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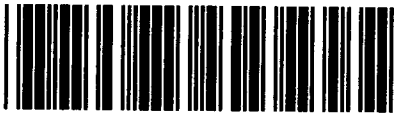

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DOCKET NO. 36416

AEP ENERGY PARTNERS' APPEAL OF THE DECISION OF THE ERCOT BOARD ASSIGNING OKLAUNION GENERATING STATION TO THE WEST ZONE AND REQUEST FOR EXPEDITED CONSIDERATION AND EMERGENCY REMAND WITH INSTRUCTIONS	§ § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

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ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.'S RESPONSE TO AEP ENERGY PARTNERS' APPEAL OF THE DECISION OF THE ERCOT BOARD ASSIGNING OKLAUNION GENERATING STATION TO THE WEST ZONE

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and files this Response to *AEP Energy Partners' Appeal of the Decision of the ERCOT Board Assigning Oklaunion Generating Station to the West Zone and Request for Expedited Consideration and Emergency Remand with Instructions* and respectfully shows the following:

Introduction

The Board of Directors of the Electric Reliability Council of Texas, Inc. (ERCOT Board) adopted "Scenario 3i" for the 2009 Congestion Zones in full compliance with Section 7.2.2 of the ERCOT Protocols. The ERCOT Board's decision was consistent with the overwhelming recommendation of the Technical Advisory Committee (TAC) and of ERCOT Staff, and the consensus of all three entities is built on the need for operational flexibility in a very challenging congestion environment.

Section 7.2.2 of the ERCOT Protocols is the exclusive authority governing the establishment of Congestion Zones, and AEP offers no basis on which this Commission could defensibly copy the "pre-contingency" requirement out of Section 7.2.1 and paste it into Section 7.2.2. Section 7.2.2 gives ERCOT the discretion to use either a pre- or post-contingency system model in performing the clustering analyses that serve as the basis for the Congestion Zones. ERCOT applied both analyses this year. The post-contingency analysis provided operational benefits that resolved operational concerns ERCOT Staff identified between the West and North Congestion Zones, and the West-North boundary was the only one with such a result. The relevant stakeholder committees (TAC and the Wholesale Market Subcommittee) had the AEP-

preferred, pre-contingency option in front of them (Scenario 3h), but Scenario 3i was endorsed by the stakeholder committees before ultimately being approved by the ERCOT Board.

The development of Scenario 3i was entirely consistent with the governing ERCOT Protocols. Therefore, the ERCOT Board's approval of that scenario, and the 2009 Congestion Zones contained therein, was entirely appropriate. As such, the resulting placement of Oklaunion in the West Zone – where Oklaunion has consistently been placed previously – is also entirely appropriate.

Background

ERCOT establishes Congestion Zones on an annual basis as part of the CSC Zone Determination Process.[1] In July and August 2008, ERCOT Staff presented three 2009 Congestion Zone Scenarios (3b, 3g and 3h) to the Congestion Management Working Group (CMWG).[2] CMWG did not reach consensus on any of the scenarios, and all three proposals were presented at the Wholesale Market Subcommittee (WMS) meeting in August.[3] WMS recommended Scenario 3h to TAC for recommendation to the ERCOT Board.[4] Prior to the TAC meeting, ERCOT Staff analyzed an alternative scenario, 3i, which was also presented to TAC for consideration.[5] TAC recommended Scenario 3i to the ERCOT Board.[6] The ERCOT Board considered the matter at its September 2008 meeting, but remanded it back to TAC in light of procedural concerns.[7] On remand, Scenario 3i again emerged as the TAC recommendation to the ERCOT Board.[8] AEP appealed TAC's action to the ERCOT Board.[9] On October 21, 2008, the ERCOT Board approved the 2009 Congestion Zones after considering the AEP appeal.[10] On

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[1] *See* Section 7.2 of the ERCOT Protocols at http://www.ercot.com/mktrules/protocols/current.

[2] CMWG agendas July 11, 2008 at http://www.ercot.com/calendar/2008/07/20080711-CMWG; and August 27, 2008 at http://www.ercot.com/calendar/2008/08/20080827-CMWG. These three options were presented after consideration of multiple scenarios.

