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Addendum StartPage: 0

PUC PROJECT NO. 51812

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**ISSUES RELATED TO THE STATE OF
DISASTER FOR THE FEBRUARY 2021
WINTER WEATHER EVENT**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

RENEWED REQUEST TO ENFORCE COMMISSION ORDER

Texas Energy Association for Marketers (“TEAM”)¹ renews and updates its request for the Public Utility Commission of Texas (“PUC” or “Commission”) to enforce its February 16 emergency order (“Order”) and protect Texas customers and their electricity suppliers from unauthorized \$9,000/MWh pricing and the associated administrative adders on February 18 and 19. It is not too late to make these corrections. Neither the Commission, nor the Governor, nor the Legislature are bound by a 30-day time restriction for ordering resettlement for February 18 and 19.² In fact, ERCOT Staff has issued a notice indicating a recommendation to change prices for February 15th and has indicated that the ERCOT Board will consider this proposed resettlement at their next meeting on April 13th.³

¹ TEAM members participating in this emergency request at this time include: Amigo Energy, APG&E, Constellation New Energy, Hudson Energy, Just Energy, and Tara Energy. While other REPs may likely support, there was not time to widely circulate this pleading in these conditions.

² See below for discussion of “30-day deadline” which is actually only an internal ERCOT Staff deadline to issue a notice of an ERCOT Staff-initiated intent to seek a resettlement for a pricing correction. As discussed herein, this deadline applied only to ERCOT Staff and not to the Commission, the Governor, or the Legislature.

³ See, Attachment A, ERCOT Market Notice M-C031721-01 Operations issued on March 17, 2021. The effect of resettlement in accordance with this notice would be to change the Real-time Settlement Point Price for several hours on February 15th.

If corrections are not made immediately, Texas commercial customers will continue to be faced with invoices that could cripple their businesses and municipal and cooperative retail electric utilities will continue to bear a substantial financial burden that ultimately must be recovered from their end-use customers. Time is still of the essence in this matter.

Since the initial TEAM filing on February 19, the Texas Independent Market Monitor (“IMM”) has filed recommendations that are wholly consistent with the TEAM filing.⁴ The IMM is the financially and politically neutral third-party advisor charged by the Legislature with overseeing the ERCOT market.⁵ The IMM promptly notified ERCOT that these hours had been priced incorrectly and has since testified before the House and the Senate and sent two letters to the Commission concerning these errors. Support for the IMM recommendation has been echoed by many varied market participants and, most recently, the Texas Senate in Senate Bill 2142.⁶

⁴ Potomac Economics, “Second Letter to Commissioners”, March 4, 2021. Further clarified by Potomac Economics “Follow-up Letter”, March 11, 2021.

⁵ Tex. Util. Code §39.1515.

