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

**MOTION TO COMPEL RESPONSES TO VIRIDITY’S FIRST REQUEST FOR
INFORMATION TO ERCOT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Pursuant to 16 TEX. ADMIN. CODE (“TAC”) § 22.144(e), Viridity Energy Solutions, Inc. (“Viridity”) files this motion to compel the production of documents and information from the Electric Reliability Council of Texas, Inc. (“ERCOT”). Motions to compel are due within five (5) working days from receipt of a party’s objections to discovery. Viridity received ERCOT’s objections to Viridity’s First Request for Information (“RFIs”) to ERCOT on October 11, 2022, thereby making this motion to compel timely filed.

As explained below, ERCOT’s objections lack merit and should be rejected.

I. MOTION TO COMPEL

Complainants contend that they are entitled to be compensated for complying with ERCOT’s protocols and PUCT rules in the course of providing critical emergency services¹ to ERCOT during 2021’s Winter Storm Uri, an unprecedented multi-day emergency that almost destroyed the ERCOT grid. ERCOT seems, from previous discovery, to have applied its protocols requiring the continued deployment in an emergency event in a disparate manner among various Load Resources entities and Battery Storage entities. These questions are relevant to discover the

¹ Namely Responsive Reserve services – “RRS”, essentially a mechanism for quickly reducing electric demand on the ERCOT system by interrupting power supply to participating large consumers, who are compensated for agreeing to forego power to which they would otherwise consume under normal circumstances.

identity of and justification for the disparate and discriminatory treatment under the same, or virtually the same protocols.

Viridity directed RFIs to ERCOT to test ERCOT's contentions and expose facts which undermine ERCOT's positions. ERCOT has objected to three RFIs seeking this information.² ERCOT's objections are unsustainable, and it should be compelled to produce this information testing its key arguments as shown below.

A. The information sought in VIRIDITY 1-3 is relevant to show ERCOT's actual pattern and practices regarding treatment of Load Resources deploying RRS

A core complaint in this case is against ERCOT for requiring Load Resources to deploy RRS however failing to compensate or credit for the service. One of the contested issues is whether ERCOT required the Viridity RRS Load Resources to remain deployed and the justification and protocol authority for that requirement. The justification for requiring Load Resources to remain deployed is thus relevant. Consequently, Viridity posed the following RFI:

VIRIDITY 1-3 For February 16-19, 2021 please advise if ERCOT allowed any deployed Load Resources to restore load during the EEA event.

- a) For any Load Resources permitted to restore load, please advise by day, the number of QSE involved, the number of Load Resources, and MW. Please also provide the justification and ERCOT Protocol reference which supported allowing restoration as well as a copy of the dispatch/restoration instructions.
- b) For any Load Resources not permitted to restore load, please provide the justification and ERCOT Protocol reference which supported denying allowing restoration as well as a copy of the communications involved.

ERCOT objects to this request, contending that the information sought is not relevant to the case as reinterpreted by ERCOT to contain only the claims ERCOT would prefer to defend.

² Objections of Electric Reliability Council of Texas, Inc. to Viridity Energy Solutions, Inc.'s First Set of Requests for Information (October 11, 2022)(“ERCOT's Objections”).

ERCOT turns a blind eye to the claims actually asserted, and remakes the case to its preference, according to ERCOT:

The relevant issue in this case insofar as Viridity is concerned is whether it complied with the requirements in the ERCOT Protocols to receive credit for the Responsive Reserve Service (“RRS”) it claims to have provided during the period from February 16-19, 2021. The issue of whether ERCOT approved or denied requests by other Load Resources to restore load during that time has no bearing on whether Viridity complied with its obligations under the Protocols to submit offers in the Day Ahead Market (“DAM”) or self-arrange RRS trades in order to receive payment or credit in ERCOT settlement for its actions.³

It is improper and impermissible for ERCOT to so re-draw and narrow the allegations in the Complaint. Moreover, ERCOT’s recharacterization of the “issue” puts the cart before the horse, and presupposes that the protocols obliged Viridity “to submit offers in the Day Ahead Market (“DAM”) or self-arrange RRS trades in order to receive payment or credit” -- when that is exactly the allegation being challenged.

This RFI is designed to test the extent to which ERCOT actually followed, in actuality, its contended interpretation of the protocols, particularly Protocol 6.5.7.6.2.2. ERCOT and Staff seem to have different interpretations of the Protocol, one claiming it applies to QSEs and one claiming that it is merely direction to ERCOT on the extent to which ERCOT may issue and deployment instruction. The information requested is relevant to determine the Protocol interpretation implementation by ERCOT during February 16-19, 2021. The evidence developed so far shows that ERCOT repeatedly advised Viridity that the Load Resources were not allowed to restore load during the EEA3 event, even after the Day Ahead RRS awards had expired after February 15, 2021, and the electronic messaging instructions through February 16th. In other words, the RFI should reveal the extent to which ERCOT’s real-time actual practice in this area in other instances

³ ERCOT’s Objections at 2.

conflicts with the interpretation it, or Staff, now assigns to these provisions in this case. ERCOT has stated, including during ADR proceedings, that the Protocols are unclear on issues raised within this proceeding and other events during the EEA event. The actions of ERCOT during the emergency event are relevant as they address issues such as: Load Resource restoration timelines, communications to/from ERCOT, resource codes, and the ability to cover RRS responsibilities, all items which notably ERCOT has asked Viridity to provide data about and to articulate in support of Viridity's compensation request. The treatment by ERCOT of other Load Resources also will demonstrate the application of ERCOT Protocols to similar situations which ERCOT has requested that Viridity respond. Moreover, the information may also demonstrate the application of Protocols by ERCOT vis-à-vis compensation which other Load Resources earned, and/or compensation which may have to be "clawed back" by ERCOT.