[3] WMS agenda August 20, 2008 http://www.ercot.com/calendar/2008/08/20080820-WMS.

[4] TAC Agenda September 4, 2008 http://www.ercot.com/calendar/2008/09/20080904-TAC.

[5] TAC Agenda October 8, 2008 http://www.ercot.com/calendar/2008/10/20081008-TACWMS

[6] ERCOT Board Agenda October 21, 2008 http://www.ercot.com/calendar/2008/10/20081021-BOD

[7] ERCOT Board September 16, 2008 Minutes http://www.ercot.com/calendar/2008/10/20081021-BOD

[8] ERCOT Board October 21, 2008 Minutes and Resolution http://www.ercot.com/calendar/2008/11/20081117-BOD.

[9] ERCOT Board agenda http://www.ercot.com/calendar/2008/10/20081021-BOD.

[10] ERCOT Board October 21, 2008 Minutes and Resolution http://www.ercot.com/calendar/2008/11/20081117-BOD.

November 19, 2008, AEP Energy Partners (AEP) filed this appeal against ERCOT, appealing the ERCOT Board's approval of the 2009 Congestion Zones, which placed the Oklaunion generating facility in the West Zone.[11] AEP requested expedited review of its complaint to mitigate the potential market impacts.

Answer

The merit of AEP's appeal hinges on whether ERCOT complied with Section 7.2.2, *Congestion Zone & Zonal Shift Factor Determination Methodology*, of the ERCOT Protocols in establishing the 2009 Congestion Zones under Scenario 3i. All other arguments and issues raised in AEP's appeal are irrelevant. If ERCOT acted within its authority under Section 7.2.2, AEP's appeal must be denied. As described in greater detail below, ERCOT's actions in this matter were, in fact, in compliance with Section 7.2.2. Accordingly, the placement of Oklaunion in the West Zone is appropriate and the issues of the alleged financial harm and requested relief are moot.[12] The appeal should be dismissed with prejudice.

I. Overview

The premise of the appeal is that AEP and North Zone consumers will be financially harmed as the result of the ERCOT Board's approval of Congestion Zones that are based on allegedly flawed process and analysis.[13] Specifically, AEP claims the definition of the 2009 Congestion Zones is flawed because the underlying clustering analysis utilized a post-contingency system model.[14] AEP argues this result is discriminatory.[15] Notably, AEP does not claim ERCOT violated the relevant Protocols. Rather, the company makes the tenuous argument that ERCOT's actions were not "fully consistent" with the ERCOT Protocols because the clustering analysis varied from past practice and there was no objective justification for this

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[11] AEP Energy Partners Appeal of the Decision of the ERCOT Board Assigning Oklaunion Generating Station to the West Zone and Request for Expedited Consideration and Emergency Remand With Instructions, Public Utility Commission of Texas, Docket No. 36416 (2008).

[12] AEP alleges the ERCOT Board's action will cost the company $35 - 45 million dollars in revenues by placing the Oklaunion generating station (Oklaunion) in the West Zone rather than the North Zone. AEP also alleges the placement of Oklaunion in the West Zone will harm North Zone consumers. AEP asks the Commission to either: 1) remand the issue back to the ERCOT Board and Technical Advisory Committee (TAC); or 2) direct the ERCOT Board to supplant Scenario 3i with Scenario 3h.

[13] *See* AEP appeal at 4: "AEP Energy Partners believes...ERCOT Staff and Board were incorrect in the process and analysis they used to determine the zone to which Oklaunion was assigned."

[14] *Id* at Part III, Statement of Issues, and Part V, Argument.

[15] *Id* at note 25.

change.[16] AEP takes this approach because it cannot claim that ERCOT actually violated the ERCOT Protocols because its actions in this matter were entirely consistent with Section 7.2.2.

In assessing the merit of AEP's appeal, the following four questions are dispositive to the key issue of whether ERCOT complied with Section 7.2.2 of the ERCOT Protocols:

1) Is Section 7.2.2 the exclusive authority for the Congestion Zone determination process?

