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JOINT PETITION OF TEXAS ENERGY	§	PUBLIC UTILITY COMMISSION
ASSOCIATION FOR MARKETERS	§	
AND ALLIANCE FOR RETAIL	§	OF TEXAS
MARKETERS FOR DESIGNATION	§	
UNDER 16 TAC § 25.475(b)(5)	§	

REP COALITION'S MOTION FOR REHEARING

The Texas Energy Association for Marketers (TEAM) and Alliance for Retail Markets (ARM) (collectively, the REP Coalition) respectfully submit this Motion for Rehearing and request a modification to the Declaratory Order issued in this proceeding on December 19, 2024.¹ The REP Coalition respectfully requests that the Public Utility Commission of Texas (Commission) reconsider the Declaratory Order and make one of two suggested changes. On the eve of the consideration of that Declaratory Order, the Commission presented additional evidence in the case, which was comprised of over 600 pages.² The REP Coalition did not and does not object to this information being made part of the record in this proceeding. However, this Motion for Rehearing provides an opportunity to respond to that information and its relevance to the Commission's ultimate Declaratory Order in this proceeding. Accordingly, the REP Coalition appreciates due and careful consideration of this Motion for Rehearing as it is necessary to assure residential and small commercial customers the appropriate opportunities for long-term fixed price products.

I. EXECUTIVE SUMMARY

The REP Coalition has filed this petition to have the Commission determine whether the newly adopted Electric Reliability Council of Texas (ERCOT) Contingency Reserve Service (ECRS) ancillary service is a new cost or fee beyond a retail electric provider's (REP's) control for purposes of 16 Texas Administrative Code (TAC) § 25.475(b)(5). The Declaratory Order focuses extensively on the date by which REPs could have reasonably anticipated the quantity of ECRS services for which the REPs would be responsible. The Declaratory Order appears to turn on the following statement:

¹ Under Tex. Gov't Code § 2001.147 (Administrative Procedures Act) a Motion for Rehearing must be filed within 25 days of the date of the order at issue. Accordingly, this Motion for Rehearing is timely filed.

² Order of Official Notice (Dec. 19, 2024).

On December 20, 2022, the quantity of ECRS that ERCOT would procure was established, based on the ERCOT Board of Directors' approval of the 2023 Ancillary Service Methodology (six months before the initial procurement of ECRS).³

Even assuming *arguendo* that knowledge of the quantities of a new ancillary service that would be procured equates to a determination that those costs were then within the REPs control, the REPs were not able to control the costs reflected in residential and small commercial contracts executed prior to the date of approval of the Ancillary Service Methodology referenced in the order. Accordingly, the real factual issue in dispute is the date upon which existing customer contracts should have reflected a price that included the cost of ECRS.

The REP Coalition requests that, at a minimum, the Declaratory Order be modified to establish the date on which existing residential and small commercial fixed price product contracts should have reflected that cost. Based on the discussion in the Declaratory Order and the evidence that was admitted on the day that order was issued, that date would be as follows:

Accordingly, the Commission ~~declines to~~ designates ECRS as an ancillary service incurring charges beyond a REP's control for a customer's existing contract (i.e., a fixed-rate product) that was executed on or before ~~June 9, 2023~~ December 20, 2022.

In addition to the sworn facts that are part of the record in this case as presented by the REP Coalition, the additional information admitted as evidence at the Open Meeting supports a determination that awareness of the 2023 Ancillary Service Methodology, which provides only the minimum quantity of ECRS to be procured by ERCOT, does not equate to the ability to reasonably anticipate the costs that would be associated with those charges. The pool of supply that would be eligible to provide that service were not known at this same time. Accordingly, the date on which ECRS presented a new cost or fee beyond the REPs control is June 10, 2023. The Declaratory Order reflects a public policy determination that fixed price products for residential and small commercial customers should include an estimated cost of future, not yet fully designed services, prior to the cost of those services actually being incurred in the marketplace.

