



## Filing Receipt

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<b>COMPLAINT OF ENGIE ENERGY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MARKETING NA, INC. AND VIRIDITY</b>	<b>§</b>	
<b>ENERGY SOLUTIONS, INC. AGAINST</b>	<b>§</b>	<b>OF TEXAS</b>
<b>THE ELECTRIC RELIABILITY</b>	<b>§</b>	
<b>COUNCIL OF TEXAS, INC.</b>	<b>§</b>	

**COMMISSION STAFF'S MOTION TO COMPEL MORE COMPLETE RESPONSES  
TO VIRIDITY ENERGY SOLUTIONS, INC. RESPONSES TO STAFF'S SECOND  
REQUESTS FOR INFORMATION**

On March 18, 2022, ENGIE Energy Marketing NA, Inc. (ENGIE) and Viridity Energy Solutions, Inc. (Viridity) (collectively, Complainants) filed an original complaint against Electric Reliability Council of Texas, Inc. (ERCOT) regarding ERCOT's alternate dispute resolution (ADR) determination regarding the settlement of Ancillary Services during the period from February 16-19, 2021 (Disputed Payment Period).

On August 19, 2022, Staff (Staff) of the Public Utility Commission of Texas (Commission) filed its Request for Information (RFIs), to Viridity. Motions to Compel are due within five working days from receipt of a party's objections to discovery. Viridity filed their responses on September 8, 2022. Therefore, this pleading is timely filed.

**I. MOTION TO COMPEL MORE COMPLETE ANSWERS**

Viridity has attempted to limit all discovery to the Disputed Payment Period without regard to the fact that its actions immediately preceding and following the Disputed Payment Period provide needed context.<sup>1</sup>

With respect to the requests for information RFIs that Viridity did not object to, Viridity's has failed to provide complete answers. Staff moves to compel the production of documents and information responsive to Staff's Request for information numbers 2-3, 2-4, 2-5, 2-6, 2-9, 2-13, 2-14, 2-15, and 2-16 in accordance with 16 Texas Administrative Code (TAC) § 22.144. Below are the specific requests for information as well as support for the motion to compel, or in the alternative, agreed resolution of the objections.

**Staff 2-3** For every Operating Hour of Operating Day, February 16, 2021, please provide the quantity of RRS you can contend was provided by each Viridity Load Resource, and provide the complete factual and legal basis for this contention.

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<sup>1</sup> Staff's Motion to Compel Response to Staff's 2nd RFI to Viridity (Sep. 9, 2022).

Instead of providing the information requested by Staff for each load resource that allegedly provided RRS, Viridity provided unexplained aggregate data and a native copy of Exhibit No. 13 to the Amended Complaint as “Attachment to Viridity Response to Staff 2-3 to 2-6” (Attachment). This Attachment allegedly “shows the load for each deployed Load Resource, for February 15, 2022 through February 19, 2022.”<sup>2</sup> Even without regard to the typographical error with the year, this is factually false because the data on the “RRS\_Loads\_2152021\_2152021” sheet<sup>3</sup> of the Attachment is limited to 00:00 to 04:00 on February 15, 2021. However, Staff’s motion to compel is not based on the falsity of the Attachment’s description in Viridity’s response. The issue is that Viridity’s response does not answer RFI Staff 2-3, which explicitly requested Viridity’s contention concerning the quantity of RRS that was allegedly provided by each Load Resource for each Operating Hour of Operating Day, February 16, 2021. If Exhibit No. 13 to the Amended Complaint were responsive, Staff would not have needed to serve this request for information. Viridity does not provide any accounting of RRS for February 16, 2021 in its response, as requested.

Furthermore, Viridity’s response is inappropriately limited to specific circumstances. Viridity alleges that “The reduction of load, during a deployment, is the amount of RRS provided at a QSE level.”<sup>4</sup> In addition to not seeking information at a “QSE Level,” RFI Staff 2-3 was not limited to “during a deployment.” Similarly, the allegation that the Attachment “shows the load for each deployed Load Resource”<sup>5</sup> implicitly limits the response to deployed load resources, but RFI Staff 2-3 was not limited to deployed load resources, and did not request information concerning load—only provision of RRS.