2) If the answer to Question 1 is "yes," the next relevant question is does Section 7.2.2 of the ERCOT Protocols allow the use of a post-contingency model in conducting the clustering analyses to establish the Congestion Zones?

3) If the answer to Question 2 is "yes," the next pertinent question is did ERCOT have an objective basis that justified the use of a post-contingency model in that process?

4) If Questions 1, 2 and 3 are answered affirmatively, the final question is did ERCOT follow all relevant procedures in conducting the Congestion Zone determination under Section 7.2.2?

If the answer to all of these questions is "yes," then the placement of Oklaunion in the West Zone under the approved 2009 Congestion Zones is appropriate under the ERCOT Protocols and AEP is not entitled to any relief. As described in Part II of this Answer, the facts demonstrate the answer to all of these questions is "yes:" 1) Section 7.2.2 is the sole authority governing the establishment of Congestion Zones; 2) ERCOT has discretion to use pre-contingency **or** post-contingency system models in conducting Congestion Zone clustering analyses, and where a specific rule provides for alternatives, past practice of using one approach does not restrict future use of other alternatives accommodated by the rule; 3) the decision to use a post-contingency model in conducting the clustering analysis under Scenario 3i was based on objective operational concerns; and 4) all relevant procedures under the ERCOT Protocols were met for Scenario 3i. Accordingly, the Scenario 3i 2009 Congestion Zones are consistent with the ERCOT Protocols and placement of Oklaunion in the West Zone is appropriate and in no way discriminatory.

[16] *Id* at Part V, Argument.

II. Scenario 3i is Consistent with the Substantive and Procedural Requirements of the ERCOT Protocols and is Supported by Objective Operational Justifications and Therefore is Not Discriminatory.

i. Section 7.2.2 is the Exclusive Authority Governing the Congestion Zone Determination Process.

In its appeal, AEP notes that Section 7.2.1, Process for Determining CSCs, requires the use of the *Steady State Working Group Data Set A summer peak case,* which is a pre-contingency model, in developing the CSCs. AEP then describes the CSC Zone Determination Process as a sequential process and states that in the past ERCOT has used the *Steady State Working Group Data Set A summer peak case* model in developing Congestion Zones pursuant to Section 7.2.2. This discussion is misleading in that it appears to imply the requirement to use a pre-contingency model in Section 7.2.1 should be imposed on Section 7.2.2 by virtue of past practice. This is not the case. To be clear, the Congestion Zone determination process under Section 7.2.2 is governed exclusively by the requirements in Section 7.2.2, which do not impose the use of a particular system model.

Each year, ERCOT conducts the CSC Zone Determination Process pursuant to Section 7.2 of the ERCOT Protocols. This process consists of four actions prescribed by Sections 7.2.1 – 7.2.4 of the ERCOT Protocols that include: 1) establishing the Commercially Significant Constraints (CSCs) for the upcoming year (Section 7.2.1, *Process for Determining CSCs*); 2) establishing the Congestion Zones for the upcoming year (Section 7.2.2, *Congestion Zone & Zonal Shift Factor Determination Methodology*); 3) establishing the Closely Related Elements (CREs) for the upcoming year (Section 7.2.3, *Determining Closely Related Elements (CREs)*); and 4) determining generation resources deemed likely to change their output (Section 7.2.4, *Determining Generation Resources Deemed Likely to Vary Their Output*). Although the totality of these actions effect the overarching CSC Zone Determination Process, each occurs independently and is not subject to the requirements of any other Section. Therefore, the requirement in Section 7.2.1(1) to use the *Steady State Working Group Data Set A summer peak case* is irrelevant to Section 7.2.2, despite the fact that ERCOT has based Congestion Zones on a pre-contingency model in the past. Similarly, Sections 7.2.3 and 7.2.4 are irrelevant to ERCOT's administration of Section 7.2.2. As described below, Section 7.2.2 gives ERCOT discretion to use a pre- or post-contingency system model. Therefore, employment of a post-contingency model for the clustering analysis supporting the 2009 Congestion Zones is entirely appropriate.

ii. Scenario 3i is Consistent with Section 7.2.2 of the ERCOT Protocols.