The Commission has already determined by a previous order in this case:

First, the outcome of this proceeding will not necessarily result in a price charge for customers. Rather, the Commission's ultimate determination in this proceeding is one of general applicability and will provide the competitive retail market with guidance on whether a REP can pass through

³ Declaratory Order at 4 (Dec. 19, 2024) (internal citation omitted).

a charge to its customer on an existing fixed rate contract under 16 TAC § 25.475(b)(5).⁴

It is critically important for customers that REPs understand how the rule language in 16 TAC § 25.475(b)(5) will impact the ability of REPs to adjust existing fixed priced products for regulatory changes implementing new ancillary services or costs approved by the Commission that create costs that are beyond the REP's control after the existing contract was established.

II. DISCUSSION OF FACTUAL AND LEGAL ARGUMENT

A. Awareness that a new ancillary service will be coming does not equate to an ability to control the cost.

The Declaratory Order focuses discussion on the ERCOT stakeholder process, which culminated in a determination of the minimum quantities of ECRS that ERCOT would procure pursuant to the Ancillary Services Methodology for 2023. The Background provided in the Order is correct that the REPs actively participated in the stakeholder process that led to the implementation of ECRS. However, the request to designate this new ancillary service as one that would cause REPs to incur costs beyond their control is consistent with their active participation in the stakeholder process. The Declaratory Order makes clear that the minimum quantities of ECRS were not finalized until approval by the ERCOT Board on December 20, 2022. While the Declaratory Order offers discussion of the stakeholder process prior to the Board action approving the ECRS minimum quantities, the Order itself recognizes that the amounts were not finalized until the Board Meeting approving the Ancillary Services Methodology.

At minimum, the discussion in the Declaratory Order supports a determination that the requested ECRS imposed a cost beyond the REPs control for existing contracts executed prior to December 20, 2022. Therefore, at minimum, the Commission should revise the Declaratory Order to designate ECRS as a new ancillary service that caused REPs to incur costs beyond their control for customer contracts that existed prior to December 20, 2022. To be clear, the REP Coalition does not seek authority to have the option to retroactively adjust prices to customers. A price adjustment, if any, would only apply to residential and small commercial customer contracts that were executed prior to December 20, 2022, that have not yet expired. So, as a practical matter, it would only allow the possibility of a going forward price adjustment for contracts that were for

⁴ Order on Appeal of Order No. 4 at 2 (May 2, 2024).

more than two-year terms. Further, whether an adjustment is made will depend on a number of factors, including the number of months that may be left in the contract term at the time the Commission issues its order.

B. Awareness of the minimum quantity of an ancillary service to be procured by ERCOT does not provide a reasonable ability to control the cost.

The Declaratory Order focuses on the date on which the ERCOT Board approved the 2023 Ancillary Services Methodology. The Declaratory Order states that this is the time that the quantities were known. However, it is important to first point out that this ERCOT action only approved the minimum quantities of ECRS that ERCOT would procure. Right up to the date that ECRS service began, ERCOT was finalizing the terms and conditions under which it would procure ECRS.

Further, the quantities to be procured are only one component of the determination of price. Ancillary service pricing is determined by the market. It is a function of demand (the quantity to be procured) and supply (the pool of resources eligible to bid into supply for the service). At the time the Ancillary Services Methodology was approved, ERCOT had not yet determined the eligibility requirements for the supply side of this service. In fact, the record evidence demonstrates that the pool of eligible supply was not finalized until April 14, 2023, just prior to ERCOT beginning to procure the service.⁵

Further, the evidence demonstrates there were no hedges available and no effective market for the service available for REPs to anticipate or control the cost for this ancillary service at the time it was initiated.⁶ Accordingly, the record supports the conclusion that, prior to June 9, 2023, REPs lacked sufficient data regarding how ERCOT would deploy ECRS to effectively anticipate or account for the cost of ECRS in their multi-year contracts with residential and small commercial customers.⁷

C. The Declaratory Order would do customers a disservice.

Today, residential and small commercial customers are seeking and entering into contracts for fixed price products for retail electric service with multi-year terms, up to five years. These

⁵ REP Coalition's Initial Brief at 4 and fn. 7 (May 31, 2024); REP Coalition's Rebuttal Brief at 5 and fn. 14 (Jun. 21, 2024).

