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DOCKET NO. 33500

COMPLAINT OF CONSTELLATION § PUBLIC UTILITY COMMISSION
ENERGY COMMODITIES GROUP, §
INC. AGAINST THE ELECTRIC §
RELIABILITY COUNCIL OF TEXAS § OF TEXAS

**CONSTELLATION ENERGY COMMODITIES GROUP INC.'S COMPLAINT
AGAINST THE ELECTRIC RELIABILITY COUNCIL OF TEXAS**

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE PUBLIC UTILITY
COMMISSION OF TEXAS:

Constellation Energy Commodities Group, Inc. ("Constellation") respectfully submits this Complaint Against The Electric Reliability Council Of Texas ("ERCOT") (hereafter, "the Complaint"). By this proceeding, Constellation seeks review of ERCOT's settlement for Replacement Reserve Service ("RPRS") Under-Scheduling Charges, in which the settlement formula ERCOT uses conflicts with the relevant Protocol and because ERCOT does not correctly apply the settlement formula contained therein. This Complaint is filed within 35 days of the completion of the ERCOT Alternative Dispute Resolution ("ADR") process and is therefore timely. Constellation has attached copies of documents relevant to the dispute.

In support of this Complaint, Constellation shows the following.

I. JURISDICTION

The Commission possesses jurisdiction over this Petition under PURA §§14.001, 39.001, 39.003, and 39.151. This proceeding seeks relief under Proc. R. 22.251.

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II. AFFECTED PARTIES

The relief sought in this Complaint would, if granted, affect ERCOT. Constellation is serving a copy of this Complaint on ERCOT. As required by Proc. R. 22.251 (d)(1)(A), Constellation provides the following information:

James Thorne
General Counsel
ERCOT
7620 Metro Center Drive
Austin, Texas 78744
(512) 225-7000
Fax (512) 225-7020

III. PARTIES AGAINST WHOM RELIEF IS SOUGHT

Constellation seeks relief from decisions that ERCOT has made in implementing the ERCOT protocols, as described more fully below.

IV. STATEMENT OF THE CASE¹

A. Underlying Proceedings. No underlying proceedings exist in this matter, although Constellation and ERCOT Staff did go through the required ADR process under Section 20 of the ERCOT protocols.

B. Identity of Directly Affected Entities or Classes. Assuming that the Commission granted Constellation's requested relief, the decision could affect all qualified scheduling entities ("QSE") ERCOT assessed an RPRS under-scheduling charge. Constellation does not know the identity of these similarly situated entities.

¹ See Proc. R. 22.251 (d)(1)(B).

C. *Concise Description of Conduct From Which Relief is Sought.* Constellation seeks review of ERCOT's settlement of ERCOT systemwide Replacement Reserve Under-Scheduling Charges. In calculating and assessing these charges, ERCOT: (1) applied settlement formulas that did not assess the charge on an ERCOT systemwide basis, but instead applied a formula that calculates the charge on a zonal basis; and (2) at the same time, applied a factor of four in its actual settlement calculations, even though the relevant formula does not include that factor.

D. *Statement of Applicable ERCOT Procedures.* The following ERCOT protocols are relevant to this Complaint: 6.6.3.2.1 (Specific Procurement Process Requirements for Replacement Reserve Service in the Adjustment Period); and 6.9.2.1.1 (Replacement Reserve Under Scheduled Capacity).

F. *Statement Related to Suspension.* The ERCOT Board has corrected the Staff's erroneous formulas by adopting PRR 666 and 687.² These reverse the ERCOT Staff's erroneous settlement methodology, and settle for RPRS on a ERCOT systemwide basis and implement/add in a factor of four. These new PRRs take effect in January. Constellation requests that the Commission order ERCOT Staff to settle until then consistent with the Commission's decisions herein.

G. *Commission Jurisdiction.* The Commission possesses jurisdiction under the statutes cited in Section I of this Complaint. Specifically, that jurisdiction includes the authority to "establish the terms and conditions for the ERCOT independent system operator's authority to

² PRR 666 (Modification of RPRS Under-Scheduled Capacity Charge Calculation); PRR 687 (Replacement Reserve Under-Scheduled Capacity Delineation).

oversee utility dispatch functions after the introduction of customer choice,”³ and to oversee and review “procedures for...accounting for the production and delivery of electricity among generators and all other market participants” within ERCOT.⁴

V. STATEMENT OF ALL ISSUES AND POINTS PRESENTED

This Complaint presents the following issues:

1. Whether the ERCOT Protocols require ERCOT to assess charges for ERCOT systemwide capacity insufficiency on an ERCOT systemwide basis or on a zonal basis.
2. Whether the Replacement Reserve Under-Scheduling settlement formula accurately settles RPRS costs in accordance with the RPRS protocol.
3. Whether ERCOT Staff’s inclusion of a factor of four, not included in the settlement formula, accurately settles RPRS costs.

