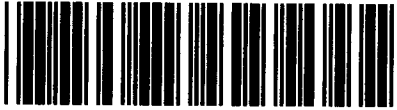


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Addendum StartPage: 0

PUC PROJECT NO. 38470

**CONFIDENTIALITY OF ELECTRIC
GENERATION INFORMATION IN THE
ELECTRIC RELIABILITY COUNCIL
OF TEXAS REGION**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

**CALPINE CORPORATION'S INITIAL COMMENTS REGARDING
PROPOSED AMENDMENT TO P.U.C. SUBSTANTIVE RULE 25.505**

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TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Calpine Corporation ("Calpine") submits the following comments regarding the Public Utility Commission of Texas ("Commission") Staff's Proposed Amendments to Substantive Rule 25.505, which was published in the Texas Register on September 3, 2010.

**I.
EXECUTIVE SUMMARY**

Calpine Corporation supports the Commission's efforts to ensure market transparency in the wholesale electricity market in Texas. Maintaining market transparency is especially critical during the transitional period as the Electric Reliability Council of Texas ("ERCOT") moves from a zonal to a nodal market design. The proposed changes to P.U.C. Substantive Rule 25.505 ("Rule 25.505"), however, are an unnecessary departure from the current rule. The proposed amendment should be rejected because: (1) the ERCOT stakeholder process is better suited for the development of disclosure protocols of this nature; (2) market monitors and regulators already have the information-access and tools required to properly monitor market behavior, ensure reliability, and ensure proper system modeling and market operation; and (3) the amendment could have several unintended consequences, including opening the door for anti-competitive behavior and pricing in the nodal market.

II. **BACKGROUND AND FACTS**

As part of implementing the competitive wholesale electricity market, the Commission adopted Rule 25.505 to govern the disclosure and publication of resource and load information in ERCOT. As the Commission recognized in its proposal for publication, “[m]arket participants rely on all information available to them, including both aggregated and disaggregated information, to inform their daily market related decisions and their understanding of how the competitive market operates.”¹ At the same time, the release of disaggregated, or “entity-specific,” information—particularly the timing of its release—“raises concerns that some parties may be able to gain an improper advantage from the information or that commercially sensitive information may be compromised.”² Indeed, the Commission's efforts “to increase the transparency of the ERCOT-administered markets,” see Rule 25.505(f), must be balanced with the Legislature's directive that “it is in the public interest to protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information[.]”³

Rule 25.505 currently sets forth specific disclosure requirements for the zonal and nodal market designs, for aggregated and disaggregated information, and for certain price-setting bids. Specifically, Rule 25.505(f) provides for a 60-day delay in the posting of data on offer curves for ancillary services and energy at each settlement point in the real-time nodal market, as well as a 60-day delay for “other resource-specific information” in the nodal market, Rule 25.505(f)(3)(B), subject to special provisions for the highest priced offer selected for dispatch at each interval and in cases where the market clearing price of energy (“MCPE”) or market clearing price of

¹ *Confidentiality of Electric Generation Information in the Electric Reliability Council of Texas Region*, P.U.C. Project No. 38470, Proposal for Publication of an Amendment to § 25.505 as Approved at the August 19, 2010 Open Meeting at 1 (Aug. 20, 2010) (“Proposal for Publication”).

² Proposal for Publication at 1-2.

³ TEX. UTIL. CODE ANN. § 39.001(b)(4).

capacity ("MCPC") exceeds the event trigger during an interval.⁴ The current Rule 25.505 is not a product of happenstance. As discussed below, market participants, and the Commission itself, have spilled much ink trying to find the right balance for the timing of the disclosure of disaggregated resource information.

As the Commission is aware, the ERCOT market is scheduled to transition from its current zonal market structure to a nodal market structure, which will "go live" on December 1, 2010. ERCOT currently is engaged in trial real-time market executions and information postings on the nodal market's portal to ensure the accuracy and stability of the market structure in advance of the go-live date.

