



## MEMORANDUM

To: ERCOT Board of Directors (Board)  
From: ERCOT Legal Department  
Date: April 8, 2021  
Re: Item 9 – ERCOT Decision regarding Exiting Energy Emergency Alert (EEA) Level 3 on Operating Days February 18 and 19, 2021  
Memorandum Addressing Board Authority to Correct Market Prices for Operating Days February 18 and 19, 2021

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For purposes of the discussion of Item 9 on the Board’s April 13, 2021 urgent meeting agenda, one Director has proposed that the Board consider directing ERCOT to correct certain Real-Time Market (RTM) prices for Operating Days February 18 and 19, 2021. This memorandum addresses the present authority of the Board to direct such a price correction. In short, the Board lacks authority to direct such a price correction because ERCOT did not issue a notice identifying a need for any price correction within 30 days of these Operating Days, which is a necessary condition for the Board’s consideration of such a correction under the Protocols.

ERCOT is authorized to correct prices only under certain limited circumstances defined in the ERCOT Protocols. The Protocols governing price corrections in the Day-Ahead Market (DAM) are similar to those governing price corrections in the RTM. *See* ERCOT Protocols §§ 4.5.3, 6.3. Because the price correction at issue in this case would affect only RTM prices, this memorandum addresses only the RTM price correction rules, but substantially similar rules apply to DAM price corrections.

### ***Protocols Addressing Correction of Real-Time Market Prices***

Under the ERCOT Protocols as they existed in February and March 2021,<sup>1</sup> ERCOT was required to initiate a correction of RTM prices as follows:

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<sup>1</sup> Nodal Protocol Revision Request (NPRR) 1024, Determination of Significance with Respect to Price Corrections, revised a number of Protocol provisions governing price corrections. Most importantly, the NPRR introduced a “significance” requirement for ERCOT-initiated price corrections, and specified various price-impact criteria for determining when significance is met. This NPRR was approved by the Board on February 9, 2021 and became effective on April 1, 2021. Because the ERCOT actions (or inactions) at issue in this memorandum preceded the effective date of NPRR1024, those actions are governed by the Protocol language preceding these revisions. However, even if the revised language were applicable, it would not change the conclusion of this memorandum, which relies on language that was not materially revised by NPRR1024.

ERCOT shall correct prices when: (i) a market solution is determined to be invalid, (ii) invalid prices are identified in an otherwise valid market solution, (iii) the Base Points received by Market Participants are inconsistent with the Base Points of a valid market solution, unless accurate prices cannot be determined, or (iv) the Security-Constrained Economic Dispatch (SCED) process experiences a failure as described in Section 6.5.9.2, Failure of the SCED Process.

ERCOT Protocols § 6.3(4). This same provision identifies several examples of circumstances that would justify a price correction, including any “data input error,” “data output error,” “hardware/software error,” or any “inconsistency with the Protocols or the Public Utility Commission of Texas (PUCT) Substantive Rules.” *Id.*

For any RTM pricing error that ERCOT identifies and corrects before 1600 on the second Business Day after the Operating Day, Board approval is not required. ERCOT Protocols § 6.3(5). Otherwise, prices are deemed final at 1600 on the second Business Day after the Operating Day, and any correction to prices must be approved by the Board. ERCOT Protocols §§ 6.3(6), (6)(a), and (6)(c).

To initiate a correction of any Real-Time price that has become final, ERCOT must notify its Market Participants by the end of the 30<sup>th</sup> day after the relevant Operating Day as a condition for Board review of the correction:

[A]fter Real-Time LMPs, Real Time Settlement Point Prices, Real-Time prices for energy metered, Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reliability Deployment Prices, Real-Time Reserve Prices for On-Line Reserves, Real-Time Reserve Prices for Off-Line Reserves, Real-Time On-Line Reserve Price Adders, Real-Time Off-Line Reserve Price Adders and SASM MCPCs are final, if ERCOT determines that prices are in need of correction and seeks ERCOT Board review of such prices, it shall notify Market Participants and describe the need for such correction as soon as practicable but no later than 30 days after the Operating Day. Failure to notify Market Participants within this timeline precludes the ERCOT Board from reviewing such prices.

