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**SOAH DOCKET NO. 473-23-04518
PUC DOCKET NO. 53377**

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

SUPPLEMENTAL DIRECT TESTIMONY OF KENAN ÖGELMAN

ON BEHALF OF

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

January 10, 2024

EXECUTIVE SUMMARY

Kenan Ögelman, who is employed by Electric Reliability Council of Texas, Inc. (“ERCOT”) as Vice-President, Commercial Operations, recommends that the Public Utility Commission of Texas (“Commission”) deny all relief sought by Engie Energy Marketing, NA, Inc. (“Engie”) and Viridity Energy Solutions, Inc. (“Viridity”). For the reasons detailed in Mr. Ögelman’s direct testimony, Load Resources represented by Viridity did not provide Responsive Reserve Service (“RRS”) during the period from 12:00 a.m. on February 16, 2021 to 9:00 a.m. on February 19, 2021 (the “Disputed Payment Period”), and therefore Engie is not entitled to avoid liability for RRS charges assessed to it for the Operating Days within the Disputed Payment Period. For the same reason, Viridity is not entitled to recover any amounts from ERCOT for allegedly providing RRS during the Disputed Payment Period.

If the Commission denies the relief sought by Engie and Viridity, it need not address the issue of whether Viridity is liable for Ancillary Service imbalance charges. However, in the unlikely event that the Commission finds that the Load Resources represented by Viridity were in fact providing RRS during the Disputed Payment Period, Viridity should be assessed approximately \$65.7 million of Ancillary Service imbalance charges for the Disputed Payment Period. That is the total amount of Ancillary Service imbalance charges that Viridity would have incurred if its February 15 Ancillary Service Supply Responsibility from its February 15 trades remained in effect through the end of the Disputed Payment Period.

To the extent Complainants argue that Viridity’s Ancillary Service Supply Responsibility arising from the February 15 trade between Engie and Viridity remained in effect for the Disputed Payment Period but that its Ancillary Service Supply Responsibility arising from the February 15 trade between Viridity and Priority Power Management, Inc. (“PPM”) did not remain in effect, that is simply not credible. Either all of Viridity’s Ancillary Service Supply Responsibility arising

1 from its February 15 trades remained in effect, or none did. Accordingly, if the Commission finds
2 that Viridity was providing RRS during the Disputed Payment Period, Viridity is responsible for
3 all of the Ancillary Service imbalance charges associated with its Ancillary Service Supply
4 Responsibility arising from trades in effect on February 15, including the Ancillary Service
5 imbalance charges associated with the PPM trade.

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LIST OF EXHIBITS

Exhibit	Description
KÖ-S1	Excerpts from Deposition of Jess Totten
KÖ-S2	Agreement between Engie and Viridity

LIST OF ACRONYMS

Acronym	Meaning
BASA	BASA Resources, Inc.
Commission	Public Utility Commission of Texas
Complainants	Engie and Viridity
Disputed Payment Period	February 16-19, 2021
Engie	Engie Energy Marketing NA, Inc.
ERCOT	Electric Reliability Council of Texas, Inc.
MW	Megawatts
PPM	Priority Power Management, LLC
QSE	Qualified Scheduling Entity
RRS	Responsive Reserve Service
Viridity	Viridity Energy Solutions, Inc.

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COMPLAINT OF ENGIE ENERGY MARKETING NA, INC. AND VIRIDITY ENERGY SOLUTIONS, INC. AGAINST THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Kenan Ögelman. My business address is 2705 West Lake Drive, Taylor, Texas 76574.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Electric Reliability Council of Texas, Inc. ("ERCOT"), as Vice President, Commercial Operations.

Q. ARE YOU THE SAME KENAN ÖGELMAN THAT FILED DIRECT TESTIMONY IN THIS DOCKET ON JULY 11, 2023?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT TESTIMONY IN THIS DOCKET?

A. The purpose of my supplemental direct testimony is to explain the effect of Viridity Energy Solutions, Inc.'s ("Viridity") eleventh-hour withdrawal of its request to recover more than \$93 million from ERCOT.¹ In short, the withdrawn claim for compensation does not moot the issue of whether Viridity is liable for Ancillary Service imbalance charges arising from

¹ Viridity previously sought up to \$140.6 million from ERCOT. *See* Direct Testimony of Michael Pavo at 50:16-21 (May 30, 2023). Viridity now seeks up to \$47.5 million from ERCOT. *See* Revised Direct Testimony of Michael Pavo at 50 (Oct. 27, 2023). \$140.6M - \$47.5M = \$93.1M.

1 its bilateral trade with Priority Power Management, LLC (“PPM”). If Viridity’s Ancillary
2 Service Supply Responsibility arising from its trade with Engie Energy Marketing, NA,
3 Inc. (“Engie”) for the February 15, 2021 Operating Day remained in effect for the entire
4 Disputed Payment Period,² as Complainants contend, then *all* of Viridity’s Ancillary
5 Service Supply Responsibility arising from its trades for the February 15 Operating Day
6 remained in effect for the entire Disputed Payment Period, including Viridity’s 90-
7 megawatt (“MW”) trade with PPM. Accordingly, under Complainants’ own theory of the
8 case, Viridity is responsible for Ancillary Service imbalance charges of approximately
9 \$65.7 million.