When the ERCOT nodal market goes live, one set of data that will be posted to the portal is the State Estimator Report ("SER"), which will provide transmission-system data useful to understanding market events and operations. A subset of the data contained in the SER—data regarding transmission flows and voltages, transformer flows and voltages, and base points—is "resource-specific information," and should be subject to the 60-day release requirements of Rule 25.505(f)(3)(B). This subset of data should be treated as resource specific because, as the Commission has noted, its "premature release . . . can be used to infer information that would otherwise be considered disaggregated (competitively-sensitive) information, such as bid curves, generator on-off status, and generator operating levels."⁵

Rule 25.505(f) currently does not explicitly address the disclosure requirement for data contained in the SER. Citing the goal of balancing the competing mandates of market transparency and the protection of competitively sensitive data, Commission Staff proposes to amend Rule 25.505 to "clarify" that in the ERCOT nodal market, information contained in the

⁴ *Id.*

⁵ Proposal for Publication at 2.

SER will be posted 14 days after the date for which the data was accumulated.⁶ This clarification is offered despite the fact that some data elements contained in the SER are "resource-specific" and should remain subject to the current 60-day delay requirement.

III.

COMMENTS ON AMENDMENT TO P.U.C. SUBST. R. 25.505

Calpine supports the Commission's efforts to ensure market transparency. However, Calpine respectfully submits that there is an important distinction between market transparency and market-participant transparency.⁷ Transparency traditionally has been a two-tier structure. Regulators and the market monitor on the first tier rightfully have full access to unit-specific information on or near a real-time basis. Calpine fully supports this access. Other market participants on the second tier, including consumers and competitors, have access on a near-term basis to aggregated data, and also have access to disaggregated data after a meaningful delay. Calpine also fully supports this access. However, the proposed amendment will provide all market participants with access to resource-specific data on an accelerated basis, eroding the disclosure delay that is the foundation of the second tier. No supporter of competition in the marketplace should support this access.

Calpine views the proposed amendment as an unnecessary departure from the current 60-day disclosure standard in Rule 25.505, which reflects a lengthily contested and negotiated position. The current rule has already established the proper mechanism to balance the competing mandates of transparency and competition; thus, the proposed amendment should be

⁶ Proposal for Publication at 2.

⁷ The Commission has in the past expressed its understanding that there is a stark difference between measures that promote market transparency and measures that prematurely disclose, in the name of "transparency," resource- and transaction-specific data that reveal a market participant's competitive position. See *Rulemaking Proceeding to Address Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas*, P.U.C. Project No. 33490, Order Adopting Amendment to § 25.505 at 21 (Aug. 16, 2007) ("Order in Project No. 33490") ("[A]ccess to the disaggregated information . . . should not be confused with market transparency . . .").

rejected. First, Rule 25.505 directs ERCOT to develop protocols that comply with the Commission's substantive rules regarding disclosure.⁸ The proposed amendment turns this progression on its head. The ERCOT stakeholder process is a wholly adequate and proper method to develop SER-specific disclosure requirements. Second, the current disclosure rules provide all information and tools necessary to enable regulators to monitor market behavior, ensure reliability, and to allow the market operator to properly model the system. Arguments for accelerated release of competitively sensitive data on these grounds must be dismissed. Third, the proposed amendment will cause unintended consequences, including the perceived promotion of anti-competitive behavior and pricing.

A. The ERCOT Stakeholder Process is the Proper Forum for the Development of State Estimator Report Disclosure Protocols

Rule 25.505(f) provides ERCOT with broad and clear rules regarding the disclosure of resource-specific data in nodal market. Rule 25.505(h) then requires ERCOT to "use a stakeholder process to develop protocols that comply with" the Commission's rules. The proposed amendment gets this backwards. The ERCOT stakeholder process is the appropriate forum to develop protocols for the release of the SER's resource-specific data in compliance with 25.505.

