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51888

**PETITION FOR EMERGENCY §
RELIEF OF FREEPOINT §
COMMODITIES LLC FOR WAIVER §
OF ERCOT NODAL PROTOCOLS §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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DOCKET NO. 51617

**OVERSIGHT OF THE ELECTRIC §
RELIABILITY COUNCIL OF TEXAS §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

DOCKET NO. 51812

**ISSUES RELATED TO THE STATE §
OF DISASTER FOR THE §
FEBRUARY 2021 WINTER §
WEATHER EVENT §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PETITION FOR EMERGENCY RELIEF OF FREEPOINT COMMODITIES LLC
FOR WAIVER OF ERCOT PROTOCOL SECTION 9.6(2)**

Freepoint Commodities LLC ("Freepoint") files this Petition for Emergency Relief and requests the Public Utility of Commission of Texas ("PUCT" or "Commission") to waive Section 9.6(2) of the Electric Reliability Council of Texas ("ERCOT") Nodal Protocols. Freepoint is requesting a waiver that is limited in time and scope to allow Freepoint to fully exercise its dispute resolution rights under the ERCOT Nodal Protocols without incurring the immediate, significant expenses for which ERCOT has invoiced Freepoint with respect to day-ahead market ("DAM") charges attributable to Ancillary Services during the February 2021 Winter Weather Event. Freepoint has made this request of ERCOT Staff, and no response has been made. In the absence of the requested relief, Freepoint faces the very real prospect that it may successfully challenge the Ancillary Services charges, but ERCOT will have insufficient funds to return the successfully disputed amounts to Freepoint.

In particular, Freepoint urges the Commission to immediately grant Freepoint waiver of Section 9.6(2) of the ERCOT Nodal Protocols to allow Freepoint 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, Freepoint requests that the Commission grant this waiver to require Freepoint's current invoiced amounts, which Freepoint has already paid, to be refunded or, alternatively, placed into escrow while the disputes are resolved. For settlement invoices Freepoint has received but remain unpaid, settlement invoices not yet received by Freepoint, and potential resettlement invoices that Freepoint anticipates receiving, Freepoint is requesting this waiver in order to be excused from the requirement for immediate payment, or, in the alternative, to have the invoiced funds placed into escrow, in each case until Freepoint exhausts all billing dispute rights under the ERCOT protocols.

I. BACKGROUND

Freepoint operates in the ERCOT market as a Qualified Scheduling Entity ("QSE") and is the parent company of a certified retail electric provider ("REP"), Freepoint Energy Solutions LLC ("Solutions"). Solutions operates as a load serving entity ("LSE"), Congestion Revenue Rights ("CRR") account holder, and a Renewable Energy Credits ("REC") account holder in the ERCOT market.

During the February 2021 Winter Weather Event, Ancillary Services cleared at multiples to the ERCOT mandated high system-wide offer cap ("HCAP") and were charged to all REPs, including Solutions. This result is contrary to the market notice M-C021521-01/Legal issued by ERCOT on February 15, 2021 ("Legal Market Notice"), which in relevant part provides: "ERCOT may soon reach the Peaker Net Margin revenue threshold established in PUC Rule 25.505(g)(6), which requires ERCOT to use the Low System-Wide Offer Cap (LCAP) instead of the \$9,000 High System-Wide Offer Cap (HCAP) currently in effect." The Winter ERCOT Order¹ notes that use of the LCAP as required by the rule could result in prices that exceed the HCAP, given current gas prices. Consequently, the order directs ERCOT to "suspend any use of the LCAP until after the Commission's regularly-scheduled next open meeting," and to "continue to use the HCAP as

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

the system-wide offer cap until that time.”² Furthermore, as indicated in Exhibit 1, the data posted by ERCOT in the Market Information section of its website indicated a system-wide offer cap of \$9,000 per MWh. Based on the invoices received so far, Freepoint has been able to determine that the DAM Charges attributable to Ancillary Services reflect grossly disproportionate unit prices:

\$21,819/MWh for February 15, 2021

\$24,284/MWh for February 16, 2021

\$25,674/MWh for February 17, 2021

\$24,902/MWh for February 18, 2021

\$24,108/MWh for February 19, 2021

These prices do not adhere to the Legal Market Notice and contradict the information posted by ERCOT on its website.