10 To be clear, ERCOT contends that Viridity’s February 15 trades with Engie and
11 PPM ended before the Disputed Payment Period, and that Viridity did not undertake any
12 Ancillary Service Supply Responsibility for the Disputed Payment Period by refusing
13 demands to confirm Ancillary Service Trades. Accordingly, Engie is responsible for the
14 \$47.5 million of Responsive Reserve Service (“RRS”) charges assessed to it by ERCOT
15 for the Disputed Payment Period, and Viridity is entitled to recover nothing from ERCOT.
16 If the Public Utility Commission of Texas (“Commission”) agrees with ERCOT, there is
17 no need to address the Ancillary Service imbalance charges. But in the unlikely event that
18 the Commission accepts Complainants’ argument that their trade for the February 15
19 Operating Day remained in effect during the entire Disputed Payment Period, Viridity is
20 responsible for Ancillary Service imbalance charges associated with *all* of the trades it had

² Throughout this proceeding, the parties have agreed that the “Disputed Payment Period” is the period beginning at 12:00 a.m. on the February 16, 2021 Operating Day and ending at 9:00 a.m. on the February 19, 2021 Operating Day.

1 for the February 15 Operating Day, not just the trade with Engie. Those Ancillary Service
2 imbalance charges total approximately \$65.7 million.

3 **Q. IS ANY OTHER WITNESS PROVIDING SUPPLEMENTAL DIRECT**
4 **TESTIMONY ON BEHALF OF ERCOT IN THIS PROCEEDING?**

5 A. Yes. ERCOT employee David J. Maggio is also providing supplemental direct testimony.
6 Mr. Maggio explains why Viridity should be required to pay Ancillary Service imbalance
7 charges if it provided RRS and supports the calculations demonstrating that, if Viridity was
8 providing RRS during the Disputed Payment Period, as it now claims, Viridity owes
9 ERCOT approximately \$65.7 million of Ancillary Service imbalance charges.

10 **Q. ARE YOU ATTACHING ANY EXHIBITS TO YOUR TESTIMONY?**

11 A. Yes. I am attaching the following Exhibits:

12 Exhibit KÖ-S1: Excerpts from Deposition of Jess Totten

13 Exhibit KÖ-S2 Agreement between Engie and Viridity

1 **II. EFFECT OF THE REVISED CLAIM AND TESTIMONY AND**
2 **RESPONSIBILITY FOR ANCILLARY SERVICE IMBALANCE CHARGES**

3 **Q. PLEASE DESCRIBE THE EVENTS THAT LED TO THE NEED FOR THIS**
4 **SUPPLEMENTAL DIRECT TESTIMONY.**

5 A. Throughout this proceeding, Complainants have contended not only that ERCOT erred by
6 assessing approximately \$47.5 million of RRS charges against Engie for the Disputed
7 Payment Period, but also that ERCOT erred by failing to pay Viridity for the RRS that
8 Viridity allegedly provided during the Disputed Payment Period. According to the direct
9 and rebuttal testimony filed by Complainants, the amount that ERCOT supposedly owed
10 to Viridity for the Disputed Payment Period ranged from \$91.9 million to \$140.6 million.³

11 However, on October 27, 2023, less than two weeks before the scheduled start of
12 the hearing on the merits in this case, Complainants filed a pleading withdrawing “any
13 claims for compensation or credit for the provision of RRS over the Disputed Payment
14 Period by the Viridity Load Resources associated with a trade with Priority Power
15 Management, LLC.”⁴ As ERCOT understands the revised testimony filed along with the
16 October 27, 2023 pleading, Complainants are now asking the Commission to find *either*
17 that: (1) Engie is not liable for the \$47.5 million of RRS charges assessed to it by ERCOT
18 for the Disputed Payment Period; or (2) Viridity is entitled to recover \$47.5 million for the
19 RRS that it allegedly provided during the Disputed Payment Period associated with a 27
20 MW trade with Engie.⁵

³ See, e.g., Direct Testimony of Michael Pavo at 50:16-21 (May 30, 2023).

⁴ Notice of Withdrawal of Certain Claims at 1 (Oct. 27, 2023).

⁵ See Revised Direct Testimony of Michael Pavo at 50 (Oct. 27, 2023).

1 **Q. DID COMPLAINANTS PROVIDE ANY EXPLANATION WHY VIRIDITY WAS**
2 **WITHDRAWING ITS CLAIM FOR COMPENSATION OF MORE THAN \$93**
3 **MILLION?**

4 A. No, they did not. Complainants only state what they believe to be the effect of withdrawing
5 the claim—“to reduce Viridity’s claim for 78 MW of RRS down to the 27 MW of RRS
6 associated with the BASA Load Resources and subject to trade with ENGIE”—and that
7 they revised their testimony “to make the changes to reduce Viridity’s claim for 78 MW of
8 RRS down to the 27 MW of RRS associated with the BASA Load Resources and subject
9 to trade with Engie.”⁶ To be clear, Complainants never explain that the effect of the change
10 is for Viridity to forego a more than \$93 million claim that was previously asserted, but
11 that is the calculated result as I already explained.⁷ But Complainants do state explicitly
12 that the withdrawn claim for compensation or credit is “associated with a trade with Priority
13 Power Management, LLC.”⁸

14 **Q. Did Viridity have a trade with Priority Power Management, LLC (“PPM”)?**

15 A. Yes, but only for Operating Day February 15, 2021, for 90 MW. Viridity had no confirmed
16 trades during the Disputed Payment Period.

