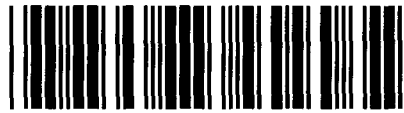


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**COMPLAINT OF ASPIRE
COMMODITIES, LLC AGAINST THE
ELECTRIC RELIABILITY COUNCIL
OF TEXAS**

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

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.'S
MOTION TO DISMISS AND
RESPONSE TO THE COMPLAINT OF ASPIRE COMMODITIES LP

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and files its Motion to Dismiss and Response to the Complaint of Aspire Commodities, LLC (Aspire) against ERCOT. ERCOT respectfully shows the following:

I. IDENTITY OF RESPONDENT AND COUNSEL

Respondent: Electric Reliability Council of Texas, Inc.
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ERCOT requests that copies of all correspondence, pleadings, briefs and other documents be served on the above-referenced counsel for ERCOT.

II. EXECUTIVE SUMMARY

On June 25, 2019, Aspire filed a letter with the Public Utility Commission of Texas (Commission) with the subject line “Complaint Against ERCOT” (hereafter, the “Complaint”). In its Complaint, Aspire alleges that it “lost money on ERCOT futures contracts [Aspire] had transacted on the Intercontinental Exchange” and for Operating Day (OD) May 30, 2019, “ERCOT’s actions capriciously resulted in a massive increase in the cost of electricity.” Aspire asserts that this price increase was due to a data error and that ERCOT was required to correct prices under ERCOT Protocol Section 6.3(4) because the May 30, 2019, event resulted in a “market solution” that should have been “determined to be invalid.” Further, Aspire’s Complaint states “pursuant to PURA Section 15.051 in regards to the actions taken by ERCOT on Thursday, May 30, 2019 at 1450 Aspire hereby lodges a formal complaint against ERCOT and requests that...ERCOT be ordered to re-price the published settlement prices” for the affected Security-Constrained Economic Dispatch (SCED) interval. Aspire admits that it did not attempt to seek relief through ERCOT’s Alternative Dispute Resolution (ADR) procedure, as set forth in the ERCOT Protocols, prior to filing its Complaint.

The pricing issue in Aspire’s Complaint occurred with respect to the 14:50 SCED interval on OD May 30, 2019, when Calpine Power Management LLC (Calpine), a Qualified Scheduling Entity (QSE) registered with ERCOT, telemetered erroneous Resource status information to ERCOT.¹ Specifically, for a single SCED interval (14:50), Calpine’s portfolio of Resources telemetered High Sustainability Limits (HSLs) and Low Sustainability Limits (LSLs) of zero,

¹ Resource status information is Protected Information under ERCOT Protocol Section 1.3.1.1(1)(c) for 60 days from the affected OD. The identity of the QSE that telemetered erroneous information to ERCOT for OD May 30, 2019, is considered confidential and Protected Information until July 29, 2019. However, on July 22, 2019, Calpine granted ERCOT authority to disclose its identity as the QSE at issue prior to the 60-day expiration date of that Protected Information.

which were captured by SCED in the 14:50 interval.² Thus, for the 14:50 SCED interval, the instantaneous capacity available for dispatch appeared to be less than instantaneous demand. As a result, energy prices in the ERCOT market increased significantly for that single SCED interval. Within an hour of the SCED run that resulted in the pricing event at issue, ERCOT issued a public notice informing ERCOT Market Participants that it would not be performing a price correction. ERCOT determined that the price increase was not due to a failure of the SCED process, nor was it due to ERCOT's failure to comply with the ERCOT Protocols or Other Binding Documents (OBDs).

Aspire's Complaint should be dismissed because: (a) Aspire failed to complete ERCOT's ADR process before seeking relief with the Commission; and (b) Aspire suffered no direct injury due to ERCOT's alleged conduct. Alternatively, Aspire's request for a price correction for May 30, 2019, should be denied because the ERCOT Protocols do not authorize a price correction when a market solution is attributable to an external data error caused by an ERCOT Market Participant. Requiring ERCOT to conduct price corrections in cases of external data errors would be imprudent, as this practice would lead to frequent price corrections and result in increased price uncertainty and market instability.