B. The information sought in VIRIDITY 1-4 is relevant to show ERCOT's actual pattern and practices regarding functionally near-identical Ancillary Services

Another way to test ERCOT's contentions regarding the application and interpretation of the protocols in this dispute is to see how ERCOT handled functionally near-identical ancillary services during the emergency event. Accordingly, Viridity posed RFI 1-4:

VIRIDITY 1-4 For February 15-19, 2021 please advise if ERCOT awarded RegDown in the Day Ahead or Realtime markets to any Battery facilities (which would have potentially meant charging or did involve charging). If so, please advise by day, the number of QSEs involved, the number of CLR Resources, and MWs by hour.

ERCOT again argues the information sought is irrelevant because:

- As discussed and disposed of above, ERCOT claims the dispute should be recharacterized as whether Complainants adhered to certain protocols as ERCOT now claims they should be interpreted; and
- Viridity is seeking to compare apples to oranges: "no party has raised an issue in this

case regarding RegDown, which is a different ancillary service than RRS. Nor has any party raised issues regarding the treatment of Battery facilities during the period at issue.⁴”

With regard to ERCOT’s attempt to make this RFI irrelevant by forcing a reshaping of the issues actually complained of, as mentioned above, it is improper and impermissible for ERCOT to so re-draw and narrow the allegations in the Complaint.

With regard to ERCOT’s objection that this RFI is irrelevant because the treatment of apples is not relevant to the treatment of oranges, that is misleading; ERCOT is arguing a distinction without a fundamental difference. This RFI is designed to elicit evidence regarding ERCOT interpretation of protocols and real-life practice during the emergency event regarding ancillary services conceptually or functionally similar if not identical to those at bar. The charging side of a Battery facility is considered by ERCOT to be a Controllable Load Resource. To provide RegDown service, a Battery unit would have to charge during the EEA3 event, which is identical to Load Resource being allowed to restore load during the EEA3 event.

The actions of ERCOT during the emergency event are relevant as they address issues like Load Resource restoration timelines, communications to/from ERCOT, resource codes, and the ability to cover RRS responsibilities - all items which ERCOT has asked Viridity to provide data for and to articulate in support of Viridity’s compensation request. In other words, if ERCOT’s position is correct with regard to the ancillary services at issue in this case, one would expect this to be repeated in the context of Battery facilities. If the treatment of these two loads proves to have been different, such inconsistent treatment is relevant to the interpretation that ERCOT has imposed on the functionally identical services involved in this case. Because the services at issue are both loads removed from the system during an emergency to preserve equilibrium, it would be

⁴ ERCOT’s Objections at 2.

relevant and appropriate to seek discovery regarding ERCOT's interpretation and implementation of the protocols in each situation.

The information is also relevant to ERCOT's argument that without Day Ahead RRS awards, there is no obligation to provide RRS. Thus, the information may demonstrate the application of Protocols towards the compensation which other Load Resources earned.

C. The information sought in VIRIDITY 1-5 is also relevant to show ERCOT's actual pattern and practices regarding functionally near-identical Ancillary Services

As discussed above, a way to test ERCOT's contentions regarding the application and interpretation of the protocols in this dispute is to see how ERCOT handles functionally near-identical ancillary services. Hence, Viridity posed RFI 1-5:

VIRIDITY 1-5 For February 15-19, 2021 please advise if ERCOT allowed any QSE to transfer RRS obligations for any Battery facility from the GEN side to the CLR side of the facility. If so, please advise by day, the number of QSEs involved, the number of Resources, and MW by hour.

As with RFI 1-4 above, ERCOT argues the information sought is irrelevant, both because (as discussed and rebutted above) the dispute should improperly be recharacterized as whether Complainants adhered to the protocols as ERCOT now claims they should be interpreted; and another version of the "apples to oranges" argument ("No party has raised an issue in this case regarding RegDown, which is a different ancillary service than RRS. Nor has any party raised an issue in this case regarding the treatment of Battery facilities or the transfer of RRS obligations as they applied to Battery facilities.⁵"). Viridity incorporates here by reference the same arguments raised in connection with RFI 1-4, above.

This RFI is designed to elicit evidence regarding ERCOT interpretation of protocols and real-life practice regarding ancillary services conceptually or functionally similar if not identical

⁵ ERCOT's Objections at 3.

to those at bar. The charging side of a Battery facility is considered by ERCOT to be a Controllable Load Resource. To transfer RRS obligation to the controllable load resource portion of a Battery (CLR), a Battery unit would have to charge (and/or to interrupt charging when deployed) during the EEA3 event, which is identical to Load Resource being allowed to restore load during the EEA3 event. It is also at the heart of ERCOT's argument that without Day Ahead RRS awards, there is no obligation to provide RRS.

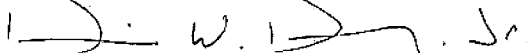
As above, if ERCOT's position is true with regards to the ancillary services at issue in this case, one would expect this to be repeated in the context of Battery facilities. If the treatment of these two loads proves to have been different, that severely undermines the interpretation that ERCOT has imposed after the fact on the functionally identical services involved in this case.

II. CONCLUSION

For the above stated reasons, Viridity respectfully requests that ERCOT be compelled to respond to the discovery identified above in accordance with 16 TAC § 22.144(h). Viridity further requests all other relief to which it may be justly entitled.

Respectfully submitted,

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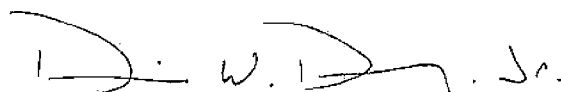
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 17, 2022, in accordance with 16 TAC § 22.74.



Dennis W. Donley, Jr.