

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

JUST ENERGY GROUP INC., et al.,

Debtors in a Foreign Proceeding.¹

JUST ENERGY TEXAS LP, FULCRUM RETAIL
ENERGY LLC, HUDSON ENERGY SERVICES
LLC, and JUST ENERGY GROUP, INC.,

Plaintiffs,

v.

ELECTRIC RELIABILITY COUNCIL OF TEXAS,
INC. and the PUBLIC UTILITY COMMISSION OF
TEXAS, INC.,

Defendants.

Chapter 15

Case No. 21-30823 (MI)

Adv. Pro. 21-04399 (MI)

**FIRST AMENDED REQUEST OF JUST ENERGY TEXAS LP, FULCRUM RETAIL
ENERGY LLC, HUDSON ENERGY SERVICES LLC, AND JUST ENERGY GROUP,
INC. FOR PRODUCTION OF DOCUMENTS AND DEPOSITION TESTIMONY FROM
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

Pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure and Rule 7026 and 7030 of the Federal Rules of Bankruptcy Procedure, Just Energy Texas LP, Fulcrum Retail Energy LLC, Hudson Energy Services LLC, and Just Energy Group, Inc. (“**Plaintiffs**”) serve the following First Amended Requests for Production on the Electric Reliability Council of Texas (“**ERCOT**”) produce the documents identified in the enclosed requests (the “**Requests**”) for documents and information fully and in accordance with the definitions and instructions set out below provide documents to Plaintiffs on or before February 15, 2022, at the offices of Quinn, Emanuel, Urquhart

¹ A complete list of debtor entities in these chapter 15 cases may be obtained at www.omniagentsolutions.com/justenergy.

& Sullivan, LLP, 711 Louisiana Street, Suite 500, Houston Texas 77002, attn. Kate Kaufmann Shih.

Respectfully submitted,

Dated: January 12, 2022
New York, New York

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

/s/ James C. Tecce

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Counsel to Plaintiffs

DEFINITIONS

As used in these Requests the following words shall have the definitions listed below:

1. **“Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
2. **“Brazos Cases”** means the chapter 11 cases bearing the caption In re Brazos Electric Power Cooperative, Inc., Case No. 21-30725 (DRJ), which is currently proceeding in the United States Bankruptcy Court for the Southern District of Texas, Houston Division and includes any related adversary proceedings, including the adversary proceeding bearing the caption Brazos Electric Power Cooperative, Inc. v. Electric Reliability Council of Texas, Inc., Adv. No. 21-03863 (DRJ).
3. **“Chapter 15 Cases”** means the above-captioned cases commenced under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the **“Bankruptcy Code”**) by Plaintiffs and their affiliated debtors currently pending in the Bankruptcy Court and bearing the caption In re Just Energy Group, Inc., et al., Case No. 21-30823 (MI).
4. **“Communication”** means both the documentary and any non-documentary transmission of facts, data, or any other information, and all attachments and enclosures thereto, whether transmitted verbally, visually, in writing, electronically, or by any other means or media from one Person or entity to another Person or entity; the non-documentary transmission of information shall include, but not be limited to, oral statements, telephone conversations, recorded voicemail messages, negotiations, conferences or meetings, however formal or informal. The term also includes information relating to oral communications and written communications, whether or not any such information or writings were themselves transmitted by their author or any other persons.
5. **“Concerning”** or **“relating to”** (or any variation thereof) mean referring to, relating to, constituting, in connection with, alluding to, supporting, refuting, reflecting, touching upon, involving, pertaining to, explaining, containing, recording, summarizing, showing, disclosing, setting forth, discussing, describing, evaluating, analyzing, or evidencing.
6. **“Debtors”** means Just Energy Group, Inc. and its affiliated debtors that are the subject of the Chapter 15 Cases as well as these entities’ past and present officers, directors, employees, members, agents, representatives, attorneys, consultants, advisors, or other Persons acting or purporting to act under its control or on these entities’ behalf
7. **“Document”** is used in the broadest sense possible and equal in scope to the use of the term in Federal Rule of Civil Procedure 34(a), as made applicable in this Chapter 15 Case by the Bankruptcy Rules, including Bankruptcy Rule 7034. For the avoidance of doubt, the term includes electronically stored information on desktop and portable computers, remote computer servers (i.e., “cloud-based” software), data-storage devices such as external hard drives and USB “thumb” drives, and portable electronic devices, including any cell phone, smartphone, or tablet computing device; and all information stored in or constituting, without limitation, e-mails, text messages, SMS messages, voice recordings, instant messages, social media posts, WhatsApp,

Telegram, Wickr, or Bloomberg chats, and/or communications sent or received via similar programs and applications.

8. “**ERCOT**” means the Electric Reliability Council of Texas, Inc., as well as its past and present officers, directors, employees, members, agents, representatives, attorneys, consultants, advisors, or other persons acting or purporting to act under its control or on its behalf.

9. “**Including**” means including, without limitation.

10. “**Person**” means natural persons, firms, associations, agencies, and/or other organizations and entities cognizable by law, including private corporations, public corporations, partnerships, unincorporated associations, offices, governments, governmental or political entities.

11. “**PUCT**” means the Public Utility Commission of Texas, as well as its past and present officers, directors, employees, members, agents, representatives, attorneys, consultants, advisors, or other persons acting or purporting to act under its control or on its behalf.

12. “**Topics**” shall mean the topics identified in the Requests for Production below.

13. “**Winter Storm Uri**” means the winter storm that had widespread impacts on the United States in February 2021, including in Texas, and including between at least February 10–20, 2021.

14. “**You**” and “**Your**” means ERCOT, as well as its past and present officers, directors, employees, agents, representatives, attorneys, consultants, advisors, or other persons acting or purporting to act under its control or on its behalf.

