



## Filing Receipt

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**PROJECT NO. 52373**

**REVIEW OF WHOLESALE PUBLIC UTILITY COMMISSION**  
**ELECTRIC MARKET DESIGN OF TEXAS**

**JOINT PETITIONERS' RESPONSE TO MEDINA ELECTRIC COOPERATIVE'S  
LETTER REGARDING THE REQUEST FOR PROJECT INITIATION RELATED TO  
BATTERY ENERGY STORAGE SYSTEMS AT DISTRIBUTION VOLTAGE**

Hunt Energy Network, L.L.C. ("HEN") and Broad Reach Power, LLC ("BRP") ("Joint Petitioners")<sup>1</sup> file this response to the letter submitted by Medina Electric Cooperative, Inc. ("MEC") on March 14, 2022,<sup>2</sup> addressing Joint Petitioners' March 3, 2022 Request for Project Initiation Related to Battery Energy Storage Systems at Distribution Voltage.<sup>3</sup>

**I. JOINT PETITIONERS' REQUEST**

Joint Petitioners' Request, both in title and in substance, is for the Public Utility Commission of Texas ("Commission") to open a Project to determine the appropriate policies for nondiscriminatory interconnection and operation of battery energy storage systems ("BESS") interconnected at distribution voltage ("distributed BESS").<sup>4</sup> Joint Petitioners have proposed that these policies include development of clear and consistent interconnection policies and determination of appropriate cost recovery mechanisms.<sup>5</sup> As further clarified by HEN in its March 11, 2022 filing, Joint Petitioners' Request "is not a formal request for rulemaking. Rather, the

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<sup>1</sup> HEN and BRP are currently parties to pending tariff applications before the Commission applicable to battery energy storage systems taking service at distribution voltage, though only BRP is a party to the pending MEC tariff proceeding in Docket 51606. Jupiter Power, LLC is a Joint Petitioner to the initial Request for opening a Project related to distributed battery energy storage systems but is not currently a party to a pending tariff application. Accordingly, Jupiter Power, LLC does not join in this Response. Jupiter Power, LLC maintains Joint Petitioners' Request is appropriate for the reasons stated therein and has reviewed the contents of this Response and has no objection to the arguments raised in response to MEC's letter.

<sup>2</sup> *Review of Wholesale Electric Market Design*, Project No. 52373, Medina Electric Cooperative Letter (Mar. 14, 2022) ("MEC's Letter").

<sup>3</sup> Request for Project Initiation Related to Battery Energy Storage Systems at Distribution Voltage (Mar. 3, 2022) ("Joint Petitioners' Request").

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.*

pleading is a request to begin the process of addressing distributed battery energy storage interconnection policies.”<sup>6</sup>

Neither the Administrative Procedure Act (“APA”)<sup>7</sup> nor the Commission’s procedural rules prohibit either Joint Petitioners’ Request or the Commission acting on Joint Petitioners’ Request. The prohibition on *ex parte* communications is set forth in 16 TAC § 22.3(b)(2) as follows:

(2) Ex parte communications. Unless required for the disposition of ex parte matters authorized by law, *members of the commission* or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case *may not communicate, directly or indirectly, in connection with any issue of law or fact* with any agency, person, party, or their representatives, *except on notice and opportunity for all parties to participate*. . . (emphasis added).<sup>8</sup>

The highlighted portions of the Commission’s procedural rule illustrate that no *ex parte* communications have occurred nor are Joint Petitioners requesting that the Commission engage in *ex parte* communications. Most significantly, the last clause specifically excepts communications when notice is provided and there is an opportunity for all parties to participate. Those are the exact circumstances that Joint Petitioners’ Request contemplate.<sup>9</sup>

## II. RESPONSE TO MEC LETTER

MEC’s Letter objects to Joint Petitioners’ Request: (1) “to the extent that Broad Reach is raising issues and alleging facts with the Commission that are the subject of pending litigation” (referencing MEC’s proposed wholesale distribution service (“WDS”) tariff currently pending in Docket No. 51606) because parties to contested cases “are not [*sic*] permitted to avoid *ex parte* rules by filing a contemporaneous request for rulemaking or project *on the same set of facts and issues* being litigated (emphasis added); (2) because “[a]ny issues that Joint Petitioners may wish

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<sup>6</sup> Hunt Energy Network Clarification Letter (Mar. 11, 2022).

