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WEATHER EVENT §

PUBLIC UTILITY COMMISSION
OF TEXAS

PUBLIC UTILITY COMMISSION
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**JOINT COMMENTS REGARDING
FEBRUARY 15, 2021 COMMISSION ORDER**

Bandera Electric Cooperative, Inc. (“BEC”), Bluebonnet Electric Cooperative, Inc. (“BBEC”), Pedernales Electric Cooperative, Inc. (“PEC”), and the City of San Marcos, Texas (“San Marcos”), collectively “Joint Commenters” file these Comments Regarding the Public Utility Commission of Texas’s (“Commission”) February 15, 2021 Order – Order Directing ERCOT to Take Action and Granting Exception to Commission Rules.

I. RELIEF REQUESTED

Joint Commenters respectfully request that the Commission enforce, or, in the alternative, clarify, its February 15, 2021 Order (the “Order” or the “February 15 Order”)¹ to ensure that immediately after customer firm load shed ended at 23:55 on February 17, 2021, energy market clearing prices were in effect and administrative price adders are removed. As described below the economic impacts from not enforcing the Order or, in the alternative, from not clarifying the Order creates a hardship and financial detriment to our members and customers for years to come.

II. INTRODUCTION

The Commission’s February 15 Order addressed a system-wide extreme winter weather emergency never experienced by ERCOT or the market. Joint Commenters appreciate the Commission’s leadership, as well as the strong desire to allow the market to function appropriately under its Order. ERCOT, however, did not correctly enforce the Order as written. The Order directly stated that the market price for the energy needed to serve load should be at its highest “*if customer load is being shed.*” The Commission’s Order provided that the offer cap of \$9,000/

¹ Project No. 51617, *Oversight of the Electric Reliability Council of Texas*, Order Directing ERCOT to Take Action and Granting Exception to Commission Rules (Feb. 15, 2021). The February 15, 2021 Order was replaced by an Order on February 16, 2021, but the February 16 Order did not change the section of the February 15 Order addressed here.

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MWh should have ended when customer load shed ended. The effects of the erroneous application of the Order are plain –without enforcement of the Order as adopted– Joint Commenters face a financial detriment during this event. For the reasons stated below, Joint Commenters respectfully request that the Commission enforce its Order as written, or, in the alternative, clarify the Order so that the deleterious effects of incorrectly maintaining the price cap after customer load shed ended can be corrected.

III. BACKGROUND

On February 15, 2021, the Commission adopted an order instructing Electric Reliability Council of Texas, Inc. (“ERCOT”) to set real-time energy prices at the system-wide offer cap (“SWCAP”) to reflect firm load shed. Specifically, the February 15 Order states:

[T]he Commission directs ERCOT to ensure that *firm load that is being shed* in EEA3 is accounted for in ERCOT's scarcity pricing signals. The Commission further directs ERCOT to correct any past prices such that *firm load that is being shed* in EEA3 is accounted for in ERCOT's scarcity pricing signals.²

The Commission reasoned, “*If customer load is being shed, scarcity is at its maximum, and the market price for the energy needed to serve that load should also be at its highest.*”³ In making this statement, the Commission logically connected the SWCAP to ERCOT’s directive to shed load. No one could have anticipated that once ERCOT recalled its load-shed directive, the SWCAP would remain in place for an additional 32 hours.

Following the Commission’s order, ERCOT implemented administrative price adders to increase energy prices to the SWCAP. At 23:55 on February 17, ERCOT recalled the last of the firm load shed instructions, meaning that load shed was no longer required and that load-serving entities (“LSEs”) could begin restoring power to families who had been suffering in the cold. But at the same time, ERCOT failed to remove the emergency price adders until 32 hours *later* on Friday, February 19. This failure amounts to hundreds of millions of dollars improperly imposed on LSEs and their ratepayers. According to the Independent Market Monitor, ERCOT’s failure to properly follow the February 15 Order resulted in \$16 billion in additional costs to the ERCOT

² *Id.* at 2 (emphasis added).

³ *Id.* at 1 (emphasis added).

market, of which roughly \$1.5 billion has been uplifted to LSEs.⁴ This is contrary to the Commission's Order.

IV. COMMISSION AUTHORITY

A. Commission has authority to make decisions regarding the administration of its orders.

The Commission's February 15 Order is certain and should be enforced as written. The February 15 Order explicitly required the administrative adders when load was shed. Requiring ERCOT to follow its order is not "repricing" the market, but rather correcting a mistake made by ERCOT in implementing the Commission's February 15 Order. *PUCT v. Houston Lighting & Power Co.* makes clear that "the Public Utility Regulatory Act empowers the Commission with the authority to make decisions concerning the administration of its rules and orders."⁵ Thus, the Commission has the authority to issue an order directing ERCOT to comply with its February 15 Order and remove the administrative adders after the firm load shed was recalled at 23:55 on February 17, 2021.

B. Commission has authority to clarify its orders *via* a new order, if necessary.

To the extent the February 15 Order requires any clarification, it is well within the Commission's authority to issue a new order clarifying that the February 15 Order applied to all times ERCOT was directing LSEs to shed firm load, *not* all times under which ERCOT remained in EEA3. Such a clarification becomes part of the original order⁶ and would therefore, again, not be "repricing." At issue in the *Houston Lighting & Power Co.* ("HL&P") case was an "interpretive" order in Docket No. 3816 that clarified what the Commission had required in an earlier order in Docket No. 3320. This clarification resulted in the Commission determining that HL&P had over-collected money from its customers, and it ordered these excess amounts refunded to customers. The current situation is analogous. Like HL&P, ERCOT misapplied a Commission

⁴ See Project. No. 51812, *Issues Related to the State Disaster for the February 2021 Winter Weather Event*, Potomac Economics, Ltd. Letter (Mar. 4, 2021).