III. MOTION TO DISMISS

16 Tex. Admin. Code § 22.181 (TAC) sets forth the grounds upon which a complaint filed with the Commission may be dismissed upon the motion of any party or the presiding officer. As explained in detail below, Aspire's purported Complaint should be dismissed for three reasons: (1) Aspire's application is insufficient in form; (2) Aspire has failed to invoke the jurisdiction of this Commission; and (3) Aspire fails to state a claim upon which relief can be granted.

² SCED runs every five minutes.

A. Failure to File a Sufficient Application

Pursuant to 16 TAC § 22.181(d)(7), a complaint may be dismissed for “failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.”³ 16 TAC § 22.251(d) sets forth the requirements for filing a formal complaint against ERCOT. For the reasons set forth below, Aspire’s purported Complaint against ERCOT is insufficient and, therefore, is subject to dismissal should Aspire fail to cure the deficiencies.

First, pursuant to 16 TAC § 22.251(d)(1)(B), a complaint against ERCOT must include a statement of the case, which must include a statement as to whether “the complainant has used the Applicable ERCOT Procedures for challenging or modifying the complained of ERCOT conduct or decision....and, if not, the provision of [16 TAC § 22.251(c)] upon which the complainant relies to excuse its failure to use the Applicable ERCOT Procedures.” Although Aspire appears to seek an exception to utilizing ERCOT’s procedures before filing its complaint, Aspire fails to identify any provision of 16 TAC § 22.251(c) to excuse its failure to use the ADR process in the ERCOT Protocols. Accordingly, Aspire failed to satisfy the requirements of 16 TAC § 22.251(d)(1)(B).

Further, a complaint filed against ERCOT must include “a detailed and specific statement of all issues or points presented for commission review.” *See* 16 TAC § 22.251(d)(1)(C). Aspire’s Complaint contains no such discernable statement of issues. Accordingly, Aspire failed to satisfy the requirement of 16 TAC § 22.251(d)(1)(C).

Finally, 16 TAC § 22.251(d)(3) provides that the factual allegations in a complaint must be supported by affidavit. The Complaint filed by Aspire with the Commission did not include a supporting affidavit. As a result, Aspire failed to satisfy 16 TAC § 22.251(d)(3).

³ This provision applies to complaints filed with the Commission. *See* 16 TAC § 22.2(6) (defining Application as a “written application, petition, *complaint*, notice of intent, appeal, or other pleading that initiates a proceeding”) (emphasis added).

In light of the above, Aspire's Complaint is substantially insufficient under the Commission's Procedural Rules.⁴ Should Aspire fail to amend its Complaint to conform to the above-referenced rules, the Complaint should be dismissed.

B. Lack of Jurisdiction

Pursuant to 16 TAC § 22.181(d)(1), a complaint filed with the Commission may be dismissed for lack of jurisdiction. Aspire's Complaint should be dismissed because Aspire has not satisfied any of the prerequisites to filing a complaint against ERCOT at the Commission; accordingly, Aspire has failed to properly invoke the jurisdiction of the Commission.

Aspire purports to have filed its Complaint pursuant to PURA § 15.051. That provision, however, only applies to complaints arising from "an act or omission by a public utility."⁵ ERCOT is not a "public utility" under PURA § 15.051.⁶ Because ERCOT does not fall within the scope of PURA § 15.051, Aspire cannot invoke the Commission's jurisdiction by filing a complaint against ERCOT under that statute.⁷

All complaints filed against ERCOT at the Commission are controlled by PURA § 39.151(d-4)(6) and 16 TAC § 22.251.⁸ As set forth in Commission rules, "[a]n entity *must* use

⁴ Additionally, 16 TAC § 22.72(b) and (c) require a complaint filed with the Commission to be in a particular form and format. Aspire's Complaint fails to satisfy the formal requisites for complaints filed with the Commission.

⁵ PURA § 15.051(a).

⁶ Per PURA § 11.004, the definitions of "public utility" applicable to PURA § 15.051 are found in PURA §31.002 (the definition of electric utility) and PURA § 51.002 (the definition of public utility or utility). PURA §31.002 defines electric utility as "a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state." PURA § 51.002 defines public utility or utility as "person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier." Neither definition is applicable to ERCOT.

