



Filing Receipt

Received - 2021-11-18 02:29:15 PM

Control Number - 51812

ItemNumber - 238

November 18, 2021

Public Utility Commission of Texas
Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
1701 N. Congress Ave.
Austin, Texas 78711

Re: *PUC Project No. 51812, Issues Related to the State of Disaster for the February 2021 Winter Weather Event*

Dear Chairman and Commissioners:

On February 21, 2021, the Public Utility Commission of Texas (Commission) issued an order that directed ERCOT to take certain actions and granted exception to provisions of the ERCOT Protocols and Operating Guides.¹ At the time the Order was issued, the electric market in the ERCOT Region was experiencing an unprecedented amount of financial strain due to high market prices over an extended period—e.g., numerous Market Participants were unable to meet collateral and payment obligations, and ERCOT was forced to short pay Market Participants that were due payments. Therefore, the Commission issued the Order to help protect the overall integrity of the ERCOT market.

Specifically, the Order gives ERCOT the discretion to resolve financial obligations between a Market Participant and ERCOT by:

- Deviating from Protocol deadlines and timing related to settlements, collateral obligations, and invoice payments;
- Utilizing available funds such as undistributed congestion revenue right auction revenues to cover short-paying invoice recipients;
- Relaxing credit requirements and releasing cash or other collateral to provide short-term market participant liquidity;
- Deviating from Protocol requirements regarding maximum amount of default uplift invoices;
- Suspending breach notifications to certain market participants for failure to make payment or provide financial security; and
- Producing reconciliation settlements following market stabilization.

¹ See *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Project No. 51812, Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols (Feb. 21, 2021).

The Order further provides, “any and all provision[s] of the ERCOT Nodal Protocols are waived to the degree necessary to allow ERCOT to take actions ordered herein,” and requires ERCOT to report actions taken under the Order.²

ERCOT utilized its discretion to address financial obligations between Market Participants and ERCOT on a regular basis from the issuance of the Order through March 2021. For example, on numerous occasions, ERCOT deviated from the Protocol deadlines in allowing Market Participants additional time to provide required collateral and make invoice payments. Consequently, ERCOT occasionally suspended the issuance of breach notifications (the issuance of a breach notice initiates breach and default processes under the Standard Form Market Participant Agreement). In addition, ERCOT used \$800 million in Congestion Revenue Right (CRR) auction revenue funds to help pay short-paid Market Participants. ERCOT reported each action to Commission Staff.

Since April 2021, ERCOT has only exercised the discretion contemplated in the Order for two limited purposes. First, ERCOT has agreed to suspend written notice of payment breach to Rayburn Country Electric Cooperative, Inc. (Rayburn) in exchange for Rayburn providing ERCOT with regular updates concerning Rayburn’s progress in obtaining securitization financing to cover its unpaid invoices related to the February 2021 winter weather event. In this case, the issuance of a notice of payment breach would likely force Rayburn into bankruptcy and would significantly delay the ability for Rayburn to pay ERCOT. ERCOT and Rayburn are working cooperatively, and Rayburn anticipates closing on securitization financing in late January 2022, which would allow it to pay ERCOT for the unpaid invoices arising from the February 2021 winter storm shortly thereafter.

Second, ERCOT has entered into a payment plan with Hanwha Energy USA Holdings Corp. dba 174 Power Global (Hanwha), whereby ERCOT has agreed to suspend payment deadlines under the ERCOT Protocols to allow Hanwha to make payments to ERCOT for invoice amounts due resulting from the February 2021 winter weather event.³ Hanwha’s fourth and final payment under the payment plan is due to ERCOT by December 30, 2021.

The use of ERCOT’s discretion in these limited scenarios is intended to facilitate the recovery of amounts owed by two Market Participants to pay other Market Participants that were short paid for February 2021 winter weather event Operating Days, while allowing them to continue to participate in the ERCOT market.

Apart from utilizing discretion for these two specific agreements, ERCOT no longer considers the Order to be necessary to preserve the integrity of the financial electric market in the ERCOT Region. The Commission may want to consider terminating the Order or replacing the Order with another order more narrowly tailored to confirm ERCOT’s discretion to continue working with

² ERCOT notes that it has already broad discretionary authority under the ERCOT Protocols to address certain financial risk in the market. *See e.g.*, Protocol Section 9.19 regarding payment plans and Protocol Section 16 regarding financial risk of Counter-Parties.

³ *See* the Payment Plan Agreement for Hanwha Energy USA Holdings Corp at https://www.ercot.com/files/docs/2021/04/23/Payment_Plan_Agreement-Hanwha_Energy_USA_Holdings_Corp_dba_174_Power_G....pdf.

Rayburn and Hanwha to recover amounts owed. If necessary, such ordering language could include a provision that allows ERCOT to continue to suspend breach notifications to Rayburn and Hanwha for failure to make payments for invoice amounts due as related to the February 2021 winter weather event, as long as Rayburn continues to diligently pursue securitization and Hanwha satisfies its payment obligations under the payment plan.

ERCOT stands ready to answer any questions the Commission may have regarding ERCOT's former and current actions taken pursuant to the Order.

Regards,

/s/ Chad V. Seely _____

Chad V. Seely

Vice President and General Counsel

(512) 225-7035

chad.seely@ercot.com