⁶ As of this filing, TEAM’s request is supported by over 74 customers and market participants, including Accent Energy Texas LP; Alamo Crossing, LLC; Arandas Bakery (Arandas Franchises); B & B Theatres Operating Co., Inc; Bandera Electric Coop, Bluebonnet Electric Coop, Pedernales Electric Coop, City of San Marcos; Bartlett Electric Cooperative, Inc; Best Press Inc; Bixby Enterprises; Blue Line Distribution; Bowie-Cass Electric Cooperative; BPR OP, LP; Brazos Electric Cooperative, Inc.; Central Texas Electric Cooperative, Inc ; Cherokee County Electric Cooperative Association; Chisos Logistics; City of Rosenberg; City of Round Rock; City of Baytown; Cooke County Electric Cooperative Association; Creative Specialty Foods Inc; Crownmark Imports (Crown Mark, Inc); Cryoport Systems; Data Foundry; Deep East Texas Electric Cooperative Inc.; Denton County Electric Cooperative, Inc.; East Texas Electric Cooperative, Inc.; EDF Renewable Energy; Explorer Pipeline Company; Fannin County Electric Cooperative, Inc.; Farmers Electric Cooperative, Inc.; Fort Belknap Electric Cooperative, Inc.; G&H Diversified Manufacturing; Grayson-Collin Electric Cooperative, Inc ; Guadalupe Valley Electric Cooperative, Inc.; Hamilton County Electric Cooperative Association; Harbor Freight Tools USA, Inc ; HILCO Electric Cooperative, Inc.; Houston County Electric Cooperative, Inc.; Huhtamaki, Inc; IKO Southwest Inc.; J-A-C Electric Cooperative, Inc.; JASPER-NEWTON Electric Cooperative, Inc.; Just Energy Texas LP; KRM 505 Sam Houston LLC; KRM 525 Sam Houston LLC; Kyocera Document Solutions America, Inc.; Leshes Poolmart, Inc.; Lincoln Rackhouse; McCoy Corporation; Mid-South Electric Cooperative Association; Navarro County Electric Cooperative, Inc.; Navasota Valley Electric Cooperative, Inc.; NET Power, LLC, NW Crossings Management LLC; Overwraps Packaging, Inc; Rayburn County Electric Cooperative, Inc; Redoak Drive LLC; Reynolds Consumer Products; Rojan, Inc; RS 4606 FM 1960 LLC; Rusk County Electric Cooperative, Inc.; RWE Renewables Americas, LLC; Sam Houston Electric Cooperative Inc.; SanMar Corporation; Stratas Foods LLC; Suffolk Business Solutions; Trinity Valley Electric Cooperative, Inc.; United Electric Cooperative Services, Inc.; United Minerals and Properties, Inc. (Cimbar Performance Minerals Inc); VISTRA Corp.; VRE Properties LLC; Webster Surgical Specialty Hospital, LTD, Wise Electric Cooperative, Inc.; and Young Energy LLC. In addition, Senator Beverly Powell and Senator Drew Springer, as well as Lt. Governor Dan Patrick, have weighed in in support.

Those market participants who oppose the corrections requested by TEAM and recommended by the IMM have made inaccurate claims to resist mitigating the extraordinary governmental intervention in the ERCOT market. First, they ignore that the PUC and ERCOT have authority to perform price corrections, have done so in the past, and a price correction for February 18 and 19 is squarely within that authority. Second, they point to a false perception that settlement timing preferences of the Intercontinental Exchange (“ICE”) are immutable and should determine deadlines for Commission decisions that affect the ERCOT market and electric customers in Texas. These arguments ignore the fact that ICE rules give it discretion to delay settlement pricing of futures contracts and to correct pricing of futures contracts.⁷ In short, their arguments are incorrect.

The Commission should make decisions based on controlling law considering only what is in the best interests of protecting Texans from the exorbitant effects of the departure from the established market rules in Texas. Well-functioning markets understand and expect identification and corrections of errors and value adherence to the market rules. TEAM renews its February 19, 2021 request that the Commission not let erroneous prices and charges stand. TEAM stands ready to work collaboratively with the Governor, the Lt. Governor, the Commission, the Legislature, ERCOT, and all stakeholders, including customers, to address the concerns raised by this event and to ensure that it never happens again.

Analysis

Swift implementation of the IMM Recommendations by the Commission will go a long way toward stabilizing the market to allow the longer-term solutions to be analyzed and implemented.

⁷ ICE Futures Trading Rules 4.34 and 4.29.

As set forth below, the recommendations are within the Commission’s existing authority and supported by ample agency precedent and sound public policy. Further, it is not too late for those actions under existing law; moving forward with these actions now will provide direct and immediate relief to Texas residential and business customers.

I. The Commission Has Authority to Correct Settlement Errors and Has Authority Under PURA § 39.151(a) To Do So Now

The notion presented by some that the Commission lacks authority to correct ERCOT’s out of market actions that affect pricing is directly contrary to law and precedent. The Texas Attorney General, the State’s ranking legal officer, issued an opinion confirming the PUCT’s authority to order ERCOT to correct wholesale electricity prices.⁸ The Commission has such authority under PURA § 39.151(a), 16 Tex. Admin. Code § 25.361(b), and ERCOT Protocols 9.5.6, 6.3(4) and 6.3(6)(a)(i). The Commission has taken corrective actions that affect prices in the past, and it should do so here.⁹ ERCOT’s actions exceeded the substantive rules of the Commission, contained in the Commission Order, by retaining the administrative price of \$9,000/MWh in the last 32 hours of the event after involuntary firm load shed stopped. This action resulted in an “invalid market solution” caused by ERCOT that can and must be corrected.