AEP claims the process used for the clustering analysis to establish the approved 2009 Congestion Zones is flawed because it is based on a post-contingency model. AEP argues this approach is not "fully" consistent with ERCOT Protocols because it deviates from past practice.

Congestion Zones are established pursuant to Section 7.2.2 of the ERCOT Protocols. As part of that process, ERCOT conducts a clustering analysis that places Supply and Load in Congestion Zones based on similarity in terms of loading impact or "shift factor" on Commercially Significant Constraints (CSCs). Specifically, the relevant language states:

> (2) A statistical clustering analysis will be used to aggregate transmission buses into zones based upon similar Shift Factors relative to all CSCs. The clustering must meet the following criteria: (i) each CSC must straddle a zonal boundary (however, not every zonal boundary need be straddled by a CSC); and (ii) station IDs as provided by TDSPs in Protocol Section 15.1.2.5, Response from TDSP to Registration Notification Request, can be assigned only into one Congestion Zone.

The clustering analysis prescribed by this section of the Protocols is necessarily dependent on the capacity and topology of the transmission system, which are reflected in a system model. The language cited does not require the use of a particular system model – *i.e.* pre- or post-contingency. Rather, ERCOT has discretion to select the model.[17] This is the sole authority for this process; there are no supporting Operating Guides that direct ERCOT's administration of Section 7.2.2. In this situation, where there is a governing rule and no other implementing documents, past practice does not dictate future actions where the rule contemplates alternative methodologies.[18] Accordingly, ERCOT is not restricted to a pre- or post-contingency model in administering Section 7.2.2, and by utilizing a pre-contingency model in the past ERCOT has merely exercised one option under Section 7.2.2. That does not preclude the use of a post-contingency model where circumstances counsel in favor of that approach. In fact, this position is confirmed by the revision history of the relevant Protocol sections.[19]

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[17] ERCOT is, however, required to present the results of the analysis to the stakeholders. *See* Section 7.2.2: "The appropriate ERCOT Technical Advisory Committee (TAC) Subcommittee will review the results and the process followed above to determine the Congestion Zones to be recommended for approval to the TAC and the Board."

[18] Even assuming the existence of related Operating Guide sections, the Protocols are the controlling authority and any conflict would be resolved in favor of the Protocols.

[19] Note that Section 7.2.1 explicitly requires the use of a particular model in establishing CSCs, whereas Section 7.2.2 imposes no such limitation. In reviewing the revision history of those sections, Protocol Revision request (PRR) 589, CSC and Zone Determination, revised Sections 7.2.1 and 7.2.2. As part of those revisions, the

Consequently, the approved 2009 Congestion Zones, which are based on the post-contingency model employed in Scenario 3i, are fully consistent with the ERCOT Protocols.

Having determined that Section 7.2.2 of the ERCOT Protocols allows for the use of a post-contingency system model in conducting the Congestion Zone clustering analysis, the next pertinent question is whether that approach was justified in performing the analysis under Scenario 3i. As described below, Scenario 3i was justified based on objective operational concerns.

iii. Utilization of a Post-Contingency Model for Scenario 3i is Justified Based on Objective Operational Concerns.

AEP claims the use of a post-contingency model in Scenario 3i is not justified, generally, or with respect to its application only to the North Zone.

ERCOT developed Scenario 3i due to operational concerns related to the transfer capability between the West and North Zones. Using the Shift Factors from a pre-contingency system model to perform the clustering analysis would result in operational limits over the West to North CSC by causing increased flows over that constraint under expected operational conditions. Under this situation, ERCOT would be left with limited operational options to respond to the West-North transmission constraints. To mitigate these operational concerns, ERCOT performed the clustering analysis based on a post-contingency model. The results of that analysis enhanced ERCOT's operational options to address congestion by changing the structure (i.e. the Supply and Load nodes that comprise each Congestion Zone) of the North and West Zones thereby giving ERCOT a greater number of operational options during periods of high demand and reduced transfer capability. Although the system could be operated reliably under Scenario 3h Congestion Zones (pre-contingency clustering analysis), Scenario 3i provided greater operational benefits. It is ERCOT's position that these enhanced operational benefits justify the use of Scenario 3i (post-contingency clustering analysis).[20]

