

DOCKET NO. 43775

RECEIVED
14 AUG 21 PM 2:44
PUBLIC UTILITY COMMISSION
FILED CLERK

COMPLAINT OF CHAMPION
ENERGY SERVICES, LLC AGAINST
TEXAS-NEW MEXICO POWER
COMPANY AND THE ELECTRIC
RELIABILITY COUNCIL OF TEXAS §
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

**COMPLAINT OF CHAMPION ENERGY SERVICES, LLC AGAINST
TEXAS-NEW MEXICO POWER COMPANY AND THE
ELECTRIC RELIABILITY COUNCIL OF TEXAS**

COMES NOW, Champion Energy Services, LLC (“Champion” or “Complainant”) and pursuant to P.U.C. PROC. R. 22.242 and 22.251, brings this complaint (“Complaint”) against Texas-New Mexico Power Company (“TNMP”) and the Electric Reliability Council of Texas, Inc. (“ERCOT”), and requests that the Public Utility Commission of Texas (“Commission”) find that TNMP violated its Tariff for Retail Delivery Service (“Retail Tariff”) and the ERCOT Protocols, order TNMP to submit corrected settlement data to ERCOT for certain Operating Days¹ to the extent TNMP has not already done so, and order ERCOT to resettle for certain Operating Days. In support of this Complaint, Champion respectfully shows the following:

I. IDENTITY OF PARTIES AND CONTACT INFORMATION

Complainant and its counsel:

Brenda Crockett
Vice President – Market Development and
Regulatory Affairs
Champion Energy Services, LLC
1500 Rankin Road, Suite 200
Houston, Texas 77073
(281) 653-5071 – Telephone
(281) 653-5080 – Facsimile
brenda.crockett@championenergyservices.com

James E. Guy
Jeffrey B. Stuart
SUTHERLAND ASBILL & BRENNAN LLP
One American Center
600 Congress Avenue, Suite 2000
Austin, Texas 78701
(512) 721-2700 – Telephone
(512) 721-2656 – Facsimile
james.guy@sutherland.com
jeffrey.stuart@sutherland.com

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Section 2 of the current ERCOT Nodal Protocols (the “Protocols”).

Complainant requests that copies of all correspondence, pleadings, briefs, and other documents be served on the above-referenced authorized representatives.

To the best of Champion's knowledge, TNMP's authorized representative is:

Scott Seamster
Corporate Counsel
PNM Resources, Inc.
225 E. John Carpenter Freeway, Suite 1500
Irving, Texas 75062
(469) 484-8577 – Telephone
(469) 484-8033 – Facsimile
scott.seamster@pnmresources.com

To the best of Champion's knowledge, ERCOT's authorized representative is:

Bill Magness
General Counsel
Juliana Morehead
Senior Corporate Counsel
Electric Reliability Council of Texas, Inc.
7620 Metro Center Drive
Austin, Texas 78744
(512) 225-7184 – Telephone
(512) 225-7079 – Facsimile
bmagness@ercot.com
juliana.morehead@ercot.com

II. STATEMENT OF THE CASE

Champion brings this Complaint as the result of unsuccessful efforts to resolve a dispute arising from TNMP providing ERCOT with inaccurate settlement meter data, and ERCOT's ultimate reliance on the inaccurate data for wholesale settlement purposes. Due to TNMP's and ERCOT's actions, Champion has paid excess charges for wholesale energy and ancillary services of approximately \$564,000. To address these issues, Champion requests that the Commission (1) find that TNMP violated its Retail Tariff and ERCOT Protocols when it submitted inaccurate meter data to ERCOT for settlement purposes and failed to correct such data when TNMP became aware of the inaccuracies; (2) order TNMP to resubmit accurate meter data for settlement purposes to the extent TNMP has not already done so; and (3) order ERCOT to resettle the market for certain Operating Days because ERCOT relied upon inaccurate meter

data supplied by TNMP. TNMP has acknowledged to Champion that it submitted inaccurate meter data used for settlement purposes for certain Operating Days. It is not clear to Champion whether TNMP has corrected the inaccurate data sent to ERCOT. Champion has attempted to resolve this issue through the applicable ERCOT requirements, including through the MarkeTrak processes and through Alternative Dispute Resolution (“ADR”) procedures, to no avail. Further, because of this error by TNMP, ERCOT has not been able to comply with its statutory duty to ensure that electricity production and delivery are accurately accounted for among generators and wholesale buyers and sellers in ERCOT because ERCOT relied on inaccurate data for wholesale settlement purposes.