Some commenters have indicated that ERCOT decided to retain the \$9,000/MWh as a reliability measure after ERCOT’s firm load shed direction had terminated and that ERCOT made this decision after private consultation with the Chairman and one or more Commissioners. These private conversations cannot legally supplant an unambiguous Commission Order that tied the \$9,000/MWh prices to ERCOT-directed firm load shed. In making a determination that

⁸Attorney General Opinion No. KP-0363 (March 27, 2021), available at <https://www.texasattorneygeneral.gov/opinions/ken-paxton/kp-0363>.

⁹ See discussion of prior price corrections in Section II below.

resettlement is required, the Commission need not pass judgement on the motivations which led ERCOT to exceed the terms of the Commission's Emergency Order. It is squarely within the Commission's authority and responsibility under PURA and agency precedent to ensure that prices in the ERCOT market are consistent with controlling law, which in this case was the Commission's Emergency Order.

As a threshold matter, PURA § 39.151(a) and 16 Tex. Admin. Code § 25.361(b) require ERCOT to "ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers" in ERCOT. Since ERCOT is obligated to perform this function, it cannot conduct settlements in a manner that produces inaccurate accounting. ERCOT Protocols accordingly mandate correction of real-time and day-ahead prices under certain circumstances. Regarding errors in real-time prices, ERCOT Protocol 6.3(4) provides:

(4) ERCOT **shall** correct prices when: (i) a market solution is determined to be invalid, (ii) invalid prices are identified in an otherwise valid market solution, (iii) the Base Points received by Market Participants are inconsistent with the Base Points of a valid market solution, unless accurate prices cannot be determined, or (iv) the Security-Constrained Economic Dispatch (SCED) process experiences a failure as described in Section 6.5.9.2, Failure of the SCED Process. The following are some reasons that may cause these conditions.

(a) Data Input error: Missing, incomplete, stale, or incorrect versions of one or more data elements input to the market applications may result in an invalid market solution and/or prices.

(b) Data Output error: These include: (i) incorrect or incomplete data transfer, (ii) price recalculation error in post-processing, and (iii) Base Points inconsistent with prices due to the Emergency Base Point flag remaining activated even when the SCED solution is valid.

(c) Hardware/Software error: These include unpredicted hardware or software failures, planned market system or database outages, planned application or database upgrades,

software implementation errors, and failure of the market run to complete.

(d) Inconsistency with the Protocols or Public Utility Commission of Texas (PUC) Substantive Rules: Pricing errors may occur when specific circumstances result in prices that are in conflict with such Protocol language or the PUC Substantive Rules.¹⁰

Regarding errors in day-ahead market prices, ERCOT Protocol 4.5.3(4) provides:

(4) ERCOT **shall** correct prices when: (i) a market solution is determined to be invalid or (ii) invalid prices are identified in an otherwise valid market solution, unless accurate prices cannot be determined. The following are some reasons that may cause these conditions.

(a) Data Input error: Missing, incomplete, or incorrect versions of one or more data elements input to the DAM application may result in an invalid market solution and/or prices.

(b) Software error: Pricing errors may occur due to software implementation errors in DAM pre-processing, DAM clearing process, and/or DAM post processing.

(c) Inconsistency with these Protocols or the Public Utility Commission of Texas (PUC) Substantive Rules: Pricing errors may occur when specific circumstances result in prices that are in conflict with such Protocol language or the PUC Substantive Rules.¹¹

II. It Is Not Too Late to Order Price Corrections.

There is neither an absolute ban nor a 30-day limit on the Commission's ability to order ERCOT to resettle any particular Operating Day. The 30-day time deadline that has been

¹⁰ Emphasis added.