17 **Q. Does Viridity now concede that it did not provide RRS during the Disputed Payment**
18 **Period associated with its 90-MW trade with PPM for Operating Day February 15?**

19 A. There is no indication in the changes to testimony that I have seen that make that
20 concession. In fact, the Notice of Withdrawal of Certain Claims seems to suggest Viridity
21 still claims to have provided RRS under the PPM trade, it just does not seek compensation

⁶ Notice of Withdrawal of Certain Claims at 1 (Oct. 27, 2023).

⁷ See note 1, *infra*.

⁸ Notice of Withdrawal of Certain Claims at 1 (Oct. 27, 2023); see also Second Amended Complaint at p. 3.

1 or credit “**for the provision of RRS** over the Disputed Payment Period by the Viridity
2 Load Resources associated with [the PPM] trade.”⁹ The lack of such a concession is not,
3 in itself, surprising because if it had been made, the same concession would have to hold
4 true for Viridity’s 27-MW trade with Engie. That 27-MW trade, like the 90-MW PPM
5 trade, was only confirmed for Operating Day February 15, not during the Disputed
6 Payment Period.

7 **Q. If Viridity still contends that it provided RRS during the Disputed Payment, does that**
8 **mean that it would have incurred Ancillary Service imbalance charges?**

9 A. Yes. Nothing in the Complainants’ revised testimony changes my prior testimony or Mr.
10 Maggio’s prior testimony that if Viridity provided RRS during the Disputed Payment
11 Period, as Complainants have argued, then Viridity would have incurred Ancillary Service
12 imbalance charges. But Complainants’ revised testimony does cause a change to the
13 amount of Ancillary Service imbalance charges that ERCOT seeks from Viridity in the
14 event Complainants’ arguments that Viridity provided RRS are accepted. By revising their
15 requested relief, Complainants appear to be trying to limit the scope of this case to 27 MW
16 of RRS that Viridity agreed to, but did not, provide for the benefit of Engie from the BASA
17 Resources, Inc. (“BASA”) Load Resources during the Disputed Payment Period. In
18 furtherance of that goal, Complainants will presumably assert that only the Ancillary
19 Service imbalance charges associated with that 27 MW of RRS can be assessed against
20 Viridity in this case. It is also worth noting that Complainants’ expert, Jess Totten, has
21 testified that he was wrong about the Protocol provision he had relied on to say Viridity
22 should be paid by ERCOT for the PPM trade, and he further conceded that there is no basis

⁹ Notice of Withdrawal of Certain Claims at 1 (Oct. 27, 2023) (emphasis added).

1 for Viridity to receive compensation from ERCOT under the Protocols.¹⁰ If that admission
2 were truly the only basis for Viridity's partial withdrawal of its claim for compensation,
3 then Viridity should have also withdrawn its claim for compensation related to the 27-MW
4 Engie trade because Mr. Totten admitted previously that Viridity is not entitled to any
5 compensation for trades.¹¹ That inconsistency, coupled with an agreement reached
6 between Viridity and Engie in November 2023, leads me to believe that the real reason
7 Viridity withdrew its claim for compensation of more than \$93 million is to try to avoid
8 the significant Ancillary Service imbalance charges that Viridity will owe if the
9 Complainants succeed in convincing the Commission that Viridity was providing RRS
10 during the Disputed Payment Period.

11 **Q. DOES ERCOT AGREE THAT THE ONLY ANCILLARY SERVICE IMBALANCE**
12 **CHARGES AT ISSUE IN THIS CASE NOW ARE THOSE ASSOCIATED WITH**
13 **THE 27-MW TRADE?**

14 A. No. Complainants are asking the Commission to assume that ERCOT's multi-day
15 deployment of RRS extended Viridity's Ancillary Service Supply Responsibility and
16 Ancillary Service Resource Responsibility based on the trades for the February 15
17 Operating Day through the end of the Disputed Payment Period.¹² It is undisputed that, in
18 addition to having a 27-MW trade with Engie, Viridity had a 90-MW trade with PPM for
19 the February 15 Operating Day. It is also undisputed that Viridity refused to confirm trades

¹⁰ See Exhibit KÖ-S1 (Totten Depo. Oct. 3, 2023) at 18:19-19:1; 7:10-15; 8:18-21; 11:9-23; 12:2-5; 12:24-13:11; 18:10-13.

¹¹ See Exhibit KÖ-20 (Totten Depo.) at 97:12-98:16; 100:1-18.

¹² See e.g., Revised Direct Testimony of Jess Totten at 29:2-4; Exhibit KÖ-20 (Totten Depo.) at 90:14-21; Revised Direct Testimony of Michael Pavo at 16:14-18; 17:3-6; 44:17-22; Second Revised Rebuttal Testimony of Michael Pavo at 8:14-10:8.

1 with Engie and PPM for the February 16 Operating Day.¹³ If the February 15 trade
2 between Engie and Viridity remained in effect throughout the Disputed Payment Period,
3 so did the February 15 trade between Viridity and PPM. And if Viridity is deemed to have
4 been providing RRS throughout the Disputed Payment Period as a result of the purported
5 extended trades, as Complainants contend it was, then Viridity is responsible for the
6 Ancillary Service imbalance charges associated with all of its RRS trades for February 15,
7 not just the 27-MW Engie trade. As Mr. Maggio explains, ERCOT settles Ancillary
8 Service imbalance charges at the QSE level, not at the Load Resource level. There is no
9 basis to settle only a portion of Viridity's Ancillary Service imbalance charges just because
10 it no longer seeks compensation for its trade with PPM. Mr. Maggio has calculated the
11 amount of Ancillary Service imbalance charges Viridity will owe to ERCOT to be
12 approximately \$65.7 million.

