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May 1, 2003


Cathy Hightower
Filing clerk
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

Dear Ms. Hightower:

Please substitute the enclosed Comments of Competitive Power Advocate in Response to Order No. 19 for the document also so entitled filed earlier this afternoon. The only difference between the two documents is in footnote no. 1, wherein the list of CPA members supporting the comments has changed.

Thank you for your attention hereto.

Very truly yours,


Marianne Carroll

DOCKET NO. 24770

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

**COMMENTS OF COMPETITIVE POWER ADVOCATES IN RESPONSE TO
ORDER NO. 19**

Competitive Power Advocates (“CPA”)¹ respectfully files these comments in response to the Commission’s request in Order No. 19. Simultaneously with filing these comments, CPA is filing a petition to intervene in this proceeding. CPA members Constellation Power Source, Inc. and Tractebel Energy Marketing, Inc. are parties to this proceeding. As stated more fully in our petition to intervene, however, all of CPA’s members will be directly and substantially affected by any decision of the Commission herein.

ISSUE 1. How would the “verifiable cost” determination be made under the MCSM model?

Since the MCSM is a Staff proposal, CPA will await Staff’s further explanation as to how it proposes such determination is to be made, and will comment thereon at the May 14 workshop if permitted.² CPA would observe, however, that “verifiable costs” are exceedingly difficult to determine in—and indeed antithetical to—a market where participants are unregulated competitors. Such determination would essentially involve a rate case-like process with respect to the affected market participant, and necessitate the

¹ Members of CPA participating in these comments include American National Power, Inc., Mirant Americas Energy Marketing, LP, Calpine Central, LP, Constellation Power Source, Inc., Dynegy Inc., TECO Power Services Corp., Texas Independent Energy, FPL Energy, LLC, Tractebel Energy Marketing, Inc., and Coral Power, LLC.

² CPA supports Commissioner Parsley’s suggestion that the Commission should hold the technical conference to fully explore the possible effects of MCSM and other proposals prior to approving any, even on an interim basis.

promulgation and adoption of procedural and substantive rules related thereto. For example, the Commission would have to approve an appropriate methodology to price the coal in the market participant's coal inventory or its gas taken from storage. Additionally, providing its cost information to the Commission (and possibly to competitors) in a contested case, even pursuant to a protective order, would entail unacceptable risks of inadvertent disclosure for a market participant. Finally, CPA agrees with the appropriately succinct comments of Reliant Resources, filed herein in its Reply Comments to Order No. 18, that the "opportunity" for a generator to recover its verifiable costs creates extreme price uncertainty because "it has been the experience both in ERCOT and nationally that such costs are difficult to define and often denied."

ISSUE 2. What are the relative merits of the MCSM and alternative proposals?

CPA urges the Commission not to adopt any price mitigation proposal unless and until it has also implemented a capacity market in ERCOT. In a single product, single price energy market like ERCOT's balancing energy market, participants must be able to recover all of their costs, including, over time, their capacity costs. Market participants must be able to recover their capacity carrying costs if a regulatory body imposes a mechanism to suppress short-term prices when they reach certain levels. Establishing a market policy that artificially suppresses market-driven cost recovery (in this case scarcity pricing) has the concomitant effect of suppressing the achievement of a market that sustains existing competition or encourages market growth. Market policy changes that will only result in higher prices overall when power supplies tighten up and capacity becomes scarce do no favors for the market and should not be acceptable to the Commission.

Most competitive wholesale markets in the U.S. have found it to be politically expedient to adopt some kind of mitigation mechanism to suppress spot energy prices. All, however, have realized the necessity to also implement a mechanism to compensate suppliers for making their capacity available, thereby reducing reliance on spot prices. Price mitigation mechanisms and a capacity market must be linked to maintain any semblance of a healthy competitive market, and the first should never be implemented without the second.

CPA accordingly opposes the implementation of any of the price mitigation proposals currently before the Commission, or any alternative that may be proposed in parties' comments or at the technical conference, even on an interim basis, prior to the approval of an appropriate capacity market (or resource adequacy requirement) in ERCOT. As noted by Commissioner Perlman and other parties, it is highly unlikely that circumstances similar to the severe weather event of late February will occur during the next few months, as temperatures increase and all available generation in ERCOT is brought on line to meet demand.³ Additionally, ERCOT appears to have addressed the load forecasting problems that contributed to the late February high prices and presumably will not fail to procure needed replacement reserves in the unlikely event such action should be necessary during the summer peak season. CPA urges the Commission to take the opportunity afforded by the summer season when capacity will be plentiful to finalize a rule in its pending resource adequacy proceeding, Project No. 24255, so that if it determines a price mitigation method may be appropriate as the shoulder months approach, a capacity market can be implemented simultaneously.

ISSUE 3. How can alternative proposals identify and distinguish true shortages so possible mitigation measures do not adversely affect legitimate scarcity prices, which may be necessary to stimulate new resource development?

Price volatility is not a spot market characteristic to be avoided. It promotes long-term contracts, identifies areas of congestion for investment, and can promote long-run competition. And it's important to remember that spot market price volatility does not necessarily result in retail price volatility for consumers if retail electric providers utilize appropriate hedging tools.

Neither CSM nor MCSM make any attempt to identify and distinguish true shortages. CPA has not had sufficient opportunity to properly evaluate other parties' proposals in this regard. No study has been made or offered with respect to how the introduction of CSM, MCSM or any other proposal may affect market participant or ERCOT behavior on a dynamic basis. Moreover, mitigation should never be considered an end in itself, but rather a transitional tool that the regulatory authority may use until additional means can be adopted to increase competition from both supply and demand resources.

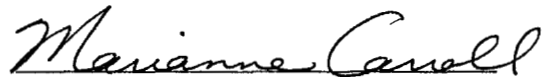
The Commission has already recognized that piecemeal approaches to market design are inappropriate – and, should, therefore, not react to necessary price signals that occurred in what serves (albeit poorly at present) as a “spot” market in ERCOT before considering the broader market impact of its proposed solution. CPA recommends that rather than attempt to bandage a perceived problem in the balancing and ancillary services pricing mechanism (when the real issue is adequate supply during a reliability event), the Commission and the stakeholders should work toward implementation of an

³ Based on ERCOT data this type of event is an extremely rare occurrence in the balancing services market. ERCOT estimated that the event has a 0.88% (less than 1%) rate of occurrence “from the start of the

efficient, competitive marketplace – one that keeps prices at politically-acceptable levels by virtue of the interaction of market participants and the forces of the market.

The Commission should undertake during this summer season a comprehensive analysis of the possible effects on the market of CSM, MCSM and other proposals prior to adopting any of them. CPA supports severing these issues into a separate rulemaking proceeding, or into the ongoing wholesale market design rulemaking, so that it can view these issues against the larger market backdrop.

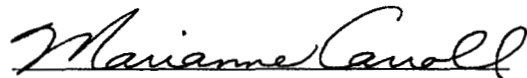
RESPECTFULLY SUBMITTED,



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Certificate of Service

I certify that a copy of this document was served on all parties of record in this proceeding on May 1, 2003, by regular mail.



Marianne Carroll