⁷ See *State v. Public Utility Com'n of Texas*, 883 S.W.2d 190, 194 (Tex. 1994) (recognizing that "an administrative agency is a creation of the legislature and, as such, has only those powers expressly conferred and those necessary to accomplish its duties"); *Public Utility Com'n of Texas v. GTE-Southwest, Inc.*, 901 S.W.2d 401, 407 (Tex.,1995)("An agency may exercise only those specific powers that the law confers upon it in clear and express language.").

⁸ PURA § 39.151(d-4)(6) provides that the Commission may "resolve disputes between an affected person and [ERCOT] and adopt procedures for the efficient resolution of such disputes." 16 TAC § 22.251 sets forth the procedures that govern disputes against ERCOT at the Commission.

Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures, or ADR), or Section 21 of the Protocols (Process for Protocol Revision), or other Applicable ERCOT Procedures, before presenting a complaint to the commission.” 16 TAC § 22.251(c) (emphasis added). 16 TAC § 22.251(c) further states “[i]f a complainant fails to use the Applicable ERCOT Procedures, the presiding official may dismiss the complaint or abate it to give the complainant an opportunity to use the Applicable ERCOT Procedures.”

Here, it is apparent from the Complaint that Aspire made no effort to use any “Applicable ERCOT Procedures” prior to seeking relief before the Commission. Aspire asserts in the last paragraph of its Complaint that it did not comply with ERCOT’s ADR procedure under Section 20 of the ERCOT Protocols because it believed only certain counterparties could use that process. However, ERCOT Protocol Section 20.1(1) makes clear that the ERCOT ADR procedure applies to “*any* claim by a Market Participant that ERCOT has violated or misinterpreted any law, including any statute, rule, Protocol, OBD, or Agreement, where such violation or misinterpretation results in actual harm, or could result in imminent harm, to the Market Participant” (emphasis added). Relevant here, Aspire is a Market Participant and registered with ERCOT as a QSE and Congestion Revenue Rights (CRR) Account Holder.⁹ The subject matter of Aspire’s Complaint is an allegation that ERCOT misinterpreted ERCOT Protocol Section 6.3(4)—which provides, in part, that ERCOT shall correct prices when a “market solution is determined to be invalid”—by failing to correct prices impacted by the telemetry error that occurred on May 30, 2019.

⁹ See ERCOT Protocol Section 2.1, Definitions (defining Market Participant to include both QSEs and CRR Account Holders).

Accordingly, Aspire's claim against ERCOT falls within the scope of ERCOT Protocol Section 20.1(1) and is precisely the type of claim for which a Market Participant must use ERCOT's ADR procedure.¹⁰ Aspire, by its own admission, failed to use ERCOT's ADR process; therefore, its Complaint is subject to dismissal by the Commission.¹¹ Alternatively, and at minimum, this proceeding should be abated until Aspire completes the ADR process.¹²

To the extent 16 TAC § 22.251(c) may allow for a complainant to bypass ERCOT's ADR process in certain limited circumstances, none of those exceptions apply here. First, 16 TAC § 22.251(c)(1) allows a complainant to file a complaint against ERCOT with the Commission without completing the ERCOT ADR process if the complainant: (a) "is the commission staff or the Office of Public Utility Counsel"; (b) "is not required to comply with the Applicable ERCOT Procedures"; or (c) "seeks emergency relief necessary to resolve health or safety issues or where compliance with the Applicable ERCOT Procedures would inhibit the ability of the affected entity to provide continuous and adequate service." None of these exceptions to using the ERCOT ADR process applies to Aspire's Complaint. Second, 16 TAC § 22.251(c)(2) allows a complainant to seek a waiver from the ERCOT ADR process by filing a written request with the Commission demonstrating good cause as to why the complainant should not have to first use the ERCOT ADR process. Here, however, Aspire has sought no such waiver, nor can Aspire demonstrate that there is good cause for allowing it to bypass the ERCOT ADR process.

In summary, Aspire's failure to comply with 16 TAC § 22.251(c) by failing to first use ERCOT's ADR process before filing a complaint against ERCOT with the Commission results in

¹⁰ See Docket No. 25959, *Rulemaking on Oversight of Independent Organizations in the Competitive Electric Market*, Order Adopting New Procedural Rule §22.251 at 7 ("The commission believes that an entity should participate in ERCOT processes prior to appealing to the commission the board's decision on that matter.").