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requirement to use the *Steady State Working Group Data Set A summer peak case* model (*i.e.* pre-contingency fully intact system) was added to Section 7.2.1, but no such requirement was added to Section 7.2.2. Thus, ERCOT and its stakeholders deliberately applied this restriction to Section 7.2.1, but not to Section 7.2.2 of the ERCOT Protocols, at http://www.ercot.com/mktrules/protocols/current.

[20] AEP references committee discussions related to the impact of the alternative scenarios on a number of market costs – e.g. zonal prices, out-of-merit energy uplift costs, TCR revenues, etc. – and states that these impacts cannot be quantified, and, therefore, cannot justify the use of a post-contingency model for the Congestion Zone clustering analysis (AEP appeal at 10). As discussed above, the justification for utilizing a post-contingency model is to realize enhanced operational flexibility between the West and North Zones during periods of high demand and

AEP also argues that applying a post-contingency clustering analysis to a single Congestion Zone is not justified, and that if this approach is used in the future it should be applied uniformly. This argument assumes that the post-contingency analysis was only applied to the W-N CSC. That is not the case. The post-contingency clustering analysis under 3i applies across all zones. The post-contingency analysis aspect merely assumed a single transmission line out of service for the purpose of the overall clustering analysis. The justification for using a post-contingency analysis is described above, and as described, requiring uniform application of a single approach is inconsistent with the terms and intent of Section 7.2.2. Section 7.2.2 does not mandate a particular model to perform the Congestion Zone clustering analyses and ERCOT needs to retain that flexibility to propose Congestion Zones that best meet the system operational needs in a manner consistent with the overall congestion management construct in the ERCOT zonal market. Imposing a uniformity requirement in this context would undermine ERCOT's ability to achieve these goals.

Furthermore, ERCOT does not discriminate in administering clustering analyses pursuant to Section 7.2.2. In fact, ERCOT looks at pre- and post-contingency scenarios for all Congestion Zones. The fact that pre-contingency models have been used in the past should have no bearing on the current clustering analysis. For those years, that approach was logical because a pre-contingency system presumably has greater transfer capability and, therefore, operational options. That was not the case this year with respect to the interface between West and North Zones, and ERCOT applied the post-contingency analysis. It is important to keep in mind that although ERCOT has the discretion to use utilize a pre or post contingency system model for the clustering analyses under Section 7.2.2, the resulting process and Congestion Zones are subject to review and approval in the ERCOT stakeholder committee process, and then by the ERCOT Board. ERCOT's discretion in administering 7.2.2 is not unchecked, but rather is subject to extensive review and subsequent approval by entities other than ERCOT.

The above discussion clearly demonstrates that ERCOT had the authority to utilize a post-contingency analysis under Section 7.2.2 and that the decision to pursue that option was justified. The final question that must be answered is did ERCOT follow the appropriate procedures in exercising that authority. Again, the answer is "yes."

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reduced transfer capability. The concerns cited by AEP, although discussed, did not drive the decision to use the post-contingency clustering analysis.

iv. Scenario 3i Complied with the Analysis and Procedural Requirements Mandated by the ERCOT Protocols.

AEP claims Scenario 3i was developed in contravention to the analysis "contemplated" by the ERCOT Protocols, and after the "usual" and "customary" studies were performed (i.e. pre-contingency clustering analyses) and presented in the relevant committee review process. AEP argues that if post-contingency analyses are used in the future, they should be considered at the beginning of the process in a transparent manner that considers all contingencies. AEP also argues that the ERCOT Protocols should be clarified to put parties on notice as to when ERCOT may utilize a post-contingency model in conducting Congestion Zone clustering analysis.