13 **Q. IS THERE ANY VALID BASIS TO DISTINGUISH BETWEEN THE 27-MW**
14 **TRADE AND THE 90-MW TRADE?**

15 A. No. It is important to remember that Complainants are asking the Commission to accept
16 their novel argument that a multi-day RRS deployment extends the trades in effect on the
17 day the deployment occurs. It is simply not credible for Complainants to argue that this
18 principle should apply to a trade that would benefit only Engie (i.e., the 27-MW trade), but
19 not to a trade that would cause Viridity to incur significant additional Ancillary Service
20 imbalance charges (i.e., the 90-MW trade with PPM).

21 **Q. WHY WOULD EXTENDING THE 27-MW TRADE ONLY BENEFIT ENGIE?**

¹³ See Exhibit KÖ-18 (Pavo Depo.) at 175:10-176:14; see also Exhibit KÖ-8 (Engie ADR Memo) at p. 1; Exhibit KÖ-25 (Pavo Depo. Ex. 24); Exhibit KÖ-26 (Pavo Depo. Ex. 27).

1 A. It would benefit only Engie because Viridity was never entitled to any compensation from
2 ERCOT (i.e., money paid from ERCOT to Viridity) for the 27-MW trade with Engie.
3 Viridity did not receive any compensation from ERCOT for that trade when it was
4 confirmed for the February 15 Operating Day, and there is no basis to compensate Viridity
5 if the Commission deems that trade to have continued (which it should not). Just as Viridity
6 has now apparently acknowledged that it is not entitled to any compensation for its 90-MW
7 trade with PPM by withdrawing that claim, it has previously acknowledged the same for
8 the 27-MW Engie trade.¹⁴ Pretending the 27-MW trade continued in effect during the
9 Disputed Payment Period actually harms Viridity because for that to be deemed true, then
10 Viridity would have had an Ancillary Service Supply Responsibility and Ancillary Service
11 Resource Responsibilities, which would result in Viridity incurring significant Ancillary
12 Service imbalance charges.

13 **Q. ARE YOU EFFECTIVELY SAYING THAT EVEN IF COMPLAINANTS WIN,**
14 **VIRIDITY LOSES?**

15 A. Yes, that is actually a good way to say it—at least from Viridity’s perspective. Viridity
16 undoubtedly knew that it did not receive monetary compensation from ERCOT for its
17 February 15 trades, and in fact, Viridity witness Michael Pavo has admitted that.¹⁵
18 Complainants’ expert testified that if the RRS that Complainants allege was provided was
19 originally provided through trades, then Viridity is not entitled to any compensation from
20 ERCOT.¹⁶ He also testified that:

- Viridity was not compensated by ERCOT for its trade with Engie on February 15;

¹⁴ See Exhibit KÖ-20 (Totten Depo.) at 97:12-98:16; 100:1-18.

¹⁵ See Exhibit KÖ-18 (Pavo Depo.) at 42:25-45:11.

¹⁶ See Exhibit KÖ-20 (Totten Depo.) at 66:24-67:3; 97:12-98:16; 100:1-18.

- any compensation for that trade was through private bilateral contracts;
- such private contractual compensation for trades is inherent in the market; and
- those market principles did not change during the Disputed Payment Period.¹⁷

Mr. Totten also testified that if the Commission agrees with Complainants' theory of this case, then Viridity would have incurred Ancillary Service imbalance charges during the Disputed Payment Period and there is no reason (other than his sympathy) to treat Viridity better than other QSEs that did provide RRS and were assessed Ancillary Service imbalance charges.¹⁸ Given that Viridity avoided paying \$65.7 million in Ancillary Service imbalance charges by choosing not to provide RRS originally, it makes little sense for it to now claim it was providing RRS when the outcome of that assertion is for Viridity to have to pay the Ancillary Service imbalance charges it previously avoided.

Q. PLEASE DESCRIBE THE AGREEMENT BETWEEN ENGIE AND VIRIDITY FROM NOVEMBER 2023 THAT YOU MENTIONED EARLIER.

A. In the agreement, which is dated November 14, 2023, Engie and Viridity agreed that, [REDACTED]

¹⁷ See Exhibit KÖ-S1 (Totten Oct. 3, 2023 Depo.) at 24:20-26:7.

¹⁸ See Exhibit KÖ-S1 (Totten Oct. 3, 2023 Depo.) at 32:11-24; 33:2-34:2.