The 60-day disclosure requirement of current Rule 25.505(f)(3)(B) reflects a heavily negotiated compromise position that was reached after two lengthy rulemaking proceedings.⁹ In

⁸ P.U.C. SUBST. R. 25.505(h).

⁹ Rule 25.505 was initially adopted in August 2006 in Project Number 31972 – a consolidated rulemaking project to promulgate a series of competition rules that had been ongoing in various iterations since 2002. *Rulemaking on Wholesale Electric Market Power and Resource Adequacy in the ERCOT Power Region*, P.U.C. Project No. 31972, Order Adopting Amendment to § 25.502, New § 25.504, and New § 25.505 (Aug. 23, 2006) ("Order in Project No. 31972"). Market participants appealed Rule 25.505 to the Texas Court of Appeals, Third District, which issued an order staying the 30-day disclosure period for resource-specific information. In order to avoid continued litigation delays, the Rule was amended in August 2007 in Project Number 33490 to implement the current 60-day disclosure schedule at issue here.

those proceedings, a variety of market participants commented on the appropriate timeframe for the disclosure of disaggregated information in the nodal market, with proposals ranging from 48-hour disclosure delays to six-month disclosure delays.¹⁰ In ultimately adopting the 60-day disclosure timeframe, the Commission stated that the timeframe "achieves a reasonable balance between the needs of market participants for timely release of information and the needs of suppliers to maintain confidentiality of disaggregated information long enough to avoid possible harm."¹¹ The Proposal for Publication has offered no justification to depart from that "reasonable balance."

The Commission has done its job and provided ERCOT stakeholders with broad and clear guidance regarding the treatment of resource-specific information. It is now the job of ERCOT stakeholders to apply the guidance of Rule 25.505 to develop data-posting requirements that appropriately treat each type of data contained in the SER so that they comply with the Commission's rules. This is the type of "in the weeds" task that is intended for the ERCOT stakeholder process. In fact, NRG Energy and Calpine have already jointly proposed, in the context of the ERCOT stakeholder process, changes to ERCOT Nodal Protocols in order to align them with the mandates of Rule 25.505.¹² Under this proposal, data elements in the SER and in other sections of the Protocols that allow actual resource status and output to be determined (such as transmission flows and voltages, transformer flows and voltages, and base points) would properly be treated under ERCOT Nodal Protocols as protected resource-specific information subject to 60-day release requirements. All other items in the SER (such as the status of certain

¹⁰ See Order in Project No. 33490 at 17, 19.

¹¹ *Id.* at 22.

¹² See ERCOT Nodal Protocols Revision Request 209, which is publicly available on ERCOT's website at <http://www.ercot.com/mktrules/issues/npr/201-225/209/index>.

breakers and switches, tap positions, and shadow prices on binding transmission constraints), would be posted on an hourly basis on the MIS secure area.

B. Current Disclosure Rules Provide All Information and Tools Necessary to Enable Market Monitoring, Ensure Reliability, and Properly Model the System

Market monitoring and efforts to ensure reliability are the role and responsibility of ERCOT's Independent Market Monitor (IMM), the Commission's Markets and Enforcement Staff, and the Texas Regional Entity (TRE). These entities have immediate access to all information needed to detect and address dysfunctions in the marketplace, and they have served ERCOT well. Further, ERCOT, as market operator, is properly equipped to evaluate system data and accurately model the nodal market. ERCOT is currently in the midst of regular market trials in which it is rigorously testing and improving its ability to operate under the nodal market design.

Any argument for accelerated disclosure of competitively sensitive information for the purposes of improving market monitoring, ensuring reliability, or double-checking ERCOT's modeling should be viewed with skepticism. Large firms with sophisticated quantitative capabilities are likely to seek full disclosure of the SER data to gain a competitive advantage. The accelerated release of the data cannot improve market monitoring; the responsible regulatory entities already have immediate access to all of the resource-specific data that they need. And the anti-competitive harm risked by the premature release of resource-specific data is far outweighed by, and simply cannot be justified by, the purported upside that firms could better review ERCOT's modeling. The better approach is to identify and resolve any shortcomings in the nodal system itself.

