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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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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

PETITION FOR EMERGENCY RELIEF

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Just Energy Texas LP, Fulcrum Retail Energy, LLC and Hudson Energy Services LLC (collectively “Just Energy”) request that the Public Utility Commission (the “Commission”) order the Electric Reliability Council of Texas, Inc. (“ERCOT”) to deviate from the deadlines and timing in its Protocols and Market Guides related to settlements, collateral obligations, and invoice payments and suspend the execution or issuance of invoices or settlements for intervals during the dates of February 14, 2021 through February 19, 2021 until issues related to the catastrophic winter event of February 2021 raised by Texas authorities from the executive and legislative branches (collectively, “State Authorities”) are investigated, addressed, and resolved. Alternatively, Just Energy requests that the Commission grant a waiver of Section 9.6(2) of the ERCOT Protocols to allow Just Energy to delay payment of certain ERCOT Settlement Invoices while it fully exercises its rights under the ERCOT Protocols to dispute the invoiced payment amounts.

In support, Just Energy shows as follows:

I. BACKGROUND

Just Energy is the largest independent REP licensed by ERCOT. As the Commission is aware, beginning on or about February 13, 2021, the state of Texas experienced an unprecedented and catastrophic energy crisis when a powerful winter storm moved over and blanketed the entire state, resulting in temperatures well below 20°F in a state where many homes and businesses rely on electricity for heating. Price shocks in Texas were felt as early as February 12 when natural gas prices jumped from \$3 to over \$150/MMBtu in anticipation of short gas supply. Customer demand for power grew from February 13 and throughout the day on February 14, pushing Texas’s power grid to a new winter peak demand record, topping 69 gigawatts between 6:00 p.m. and 7:00 p.m.—more than 3,200 megawatts higher than the previous winter peak set in January 2018. At the same time, demand for gas for heating grew.

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In the early hours of February 15, ERCOT declared an Energy Emergency Alert Level 1, urging consumers to conserve power. Within an hour, ERCOT elevated to an Energy Emergency Alert Level 2, and only 13 minutes later, at 1:25 a.m., ERCOT elevated to an Energy Emergency Alert Level 3. With the grid stressed to within minutes of a catastrophic failure, ERCOT ordered transmission operators to implement deep cuts in load in the form of rotating outages to reduce the strain and avoid a complete collapse. While demand soared, supply plummeted as power plants tripped offline and demand threatened to exceed supply. Natural gas prices spiked in response to falling supply as lines froze up; as a result, the cost to produce electricity from gas-fueled power plants increased dramatically.

On February 15 (and amended on the 16th), the Commission directed ERCOT to adjust prices “to ensure that firm load that is being shed in [Energy Emergency Alert 3] is accounted for in ERCOT’s scarcity pricing signals . . .” noting that, “[i]f customer load is being shed, scarcity is at its maximum, and the market price to serve that load should also be at its highest[.]”¹ Based on this order, ERCOT set prices at the System Wide Offer Cap (\$9,000 per MWh). Although load stopped being shed as of 1:05 a.m. on the morning of February 18, 2021, ERCOT continued to set prices at the System Wide Offer Cap until 9:00 a.m. on February 19, 2021.

The February winter event caused the ERCOT wholesale market to incur charges of \$55 billion over a seven-day period—an amount equal to what it ordinarily incurs over four years. In recognition of this fact, on February 21, 2021, the Commission issued an “Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols” (the “February 21 Order”) which explained:

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;

¹ *Oversight of the Electric Reliability Council of Texas, Project No 51617, Second Order Directing ERCOT to Take Action and Granting Exception to Commission Rules (Feb. 16, 2021).*

- 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:

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.

Then one day later and without explanation, ERCOT issued a second notice saying that “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.”

This action by ERCOT does not provide opportunity to State Authorities to implement solutions necessary to preserve the Texas competitive electricity market. Many REPs including Just Energy, electric cooperatives, municipalities, and their customers will suffer severe and irreparable injury without emergency Commission action. The extreme costs of energy and ancillary services that will be passed on to REPs and potentially some of their customers for the dates of the winter weather event will likely drive many participants from the market, thereby dramatically decreasing consumer choice. This has the potential to devastate the competitive electricity market that has been a model since implementation and provided untold benefits to consumers.

Furthermore, ERCOT’s processes do not provide any opportunity for market participants or policymakers to consider action to preserve the Texas competitive electricity market, nor does it provide sufficient opportunity for suppliers to adequately address their concerns about settlement invoices issued for February 14, 2021 through 19, 2021. The requirement to pay the invoices immediately while disputing the charges through a comparatively lengthy process is inadequate and payment would cause irreparable harm. During a meeting open to the public held on February 24, 2021 as well as legislative hearings on February 25, 2021, senior ERCOT executives provided

no assurances regarding these issues or any indication that they would temporarily suspend their invoice process.

II. DISCUSSION

The Commission has broad powers, especially during an emergency, and the Commission continues to exercise this authority in issuing orders related to the February winter weather event. The Commission's February 21 Order noted that PURA §39.151(d) gives the Commission complete authority over ERCOT. The Commission also has the authority to grant exceptions to any requirement in its rules for good cause.² The Commission should exercise this authority in these extraordinary circumstances to take all necessary action to preserve the competitive electricity market while State Authorities determine the proper policy solutions to resolve the market issues for February 14 to February 19, 2021.

Just Energy requests the Commission to order ERCOT to deviate from the deadlines and timing in its Protocols and Market Guides related to settlements, collateral obligations, and invoice payments and suspend the execution or issuance of invoices or settlements for intervals during the dates of February 14, 2021 to February 19, 2021, until State Authorities consider and implement solutions to the immense financial challenges caused by the 2021 Texas winter event.