Champion submitted a request to ERCOT for ADR pursuant to Section 20 of the Protocols on July 7, 2014. ERCOT informed Champion of its decision not to consider the request for ADR on July 17, 2014 because of Champion’s failure to meet the applicable ERCOT timelines. Therefore, pursuant to P.U.C. PROC. R. 22.251(d), this Complaint is timely filed. All Qualified Scheduling Entities (“QSEs”) could be directly affected by the Commission’s decision. There was no formal underlying proceeding to this Complaint.

The Commission has jurisdiction over this Complaint pursuant to PURA² §§ 14.001, 17.157, and 39.151. Other provisions applicable to this Complaint include P.U.C. SUBST. R. 25.361, P.U.C. PROC. R. 22.251, P.U.C. PROC. R. 22.242, and ERCOT Protocols §§ 1.2, 9, 10, and 20. Complainant does not at this time seek suspension of any specific ERCOT conduct pending the outcome of this proceeding.

III. ISSUES PRESENTED FOR COMMISSION REVIEW

1. Whether TNMP violated its Tariff for Retail Delivery Service and/or ERCOT Protocols when it submitted inaccurate settlement meter data and did not submit corrected data once TNMP became aware of the inaccuracies;
2. Whether the Commission should order TNMP to submit corrected settlement meter data to ERCOT, to the extent TNMP has not already done so; and

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

3. Whether ERCOT should be ordered to resettle the market based on accurate settlement data because it utilized inaccurate data for settlement purposes.

IV. STATEMENT OF FACTS

Champion is a retail electric provider (“REP”) and load serving entity (“LSE”) in ERCOT. During the Operating Days of November 19, 2012 through January 4, 2013 (the “Disputed Operating Days”), Champion was the REP of record for the single electric service identifier (“ESI ID”) at issue. TNMP, the distribution service provider (“DSP”) associated with this ESI ID, meters consumption for the ESI ID through the use of an Advanced Metering System (“AMS”). For the Disputed Operating Days, and at all times that Champion has been the associated REP of record, Champion believes it received correct consumption data from TNMP based upon the Texas Standard Electronic Transaction (“TX SET”) transactions sent by TNMP, and this accurate data was used to bill the end-use customer. However, for settlement purposes, ERCOT relied upon the interval data supplied by TNMP’s Advanced Meter. This settlement AMS interval data for the Disputed Operating Days was inaccurate and on average 300 times higher than the data relied upon by Champion for billing the end-use customer because, according to TNMP, TNMP used an incorrect meter multiplier. Thus, for settlement purposes, ERCOT used data that was substantially higher than the data Champion used to bill the end-use customer. TNMP’s use of the incorrect meter multiplier and ERCOT’s reliance upon inaccurate data for wholesale settlement purposes for this one ESI ID has resulted in Champion paying excess charges for wholesale energy and ancillary services of approximately \$564,000.

On or about December 12, 2013, when Champion compared its backcasted billing volume to its aggregate settlement volume, Champion identified a large discrepancy between the two. Therefore, Champion began reviewing the AMS 727 data and comparing it to the TX SET 867 data to pinpoint the source of the discrepancy. During this review, Champion observed that the energy usage for the consecutive periods of November 17, 2012 through December 18, 2012 and December 19, 2012 through January 17, 2013, as reported in the TX SET 867 data, were significantly less than the Advanced Meter interval usage provided in the AMS 727 data that was used by ERCOT for settlement purposes. During the months of January and February 2014,