⁶ REP Coalition's Exception to the Proposed Declaratory Order at 11 and Attachment A (Sept. 9, 2018).

⁷ REP Coalition's Initial Brief at 3.

longer-term contracts are beneficial to customers and the market because they allow for, and in fact essentially require, longer term purchased power agreements or other types of hedges. The Declaratory Order, if left unchanged, would add significant regulatory uncertainty regarding the feasibility of offering these long-term contracts for residential and small commercial customers. This application of the rule language could create a situation where REPs are left without direction as to how or if the costs of future new ancillary or reliability services can or should be recovered for existing residential and small commercial fixed price products despite the plain language of PURA⁸ § 39.112(a) and 16 TAC § 25.475(b)(5).

The discussion in the Declaratory Order implies that the rule language that was added in 2021 to require the Commission to designate a change in ancillary services charges as one that causes REPs to incur costs beyond their control as an expansion of the statutory language regarding the circumstances under which a fixed price product price may be adjusted.⁹ However, in the manner applied in this proceeding, the rule language acts as a restriction on the statutory language that essentially creates a circumstance where new costs are imposed by a regulatory authority and REPs are precluded from adjusting fixed price products to account for these new regulatory charges. This is inconsistent with the definition of fixed price product in the statute and results in an unsustainable situation for REPs that ultimately disadvantages customers.¹⁰

As a practical matter, many customer contracts that were entered into prior to June 9, 2023 (or December 20, 2022) have expired, and thus, would not be subject to a possible price adjustment regardless of the outcome of this proceeding. However, the public policy determinations here will give much needed meaning to the rule language that was adopted in 2021. If the Declaratory Order were to move forward as-is, it would essentially negate the careful balance that the Commission expressly enacted in adopting the rule.¹¹

III. CONCLUSION

The REP Coalition respectfully requests the Commission grant the request for hearing and issue an order consistent with this Motion for Rehearing that designates ECRS as a new ancillary

⁸ Public Utility Regulatory Act, Tex. Util. Code §§ 11.003-66.016 (PURA).

⁹ Declaratory Order at 4-5.

¹⁰ PURA § 39.112(a).

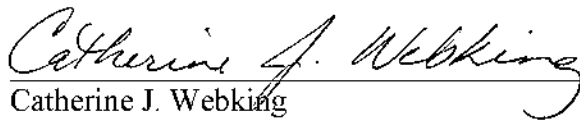
¹¹ See REP Coalition's Exceptions to Proposed Declaratory Order at 5-7 (incorporated here by reference).

service that caused REPs to incur cost beyond their control. Based on the background in the Declaratory Order as discussed in this motion, the REP Coalition requests that this designation apply on a go-forward basis for fixed price contracts, to which 16 TAC § 25.475(b)(5) applies, that were existing at the time of the ECRS implementation on June 9, 2023; or in the alternative, apply to existing residential and small commercial contracts that were executed prior to December 20, 2022.

To reiterate, this designation would apply on a going-forward basis from the date of the Declaratory Order and apply only to residential and small commercial fixed price product contracts that remain in place today and were in existence prior to the date designated (June 9, 2023, or December 20, 2022). Further, the designation does not mean that customer contract prices would necessarily be adjusted. The designation would provide better clarity on the application of the Commission's rule changes adopted in 2021 with respect to ancillary services. Therefore, the REP Coalition respectfully requests the entry of revised Declaratory Order consistent with the foregoing.

Respectfully submitted,

ON BEHALF OF THE REP COALITION



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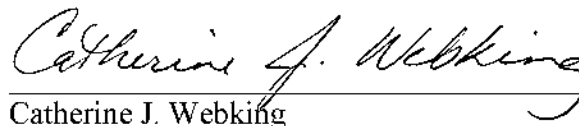
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CERTIFICATE OF SERVICE

I hereby certify that notice of the filing of this document was provided to all parties of record via electronic mail on January 13, 2025, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.


Catherine J. Webking