¹¹ See also ERCOT Nodal Protocol Revision Request ("NPRR") 1024, which has been approved by the ERCOT Board but has not yet been implemented in the ERCOT system. These revisions add certain thresholds for when a pricing impact is considered significant.

referenced applies only to an ERCOT Staff-initiated correction¹². If ERCOT Staff determines that prices are in need of correction and seeks ERCOT Board review of such prices, the Protocols provide that ERCOT Staff shall notify Market Participants and describe the need for such correction as soon as practicable but no later than 30 days after the Operating Day. Unless notice is made during this window, the ERCOT Staff cannot unilaterally recommend price corrections. ERCOT Staff invoked this authority just last week, issuing a market notice on March 17, 2021 entitled M-C031721-01 Potential Price Correction – Software Error Impacting Real-Time Market Prices, provided notice of its intent to seek approval of a price correction for the operating day February 15, 2021. This notice also indicated that the issue would not be brought to the ERCOT Board until April 13, 2021, and included no proposed date to indicate when the resettlement might take place. Moreover, the 30-day limitation on ERCOT Staff is not even a restriction on the ERCOT Board, much less a restriction on the Governor, the Commission or the Legislature. For example, under the Protocols, “the ERCOT Board may, in its discretion, direct ERCOT to run a resettlement of any Operating Day, at any time, to address unusual circumstances”.¹³

More importantly, the Protocols specifically recognize the 30-day window does not limit the PUC’s authority to correct prices. ERCOT Protocol Sec. 6.3(6)(a)(i) provides:

[N]othing in this section shall be understood to limit or otherwise inhibit any of the following:

- (i) ERCOT’s duty to inform the PUCT of potential or actual violations of the ERCOT Protocols or PUCT Rules and its right to request that the PUCT authorize correction of any prices that may have been affected by such potential or actual violations;

¹² ERCOT Protocols Sec. 6.3(6)(a).

¹³ ERCOT Protocol Sec. 9.5.6.

(ii) **The PUCT’s authority to order price corrections when permitted to do so under other law; or**

(iii) ERCOT’s authority to grant relief to a Market Participant pursuant to the timelines specified in Section 20, Alternative Dispute Resolution Procedure.¹⁴

PURA § 39.151(a) and 16 Tex. Admin. Code § 25.361(b) is the “other law” that grants the PUC such authority.

Price corrections to address an ERCOT error also are consistent with Commission precedent. The ERCOT Protocols do not expressly define what constitutes an invalid market solution or invalid market prices. The list provided in Section 6.3(4)(a)-(d) is expressly identified in the protocol as only “some” of the reasons that there may be an invalid market solution to invoke a price correction. Commission precedent related to ERCOT pricing complaints reveals that whether a market solution is determined to be invalid turns on whether a pricing error was caused by ERCOT or a third party Qualified Scheduling Entity (“QSE”) or transmission and distribution service provider (“TDSP”), the former of which is the case with the pricing errors on February 18 and 19.¹⁵ If errors are caused by ERCOT, then Commission precedent supports resettlement in such instances.

The PUC has approved resettlements for improper pricing caused by ERCOT software errors, metering errors, or other errors. For example, in December 2019, the ERCOT board

¹⁴ Emphasis added.

¹⁵ See *Complaint of Aspire Commodities LLC Against the Electric Reliability Council of Texas*, Docket No. 49763, ERCOT Motion to Dismiss and Response to the Complaint of Aspire Commodities, LP (July 24, 2019)(The PUC ultimately rejected Aspire’s complaint for the same reason, holding that “the language of ERCOT Protocol § 6.3(4) does not mandate price correction when the pricing interval is impacted by erroneous telemetry from a QSE.”)(emphasis supplied). See also reference NPRR 474, *Clarification of Price Correction Principles and Associated Timelines*

approved two different sets of price corrections for certain operating days, concluding in one case that the day-ahead settlement point prices (“SP prices”), day-ahead locational marginal prices (“LMPs”), and market clearing prices for capacity (“MCPCs”) for the operating days had been significantly affected by a software implementation error with ERCOT’s market management software. ERCOT resettled the day-ahead market by applying corrected day-ahead SP prices, day-ahead LMPs, and MCPCs to the quantities awarded during the operating days.¹⁶ At the same time, ERCOT Staff recommended and the Board approved resettlement of a number of different days for real time settlement point prices and other pricing elements from October and November of that same year.