Champion contacted multiple individuals at TNMP to address these issues.³ TNMP, both orally and through e-mail, communicated to Champion that the data discrepancy was a result of an incorrect meter multiplier that was used for the meter in question.⁴ TNMP further explained to Champion that TNMP began noticing issues associated with incorrect meter multipliers beginning in November of 2012, and that TNMP implemented an audit process in the latter half of 2013 in an effort to correct these issues.⁵ However, this information was never communicated to Champion personnel until Champion inquired about the discrepancy, and to Champion's knowledge, TNMP has not sent corrected data to ERCOT in order to resettle the Disputed Operating Days.

After unsuccessfully attempting to resolve the issues surrounding the Complaint with TNMP informally, on June 10, 2014, Champion submitted MarkeTrak Issue No. 2189435 to address the apparent differences in the data.⁶ However, Champion and TNMP were not able to resolve this issue through the MarkeTrak process.⁷ Therefore, on July 7, 2014, Champion submitted a request for Alternative Dispute Resolution ("ADR") to ERCOT pursuant to Section 20 of the ERCOT Protocols.⁸ On July 17, 2014, ERCOT ultimately denied Champion's request for ADR as untimely, reasoning that the Protocols require variance issues to be submitted 75 days prior to the True-Up Settlement date of July 3, 2013 (*i.e.*, April 19, 2013), and ADR requests on those variance issues to be submitted within 45 days after the True-Up Settlement Date (*i.e.*, August 17, 2013).⁹ ERCOT did not opine on the feasibility of complying with these deadlines for an issue that was only discovered by Champion on December 12, 2013.

³ See Confidential Exhibit A (e-mail correspondence).

⁴ Confidential Exhibit A at 2-3.

⁵ Confidential Exhibit A at 2.

⁶ As early as December 2013, Champion raised the apparent discrepancies between the TX SET 867 data and the aggregate interval data through MarkeTrak and through informal communications with TNMP.

⁷ A copy of ERCOT's notice to Champion is attached hereto as Confidential Exhibit B.

⁸ A copy of Champion's request for ADR is attached hereto as Confidential Exhibit C.

⁹ Confidential Exhibit B at 1.

V. ARGUMENT

As a result of incorrect meter data supplied by TNMP to ERCOT, Champion has paid approximately \$564,000 more than it would have if TNMP had supplied correct meter data for settlement purposes. ERCOT has refused to address this issue through both the MarkeTrak process and the applicable ADR procedures, and thus has not complied with its statutory duty to ensure that electricity production and delivery are accurately accounted for among Market Participants in ERCOT. For these reasons, Champion requests that the Commission find that TNMP violated its Retail Tariff and ERCOT Protocols, order TNMP to submit corrected settlement meter data to ERCOT, and order ERCOT to resettle for the Disputed Operating Days.

A. **Complaint Against TNMP**

1. **Requirement for Informal Disposition**

The Complaint, as it relates to TNMP, is filed pursuant to P.U.C. PROC. R. 22.242. Complaints submitted pursuant to this rule must be submitted to the Commission for informal resolution prior to the filing of a formal complaint, absent a request for waiver of the informal resolution requirement. Champion hereby requests a good cause waiver from the requirement for submission of the Complaint for informal resolution prior to filing the Complaint. Champion is seeking a Commission finding that TNMP has violated its Retail Tariff and the Protocols and that it be ordered to submit accurate data to ERCOT, relief that cannot be granted through informal disposition. Further, the facts and arguments serving as the basis for Champion's Complaint against TNMP are essentially the same as those forming the basis for Champion's complaint against ERCOT. Therefore, it would be administratively efficient to consider these issues in a single proceeding. The filing of the Complaint against ERCOT on this day is necessitated by the 35-day deadline established by P.U.C. PROC. R. 22.251(d), which does not allow for informal consideration of the issues related to TNMP. Because it would be administratively inefficient to submit two separate complaints involving the same facts and arguments, Champion believes that a good cause waiver is warranted.