Granting the requested relief is within the jurisdiction of the Commission. PURA §39.151(d) gives the Commission complete authority over ERCOT, and the Commission has the authority to suspend its own rules for good cause.³

As this week's bankruptcy filing by Brazos River Electric Cooperative⁴ demonstrates all too saliently, ERCOT's actions—requiring Market Participants such as Just Energy to pay full invoices in accordance with the rigid ERCOT settlement schedule, even while there are ongoing discussions regarding substantial resettlements and uncertainty regarding data, with billions of dollars in issue—has and will continue to drive Market Participants out of business. ERCOT's actions have essentially negated the benefit that the Commission sought to provide through the

² PUC Subt. R. § 22.5(b).

³ PUC Subt. R. § 22.5(b).

⁴ See Voluntary Petition for Non-Individuals Filing for Bankruptcy, *In re Brazos Electric Power Cooperative, Inc.*, Case No. 21-30725 filed on March 1, 2021 in the United States Bankruptcy Court for the Southern District of Texas.

February 21, 2021 Order. Granting the requested relief will help ensure that no Market Participant is forced out of the market as a result of the current chaos just because ERCOT's calculations have not yet properly resettled, or because it is unable to raise the extraordinary amounts of capital required to meet these unprecedented invoices and collateral calls on mere days' notice.

Alternatively, Just Energy requests that the Commission grant a waiver of Section 9.6(2) of the ERCOT Nodal Protocols to allow Just Energy to delay payment of certain ERCOT Settlement Invoices while it fully exercises its rights under the ERCOT Nodal Protocols to dispute the invoiced payment amounts. Additionally, Just Energy requests that the Commission grant this waiver to require any invoiced amounts that Just Energy has already paid to be refunded. For settlement invoices Just Energy has received but that remain unpaid, settlement invoices not yet received by Just Energy, and potential resettlement invoices that Just Energy anticipates receiving, Just Energy requests this waiver in order to be excused from the requirement for immediate payment until all billing dispute rights are exhausted under the ERCOT protocols.

Just Energy has initiated and has a good faith basis for disputing the charges being invoiced. As an initial matter, Just Energy disputes the application of the \$9,000 MWh System Wide Offer Cap to any time period after the ERCOT grid ceased shedding load at 1:05 a.m. on February 18, 2021, as applying the System Wide Offer Cap after that time contravenes the language of the Commission's February 15 and February 16 orders.⁵ In addition, as the pleadings of other parties and the recent comments of the Independent Market Monitor⁶ have made clear, there are significant concerns regarding how Ancillary Services charges were calculated and assessed during the winter weather event.

Further, Just Energy's invoices include Ancillary Services charges that Just Energy believes may have been either erroneously calculated or are an unreasonable application of ERCOT's Protocols. For example, for three settlement days during the week of February 14th, the charge for Reliability Deployment Ancillary Service Imbalance Revenue Neutrality, which usually ranges from \$0-\$1,000 per invoice, is approximately 185 times higher than the last 5 years of charges combined. Just Energy understands that this charge is a load-based allocation for

⁵ Just Energy supports the Emergency Request to Enforce Commission Order filed by the Texas Energy Association for Marketers in Project No. 51812 on February 19, 2021, and urges the Commission to grant the relief requested therein.

⁶ Comments of the Independent Market Monitor, Project No. 51812 (Mar. 1, 2021).

incremental revenue provided to online generation during a period of scarcity, which is then paid out based on online generation capacity net of generating volume and net of generation procured for ancillary service multiplied by real time Operating Reserve Demand Curve (“ORDC”) adders. The ORDC adders for Operating Day February 18th and 19th, 2021, in particular, were artificially set and do not reflect available capacity on the system. As such, strict application of the ERCOT Protocols would mean that generators would receive a reliability revenue when there was no scarcity. Just Energy estimates that Market Participants were paying approximately \$1.9 billion for this charge when there was no scarcity. Just Energy has been able to discern no reasonable basis for the exponential increase in this charge, and ERCOT has provided no data in support of this determination.

The requested waiver is limited in scope and addresses an immediate, concrete problem related to emergency circumstances. The waiver does not require that the Commission make a determination as to whether Just Energy should be relieved of its payment obligations. Just Energy intends to address these disputes with ERCOT, including its claims with respect to payment obligations, through the dispute resolution procedures set out in the ERCOT Nodal Protocols. Accordingly, if the Commission does not grant the relief requested above, Just Energy respectfully requests that the Commission waive the requirements of Section 9.6(2) such that its payment obligations may be delayed until the dispute with ERCOT is resolved. With respect to invoices already paid, Just Energy requests that the amounts paid be refunded by ERCOT.

III. REQUEST FOR RELIEF

PURA §39.151(d) gives the Commission complete authority over ERCOT. The Commission also may grant exceptions to any requirement in its rules for good cause.⁷ Given the extraordinary circumstances facing the ERCOT market, the Commission should exercise its authority to take all necessary action to preserve the competitive electric market. Additionally, PUC Subt. R. § 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) also provides that the Commission may “resolve disputes between an

⁷ PUC Subt. R. § 22.5(b).

affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.”

Therefore, based on the Commission’s authority under Texas law, Just Energy requests that that the Commission immediately restore the deviation to ERCOT Protocols as was originally issued by ERCOT on February 22, 2021. In the alternative, Just Energy requests the Commission grant a temporary waiver of section 9.6(2) of ERCOT protocols to give Just Energy the additional opportunity to resolve its settlement dispute in accordance with ERCOT’s dispute resolution protocol without inflicting undue financial harm upon Just Energy. Just Energy further requests that the Commission grant such other relief to which it is entitled.

Respectfully submitted,



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