15. Each reference to a corporation, partnership, joint venture, unincorporated association, government agency, entity, or other fictitious person shall be deemed to include each and all of its current or former subsidiaries, affiliates, predecessors, successors, parents, and assigns, and with respect to each of such entities, including all divisions, departments, or operating units, its officers, directors, shareholders, employees, partners, limited partners, representatives, agents, accountants, attorneys, principals, trustees, consultants, managers, advisors, and any other Person who acted on its behalf.

16. For purposes of the Requests herein, terms not specifically defined shall be given their ordinary meanings as You understand them to be used. Whenever necessary to bring Documents or other information within the scope of these Requests that might otherwise be construed to be outside their scope:

- (a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses;
- (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well;
- (c) the use of a word in its plural form shall be deemed to include within its use the singular form as well;

- (d) the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Requests all Documents that might otherwise be construed to be outside its scope; and
- (e) the terms “all” and “each” shall be construed as both all and each.

INSTRUCTIONS

1. You are instructed to produce all Documents responsive to the Requests that are within Your possession, custody, or control, or in the possession, custody, or control of any other person or entity acting or purporting to act on Your behalf.

2. If there are no Documents responsive to any particular Request, Your response shall state so in writing.

3. If any information requested in a Request is claimed to be privileged or otherwise immune from discovery, or if any Document is withheld from production based on a claim of privilege, immunity, or other ground, furnish a list specifying: (a) the nature of the privilege, immunity, or other ground claimed; (b) the authors of the Document; (c) all persons who received copies of the Document, including the Document’s indicated and blind copy recipients; (d) the date of the Document; (e) the type of Document withheld (e.g., memorandum, letter, report, email, etc.); and (f) the general subject matter of the Document sufficient to enable Plaintiffs to assess the applicability of the claimed privilege, immunity, or other ground for refusal to produce. For each item of information or Document You withhold based on a claim of privilege, immunity, or other ground, identify such information or Document with sufficient particularity for purposes of a motion to compel. Notwithstanding any claim of privilege or immunity, any information or Documents falling within the scope of the Request which are not privileged or immune from production should be produced.

4. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, only that portion of the Document subject to the claim of privilege shall be deleted or redacted from the Document following the instructions in the preceding paragraph and the rest shall be produced.

5. If Your response to a particular Request is a statement that You lack the ability to comply with that Request, You must specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in Your possession, custody, or control, in which case the name and address of any person or entity known or believed by You to have possession, custody, or control of that information or category of information must be identified.

6. A Request shall be deemed to include a request for the entire Document requested, including any and all file folders within which the Document was contained, transmittal sheets or memoranda, cover letters, exhibits, enclosures, comments or attachments to the Document in addition to the Document itself. In the case of email attachments, if either the email or any of its attachments is responsive, produce the email and all of the corresponding attachments.

7. If You object to any part of any Request, You shall state fully in writing the nature of the objection. Notwithstanding any objections, You shall respond to the Request as narrowed in a way that renders it not overbroad in Your opinion, and state the extent to which You have narrowed that Request for purposes of Your response. You shall also comply fully with the other parts of the Request to which You are not objecting.

8. In the event any Document responsive to any Request has been lost, discarded, or destroyed, that Document is to be identified by stating as completely as possible: (a) the authors or creators of the Document; (b) all persons who received copies of the Document, including the Document's indicated and blind copy recipients; (c) the custodian of the Document; (d) the date of the Document; (e) the type of Document (e.g., memorandum, letter, report, email, etc.); (f) the Document's date of destruction or discard, manner of destruction or discard, and the reason for destruction or discard; and (g) the persons authorizing and carrying out such destruction or discarding of the Document. Each Request shall be construed independently and not with reference to any other Request for the purpose of limitation.

9. Unless otherwise indicated, the Requests seek Documents generated, sent, written, or received from **February 10, 2021** through **March 15, 2021**.

10. Each Request shall be deemed to be continuing in nature. If at any time additional Documents or information come into Your possession, custody or control or are brought to Your attention, prompt supplementation of Your response to these Requests is required.

REQUESTS FOR PRODUCTION

1. All internal documents and communications concerning the preparation and issuance of:

(a) The PUCT's February 15, 2021 *Order Directing ERCOT to Take Action and Granting Exception to Commission Rules*, filed in Project No. 51617, Item No. 3, and

(b) The PUCT's February 16, 2021 *Order Directing ERCOT to Take Action and Granting Exception to Commission Rules*, filed in Project No. 51617, Item No. 4 (together, the "**Orders**").

2. All documents and communications exchanged with the PUCT or any third party concerning the preparation and issuance of the Orders.

3. All documents and communications concerning available generation capacity between February 12 and February 16, 2021, before the issuance of the Orders.

4. All documents and communications concerning firm load shed between February 12 and February 16, 2021, before the issuance of the Orders.

5. All documents and communications concerning scarcity pricing signals between February 12 and February 16, 2021, before the issuance of the Orders.

6. Documents you contend are part of the agency record relating to the Orders.

7. With respect to the Brazos Bankruptcy Cases:

(a) all documents that You produced;

(b) copies of deposition transcripts of Your witnesses that were deposed.

8. With respect to any litigation or proceeding concerning the Orders:

(a) all documents that You produced;

(b) copies of deposition transcripts of Your witnesses that were deposed.

DEPOSITIONS TO BE NOTICED

1. Pursuant to Federal Rule 30(b)(6) and Federal Rule of Bankruptcy Procedure 7030, a witness prepared a capable of testifying with respect to the Topics.
2. Bill Magness (Former CEO).