The PUC has also permitted price corrections in other cases in which it determined that ERCOT made an error. In PUC Docket No. 31243, TXU Portfolio Management Company LP successfully challenged an ERCOT settlement alleging erroneous ERCOT imposition of load imbalance charges during half of 2001 due to inadvertent double-counting of two wholesale points of delivery.¹⁷ The Order requiring ERCOT to resettle this period was approved more than 5 years after the period to be resettled.

Similarly, in PUC Docket No. 29210, the PUC ordered ERCOT to resettle ancillary services fees for nearly a 3-month period from January 7, 2003 through March 31, 2003.¹⁸ The Order requiring ERCOT to conduct this resettlement was signed in November of 2004. ERCOT

¹⁶ ERCOT’s decision was upheld by the PUC. *Complaints and Appeals of DC Energy Texas, LLC and Monterey TX, LLC Against ERCOT* (2021) (consolidated with Docket 50881), Docket 50871, Order (Feb. 12, 2021).

¹⁷ *Complaint of TXU Portfolio Management Company LP and TXU Energy Retail Company LP Against ERCOT* Docket 31243, Order (Aug. 9, 2006).

¹⁸ *Complaint of Direct Energy LP and Tenaska Power Services Co Against ERCOT*, Docket 29210. Order (Nov. 5, 2004).

opposed that resettlement in part based on impacts to the other market participants. The PUC held however:

ERCOT's argument that no adjustment should be required because to require adjustments at this late date would be unfair to Market Participants from whom the overcharge would need to be recovered is rejected. ERCOT is reminded that Complainants in this docket are also Market Participants entitled to fairness.¹⁹

This precedent supports a determination that initial-statement data can be changed, and that once the error in the data is identified, ERCOT has a duty to resolve the dispute any make any necessary corrections.

It is clear that ERCOT's failure to adjust administrative inputs it made to a pricing formula change in response to the PUC's February order resulted in an invalid market solution after involuntary firm load shed stopped on February 18. On February 18, after ERCOT instructed the Transmission and Distribution Service Providers to cease firm load shed, an invalid market solution existed because there was no longer any correlation between the \$9,000/MWh administratively set pricing and the Commission's Order.²⁰ Taking all of the ERCOT market notices into consideration, it is clear that ERCOT communicated to the market that the \$9,000/MWh price would only be associated with firm load shed conditions.²¹ TEAM is aware that some parties argue that, because some load remained off-line voluntary, scarcity pricing

¹⁹ *Id* at p 8.

²⁰ M-C021521-04 Update: ERCOT Expectations Regarding Exiting EEA3 and Public Utility Commission Emergency Orders Affecting ERCOT Market Prices

²¹ See ERCOT Market Notices M-C021521-01, Emergency Order of the Public Utility Commission Affecting Market Prices (Feb. 15, 2021, 11:08 pm), M-C021521-02 Update: Public Utility Commission Emergency Orders Affecting ERCOT Market Prices (Feb. 16, 2021, 6:04 pm); M-C021521-03 Update: Public Utility Commission Emergency Orders Affecting ERCOT Market Prices (Feb. 17, 2021, 9:24 pm); M-C021521-04 Update: ERCOT Expectations Regarding Exiting EEA3 and Public Utility Commission Emergency Orders Affecting ERCOT Market Prices (Feb. 18, 2021, 7:46 am).

should have remained at its maximum. This argument is without merit because large loads can always voluntarily curtail. Moreover, any such voluntary curtailment is on its face not “firm” load shed and is inconsistent with ERCOT’s apt description of firm load shedding as “rolling blackouts”.²²

II. Concerns Regarding the Deadline for Settling ICE Transactions Are Unfounded

At the Commission open meeting on March 5, 2021, the Commissioners stated their belief that the company known as ICE somehow imposed a deadline of that very day for correction of ERCOT prices. The fact that a company operating a futures exchange such as ICE – with its own agenda and fiduciary duty to its own shareholders – relies on ERCOT market clearing prices should not determine whether ERCOT should correct prices in accordance with Commission Orders.²³ It should go without saying that any effect on ICE transactions of Commission action to correct energy or ancillary service prices will be primarily borne by market participants and not Texas end-use customers. The correction is in the best interests of Texans, as well as what is required under the law.