2. **TNMP's Violation of its Tariff for Retail Delivery Service and ERCOT Protocols**

TNMP violated Section 4.7.1 of its Retail Tariff. That section provides, in relevant part:

Company shall provide metering services and provide monthly Meter Reads used for Company billing, billing by a Competitive Retailer and ERCOT settlement in accordance with Applicable Legal Authorities and all standards and protocols adopted by the Independent Organization.

Section 10.1 of the Protocols provides that TNMP is the *only* entity authorized to provide Settlement Meter data to ERCOT, and therefore bears the sole burden of—and responsibility for—providing accurate settlement data, without which the ERCOT market could not effectively function. The Protocols support this conclusion, requiring transmission service providers (“TSPs”) and DSPs to provide ERCOT “with Settlement Quality Meter Data¹⁰ for the TSP or DSP Settlement Meters on its system and shall ensure that at a minimum the VEE requirements as specified in the Uniform Business Practices (“UBP”) standard for Validating, Editing, and Estimating have been properly performed on such data.”¹¹ The UBP standards have a number of checks that are designed to prevent issues associated with incorrect meter multipliers.¹² Given the magnitude of the inaccuracies, Champion believes that these checks were either not performed or performed improperly, and as a result, TNMP violated Section 4.7.1 of its Retail Tariff and Section 10.11.3 of the Protocols.

Additionally, Section 5.3.5 of TNMP’s Retail Tariff (“Identification of the Premises and Selection of the Rate Schedule”) requires TNMP to assign and maintain the appropriate “load profile, Meter Reading cycle, and other information necessary for settlement of the wholesale market” for each ESI ID.¹³ Here, TNMP assigned incorrect multiplier information to the ESI ID in question and that information was necessary for proper settlement of the wholesale market.

Moreover, Section 4.7.2 of TNMP’s Retail Tariff requires TNMP to establish its own validation procedures that prohibit extreme value meter readings unless good reason exists for the readings.¹⁴ The interval AMS meter readings for the time period in question were on average

¹⁰ Namely, data that has been “edited, validated, and *is appropriate for the ERCOT Settlement agent to use for Settlement and billing purposes.*” ERCOT Protocol § 2, Definitions (emphasis added).

¹¹ ERCOT Protocol 10.11.3.

¹² EDISON ELECTRIC INSTITUTE, UNIFORM BUSINESS PRACTICES FOR UNBUNDLED ELECTRICITY METERING, VOL. 2, 113-18 (December 5, 2000) *available at* <https://www.naesb.org/pdf/ubp120500.pdf>.

¹³ Retail Tariff Section 5.3.5(3).

¹⁴ Retail Tariff Section 4.7.2.

300 times higher than the actual energy consumption associated with the ESI ID in question. TNMP's validation procedures presumably should have caught this increase and, the fact that they did not, suggests that either the validation procedures were ineffective or nonexistent.

Lastly, Section 4.8.3 of TNMP's Retail Tariff imposes on TNMP a duty to correct previously transmitted data. Pursuant to Subsections (2), (4), and (5), TNMP is required to make any corrected data (including incorrect multipliers) available to the original recipients—together with the reason for the correction—in a timely manner, no matter when the correction is made. TNMP has recognized the fact that it had an incorrect meter multiplier for multiple ESI IDs, but to Champion's knowledge, TNMP has not sent corrected data to ERCOT.

Because TNMP failed to correctly assign and maintain the appropriate information necessary for accurate settlement and submitted inaccurate meter data for settlement purposes to ERCOT, TNMP violated its Tariff and the Protocols, and Champion requests that the Commission issue an order finding TNMP in violation of its Retail Tariff and Protocols, and order TNMP to submit accurate settlement meter data to the extent TNMP has not already done so.