VI. STATEMENT OF FACTS

Replacement Reserve capacity service is an ancillary service that allows ERCOT to insure that adequate reserve capacity exists. The protocols provide for three different types of Replacement Reserve service – local, zonal, and ERCOT systemwide. This complaint deals with ERCOT systemwide RPRS, by which ERCOT acquires additional capacity when insufficient capacity exists on an ERCOT systemwide basis. It is important to note that ERCOT has not used zonal RPRS since the start of the market due to the inability of the systems to account for zonal insufficiencies. Although the original ERCOT protocols provided for RPRS service, ERCOT did not utilize this service until March 2006 after the systems were built to allow it to function. The

³ PURA §39.151 (i).

original intent of the protocols was to assesses the Replacement Reserve Underschedule Charge to all QSE's that are short on capacity in real time, and who thereby created the need to procure ERCOT systemwide RPRS service. The relevant ERCOT protocol, Section 6.6.3.2.1, provides that ERCOT should assess this charge to those QSEs that are short on an ERCOT systemwide basis. This particular section is the only protocol section addressing RPRS cost responsibility, and therefore provides the only indication regarding how ERCOT should allocate these charges. Subsection (5) states that ERCOT should divide charges related to RPRS into costs related to capacity inadequacy, zonal congestion, and local congestion. Subsection (7) describes how ERCOT should allocate zonal congestion charges. Subsection (8) states how ERCOT should allocate local congestion related charges. Finally, subsection (9) states that ERCOT should uplift all other RPRS-related costs to the market as a whole.

ERCOT began deploying RPRS on a systemwide basis in March 2006. The first time ERCOT ever assessed Constellation RPRS charges was May 11, 2006 based on its determination that Constellation was short on capacity on a zonal, not a systemwide, basis.

In so doing, ERCOT Staff purported to apply the formula contained in Section 6.9.2.1.1. Constellation dispute two aspects of the Staff's settlement methodology. First, although the relevant protocol requires assessing these charges on a ERCOT systemwide basis, the formula implementing the Protocol allocates the charges on a zonal basis. ERCOT Staff does not assess the charge to those QSEs short on capacity on a systemwide basis, but instead to QSEs who are short in any zone, even if they are not short on a systemwide basis. The second ERCOT Staff practice involves its using a factor of four when it calculates settlement charges, even though the

⁴ PURA §39.151 (d).

settlement formulas it purports to apply to do not include that factor. ERCOT ostensibly uses this factor to convert capacity to energy. Including this factor of four significantly increases the RPRS Under-Schedule Charge beyond what a strict application of the settlement formula's literal text would produce.

When ERCOT Staff began applying the settlement formula in the manner described above, the market immediately reacted. Significantly, the ERCOT stakeholders quickly adopted PRRs 666 and 687 to revise this allocation mechanism, in a manner that provided for the factor of four but eliminated the zonal factor from the formulas. ERCOT will formally implement these changes in January, along with other changes to the RPRS market. These changes have resolved the issues giving rise to this Complaint on a going-forward basis beginning in January.

In the course of adopting these two PRRs, the Technical Advisory Committee ("TAC") adopted a resolution that significantly bears on the questions at issue. The resolution, adopted on June 1, 2006, provides that the market intended that ERCOT should assess the Under-Scheduling charge using a QSE's net position.

It was and continues to be the intent of the TAC that an ERCOT wide procurement of RPRS result in charges to market participants that were net short on an ERCOT wide basis. TAC also directs the PRS to expeditiously/urgently process the PRR's necessary to correct this error in the protocol's equations in time for the June ERCOT Board meeting.

Beginning with the first RPRS Under-Scheduling charge that ERCOT assessed Constellation in May 2006, Constellation has contested every settlement statement containing such a charge. Constellation has advanced three alternative methods to calculate the correct RPRS charge – using the intent expressed by TAC, following the settlement formulas as written

(without the factor of four), and using the protocol language as written (uplift to the market). The exact amounts Constellation contests are summarized in the attached table.

Constellation and ERCOT Staff met to discuss these disputes on October 10, 2006, but failed to settle the disputes. ERCOT Staff wrote a letter to Constellation memorializing the agreement that both parties waived any obligation the parties may have to engage in any further ADR processes, and that Constellation should proceed with filing this complaint without further ADR proceedings.⁵

VII. SUPPORT FOR CONTENTIONS⁶

ERCOT Staff's application of this formula causes results inconsistent with the RPRS protocol. Constellation generally recognizes that the settlement process should use a factor of four to produce the intended result, but the market also intended that ERCOT systemwide capacity shortfall costs should be allocated to QSEs on a net ERCOT systemwide basis and not based on zonal shortfalls. ERCOT Staff's allocation methodology is both internally inconsistent and inconsistent with the RPRS protocol.

