCT may grant the relief it deems appropriate.
29. Pursuant to 16 Texas Administrative Code (TAC) § 22.182(a), the presiding officer may grant a Motion for Summary Decision "on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion."

F. Aspire's Asserted Injury

30. Aspire is not registered with ERCOT as a Market Participant and admits that it suffered no injury within the ERCOT market due to the price event on May 30, 2019. Rather, Aspire argues that it participates in the Intercontinental Exchange (ICE), and lost money in ICE due to the price spike that occurred during the 14:50 SCED interval on May 30, 2019.
31. Aspire has not shown that ordering ERCOT to now correct prices for May 30, 2019, would redress any financial injury Aspire claims to have suffered in ICE due to the May 30, 2019, pricing event. There is no evidence that ordering a price correction for May 30, 2019, would result in ICE correcting prices in a manner that would impact any positions Aspire may have held in the ICE market on May 30, 2019.

II. CONCLUSIONS OF LAW

1. Aspire's Complaint is appropriate for disposition by a Motion for Summary Decision because there is no dispute regarding facts material to the resolution of the Motion and this dispute involves the interpretation of an ERCOT Protocol, which is a purely legal question.
2. The PUCT has jurisdiction over this proceeding as the ERCOT Protocols are subject to PUCT oversight and review.¹
3. The PUCT's interpretation of an ERCOT Protocol is entitled to deference unless it is "plainly erroneous or inconsistent with the text of the protocols."²
4. The language of ERCOT Protocol Section 6.3(4) is ambiguous to the extent it does not clearly mandate, nor clearly prohibit, a price correction when applied to the facts in this matter. To the extent Aspire asserts that the Calpine telemetry error resulted in an "invalid

¹ PURA § 39.151(d).

² *Pub. Util. Com'n v. Constellation Energy Commodities Group, Inc.*, 351 S.W.3d 588, 595 (Tex. App.—Austin 2011, pet. denied).

market solution” or “invalid prices,” as those terms are used in ERCOT Protocol Section 6.3(4), those terms are not defined in the Protocols and are reasonably susceptible to more than one understanding, as applied to the facts relevant to this dispute.³

5. ERCOT Protocol Section 6.3(4) provides that a “data input error” “**may**” be a reason that causes an “invalid” market solution or “invalid prices” to occur and require a price correction. This use of the word “may” signifies that not every possible “data input error” must be deemed by ERCOT to be a cause for an “invalid” market solution or “invalid prices.” Rather, the use of the word “may” in ERCOT Protocol Section 6.3(4) can be reasonably interpreted to mean that ERCOT has discretion under ERCOT Protocol Section 6.3(4) to determine whether a particular type of data input error qualifies as an error that causes an “invalid” market solution or “invalid prices” to occur and require a price correction.⁴
6. ERCOT validly exercised its discretion under ERCOT Protocol Section 6.3(4) by interpreting ERCOT Protocol Section 6.3(4) as applying to internal data input errors caused by ERCOT, but not to external telemetry errors caused by ERCOT Market Participants.
7. ERCOT’s interpretation is consistent with other language in the ERCOT Protocols. ERCOT Protocol Section 6.5.7.1.13(1)(c)(ii) provides that HSL and LSL data telemetered from QSEs “must be provided as inputs to...SCED.” Accordingly, ERCOT’s use of Calpine’s telemetered data in SCED on May 30, 2019, complied with the Protocols, even if Calpine’s telemetered data was not correct. Adopting Aspire’s asserted construction of the price correction language in ERCOT Protocol Section 6.3(4) would require ERCOT to

³ See *Baird v. State*, 398 S.W.3d 220, 229 (Tex. Crim. App. 2013) (“statute is ambiguous when the language it employs is reasonably susceptible to more than one understanding”).

⁴ See TEX. GOV’T CODE § 311.016(1) (use of “may” in a statute “creates discretionary authority or grants permission or a power”); *Haig v. Agee*, 453 U.S. 280, 294 n. 26 (1981) (use of word “may” in statute “expressly recognizes substantial discretion”).

disregard the telemetered data Calpine sent to ERCOT, which would be contrary to the ERCOT Protocols.

8. ERCOT's interpretation of ERCOT Protocol Section 6.3(4) as not requiring a price correction when there is an external telemetry error is also reasonable because this interpretation reduces the number of instances in which an after-the-fact price correction might occur, which in turn helps improve pricing certainty.
9. The fact that no ERCOT Market Participant filed an ADR dispute to challenge ERCOT's decision to not correct prices on May 30, 2019, is further evidence supporting a finding that ERCOT's interpretation of ERCOT Protocol Section 6.3(4) is reasonable.
10. The fact that no ERCOT Market Participant has proposed revising the ERCOT Protocols to expressly require that ERCOT correct prices impacted by external telemetry errors also is evidence supporting a determination that ERCOT's interpretation of ERCOT Protocol Section 6.3(4) is reasonable.
11. The PUCT may adopt ERCOT's reasonable interpretation of a Protocol so long as the interpretation is not "plainly erroneous or inconsistent with the text of the protocols."⁵
12. Because ERCOT's interpretation of ERCOT Protocol Section 6.3, as applied to the facts relevant to this dispute, is reasonable and not inconsistent with the text of the ERCOT Protocols, the PUCT adopts that interpretation and finds that ERCOT did not act contrary to ERCOT Protocol Section 6.3 when it determined that it was not authorized to correct prices impacted by the Calpine telemetry error on OD May 30, 2019.

⁵ *Constellation Energy Commodities Group, Inc.*, 351 S.W.3d at 595.

13. Aspire has failed to demonstrate that ERCOT has violated the ERCOT Protocols or any other law; accordingly, Aspire's Motion for Summary Decision and request for relief is DENIED.
14. ERCOT's Motion for Summary Decision is GRANTED and Aspire's Complaint against ERCOT is DISMISSED.

Respectfully submitted,

/s/ Erika Kane

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on all parties of record to this proceeding on June 5, 2020, by email, in accordance with Order Suspending Rules issued on March 16, 2020 in Project No. 50664.

/s/ Erika Kane