Freepoint believes that the Ancillary Services charges, typically related to providing a reliable (and operating) energy grid, reflect an algorithm that at least prima facie no longer functioned in a reasonable and rational manner during the February 2021 Winter Weather Event. For example, in its training materials ERCOT describes its Responsive Reserve Service (“RRS”) as being “used under normal operations to recover from significant frequency deviations.” In other words, RRS is intended to ensure generation is online and available to ramp up in the case of a sudden drop in frequency. During the February 2021 Winter Weather Event, however, system frequency was actually managed by load shedding, which ERCOT confirmed during a meeting open to the public held on Wednesday, February 24, 2021. In this circumstance, market participants should not be charged for any RRS generation resources, as all available generation should have been dispatched to minimize the number of residents without power rather than being held in reserve. The same logic applies to Non-Spin Reserve (“NSR”) charges. In the extreme circumstances of the Winter Weather Event, all available generation should have been online, with system disturbances managed through load shedding. Consequently, market participants should not have incurred NSR charges during the period in question.

Freepoint anticipates disputing these charges. ERCOT’s dispute resolution procedures, set forth in Section 9.14 of its Nodal Protocols, generally require disputes to be initiated within ten (10) business days after an invoice is posted by ERCOT, and ERCOT may request additional

² Winter ERCOT Order at 2.

information regarding the dispute within seven (7) business days. Once a dispute is initiated, ERCOT will attempt to resolve a dispute within fifteen (15) days unless more time is requested because of the complex nature of a dispute. If a dispute is not resolved through the dispute resolutions procedures set forth in Section 9.14 of the ECROT Nodal Protocols, the party raising the dispute may proceed to the Alternative Dispute Resolution Procedures outlined in Section 20 of the ERCOT Nodal Protocols.

The requirement to pay the invoices immediately while disputing the charges through a comparatively lengthy process is inadequate. During a meeting open to the public held on Wednesday, February 24, 2021, senior ERCOT executives were asked if they expected to have sufficient liquidity through Friday, February 26, 2021. In response, ERCOT admitted that it does not have a solid answer and would have to wait and see how much money comes in.

II. REQUEST FOR WAIVER

Freepoint recognizes and appreciates the efforts by the Commission, ERCOT, and market participants during this weather emergency. This requested waiver is necessary to avoid Freepoint having to make payments immediately to ERCOT despite the continuing uncertainty surrounding the proper amounts of those payments and the requirements generally of Freepoint to make those payments, when, by its own admission, ERCOT may not have sufficient liquidity to return any successfully disputed amounts.³ In light of ERCOT's tenuous financial circumstances, and Freepoint's belief that these DAM charges attributable to Ancillary Services are grossly inaccurate, Freepoint will be unfairly prejudiced if forced to make payment of the disputed amounts. The impacts to Freepoint, Solutions, and in some cases, potentially to end-use retail customers of

³ See ERCOT Market Notice M-B021921-01 Collateral Adjustments and Invoice Payments (Feb. 19, 2021) (announcing ERCOT would use "its available discretion under the Protocols" to adjust the collateral requirements for Counter-Parties on a case-by-case basis); *Issues Related to the State of Disaster for the Feb. 2021 Winter Weather Event*, Project No. 51812, Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols (Feb. 21, 2021) (directing ERCOT to take certain actions and grant exceptions to the Protocols and Operating Guides to resolve protect overall integrity of the financial electric market and resolve financial obligations between market participants and ERCOT); ERCOT Market Notice M-A022321-01 ERCOT Discretion to Resolve Financial Obligations (Feb. 23, 2021) (noting that ERCOT was continuing to use its discretion authority under the PUCT's order of February 21, 2021, to help protect the overall integrity of the financial electric market, and noting that such actions by ERCOT would only provide limited financial support to address liquidity issues encouraging Counter-Parties to explore all available financial and/or business transition options; ERCOT Market Notice M-A02221-02 ERCOT has ended its temporary deviation from Protocol deadlines and timing related to settlements, collateral obligations, and invoice payments (Feb. 23, 2021) (ending temporary deviation from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments).

Solutions, if Freepoint is forced to continue to make these payments immediately will be devastating and cause irreparable harm to Freepoint, Solutions, retail consumers in Texas, and other ERCOT market participants long after the immediate weather event has passed.