Initially, the recent TAC resolution and the immediate ERCOT adoption of PRR 666 and 687 demonstrate that the market and stakeholders intended that ERCOT systemwide insufficient capacity charges should be assessed using a QSE's net systemwide position, not on a zonal basis. Thus, as between the Protocol language and the formula, the TAC clearly directed that the Protocol language should govern.

⁵ Letter of Chad Seely, October 11, 2006 (attached).

⁶ Proc. R. 22.251 (d)(1)(E).

Second, ERCOT Staff's methodology produces an illogical result contrary to the market's intent. ERCOT deploys RPRS service to address a systemwide capacity shortfall. It does not deploy zonal RPRS service to address a systemwide capacity shortfall. Indeed, ERCOT has not even opened a zonal-based RPRS market. Accordingly, it makes no sense to assign system wide capacity shortfall costs on a zonal basis. Were that the case, the Protocols would have so provided. Section 6.6.3.2.1 does provide a specific method to allocate costs associated with a zonal capacity shortfall. It allocates such costs on a zonal basis. If the Protocols contemplated assigning systemwide capacity shortfalls on a zonal basis, it simply would have stated that not only are zonal capacity shortfalls to be assigned on the basis of zonal insufficiency, but also would have included systemwide capacity shortfalls within that requirement.

As illustrated in the example below, ERCOT's application of the Protocol formulas causes entities that have completely fulfilled their systemwide capacity requirements to pay systemwide capacity insufficiency charges simply because they may have been shorter than anticipated in a zone, even if they are long on capacity in a different zone. Take for example a supplier that has scheduled 500MW in each of the North and South zones. Suppose that supplier's real time load is 600MW in the North zone and 400MW in the South zone. That supplier has fulfilled its requirement to supply 1,000MW on ERCOT systemwide basis. Yet, because it was short 100MW in the South zone, ERCOT Staff's policy assess it a system wide capacity insufficiency shortfall charge, and does not credit the additional 100MW it supplied in the North zone. This settlement practice is particularly unfair and egregious when one considers the reverse situation. Where another supplier had committed to supply 1,000MW but was short

100MW in the South zone (such that it supplied only 400MW) and supplied 500MW in the North zone, that entity pays exactly the same systemwide capacity shortfall charge as the first entity. This creates the illogical result that a QSE who has fulfilled its systemwide capacity responsibility bears the same systemwide insufficiency charge as a QSE that was short on a systemwide basis. From the standpoint of assigning cost responsibility for creating system wide capacity shortfall, ERCOT policy therefore is inconsistent with the fundamental nature of the service and produces inefficient and unfair results.

Finally ERCOT Staff's position is untenable. ERCOT Staff believes that it must follow as written, without any variance, the exact settlement formula protocol Section 6.9.2.1.1 describes, which contains the zonal factor, notwithstanding that this produces a result inconsistent with the RPRS protocol section. It claims that it must apply the settlement formula exactly as written because it has absolutely no authority to vary at all from ERCOT protocol text as written. On the other hand, it purports to exercise this type of discretion when it uses a factor of four as it calculates settlement charges, even though the protocol formula does not include that factor. When it comes to the factor of four, ERCOT Staff has adopted a pragmatic approach, in which it will vary slightly from the formula's literal wording to produce the result that the market intended. ERCOT cannot have it both ways – either it cannot vary from the literal text of the protocols (and therefore it cannot apply a factor of four) or it may depart within reason from the text of those formulas where necessary to produce a result that implements the market's intent and the Protocol language (as when it implements the factor of four). Put another way, ERCOT cannot hide behind the literal text of the protocols to reduce Constellation's and similarly situated market participant's payments, while it simultaneously adds factors the literal text of the

protocols does not include to further reduce such payments. That rises to the level of arbitrary and capricious action and the Commission should require, at a minimum, that ERCOT adopt a consistent policy in this regard.

VIII. QUESTIONS OF FACT FOR EVIDENTIARY HEARING

At this time, Constellation believes that the dispute involves only the interpretation of the relevant Protocols sections, and that the parties do not dispute the relevant facts. In the alternative, questions of fact could exist concerning the appropriate calculation of disputed settlement charges that ERCOT should refund to Constellation. Constellation believes that the parties can stipulate to these amounts at the appropriate time. Constellation reserves the right to supplement this statement should ERCOT's response or subsequent discovery reveal disputed factual issues.

