



## **Filing Receipt**

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PUC DOCKET NO. 53377**

<b>COMPLAINT OF ENGIE ENERGY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>MARKETING NA, INC. AND VIRIDITY</b>	<b>§</b>	<b>STATE OFFICE OF ADMINISTRATIVE</b>
<b>ENERGY SOLUTIONS, INC. AGAINST</b>	<b>§</b>	<b>HEARINGS</b>
<b>THE ELECTRIC RELIABILITY</b>	<b>§</b>	
<b>COUNCIL OF TEXAS, INC.</b>	<b>§</b>	

**VIRIDITY’S RESPONSE TO ERCOT’S MOTION TO COMPEL COMPLETE  
RESPONSES TO ITS SIXTH SET OF REQUESTS FOR INFORMATION TO VIRIDITY**

NOW COMES Viridity Energy Solutions, Inc. (“Viridity”) and files this response to the Electric Reliability Council of Texas, Inc.’s (“ERCOT”) motion to compel complete responses to ERCOT’s Sixth set of Requests for Information (“RFI”) to Viridity, filed on October 6, 2023. This response is timely filed.

**I. OVERVIEW**

ERCOT seeks to compel responses from Viridity to two RFIs associated with Viridity communications with third parties regarding Ancillary Service Imbalance Charges.<sup>1</sup> Viridity objected to the RFIs as being beyond the scope of permissible discovery on rebuttal testimony and as an improper fishing expedition for irrelevant information. The RFIs are not properly targeted at rebuttal testimony and are thus impermissible under the procedural schedule in this case. Further, the RFIs seek information that has no bearing on any relief available in this proceeding. Viridity’s objection should be sustained and ERCOT’s motion to compel denied.

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<sup>1</sup> Counsel for ERCOT has clarified that “imbalance charges” refers to Ancillary Service Imbalance Charges as opposed to real-time charges for an imbalanced schedule or any other charge. With that understanding, Viridity withdraws its objection that the phrase “imbalance charges” as undefined.

## II. RESPONSE

### A. The Disputed RFIs Are Not Directed at Rebuttal Testimony and Are Thus Beyond the Scope of Permissible Discovery Pursuant to the Procedural Schedule in This Case.

ERCOT's disputed RFIs set forth below were filed on September 21, 2023, when ERCOT's discovery is limited to Complainants rebuttal testimony pursuant to SOAH Order No. 10:<sup>2</sup>

**ERCOT 6-18** Please refer to the rebuttal testimony of Michael Pavo at page 18, lines 5-15. Please produce all communications between Viridity and PPM related to imbalance charges for Operating Day February 15, 2021, and/or the Disputed Payment Period.

**ERCOT 6-19** Please produce all communications between Viridity and Lone Star Demand Response related to imbalance charges for Operating Day February 15, 2021 and/or the Disputed Payment Period.

Neither RFI is properly directed at Complainants' rebuttal testimony. Regarding ERCOT RFI 6-18, ERCOT specifically references a portion of Mr. Pavo's rebuttal testimony that is unrelated to the information the RFI seeks regarding communications related to Ancillary Service Imbalance Charges. The actual testimony ERCOT cites in ERCOT RFI 6-18 does not appear in ERCOT's motion to compel or among the over 70 pages of exhibits attached to its motion. That testimony is provided below to aid the ALJs' review:

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<sup>2</sup> See SOAH Order No. 10 Adopting Revised Procedural Schedule; Revising Profiling Requirements; Resetting Hearing on the Merits (May 17, 2023).

**Q. SHOULD THE COMMISSION CREDIT PPM FOR THE TRADE AS OPPOSED TO COMPENSATING VIRIDITY?**

A. No. The PPM trade and the circumstances involved are different from the ENGIE trade. For the 51 MW associated with the PPM trade, the trade was not made pursuant to a long-term contract like the ENGIE trade was. It was made on an hour-by-hour basis. Even if the trade were held to continue as a result of the extended deployment, ERCOT acknowledges that PPM acquired replacement RRS,<sup>26</sup> meaning that the RRS provided was in excess of PPM's Ancillary Service Obligation for the Disputed Payment Period. Accordingly, the RRS should still be considered to be offered into the Day-Ahead Market and Viridity, as the QSE representing the Load Resources, should be compensated the market clearing price of capacity.

Because the referenced testimony does not address Ancillary Service Imbalance Charges at all or communications with PPM related to such, the request is plainly not targeted at Mr. Pavo's rebuttal testimony.

Likewise, ERCOT RFI 6-19 seeks Viridity's communications with Lone Star Demand Response ("LSDR"), but nowhere in Mr. Pavo's rebuttal testimony does he refer to LSDR. ERCOT's motion to compel makes clear that ERCOT's RFI 6-19 arises from ERCOT's review of information contained in a lawsuit Viridity filed against LSDR in 2021<sup>3</sup>—not from Mr. Pavo's rebuttal testimony. Both disputed RFIs represent ERCOT's attempt to conduct discovery beyond the scope allowed under SOAH Order No. 10.

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<sup>3</sup> ERCOT Motion to Compel at p. 6 and 9. This case is effectively closed.

The disputed RFIs seek to continue discovery on topics which ERCOT pursued prior to the filing of Mr. Pavo's rebuttal testimony. ERCOT questioned Mr. Pavo for nearly six hours at his June 29, 2023, deposition, where ERCOT asked him about ancillary imbalance charges associated with PPM and LSDR.<sup>4</sup> Further, ERCOT requested RFIs seeking very similar information in its September 19, 2022, ERCOT RFI 2-6,<sup>5</sup> to which Viridity produced in response twenty-eight pages of email communications. ERCOT is now wanting to expand that question to ask additional questions that it apparently wished it had asked in the first place under the guise of discovery directed at rebuttal testimony.

