



Control Number: 49673



Item Number: 59

Addendum StartPage: 0



DOCKET NO. 49673

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

PUBLIC UTILITY COMMISSION
OF TEXAS

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.’S
RESPONSE TO MOTION FOR REHEARING**

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and files this Response to the Motion for Rehearing filed by Aspire Commodities, LLC (Aspire). In support of its Response, ERCOT respectfully shows the following:

Aspire’s Motion for Rehearing should be denied because it does nothing more than repeat the arguments made in Aspire’s Exceptions to the Proposal for Decision, which the Commission has already considered and rejected. Further, the Commission’s Final Order is supported by substantial evidence and contains no error of law. Because the Motion for Rehearing simply repeats Aspire’s prior arguments, ERCOT responds by incorporating herein by reference the arguments and authorities set forth in ERCOT’s Reply to Aspire’s Exceptions to Proposal for Decision, ERCOT’s Motion for Summary Decision, and ERCOT’s Response to Aspire’s Motion for Summary Decision. ERCOT also further responds as follows:

I. It was not necessary to address ERCOT Protocol Sections 6.3(5) and 6.3(6)(b) in the Final Order, because Aspire’s Complaint did not allege violations of those Protocols.

16 Tex. Admin. Code (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.” Aspire’s Complaint did not cite ERCOT Protocol Sections 6.3(5) and 6.3(6)(b); accordingly, there was no need to address these Protocols—which are not applicable to the instant dispute in any event—in the Final Order. To the extent the Commission is inclined to address these Protocols in an Order on Rehearing, ERCOT provided proposed Findings of Fact and Conclusions of Law

relevant to these Protocols in ERCOT's Reply to Aspire's Exceptions to Proposal for Decision. Should the Commission wish to further amend its Final Order, ERCOT respectfully points the Commission to the Joint Proposed Findings of Fact and Conclusions of Law, which were jointly filed by ERCOT and Commission Staff on June 5, 2020.

II. The Final Order applied the proper standard relevant to the interpretation of ERCOT's Protocols.

The authorities Aspire cites in its Motion for Rehearing are either irrelevant or unavailing.¹ Because this is a proceeding brought pursuant to 16 TAC § 22.251, the Commission must resolve the matter by deciding whether ERCOT acted contrary to its Protocols. This necessarily requires the Commission to interpret the applicable ERCOT Protocols. The Austin Court of Appeals has established the standard for judicial review of the Commission's interpretation as follows:

ERCOT protocols...are subject to Commission oversight and review. An agency's interpretation of a rule becomes part of the rule itself and represents the view of the regulatory body that must administer it. Statutory construction presents a question of law that [a court will] review de novo. Because they have the force and effect of statutes, [a court will] construe administrative rules in the same manner as statutes. Unless the rule is ambiguous, [a court will] follow the rule's clear language. The supreme court has observed that deference to an agency's interpretation is tempered by several considerations. First, deference applies to formal opinions adopted after formal proceedings, not isolated comments during a hearing or opinions in a brief. Second, the language at issue must be ambiguous. Third, the agency's construction must be reasonable. *When a statutory scheme is subject to multiple understandings, that is, ambiguous, we must uphold the enforcing agency's construction of its statutory scheme if [it] is reasonable and in harmony with the statute. This deference is particularly important in a complex regulatory scheme like the Public Utility Regulatory Act.* Accordingly, [the court] must determine whether the Commission's interpretation of the ERCOT protocols in question is plainly erroneous or inconsistent with the text of the protocols and defer to the

¹ The authority cited in footnotes 1 and 3 of Aspire's Motion for Rehearing is a pleading in PUC Docket No. 40092, not a Commission order. However, the language cited in footnote 1 is from an unpublished Third Court of Appeals opinion (*Harris County Hosp Dist v. Pub Util Comm'n of Tex.*, 03-10-00647-CV, 2012 WL 2989228 (Tex. App.—Austin, July 13, 2012, no pet.)) attached to that pleading, and the language cited in footnote 3 is a quote from *Rodriguez v Serv Lloyds Ins. Co.*, 997 S.W.2d 248, 255 (Tex. 1999). The legal principles embodied by the cited language are not relevant to disposition of the instant matter, because—unlike in those cases—this matter involves the Commission's formal interpretation of an ERCOT Protocol in a contested case and not an attempt to amend an agency rule by "isolated comment."

Commission’s construction of its regulatory scheme if [it] is reasonable and in harmony with the statute.²

For all of the reasons previously asserted by ERCOT in its prior pleadings, ERCOT Protocol Section 6.3(4) did not “unambiguously” mandate that ERCOT perform a price correction in this matter. The plain language of ERCOT Protocol Section 6.3(4) clearly states that a data error “may”—but not must—be considered an “invalid” “market solution” that requires a price correction. Because ERCOT Protocol Section 6.3(4) does not mandate a price correction for every type of data error, ERCOT reasonably interpreted the Protocol to not require a price correction when there is an external telemetry error. This interpretation is reasonable because it helps ensure market certainty by reducing the number of after-the-fact price corrections. Further, and contrary to Aspire’s conclusory assertions, it was reasonable for ERCOT to determine that the external telemetry error at issue in this specific case did not result in an “invalid” “market solution,” because the Security-Constrained Economic Dispatch (SCED) process did not fail, ERCOT was not the cause of any data error, and ERCOT’s hardware and software worked as intended.

Accordingly, it was entirely proper for the Commission to conclude in its Final Order that “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” and “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.”

II. PRAYER

For the reasons set forth herein and in ERCOT’s prior pleadings, Aspire’s Motion for Rehearing should be denied.

² *Pub. Util. Comm’n v. Constellation Energy Commodities Group, Inc.*, 351 S.W.3d 588, 595 (Tex. App.—Austin 2011, pet. denied) (internal citations and quotations omitted and emphasis added).

Respectfully submitted,

/s/ Erika Kane

Chad V. Seely
Vice President and General Counsel
Texas Bar No. 24037466
(512) 225-7035 (Phone)
(512) 225-7079 (Fax)
Chad.Seely@ercot.com

Juliana Morehead
Assistant General Counsel
Texas Bar No. 24046474
(512) 225-7184 (Phone)
(512) 225-7079 (Fax)
Juliana.Morehead@ercot.com

Erika Kane
Sr. Corporate Counsel
(512) 225-7010 (Phone)
(512) 225-7079 (Fax)
Email: Erika.Kane@ercot.com

ERCOT
7620 Metro Center Drive
Austin, Texas 78744

ATTORNEYS FOR ELECTRIC
RELIABILITY COUNCIL OF TEXAS,
INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on all parties of record to this proceeding on October 12, 2020, by email, in accordance with Second Order Suspending Rules issued on July 16, 2020 in Project No. 50664.

/s/ Erika Kane