IX. CONCLUSION

Based on the foregoing, Constellation requests that the Commission enter an Order granting its Complaint, and finding that ERCOT incorrectly calculated Constellation's RPRS Under-Scheduling settlement charges. Constellation suggests three alternative methods to calculate the correct charges, based on the Commission's interpretation of the relevant protocols. The first method is that the Commission could require ERCOT to calculate the Under-Scheduling charges based on the market intent that those entities who were short on a systemwide basis should bear the Under-Scheduling charges. Second, the Commission could require ERCOT to settle according to the literal language of the settlement formula, in which case the zonal factor would continue to apply, but ERCOT would not apply the "factor of four"

in rendering charges. Finally, the Commission could order ERCOT to settle based on the strict language of the relevant protocol, which would require uplifting the cost of capacity insufficiency to the entire market on a load ratio share basis. Constellation submits that any of these alternatives are more appropriate than the current ERCOT settlement policy. Constellation further requests that the Commission order ERCOT to suspend its erroneous interpretation of the Protocols. Constellation further requests the Commission award any all such further relief to which it may be entitled.

Respectfully submitted,

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By: 
Chris Reeder

ATTORNEYS FOR CONSTELLATION
ENERGY COMMODITIES GROUP, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been forwarded by fax, U.S. first class mail, hand-delivery, or by courier service to ERCOT on the 14th day of November, 2006.



Chris Reeder

AFFIDAVIT OF STUART RUBENSTEIN

STATE OF MARYLAND §

COUNTY OF BALTIMORE §

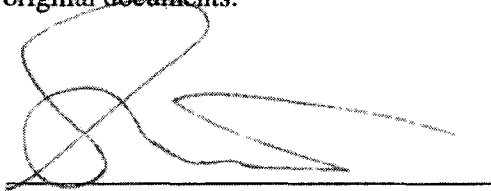
I, Stuart Rubenstein, Chief Operating Officer of Constellation Energy Commodities Group, Inc., first being duly sworn, do hereby state as follows:

"1. I affirm that I have reviewed the Complaint of Constellation Energy Commodities Group Against Electric Reliability Council of Texas ("Complaint"), including all attachments. I further affirm that I have personal knowledge of the facts stated in this Complaint and that I have the authority to submit this Complaint on behalf of Constellation Energy Commodities Group, Inc.

2. I have reviewed the Complaint, including all documents attached to the Complaint.

3. I certify that the factual allegations contained within this Complaint are true and accurate to the best of my knowledge, information, and belief, and that all documents attached to the Complaint are true and correct copies of the original documents."

Further affiant sayeth not.



Stuart Rubenstein

Given under my hand and seal of office this 14th day of November, A.D., 2006.

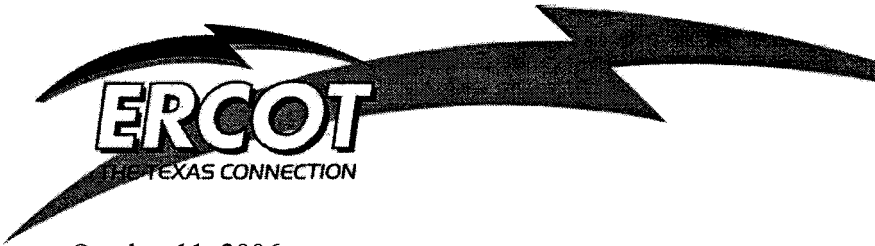


Melissa A. Kerchner

Notary Public in and for the State of Maryland

My Commission Expires On:

9/1/09



Chad V. Seely
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October 11, 2006

VIA EMAIL ONLY

Colleen K. Moore (colleen.moore@constellation.com)
Constellation Energy Commodities Group, Inc.

Re: ADR Nos. 2006-CCG-02 thru 2006-CCG-46 (RPRS Under Scheduled Charges)

Ms. Moore:

Electric Reliability Council of Texas, Inc. ("ERCOT") has reviewed the requests of Constellation Energy Commodities Group, Inc. ("Constellation") for Alternative Dispute Resolution ("ADR") regarding the above-referenced disputes, pursuant to Section 20 of the ERCOT Protocols. On October 10, 2006, ERCOT representatives (Sam Jones, Kent Saathoff, Betty Day, Andy Gallo and I) met with Constellation representatives (Stuart R. Rubenstein, Jean Ryall, Les Dedrickson, Clayton Greer, Mindi Sauter and you) to discuss these disputes.

As explained at the meeting, ERCOT cannot grant Constellation's requests for resettlement. ERCOT, therefore, confirms the agreement the parties made at the meeting to waive any further ADR process requirements, including mediation, and hereby denies the above-mentioned ADR requests. Pursuant to Section 20.3 of the ERCOT Protocols and P.U.C. PROC. Rule 22.251(d), Constellation has thirty-five (35) days from the date of the meeting, *i.e.* until November 14, 2006, to appeal ERCOT's decision directly to the Public Utility Commission of Texas ("PUCT") regarding these matters.

If you have any questions, please feel free to contact me at (512) 225-7035.

Sincerely,

Chad V. Seely

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