There is no support for the contention that there is a deadline by which the Commission must act to direct ERCOT’s resettlement of the energy market consistent with the Commission orders. ERCOT’s market notice on March 17, 2021 providing notice of its intent to seek approval of a price correction for the operating day February 15, 2021 underscores the ability to price correct notwithstanding the fact that the period for setting ICE transactions has passed. Moreover, ICE has demonstrated that it can delay settlement of its financial process for contracts tied specially to

²² See www.ercot.com/services/programs/load/eils.

²³ Certainly, the Commission seemed to consider information regarding related ICE impacts irrelevant in the context of Aspire’s complaint.

ERCOT settlement prices, at its convenience, as it has done so with respect to contracts relating to ancillary services.²⁴

March 8, 2021



Notice

Delay of the Final Settlement of Four ERCOT Ancillary Services Contracts

The Exchange has determined pursuant to Rule 4.34(b)(v) to delay the final settlement process for the contracts listed below until further notice, while the prices are under review by authorities in the state of Texas.

Contract Name	Code
ERCOT Capacity Responsive Reserve Future	ECR
ERCOT Non-Spinning Reserve Future	ENS
ERCOT Regulation DOWN Future	ERL
ERCOT Regulation UP Future	ERK

As the above referenced notice indicates, ICE has discretion to delay final settlement pricing of futures contracts and to correct settlement pricing of futures contracts pursuant to ICE Futures US (“IFUS”) Trading Rule 4.34. IFUS Trading Rule 4.34(b)(v) provides:

ICE Futures US (IFUS) Trading Rules permit ICE to delay issuing a final Settlement Price at its discretion if, for any reason, it believes there is an error in the calculation of the index or other value on which final settlement of any futures contract is based. It can thereafter publish a final Settlement as soon thereafter as practicable using such pricing data as it deems reliable, unless otherwise specified in the rules of the relevant futures contract.

ICE also has discretion to determine settlement prices for futures contracts. IFUS Trading Rule 4.34(b)(iv) provides:

²⁴ See ICE Ancillary Contracts Notice, available at: https://www.theice.com/publicdocs/futures_us/exchange_notices/ICE_Futures_US_Ancillary_Contracts_Notice_2021308.pdf?utm_source2=ICE_Futures_US_Ancillary_Contracts_Notice_2021308

If ICE concludes that a Settlement Price as determined by the averaging method specified by the IFUS Rules does not fairly represent the market value of the relevant futures contract delivery or expiration period relative to the Settlement Price of any other delivery or expiration period, or is inconsistent with market information known to ICE, then ICE may set the Settlement Price for such period at a level consistent with such other Settlement Prices or market information including the settlement prices for similar contracts trading on other markets, trading activity in the spot, OTC and swap markets, forward prices, pricing data obtained from OTC and swap market participants, and any other pricing data from sources deemed reliable by ICE.

ICR rules also indicate it can cancel trades that take place at an “unrepresentative price” as invalid. For example, IFUS Trading Rule 4.29 provides:

If ICE determines that a trade has taken place at an unrepresentative price, ICE, at its absolute discretion, may declare such trade invalid. ICE may take into account such information as it deems appropriate when determining whether to invalidate a trade, including, without limitation, the following:

(A) price movement in other delivery or expiration months of the same Exchange Commodity Contract;

(B) current market conditions, including levels of activity and volatility;

(C) time period between different quotes and between quoted and traded prices;

(D) market or other information regarding price movement in related Commodity Contracts;

(E) manifest error;

(F) proximity of the Trade to the close of the ETS trading session.