¹¹ 16 TAC § 22.251(c) (stating that the presiding officer "may dismiss the complaint" if "a complainant fails to use the Applicable ERCOT Procedures").

¹² *Id.* (allowing the presiding officer to, in the alternative, abate the proceeding to "to give the complainant an opportunity to use the Applicable ERCOT Procedures").

Aspire's complaint being subject to immediate dismissal. Accordingly, ERCOT respectfully requests that this Motion to Dismiss be granted and that Aspire's Complaint be dismissed.

C. Failure to State a Claim for which Relief can be Granted

16 TAC § 22.181(d)(8) provides for the dismissal of any proceeding for failure to state a claim for which relief can be granted. The Commission has found that a motion for dismissal under 16 TAC § 22.181(d)(8) is similar to a dismissal motion under Federal Rule of Civil Procedure (FRCP) 12(b)(6), and that the federal standards can be used for guidance in analyzing the standard under the Commission's rule.¹³ Specifically, in PUC Docket No. 34061, the administrative law judge cited the U.S. Supreme Court to note that:

To withstand a Rule 12(b)(6) dismissal motion, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."¹⁴

Relevant here, Aspire has failed to explain in its Complaint how obtaining the relief it seeks—a price correction in the ERCOT market for May 30, 2019—would remedy an injury it admits occurred entirely outside of the ERCOT market through the positions it took in the Intercontinental Exchange (ICE). Aspire admits that it was not active in the ERCOT market for the SCED interval in question; therefore, Aspire has failed to show it suffered any direct injury due to ERCOT's alleged actions on that day.

To the extent Aspire claims that an ERCOT price correction related to the May 30, 2019, event could result in changed compensation to Aspire related to its activity in ICE, any such claimed connection between the ERCOT market and a trader's activity in ICE should be deemed

¹³ See *Notices of Violation by TXU Corp., et al, of PURA 39.157(a) and PUC Subst. R. 25.503(g)(7)*, Docket No. 34061, Order No. 19 at 2 (Feb. 8, 2008).

¹⁴ See Docket No. 34061, Order No. 19 at 2, citing *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-1965 (2007).

too attenuated to support Aspire’s Complaint against ERCOT before the Commission. The Texas Supreme Court has recognized that when an alleged unlawful act “does no more than furnish a condition which makes the injuries possible,” then the conduct complained of will be deemed “too attenuated” from the injury to support a cause of action.¹⁵ Such is the case here; for all intents and purposes, Aspire is complaining that the May 30, 2019, ERCOT price event did nothing more than create a condition that allegedly caused Aspire some injury outside of the ERCOT market—i.e., in ICE. If a complaint such as Aspire’s can be maintained against ERCOT before the Commission, then presumably any person or entity could allege a tangential connection to an ERCOT action and seek a price correction or other invasive remedy against ERCOT.¹⁶ This cannot be the result intended under the Commission’s rules.

Finally, the forum in which Aspire claims to have suffered injury—ICE—is outside the scope of the Commission’s jurisdiction. Neither PURA nor Commission rules suggest an intent to include within the scope of the Commission’s jurisdiction complaints made against ERCOT that arise from injuries borne entirely outside of the ERCOT market.

Aspire has failed to state a claim upon which the Commission can grant relief; therefore, its Complaint should be dismissed.

IV. STATEMENT OF JURISDICTION

In the event that the complainant fails to assert a valid ground for jurisdiction, 16 TAC § 22.251(f)(3) requires ERCOT to include in its Response the reasons why the Commission lacks

¹⁵ See *IHS Cedars Treatment Center of DeSoto, Texas, Inc. v. Mason*, 143 S.W.3d 794, 799 (Tex. 2003).

¹⁶ For example, if such attenuated claims were found to be actionable against ERCOT under 16 TAC § 22.251, then it would not be outside the realm of possibility that a residential or commercial electricity customer that alleges it was financially impacted in some way by a loss of Load could seek redress against ERCOT at the Commission by claiming the lost Load was tied in some way to an ERCOT operator instruction. Interpreting 16 TAC § 22.251(b)—the provision that governs the scope of complaints actionable against ERCOT—this broadly could result in a litany of negative consequences and subject ERCOT to a possibly never-ending series of complaints.

jurisdiction. Here, as explained below and in the above Motion to Dismiss, Aspire has failed to state a valid ground for jurisdiction.

