



Control Number: 49673



Item Number: 50

Addendum StartPage: 0



DOCKET NO. 49673

**COMPLAINT OF ASPIRE
COMMODITIES, LLC AGAINST THE
ELECTRIC RELIABILITY COUNCIL
OF TEXAS**

§ **PUBLIC UTILITY COMMISSION**
§ **OF TEXAS**
§
§

ASPIRE COMMODITIES, LLC’S EXCEPTIONS TO THE
PROPOSAL FOR DECISION ON MOTION FOR SUMMARY DECISION

Aspire Commodities, LLC (“Aspire”) hereby files the following exceptions to the proposal for decision on motion for summary decision filed by the administrative law judge.

I. Special Exceptions to the Discussion Section of the Proposal for Decision

1. Aspire specially excepts to the presentation of its claims against ERCOT as being limited to ERCOT’s refusal to due to the existence of an “invalid market solution”.¹ Aspire’s motion for summary decision claims that ERCOT violated ERCOT Protocols §§6.3(4), 6.3(5) and 6.3(6)(b).² The administrative law judge improperly limits analysis of Aspire’s claims to Aspire’s claims under ERCOT Protocols §6.3(4)(i).
2. Aspire specially excepts to the analysis regarding whether the term “invalid” or “invalid market solution” is meaningfully ambiguous. First, the word “invalid” as an adjective is far from ambiguous; the Oxford English Dictionary succinctly defines it as “not true because based on erroneous information or unsound reasoning.”³ It is clear that the pricing event the May 30, 2019 pricing event would accurately be described as being based on erroneous information.

¹ “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.”, Proposal for Decision at 1 (August 6, 2020).

² Aspire Commodities, LLC’s Motion for Summary Decision and Request for Oral Hearing at 3 – 4 (February 18, 2020).

³ Oxford University Press, available at <https://www.lexico.com/en/definition/invalid> (Accessed on August 18, 2020).

3. Aspire specially excepts to the proposal for decision’s use of the Protocols “non-exclusive list of factors that ‘may’ cause a solution to be invalid” as a way to constrain the meaning of the word “invalid”.⁴ The provided examples inform what “may” cause an invalid market solution or price, but they do not provide a limitation to what could do so. The administrative law judge’s ruling allows ERCOT to interpret the words “some” or “may” as “only” or “shall” allows ERCOT to exceed its authority – ERCOT is now allowed to interpret unambiguous language.
4. Aspire specially excepts to the presentation of the word “invalid” as ambiguous. ERCOT knows what an “invalid price” or an “invalid market solution” is, it corrects prices based on this frequently, most recently for operating days June 8 – July 7, 2020.⁵ In this instance, ERCOT noticed that prices were “questionable”, flagged them for review, and later corrected the prices.⁶ ERCOT can clearly identify invalid pricing but chooses to read in an internal versus external limitation to reduce the amount of times it has to change prices. This is a public policy decision but exceeds its authority as the language in the statute is unambiguous.
5. Aspire specially excepts to the characterization that ERCOT’s interpretation of §6.3(4)(a) is “not inconsistent with the text of the protocol”.⁷ It is inconsistent to read a limitation into a statute when such limitation is clearly contrary to the language in the statute.
6. Aspire specially excepts to the presentation of what ERCOT has done as an interpretation of “invalid”. What ERCOT posits is a tautology – it fails to provide a definition of “invalid” other than to seem to posit that it can only exist when caused by internally supplied erroneous data.

⁴ Proposal for Decision at 3-4.

⁵ Notification of Market Price Correction (August 5, 2020 at 15:05:07 CST).

⁶ *Id.*

⁷ Proposal for Decision at 4.

This is a logical loop until ERCOT provides its interpretation of invalid.

II. Special Exceptions to the Conclusions of Law Section of the Proposal for Decision

1. Aspire specially excepts to Finding 7 to the degree that it supplants the unambiguous language of the Protocols with ERCOT's limiting interpretation of the same.⁸
2. Aspire specially excepts to Finding 8 to the degree that it is based on ERCOT's unfounded and inappropriate interpretation of the Protocols as opposed to the Protocols unambiguous, plain language meaning.⁹

III. Conclusion


Every action by ERCOT in this instance violates the clear precedent established the Texas Supreme Court, that no deference is due when "an agency's interpretation fails to follow the clear, unambiguous language of its own regulations."¹⁰ In this case, ERCOT has chosen to take unambiguous statement, act as if it is ambiguous, and then change the meaning of the plain language in the statute. It is illegal and wrong to allow ERCOT to change the unilaterally change the words "may" and "some" to "shall" and "all". If the interpretation that ERCOT has informally adopted is the preferred interpretation, it should formally seek to revise the Protocols. The proposed decision and ERCOT's interpretation are untenable under current Texas case law as they both read in a limitation that directly contradicts the Protocols.

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *TGS-NOPEC Geophysical Co v Combs*, 340 S.W.3d 432, 438 (Tex. 2011) (citing *Pub Util Comm'n v Gulf States Utilities Co.*, 809 S.W.2d 201, 207 (Tex. 1991)).

Respectfully submitted,



Barry M. Hammond, Jr.

General Counsel

Texas State Bar No. 24059883

bhammond@aspirecommodities.com

1302 Waugh Drive #539

Houston, Texas 77019

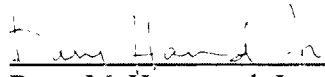
Tel. (832) 819-1020

Fax (832) 827-4280

**ATTORNEY FOR ASPIRE COMMODITIES,
LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been forwarded to all counsel of record on the 19th day of August, 2020 by email, in accordance with the Order Suspending Rules issued on March 16, 2020 in Project No. 50664.



Barry M. Hammond, Jr.