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**CALPINE CORPORATION'S RESPONSE TO INDEPENDENT MARKET MONITOR'S
MARCH 1ST RECOMMENDATIONS**

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

On March 4, 2021, the Independent Market Monitor (“IMM”) of the Electric Reliability Council of Texas (“ERCOT”) submitted an additional recommendation 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, presumably, to be set at lower prices. This recommendation is made in addition to the IMM’s March 1, 2021, recommendations to reprice all day-ahead ancillary services (“AS”) prices for operating days February 15 through February 20, 2021 to cap them at the SWCAP.¹ Calpine Corporation (“Calpine”) respectfully submits that the IMM’s and others’ re-pricing recommendations constitute a retroactive shift in the rules on which market participants relied and should not be adopted.

To reverse ERCOT’s prior determinations, as well as the rules underlying those determinations, and retroactively reset the market prices, would create uncertainty in the market and harm those market participants that took prudent actions to protect themselves. For example, retroactive re-pricing by the Commission will lead to mismatches that create huge losses for

¹ The IMM’s March 1 letter also identified an error on the part of ERCOT in failing to apply manually the appropriate settlement treatment for AS that were not provided in real time. The then-existing rules required ERCOT to apply this treatment in real time, but ERCOT failed to do so. Calpine agrees with the IMM’s position on this issue, and appreciates the Commission’s quick action to adopt the recommendation in its March 3, 2021 open meeting.

participants who entered into hedging transactions in reliance on the existing market rules and real-time instructions from ERCOT, including real-time information from ERCOT legal the morning of February 18 that advised market participants that ERCOT would remain in EEA3, with prices at \$9,000/MWh, through at least the morning peak period on Friday, February 19, 2021.² For example, market participants that responsibly hedged their generation on the Intercontinental Exchange (“ICE”) agree to pay a “floating” price to an ICE counterparty, based on ERCOT’s daily prices, and receive a pre-determined fixed-price payment in return. These daily ICE transactions have already settled on ICE – meaning that market participants have *already* paid the floating price based on ERCOT published prices according to its published rules during the event. If ERCOT were to reset the prices, as recommended, ERCOT market participants that hedged will have to refund the revenue received for the generation provided to ERCOT, but will not have any avenue for getting refunds from their ICE counterparty. As a result, the ERCOT market participant may suffer substantial market losses, despite having provided power to ERCOT in scarcity and load-shed conditions, and despite having undertaken to responsibly hedge its market-price exposure.³ Such a lack of convergence of the ERCOT and ICE prices could lead to losses in the billions of dollars.

A re-pricing and resettlement event, in the absence of demonstrated error on the part of ERCOT, is not supported by law, and would have the effect of undermining faith in ERCOT’s

² See, for example, the market notice issued by ERCOT legal on February 18, 2021 at 07:46 am CST, informing the market that the SWCAP would remain in effect until the cessation of the Energy Emergency Alert (“EEA”) Level 3 (“EEA3”) determination, as required by the Commission’s February 16th order. See ERCOT Notice M-C021521-04 Legal, “Update: ERCOT Expectations Regarding Exiting EEA3 and Public Utility Commission Emergency Orders Affection ERCOT Market Prices” (“Feb. 18 Pricing Notice”).

³ This example involved a daily ICE product, but the same analysis applies to counterparties that hedged based on monthly contracts. Those contracts for February 2021 settle out tomorrow, March 5th. The ERCOT market participant in the example will have to pay based on the published ERCOT prices. But the counterparty has not posted collateral, and there is no reasonable expectation that the ERCOT market participant would ever be able to recover a refund of monies paid, despite any changes that the Commission or ERCOT may make.

market for a large variety of market participants, off-takers, physical and financing counterparties, financing and investor parties, and others. This Commission has long recognized that it is critical to adopt, maintain, and stand by, market rules that have been promulgated after long deliberation and with extensive market participant input. Retroactive, outcome-determinative decisions that pick winners and losers after the fact without a record on which to make such decisions greatly diminishes investor confidence in the market and acts as a significant disincentive to participate in the future, as the Commission recognized on February 16th, when it reversed its earlier decision to retroactively adjust the Reliability Deployment Price Adder. The Texas Constitution more generally prohibits retroactive laws,⁴ and our state courts have prohibited retroactive agency rules and rate decisions that deprive parties of their vested interests.⁵ Finally, the likelihood of a challenge in the courts were the Commission to order repricing would introduce further uncertainty and financial fallout that would reflect poorly on the Texas markets. The resulting chaos of all these actions does not lend the kind of stability desperately needed at this time.

The IMM's recommendations to reset energy and AS prices are not the result of ERCOT mistakes in application of the market rules.⁶ Instead, these prices were the result of the implementation of existing PUC orders and ERCOT Protocols.⁷ Indeed, the potential resettlement of February 18 and 19, could push the prices lower than generators' actual cost of gas, leading to

⁴ Tex. Const. art. I, § 16.

⁵ *Liberty Mut. Ins. Co. v. Department of Ins.*, 187 S.W.3d 808, 820-21 (Tex. App.—Austin 2006, pet. denied); *All Saints Health System v. Texas Workers' Compensation Comm'n*, 125 S.W.3d 96, 104 (Tex.App—Austin 2003, pet. denied)

⁶ The IMM has asserted that ERCOT applied the Commission's prior order in an erroneous way. This interpretation from the IMM conflicts directly with the real-time interpretation provided by ERCOT. The Commission's February 16th order ties the SWCAP implementation directive not just to load shed instructions, but also to the presence of EEA3 conditions. While load shed may have ceased at an earlier time, the EEA3 directive was not lifted until 09:00 on February 19th. See n. 2, above, and also the Feb. 18 Pricing Notice, confirming ERCOT's interpretation.

⁷ For example, on February 15, 2021, ERCOT notified market participants of the potential for the AS rules to generate high AS prices, and stated that it "had not identified a need" to correct those prices. See ERCOT Notice M-D021421-01 Operations, "High DAM Responsive Reserve Service Market Clearing Prices for Capacity for Operating Day February 15, 2021."

even more financial distress. For example, with gas costs at \$350/mmBtu, the running costs for a power plant with a 12,000 heat rate exceed \$4,200/MWh. The effect of these proposed retroactive actions will not be to lessen the financial crisis experienced by parties in ERCOT, but instead to simply shift the loss from one set of market participants to another market participants. The result is still the same—significant financial loss for ERCOT market participants and financial distress for the ERCOT market as a whole.

As the Commission stated in its open meeting on March 3, 2021, the events of this past month indicate a serious need to evaluate ERCOT pricing mechanisms in advance of the next summer peak season. Calpine supports a critical review and plans to be a partner in the review and recommendation process to address market reforms that may be needed. However, re-pricing recommendations are not the vehicle to address such change. We urge the Commission to definitively rule against retroactive repricing and resettlement of the markets.

Calpine appreciates this opportunity to present its views on these requests and will make available representatives to discuss Calpine's position if helpful to the Commission.

Respectfully submitted,

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