ERCOT Protocols § 6.3(6)(a) (emphasis added). As the underlined language underscores, the absence of the required notice by ERCOT to its Market Participants removes any basis for Board consideration of the price correction. If ERCOT does provide notice within the required 30-day window that it intends to seek Board review of prices, only then may the Board review and change prices if it determines that the prices were significantly affected by an error. ERCOT Protocols § 6.3(6)(c). The Protocols do not establish a deadline for the Board to direct the price correction.

ERCOT has provided notice of only one potential price correction relating to the February 14-19, 2021 winter storm event. Specifically, on March 17, 2021, ERCOT provided notice that it would seek Board review of RTM prices for 79 SCED intervals on Operating Day February 15, 2021 based on a software error affecting the calculation of the Real Time On-Line Reliability Deployment Price Adder (RTORDPA). *See* [ERCOT Market Notice M-C031721-01](#). Consequently, the Board will consider this price correction at its April 13, 2021 urgent meeting. *See* Board Agenda Item 10 – Real-Time Price Correction for Software Error on Operating Day February 15, 2021 regarding Deployed Emergency Response Service (ERS).

ERCOT has not provided notice of any potential price correction for Operating Days February 18-19, 2021. And because the 30-day window for providing notice of a potential price correction for those Operating Days closed on March 20 and 21, 2021, respectively, the time for initiating Board review of RTM prices pursuant to Section 6.3 of the Protocols has now expired. Therefore, the Board may not now consider any price correction for those two Operating Days. *See* ERCOT Protocols § 6.3(6)(a).

### ***Board Resettlement Authority Under Section 9.5.6***

While the Protocols allow the Board to consider a price correction only if ERCOT has provided notice of the change within 30 days, the Protocols elsewhere authorize the Board to direct a resettlement of the RTM “at any time, to address unusual circumstances.” In particular, Section 9.5.6(1) provides as follows:

ERCOT shall issue a RTM Resettlement Statement using corrected Settlement data due to resolution of Settlement and billing disputes. Any resettlement occurring after an RTM True-Up Statement has been issued must meet the same Interval Data Recorder (IDR) Meter Data Threshold requirements defined in Section 9.5.8, RTM True-Up Statement, and is subject to the same limitations for filing a dispute. Despite the preceding sentence, the ERCOT Board may, in its discretion, direct ERCOT to run a resettlement of any Operating Day, at any time, to address unusual circumstances.

ERCOT Protocols § 9.5.6(1) (emphasis added).

A broad reading of this language might lead one to conclude that the Board may change any input to resettlement—including prices—at any time, no matter how much time has passed since the Operating Day. But this reading should be disfavored because the provision speaks only to ERCOT’s general authority to resettle and does not specifically address the Board’s authority to correct prices, which are only one of many parameters that, if changed, could justify a resettlement. Reading Section 9.5.6(1) to allow price corrections at any time based solely on “unusual circumstances” would effectively undermine Section 6.3(6)(a), which is clearly intended to limit both the circumstances that may justify a price correction and the time within which such a correction must be initiated. Such a reading would be contrary to basic rules of legal construction, which provide that a

specific provision should be read as an exception to a more general provision if the two provisions would otherwise conflict. *See* TEX. GOV'T CODE § 311.026(a) (“If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.”). This reading would also be contrary to the principle that, when possible, provisions should not be read in a way that renders any of their language meaningless. *See Marks v. St. Luke’s Episcopal Hosp.*, 319 S.W.3d 658, 663 (Tex. 2010) (In interpreting a statute, one must “giv[e] effect to all words so that none of the statute’s language is treated as surplusage.”). More specifically, reading Section 9.5.6(1) this broadly would render meaningless the express intention in Section 6.3(6)(a) that ERCOT’s “[f]ailure to notify Market Participants within this timeline precludes the ERCOT Board from reviewing such prices.”

The apparent purpose of the last sentence in Section 9.5.6(1) is not to permit resettlement for any reason at any time, but rather to simply clarify that, in circumstances that the Board deems sufficiently “unusual,” the Board may choose to direct a resettlement even if ERCOT has not yet obtained the minimum quantity of Interval Data Recorder (IDR) meter data that would otherwise be required by the directly preceding sentence in Section 9.5.6(1).<sup>2</sup> This conclusion is supported by the fact that the sentence in question begins with the phrase “[d]espite the preceding sentence,” which signals an intention to create an exception to the minimum meter data requirement in that preceding sentence—not to supply the Board with broad authority to change all market pricing outcomes based on a substantive re-evaluation of the facts. In fact, Section 9.5.6 is not otherwise about the substance of the resettlement, but simply the process of issuing RTM Resettlement Statements, as its title (“RTM Resettlement Statement”) suggests.

