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APPLICATION OF ELECTRIC	§	PUBLIC UTILITY COMMISSION
RELIABILITY COUNCIL OF TEXAS,	§	
INC. FOR A DEBT OBLIGATION	§	OF TEXAS
ORDER PURSUANT TO CHAPTER 39,	§	
SUBCHAPTER M, OF THE PUBLIC	§	
UTILITY REGULATORY ACT	§	

**EXELON GENERATION COMPANY LLC’S RESPONSE TO ORDER NO. 2
REGARDING GOOD CAUSE EXCEPTION**

COMES NOW Exelon Generation Company, LLC (“Exelon”), and files this Response to the Public Utility Commission of Texas’ (the “Commission”) Order No. 2 regarding the Electric Reliability Council of Texas’ (“ERCOT”) request for a good cause exception to ERCOT Protocol § 1.3.1.1(j) and would show the following:

I. BACKGROUND

On July 16, 2021, ERCOT filed an Application For a Debt Obligation Order to Finance Uplift Balances Under PURA¹ Chapter 39, Subchapter N, for an Order Initiating a Parallel Docket, and For a Good Cause Exception. On July 29, 2021, the Commission Administrative Law Judge (“ALJ”) filed Order No. 2, requiring Commission Staff, and authorizing any intervenor, to file a brief regarding whether the ALJ has the legal authority to grant ERCOT’s request for a good cause waiver to ERCOT Protocol § 1.3.1.1. Therefore, this pleading is timely filed.

II. DISCUSSION

Exelon recommends the ALJ reject ERCOT’s request for a good cause exception. There is no need for the good cause exception and Commission rules do not support it.

A. The Commission’s Authority to Grant a Good Cause Exception.

ERCOT Protocol 1.3.1.1(1) provides a list of items that are considered protected information that cannot be publicly disclosed within a certain timeframe. Among those items specifically listed is “Settlement Statements and Invoices identifiable to a specific QSE.”² The status of settlement statements and invoices of a qualified scheduling entity (“QSE”) as protected information is in

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

² ERCOT Protocol § 1.3.1.1(j).

place until 180 days after the applicable operating day. ERCOT Protocol § 1.3.1(1) prohibits disclosure of protected information received by ERCOT, the Independent Market Monitor (“IMM”) or any market participant in its capacity as the recipient of protected information from a disclosing party to any other entity except as specifically permitted in certain exclusions provided for in the ERCOT Protocols.

ERCOT’s rules have the full force and effect of statutes.³ The Commission ALJ cannot provide a good cause exception to a statutory requirement via a waiver of the Commission’s procedural rules. PURA does not provide the Commission with the authority to grant a good cause exception to ERCOT’s Protocol requirements. Under PURA § 39.151(d), the Commission is not specifically granted any ad hoc good cause exception authority. Assuming the Commission’s general review authority under PURA § 39.151(d) provides the Commission with the authority to grant a good cause exception, ERCOT cites to Project No. 51812 where the Commission issued an order requiring ERCOT to disclose certain generator outage information.⁴ However, this docket does not provide a sufficient legal basis for ad hoc waiver of ERCOT Protocols. Moreover, it should be noted that the emergency cited in Project No. 51812 for the basis of that waiver is not at issue here. There are no exigent circumstances that justify the waiver.

Indeed, market participants in either this proceeding or a separate parallel proceeding addressing documentation of exposure to uplift balance costs will be required to provide their exposure to RDPA and ancillary services charges in excess of the system-wide offer cap to qualify for securitization proceeds. Until then, ERCOT is capable of providing responses to any discovery propounded through the protective order process with minimal additional effort. Therefore, the emergency conditions under which the Commission issued the waiver of an ERCOT Protocol requirement in Project 51812 are simply not present in this proceeding.

³ See Tex. Util. Code § 39.151(d); *PUC v. Constellation Energy Commodities Group, LLC*, 351 S.W.3d 588, 595 (Tex.App—Austin 2011, *pet. denied*).

⁴ *Application of the Electric Reliability Council Of Texas, Inc. For a Debt Obligation Order to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, and For a Good Cause Exception*, Docket No. 52322, Electric Reliability Council Of Texas, Inc.’s Brief In Response To Order No. 2 Regarding Authority For Requested Good-Cause Exception at 5 (Jul. 30, 2021).

B. There Is No Need for a Good Cause Waiver to Publicly Disclose Protected Information in This Proceeding.

Nor is there a valid basis for the good cause exception. Disclosure of QSE invoices is not necessary or required in this proceeding. PURA § 39.652(b) provides that the order issued in this proceeding must, among other items, “provide the process for remitting the proceeds of the financing to **load-serving entities** who were exposed to the costs included in the uplift balance, including a requirement for the **load-serving entities** to submit documentation of their exposure.”⁵ The statute clearly and expressly requires that LSEs, defined as “a municipally-owned utility, an electric cooperative, or a retail electric provider”⁶ submit documentation of their exposure. QSE invoices are not such documentation. They do not in all cases provide evidence of an individual LSE’s exposure to uplift balance costs during Winter Storm Uri because a QSE invoice may, depending on a market participant’s structure and participation in the market, contain costs and revenues of separate corporate entities, LSEs, and wholesale loads. Accordingly, there is no valid basis for departing from ERCOT’s Protocols and doing so may add to the confusion and mis-information regarding the proper allocation of default uplift financing proceeds consistent with the statute.

Moreover, ERCOT is already capable of disclosing to certain specified entities a QSE’s settlement statements and invoices in response to discovery requests; however, Protocols require that ERCOT make reasonable efforts to restrict public access to the disclosed protective information by protective order, by aggregating information, or otherwise if reasonably possible.⁷ Thus, there is no need for ERCOT to seek this good cause exception. Although Exelon posits that such information may not be relevant, ERCOT can provide any protected information sought through discovery in accordance with the protective order in place until such time as the 180-day period expires as is envisioned under the ERCOT Protocol. No party to this proceeding is in any way hindered from preparing their case for the hearing on the merits by being provided responses consistent with the protective order and market participants will be providing the same information in a parallel docket to document their exposure and entitlement to securitization funding. The

⁵ Emphasis added.

⁶ PURA § 39.652(2).

⁷ ERCOT Protocol § 1.3.6(1)(a).

public will also have access to settlement statements and invoices prior to the hearing on the merits under the 180-day timeframe established in the ERCOT Protocol.

Therefore, Exelon asserts that the process for proving up LSEs' exposure to RDPA and ancillary service charges and the established ERCOT Protocol requirements negate the need for ERCOT to make commercially sensitive market information public prior to the 180-day requirement available in this proceeding

III. CONCLUSION

For the reasons stated above, Exelon respectfully requests that the Commission deny ERCOT's request for a good cause exception to ERCOT Protocol § 1.3.1.1(j).

Respectfully submitted,

JACKSON WALKER LLP

/s/ Meghan Griffiths

Meghan Griffiths

State Bar No. 24045983

Jennifer Ferri

State Bar No. 24065224

Alisha Mehta

State Bar No. 24102190

100 Congress Avenue, Suite 1100

Austin, TX 78701

(512) 236-2363

(512) 391-2163 (Fax)

mgriffiths@jw.com

jferri@jw.com

amehta@jw.com

**ATTORNEYS FOR EXELON
GENERATION COMPANY LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been forwarded to all parties of record via electronic mail on August 3, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50064. Pursuant to Order No. 2, filing this document on the Commission's Interchange constitutes service of the document on all parties to this proceeding.

/s/ Meghan Griffiths _____
Meghan Griffiths