1 [REDACTED]
2 [REDACTED]
3 **Q. DOES COMPLAINANTS' AGREEMENT ADDRESS [REDACTED]**
4 [REDACTED]
5 [REDACTED]

6 A. It does not appear so. As I understand the agreement, it pertains only to [REDACTED]
7 [REDACTED]
8 [REDACTED] As I have previously explained, however, Viridity should be
9 held liable for the entire amount of Ancillary Service imbalance charges if the Commission
10 finds that Viridity's Ancillary Service Supply Responsibility and Ancillary Service
11 Resource Responsibilities from February 15 extended throughout the Disputed Payment
12 Period, including the 90 MW attributable to the PPM trade. As Mr. Maggio explains,
13 Viridity was able to parse out the Ancillary Service imbalance charges it incurred for the
14 February 15 Operating Day based on the PPM trade to recover a judgment against Lone
15 Star Demand Response, LLC in a lawsuit Viridity filed. Similarly, it will be up to Viridity
16 and Engie to parse out the amount of Viridity's Ancillary Service imbalance charges [REDACTED]
17 [REDACTED]

18 **Q. DOES VIRIDITY'S REDUCTION OF ITS CLAIM FOR COMPENSATION**
19 **"DOWN TO THE 27 MW OF RRS ASSOCIATED WITH THE BASA LOAD**
20 **RESOURCES AND SUBJECT TO TRADE WITH ENGIE"²⁰ HAVE THE EFFECT**
21 **OF REDUCING THE AMOUNT OF ANCILLARY SERVICE IMBALANCE**
22 **CHARGES VIRIDITY WILL OWE?**

¹⁹ Exhibit KÖ-S2.

²⁰ Notice of Withdrawal of Certain Claims at 1 (Oct. 27, 2023) (emphasis added).

1 A. No, for the reasons I already mentioned. Ancillary Service imbalance charge liability is
2 calculated based on QSE-level Ancillary Service Supply Responsibility. It is not calculated
3 based on a particular Load Resource or trade. So Complainants' characterization that *their*
4 *claim* for compensation is limited to RRS allegedly provide by the BASA Load Resources,
5 has no reducing effect on *ERCOT's claim* for Ancillary Service imbalance charges at the
6 QSE level—if the Commission agrees RRS was provided.

7 I also want to point out that Complainants have articulated they are reducing their
8 claim that Viridity provided RRS to just the BASA Load Resources, as you state in your
9 question. The way the testimony was revised still makes it sound like BASA deployed
10 27 MW of RRS in the time required by the Protocols.²¹ But Mr. Cunningham previously
11 admitted that BASA did not comply with the Protocols that require 95% deployment within
12 ten minutes,²² and Mr. McGough admitted BASA did not return to 95% consumption on
13 February 19, which it would have been required to do if it was actually providing RRS.²³
14 But again, Complainants' voluntary reduction of the amount of compensation that Viridity
15 seeks does not reduce the amount Viridity will have to pay for Ancillary Service imbalance
16 charges if it is deemed to have provided RRS under Complainants' theory of continuing
17 Ancillary Service responsibilities.

18 **Q. WHAT IS ERCOT'S POSITION REGARDING THE AMOUNT OF ANCILLARY**
19 **SERVICE IMBALANCE CHARGES OWED BY VIRIDITY?**

20 A. As I explained earlier, ERCOT's primary position is that the February 15 trades ended
21 before the Disputed Payment Period began. Viridity refused to confirm trades during the

²¹ See Revised Direct Testimony of Michael Pavo at 38:4-6.

²² See Exhibit KÖ-19 (Cunningham Depo.) at 24:5-11; 24:15-22; 25:11-19; 27:24-28:16.

²³ See Exhibit KÖ-21 (McGough Depo.) at 60:25-61:13.

1 Disputed Payment Period and did not have an Ancillary Service Supply Responsibility and
2 Ancillary Service Resource Responsibilities, so Viridity was not providing any RRS during
3 the Disputed Payment Period. Accordingly, Engie was properly charged for the \$47.5
4 million of RRS charges, and Viridity is not entitled to recover anything from ERCOT. If
5 the Commission agrees with ERCOT, then Viridity is not liable for any Ancillary Service
6 imbalance charges attributable to the Disputed Payment Period.

7 In the unlikely event that the Commission finds Viridity was providing RRS during
8 the Disputed Payment Period, the actual amount of Ancillary Service imbalance charges
9 that Viridity would have been charged is approximately \$65.7 million. ERCOT submits
10 that it would be reasonable to require Viridity to pay the \$65.7 million of Ancillary Service
11 imbalance charges just as the other QSEs that provided RRS from Load Resources had to
12 pay Ancillary Service imbalance charges. Those other QSEs were charged Ancillary
13 Service imbalance charges at the QSE level based on the QSE's Ancillary Service Supply
14 Responsibility amount. They were not allowed to pick and choose megawatts at the Load
15 Resource level to try and reduce their exposure to Ancillary Service imbalance charges.
16 Allowing Viridity to do that through litigation would be discriminatory and unfair to the
17 rest of the market.

18 **Q. DO YOU PROPOSE ANYTHING DIFFERENT ABOUT HOW THE**
19 **COMMISSION SHOULD HANDLE AN AWARD TO COMPLAINANTS IF THEY**
20 **SUCCEED?**

21 A. Not really, the same basic approach should still be used that I previously explained in my
22 direct testimony. The difference would be in the dollar amounts and the megawatt amount
23 of Viridity's Ancillary Service Supply Responsibility. In other words, if Complainants

1 succeed, then ERCOT recommends that the Commission require Viridity to first pay the
2 Ancillary Services imbalance charges it would owe to ERCOT and only after that would
3 Engie be entitled to any relief. If required, resettlement would be accomplished by:

4 (1) Increasing the RT Ancillary Service Supply responsibility for RRS for Viridity
5 by 117 for all intervals on 2/16/2021 through 2/19/2021;

6 (2) Removing the RRS Failed Quantity amount for Engie on 2/16/2021 (27 MW in
7 each hour); and

8 (3) Adding 27 MW to Engie's self-arranged RRS for all intervals on 2/17/2021
9 through 2/19/2021.

