PUC PROJECT NO. 51812

ISSUES RELATED TO THE STATE OF DISASTER FOR THE FEBRUARY 2021 WINTER WEATHER EVENT	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

<u>CALPINE CORPORATION RESPONSE TO REQUESTS TO RETROACTIVELY RESET PRICES</u>

TO THE HONORABLE CHAIRMAN OF THE PUBLIC UTILITY COMMISSION OF TEXAS:

In letters submitted to the Commission on March 1 and 4, 2021, the Independent Market Monitor ("IMM") of the Electric Reliability Council of Texas, Inc. ("ERCOT") submitted recommendations to retroactively reset ERCOT market prices (i) to change the real-time energy prices from 0:00 February 18, 2021, to 9:00 February 19, 2021, to remove the requirement that real-time energy prices should be at their highest (*i.e.* the System-Wide Offer Cap ("SWCAP") $9,000 per MWh, and (ii) to reprice all day-ahead ancillary services ("AS") prices for operating days February 15 through February 20, 2021 to cap them at the SWCAP. In addition, a number of entities have filed proposing their own preferred versions of re-pricing alternatives.

While the IMM and others' suggestions may have been well intentioned, weeks have now passed, markets have now closed, and retroactive attempts to re-distribute market outcomes are not the fix that Texas needs:

- There was no $16 billion error, the unhedgeable market uplift is only $1.5 billion according to the IMM.
- Repricing would not directly benefit residential consumers, it merely shifts costs from one group of sophisticated market participants to another.

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- Repricing undermines confidence in Texas power and gas markets, and more broadly could chill investment in the state.
- Attempts to reprice when no mistake has been made are illegal, will result in litigation and extend the chaos.

First, the $16 billion from the IMM's filing that has been cited by the media and certain market participants has been taken out of context and is grossly overstated given the amount of bilateral hedge transactions done in the Texas market. In fact, the IMM's filing noted that only "roughly $1.5 billion [of the $16 billion] was uplifted to load-serving entities to provide make-whole payments to generators for energy[.]"[1] The rest was able to be hedged. What was not hedged will simply be shifted between generators, retailers, traders and public power entities. As Chairman D'Andrea said at the March 5 PUC meeting, "You don't know who you're hurting. And you think you're protecting the consumer, and it turns out you're bankrupting [someone else]." Government intervention to reset past prices will destroy confidence in a competitive Texas electricity market, will shift the cost to punish market participants that mitigated their market risk through hedges and reward market participants that did not, and will cost Texas consumers more in the long run as they lose the ability to enjoy a transparent, diversified, low-cost energy market.

What is being proposed is the government coming into the Texas markets after the fact and deciding who should win and who should lose, rather than letting the markets decide. It is important to understand that while on its face, the idea of resetting prices sounds like a win for residential consumers facing high bills, in reality, the overwhelming majority of residential consumers have not been impacted by real time wholesale prices because they are served by contracts that have a have a fixed price or a price that varies by month. Indeed, many retail electric

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[1] IMM March 4, 2021 Filing (p 1).

providers, including some that are seeking repricing, have already promised to insulate residential customers from wholesale market volatility and have committed there will not be near term impacts to rates. Repricing simply shifts costs from one group of large sophisticated market participants to another.

Second, repricing will likely, and possibly permanently, damage the Texas market that has worked for many years so well. As mentioned, due to the interrelated nature of the Texas physical and financial natural gas and power markets, resetting prices does not actually reduce the cost to residential consumers—it simply forces different groups to pay those prices. Many economic decisions were made both well ahead of the event as well as during the event in express reliance on market rules in force at that time. As an example, even as many of their gas supplies were cut, generators made decisions to buy gas at hundreds of dollars per mmbtu, while other market participants exercised options for thousands of dollars per MWh to meet obligations and respond to ERCOT's emergency directives. Literally billions of dollars were spent during the event to keep generation operating in reliance on the market rules in place based on a PUC order. None of the proposals for retroactive repricing of the market address the deleterious impact on market participants who face these costs or articulate how market participants will be made whole.

Another related issue is the use by market participants of financial hedges for output or demand on futures exchanges. The Intercontinental Exchange (ICE) allows market participants to sell power and settle against the actual market clearing price. ICE has already closed its markets for the time period and has collected the monies and paid all parties due. These ICE settlements assume the $9,000 per MWh market price. ICE will not reopen. Billions of dollars of losses will occur when sellers on ICE that paid $9,000 are only paid a de minimis market price. Maybe even more importantly, this type of behavior will cause a crisis of confidence in the markets and service providers like ICE will likely stop offering Texas products as a result of the violation of the sanctity of final pricing, a tenet of financial markets, and disregard for the rule of law in Texas. The net effect of this price intervention will be to reduce market transparency and efficiency and to increase the cost of power to Texas going forward. There will be no forward curve and no ability to hedge retail or wholesale business on a go forward basis. And the confidence of capital markets in investment in Texas more generally could be shaken with the knowledge that political action trumped the rule of law in Texas.

Third, attempts to reprice are likely illegal and subject to attack in the courts, furthering the chaos that would be brought about by retroactive rulemaking and price redetermination. These governmental actions to interfere with the market are not supported by the false narrative that ERCOT made an error that needs to be corrected. There is no evidence ERCOT made an "error". In the midst of a freeze the morning of February 18 and with another freeze coming the morning of February 19, load still offline and the system in an EEA Level 3 emergency, ERCOT applied its tariff and the order from the PUCT and left prices at $9000 MW/h. ERCOT legal sent a notice to all market participants advising them that this action was being taken early the morning of February 18. Market participants then relied on ERCOT's actions and kept their generation online through the remainder of the EEA Level 3 emergency, which ended on February 19. In hindsight, some in the market may now disagree with ERCOT's handling of the crisis, but that is not a cause for arbitrary retroactive governmental intervention in the Texas markets – instead, it is cause for going forward market reform.

We appreciate this opportunity to present our views on this very important matter and will make available representatives to discuss these positions if helpful to the Commission.

Respectfully submitted,

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