As discussed, Section 7.2.2 does not "contemplate" the use of a particular model. Therefore, despite the fact that pre-contingency models have been used in the past, they are not controlling as "customary" because there is a specific rule that allows for the use of alternative models – *i.e.* pre- or post-contingency.

With respect to the presentation of Scenario 3i in the committee process, ERCOT acknowledges that Scenario 3i was developed after alternative scenarios based on pre-contingency models were presented in the committee process. However, as noted by AEP, the ERCOT Board remanded Scenario 3i to TAC for further review. Upon remand, it was reviewed by WMS and TAC as required by the ERCOT Protocols. After taking another bite at the apple, both WMS and TAC recommended Scenario 3i back to the ERCOT Board at its October 2008 meeting. Thus, Scenario 3i complied with the relevant procedural requirements in the ERCOT Protocols.

Finally, with respect to the argument that the ERCOT Protocols should be revised to put parties on notice as to when ERCOT may utilize a post-contingency model in conducting Congestion Zone clustering analysis, ERCOT notes that AEP is free to submit a Protocol Revision Request (PRR) pursuant to Section 21 of the ERCOT Protocols at any time. In fact, because ERCOT's actions in this matter were consistent with all relevant substantive and procedural rules, if there is any appropriate remedy it would be prospective via the PRR process.

v. The Impact of Scenario 3i on AEP is Not Discriminatory.

The above discussion demonstrates that Scenario 3i was developed and approved consistent with the requirements of the ERCOT Protocols. ERCOT analyzed Scenario 3i pursuant to the objective process established in Section 7.2.2 of the ERCOT Protocols. This process allocates Load and Supply to Congestion Zones indiscriminately according to similarity

in Shift Factors. This occurs despite the type of system model used. While altering the system model may result in different zonal allocations, the process is executed on an objective basis that applies to all Loads and Supplies – no individual Load or Resource is singled out, regardless of whether a pre- or post-contingency model is used. For 2009, ERCOT performed the clustering analysis using both models. ERCOT supported Scenario 3i (post-contingency analysis) because it provided objective operational benefits. Given these facts, the impact of Scenario 3i on AEP cannot be viewed as discriminatory because the outcome reflects exactly what is supposed to happen under the ERCOT market structure and the Protocols that define that structure.[21]

Related to the discrimination argument, AEP claims Scenario 3i resulted in less favorable access to the ERCOT Transmission Grid for Oklaunion. While not relevant to disposition of the appeal, it is worth noting that this argument fails to recognize the distinction between access to the ERCOT transmission Grid and locational energy pricing. The Oklaunion facility has the same access to the ERCOT Transmission Grid as any other Resource. Conversely, it does not have the right to any particular zonal price, but rather is subject to the zonal price of the Congestion Zone in which it is located. The two issues are separate and locational energy pricing has no impact on transmission access. Therefore, placement of Oklaunion in the West Zone does not impact its access to the ERCOT Transmission Grid and in no way results in discriminatory or unjust and unreasonable outcomes; AEP confuses access to the ERCOT Transmission Grid with access/entitlement to a particular market price.[22]

III. Potential Market Impacts

AEP asks for expedited review because the 2009 congestion management structure at issue becomes effective January 1, 2009, and any change resulting from its appeal

[21] AEP notes that Oklaunion was designated as a movable unit under Section 7.2.4 (AEP appeal, Part V, Argument, at 12 and alleges that this was done to manage congestion (AEP Appeal, Part III, Statement of Issues, at 5). The implication of this discussion is that ERCOT conducted the post-contingency clustering analysis specifically to place Oklaunion in the West Zone to manage congestion and that this alleged treatment is discriminatory and unjust and unreasonable. The unit designation under 7.2.4 is irrelevant to the clustering analysis under 7.2.2. Accordingly, these arguments do not support AEP's allegations that scenario 3i discriminated against AEP or is otherwise not just and reasonable; designating Oklaunion as a movable unit under 7.2.4 had no bearing on the 3i clustering analysis.

