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COMPLAINT AND APPEAL OF SOUTH TEXAS ELECTRIC COOPERATIVE, INC. AGAINST THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.	§ § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

COMMISSION STAFF'S REPLY BRIEF ON THRESHOLD ISSUES

On August 16, 2023, Commission Counsel filed a memo establishing a deadline of September 14, 2023 for the parties to file reply briefs on threshold issues. Therefore, this pleading is timely filed.

I. INTRODUCTION

The initial brief of South Texas Electric Cooperative, Inc. (STEC) is based on the false premise that Ancillary Service Supply Responsibility can be met solely by load response. It cannot. Accordingly, STEC's contention that either ERCOT Nodal Protocol § 6.4.9.1.3 or the Ancillary Services Order can be met solely by load response should be rejected.[1] Commission Staff notes that STEC's reliance on an interim order in Docket No. 53377 is misplaced as that matter is still pending and the SOAH ALJs were not interpreting the protocols at issue in this case. However, to the extent that this interim order could be applicable, it confirms the critical role of accurate telemetry of Ancillary Service Resource Responsibility in providing Responsive Reserve Service (RRS).[2] Furthermore, STEC's reliance on other proceedings ignores the fact that STEC is solely to blame for the telemetry that resulted in its failure to meet its obligations. Accordingly, there is no precedential basis to rescue STEC from the consequences of its mistake.

II. ARGUMENT

STEC's Brief disregards the simple fact that its complaint against ERCOT was caused by its own actions. STEC sent the data that ERCOT used to determine that STEC failed to meet its

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[1] *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Project No. 51812, Second Order Addressing Ancillary Services (Mar. 12, 2021) (Ancillary Services Order).

[2] Commission Staff notes that STEC's parenthetical claim that Ancillary Service Resource Responsibility is assigned by ERCOT is false. *Compare* STEC's Brief at 5 *with* ERCOT Nodal Protocol § 3.9.1 (requiring a Current Operating Plan (COP) containing an Ancillary Service Resource Responsibility must be provided by a QSE).

Ancillary Service Supply Responsibility. There is no dispute that STEC would not have filed a complaint had it sent the proper telemetry at the time. Therefore, the real issue is whether there is some basis in the ERCOT Nodal Protocols to excuse STEC's failure or retroactively alter its telemetry. Commission Staff respectfully submits that there is not. However, STEC's initial brief is based on the assumption that mistakes must be forgiven, which is not the case.

The issue in this proceeding is whether STEC met its Ancillary Service Supply Responsibility in accordance with ERCOT Nodal Protocol § 6.4.9.1.3. Accordingly, STEC's arguments directed to load response, load reduction, and providing RRS in the abstract are a distraction from the real issue, which is whether ERCOT properly implemented the Commission's Order, which required STEC to provide accurate telemetry of Ancillary Service Resource Responsibility in real-time.

Issue #1 – May ERCOT use real-time telemetry of ancillary service resource responsibility to determine if a qualified scheduling entity failed on its ancillary service supply responsibility under ERCOT Nodal Protocol § 6.4.9.1.3(1)?

The parties appear to agree that the answer is yes.[3] However, STEC's agreement is conditional on external validation of Ancillary Service Resource Responsibility telemetry as reflective of "the Load Resource's available capacity and load response."[4] There is no basis for this extra condition, which would effectively absolve QSEs of the need to submit accurate telemetry of ASRR. Contrary to their representation, the ALJs in Docket No. 53377 did not hold that ASRR telemetry is subordinate to load response. The ALJs explicitly held that RRS cannot be provided solely by deployment without regard to ASRR telemetry.[5] However, STEC's contention that ASRR telemetry can be ignored if it does not agree with load response would require disregarding ASRR telemetry.

Accordingly, ERCOT can ***unequivocally*** use telemetry of ASRR to determine if a qualified scheduling entity failed on its Ancillary Service Supply Responsibility under ERCOT Nodal

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[3] South Texas Electric Cooperative, Inc.'s Initial Brief on Threshold Issues at 2 (Sep. 7, 2023) (STEC's Brief); Electric Reliability Council of Texas, Inc.'s Brief on Threshold Issues at 1 (Sep. 7, 2023); Commission Staff's Initial Brief on Threshold Issues at 2 (Sep. 7, 2023).

[4] STEC's Brief at 3.

[5] *Complaint of Engie Energy Marketing NA, Inc. and Viridity Energy Solutions, Inc. Against the Electric Reliability Council of Texas, Inc.*, Docket No. 53377, SOAH Order No. 8 at 12 (Mar. 23, 2023).

Protocol § 6.4.9.1.3(1). In the case of real-time calculations concerning Ancillary Service Supply Responsibility, it is appropriate to use the real-time value of ASRR.

Issue #2 – Is ERCOT required to examine other data sources than real-time telemetry of ancillary service resource responsibility when determining if a qualified scheduling entity failed on its ancillary services supply responsibility under ERCOT Nodal Protocol § 6.4.9.1.3(2)?

