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PUC DOCKET NO. 52689

EXPEDITED PETITION OF	§	BEFORE THE
CENTERPOINT ENERGY HOUSTON	§	PUBLIC UTILITY COMMISSION
ELECTRIC, LLC FOR APPROVAL OF	§	OF TEXAS
INTERIM LOAD MANAGEMENT	§	
PROGRAMS FOR NONRESIDENTIAL	§	
CUSTOMERS AND FOR AN	§	
ACCOUNTING ORDER	§	

**TEXAS COMPETITIVE POWER ADVOCATES’
STATEMENT OF POSITION IN OPPOSITION TO STIPULATION**

I. INTRODUCTION

Texas Competitive Power Advocates (TCPA) filed a Motion to Intervene in this proceeding on November 9, 2021. TCPA is a trade association representing power generation companies and wholesale power marketers with investments in Texas and ERCOT’s wholesale electric market. TCPA members and their affiliates provide a wide range of important market functions and services in ERCOT, including the development, operation, and management of power generation assets, the scheduling and marketing of power, the provision of energy management services, and sales of competitive electric service to consumers. TCPA members provide nearly ninety percent of the non-wind electric generating capacity in ERCOT, represent billions of dollars of investment in the state, and employ thousands of Texans.

Given the requested effective date of December 1 and procedural status of this petition, TCPA felt it important to provide this commentary prior to the Commission’s discussion at the November 18, 2021 open meeting. TCPA recognizes the desire to secure all possible resources to insure against any possibility of a repeat of the issues seen in February 2021. TCPA has no desire to stand in the way of the implementation of the Joint TDUs proposal. Rather, TCPA requests that the proposal be adopted with TCPA’s proposed term to ensure that the programs can be

implemented by ERCOT and the Commission with minimal disruption to the wholesale and retail electricity markets and to ensure that intermediate and long-term goals for resource adequacy are not disrupted.

II. STIPULATION AND SETTLEMENT AGREEMENT

On October 8, 2021, AEP Texas, Inc. (AEP), CenterPoint Energy Houston Electric LLC (CenterPoint), and Texas-New Mexico Power Company (TNMP) (together, Joint TDUs) filed an expedited petition requesting approval of the design and operation of load management programs for the period of December 1, 2021 through February 28, 2022 and the recording of a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs. On October 20, 2021, Order No. 2 was issued finding the Petition deficient and requiring additional notice including publication in the Texas Register. A deadline to intervene was established for 14 days after notice was provided as ordered. To date, notice has not been completed. Order No. 3 was issued on October 26, 2021 granting Commission Staff an extension to November 9, 2021 to file its supplemental recommendation on the sufficiency of the petition and notice. On November 1, 2021, Joint TDUs filed additional information concerning their programs. To date, Commission Staff has filed no supplemental recommendation.

Nevertheless, on November 9, 2021, the Joint TDUs filed a “Stipulation and Settlement Agreement” (Agreement) purporting to resolve “all outstanding issues in this proceeding” and recommending that the “remaining deadlines in the procedural schedule are moot.” The Agreement allowed the Joint TDUs to operate load management programs for nonresidential customers during the period of December 1, 2021 through February 28, 2022, and allowed them to record the costs as regulatory assets. No other aspects of the program’s operations,

limitations, or impacts on the Texas competitive wholesale and retail electricity markets were addressed in the terms of the Agreement.

Only the Joint TDUs and Commission Staff signed the Agreement. Four parties (Texas Industrial Electric Consumers, the Gulf Coast Coalition of Cities, the City of Houston, and the Office of Public Utility Counsel) had intervened prior to November 9, 2021 and TCPA's intervention was filed before the filing of the Agreement. However, none of the intervening parties signed the Agreement and their position on its terms was not mentioned in the text of the Agreement.¹ On November 10, 2021, the Alliance for Retail Markets ("ARM") also filed a motion to intervene. To date, because notice has not been completed or approved as directed by Order No. 2 in this docket, the intervention deadline of 14 days after the completion of notice has yet to expire.

III. TCPA'S OPPOSITION TO THE STIPULATION AND SETTLEMENT AGREEMENT

TCPA has serious concerns regarding the substance of the Agreement as drafted by the Joint TDUs and Commission Staff. The Load Management Programs described in Attachment A to the Agreement propose to make out-of-market payments for load curtailment in the amount of \$30 (CenterPoint)² and \$35 (AEP)³ per kW, an amount far in excess of the Value of Lost Load (VOLL) and the market price cap (and TNMP separately notes in testimony that it will pay an incentive of \$40 per kW)⁴. While AEP and TNMP propose budgets on the amount of money

¹ A statement in Finding of Fact No. 31 of the Proposed Order attached to the Agreement does state that those parties are "unopposed" to the Agreement.

² Stipulation and settlement agreement at 12.

³ Stipulation and settlement agreement at 8.

⁴ Direct Testimony of Stefani M. Case at 8.

spent on the programs, CenterPoint proposes that it be able to implement the curtailment program with no budget cap for Commission consideration.

