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Chairman

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Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director




Public Utility Commission of Texas



TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Steven Leary 
Administrative Law Judge

RE: Docket No. 49673 – *Complaint of Aspire Commodities, LLC Against the Electric Reliability Council of Texas, Inc.*

DATE: August 6, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

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DOCKET NO. 49673

COMPLAINT OF ASPIRE	§	PUBLIC UTILITY COMMISSION
COMMODITIES, LLC AGAINST THE	§	
ELECTRIC RELIABILITY COUNCIL	§	OF TEXAS
OF TEXAS, INC.	§	

**PROPOSAL FOR DECISION
ON MOTION FOR SUMMARY DECISION**

This Proposal for Decision (PFD) addresses the complaint of Aspire Commodities, LLC (Aspire) against the Electric Reliability Council of Texas, Inc. (ERCOT). Both Aspire and ERCOT filed motions for summary decision. For the reasons set forth herein, the administrative law judge (ALJ) recommends that Aspire’s motion for summary decision be denied, that ERCOT’s motion for summary decision be granted, and that Aspire’s complaint be denied.

I. Background

Aspire filed the complaint at issue in this case on June 25, 2019. The complaint challenges the refusal of ERCOT to re-price the 14:50 security-constrained economic dispatch (SCED) interval for operating day May 30, 2019, the pricing for which interval was impacted by erroneous telemetry. Aspire states that it is a commodities trader that lost money on ERCOT futures contracts on the Intercontinental Exchange as a result of ERCOT’s refusal to re-price the interval. Aspire contends that ERCOT was required by Nodal Protocols § 6.3(4) to perform a price correction. ERCOT agrees that the interval was impacted by erroneous telemetry, but disagrees with Aspire’s contention that a price correction is required.

Both Aspire and ERCOT filed motions for summary decision and filed proposed findings of fact and conclusions of law in support of their respective motions. This PFD denies Aspire’s motion for summary decision and grants ERCOT’s motion for summary decision.

II. Discussion

The pleadings in this case reflect that there are no disputed material facts. The parties agree that on operating day May 30, 2019, Calpine Power Management LLC (Calpine), a qualified scheduling entity (QSE) sent erroneous telemetry for a fleet of resources to ERCOT, incorrectly telemetering both a high sustainability limit (HSL) and low sustainability limit (LSL) of zero

megawatts (MW). The parties also agree that the erroneous telemetry impacted the pricing for the 14:50 SCED, causing the system lambda¹ to soar from approximately \$37 per megawatt-hour (MWh) to \$9,001 per MWh, the maximum price allowed in the market. Aspire alleges, and ERCOT does not dispute, that Calpine received a financial windfall as a result of the error. Aspire alleges that it lost money on futures contracts on the Intercontinental Exchange as a result of the pricing of the interval. ERCOT and Aspire disagree concerning whether re-pricing the interval will redress any harm Aspire suffered. Because the ALJ concludes that ERCOT was not required to re-price the interval, the ALJ need not reach the issue of whether the requested price correction would redress Aspire's alleged harm.

The resolution of this case hinges on the interpretation of ERCOT's nodal protocols, specifically, Nodal Protocols § 6.3(4). Aspire contends the price spike the for the 14:50 SCED interval constituted an "invalid market solution" within the meaning of Nodal Protocols § 6.3(4), requiring ERCOT to re-price the interval. ERCOT contends that because the price spike was due an external telemetry error rather than a failure of an ERCOT system, that the circumstances did not rise to the level of an "invalid market solution." ERCOT therefore contends that it was not required to re-price the interval. The term "invalid market solution" is not defined in ERCOT's protocols.

ERCOT Nodal Protocols § 6.3(4), provides as follows:

ERCOT shall correct prices when: (i) *a market solution is determined to be invalid*, (ii) invalid prices are identified in an otherwise valid market solution, (iii) the Base Points received by Market Participants are inconsistent with the Base Points of a valid market solution, unless accurate prices cannot be determined, or (iv) the Security-Constrained Economic Dispatch (SCED) process experiences a failure as described in Section 6.5.9.2, Failure of the SCED Process. The following are some reasons that may cause these conditions.

- (a) Data Input error: Missing, incomplete, stale, or incorrect versions of one or more data elements input to the market applications may result in an invalid market solution and/or prices.
- (b) Data Output error: These include: (i) incorrect or incomplete data transfer, (ii) price recalculation error in post-processing, and (iii) Base Points inconsistent with prices due to the Emergency Base Point flag remaining activated even when the SCED solution is valid.

¹ The term "system lambda" is defined under Nodal Protocols § 2.1 as the energy component of the locational marginal price at each ERCOT settlement point.