First, Aspire's only citation in its attempt to invoke the jurisdiction of the Commission is to PURA § 15.051. Aspire's reference to PURA § 15.051 fails to invoke the Commission's jurisdiction, however, because that provision only applies to complaints arising from "an act or omission by a public utility." ERCOT is not a public utility; therefore, Aspire cannot maintain a Complaint against ERCOT before the Commission under PURA § 15.051.

Second, to the extent the Commission has jurisdiction over complaints against ERCOT under 16 TAC § 22.251, Aspire has failed to comply with that rule. Aspire acknowledges that it did not use ERCOT's ADR process "for challenging or modifying the complained of ERCOT conduct or decision" prior to filing its Complaint. Furthermore, Aspire failed to provide the Commission with "the provision of [16 TAC § 22.251(c)] upon which [it] relies to excuse its failure to use the Applicable ERCOT Procedures." Because Aspire failed comply with 16 TAC § 22.251, the Commission lacks jurisdiction over this matter.

Third, Aspire has failed to state a claim upon which the Commission can grant relief. 16 TAC § 22.181(d)(8) provides for the dismissal of any proceeding for failure to state a claim for which relief can be granted. Aspire has failed to show it suffered any direct injury due to ERCOT's alleged improper actions; rather, Aspire admits that its injury occurred entire outside of the ERCOT market. Because Aspire has not provided any information to suggest that actions taken by ERCOT on May 30, 2019, directly caused Aspire's injury, its Complaint should be dismissed for failure to state a claim for which the Commission can grant relief.

V. RESPONSE TO COMPLAINT

A. Price Event of May 30, 2019

The pricing issue giving rise to Aspire’s Complaint occurred during the 14:50 SCED interval on OD May 30, 2019. At approximately 14:49 on that day, Calpine sent incorrect telemetry to ERCOT for a fleet of Resources, which was captured in the 14:50 SCED run.¹⁷ Specifically, Calpine telemetered zero to ERCOT as the HSLs and LSLs for these Resources for the 14:50 SCED run.¹⁸ Notably, the Resources at issue had a combined telemetered output of approximately 6,300 MW just prior to the telemetry error.

In conformance with ERCOT Protocol Section 6.5.7.2, ERCOT’s Resource Limit Calculator immediately and automatically determined a new High Dispatch Limit (HDL) for the Resources at issue based on the changed telemetry (i.e., the zero HSL and LSL values).¹⁹ This resulted in a significant decrease in the total HDL for the Resource fleet—i.e., 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. In conformance with ERCOT’s OBD “Methodology for Setting Maximum Shadow Prices for Network and Power Balance Constraints,” this result constituted a violation of the Power Balance Penalty Curve and caused the ERCOT System Lambda²⁰ to reach \$9,001.00/MWh.²¹

¹⁷ Calpine also sent erroneous telemetry at 11:42 on May 30, 2019; however, unlike the error that occurred at 14:49, the earlier erroneous telemetry did not affect prices because it was not captured in a SCED run.

¹⁸ In this case, the HSL value of zero telemetered by Calpine was considered a valid value in SCED. In contrast, if a QSE telemeters a negative HSL value, that value is blocked as invalid and SCED will instead use the last valid value received.

¹⁹ Per ERCOT Protocol Section 6.5.7.2, new Resource limits are calculated within four seconds after a change of Resource-specific attributes provided via a QSE’s telemetry. These Resource limits are used as inputs in SCED.

²⁰ System Lambda is the energy component of a Locational Marginal Price (“LMP”) at each ERCOT Settlement Point.

²¹ See Section 4.3, *The ERCOT Power Balance Penalty Curve*, in “Methodology for Setting Maximum Shadow Prices for Network and Power Balance Constraints” available at: http://www.ercot.com/content/wcm/key_documents_lists/89286/Methodology_for_Setting_Maximum_Shadow_Prices_for_Network_and_Power_Balance_Constraints.zip.

Importantly, at no time was any ERCOT Load shed because of this telemetry error. Further, and contrary to Aspire's assertion, Emergency Resource Service (ERS) was not deployed by ERCOT on May 30, 2019.