B. Complaint and Petition for Order Compelling Resettlement Against ERCOT

The Complaint, as it relates to ERCOT, is an appeal of ERCOT's decision to refuse to resettle the market for the Disputed Operating Days and for its denial of Champion's request for ADR. As the authorized independent organization certified by the Commission, ERCOT has the explicit duty to "ensure that electricity production and delivery are accurately accounted for among the generator and wholesale buyers and sellers in the [ERCOT] region."¹⁵ Similarly, ERCOT has recognized this duty as one of its four major functions in Protocol 1.2. The Commission has reaffirmed the importance of this obligation in its Substantive Rules and in its oversight of ERCOT's procedures and accounting activities. Furthermore, the Commission has required ERCOT to resettle certain Operating Days when the original settlement was based on inaccurate data, even years after the fact.¹⁶

¹⁵ PURA § 39.151(a)(4); *accord* P.U.C. SUBST. R. 25.361(b).

¹⁶ See *Complaint of Direct Energy, LP and Tenaska Power Services Co. Against the Electric Reliability Council of Texas*, Docket No. 29201, Order (Nov. 5, 2004); *Complaint of TXU Portfolio Management Company LP*

Champion does not believe that a dispute exists with regards to whether or not the data relied upon by ERCOT for settlement purposes for the ESI ID in question was incorrect. TNMP has recognized this fact.¹⁷ As such, there is not a dispute as to whether electricity production and delivery were accurately accounted for during the Disputed Operating Days. Accordingly, the Commission should order ERCOT to resettle for the Disputed Operating Days so that ERCOT has an opportunity to comply with its statutory duty.

ERCOT's rationale for refusing to grant Champion's request for ADR and to resettle the market is that Champion did not comply with the strict deadlines set forth in the Retail Market Guide and the Protocols.¹⁸ However, as was previously noted and is discussed more fully below, Champion was not aware of the error on TNMP's part until December 2013, and thus was not able to comply with the deadlines established by the applicable ERCOT requirements. TNMP's Retail Tariff requires TNMP to "provide metering service and provide monthly Meter Reads used for Company billing, billing by a Competitive Retailer and ERCOT settlement in accordance with Applicable Legal Authorities and all standards and protocols adopted by [ERCOT]."¹⁹ The Protocols make clear that the TSP or DSP is the *only* entity authorized to provide Settlement Meter data to ERCOT.²⁰ Furthermore, the TSP or DSP is responsible for validation, editing, and estimation of meter data before submitting the data to the settlement process.²¹ Thus, the duty and burden to provide accurate settlement data is placed on the appropriate TSP or DSP, as the case may be. As such, it was reasonable for Champion to have believed that the settlement data provided by TNMP would be accurate and for Champion to have relied upon that data.

and TXU Energy Retail Company LP Against the Electric Reliability Council of Texas, Docket No. 31243, Order (Aug. 9, 2006).

¹⁷ Confidential Exhibit A at 2-3.

¹⁸ Confidential Exhibit B.

¹⁹ Retail Tariff Section 4.7.1.

²⁰ ERCOT Protocol 10.1.

²¹ ERCOT Protocol 10.3.3.1.

Additionally, because this error occurred on TNMP's end of the metering transactions, Champion had no reasonable way of knowing that the Advanced Meter data submitted by TNMP was different from the data upon which Champion relied for billing purposes absent implementing costly and time-consuming processes to check the settlement and consumption data on an ESI ID basis (as opposed to comparing the monthly aggregate data). The potential for significant differences between Advanced Meter interval data used for settlement purposes and monthly metering data used for billing purposes is now acknowledged by Market Participants, and ERCOT has recently held multiple workshops in an effort to develop solutions to address these issues.²² Champion has participated in these workshops, and has also implemented company-specific safeguards and made personnel changes and reassignments in an effort to better identify data discrepancies. However, during the time of the Disputed Operating Days, Champion was not aware of the severity of this problem associated with the relatively new Advanced Meters, and has been financially harmed by the inaccurate data submitted by TNMP. This Complaint is therefore distinguishable from cases where the Market Participant requesting resettlement was aware of—or even caused—the error, and yet failed to request resettlement in a timely fashion.²³

Champion has attempted to resolve this dispute informally through the applicable ERCOT procedures. After Champion became aware of the data discrepancy for the Disputed Operating Days, Champion began working with TNMP to determine the cause of the discrepancy. Once the determination was made that it was a result of the use of an incorrect meter multiplier by TNMP, Champion proceeded with submitting a MarkeTrak issue through ERCOT and subsequently, a request for ADR. Unfortunately, these efforts were unsuccessful.