Most critically, the Agreement makes no consideration whatsoever of the impact of these programs on wholesale electricity prices. No provision is made to incorporate the cost of these programs into the Reliability Deployment Price Adder (RDPA), the Operating Reserve Demand Curve (ORDC), or any other market pricing mechanism. These are not issues of first impression to the Joint TDUs, the intervenors, the Commission, or ERCOT. In 2020, ERCOT approved Nodal Protocol Revision Request (“NPRR”) 1006 titled “Update Real-Time On-Line Reliability Deployment Price Adder Inputs to Match Actual Data.” The Business Case for NPRR 1006 was described as follows:

Adjusting the Real-Time On-Line Reliability Deployment Price Adder ERS restoration assumption and including ERCOT-instructed Load reductions through the use of TDSP Load management programs provides more accurate pricing signals for Loads and generators. These enhancements avoid inefficient market response, preserve resources for other periods when response is actually needed, and limit unnecessary high prices for consumers after scarcity conditions have subsided. Implementation costs are easily justified by the pricing efficiencies this will provide.

The Board Report adopting NPRR 1006 noted that:

The December 2019 Capacity Demand and Reserves Report notes TDSP Load management programs account for 257 MW of demand reduction capacity. Inclusion of this capacity in the Real-Time On-Line Reliability Deployment Price Adder is consistent with its intent, **which mitigates price distortions resulting from out-of-market actions. Section 6.3.2 is revised to reflect the addition of the TDSP Load management program to the calculation of the Real-Time On-Line Reliability Deployment Price Adder.** [Emphasis added].

Although NPRR 1006 was approved on June 9, 2020, it has yet to be fully implemented by ERCOT – specifically, the part of NPRR 1006 intended to mitigate price distortions from out-of-market deployment of TDSP [TDU] load management programs.

Allowing the Joint TDUs to implement additional load curtailment plans at the prices contemplated in the Agreement could have substantial detrimental impacts to the formation of wholesale electricity prices and long-term resource adequacy within ERCOT. If the Commission allows the Joint TDUs – who are not subject to any market impacts and recover their expenses entirely from captive ratepayers – to unilaterally pay extraordinarily high prices for load curtailment, the Commission risks incurring irreparable harm to price signal formation that is urgently needed to attract additional generation resources to the ERCOT market. The Commission has repeatedly stressed the importance of sending accurate and sufficient price signals to capacity providers and investors, yet the plans contemplated in the Agreement would directly undermine those signals.

The demand response contemplated by the non-residential load curtailment programs proposed by the Joint TDUs is not a “free resource.” Demand response – particularly on the scale contemplated by the Agreement – requires direct payment by ratepayers. If this payment is allowed to occur entirely out-of-market and without careful implementation into the market structures established by the Commission and ERCOT over the past decade, its impact on the overall health of the wholesale electricity market and resource adequacy could be significant and detrimental.

To mitigate these concerns, TCPA proposes that the following term be included in the Agreement and Proposed Order:

ERCOT shall ensure that the testing and operation of all TDU Load Management Programs, including the Interim Load Management Programs described in Attachment A to the Agreement, do not harm wholesale market price formation and that the out of market actions’ impacts are appropriately accounted for in the calculation of wholesale market prices. Joint TDUs shall provide ERCOT with any information needed to ensure the appropriate accounting of their programs in

the wholesale market, and ERCOT shall implement any necessary operational changes, including the implementation of NPRR 1006, by January 30, 2022.

This term was proposed to the Joint TDUs and Commission Staff for inclusion in a revised Agreement but as of the time of this filing TCPA has received no response. Given the requested effective date of December 1 and procedural status of this petition, TCPA felt it important to provide this commentary on the record prior to the Commission's discussion at the November 18, 2021 open meeting.

TCPA's objections to the Agreement are substantive, but certain procedural issues must also be raised in advance of the consideration of the Agreement by the Commission. Notably, as a non-unanimous stipulation, the Commission cannot simply adopt its terms but must consider it on its own merits and provide each party a full hearing on the issues that are in dispute. *Nucor Steel-Tex. v. Pub. Util. Comm'n of Tex.*, 363 S.W.3d 871, 890 (Tex. App.—Austin 2012, no pet.) citing *City of Corpus Christi v. Public Util. Comm'n*, 51 S.W.3d 231 (Tex.2001); *City of El Paso v. Public Util. Comm'n*, 883 S.W.2d 179 (Tex.1994). (Stating that consideration of a non-unanimous stipulation is only permissible “when the agency “provides all parties, including non-signatories, the opportunity to be heard on the merits of the stipulation”). Moreover, due to the notice issue, because the deadline to intervene in this proceeding has not yet run, it is unknown if the position of all potential parties who may object to one or more elements have the Agreement are known.

TCPA recognizes that the Commission has strong incentives to deploy all possible resources to address electricity supply in advance of the 2021-2022 winter season in order to avoid any possibility of a repeat of the issues of February 2021. TCPA has no desire to stand in the way of the implementation of the Joint TDUs proposal. Rather, TCPA requests that the

proposal be adopted with its proposed term to ensure that the programs can be implemented by ERCOT and the Commission with minimal disruption to the wholesale and retail electricity markets and to ensure that intermediate and long-term goals for resource adequacy are not disrupted.

IV. Conclusion

For the above-stated reasons, TCPA respectfully requests that the Commission decline to adopt the Agreement presented by the Joint TDUs and Commission Staff without incorporation of the terms proposed by TCPA and other intervening parties. In the alternative, TCPA requests that the parties be allowed to conduct a hearing on the merits of the Agreement as required by law.

Respectfully submitted,

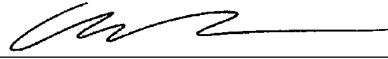


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**ATTORNEY FOR TEXAS
COMPETITIVE POWER ADVOCATES**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served via facsimile or first-class mail to all parties of record in this proceeding on this 17th day of November, 2021.



Andres Medrano