Moreover, if it is Viridity’s contention that RRS is provided by load reduction, it should have been easy for it to provide this information on the basis of the respective loads of individual load resources. Viridity also claims that “This amount of RRS provided would be constant across all hours of the deployment event.”<sup>6</sup> However, Viridity did not identify the alleged load

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<sup>2</sup> Viridity’s Response to Staff’s 2nd RFI to Viridity, Staff 2-3 (Sept. 8, 2022) (Viridity’s Response to Staff).

<sup>3</sup> This is the only tab that purports to provide data for individual load resources.

<sup>4</sup> Viridity’s Response to Staff 2-3.

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

<sup>6</sup> *Id.*

reduction for any load resource for any operating hour, so there is no basis for comparison. Based on the highlighted fields in the attachment, Viridity inexplicably selected the time period 02:12 to 02:16 on February 15, 2021 as some sort of baseline.

	A	BW	BX	BY	BZ	CA	CB
1	Datetime	[Cardinal]	TOTAL LOAD	BASA	LSDR		
130	2/15/2021 02:08	357	78290	27556	50734		
131	2/15/2021 02:09	351	77447	27293	50154		
132	2/15/2021 02:10	349	79048	28774	50274		
133	2/15/2021 02:11	347	77590	27028	50562		
134	2/15/2021 02:12	351	78493	27622	50871		
135	2/15/2021 02:13	353	78635	28353	50282		
136	2/15/2021 02:14	355	78356	28073	50283		
137	2/15/2021 02:15	355	79019	28451	50568	AVE BASA AVE LSDR	
138	2/15/2021 02:16	355	78806	27731	51075	28046	50615.8
139	2/15/2021 02:17	356	75833	28115	47718		

However, because Viridity objected to Staff 2-2, regarding the provision of RRS on February 15, 2021, it is not clear if Viridity contends that it was providing RRS at that moment on February 15, 2021 or whether it contends that this five-minute span is representative of every Operating Hour of Operating Day, February 16, 2021, for some reason.

Viridity's suggestion that Staff seek this information from ERCOT contradicts the assertion that the Attachment to Viridity's Response to Staff 2-3 to 2-6 is responsive to this request.<sup>8</sup> If Viridity needs information from ERCOT to understand why it contends it provided 78 MW of RRS, Viridity should state this explicitly—not suggest that Staff seek this information elsewhere. However, Staff notes that only Viridity can disclose what Viridity contends regarding the provision of RRS for each load resource. For the above-mentioned reasons, Staff requests that Viridity be compelled to provide a complete answer to this request for information.

**Staff 2-4** For every Operating Hour of Operating Day, February 17, 2021, please provide the quantity of RRS you can contend was provided by each Viridity Load Resource, and provide the complete factual and legal basis for this contention.

Viridity's entire response to RFI Staff 2-4 consists of:

<sup>7</sup> Attachment to Viridity Response to Staff RFI 2-3 to 2-6 at RRS\_Loads\_2152021\_2152021 (Sep. 8, 2022).

<sup>8</sup> Viridity's Response to Staff 2-3 (asserting that "ERCOT would have to prepare the data file to breakdown the response at a resource level").

Please refer to response 2-3 and Viridity's Attachment to 2-3 to 2-6. The amount of RRS provided on February 16, 2021 was continued to be provided into February 17, 2021.<sup>9</sup>

For the reasons stated above with respect to RFI Staff 2-3, Viridity's response to RFI Staff 2-4 is also inadequate and does not provide any accounting of RRS for every Operating Hour of Operating Day, February 17, 2021.

For the above-mentioned reasons, Staff requests that Viridity be compelled to provide a complete answer to this request for information

**Staff 2-5** For every Operating Hour of Operating Day, February 18, 2021, please provide the quantity of RRS you can contend was provided by each Viridity Load Resource and provide the complete factual and legal basis for this contention.

Viridity's entire response to RFI Staff 2-5 consists of:

Please refer to response 2-3 and Viridity's Attachment to 2-3 to 2-6. The amount of RRS provided on February 16-17, 2021 was continued to be provided into February 18, 2021.<sup>10</sup>

For the reasons stated above with respect to RFI Staff 2-3, Viridity's response to RFI Staff 2-5 is also inadequate and does not provide any accounting of RRS for every Operating Hour of Operating Day, February 18, 2021.