- (c) Hardware/Software error: These include unpredicted hardware or software failures, planned market system or database outages, planned application or database upgrades, software implementation errors, and failure of the market run to complete.
- (d) Inconsistency with the Protocols or Public Utility Commission of Texas (PUCT) Substantive Rules: Pricing errors may occur when specific circumstances result in prices that are in conflict with such Protocol language or the PUCT Substantive Rules.²

Aspire contends that the plain language of § 6.3(4) mandates a price correction. In support, Aspire notes the mandatory term “shall” in the phrase “ERCOT shall correct prices.” Aspire contends that the price spike constituted an invalid market solution because the prices were unrelated to market fundamentals and were caused by erroneous telemetry. Aspire categorizes the relevant protocols as being unambiguous in this regard and ERCOT’s interpretation of the protocols as unreasonable. Aspire contends that, because the relevant protocols are not ambiguous, should the Commission follow ERCOT’s interpretation, the Commission’s interpretation would not be entitled to deference by the courts under relevant case law. Aspire points to the magnitude of the impact of the erroneous telemetry and categorizes the outcome as arbitrary and unfair, and points out that another independent organization, Southwest Power Pool, allows for price corrections in similar circumstances. Lastly, in a supplemental filing dated July 30, 2020, Aspire submits a news article alleging that Calpine acknowledged its error and requested that the grid manager reprice the interval, but was told it would be impractical to do so.

ERCOT and Commission Staff point out that § 6.3(4) provides a non-exclusive list of factors that “may” cause a solution to be deemed invalid and that ERCOT has consistently interpreted § 6.3(4) so as to not require a price correction in cases of erroneous telemetry from a market participant, having never performed a price correction in such circumstances. ERCOT and Commission Staff contend that because the term “invalid” within the meaning of § 6.3(4) is not defined and because the term is subject to more than one interpretation, the protocol is ambiguous and that, should the Commission choose to follow ERCOT’s interpretation, the Commission’s interpretation will likely be given deference by the courts. ERCOT further points out that Aspire is not a market participant, that no market participant initiated alternative dispute resolution

² Emphasis added.

procedures to challenge ERCOT's decision, that ERCOT did not determine the price for the interval to be invalid, and that the time frame for ERCOT-initiated price corrections under §§ 6.3(5) and 6.3(6) of the Nodal Protocols has expired. ERCOT additionally advances policy arguments in favor of its proposed interpretation, including the prevention of market uncertainty through the avoidance of after-the-fact price changes, and states that its interpretation is consistent with that of other independent system operators, including ISO-New England. Commission Staff additionally points out that Aspire is a sophisticated party and contends that, given ERCOT's longstanding practice of not performing price corrections in cases of erroneous telemetry from a market participant and given that erroneous telemetry is a fact of the market, Aspire knowingly assumed the risk of a price spike caused by erroneous telemetry.

The ALJ concludes that ERCOT correctly applied § 6.3(4) in failing to require a price correction in this case. ERCOT's interpretation is not inconsistent with the text of the protocol and appears to be consistent with its longstanding practices and a policy of market certainty. Although the impacts of the erroneous telemetry on operating day May 30, 2019 were extreme, given ERCOT's longstanding interpretation, market participants knowingly assume the risk of price fluctuations due to erroneous telemetry. Because the relevant facts are not disputed and the outcome of this case hinges purely on questions of law, summary decision is appropriate in this case under 16 Texas Administrative Code (TAC) § 22.182(a). The ALJ recommends that summary decision be granted in favor of ERCOT and that the relief sought in Aspire's complaint be denied.

III. Findings of Fact

The ALJ makes the following findings of fact.

Complainant

1. Aspire is a for-profit limited liability company registered with the Delaware secretary of state under file number 6662686.
2. Aspire participates in ERCOT futures contracts transactions on the Intercontinental Exchange.

Respondent

3. ERCOT is a Texas nonprofit corporation registered with the Texas secretary of state under file number 116906401. ERCOT serves as the independent system operator for the ERCOT region.

Complaint

4. On June 25, 2019, Aspire Commodities filed a complaint against ERCOT with the Commission.

Notice

5. On July 1, 2019, ERCOT filed the affidavit of Erika M. Kane, attorney for ERCOT, attesting that notice of the complaint was to be sent via electronic mail distribution to all qualified scheduling entities (QSEs) and the Technical Advisory Committee on June 28, 2019; and a copy of the complaint was posted to ERCOT's website.
6. On July 3, 2019, ERCOT filed the affidavit of Erika M. Kane, attorney for ERCOT, attesting that amended notice of the complaint was to be sent via electronic mail distribution to all qualified scheduling entities (QSEs) and the Technical Advisory Committee on July 3, 2019.

Motions to Intervene

7. On August 12, 2019, Aspire Power Ventures filed a motion to intervene.
8. On August 14, 2019, 3S Real Estate Investments, LLC and V247 Power Corporation filed motions to intervene.
9. In Order No. 4 filed on September 19, 2019 by Order No. 4, the ALJ denied all three motions to intervene.