Section 9.6(2) of the ERCOT Nodal Protocols requires “[e]ach Invoice Recipient shall pay any net debit and be entitled to receive any net credit shown on the Settlement Invoice on the payment due date, whether or not there is any Settlement and billing dispute regarding the amount of the debit or credit.” Freepoint anticipates disputing settlement invoices it has already received and paid, settlement invoices it has received but remain unpaid, settlement invoices not yet received, and potential resettlement invoices that Freepoint anticipates receiving. However, according to the language of the ERCOT Nodal Protocols, Freepoint is required to pay ERCOT these disputed amounts immediately while the disputes are pending, and, as noted above, it could take more than a month for these disputes to be resolved. Freepoint asserts that, given the extreme emergency conditions faced by all market participants as a result of the extreme weather events, and the potential harm to Freepoint and its customers if required to immediately pay these disputed amounts to ERCOT, waiver of this requirement to pay the ERCOT Settlement Invoice amounts while amounts are in dispute is appropriate, particularly in light of ERCOT’s own statement that it is uncertain if it has sufficient liquidity to last through Friday.

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. Additionally, PURA § 39.151(d)⁴ gives the Commission complete authority over ERCOT, the independent organization certified by the Commission under PURA § 39.151.⁵ Therefore, granting this waiver is within the jurisdiction of the Commission.

The Commission has broadly granted waiver of the ERCOT Nodal Protocols to the extent necessary to comply with the Commission’s directives, and Freepoint is requesting this waiver to the extent it is not covered by the Commission’s current waiver of the ERCOT Nodal Protocols.⁶ However, ERCOT has issued a series of inconsistent market notices which have effectively

⁴ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016 (“PURA”).

⁵ *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) (“February 21 PUC Order”).

⁶ February 21 PUC Order at Ordering Par. 2 (“Any and all provision of the ERCOT Nodal Protocols are waived to the degree necessary to allow ERCOT to take the actions ordered herein.”).

negated the relief the Commission has attempted to provide.⁷ The Commission clearly has authority to directly grant this waiver, and the Commission has granted waiver of ERCOT Nodal Protocols in other instances where there is good cause to do so.⁸ Good cause exists here to grant Freepoint's requested waiver.

Freepoint's requested waiver is limited in scope and addresses an immediate, concrete problem related to emergency circumstances.⁹ Freepoint is not requesting that the Commission make a determination as to whether Freepoint should be relieved of its payment obligations.¹⁰ Freepoint intends to address its disputes with ERCOT, including its claims with respect to payment obligations, through the dispute resolution procedures set out in the ERCOT Nodal Protocols. Freepoint is requesting 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.

Alternatively, Freepoint requests waiver of Section 9.6(2) and require payments to be placed into escrow until the dispute with ERCOT is resolved with respect to invoices Freepoint has received but not yet paid, settlement invoices not yet received, and potential resettlement invoices that Freepoint anticipates receiving. With respect to invoices Freepoint already has paid, Freepoint requests that the amounts paid be refunded by ERCOT, and Freepoint's payment obligation be held in abeyance until the dispute is resolved, or, alternatively that the refunded amounts be placed into escrow until the dispute with ERCOT is resolved. This alternative approach would ensure that all payments are timely made pursuant to the ERCOT Nodal Protocols, but would also ensure that once Freepoint's disputes with ERCOT are resolved, Freepoint can be made whole in the event that the amounts due to ERCOT are less than previously invoiced.

⁷ See *supra* note 3.

⁸ See PURA § 39.151. The Commission has the specified authority to grant waiver of certain ECROT dispute resolution procedures. 16 Tex. Admin. Code ("TAC") § 22.251(c). The Commission has also granted waivers where its authority to do so has not been explicitly established. See *Joint Report of Application of Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, L.L.L., and Oncor Electric Delivery Company LLC for Transfer of Facilities, Transfer of Rights Under and Amendment of Certificates of Convenience and Necessity, and for Other Regulatory Approvals*, Docket No. 47469, Order at Ordering Par. 20 (Oct. 13, 2017) ("given that the proposed transaction is expected to close before ERCOT can update its Network Operations Model and possibly other ERCOT databases per timing requirements under the Protocols, ERCOT and joint applicants are granted a waiver of any timing requirements under the ERCOT Protocols related to updating ERCOT models, databases, and/or systems to reflect proper asset ownership resulting from the proposed transition").

⁹ The Federal Energy Regulatory Commission has reviewed and granted at least one waiver requested as a result of the impacts of the last week's extreme weather. See *Southwest Power Pool, Inc.*, 174 FERC ¶ 61,136 (2021).