For the above-mentioned reasons, Staff requests that Viridity be compelled to provide a complete answer to this request for information.

**Staff 2-6** For every Operating Hour of Operating Day, February 19, 2021, please provide the quantity of RRS you can contend was provided by each Viridity Load Resource, and provide the complete factual and legal basis for this contention.

Viridity's entire response to RFI Staff 2-6 consists of:

Please refer to response 2-3 and Viridity's Attachment to 2-3 to 2-6. The amount of RRS provided on February 16-18, 2021 was continued to be provided into February 19, 2021.<sup>11</sup>

For the reasons stated above with respect to RFI Staff 2-3, Viridity's response to RFI Staff 2-6 is also inadequate and does not provide any accounting of RRS for every Operating Hour of Operating Day, February 19, 2021.

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<sup>9</sup> Viridity's Response to Staff 2-4.

<sup>10</sup> Viridity's Response to Staff 2-4.

<sup>11</sup> Viridity's Response to Staff 2-4.

For the above-mentioned reasons, Staff requests that Viridity be compelled to provide a complete answer to this request for information.

**Staff 2-9** From your own records (obtained before March 31, 2022), please provide a copy of all Dispatch Instructions concerning Viridity's Load Resources that were received via an "electronic Messaging System"<sup>12</sup> with respect to the operating days, February 14, 2021 through February 20, 2021.

RFI Staff 2-9 explicitly requested documents from Viridity's records. Viridity's response to this request did not include any of those documents. Viridity did not claim that it looked for responsive documents or even acknowledge that RFI Staff 2-9 was a request for documents. Instead, Viridity provided allegations concerning other communications and its legal contentions. None of this information is responsive to Staff's specific request regarding Dispatch Instructions received via an "electronic Messaging System." If Viridity does not have a record of these Dispatch Instructions, it can merely state that it does not have these documents rather than provide a response to questions that were not asked by Staff.

For the above-mentioned reasons, Staff requests that Viridity be compelled to provide a copy of all responsive documents in its possession.

**Staff 2-13** With respect to the Market Notice concluding ADR No. 2021-EEM-01 (Exhibit No. 1 to the Amended Complaint), please identify all statements in the "Relevant Facts" section that you contend are inaccurate.

Instead of responding to Staff's request, Viridity asserts that it "has provided the relevant factual and legal bases of its claims in ENGIE's and Viridity's Amended Complaint."<sup>13</sup> To the extent that Viridity is objecting to the relevance of this request, the deadline for objecting to this RFI has passed. Moreover, Viridity does not get to unilaterally limit its responses to only those topics it considers to be relevant. This proceeding is based on an ERCOT decision that is reflected in this Market Notice, and RFI Staff 2-13 seeks Viridity's contentions on those factual allegations regardless of whether Viridity decided to include them in the Amended Complaint.

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<sup>12</sup> See ERCOT Nodal Protocols § 6.5.7.6.2.2(2)(c) ("ERCOT shall deploy RRS... By Dispatch Instructions for deployment of RRS energy from a Load Resource, excluding Controllable Load Resources, by an electronic Messaging System[.]"); *Id.* § 6.5.7.6.2.2(11) ("ERCOT shall issue RRS deployment Dispatch Instructions over ICCP for Generation Resources and Controllable Load Resources and Extensible Markup Language (XML) for all other Load Resources."); see *id.* § 6.5.9.4.2(2)(a)(v)(A) ("ERCOT shall issue notification of the deployment via XML message."); *id.* § 6.5.9.4.2(2)(a)(v)(B) (same); *id.* § 6.5.9.4.2(2)(a)(v)(C) (same).

<sup>13</sup> Viridity's Response to Staff 2-13.

Viridity further alleges that it “disputes the entirety of the facts contained in ERCOT’s Market Notice to the extent there is any conflict with, or omission of, the facts in ENGIE’s and Viridity’s Amended Complaint.”<sup>14</sup> If Viridity does not dispute any of the factual allegations in the market notice it need only say so unequivocally. If Viridity does dispute factual allegations in the market notice, it needs to identify those allegations now rather than hiding behind “to the extent” because the extent of any factual disputes is the precise subject matter of RFI Staff 2-13.