Motions for Summary Decision

10. On February 18, 2020, Aspire filed its motion for summary decision, requesting that ERCOT be required to reprice the 14:50 SCHED interval for operating day May 30, 2019.
11. In Order No. 8 filed on February 20, 2020, the ALJ established a procedural schedule for the filing of a response to Aspire's motion, the filing of motions for summary decision by other parties, and the filing of responses to these motions.

12. On March 5, 2020, ERCOT filed its motion for summary decision, requesting that the complaint be denied in its entirety.
13. On March 27, 2020, ERCOT and Commission Staff filed separate responses to Aspire's motion for summary decision. Additionally, on March 27, 2020, Aspire filed a response to ERCOT's motion for summary decision.
14. In Order No. 9 filed on May 11, 2020, the ALJ permitted the parties to submit proposed findings of fact and conclusions of law.
15. On June 5, 2020, ERCOT and Commission Staff filed joint proposed findings of fact and conclusions of law. Additionally, on June 5, 2020, Aspire filed proposed findings of fact and conclusions of law.
16. No hearing was held on the motions for summary decision.

Basis of Complaint

17. The event that forms the basis for Aspire's complaint occurred during the 14:50 SCED interval on operating day May 30, 2019.
18. At approximately 14:49 on that day, Calpine, a QSE registered with ERCOT, sent incorrect telemetry to ERCOT for a fleet of resources, which was captured in the 14:50 SCED run. Calpine telemetered a zero MW value to ERCOT for the HSL and LSL of these resources for the 14:50 SCED run.
19. ERCOT's resource limit calculator automatically determined a new high dispatch limit (HDL) for the Calpine resources based on this changed telemetry. This resulted in the total HDL for the Calpine resource fleet decreasing from 6,388 MW to 5,125 MW. Consequently, for the 14:50 SCED interval, the calculated total instantaneous capacity available for dispatch was approximately 220 MW less than the total instantaneous demand. This caused the system lambda to soar from approximately \$37 to \$9,001 per MWh.
20. Although ERCOT's systems are designed to automatically disregard certain telemetered data that is outside of acceptable ranges, the data telemetered by Calpine on May 30, 2019, was within the range of values deemed presumptively valid by ERCOT's systems.

21. SCED runs automatically every five minutes; however, the ERCOT Real-Time Operating Procedure Manual gives ERCOT operators discretion to run SCED manually in certain circumstances. At 14:52 on the operating day at issue, ERCOT operators executed a manual SCED run and captured updated Calpine telemetry. Based on this updated telemetry, the resource limit calculator determined a new total HDL for Calpine's resource fleet of 6,433 MW; which resulted in a decrease of the system lambda to \$38.04 per MWh.
22. Within an hour of the telemetry error, ERCOT investigated and determined that SCED properly executed the 14:50 interval. Further, ERCOT determined that a price correction was not appropriate because ERCOT has interpreted the ERCOT Protocols as not granting ERCOT the authority to correct prices when a market solution is attributable to an external data error caused by a market participant—in this case, inaccurate telemetry submitted by Calpine. Accordingly, ERCOT issued a public notice at 15:44 on May 30, 2019, stating that it would not be performing a price correction for the 14:50 SCED interval.
23. Aspire requests that ERCOT be ordered to re-price the published settlement prices for the 14:50 SCED interval on operating day May 30, 2019.

IV. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this proceeding under PURA § 39.151(d).
2. Under 16 Texas Administrative Code (TAC) § 22.251(b), any affected entity may complain to the Commission regarding conduct that is in violation of any law that the Commission has jurisdiction to administer, any order or rule of the Commission, or any protocol or procedure adopted by ERCOT.
3. Under 16 TAC § 22.251(o), if the Commission finds merit in a complaint filed against ERCOT under 16 TAC § 22.251, the Commission may grant the relief it deems appropriate.
4. Under 16 TAC § 22.182(a), the Commission may grant a motion for summary decision if the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law.

5. When the ALJ recommends disposition of a case by summary decision, the ALJ must prepare a PFD. 16 TAC § 22.182(f).
6. Aspire's complaint is appropriate for disposition by a motion for summary decision because there is no dispute regarding facts material to the resolution of the motion and this dispute involves the interpretation of an ERCOT Nodal Protocol, which is purely a legal question.
7. The language of ERCOT Protocol § 6.3(4) does not mandate a price correction when the pricing for an interval is impacted by erroneous telemetry from a QSE.
8. ERCOT did not act contrary to ERCOT Protocol § 6.3(4) when it determined that it would not correct prices impacted by the telemetry error on operating day May 30, 2019.

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the ALJ proposes that the Commission issue the following orders:

1. The Commission denies Aspire's motion for summary decision.
2. The Commission grants ERCOT's motion for summary decision and denies Aspire's complaint.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 6th day of August 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



STEVEN LEARY
ADMINISTRATIVE LAW JUDGE