¹⁰ See February 21 PUC Order (stating payment obligations are not excused).

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Freepoint urges the Commission to immediately grant Freepoint waiver of Section 9.6(2) of the ERCOT Nodal Protocols (1) to allow Freepoint 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 and (2) to refund to Freepoint amounts Freepoint has already paid in connection with disputed invoices pending resolution of such disputes. Alternatively, Freepoint requests that the Commission grant this waiver to allow that Freepoint's current invoiced amounts be placed into escrow while the disputes are resolved and that disputed amounts Freepoint has already paid be placed into escrow by ERCOT. It is imperative that these steps be taken to avoid, or at least help mitigate, the potential financial impact to Freepoint and its customers.

Respectfully submitted,

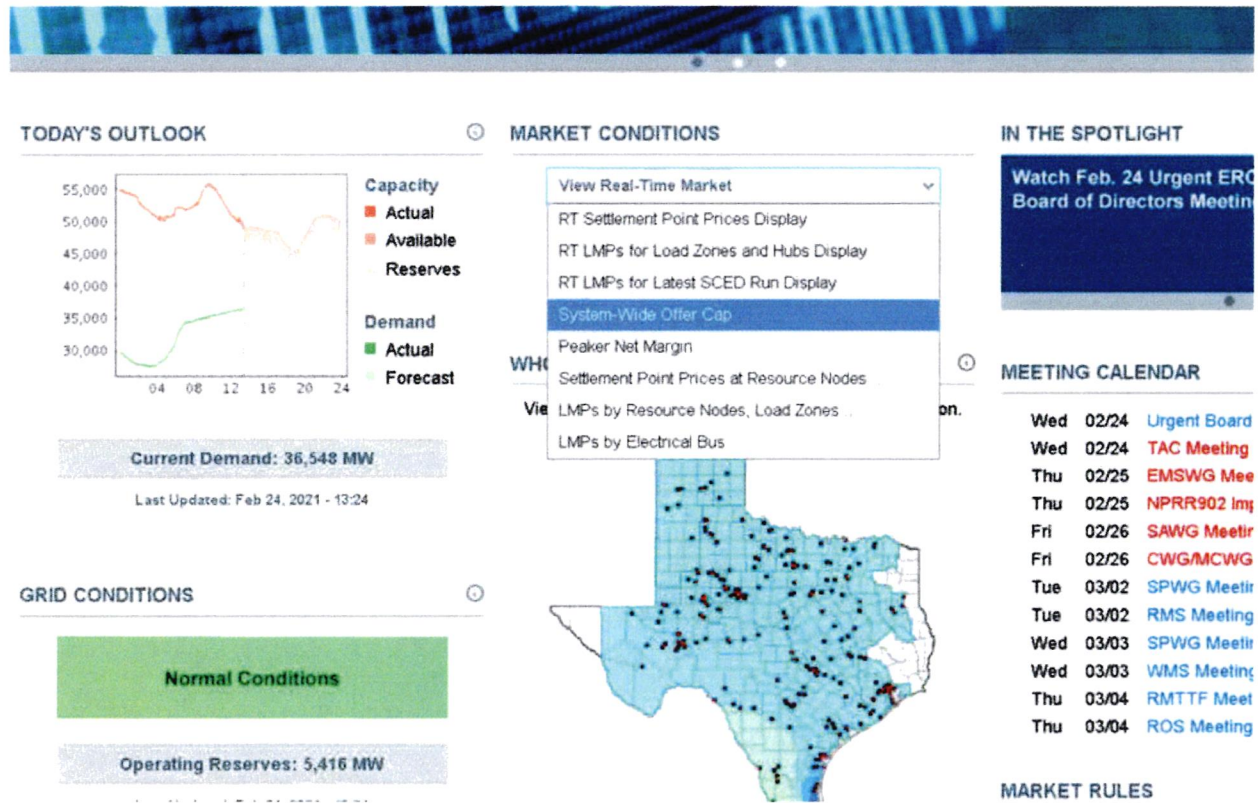
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Attorney for Freepoint Commodities LLC

February 25, 2021

Exhibit 1 – ERCOT Website - SWCAP Data

ercot.com



Values posted for Ancillary Services under System-Wide Offer Cap

| | A | B | C | D |
|---|---------|-------|---|---|
| 1 | SWCAPty | SWCAP | | |
| 2 | AS | 9000 | | |
| 3 | ENERGY | 9000 | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |