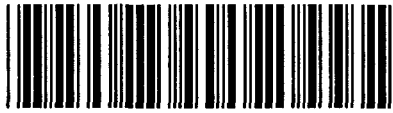


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DOCKET NO. 24770

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

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POST-WORKSHOP COMMENTS OF COMPETITIVE POWER ADVOCATES

Competitive Power Advocates ("CPA")<sup>1</sup> respectfully files these brief comments following the May 14th technical workshop in the above-referenced proceeding.

I. NO MARKET FAILURE

CPA simply does not accept the allegation that the ERCOT market is in a state of "market failure." Contrary to Dr. Oren's assertion at the beginning of the workshop, **there is no market failure** here. In our view, this seems to be the underlying premise of the staff proposal. The staff proposal addresses market failure, a condition that does not exist, and mitigates prices even where hockey stick bidding has not occurred.

During his presentation, Dr. Oren opined that hockey stick bidding was without risk; if that is true, then one must ask why the behavior is not rampant. In fact, as the evidence presented by MOD clearly shows, not all, not most, not even many market participants are submitting hockey stick bids. According to staff, only one or two bidders bid this way on a regular basis. And for the vast majority of the time (over 99.4%), competition ensures that the hockey stick bids are not struck. The overwhelming majority of the market participants in this case (load-serving entities as well as generators) are telling to the Commission that they are willing to pay the relatively small cost attributable to the hockey stick bids being struck in the

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<sup>1</sup> 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., Exelon Generation (Power Team) and Coral Power, LLC.

very few settlement intervals of historical occurrence, rather than have the Commission impose on the market a price mitigation mechanism that overcompensates for the perceived harm, mitigates when not needed, discourages Load acting as a Resource (“LaaR”), and sends incorrect price signals thereby resulting in distortions in market behavior.

If the Commission believes that the act of “parking” a hockey stick bid indicates “bad behavior” or “price gouging,” then what is a market monitor’s purpose if not to investigate such action and find out why such bids are being submitted? As discussed by Dr. Shams Siddiqi of LCRA, the Commission needs to investigate the reasons why parties feel the need to submit limited-megawatt hockey stick bids. Hockey stick bidding may be an indication that a frustrated supplier is not recovering its capital costs due to a deeply flawed market design and the lack of a capacity market in ERCOT. Hockey stick bidding is a symptom of market flaws, and it is far better to identify and remedy those flaws than to distort the market itself by dampening overall market prices to address one symptom.

The market must be viewed as a whole. As the Commission has reaffirmed in the Proposed Rule in Project No. 26376, the ERCOT market structure needs to be holistically modified through deliberative processes which can fully examine the potential ramifications of the actions being taken, not through the partial mitigation suggested here with premature, piecemeal fixes to market problems. Currently three rulemakings are pursuing integrally related issues that must be considered together. The lack of capacity and day ahead markets as well as the absence of price signals associated with local congestion are all issues that must be considered simultaneously. The overall market design flaws must be reviewed before instituting a mitigation mechanism. CPA respectfully requests that these mitigation issues be severed from

Docket 24770 and considered with the reserve margin, capacity market and day ahead issues (Project Nos. 24255 and 27678) in Project No. 26376.

## **II. NO IMMEDIATE CRISIS**

Although mentioned briefly by several witnesses, the most reasonable option before the Commissioners in this case, unfortunately, was largely neglected in the workshop discussions. That option is to take no action in haste at this time. We strongly believe that hasty, ill-considered action is likely to have far worse consequences for the market than taking no action. As CPA noted in its comments filed herein in response to Order No. 19, 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.<sup>2</sup> Additionally, ERCOT appears to have addressed the load forecasting problems that contributed to the late February high prices and presumably will not continue to fail to procure needed replacement reserves in the unlikely event such action should be necessary during the summer peak season.<sup>3</sup>

As was demonstrably evident from the presentations and responses to questions, the proposals before the Commission have been hastily put together and incompletely thought through. Most importantly, each lacks the necessary rigorous analysis of possible adverse effects on the market. In the very brief time parties had to think about the potential effects of the staff's proposed revised MCSM, for example:

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<sup>2</sup> 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 market through March 27, 2003". ERCOT Reply to Order No. 18, fn. 3.