<sup>7</sup> Tex. Gov’t Code ch. 2001.

<sup>8</sup> *See also* APA § 2001.061(a).

<sup>9</sup> Further, as the Commission has not previously considered the appropriate cost recovery policies for distributed BESS, there is no governing law concerning how those costs should be recovered. Consideration of these issues does not require communications concerning any facts from MEC’s pending tariff proceeding (or any other proceeding).

to raise may be raised in the Commission’s upcoming rulemaking on distributed generation;” and (3) because “Joint Petitioners did not follow the proper procedural rules and notice requirements for requesting a rulemaking, and have instead filed the request in a pending project without notice requirements.”<sup>10</sup>

**a. Pending WDS Tariff Cases**

None of Joint Petitioners, including BRP, have proposed that the requested Project consider any of the facts or requested relief specific to MEC’s pending WDS tariff application. In fact, two of the three Joint Petitioners are not even intervenors in MEC’s tariff application proceeding. Joint Petitioners’ Request cited to three pending WDS tariff applications related to distributed BESS only to indicate the timeliness for Commission consideration of broad interconnection and cost recovery policies for these resources that have not been previously discussed in a market-wide forum.

The Commission has not considered the appropriate utility cost recovery policy for distributed BESS. Consideration of the most appropriate method of cost recovery on a market-wide, going forward basis would not “raise issues” or “allege facts” that are *the same* as those contemplated in MEC’s current tariff proceeding.

Further, the MEC WDS tariff proceeding is currently abated with an interim rate approved and in effect.<sup>11</sup> The proceeding was abated prior to entry of a procedural schedule and prior to the exchange of discovery. Accordingly, the facts and issues currently involved in that case are largely yet to be determined outside the bounds of the Preliminary Order, rendering MEC’s objection to Joint Petitioners’ Request on the potential basis of *ex parte* communications premature at best.

Finally, MEC’s arguments imply that the Commission can never have an open Project or rulemaking to address a market or industry wide policy or rule change, involving stakeholder feedback, where a contested case with issues somehow connected or related is also pending; this has historically not been the case. Just recently, the Commission concluded a rulemaking proceeding in Project 52312, *Review of Administrative Penalty Authority*, regarding implementation of Senate Bill 3 granting the Commission enhanced penalty authority for violations related to PURA § 35.0021 regarding winter weather readiness. While that rulemaking

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<sup>10</sup> MEC’s Letter at 1-2.

<sup>11</sup> Docket 51606, Order No. 7 (Aug. 19, 2021) (Granting unopposed motion for interim relief and abatement).

was pending, the Commission also issued several Notices of Violation (“NOVs”) to generators and transmission service providers for violations related to winter weather readiness (16 TAC § 25.55), utilizing the enhanced statutory authority provided by the Legislature.<sup>12</sup> While the rulemaking itself was not dispositive of the NOVs, issues related to determination and imposition of penalties related to weatherization violations were inextricably present in both the rulemaking and the NOVs. If MEC’s argument is to be believed, the Commission would not have been permitted to engage in the Project 52312 rulemaking process concurrently with the contested NOVs pending for fear of the Commission’s enforcement Staff or Executive Director, or the Respondent parties to the NOVs, having *ex parte* communications with the Commissioners under the guise of furthering the rulemaking.<sup>13</sup> “Related” issues existing between a rulemaking or Project and a contested case will not necessarily result in prohibited *ex parte* communications.<sup>14</sup> In short, this Commission and parties to its proceedings are very familiar with *ex parte* standards and can readily manage their conduct accordingly.

#### **b. Future Distributed Generation (“DG”) Rulemaking**

MEC’s Letter implies that BRP should reserve the issues raised in Joint Petitioners’ Request for a future DG rulemaking that was signaled by Commission Staff in a December 6, 2021 memorandum. In such memorandum, Commission Staff described as a Phase I market design initiative that the Commission would open rulemaking proceedings and other projects to request

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<sup>12</sup> See e.g. Notices of Violation filed in Docket Nos. 52925, 52926, 52927, 52928, 52929, 52930, 52931, and 53142.

<sup>13</sup> It is a well-established principle that as the ultimate finders of fact and conclusers of law in enforcement cases, Commission Staff is subject to the *ex parte* prohibition on communications with the Commissioners in prosecution of NOVs as a party to the proceeding. See 16 TAC § 22.102(a) in conjunction with 16 TAC § 22.3(b)(2).

<sup>14</sup> See also Project 50031, *Rulemaking Related to Generation Cost Recovery Rider* initiated on September 19, 2019, to “provide a mechanism outside of a comprehensive base-rate proceeding whereby an electric utility may recover certain power generation facility costs that are not otherwise being recovered” (Strawman for Adoption, Oct. 22, 2019) pending at the same time as Southwestern Public Service Company’s Application to Change Base Rates in Docket 49831, filed August 8, 2019; see also Project No. 48937, *Rulemaking to Amend 16 TAC § 24.44 – Rate Case Expenses Pursuant to Texas Water Code § 13.187 and 13.1871* initiated on November 30, 2018 pending at the same time as Double Diamond Utility Company’s Review of Rate Case Expenses in Docket 47748, filed October 31, 2017; see also Project No. 48692, *Rulemaking Proceeding to Amend 16 TAC § 25.181 and Adopt New 16 TAC § 25.182 Relating to Energy Efficiency Cost Recovery Factors* initiated on September 17, 2018 pending at the same time as several utilities’ applications to adjust their Energy Efficiency Cost Recovery Factor (“EECF”) including but not limited to: (1) Texas-New Mexico Power Company’s Application for Approval to Adjust its Energy Efficiency Cost Recovery Factor (“EECF”) in Docket 48404, filed May 30, 2018, (2) Entergy Texas, Inc.’s Application to Adjust its EECF in Docket No. 48333, filed May 1, 2018, (3) and CenterPoint Energy Houston Electric, LLC’s Application to Adjust its EECF in Docket No. 48420, filed June 1, 2018.

technical feedback and provide rate recovery of reasonable and necessary distribution voltage reduction costs and review DG interconnection procedures.<sup>15</sup>

This assertion contradicts MEC's overall objection that a rulemaking or other project to consider distributed BESS issues inherently constitutes an *ex parte* violation with regard to its pending tariff case. A DG rulemaking is just another Project like the market design Project in which Joint Petitioners have urged the Commission to make distributed BESS policy decisions. MEC's assertion also seems without foundation. While the Commission has included a potential DG rulemaking in its Phase I market design blueprint, there is no anticipated timeline for implementation or even indication that the proceeding will address unique features presented by distributed BESS.<sup>16</sup> As referenced in Joint Petitioners' Request, the time for expedient consideration of distributed BESS interconnection and cost recovery policies is now – particularly given the influx of WDS tariff applications and the growing proliferation of BESS in ERCOT.

### **c. Formal Rulemaking Petition Procedures**

Joint Petitioners' Request was not intended to be formal petition for rulemaking, as indicated by HEN's Clarification Letter filed on March 11, 2022; accordingly, MEC's objection on this basis is moot.

## **III. CONCLUSION**

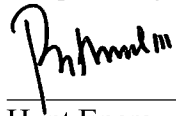
Joint Petitioners respectfully request that the Commission open a Project as requested in their initial filing and all other relief to which they may be entitled.

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<sup>15</sup> Project 52373, Memo Regarding Written Comment for Phase II Market Design at 3 (Dec. 6, 2021).

<sup>16</sup> See Project 52373, Approval of Blueprint for Wholesale Electric Market Design and Directives to ERCOT (Jan. 13, 2022).

Respectfully submitted,



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