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PUBLIC UTILITY COMMISSION
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DOCKET NO. 51812

OVERSIGHT OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
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REQUEST FOR EMERGENCY ACTION

COMES NOW, Spark Energy, Inc. ("Petitioner") and requests that the Public Utility Commission of Texas Inc. (the "Commission") order the Electric Reliability Council of Texas, Inc. ("ERCOT") to deviate from its protocol deadlines and timing related to settlements, collateral obligations, and invoice payments and to suspend the execution or issuance of invoices or settlements until issues raised by Governor Greg Abbott and the Texas Legislature and investigated by the office of Attorney General Ken Paxton, (collectively, "State Authorities") to address and resolve in a fair and equitable manner the unprecedented financial challenges to Spark and the residential and small business customers it serves in the State of Texas due to the catastrophic winter event of February 15 through 19, 2021. In support thereof, Petitioner shows as follows:

I.

On February 21, 2021, the Commission issued an "Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols" ("Order") that stated, in pertinent part, as follows:

"In an attempt to protect the overall integrity of the financial electric market in the ERCOT region, the Commission concludes it is necessary to authorize ERCOT to use its sole discretion in taking actions under the ERCOT Nodal Protocols to resolve financial obligations between a market participant and ERCOT. It is appropriate that ERCOT's discretion include, but not be limited to, ERCOT's ability to take the following actions:

- Deviate from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments;
- Utilize available funds, such as undistributed congestion revenue right auction revenues, to cover short-paying invoice recipients;
- Relax credit requirements and releasing cash or other collateral to provide short-

- term market-participant liquidity;
- Deviate from protocol requirements regarding the maximum amount of default uplift invoices;
 - Suspend breach notifications to certain market participants for failure to make payment or provide financial security; and
 - Produce reconciliation settlements following market stabilization.”

In Response to the Order, ERCOT issued this notice on February 22, 2021 that stated, in pertinent part, as follows:

“ERCOT is temporarily deviating from Protocol deadlines and timing related to settlements, collateral obligations, and Invoice payments while prices are under review. Invoices or settlements will not be executed until issues are finalized by State leaders considering solutions to the financial challenges caused by the winter event, which is anticipated to occur this week.”

On the very next day, however, ERCOT issued a new notice with no explanation whatsoever. It said: "ERCOT has ended its temporary deviation from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments. Invoices and settlement will be executed in accordance with Protocol language." Even though the weather crisis had abated, this subsequent ERCOT notice was followed by an unabated flurry of invoices from ERCOT for additional collateral postings in dramatically escalating amounts. This activity was initiated without explanation and even a draw on already posted cash collateral without any delay or failure to pay on behalf of Spark, to-wit: February 15 – \$8,151.88; February 16 – \$1,559,126.47; February 17 – \$7,724,037.31; February 18 – \$8,842,012.35; and February 19 – \$5,299,227.91. .

Our Chairman, CEO and President has reached out to the leadership of Texas at every level to address this urgent concern. To date, no action has been taken. We expect there to be hearings and , investigations which will take months, if not years to complete. However, the issue concerning the huge run up of ancillary charges is one that can be addressed now and solutions found now – IF the Commission will direct ERCOT to restore its notice of February 22 to deviate Protocol deadlines and allow State Authorities to have an opportunity to fashion a solution that will mitigate the damage done to the competitive marketplace.

Petitioner is accountable to a Board of Directors, public shareholders, and over 35,000 customers (of over 50,000 RCEs) facing electricity bills for 5 days of service that are in excess of *annual* mortgage or rent payments. If these outrageous costs are passed through to residential customers under variable rate contracts or even to fixed rate customers under force majeure clauses, the human suffering caused by the waves of consumer bankruptcies across Texas would be staggering. All but the largest independent REPs like Spark will be forced out of business; the retail energy sector will be reduced to a near monopoly dominated by a handful of large generators who have been acquiring REPs in the past few years anyway and who will opportunistically capture the customer bases of smaller bankrupt REPs.

This Commission has the power and authority to save the deregulated energy industry and the customers they each serve, by granting the emergency relief requested herein by Petitioner on behalf REPs S and the customers we serve, all of whom will suffer catastrophic and irreparable injury. e. While it is too late to save the dozens of Texas citizens who died trying to stay warm in the near collapse of the electricity grid, *it is not too late* to save REPs and their consumers and ensure that the vibrant competition of the retail sector continues. The key now for the Commission to exercise its authority its authority outlined below and simply hit the proverbial “pause” button **by restoring the deviation to ERCOT Protocols as was originally issued by ERCOT on February 22, 2021** to stop this irreparably destructive cycle of outrageous pricing and ancillary costs that exceed by *thousands* of percent the true cost of electricity generation as well as equally dramatically escalating collateral calls and draws that will unravel the entire industry, create significant job losses, and further burden a pandemic-stricken population with yet another heavy financial burden that will take years to recover from.

III.

The Commission’s Order noted that PURA §39.151(d) gives the Commission complete authority over ERCOT. The Commission can also rely on the following:

- 16 TEX. ADMIN CODE § 25.501(a) provides that ERCOT determines market clearing prices of energy and other ancillary services in the ERCOT market unless otherwise directed by the Commission.
- PURA § 39.151(d-4) provides that the Commission may “resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.”
- PURA §35.004(e) provides: “The commission shall ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive. In this subsection, ‘ancillary services’ means services necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services as the commission may determine by rule.”
- PURA § 39.001(d) provides: “Regulatory authorities ... shall authorize or order competitive rather than regulatory methods to achieve the goals of this chapter to the greatest extent feasible and shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition.”

Spark Energy requests that the that the Commission immediately restore the deviation to ERCOT Protocols as was originally issued by ERCOT on February 22, 2021, and to provide such other and further relief as may be appropriate and necessary under the exigent facts and circumstances of this emergency situation.

Respectfully submitted,

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