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**DOCKET NO. 24770**

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

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**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**TXU ENERGY'S MOTION FOR COMMISSION  
RECONSIDERATION OF ORDER NO. 22**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

NOW COMES TXU Portfolio Management Company LP and TXU Energy Retail Company LP, (collectively referred to herein as "TXU Energy") and file this Motion for Commission Reconsideration of Order No. 22 regarding the ordered implementation of a revised form of Staff's Modified Competitive Solution Method (referred to herein as "revised MCSM") for application to the Electric Reliability Council of Texas' ("ERCOT's) Balancing Energy Service ("BES") market. As grounds therefore, TXU Energy respectfully shows the following:

**I. INTRODUCTION**

At the outset, TXU Energy applauds the Commission for moving to close-out Docket No. 24770 in anticipation of a Commission project that would appropriately evaluate the need for permanent market mitigation measures in the ERCOT markets in concert with other market design issues, as expressed in its May 22 Open Meeting<sup>1</sup>. Any permanent market mitigation measures must be evaluated after full discussion, comment, and rigorous analysis, a process that did not occur in this Docket. Indeed, the fact that the final mitigation measures that have been proposed for the BES market were first considered in a single workshop with no opportunity for subsequent written comment has made it very difficult for the Commission to receive all of the

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<sup>1</sup> Open Meeting Tr. at p. 170 and 177 (May 22, 2003).

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information it needs to make appropriate decisions regarding options as varied as the MCSM<sup>2</sup>, the revised MCSM<sup>3</sup>, Reliant Resources Inc's proposal ("RRI")<sup>4</sup>, the modified RRI ("MRRI")<sup>5</sup>, and the hybrid proposal proposed by Commissioner Parsley.<sup>6</sup> Moreover, the fact that Docket No. 24770 has been conducted at times like a contested case and at other times more like a Commission rulemaking project has made it very difficult for parties to procedurally navigate this Docket and for the Commission to receive adequate and timely input. TXU Energy believes that procedural issues such as these have led the Commission to an improper determination in Order No. 22.

Unfortunately, no matter how "interim" the Commission intends the mitigation measure approved in this Docket to be, Commission orders in this Docket will carry great weight in any future rulemaking that would consider permanent market mitigation measures. It is for this and

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<sup>2</sup> See *Report of the Electric Reliability Council of Texas (ERCOT) to the PUCT Regarding Implementation of the ERCOT Protocols*, Docket No. 24770, Proposal to Apply a Modified Competitive Solution Method to Balancing Energy Service and Update on Applying the Competitive Solution Method to Ancillary Services Capacity, Parviz Adib, Market Oversight Division, at p. 1 (March 18, 2003). It appears from statements by Commissioner Parsley at the May 22, 2003, Open Meeting (Open Meeting Tr. at 167-168) that there may be a misconception that the MCSM, that has been proposed by the Staff for the ERCOT BES market, is quite similar to the Competitive Solution Method originally proposed by Staff a year and half ago for the ERCOT day-ahead ancillary services markets. Unfortunately, despite the similarity in their names, the MCSM bears no relation to the Competitive Solution Method (other than they are both market mitigation measures). Most importantly, operation of the ERCOT day-ahead ancillary services markets is quite different from the ERCOT real-time BES market. The Competitive Solution Method was proposed for the day-ahead ancillary services markets and the MCSM was proposed for the BES market. Mitigation is triggered under the Competitive Solution Method when after extending the day-ahead market, 115% of the necessary service amount is not present in the bid stack or when a bidder or bidders is/are absolutely necessary to the stack to achieve that 115% level (referred to as "pivotal bidder(s)"). Under the Competitive Solution Method, the mitigated price is then set by removing from the bid stack the pivotal bids plus the highest price 5% of the remaining bids and then multiplying the remaining highest bid by 50%. See Commission Staff's Initial Brief at pp. 15-19 (January 25, 2002). These concepts and procedures are quite different from those proposed for the MCSM.

<sup>3</sup> See Preliminary Order No. 22 at p. 1 (May 30, 2003).

<sup>4</sup> See Reliant Resources Inc's Reply Comments to Order 18 at pp. 6-7 (April 3, 2003).

<sup>5</sup> See Memorandum to the Commissioners from David Hurlbut, Market Oversight Division, re: Comparison of the Three Proposed Mitigation Methods at pp. 3-5 (May 20, 2003).

other reasons stated herein that TXU Energy believes that it is very important that the Commission reconsider Order No. 22 and reach a proper determination.

## **II. DISCUSSION**

### **A. Immediate Impairment of a Substantial or Material Right**

Commission Procedural Rule § 22.123(b)(1) provides that a motion for reconsideration may be brought when a Commission interim order “immediately prejudices a substantial or material right of a party.” TXU Energy feels compelled to request Commission reconsideration of Order No. 22, instead of waiting to request rehearing upon a final order in Docket No. 24770, because Order No. 22 immediately impairs a substantial and material right of TXU Energy. Specifically, Order No. 22 requires ERCOT, and therefore the ERCOT stakeholders (including TXU Energy), to “develop and adopt *on an expedited basis* the protocol revisions necessary to implement revised MCSM.”<sup>7</sup> The development and adoption of such protocols is likely to occur before a final order is issued in this Docket. Moreover, upon adoption of such protocols, market participant behavior in the ERCOT BES market will be immediately influenced by the presence of the revised MCSM, regardless of whether a complete exhaustion of the BES bid stack occurs within the foreseeable future.