C. The Proposed Amendment Will Increase the Potential for Anti-Competitive Behavior

The Commission must not lose sight of the fact that current disclosure rules provide ample market information—disclosed on an hourly basis in some cases and under 48-hour disclosure provisions in other cases—to provide transparency to all stakeholders and permit market participants to make efficient, competitive decisions. The accelerated release of the resource-specific SER data can only harm competition in the marketplace.

If the resource-specific data of the SER—the data regarding transmission flows and voltages, transformer flows and voltages, and base points—are released in the accelerated 14-day time frame as proposed, sophisticated market participants (including both competitors and contractual counterparties) would be able to determine an entity's offer curve by reviewing output data in light of sequential Security Constrained Economic Dispatch outputs of locational marginal pricing data. Radially connected resources provide a concrete example of how this can occur. In the case of radially connected resources, the transformer and transmission flow data reveal the precise amounts and patterns of power flowing into and out of the resource with total certainty. The presence of directional flows from a radially connected resource to the bulk electric system inherently and unambiguously reveals the status and output of that resource.

If a market participant gains information about a competitor's output and pricing, that market participant should be expected to use that information to its competitive advantage and to its competitors' disadvantage. For example, the accelerated availability of output data under the proposed amendment may allow other generation owners to know when generation is not available in a certain area and raise offer prices accordingly.

This risk that a market participant could use the data to gain an advantage and negatively impact a negotiated transaction is heightened when the disclosure delay of resource-specific SER

data is reduced from 60 days to 14 days. Time dilutes the competitive value and sensitivity of the SER data; thus accelerated disclosure creates predatory conditions that can only raise costs to consumers. The Commission's prior view that competitors could "simply change their bidding strategies more frequently if they felt disadvantaged by the disclosure,"¹³ will not be realistic under the proposed 14-day disclosure period in light of the fact that market participants enter longer-term contracts.

Another harmful anti-competitive consequence of the proposed amendment is an increased risk that market participants unwittingly could engage in "tacit collusion," which occurs when many market participants independently use the released data such that their offers naturally coalesce around a price point. This phenomenon would be a natural consequence of the proposed amendment, as resource-specific offer-curve information becomes available on an accelerated schedule. Such a result would expose market participants to significant risk of unfounded market-manipulation claims, which, in turn, would reduce the efficiency of market monitoring and enforcement efforts and negatively impact consumer pricing. Tacit collusion is not productive for the ERCOT market, because efficiency losses, increased risk and inflated prices are antithetical to a fully competitive marketplace.

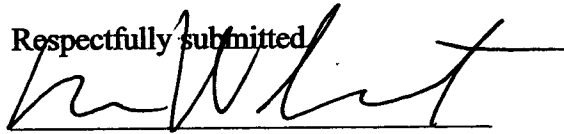
The fact that third-party subscription services already provide for a fee certain resource-specific data—much of it speculative or stale—confirms the competitive value of the information that would be released on an accelerated basis under the proposed amendment. This underscores the importance of retaining the 60-day disclosure delay in order to erode the competitive value of the information. It is the sole responsibility of the Commission to identify the types of data that are commercially sensitive and to determine what the appropriate timetable for its disclosure.

¹³ See Order in Project 33490 at 24.

That responsibility is arguably heightened when existing commercial markets confirm the value of the competitive information at issue. In short, the competitive harm risked by accelerating disclosure of competitively sensitive information in the SER far outweighs any benefit of the proposed rule change.

IV.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Calpine Corporation respectfully requests that the Commission consider the foregoing comments and reject the proposed amendment to P.U.C. Substantive Rule 25.505.

Respectfully submitted,


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