Finally, ICE’s Error Trade Policy confirms that “The Rules . . . provide ICE with absolute discretion to delete orders, adjust prices, cancel trades or suspend the market in the interests of

maintaining a fair and orderly market.”²⁵ It also states: “In normal circumstances, the Exchange will only adjust prices or cancel trades on the basis that the price traded is not representative of market value. Any trade where the only error is the number of contracts traded and not the price at which they are traded, will not be subject to cancellation. The Exchange will make the final decision on whether a trade price is adjusted, or a trade is cancelled or is allowed to stand.”²⁶

In summary, ICE has broad discretion to delay final settlement pricing or correct settlement pricing pursuant to its rules. Its decision to settle contracts for energy despite the well-publicized calls for resettlement by the IMM and others should not drive the Commission’s decision of whether to enforce the terms of its own Order. Physical contracts for purchased power as well as ICE contracts have provisions that address price corrections. The Commission action is not restricted by these private contracts, and the right decision for Texans should not be driven by hedges on the ICE exchange.

III. Concerns About the Impacts on Hedges Can Be Addressed In Due Course

TEAM respectfully suggests that no action the Commission takes regarding prices during the week of Winter Storm Uri is without consequences; certainly, its decision to set aside the market rules and fix prices at \$9,000/MWh abruptly and without notice had its own ramifications on the hedges that were in place at that time. The Commission’s guiding principle, however, must be to do what is consistent with PURA and in the best interest of Texas consumers. While the Commission voiced concern about hedges entered into in reliance on the \$9,000/MWh prices on February 18 at its open meeting on March 5, the Commission failed to adequately consider the

²⁵ See Appendix I, Error Trade Policy (2013) available at: https://www.theice.com/publicdocs/rulebooks/futures_us/--Appendix_I_Error_Trade_Policy.pdf as amended by the Board effective June 11, 2018

²⁶ *Id*

unhedgable uplift costs that its failure to enforce its order caused on all entities who serve end-use customers. As the IMM notes, the massive uplift charges that have been created and passed on to market participants as a result of these administrative prices cannot be hedged. As described by the IMM, ERCOT's decision to act outside the scope of the Commission order and beyond the needs of ERCOT's system:

resulted in \$16 billion in additional costs to ERCOT's market, of which roughly \$1.5 billion was uplifted to load serving entities to provide make-whole payments to generators for energy that was not needed or produced. Although most energy costs can be hedged by ERCOT's load-serving entities through bilateral contracts or generation, **these make-whole payments are particularly harmful because they are uplifted to all loads through the Real-Time Ancillary Service Imbalance Charge. Therefore, they cannot be hedged and will likely result in substantial adverse economic effects, including higher levels of defaults.**²⁷

Included in TEAM's original February 19 request was a request that the Commission clarify that any generator that is unable to recover its verifiable fuel costs that it reasonably incurred to produce power through the applicable ERCOT Nodal Protocols will be permitted to file with the PUC for recovery of those costs. TEAM stands by its suggestion that the Commission can act to ensure that that companies are made whole for the cost of fuel hedges that they procured and would not be recovered if prices were corrected. Thus, to the extent that the "hedges" with which the Commission was concerned on March 5 were fuel hedges, the Commission has a means at its disposal to address them.

IV. Price Corrections Are In the Best Interest of the ERCOT Market

Price corrections are also appropriate as a policy matter and in the best interest of the ERCOT market. The market depends on the rules being followed. The PUC's unusual February 15 and 16

²⁷ Potomac Economics, "Second Letter to Commissioners", Docket No. 51812, March 4, 2021 (emphasis added)

orders unexpectedly and without notice changed the rules of the road, but, at a minimum, the \$9,000/MWh pricing should have been corrected when firm load shed ceased. As previously stated, price corrections in the physical market – sometimes small and sometimes large – occur routinely when the market rules are not followed. That is, the source of market participants’ confidence in the prices is the knowledge that the market rules will be followed, not the fact that prices have been posted. Here, where the Commission substituted its order for the market rules, it is difficult to see how parties can credibly argue that they relied upon the order not being followed, *i.e.*, that administrative pricing would continue even when ERCOT-directed load shed had ceased.