The underlying concern at the heart of this issue is how ERCOT utilizes Ancillary Service Resource Responsibility and Ancillary Service Supply Responsibility to manage RRS. ERCOT issues Dispatch Instructions, deployment and recall, based on telemetry of Ancillary Service Resource Responsibility.[6] Accordingly, the suitability and relevance of other data sources must be evaluated in terms of the effect if any on the issuance of Dispatch Instructions. In contrast, STEC's Brief relies on an abstract notion of available capacity that is untethered to Ancillary Service Resource Responsibility and cannot be used by ERCOT to issue Dispatch Instructions. For that reason, STEC's contention should be rejected. To the extent that there is any ambiguity on this point, ERCOT has sole discretion under ERCOT Nodal Protocol § 6.4.9.1.3 to determine whether a QSE has failed on its Ancillary Service Supply Responsibility.

STEC's Brief reiterates the fallacious condition that ASRR can only be used if it is validated as reflective of a "Load Resource's available capacity and load response."[7] However, STEC has failed to explain why either available capacity or load response has any role in ERCOT Nodal Protocol § 6.4.9.1.3. They do not. ERCOT does not issue Dispatch Instructions based on load response or STEC's unstated concept of available capacity. Therefore, from an operational standpoint, STEC's proposed other data sources would not permit a QSE to meet its Ancillary Service Supply Responsibility.

Furthermore, STEC's understanding of load response appears to only apply in the event of Dispatch Instructions, which makes STEC's proposal regarding Ancillary Service Supply Responsibility only applicable under special circumstances. However, there is no basis to assert that Ancillary Service Supply Responsibility can be met in different ways under different circumstances. To the extent that other data sources could be relevant, it would only be to the

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[6] ERCOT Exhibit No. 2 (Mar. 31, 2023).

[7] STEC's Brief at 3.

extent that they are relevant to Ancillary Service Supply Responsibility. STEC has failed to identify any.

STEC asserted that: "The Protocols expressly give ERCOT the sole discretion to determine whether the RRS capacity of STEC's NCLRs was available on February 15, 2021 when ERCOT issued its RRS deployment instruction."[8] This contention misstates the issue, which is whether STEC met is ASSR obligation ***after*** ERCOT issued deployment instructions. After receipt of deployment instructions, STEC changed the ASRR for each NCLR to 0.0 MW, which made them not available.[9] This condition persisted until STEC changed the telemetry for its NCLRs to reflect non-zero values of ASRR at approximately 04:44. In fact, the period when STEC sent ASRR telemetry of 0.0 MW is the Disputed Period. Availability prior to the Disputed Period is irrelevant.

Issue #3 – Did ERCOT correctly implement the Commission's March 12, 2021 order in Project No. 51812 by assessing failure-to-provide charges against STEC for failing to comply with its ancillary service supply responsibility during the February 14 through 19, 2021 operating days?

Yes. STEC claims that the March 12, 2021 Order did not require ERCOT to use real-time ASRR telemetry, yet acknowledges that ERCOT was required to use the method described in ERCOT Nodal Protocol § 6.4.9.1.3. STEC fails to recognize that this method does require the use of Ancillary Service Resource Responsibility, although this is not stated explicitly. As an initial matter, it is important to recognize that it is the QSE—not ERCOT—that allocates ASRR to a QSE's resources.[10] Pursuant to ERCOT Nodal Protocol § 3.9.1(3), "The Resource capacity in a QSE's COP must be sufficient to supply the Ancillary Service Supply Responsibility." According to ERCOT Nodal Protocol § 4.4.7.4(4), "Section 6.4.9.1.3 specifies what happens if the QSE fails on its Ancillary Service Supply Responsibility." While STEC is correct that ERCOT Nodal Protocol § 6.4.9.1.3 does not explicitly mention a QSE's Ancillary Service Supply Responsibility, it would be wrong to say that its use was not contemplated.

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[8] STEC's Brief at 4.

[9] ERCOT Exhibit No. 1 (Mar. 31, 2023).

[10] ERCOT Nodal Protocol § 4.4.7.4(3) ("By 1430 in the Day-Ahead, the QSE must notify ERCOT, in the QSE's COP, which Resources represented by the QSE will provide the Ancillary Service capacity necessary to meet the QSE's Ancillary Service Supply Responsibility, specified by Resource, hour, and service type.").

Contrary to STEC's representations, the ALJs in Docket No. 53377 ***did not*** issue a general holding that "the provision of RRS is determined by load response rather than telemetry."[11] In fact, the ALJ explicitly held that "Load Resources **cannot** provide RRS based solely on deployment without regard to telemetry or Ancillary Service Resource Responsibility."[12] However, STEC claims that it provided RRS solely based on deployment, which goes directly against that holding. The issue in this proceeding is that STEC telemetered 0.0 MW as the Ancillary Service Resource Responsibility for its Load Resources, which it now claims was a mistake. However, the cited order in Docket No. 53377 does not stand for the proposition that a QSE's telemetry of Ancillary Service Resource Responsibility can be ignored whenever it becomes inconvenient. In fact, providing RRS requires proper telemetry of Ancillary Service Resource Responsibility.