Staff notes that it served the exact same request upon ENGIE, which was able to provide a substantive response to this request for information.<sup>15</sup> If Viridity agrees with ENGIE’s response, it can adopt ENGIE’s response as its own. If Viridity disagrees with some portion of ENGIE’s response, the importance of this RFI cannot be overstated. Currently, ENGIE and Viridity share the same counsel so it should be easy for Complainants to coordinate their responses.

For the above-mentioned reasons, Staff requires that Viridity be compelled to provide a complete response to this request.

**Staff 2-14** For each statement identified in response to Staff 2-13, please provide the complete factual and legal basis for your contention, including a description of the alleged inaccuracy.

Viridity’s response to this request is based on its insufficient response to RFI Staff 2-13.<sup>16</sup> To the extent that Viridity is compelled to provide a complete response to RFI Staff 2-13, it should be compelled to provide a complete response to this RFI, which refers to that request for information.

**Staff 2-15** With respect to the Market Notice concluding ADR No. 2021-VES-01 (Exhibit No. 2 to the Amended Complaint), please identify all statements in the “Relevant Facts” section that you contend are inaccurate.

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<sup>14</sup> *Id.*

<sup>15</sup> ENGIE’s Responses to Commission Staff’s First Requests for Information at 4-10 (Sep. 8, 2022).

<sup>16</sup> Viridity’s Response to RFI Staff 2-14 (“See Viridity’s Response to Staff RFI 2-13.”).

Instead of responding to Staff's request, Viridity asserts that it "has provided the relevant factual and legal bases of its claims in ENGIE's and Viridity's Amended Complaint."<sup>17</sup> To the extent that Viridity is objecting to the relevance of this request, the deadline for objecting to this RFI has passed. Moreover, Viridity does not get to unilaterally limit its responses to only those topics it considers to be relevant. This proceeding is based on an ERCOT decision that is reflected in this Market Notice, and RFI Staff 2-15 seeks Viridity's contentions on those factual allegations regardless of whether Viridity decided to include them in the Amended Complaint.

Viridity further alleges that it "disputes the entirety of the facts contained in ERCOT's Market Notice to the extent there is any conflict with, or omission of, the facts in ENGIE's and Viridity's Amended Complaint."<sup>18</sup> If Viridity does not dispute any of the factual allegations in the market notice it need only say so unequivocally. If Viridity does dispute factual allegations in the market notice, it needs to identify those allegations now rather than hiding behind "to the extent" because the extent of any factual disputes is the precise subject matter of RFI Staff 2-15.

Staff notes that it served the exact same request upon ENGIE, which was able to provide a substantive response to this request for information.<sup>19</sup> If Viridity agrees with ENGIE's response, it can adopt ENGIE's response as its own. If Viridity disagrees with some portion of ENGIE's response, the importance of this RFI cannot be overstated. Currently, ENGIE and Viridity share the same counsel so it should be easy for Complainants to coordinate their responses.

For the above-mentioned reasons, Staff requires that Viridity be compelled to provide a complete response to this request.

**Staff 2-16** For each statement identified in response to Staff 2-15, please provide the complete factual and legal basis for your contention, including a description of the alleged inaccuracy.

Viridity's response to this request is based on its insufficient response to RFI Staff 2-15.<sup>20</sup> To the extent that Viridity is compelled to provide a complete response to RFI Staff 2-15, it

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<sup>17</sup> Viridity's Response to Staff 2-13.

<sup>18</sup> *Id.*

<sup>19</sup> ENGIE's Responses to Commission Staff's First Requests for Information at 4-10 (Sep. 8, 2022).

<sup>20</sup> Viridity's Response to Staff 2-16 ("See Viridity's Response to Staff RFI 2-15.").



should be compelled to provide a complete response to this RFI, which refers to that request for information.

## **II. CONCLUSION**

Staff respectfully requests the issuance of an order compelling Viridity to respond to Staff's RFIs consistent with the foregoing request.

Dated: September 15, 2022

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
MARKET ANALYSIS DIVISION**

Harika Basaran  
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/s/ R. Floyd Walker

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**DOCKET NO. 53377**

**CERTIFICATE OF SERVICE**

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 15, 2022 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ R. Floyd Walker  
R. Floyd Walker