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 OD at issue, ERCOT operators executed a manual SCED run due to concerns regarding (a) the potential for high frequency (due to generation responding to the \$9,001.00/MWh System Lambda), and (b) dispatch not being as expected.²² The manual SCED run at 14:52 captured telemetry from Calpine that appeared to more accurately reflect the actual status of the Resource fleet.

This manual action by ERCOT operators effectively resolved the price spike caused by the telemetry error.²³ More specifically, the Resource Limit Calculator determined a new total HDL for Calpine's Resource fleet of 6,433 MW using the telemetry captured at 14:52; this resulted in a decrease of the System Lambda to \$38.04/MWh. ERCOT did not observe any noticeable issues or errors with Calpine's telemetry for subsequent SCED intervals on the OD at issue.

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 does not have the authority to correct prices when a particular market solution is attributable to inaccurate telemetry submitted by a QSE or TDSP. Accordingly,

²² The 14:50 SCED run produced a markedly different outcome than the previous SCED interval, given that the 14:45 SCED run resulted in a System Lambda of \$38.62/MWh.

²³ Aspire asserts that the price increase that resulted from the telemetry error had an impact of over \$18 million on the cost of electricity in ERCOT. This is incorrect, however, because Aspire's claim is based on an improper assumption that all ERCOT Load for the affected SCED interval was exposed to the spike in Real-Time prices. Aspire ignores the fact that Load for the affected SCED interval could have also been cleared in the Day Ahead Market (DAM) or covered by hedge transactions that occur outside of the ERCOT market.

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.²⁴

B. Argument

Aspire argues that ERCOT was required to correct prices under ERCOT Protocol Section 6.3(4) because the May 30, 2019, event resulted in a “market solution” that should have been “determined to be invalid.” This argument is without merit, however, because: (a) the pricing issue was not due to a failure of the SCED process or a misapplication of ERCOT Protocols or OBDs; and (b) requiring ERCOT to perform a price correction when a market solution is due, in part, to a data error external to ERCOT would lead to frequent price corrections and increased uncertainty in the market.

ERCOT Protocol Section 6.3(4) provides three conditions upon which ERCOT “shall” correct prices, if accurate prices can be determined: (1) if a market solution is determined to be invalid; (2) if invalid prices are found in an otherwise valid market solution; or (3) if Base Points (BPs) received by Market Participants are inconsistent with BPs of a valid market solution.²⁵ ERCOT Protocol Section 6.3(4) further illustrates “some reasons that may cause these conditions,” namely:

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

²⁴ See Public Notice published at 15:44:00 CST on May 30, 2019, available at http://www.ercot.com/services/comm/mkt_notices/notices/2019/05.

²⁵ ERCOT Protocol Section 6.3(4) includes a fourth condition upon which prices must be corrected—when there has been a failure of the SCED process as set forth in ERCOT Protocol Section 6.5.9.2. There was no failure of the SCED process in this matter, rendering this condition inapplicable.

Hardware/Software Failure	Including: (i) unpredicted hardware or software failures; (ii) planned market system or database outages; (iii) planned application or database upgrades; (iv) software implementation errors; and (v) failure of the market run to complete.
Inconsistency with the Protocols or PUC Substantive Rules	The occurrence of pricing errors when specific circumstances result in prices that are in conflict with Protocol language or the PUCT Substantive Rules.

In the case of Calpine’s telemetry error that occurred on May 30, 2019, ERCOT made a determination that the error did not qualify as one of the conditions in ERCOT Protocol Section 6.3(4) that mandate a price correction.²⁶ Aspire, however, asserts in its Complaint that the events that occurred during the 14:50 SCED interval on May 30, 2019, resulted in an invalid market solution, and therefore require a price correction under ERCOT Protocol Section 6.3(4).