10 This would result in Viridity owing approximately \$65.7 million in Ancillary Service
11 imbalance charges, as explained by Mr. Maggio. Engie would receive a benefit of
12 approximately \$47.5 million. Through the mechanics of the resettlement process, the
13 Engie benefit would primarily result in an increase in charges for QSEs for whom ERCOT
14 purchased RRS in the DAM on their behalf (including Engie for the share of its RRS
15 obligation in excess of the 27 MW), and the Viridity charges would primarily result in
16 payments or credits being allocated to QSEs representing LSEs (including Engie). So, the
17 approximate \$18 million dollar difference between what Viridity would owe ERCOT and
18 the credit Engie would receive from ERCOT would not be kept by ERCOT, it would be
19 paid out through resettlements through payments or credits to those QSEs who represented
20 LSEs during the Disputed Payment Period.

21 As I did previously, I wish to emphasize that ERCOT contends neither Engie nor
22 Viridity is entitled to any relief in this docket. ERCOT provides this option only in the
23 unlikely event that the Commission determines Complainants are entitled to relief in this

1 docket. My concerns remain that Viridity does not have the ability to pay the \$65.7 million
2 it would owe if it is deemed to have provided RRS as it claims. Accordingly, any award
3 to Engie should be conditioned on Viridity first paying ERCOT \$65.7 million for the
4 reasons I previously explained in my direct testimony.²⁴

5 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?**

6 **A.** Yes.

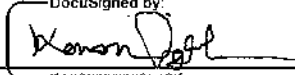
²⁴ See Direct Testimony of Kenan Ögelman at 98-99.

THE STATE OF TEXAS §

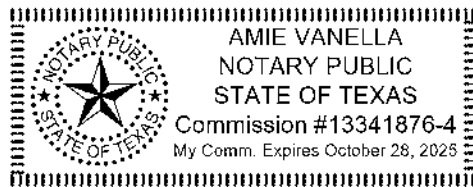
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared by means of an interactive two-way audio and video communication, Kenan Ögelman, who, having been placed under oath by me, did depose as follows:

My name is Kenan Ögelman. I am of legal age and a resident of the State of Texas. The foregoing supplemental direct testimony is accurate, true and correct.

DocuSigned by:

FA28588E056548E...
Kenan Ögelman

SUBSCRIBED AND SWORN TO BEFORE ME by the said Kenan Ögelman on this
9th day of January, 2024. This act was an online notarization.



NOTARY PUBLIC
STATE OF TEXAS

EXHIBIT KÖ-S1

SOAH DOCKET NO. 473-23-04518

DOCKET NO. 53377

COMPLAINT OF ENGIE ENERGY) BEFORE THE STATE OFFICE
MARKETING NA, INC. AND)
VIRIDITY ENERGY SOLUTIONS,) OF
INC. AGAINST THE ELECTRIC)
RELIABILITY COUNCIL OF)
TEXAS, INC.) ADMINISTRATIVE HEARINGS

ORAL DEPOSITION OF

JESS TOTTEN

October 3, 2023

ORAL DEPOSITION of JESS TOTTEN, produced as a witness at the instance of the Electric Reliability Council of Texas, Inc. and duly sworn, was taken in the above-styled and numbered cause on October 3, 2023, from 1:00 p.m. to 2:05 p.m., before Lorrie A. Schnoor, Certified Shorthand Reporter in and for the State of Texas, Registered Diplomate Reporter and Certified Realtime Reporter, reported by computerized stenotype machine at Naman, Howell, Smith & Lee, PLLC, 8310 North Capital of Texas Highway, Suite 490, Austin, Texas 78731, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1.	Changes and Signature pages to Deposition of Jess Totten taken June 20, 2023	5
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20

JESS TOTTEN,

21

having been first duly sworn, testified as follows:

22

EXAMINATION

Q Mr. Totten, there's a difference between
self-arranging RRS, offering RRS, and confirming a trade
of RRS. Correct?

A Yes.

Q Those are three different things. Right?

A Yes.

18 Q So if a QSE does not represent load-serving
19 entities, it is not assigned an Ancillary Service
20 Obligation. Correct?
21 A Correct.

Q (BY MR. CLARK) Mr. Totten, when a QSE self-arranges, it does that to satisfy all or a portion of its Ancillary Service Obligation, capital A, capital S, capital O. Correct?

A Right.

9 Q And we know elsewhere in your testimony -- you
10 now know, but you didn't know in your last deposition --
11 that Viridity had a trade with ENGIE, and Viridity had a
12 trade with PPM, and that made up all of the RRS that's
13 in dispute in this case. Correct?

14 A Right.

15 Q Okay. So explain to me the basis for your
16 answer on Line 13 that the Viridity load resources were
17 scheduled as self-arranged and arranged through trades.

18 A Well, I think I -- what I'm saying there is
19 that PPM and ENGIE self-arranged, and then they had
20 Viridity managing those load resources for them.

21 Q What makes you think that PPM self-arranged?

22 A I drew that conclusion from reading Ogelman's
23 testimony.

THE WITNESS: Ogelman.

Q (BY MR. CLARK) Were there parts of Mr. Ogelman's testimony that you chose not to reference or consider when you drew that conclusion?

A I don't recall.

Q And turn to Page 69 of Mr. Ogelman's testimony.
And look at Lines 4 through 5.

