



**Attached are the Public Comments timely received by ERCOT on April 12, 2021 in relation to Agenda Item 9.**

**From:** [Shane Cawood](#)  
**To:** [Corporate](#)  
**Subject:** Public Comments for 4/13 ERCOT Urgent Board of Directors Meeting (Agenda Item #9)  
**Date:** Monday, April 12, 2021 4:56:31 PM

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**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

Please accept this as my request to provide public comments in the ERCOT Board meeting tomorrow, 4/13.

1. Your name
  - Shane Cawood
2. The company or organization that you represent, if applicable
  - Hartman Income REIT
3. Your preferred email address
  - [scawood@hi-reit.com](mailto:scawood@hi-reit.com)
4. The agenda item for which you plan to provide comment
  - **Agenda Item #9 - ERCOT Decision regarding Exiting Energy Emergency Alert (EEA) Level 3 on Operating Days February 18 and 19, 2021**
5. The general substance of your comment
  - **Plead for repricing in alignment with IMM recommendations.**

Shane Cawood | Director of Operations - Asset Services

**HARTMAN INCOME REIT**

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**From:** [Boldt, Michael](#)  
**To:** [Corporate](#)  
**Subject:** April 13, 2021 Board Meeting, Agenda Item No. 9  
**Date:** Monday, April 12, 2021 4:17:07 PM  
**Attachments:** [Exelon letter - ERCOT 4-13-21 Board Meeting - final.pdf](#)

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1. Michael Boldt
2. Exelon Generation Company, LLC
3. [michaelboldt@eversheds-sutherland.us](mailto:michaelboldt@eversheds-sutherland.us)
4. Agenda Item No. 9
5. General substance of comments are included in attached letter

Thank you for the opportunity to provide these comments.

Sincerest regards,

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April 12, 2021

**Via Email**

ERCOT Board of Directors  
corporate@ercot.com

Re: April 13, 2021 Board Meeting, Agenda Item No. 9, ERCOT Decision regarding Exiting Energy Emergency Alert (EEA) Level 3 on Operating Days February 18 and 19, 2021

Dear ERCOT Board Members:

Winter Storm Uri brought subzero temperatures, record snowfall, and bitter conditions that knocked out over **40,000 MW** of generation capacity. ERCOT employees worked feverishly to ensure the stability of the grid, and their tireless efforts were instrumental in preventing – by mere minutes – a doomsday black start scenario. This was, without any exaggeration, a truly unusual event.

ERCOT also implemented orders issued by the Public Utility Commission of Texas (“Commission”) that required ERCOT to “ensure that firm load that is being shed in EEA3 is accounted for in ERCOT’s scarcity pricing signals.”<sup>1</sup> ERCOT did so by setting market prices at the high system-wide offer cap (“HCAP”) of \$9,000/MWh, though an adjustment to one of the input values to the *Real-Time Reliability Deployment Price Adder*, Protocol 6.5.7.3.1. This adjustment began at approximately 10:15 p.m. on February 15, and continued until 9 a.m. on February 19, roughly 33 hours after ERCOT recalled firm load shed. But without firm load shed, there was nothing to account for under the terms of the Commission’s order. As the Independent Market Monitor has recognized, compliance with the Commission’s order required cessation of the pricing intervention once the load shed direction was recalled.

The ERCOT board retains the authority to correct this mispricing issue. While the ERCOT board’s authority to correct prices is, in certain circumstances not applicable here, constrained by the 30-day notice rule contained in former Protocol Section 6.3(6)(a), the Board may, “in its discretion, direct ERCOT to run a resettlement of any Operating Day, at any time, to address unusual circumstances.” Nodal Protocol § 9.5.6(1). This is just such an unusual circumstance. Never before has the Texas electricity market suffered such a cataclysmic event, nor is it likely that we will ever see anything like it again.

Attempts to constrain the Board’s authority under Section 9.5.6(1) by appeal to the “specific-over-general” canon of construction are flawed. As the Texas Supreme Court has made clear, “the specific-controls-over-general maxim applies only when overlapping

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<sup>1</sup> *Calendar Year 2021, Open Meeting Agenda Items Without an Associated Control Number*, Project No. 51617, