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DOCKET NO. 49673

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

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PUBLIC UTILITY COMMISSION
OF TEXAS

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.’S
REPLY TO ASPIRE’S EXCEPTIONS TO PROPOSAL FOR DECISION**

Electric Reliability Council of Texas, Inc. (ERCOT) files this reply to the exceptions filed by Aspire Commodities, LLC (Aspire) to the Proposal for Decision (PFD), and would show as follows:

I. The PFD reflects that the Administrative Law Judge (ALJ) considered and rejected Aspire’s references to ERCOT Protocol Sections 6.3(5) and 6.3(6)(b).

Aspire asserts that it argued in its Motion for Summary Decision that ERCOT violated ERCOT Protocol Sections 6.3(4), 6.3(5) and 6.3(6)(b), and that the PFD improperly limits analysis of Aspire’s claims to only ERCOT Protocol Section 6.3(4)(i). Aspire’s characterization of the PFD is incorrect. The PFD makes clear that the ALJ’s analysis was not narrowly limited to ERCOT Protocol Section 6.3(4)(i); rather, the proposed Conclusions of Law show that the decision is based on review of the entirety of ERCOT Protocol Section 6.3(4). Further, the PFD reflects consideration of ERCOT Protocol Sections 6.3(5) and 6.3(6)(b), as it makes note of ERCOT’s assertion that “the time frame for ERCOT-initiated price corrections under §§ 6.3(5) and 6.3(6) of the Nodal Protocols has expired.”

Additionally, it was not improper to for the ALJ to omit references to ERCOT Protocol Sections 6.3(5) and 6.3(6)(b) in the Findings of Fact and Conclusions of Law in the PFD, because Aspire did not cite ERCOT Protocol Sections 6.3(5) and 6.3(6)(b) in its Complaint filed on June 20, 2019. Rather, the Complaint only cites ERCOT Protocol Section 6.3(4).¹ 16 Tex. Admin. Code

¹ See Aspire’s Complaint, available at http://interchange.puc.texas.gov/Documents/49673_1_1023438.PDF.

(TAC) § 22.251(d)(1)(B)(iv) requires that a Complaint filed against ERCOT include a statement of “the ERCOT...protocols...applicable to resolution of the dispute.” Accordingly, the Order disposing of this matter need not include Findings of Fact or Conclusions of Law regarding Protocol Sections not put at issue in the Complaint.

To the extent the Commission may be inclined to reference ERCOT Protocol Sections 6.3(5) and 6.3(6)(b) in its Final Order, ERCOT refers the Commission to Section IV of ERCOT’s Response to Aspire’s Motion for Summary Decision, which details the reasons that ERCOT Protocol Sections 6.3(5) and 6.3(6)(b) do not support granting Aspire relief.² In short, ERCOT Protocol Section 6.3(6)(b) is not relevant because it only applies to price corrections approved by the ERCOT Board of Directors. ERCOT Protocol Section 6.3(5) is not relevant because it applies only when a condition requiring a price correction in ERCOT Protocol Section 6.3(4) has occurred, and there was no such condition in this matter.

ERCOT provides the following proposed Finding of Fact and Conclusion of Law for the Commission’s consideration to address this issue:

Proposed Finding of Fact:

If ERCOT determines that a condition set out in Protocol Section 6.3(4) has occurred, ERCOT Protocol Section 6.3(5) requires that ERCOT correct prices by 16:00 on the second Business Day after the impacted Operating Day (OD). If ERCOT does not correct prices by that time, but believes that a condition in Protocol Section 6.3(4) has occurred and requires a price correction, then ERCOT Protocol Section 6.3(6) requires that ERCOT issue a Market Notice within 30 days of the impacted OD stating that it will seek ERCOT Board of Directors approval to correct prices.

Proposed Conclusion of Law:

Protocol Sections 6.3(5) and 6.3(6)(b) are not applicable to this matter because ERCOT determined that the telemetry error on OD May 30, 2019, was not a condition requiring a price correction under Protocol Section 6.3(4).

² See ERCOT’s Response to Aspire’s Motion for Summary Decision at 4-6, available at http://interchange.puc.texas.gov/Documents/49673_37_1057936.PDF.

II. The ALJ correctly applied the law in rejecting Aspire’s asserted interpretation of ERCOT Protocol Section 6.3(4).

Every other exception to the PFD made by Aspire constitutes a request for reconsideration of Aspire’s repeated assertion — which the ALJ expressly considered and rejected — that the terms “invalid” and “market solution,” as used in ERCOT Protocol Section 6.3(4), are unambiguous and must be interpreted to require that ERCOT perform a price correction when external telemetry errors affect prices.³ This exception is without merit, because the ALJ properly applied the law when interpreting ERCOT Protocol Section 6.3(4).

As explained in Sections I and II of ERCOT’s Motion for Summary Decision and Section I of ERCOT’s Response to Aspire’s Motion for Summary Decision, which are incorporated here by reference, the terms “invalid” and “market solution” are not defined in the Protocols and are subject to more than one reasonable interpretation when applied to the facts at issue in this matter.⁴ Accordingly, the Commission may adopt ERCOT’s reasonable interpretation that Protocol Section § 6.3(4) does not mandate a price correction when there are external telemetry errors.⁵

ERCOT Protocol Section 6.3(4) expressly provides that a data error is something that “may” — not must — cause an “invalid market solution.” Rules of statutory construction support a finding that use of the word “may” in this Protocol language is an indication of “*discretionary* authority” on the part of ERCOT to determine when a data error causes an “invalid market

³ ERCOT Protocol Section 6.3(4) provides, in part, that ERCOT shall correct prices when “a market solution is determined to be invalid” or “invalid prices are identified in an otherwise valid market solution.”

⁴ See ERCOT’s Response to Aspire’s Motion for Summary Decision at 1-2; see also ERCOT’s Motion for Summary Decision at 4-9, available at http://interchange.puc.texas.gov/Documents/49673_35_1054572.PDF. It was reasonable for ERCOT to determine that the Calpine telemetry error did not cause an “invalid market solution” under ERCOT Protocol Section 6.3(4) because there was no failure of the Security-Constrained Economic Dispatch (SCED) process, there were no data errors caused by ERCOT, there was no failure of ERCOT’s hardware or software, and the resulting market solution was not inconsistent with any ERCOT Protocols or Commission Rules.

⁵ See *Pub Util Com'n v. Constellation Energy Commodities Group, Inc.*, 351 S.W.3d 588, 595 (Tex. App.—Austin 2011, pet. denied) (courts defer to the Commission’s interpretation of a protocol if it “is reasonable and in harmony” with relevant statutes).

solution” requiring a price correction.⁶ ERCOT has a long practice of *not* conducting price corrections when there are external telemetry errors. This practice helps ensure market certainty by reducing the number of after-the-fact corrections, and it is a practice that has not been challenged by actual ERCOT Market Participants. Given this, the ALJ was correct in including a Conclusion of the Law in the PFD providing that “[t]he 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.”

For the reasons stated herein, and in ERCOT’s Motion for Summary Decision and Response to Aspire’s Motion for Summary Decision, ERCOT respectfully requests that the Commission adopt the PFD and issue a Final Order denying Aspire’s requested relief.

⁶ See TEX. GOV’T CODE § 311.016(1) (emphasis added) (use of “may” “creates discretionary authority or grants permission or a power”); see also *Haig v Agee*, 453 U.S. 280, 294 n. 26 (1981) (use of word “may” in statute “expressly recognizes substantial discretion”).

Respectfully submitted,

/s/ Erika Kane

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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 August 26, 2020, by email, in accordance with Second Order Suspending Rules issued on July 16, 2020 in Project No. 50664.

/s/ Erika Kane