1 A I see it.

2 Q Do you have any basis to dispute, Mr. Totten,
3 that PPM, in fact, did not represent load-serving
4 entities and had no Ancillary Service Obligation?

5 A No.

6 Q And did you miss that piece of testimony in
7 Mr. Ogelman's testimony, or did you choose to ignore it?

8 A I must have missed it.

9 Q Okay. And if PPM had no Ancillary Service
10 Obligation, it did not self-arrange. Correct?

11 A Correct.

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3 Q And ancillary service trades are what change a
4 QSE's Ancillary Service Supply Responsibility. Correct?

5 A Right.

20 Q You understand from your work in this case that
21 ENGIE and Viridity had a confirmed trade of 27 megawatts
22 for operating day February 15th, 2021. Correct?

23 A Right.

24 Q And the Ancillary Service Supply Responsibility
25 that resulted from that trade would have meant Viridity

1 had now a 27-megawatt Ancillary Service Supply
2 Responsibility. Correct?

3 A Right.

4 Q And that is spelled out in this Protocol
5 4.4.7.4(1) as to how that is determined. Correct?

6 MR. MACK: Objection, form.

7 A I believe you're correct.

8 Q (BY MR. CLARK) And so, for example, with
9 respect to the 27 megawatts, you know that ENGIE
10 self-arranged 27 megawatts of its Ancillary Service
11 Obligation. Correct?

12 A Yes.

13 Q And that would be reflected -- or that would be
14 considered by 4.4.7.4(1)(a)(i). Correct?

15 A Right.

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14 Q Okay. Are you -- having seen the buyer and the
15 seller, are you able to tell me, Mr. Totten, whether
16 ENGIE was the seller under (a)(ii) or the buyer under
17 (b)(i)?

18 A Well, it would appear to me that Viridity is
19 the seller.

20 Q Right, because ENGIE has to take its
21 self-arranged quantity in (a) and subtract what it
22 bought from (b) to get to zero supply responsibility.
23 Right?

24 A Right.

25 Q And then Viridity, to create an Ancillary

1 Service Supply Responsibility, has to be the seller of a
2 trade. And then there's nothing in (b) to subtract
3 that, and so that's how it ends up with a 27-megawatt
4 Ancillary Service Supply Responsibility. Right?

5	A	The math works.
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6 Q And that's how it works. It's not just how the
7 math works. That's how the protocols work. Right?

8	A	Right.
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Q Okay. And you say the RRS was, in fact, in excess of PPM's obligations. Is that what you were talking about earlier when you said you based that on Mr. Ogelman's testimony at Page 80?

A Right.

Q And so now having seen Mr. Ogelman's testimony at Page 69 that we looked at earlier, do you need to revise that testimony?

A I believe I may need to.

Q Okay. But you agree that if PPM has no Ancillary Service Obligation, then Protocol Section 4.4.7.1(1) wouldn't apply. Correct?

A Right.

Q So that would leave no basis that you've spelled out in your rebuttal testimony for Viridity to be compensated for its trade with PPM. Correct?

1 A None that I'm aware of.

2 Q Mr. Totten, what is the difference between an
3 Ancillary Service Supply Responsibility and an Ancillary
4 Service Resource Responsibility? And that's capital A,
5 capital S, capital S, R, and capital A, capital S,
6 capital R, capital R.

7 A Well, I believe the Supply Responsibility
8 refers to the QSE's responsibility, and the Resource
9 Responsibility refers to the resource.

10 Q And after the QSE obtains a supply
11 responsibility, it is then required to dole that out,
12 for lack of a better word, to each of its specific
13 resource and give them each a Resource Responsibility.
14 Correct?

15 A Well, yeah, it has to have the resources to
16 meet its supply obligation.

17 Q And who telemeters to ERCOT a load resources
18 Ancillary Service Resource Responsibility?

19 A Well, the QSE that's managing that resource.

20 Q And you are aware, Mr. Totten, that for
21 operating day February 16th, 2021, Viridity telemetered
22 zero megawatts of Ancillary Service Resource
23 Responsibility for its load resources to ERCOT.
24 Correct?

25 A I'm not aware of that, no.

13 Q Well, you use throughout your testimony that
14 the load resources should be compensated. So let's just
15 get to the bottom of that. You're not suggesting, are
16 you, that the actual load resources that aren't even
17 parties to this proceeding should be compensated; i.e.,
18 paid money by ERCOT, are you?

19 MR. MACK: Objection, form.

20 A No, I'm not.

5 Q Uh-huh. You know, Mr. Totten, that on
6 February 15th, 2021, that operating day, ENGIE and
7 Viridity had a confirmed trade that was recognized by
8 ERCOT. Correct?

9 A Right.

20 Q All right. You understand, don't you,
21 Mr. Totten, that for the February 15th, 2021 confirmed
22 trade between ENGIE and Viridity, neither of them were
23 compensated; i.e., paid money by ERCOT. Correct?

24 A Correct.

25 Q Was that improper?

1 A It would -- it would not be improper if they
2 were credited for ENGIE's Ancillary Service Obligation.

3 Q Was it against market principles for ERCOT not
4 to pay money to ENGIE and Viridity for their confirmed
5 trade on February 15th, 2021?

6 A No.

7 Q You understand, don't you, Mr. Totten, that for
8 the February 15th, 2021 operating day, the only payment
9 of money for the provision of RRS as between Viridity
10 and ENGIE was between themselves and BASA pursuant to
11 their private bilateral contracts. Correct?