This conclusion is further corroborated by the limited context of the Protocol Revision Request (PRR) that introduced this language in 2002—namely PRR330, IDR Meter Data for True-Up Settlement. PRR330 was intended solely to provide clarity as to the quantity of IDR meter data that would be required before ERCOT would be permitted to run True-Up Settlement and Resettlement. *See* [PRR830 PRS Report](#), May 22, 2002. Nothing in the record suggested this provision was intended to provide the Board far-reaching authority to correct prices without timely notice months after the Operating Day.

### ***Other Mechanisms for Changing Prices***

As noted above, the Board lacks authority to direct a price correction for which ERCOT has not provided the noticed required by Section 6.3(6)(a). However, this does not mean that prices for Operating Days February 18-19, 2021 cannot be changed through other means. In fact, the same provision that establishes the Board’s limited price correction authority recognizes that other circumstances may require corrections to RTM

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<sup>2</sup> The preceding sentence in Section 9.5.6(1) references the True-Up Settlement meter data threshold in Section 9.5.8, which provides as follows: “ERCOT shall issue RTM True-Up Statements 180 days following the Operating Day, if ERCOT has received and validated usage data from at least 99% of the total number of Electric Service Identifiers (ESI IDs) with a BUSIDRRQ Load Profile Type code and if ERCOT has received and validated usage data from at least 90% of the total number of ESI IDs with a BUSIDRRQ Load Profile Type code from each Meter Reading Entity (MRE) representing at least 20 Interval Data Recorder (IDR) ESI IDs (IDR Meter Data Threshold).”

prices—namely, when the PUCT orders a price correction or when ERCOT grants a request for Alternative Dispute Resolution (ADR) pursuant to Section 20 of the Protocols:

[N]othing in this section shall be understood to limit or otherwise inhibit any of the following:

- (i) ERCOT’s duty to inform the PUCT of potential or actual violations of the ERCOT Protocols or PUCT Rules and its right to request that the PUCT authorize correction of any prices that may have been affected by such potential or actual violations;
- (ii) The PUCT’s authority to order price corrections when permitted to do so under other law; or
- (iii) ERCOT’s authority to grant relief to a Market Participant pursuant to the timelines specified in Section 20, Alternative Dispute Resolution Procedure.

ERCOT Protocols § 6.3(6)(a).

ERCOT has received numerous Settlement and Billing Disputes related to Operating Days February 14-19, 2021, and these disputes may ripen into ADR proceedings that could impact prices that have already become final. *See* ERCOT Protocols § 20.2(1)(a). Of course, any ADR proceeding addressing pricing outcomes on these Operating Days would likely be challenged at the Public Utility Commission of Texas (PUCT), and the PUCT’s order in such a proceeding could require a different settlement outcome, as could any court decision in a proceeding to review the PUCT’s order. *See* 16 TEX. ADMIN. CODE § 22.251 (In any proceeding challenging ERCOT conduct, PUCT may “grant[] the relief the commission deems appropriate.”); TEX. GOV’T CODE § 2001.174 (describing relief available in suits for judicial review under Administrative Procedure Act).

Alternatively, the PUCT could choose to take up the issue on its own motion, pursuant to its “complete authority” over ERCOT, and direct ERCOT to correct prices and resettle the market. TEX. UTIL. CODE § 39.151(d). This conclusion is consistent with the Attorney General’s recent opinion construing this statute “to allow the Public Utility Commission to order ERCOT to correct prices for wholesale electricity and ancillary services during a specific timeframe.”<sup>3</sup> And as with any PUCT order in a case challenging ERCOT’s resolution of an ADR proceeding, the PUCT’s order would be subject to judicial review, which could result in changes to prices. TEX. UTIL. CODE § 15.001. Lastly, the Texas Legislature may change the law to direct the PUCT and/or ERCOT to correct prices. *See, e.g.*, Texas Senate Bill 2142, Relating to Correcting the Prices of Wholesale Power and Ancillary Services Sold in the ERCOT Market during a Certain Period.

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<sup>3</sup> Tex. Atty. Gen. Op. No. KP-0363, <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2021/kp-0363.pdf>.