⁵ *Pub. Util. Comm'n of Tex. v. Houston Lighting & Power Co.*, 645 S.W.2d 645, 647 (Tex. App.—Austin 1983, *writ ref'd n.r.e.*) (citing Tex. Rev. Civ. Stat. Ann. art. 1446c, § 16 (1980)). Tex. Rev. Civ. Stat. Ann. art. 1446c, § 16 has since been repealed and replaced by the current Public Utility Regulatory Act ("PURA"), but the underlying authority cited to by the *HL&P* court remains: "The commission may...make findings of fact and decisions to administer this title or a rule, order, or other action of the commission." PURA § 14.051(5).

⁶ See *id.* (citing *Texarkana & Ft. S. Ry. Co. v. Houston Gas & Fuel Co.*, 51 S.W.2d 284 (Tex. 1932)).

order, and as it did in Docket No. 3816, the Commission can issue a new order now clarifying how ERCOT should have applied its February 15 Order—especially if it means refunding significant sums to (or not collecting significant sums from) market participants.⁷

Agencies are entitled to interpret their own orders, for administrative purposes, so long as the agency does not use the occasion to interpret as a means to amend the prior order.⁸ In 2004, the Austin Court of Appeals acknowledged this principle of administrative law in *Cities of Abilene v. Pub. Util. Comm'n of Tex.* There, the Commission had approved a non-unanimous settlement agreement *via* Commission order. Afterward, the parties disputed the meaning of the settlement order and the Commission included its interpretation of the settlement order in its final order. The court found no fault with the Commission's actions in that case, and, in fact, agreed with the Commission's determination that the settlement order was ambiguous and the Commission's interpretation of the settlement order contained in the final order was reasonable and supported by substantial evidence.⁹

If the Commission clarified its February 15 Order to express its intention that SWCAP pricing was to exist only while LSEs were directed to shed firm load, this clarification would not amend its prior order. A new order in this context would simply be interpreting the February 15 Order, clarifying its proper application, and ordering ERCOT to take actions consistent therewith by removing the administrative adders as of 23:55 on February 17 when the firm load shed requirements were lifted.

This action is entirely within the Commission's authority and would correct the financial penalty that LSEs incurred for acting quickly in a humanitarian way to stop the suffering of Texans and restore power as quickly as possible. Such an order would also clearly resolve this issue, providing regulatory certainty for the market participants, a result which all market participants desire.

⁷ See generally *id.*

⁸ See *Cities of Abilene v. Pub. Util. Comm'n of Tex.*, 146 S.W.3d 742, 747 & n7 (Tex. App.—Austin 2004, *no pet.*) (citing *Railroad Comm'n v. Home Transp. Co.*, 670 S.W.2d 319, 325 (Tex. App.—Austin 1984, *no writ*); see also *Off. of Pub. Util. Couns. v. Texas-New Mexico Power Co.*, 344 S.W.3d 446, 452 (Tex. App.—Austin 2011, *pet. denied*) (acknowledging Commission is entitled to interpret its own orders so long as it does not amend the order).

⁹ See generally *Cities of Abilene*, 146 S.W.3d 742.

**V. BEC, BBEC, PEC & SAN MARCOS RESTORATION AFTER LOAD SHED
WAS CRUCIAL**

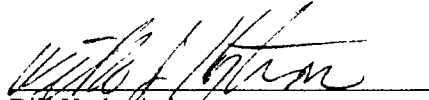
As soon as the load-shed orders were lifted, LSEs, like BEC, BBEC, PEC and San Marcos reacted quickly to restore service to households, many of which rely on electricity to heat their homes due to the lack of natural gas accessibility. BEC, BBEC, PEC and San Marcos restored its members as soon as possible despite artificial price adders. Because BEC, BBEC, PEC and San Marcos and other LSEs did not wait for the EEA3 to be recalled, but instead focused on the immediate needs of members and customers, BEC, BBEC, PEC and San Marcos, and other LSEs will bear the costs of ERCOT's failure to remove price adders that were in direct contradiction of the Commission's specific Order.

Knowing that many of its members and customers depend on electricity for winter heat, BEC, BBEC, PEC and San Marcos, and other LSEs worked diligently to restore members' and customers' power without consideration of the financial impact to the millions of Texans they serve. In fact, BEC, BBEC, PEC and San Marcos achieved approximately 99% of its members and customers back online by Thursday, February 18. Unless the Commission enforces its Order – as written – and directs ERCOT to remove the SWCAP price adder for the 32 hours firm load was not being shed, BEC, BBEC, PEC and San Marcos and their membership and customers face a financial detriment for restoring power immediately after ERCOT lifted the load-shed directive, but before ERCOT ended the EEA3 notice.

Enforcement of the Order or, in the alternative, clarification of the Order, is within the Commission's authority as described herein.

Joint Commenters appreciate the opportunity to provide these comments to the Commission.

Respectfully Submitted,



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Bandera Electric Cooperative, Inc.

Matt Bentke
Chief Executive Officer
Bluebonnet Electric Cooperative, Inc.

Julie C. Parsley
Chief Executive Officer
Pedernales Electric Cooperative, Inc.

Joe Pantalione
Assistant City Manager
City of San Marcos, Texas

March 8, 2021

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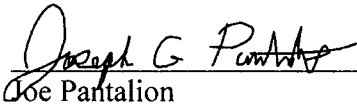
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