12 MR. MACK: Objection, form.

13 A Well, I -- I understand that the parties would
14 have -- would have had arrangements for compensation. I
15 don't know exactly what those were, but I understand
16 also that ERCOT would not have had an obligation to pay
17 them.

18 Q (BY MR. CLARK) And was it improper for those
19 private parties to have bilateral contracts by which
20 they compensated each other for ancillary service
21 trades?

22 A No.

23 Q Was that contrary to market principles?

24 A No. That's kind of inherent in the market.

25 Q Right. Did the market change on February 16th?

2 A No.

3 Q (BY MR. CLARK) So those same market principles
4 would apply on February 16th, 17th, 18th, and 19th.
5 Correct?

6 MR. MACK: Objection, form.

7 A Correct.

18 Q (BY MR. CLARK) Okay. But you're the -- the
19 one coming in to this proceeding offering testimony,
20 saying to the Commission, Give my side good cause waiver
21 exceptions from complying with the protocols. But you
22 haven't said anywhere in your testimony which specific
23 protocols. Correct?

24 MR. MACK: Objection, form.

25 A Correct.

11 Q (BY MR. CLARK) And if the Commission were to
12 agree with Viridity that it had an Ancillary Service
13 Supply Responsibility and its load resources had
14 Ancillary Service Resource Responsibilities on
15 February 16th, 17th, 18th, and 19th of 2021, they would
16 have incurred ancillary service imbalance charges.
17 Correct?

18 MR. MACK: Objection, form.

19 A That's -- that's the way the protocols work.

20 Q (BY MR. CLARK) And much like the North Maple
21 ADR that you cite, there's no reason here that Viridity
22 should be given the benefit of Resource Responsibility
23 and not the burden, is there?

24 A None occurs to me at the moment.
25

2 Q And you're aware that EnerWise was a QSE that
3 incurred ancillary service imbalance charges from
4 February 16th to the 19th, 2021. Correct?

5 A Right.

6 Q And it's not your opinion, is it, that Viridity
7 should receive better treatment than EnerWise if the
8 Commission agrees with Viridity that it had ancillary
9 service responsibilities during the disputed payment
10 period, is it?

11 MR. MACK: Objection, form.

12 A Well, in general I would say no; but this has
13 been a long, difficult process, so it's hard for me not
14 to sympathize with Viridity.

15 Q (BY MR. CLARK) Okay. So is there a protocol
16 that you're relying on that says if a PUC proceeding
17 takes a certain amount of time or is met with a certain
18 amount of opposition, that in that case, the QSE should
19 be treated better than other similarly situated QSEs?

20 A No, there's not.

21 MR. MACK: Objection, form.

22 Q (BY MR. CLARK) Okay. So other than your
23 general sympathy for Viridity, is there any other reason
24 that you can think of that Viridity should be treated
25 better than EnerWise was treated?

MR. MACK: Objection, form.

A No.

1 SOAH DOCKET NO. 473-23-04518

2 DOCKET NO. 53377

3 COMPLAINT OF ENGIE ENERGY) BEFORE THE STATE OFFICE
4 MARKETING NA, INC. AND)
5 VIRIDITY ENERGY SOLUTIONS,) OF
6 INC. AGAINST THE ELECTRIC)
7 RELIABILITY COUNCIL OF)
8 TEXAS, INC.) ADMINISTRATIVE HEARINGS

9 REPORTER'S CERTIFICATION

10 ORAL DEPOSITION OF JESS TOTTEN

11 OCTOBER 3, 2023

12 I, Lorrie A. Schnoor, Certified Shorthand
13 Reporter in and for the State of Texas, Registered
14 Diplomate Reporter and Certified Realtime Reporter,
15 hereby certify to the following:

16 That the witness, JESS TOTTEN, was duly sworn
17 and that the transcript of the deposition is a true
18 record of the testimony given by the witness;

19 That the deposition transcript was duly
20 submitted on October 13, 2023 to the witness or to the
21 attorney for the witness for examination, signature, and
22 returned to me by November 2, 2023;

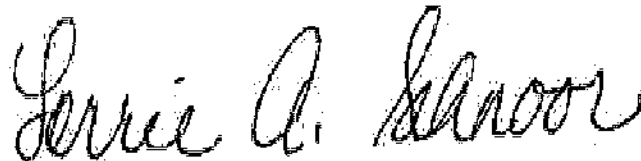
23 That pursuant to information given to the
24 deposition officer at the time said testimony was taken,
25 the following includes all parties of record and the

1 amount of time used by each party at the time of the
2 deposition:

3 Mr. Stephen Mack (0h0m)
4 Attorney for ENGIE Marketing NA, Inc. and
5 Viridity Energy Solutions, Inc.
6 Mr. Elliot Clark (0h57m)
7 Attorney for Electric Reliability Council
8 of Texas, Inc.
9 Mr. Floyd Walker (0h0m)
10 Attorney for Commission Staff

11 I further certify that I am neither counsel
12 for, related to, nor employed by any of the parties in
13 the action in which this proceeding was taken, and
14 further that I am not financially or otherwise
15 interested in the outcome of this action.

16 Certified to by me on this 13th day of October,
17 2023.

18 

19 LORRIE A. SCHNOOR, RDR, CRR, TCRR
20 Certified Shorthand Reporter
21 CSR No. 4642 - Expires 1/31/24

22 Firm Registration No. 276
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EXHIBIT KÖ-S2

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