[22] The ERCOT market is based on zonal pricing, which necessarily has disparate impacts on Market Participants due to price separation between zones. This principle is one of the central tenets of organized electricity markets. Under this construct, no entity is entitled to any particular zonal price. Rather, they are subject to the price applicable to the zone in which they are located. Thus, provided the process used to establish the Congestion Zones was in compliance with the relevant governing rules, the resulting zonal location and revenue potential for supply resources is neither discriminatory nor unjust and unreasonable.

could impact the market. This appeal does have the potential to affect participants' market positions, both within the ERCOT markets and with respect to their bilateral positions. Accordingly, it is in the best interest of the market to resolve this matter as quickly as possible and ERCOT will use its best efforts to facilitate timely resolution. Unfortunately, expedited review will not mitigate all impacts if AEP is granted the relief it seeks.

The 2009 annual Transmission Congestion Right (TCR) auction and January 2009 monthly TCR Auction take place this month. Depending on when this appeal is resolved, additional monthly auctions could be impacted.[23] Unwinding past auctions and then re-running auctions based on zonal changes that are at issue in this appeal would require a significant effort by ERCOT staff.

Furthermore, Market Participants with positions potentially affected by this appeal are faced with the choice of waiting until the appeal is resolved, which essentially means foregoing the TCR price hedge, thereby leaving any such positions exposed to congestion, or purchasing hedges and risking the potential devaluation of the TCR that would occur if the Congestion Zones change as a result of this appeal (the devaluation would apply both in absolute terms as a financial product and with respect to the value as hedge). This could also produce a chilling effect with respect to the TCR market, which would reduce the liquidity in that market.

Although ERCOT cannot speak for the market, it is possible that parties have already taken bilateral positions based on the approved 2009 Congestion Zones. Any such positions based on transactions involving the North and West Congestion Zones would most likely be impacted by changes to those Congestion Zones. Therefore, even assuming ERCOT runs new TCR auctions affected by this complaint (assuming AEP prevails), Market Participants' bilateral positions based on the approved 2009 North and West Congestion Zones would be irreversibly impacted because any changes to those Congestion Zones as a result of this appeal would impact the zonal pricing, and, therefore, the value of their positions, which would be based on the approved Congestion Zones.

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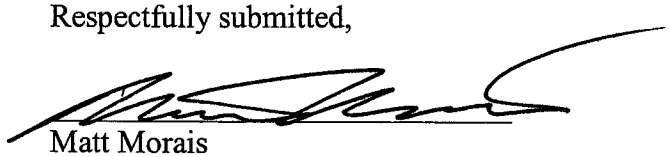
[23] Even assuming the appeal could be resolved at the Commission's December Open Meeting, which will not happen, it is reasonable to assume that any resulting changes would not be effective until at least the March 2009 TCR auction, with operations implementing the revised zones on March 1, 2009. Because this matter will not be resolved in December 2008, the potential impacts will most likely be even greater than this depending on when the matter is ultimately resolved. Again, it is ERCOT's position that the appeal lacks merit and should be rejected, but ERCOT believes it is noteworthy to identify, at least generally, the potential market impacts that could result due to the timing of AEP's filing. Furthermore, although the cost of potential market impacts is dependent on a multitude of variables, ERCOT believes it would be substantial.

ERCOT believes the 2009 Congestion Zones are appropriate and should be affirmed by the Commission, but it is noteworthy that due to the timing of AEP's appeal any decision resulting in a change in the 2009 Congestion Zones has the potential to create significant market impacts.

IV. Conclusion

ERCOT's actions in establishing the 2009 Congestion Zones under Scenario 3i were entirely consistent with its authority under the ERCOT Protocols and were justified based on legitimate operational concerns. Scenario 3i was reviewed and approved by the relevant ERCOT committee (TAC) and subcommittee (WMS) and the ERCOT Board based on the objective process and justifications described above. That process is in no way discriminatory, and AEP's dissatisfaction with the outcome of that process on Oklaunion does not make it so. Accordingly, the Commission should reject AEP's appeal and affirm the ERCOT Board's approval of Scenario 3i.

Respectfully submitted,



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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 December 11, 2008 by hand delivery, electronic mail, or first class U.S. mail.