Indeed, ERCOT’s communications clearly indicate that the entire market was on notice as to how ERCOT planned to interpret the Commission’s order. In a Market Notice on February 15, 2021, ERCOT informed Market Participants of the Commission’s Emergency Order related to firm load shed, and described the steps that ERCOT would be taking to implement the Order, as follows:

LONG DESCRIPTION: On February 15, 2021, the Public Utility Commission of Texas entered an order requiring ERCOT to address pricing issues that are significantly affecting the ERCOT Market during the ongoing Energy Emergency Alert (EEA) Level 3 conditions. This Market Notice explains how ERCOT intends to implement certain directives under this order.

First, the order requires ERCOT to “ensure that firm load that is being shed in EEA3 is accounted for in ERCOT’s scarcity pricing signals.” This directive is based on the Commission’s observation in the order that energy prices of less than \$9,000/MWh during load-shed conditions are “inconsistent with the fundamental design of the ERCOT Market.”

ERCOT will implement the pricing outcomes directed by the order by making an administrative adjustment to the Generation To Be Dispatched value in the Real-Time Reliability Deployment Price Adder process during all intervals in which ERCOT has directed firm Load shed. This adjustment will be equal to the cumulative MW ERCOT has directed for Load shed during each Security-Constrained Economic Dispatch (SCED) interval...

(emphasis added).²⁸ The Market Notice also provided links to the related Commission Orders that provided authority for the ERCOT action.

The market was also well aware of when ERCOT ceased shedding firm load – in fact, ERCOT posted a notice of such available to all market participants at 1:05 am on February 18. Cessation of firm load shed was evidenced in an Operations message that it had “completed the restoration of all firm load shed.” In a media notice issued by ERCOT at 7:45 am, ERCOT Senior Director of System Operations Dan Woodfin reiterated: “We’re to the point in the load restoration where we are allowing transmission owners to bring back any load they can related to this load shed event”, and there was “no additional load shed occurring at this time”.

To the extent that entities engaged in hedging based on the continuation of \$9,000/MWh pricing beyond the authority of the Commission’s Orders and ERCOT’s market notices interpreting the Orders, their derivative interest cannot and should not prevail over the interest of Texas consumers and physical market participants in the enforcement of the actual language of the orders and the elimination of \$16 billion in unnecessary charges. Many of those market participants have filed indicating their support of this request already.²⁹

V. Conclusion and Request for Relief

ERCOT’s continued administrative pricing, after ERCOT-directed firm load shed had ceased, is inconsistent with the clear language of the Commission’s Order. Not only was ERCOT acting outside of its authority in violation of the Commission’s Orders and the protocols, but those

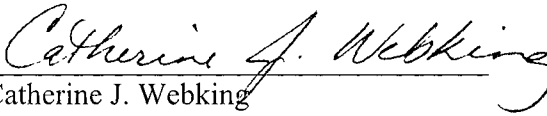
²⁸ http://www.ercot.com/services/comm/mkt_notices/archives/5196.

²⁹ See *supra*, note 3.

actions directly created billions of dollars in unnecessary costs. The Commission's duties and responsibilities are to Texans and to the Texas markets. It is within the PUC's authority under PURA, agency rules, and precedent to correct invalid market prices. The harm in failing to correct the pricing errors on 32 hours across February 18 and February 19 to comply with the Commission's Orders will be felt in Texas, on the licensed entities that provide electricity, and on the Texas businesses and residents that they serve.

WHEREFORE, PREMISES CONSIDERED, we urge the Commission to immediately direct ERCOT to correct pricing errors consistent with this Order back to 1:05 am on February 18, at which time ERCOT removed the firm load shed instructions to the transmission and distribution utilities.

Respectfully submitted,

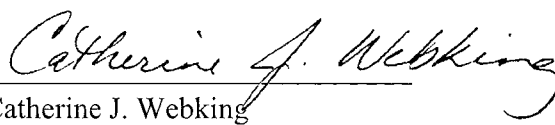

Catherine J. Webking
State Bar No. 21050055
cwebking@scottdoug.com

SCOTT DOUGLASS & MCCONNICO LLP
303 Colorado Street, Suite 2400
Austin, Texas 78701
512.495.6337
512.495.6399 (facsimile)

ATTORNEYS FOR TEAM

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been filed electronically and made available on the Commission's website and was emailed to ERCOT on March 22, 2021.


Catherine J. Webking