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DOCKET NO. 24770

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REPORT OF THE ELECTRIC	§	BEFORE THE
RELIABILITY COUNCIL OF TEXAS	§	
(ERCOT) TO THE PUCT	§	PUBLIC UTILITY COMMISSION
REGARDING IMPLEMENTATION	§	
OF THE ERCOT PROTOCOLS	§	OF TEXAS

**FINAL COMMENTS OF THE CITY OF AUSTIN D/B/A AUSTIN ENERGY TO THE
COMMISSION STAFF'S OCTOBER 11, 2002 REPORT ENTITLED APPLICATION
OF COMPETITIVE SOLUTION METHOD TO DATA FROM ERCOT
ANCILLARY CAPACITY SERVICES**

NOW COMES The City of Austin d/b/a Austin Energy, ("Austin Energy") and files these Comments in the above docket as follows:

On October 11, 2002, the Commission Staff released its report entitled "Application of Competitive Solution Method to Data from ERCOT Ancillary Capacity Services."¹ Austin Energy has filed more extensive comments on the Staff Report previously,² but is compelled to single out two core issues for the Commission's attention before any final Commission decision on CSM.

The Central Question: Price Signals and Market Response

Austin Energy has raised a legitimate issue of economics and market design in the CSM discussion: do price spikes serve as price signals to which market participants respond by

¹ Docket No. 24770, *Application of Competitive Solution Method to Data from ERCOT Ancillary Capacity Services* ("Staff Report"), Market Oversight Division, October 22, 2002.

² Docket No. 24770, *Comments of the City of Austin d/b/a Austin Energy on Commission Staff's October 11, 2002 report entitled Application of Competitive Solution Method to Data from ERCOT Ancillary Capacity Services*, November 22, 2002 and *Reply of the City of Austin D/B/A Austin Energy to the Commission Staff's December 13, 2002 Response to Comments on Staff's October 11, 2002 Report Entitled Application of Competitive Solution Method to Data from ERCOT Ancillary Capacity Services*, January 6, 2003.

offering more supply to the market? And if the answer to that question is yes, will the Staff's proposed indicative price disclosure create an equivalent incentive to expand supply? Austin Energy has suggested that this is an issue that should be empirically investigated before any CSM implementation occurs.

In its replies to AE's Comments, the Commission Staff has simply not responded to this issue.

The Commission's Market Power Policy is Unclear

The second core issue raised by Austin Energy is the appropriate definition of market power in this instance. In its Comments, Staff incorrectly attributed a number of arguments to AE related to market power and the DOJ/FTC merger guidelines.³ Austin Energy does not believe that the DOJ/FTC guidelines should be brought to bear in this instance. Austin Energy raised the guidelines in our November comments simply to point out that by well-recognized definition, market power does not exist unless the party asserting the market power can *sustain* high prices.⁴ A one-interval price excursion does not demonstrate market power abuse. Similarly, AE believes that the April price spike discussed in the Staff Report does not constitute market power abuse because new resources entered the market and prices moderated; in other words, the elevated price was not sustained. Austin Energy believes that this discussion has raised an issue that should be debated by the Staff and the market participants and ultimately raised to the Commission, namely: What constitutes market power abuse in the ERCOT ancillary services market?

³ See Docket No. 24770, *Commission Staff's Reply to Austin Concerning Staff Report*, January 14, 2003, pp. 3-8, particularly 7.

⁴ See *Comments of the City of Austin*, November 22, 2002, pp. 12-15.

Next Steps

Austin Energy believes that its comments regarding the CSM have raised two meaningful issues that should be debated, rigorously analyzed, and ultimately presented to the Commission. Such a course of action will assist the entire market by providing much needed clarity and certainty to the market participants. Austin Energy believes that at a minimum, this is a prerequisite to adoption of the CSM, and in the larger picture is good public policy.

Respectfully submitted,

CITY OF AUSTIN d/b/a Austin Energy

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding on this the 23rd day of January 2003, by facsimile, first class, U.S. Mail, postage prepaid, or by hand delivery.


Bob Kahn