Although the ERCOT Protocols do not give express guidance on what constitutes an invalid market solution, ERCOT Protocol Section 6.3(4)(a) provides that a “data input error” can be a condition that results in a needed price correction. ERCOT, however, has consistently interpreted this language as applying only to *internal* data input errors caused by ERCOT, and not to external data errors caused by ERCOT Market Participants. Notably, this interpretation has been discussed previously in stakeholder forums.²⁷ Moreover, there have been prior instances where erroneous telemetry received from an ERCOT Market Participant likely had an impact on prices.²⁸ ERCOT, however, did not interpret ERCOT Protocol Section 6.3(4) as requiring it to

²⁶ In cases where ERCOT does determine that a condition set out in Protocol Section 6.3(4) has occurred and requires a price correction, ERCOT must correct prices by 16:00 on the second Business Day after the impacted OD. See ERCOT Protocol Section 6.3(5). If ERCOT fails to correct prices within that time, but believes a price correction is required under ERCOT Protocol Section 6.3(4), it must obtain ERCOT Board approval for the price correction within 30 days of the impacted OD. See ERCOT Protocol Section 6.3(5).

²⁷ See e.g., Nodal Protocol Revision Request (NPRR) 474, *Clarification of Price Correction Principles and Associated Timelines*.

²⁸ See, e.g., *ERCOT’s Response to Complaint of Raiden Commodities LP and Motion to Dismiss*, Docket No. 45542 (describing event in May 2015 where incorrect line ratings received from an ERCOT TSP likely impacted prices due to impacts of the incorrect data on congestion pricing, and explaining why ERCOT did not conduct a price correction in that circumstance). A similar incident occurred in July 2011 in which incorrect line ratings from a TSP led to congestion that likely impacted prices in the Real-Time Market over multiple ODs; however, ERCOT

correct prices for the impacted ODs in those earlier cases, which is consistent with the position ERCOT has taken in this case.

Aspire's interpretation of ERCOT Protocol Section 6.3(4) ignores the fact that the ERCOT Protocols *require* ERCOT to use a Market Participant's telemetered data in SCED, and that is precisely what happened in this case. Moreover, the ERCOT Protocols make clear that every ERCOT QSE that represents a Resource is responsible for providing ERCOT with accurate telemetry. For example, ERCOT Protocol Section 6.4.6 states, "ERCOT shall use the telemetered Resource Status for all applications requiring status of Resources during the Operating Hour, including SCED and Load Frequency Control (LFC). *QSEs shall provide ERCOT with accurate telemetry of the current capability of each Resource including the Resource Status, Ramp Rates, HSL, and LSL.*" (emphasis added). ERCOT Protocol Section 6.5.7.1.13 also requires QSEs to telemeter Resource HSL and LSL for input in SCED. Finally, ERCOT Protocol Section 6.5.7.3(1) provides that the SCED process must use the Resource Status provided by telemetry from the QSE pursuant to Protocol Section 6.5.5.2, and not the Resource Status in the Current Operating Plan (COP). Accordingly, ERCOT properly complied with ERCOT Protocols when it utilized Calpine's telemetered data for the 14:50 SCED run.

The ERCOT Protocols do require ERCOT to validate certain QSE telemetered data. For example, per ERCOT Protocol Section 6.4.6(2)(b), ERCOT must identify inconsistencies between a QSE's telemetered Resource status and its COP five minutes before the end of each hour. In this matter, however, nothing in the ERCOT Protocols required this type of validation for the impacted SCED interval, and ERCOT did not act in violation of any Protocol when SCED utilized Calpine's

did not correct prices in that instance. Finally, ERCOT is aware of at least one ADR filed with ERCOT since Nodal go-live in which a Market Participant argued that certain prices should be corrected due to a telemetry error (incorrect line ratings); again, ERCOT did not correct prices in that instance.

erroneous telemetered data for the 14:50 SCED run. Moreover, although ERCOT's systems are designed to automatically disregard certain telemetry 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 systems—i.e., the HSLs values of zero telemetered by Calpine were considered acceptable in this case.²⁹

ERCOT recognizes that it is critical for values telemetered by ERCOT Market Participants, and captured by SCED, to be as accurate as possible. ERCOT, however, has consistently interpreted ERCOT Protocol Section 6.3(4) as *not* requiring a price correction when a market solution is found to be due to erroneous data sent to ERCOT from an external source, such as in this case. This makes sense as both a practical matter and as a matter of market certainty. In all likelihood, on any given day, at least some telemetry sent to ERCOT by QSEs and/or TSPs is inaccurate or sent in error. If ERCOT were to interpret Protocol Section 6.3(4) to require a price correction whenever an external data error was discovered, price corrections would occur on a weekly or perhaps daily basis.