The resolution of the Tenaska ADR is also of no help to STEC.[13] While there were data errors involved in the Tenaska proceeding, the underlying claim was that ERCOT improperly failed to start accepting Tenaska's data after its telemetry issues were corrected.[14] In other words, Tenaska did not seek to be relieved of the consequences of its incorrect telemetry on February 16, 2021, but only sought acceptance of correct telemetry that had been improperly rejected for February 18, 2021.[15] Accordingly, the resolution was for ERCOT to accept the data that had been sent by Tenaska, which is the exact opposite of the resolution sought by STEC. Here, STEC demands that ERCOT retroactively reject STEC's telemetry and use an entirely different methodology that relies on different types of data. The Tenaska ADR was an example of following the existing rules—not an example of ad hoc rule modifications. Accordingly, it is not applicable to this proceeding.

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[11] STEC's Brief at 7-8.

[12] *Id.* (emphasis in original).

[13] STEC's Brief at 8.

[14] Tenaska ADR Resolution, ADR No. 2021-TPS-05, (available at: https://www.ercot.com/services/comm/mkt_notices/M-A080522-01) (showing that the ADR dispute was only as to February 18, 2021, although the telemetry issues begin on February 16, 2021 at 08:49).

[15] *Id.*

Commission Staff notes that STEC's reliance on Docket No. 31243 (TXU Proceeding) is also misplaced.[16] In the TXU Proceeding, the Complainants and ERCOT were alleged to have both made mistakes.[17] The ALJ held that Complainants' mistakes did not preclude their claims based on ERCOT's mistakes.[18] However, in this case, the only alleged mistakes were made by STEC. Therefore, the issue is not whether STEC's mistakes should preclude its claim. The issue is that STEC has not pointed to any mistakes made by ERCOT. Contrary to STEC's position, the TXU Proceeding does not stand for the proposition that mistakes must always be forgiven.

STEC's claim that the ERCOT Nodal Protocols lead to an unreasonable result is based on a logical fallacy.[19] STEC claims that relying on real-time telemetry instead of load response would allow a QSE to receive compensation despite failing to meet its obligations. However, this is based on the false assumption that doing so has no other consequences. This hypothetical QSE would still be subject to administrative penalties for failing to meet its obligations. Moreover, there is no reason why ***both*** accurate telemetry of ASRR ***and*** appropriate load response cannot be required to meet an Ancillary Service Supply Responsibility. The fact that STEC only seeks to repudiate its ASRR telemetry is why that requirement must be addressed, but that does not mean that STEC did not have other ways to fail to meet its Ancillary Service Supply Responsibility. Moreover, the solution to an unreasonable result would be to amend the ERCOT Nodal Protocols—not to reimagine them.

STEC's reliance on Docket No. 54957 is based on blurring the distinction between inadvertent and erroneous.[20] Certain types of mistakes are subject to an objective standard that can be categorized as erroneous, but STEC's mistake was that it sent valid data that it did not intend to send. There is no dispute that 0.0 MW is a valid value of Ancillary Service Resource Responsibility. Because STEC was not required to stick with its COP, there is no objective way to determine whether deviations between the COP and real-time telemetry are due to unexpected

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[16] STEC's Brief at 8-10 (citing *Complaint of TXU Portfolio Management Company LP and TXU Energy Retail Company LP Against the Electric Reliability Council of Texas (ERCOT)*, Docket No. 31243 (Aug. 9, 2006) (TXU Proceeding)).

[17] Docket No. 31243, Proposal for Decision at 27 (Jun. 20, 2006) ("Thus, the actions of both ERCOT and the Companies clearly contributed to the double-counted load and resulting charges.").

[18] *Id.* ("Thus, under the facts of this case, the ALJ does not find that the Companies' inadvertent mistakes should result in denial of their claim.").

[19] STEC's Brief at 11.

[20] STEC's Brief at 11-12.

circumstances, changed plan, or just user error. Moreover, unlike the Resource Status codes at issue in Docket No. 54957, Ancillary Service Resource Responsibility is a numeric value that cannot be easily corrected to some known value. Whereas it may be possible to determine whether the wrong Resource Status codes were used, whether the QSE intended the ASRR that it transmitted is of an entirely different character. Docket No. 54957 does not stand for the proposition that QSEs are entitled to telemetry do-overs.

STEC's argument regarding the use of Interval Data Recorder (IDR) meter data to validate telemetry fails to recognize that the IDR meter data does not show Ancillary Service Resource Responsibility.[21] While it might be appropriate to use IDR meter data to validate STEC's telemetry of power consumption, that data cannot be used to validate ASRR any more than it can be used to validate a bus pass. If power consumption were relevant to Ancillary Service Supply Responsibility, which it is not, it would not be affected by whether the source is IDR meter data or STEC's telemetry. Accordingly, STEC's argument that IDR meter data should be used to validate telemetry is either erroneous if applied to ASRR telemetry, or irrelevant if applied to any other telemetry.

III. CONCLUSION

Commission Staff respectfully requests entry of an order consistent with the above discussion.

[21] STEC's Brief at 13-14.

Dated: September 14, 2023

Respectfully Submitted,

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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 14, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ R. Floyd Walker
R. Floyd Walker