<sup>3</sup> Perhaps an investigation of ERCOT's failures to utilize tools already provided in the Protocols would be a better use of MOD's time.

- ERCOT observed twice that it can be triggered when there are no hockey stick bids (i.e. MCSM would be applied to mitigate prices when the bid stack is exhausted, whether or not any party submitted a hockey stick bid);
- Austin Energy observed that the MCSM would mitigate 200-300 MW of bids when the staff is saying only 1-2 MW were at issue;
- LCRA observed that if mitigation is imposed when the bid stack is exhausted, then prices are being suppressed just when the market needs to attract more power;
- CPS San Antonio observed that MCSM would kill any chance that LaaR could have its intended effect at times of scarcity; and
- Several parties noted the problems associated with settlement of the bids higher than the mitigated MCPE and the arbitrage possibilities afforded by disparities between the mitigated MCPE and shadow prices.

Additional, *independent* analysis of the price mitigation proposals before the Commission is needed before the need for approval of any proposal can be determined. No review has been made or offered with respect to how the introduction of MCSM, the revised MCSM, or the modified RRI proposal may affect market participant or ERCOT behavior on a dynamic basis. The short- and long-term consequences of implementing a flawed methodology are serious, while postponing a hasty decision in order to undertake such an analysis carries little, if any, risk during the summer months when all available generation is on line in ERCOT. Additionally, it was unclear whether either the MRRI or MCSM could be implemented before the summer peak.

Finally, it should be noted that ERCOT's Protocols already contain tools to mitigate prices when warranted – if ERCOT would only utilize the tools according to the approved

Protocols. All of this raises questions for the Commission and market participants alike such as, whether ERCOT has failed to utilize the tools according to the approved Protocols? And if so, whether these any of the mitigation measures are additional, unnecessary belts and suspenders? Answering these questions will certainly inform the process before any of the measures are adopted.

### **III. PROCEDURAL ISSUES**

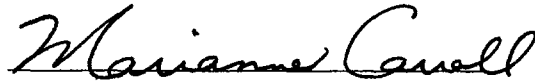
The unusual circumstance of a technical workshop conducted in a contested case did not afford an opportunity to fully explore the possible consequences of the best option—taking no action at this time—compared to the other options before the Commission. If the Commission wants to consider an interim market price mitigation mechanism at this time, then the Commission is required by the Administrative Procedure Act to conduct an interim hearing before issuing an interim order in this case. In doing so, the Commission will have an appropriate comparison of the alternative mitigation approaches as a result of the opportunity for parties to cross-examine the proponents of the price mitigation alternatives (once the proposals have been provided to the parties in written form and followed by a reasonable opportunity to properly evaluate exactly what the proposals are and what might be their effects on the market).

### **IV. CONCLUSION**

As we noted in our prior comments, CPA urges the Commission to take the opportunity afforded by the summer season -- when the capacity market will be plentiful -- to finalize a rule in its pending resource adequacy proceeding, Project No. 24255. Thus, if the Commission determines a price mitigation method is appropriate as the shoulder months approach, a capacity market can be implemented at the same time. CPA supports severing these issues into Project

No. 26376, the wholesale market design rulemaking and merging Project Nos. 24255 on Planning Reserve Margin Requirements and 27678 concerning day ahead markets into Project No. 26376, so that these issues can be thoroughly examined in the proper context, i.e. viewing the market framework as a whole.

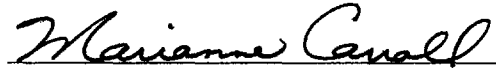
RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, reading "Marianne Carroll".

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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 16, 2003, by regular mail.

A handwritten signature in cursive script, reading "Marianne Carroll".

Marianne Carroll