Accordingly, Champion has filed this Complaint and believes that the Commission should order ERCOT to resettle for the Disputed Operating days to alleviate the harm caused to

²² The first AMS Workshop was held on June 27, 2014, and a subsequent AMS Workshop was held on August 4, 2014.

²³ See, e.g., *Complaint of Calpine Power Management, LP Against the Electricity Reliability Council of Texas (ERCOT)*, Docket No. 31362, Order at 10-11 (Jun. 9, 2006) (noting that Calpine was aware of the errors and did not act diligently in raising them); *Complaint of Sempra Energy Solutions Against the Electricity Reliability Council of Texas*, Docket No. 31846, Order at 5-9 (May 15, 2006) (noting that the errors in Sempra's settlement data were self-caused and Sempra could have, but did not, address them in a timely fashion).

Champion and to ensure that ERCOT complies with its statutory duty to ensure that energy production and delivery are accurately accounted for in ERCOT.

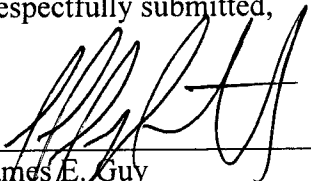
VI. QUESTIONS OF FACT REQUIRING AN EVIDENTIARY HEARING

At this time, Champion does not believe that this Complaint presents any disputed questions of fact. Accordingly, the Commission can decide the issues in this Complaint without referring this proceeding to the State Office of Administrative Hearings.

VII. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Champion respectfully requests that the Commission find that TNMP violated its Retail Tariff and ERCOT Protocols, order TNMP to submit corrected settlement meter data to ERCOT to the extent TNMP has not already done so, and order ERCOT to resettle for the Disputed Operating Days so that ERCOT complies with its obligations to ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in ERCOT. Champion further requests any other relief to which it shows itself entitled.

Respectfully submitted,



James E. Guy

State Bar No. 24027061

Jeffrey B. Stuart

State Bar No. 24066160

SUTHERLAND ASBILL & BRENNAN LLP

One American Center

600 Congress Avenue, Suite 2000

Austin, Texas 78701-3238

(512) 721-2700 (Telephone)

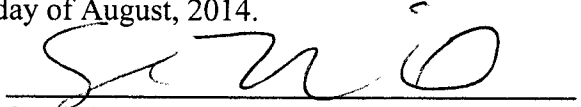
(512) 721-2656 (Facsimile)

Attorneys for Champion Energy Services, LLC

August 21, 2014

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing document has been served on the Commission Staff, ERCOT's General Counsel, TNMP's Authorized Representative, and the Office of Public Utility Counsel by hand delivery, fax, or first class United States mail, postage prepaid on this the 21st day of August, 2014.

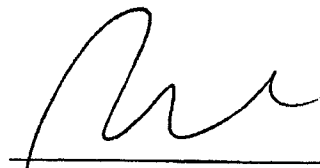


Sarah K. Merrick

VERIFICATION

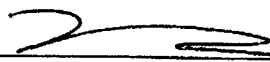
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Brenda Crockett, a duly authorized representative of Champion Energy Services, LLC (“Champion”), who, after being by me first duly sworn, upon her oath stated that she is competent to testify to the matters stated in the Champion’s Complaint Against the Electric Reliability Council of Texas (“ERCOT”) and Texas-New Mexico Power Company and that the facts and statements set forth therein are true and correct to the best of her personal knowledge and belief.



Brenda Crockett
Vice President – Market Development and
Regulatory Affairs
Champion Energy Services, LLC

SWORN TO AND SUBSCRIBED before me on the 20 day of August 2014.



Notary Public In and For the
State of Texas

My commission expires: 11/19/16