ERCOT Protocol Section 6.3(4) does not give ERCOT discretion to perform a price correction when a pricing error is of a particular magnitude.³⁰ Rather, ERCOT Protocol Section 6.3(4) mandates that ERCOT “shall” perform a price correction every time the conditions stated in that section are satisfied. Accordingly, interpreting ERCOT Protocol Section 6.3(4) in the manner suggested by Aspire would require ERCOT to perform a price correction every time it

²⁹ A negative HSL value, however, is deemed invalid by ERCOT systems and would be blocked by SCED; in such an instance, SCED would use the last valid telemetered value.

³⁰ By way of contrast, ERCOT Protocol Section 9.2.5(2) requires ERCOT to issue DAM Resettlement Statements only when errors (other than errors in prices) result in an absolute value impact greater than 2% of the total DAM Statement amount for any single Statement Recipient for the Operating Day, and the impact to a Statement Recipient is greater than \$200.00. ERCOT Protocol Section 9.5.6(2) requires ERCOT to issue Real-Time Market (RTM) Resettlement Statements only when errors (other than errors in prices) result in an absolute value impact greater than 4% of the total RTM Statement amount for any single Statement Recipient for the Operating Day, and the impact to a Statement Recipient is greater than \$400.00.

discovered an external data input error that could have a price impact, regardless of whether the impact was nominal or significant. Interpreting ERCOT Protocol Section 6.3(4) in this manner would lead to frequent price corrections, resulting in increased uncertainty and instability in the market.

Finally, ERCOT notes that it expects to engage in further stakeholder discussions regarding possible revisions to the Protocols and/or ERCOT processes in light of the May 30, 2019, event with respect to ERCOT's telemetry validation processes. Nonetheless, ERCOT cannot support a price correction for May 30, 2019. Rather, and for the reasons set forth above, ERCOT acted in conformance with ERCOT Protocols by not correcting prices on May 30, 2019. Therefore, Aspire's request for relief should be denied.

VI. EVIDENTIARY HEARING

As reasoned above, and based on ERCOT's Motion to Dismiss, ERCOT believes that the Commission can rule on the dispute at issue without an evidentiary hearing. However, if the Commission does not grant ERCOT's Motion to Dismiss, ERCOT requests the opportunity to work with Aspire and any other intervening party to develop a list of stipulated facts, as well as full discovery, and would request a hearing on the matter.

VII. PRAYER

For the reasons set forth herein, ERCOT respectfully requests that the Commission grant ERCOT's Motion to Dismiss Aspire's Complaint, or, in the alternative, deny the relief requested by Aspire. ERCOT further requests all other relief to which it may be granted.

Respectfully submitted,



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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 July 24, 2019, by hand delivery, fax, or first-class U.S. mail.



AFFIDAVIT OF KENAN OGELMAN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

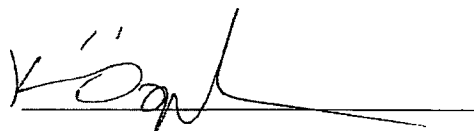
BEFORE ME, the undersigned authority, Kenan Ogelman, who, being first duly sworn, deposes and states:

“My name is Kenan Ogelman. I am Vice President of Commercial Operations with Electric Reliability Council of Texas, Inc. (ERCOT), having its principal place of business at 7620 Metro Center Drive, Austin, Texas. I am over the age of twenty-one and am competent to make the following statement:

“I affirm that I have reviewed Electric Reliability Council of Texas, Inc.’s Response to the Complaint of Aspire Commodities LP and Motion to Dismiss. I further affirm that I have personal knowledge of the facts stated in this Response and Motion to Dismiss and that I have the authority to submit this Affidavit on behalf of ERCOT.

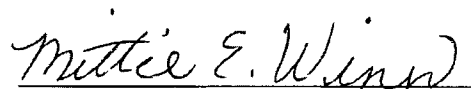
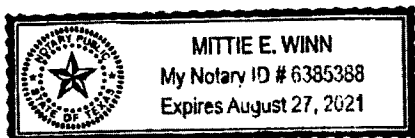
I certify that the factual allegations contained in this response are true and accurate to the best of my knowledge, information and belief.”

Further affiant sayeth not.



Kenan Ogelman

SUBSCRIBED AND SWORN TO BEFORE ME this 24th day of July 2019



Notary Public, State of Texas