### **B. Insufficient Evidence for the Commission’s Decision**

TXU Energy is concerned that the Commission did not have sufficient evidence to make a proper decision with regard to proposed market mitigation measures for the ERCOT BES market. Indeed, the May 14, 2003, Technical Conference in this Docket, by all accounts, raised a host of questions and issues regarding all of the BES market mitigation measures proposed in this Docket. As Chairman Klein noted at the May 22 Open Meeting:

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<sup>7</sup> Preliminary Order No. 22 at p. 2 (May 30, 2003) [emphasis added].

We had, Brett, what I would consider a good and a bad workshop. It was good that it brought to light a lot of issues regarding the different proposals, and it was bad because it brought to light a lot of issues from the different proposals.<sup>8</sup>

TXU Energy is concerned that these issues went unexplored and a number of questions went unanswered after that Technical Conference, leading to an improper decision by the Commission in Order No. 22.

At the May 14, 2003, Technical Conference referenced by Chairman Klein, revisions were suggested for the first time in this Docket for each of the proposed mitigation measures, with no opportunity for subsequent written or oral comment by the parties on those suggested revisions. Indeed, the only comments permitted on these revisions were the “off the cuff” analysis presented at the Technical Conference itself. The Commission has in Order No. 22 adopted a modification to the MCSM that was first discussed at that Technical Conference, specifically Staff’s proposed 1.5 times multiplier to the 95% mitigated price.<sup>9</sup> In addition, the Commission has adopted a revision to the MCSM, specifically the pay-as-bid above the 95% mitigated price<sup>10</sup>, that was actually a characteristic of the City of San Antonio’s now retracted proposal<sup>11</sup>. TXU Energy is concerned that parties have not been given a proper opportunity to comment on the revised MCSM, and therefore the Commission did not have sufficient evidence to make a proper decision on it as compared to other proposals.

Importantly, the parties have not been given adequate time to evaluate and comment on market mitigation measures that attempt to define “hockey stick bids.” As Commissioner Perlman noted at the May 22 Open Meeting:

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<sup>8</sup> Open Meeting Tr. at p. 145 (May 22, 2003).

<sup>9</sup> Preliminary Order No. 22 at p. 1 (May 30, 2003).

<sup>10</sup> Id.

<sup>11</sup> Comments and Recommendations of City Public Service of San Antonio at p. 5 (April 3, 2003).

If we wanted to consider a broader sort of proceeding to look at the more general issue of hockey stick bids, then I think we ought to give people more of an opportunity other than having it discussed in one workshop, to do that. I think it has, maybe broader implications.<sup>12</sup>

TXU Energy agrees. For example, the Staff specifically identified “hockey stick bids” at the top of an exhausted BES bid stack as a primary cause of the February cold weather price spikes in the BES market;<sup>13</sup> however, the parties were not allowed to fully comment and explore the modified RRI proposals that would specifically identify and target hockey stick bids.

Instead of sending proper signals to the market by adopting an interim market mitigation measure that would prevent clearly defined behavior in emergency conditions, the Commission adopted in Order No. 22 a market mitigation measure that will mitigate bids in the top 5% of the BES bid stack, whether or not they are “hockey stick bids.” Prospective market participants will *not* be discouraged from entering a market when the market mitigation measures in that market appropriately mitigate defined improper behavior. On the other hand, implementing a market mitigation measure that arbitrarily mitigates legitimate bids, no matter how rarely, would send a very negative signal to current and prospective market participants. Order No. 22 sends such a signal. TXU Energy is concerned that the Commission has made this improper decision because, as described above, it did not have sufficient evidence before it to make a proper decision. TXU Energy requests that the Commission reconsider Order No. 22 and host at least one more Technical Conference where the MCSM, the RRI, and the proposed modifications to those proposals can be fully explored and thoughtfully considered in their final forms. To the extent that these proposals are further modified in the subsequent Technical Conference, TXU Energy

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<sup>12</sup> Open Meeting Tr. at p. 159 (May 22, 2003).

<sup>13</sup> Proposal to Apply a Modified Competitive Solution Method to Balancing Energy Service and Update on Applying the Competitive Solution Method to Ancillary Services Capacity, Parviz Adib, Market Oversight Division at p. 1 (March 18, 2003).

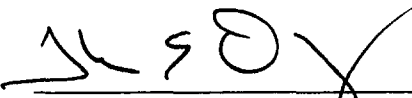
respectfully requests that the Commission permit post-Conference briefing to allow interested parties the opportunity for more thoughtful and complete comments than the conference format allows.

### **III. CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, TXU Energy respectfully requests that the Commission grant its Motion for Reconsideration of Order No. 22, and provide parties at least one more Technical Conference where the proposed market mitigation measures for the ERCOT BES market and the proposed revisions of those measures can be considered and analyzed.

Respectfully submitted,

**HUNTON & WILLIAMS**

By: 

Angela Agee Kennerly  
State Bar No. 09231050  
Thomas E. Oney  
State Bar No. 24013270  
Tab R. Urbantke  
State Bar No. 24034717

Energy Plaza  
1601 Bryan Street, 30th Floor  
Dallas, Texas 75201-3402  
(214) 979-3000  
(214) 880-0011 (fax)

**ATTORNEYS FOR TXU ENERGY RETAIL  
COMPANY LP AND TXU PORTFOLIO  
MANAGEMENT COMPANY LP**

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing has either been hand delivered, delivered by facsimile, or delivered by overnight courier delivery to the Office of Regulatory Affairs and to all other parties of record in this Docket, all on this the 5th day of June, 2003.

  
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