**B. The Disputed RFIs Represent an Impermissible Fishing Expedition.**

Viridity objected to the RFIs as irrelevant and an impermissible fishing expedition. ERCOT asserts that the RFIs are "plainly relevant" because Viridity's requested relief involves trades with ENGIE and PPM. But ERCOT offers no explanation of how communications with PPM or LSDR regarding Ancillary Service Imbalance Charges bear on any relief available in this proceeding. Even if the assessment of Ancillary Service Imbalance Charges were applicable to this proceeding, ERCOT does not identify Viridity's communications with third parties as a factor ERCOT considers in determining Ancillary Service Imbalance Charges.<sup>6</sup> "Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the

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<sup>4</sup> *E.g.*, Deposition of Mike Pavo at 51:2-5 ("Okay. If the – if the trades between Viridity resulted in a charge or penalty for whatever reason, Viridity could be responsible for that; correct?"); *id.* at 56:10-13 ("When PPM was short, that caused Viridity to incur ancillary service imbalance charges for the confirmed trade for operating day February 15<sup>th</sup>, 2021, didn't it."); *id.* at 56:21-24 ("Okay. With that clarification, then, you agree that the Lone Star resources were short, and that's what caused Viridity to incur AS imbalance chargers?") (Attached as Exhibit A.).

<sup>5</sup> ERCOT's Second Set of RFIs to Viridity at RFI 2-6 ("Please produce all communications to date between Viridity and PPM relating to Ancillary Service trades, RRS, or Load Resources during February 14-20, 2021.")

<sup>6</sup> *See* Direct Testimony of David Maggio at 14:15-17:3 and DJM-2 (Explaining ERCOT's purported methodology for calculating Ancillary Service Imbalance Charges).

dispute's resolution.”<sup>7</sup> The requested information is irrelevant to this proceeding and beyond the scope of discovery on rebuttal testimony.

### **III. CONCLUSION**

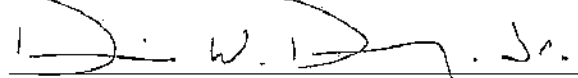
Viridity respectfully requests that ERCOT's Motion to Compel responses to Viridity's sixth RFIs to Viridity be denied, and such other relief to which Viridity may be justly entitled.

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<sup>7</sup> *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003).

Respectfully submitted,

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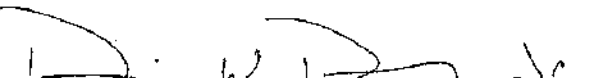
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*Attorneys for ENGIE Energy Marketing NA, Inc. and  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 13, 2023, in accordance with 16 TAC § 22.74.



Dennis W. Donley, Jr.

**EXHIBIT A**

**In the Matter Of:**  
Complaint Of Engie Energy v ERCOT

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**Mike Pavo**

*June 29, 2023*

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1341 Moreland Ave, SE  
Suite 2000  
Atlanta, GA 30316  
855.478.7376

1 A Well, these were physical transactions.

2 Q Okay. If the -- if the trades between  
3 PPM and Viridity resulted in a charge or a penalty  
4 for whatever reason, Viridity could be responsible  
5 to ERCOT for that; correct?

6 MR. MACK: Objection. Form.

7 THE WITNESS: As a QSE, Viridity would be  
8 responsible to ERCOT for any charges or receive any  
9 payments based on our settlements.

10 Likewise, PPM would be responsible to  
11 ERCOT for their settlement activities.

12 BY MR. CLARK:

13 Q If you'll look on Pavo Exhibit 6, at the  
14 bottom, second-to-last paragraph beginning with  
15 "therefore."

16 Do you see that?

17 A Yes, sir.

18 Q And before we talk about that paragraph,  
19 who was Jessica Woelfel?

20 A She is general counsel for Ormat.

21 Q And also would be representing Viridity?

22 A Yes.

23 Q And so by February 18th, 2021, before  
24 the storm was even over, Viridity's in-house counsel  
25 had gotten involved with issues related to the PPM

1 BY MR. CLARK:

2 Q And Viridity would have had a written  
3 contract with Lone Star; correct?

4 A Yes.

5 Q And when PPM was short, that caused  
6 Viridity to incur AS imbalance charges for the  
7 confirmed trade for operating day February 15th,  
8 2021, didn't it?

9 A Could you repeat that?

10 Q When PPM was short, that caused Viridity  
11 to incur ancillary service imbalance charges for the  
12 confirmed trade for operating day February 15th,  
13 2021, didn't it?

14 A We -- Viridity incurred AS imbalance  
15 charges when the deployment started.

16 Q And that was because, when the deployment  
17 started, the load resources underneath the PPM side  
18 of the trade were short; correct?

19 A Well, they were Lone Star resources that  
20 were supporting a schedule to PPM.

21 Q Okay. With that clarification, then, you  
22 agree that the Lone Star resources were short, and  
23 that's what caused Viridity to incur AS imbalance  
24 charges?

25 A Well, the AS imbalance charges are

1

2 Certificate of shorthand reporter - notary public

3 I, Susan E. Alldridge, Registered Professional

4 Reporter, Certified Shorthand Reporter, the officer

5 before whom the foregoing deposition was taken, do

6 hereby certify that the foregoing transcript is a

7 true and correct record of the testimony given; that

8 said testimony was taken by me stenographically and

9 thereafter reduced to typewriting under my

10 supervision; that reading and signing was not

11 requested; and that I am neither counsel for or

12 related to, nor employed by any of the parties to

13 this case and have no interest, financial or

14 otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand

16 and affixed my notarial seal this 2nd day of July

17 2023.

18

19

Lucas E. Aldridge

20 NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA

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