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PUC DOCKET NO. 52321

APPLICATION OF THE ELECTRIC	§	PUBLIC UTILITY COMMISSION
RELIABILITY COUNCIL OF TEXAS,	§	
INC. FOR A DEBT OBLIGATION	§	
ORDER TO FINANCE UPLIFT	§	OF TEXAS
BALANCES UNDER PURA CHAPTER	§	
39, SUBCHAPTER M, AND FOR	§	
GOOD CAUSE EXCEPTION	§	

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TEXAS INDUSTRIAL ENERGY CONSUMERS’ RESPONSE TO ORDER NO. 2

I. INTRODUCTION

Texas Industrial Energy Consumers (TIEC) submits this response to Order No. 2, which requested briefing on the legal authority for granting ERCOT’s request for a good cause exception to ERCOT Protocol § 1.3.1.1(j). In particular, ERCOT requested an exception to disclosure restrictions “to the extent it may become necessary during the course of this proceeding to disclose individual market participants’ settlement and invoice information in response to discovery.”¹

TIEC does not object to early public disclosure of settlements and invoices that would otherwise lose protected status after 180 days, which appears to be ERCOT’s intent. However, it is possible that information covered by ERCOT’s request could remain protected under separate provisions of the protocols or PUC rules after 180 days. This is particularly a concern if the waiver is for “settlement and invoice *information.*” The Commission should tailor any good cause

¹ See Application at 2 (July 16, 2021).

exception to ensure that it does not inadvertently waive other protections that might apply to the same information beyond the 180 day waiting period. For this reason, TIEC recommends that a narrower exception be granted, as addressed below.

II. ARGUMENT AND AUTHORITIES

TIEC generally agrees with the Calpine Corporation's (Calpine's) position that ERCOT's requested good cause exception is stated too broadly and that any grant of a good cause exception should closely track the language of Protocol § 1.3.1.1(j), limiting disclosures to "settlement statements and invoices," rather than "settlement and invoice *information*."² The exception should also be explicitly limited to information that would otherwise lose its protected status after 180 days—*i.e.*, information that is not otherwise protected under another section of the protocols, Commission rules, or other law.

TIEC's primary concern is the potential public release of customer-specific information. If the Commission grants an exception to ERCOT's standard disclosure policies, it should be clear that the exception does not in any way authorize the public release of customer-specific data related to electricity consumption or electric costs, which is proprietary, competitively sensitive, and protected by other provisions of the protocols and the Commission's substantive rules. As one example, TIEC is concerned that "settlement and invoice information" for Option 2 retail electric providers that only have one large customer could potentially reveal confidential information about the usage characteristics or electric costs of that customer. Regardless of the 180 day expiration of QSE settlements and invoices, any customer-specific information remains indefinitely protected from public disclosure by ERCOT Protocol § 1.3.1.1(1)(r), which covers:

Any information compiled by a Market Participant on a Customer that in the normal course of a Market Participant's business that makes possible the identification of any individual Customer by matching such information with the Customer's name, address, account number, type of classification service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing record, or any other information that a Customer has expressly requested not be disclosed ("Proprietary

² Calpine Corporation's Response to Staff's Recommendation to Open a Parallel Docket, and for a Good Cause Exception at 2 (July 28, 2021).

Customer Information”) unless the Customer has authorized the release for public disclosure of that information in a manner approved by the Public Utility Commission of Texas (PUCT). Information that is redacted or organized in such a way as to make it impossible to identify the Customer to whom the information relates does not constitute Proprietary Customer Information.

Under this provision, “Proprietary Customer Information” is protected from disclosure “unless the Customer has authorized the release for public disclosure of that information.” Commission Substantive Rule 25.472(b)(1)³ similarly prohibits REPs and aggregators from disclosing “proprietary customer information.”⁴ In light of the protections laid out in ERCOT Protocol § 1.3.1.1(1)(r) and Commission Substantive Rule 25.472(b)(1), “Proprietary Customer Information” cannot be publicly disclosed without customer authorization.⁵ The Commission should make clear that any good cause exception only applies to information *that would otherwise lose protected status after 180 days*.

TIEC does not anticipate that most QSE-level settlement statements and invoices would reveal protected customer-specific information. However, the vague reference to “settlement and invoices *information*” could potentially open the door to other items. Further, if there were QSE-level settlement data that revealed information about a specific customer through an Option 2 REP or otherwise, this information should remain “Proprietary Customer Information” that is protected from public disclosure regardless of the 180 day period in 1.3.1.1(1)(j). This information could still be disclosed in litigation if it is relevant, but it would need to be designated as Highly Sensitive

³ See 16 TAC § 25.472(b)(1) (“A REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer’s or applicant’s verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider).”).

⁴ See 16 TAC § 25.272(c)(5) (“Proprietary customer information -- Any information compiled by an electric utility on a customer in the normal course of providing electric service that makes possible the identification of any individual customer by matching such information with the customer’s name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.”).

⁵ See ERCOT Protocol § 1.3.1.1(1)(r).

under the Commission’s standard protective order. TIEC requests that any grant of a good cause exception explicitly recognize this limitation.

III. CONCLUSION

TIEC asks that any good cause exception allowing early release of information protected by Protocol § 1.3.1.1(j) be limited to “settlement statements and invoices that would otherwise lose protected status after 180 days.” This framing will ensure that the exception is narrowly tailored and does not inadvertently waive other protections that may separately apply to the same information.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS INDUSTRIAL
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CERTIFICATE OF SERVICE

I, John R. Hubbard, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 3rd day of August 2021 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

/s/ John R. Hubbard

John R. Hubbard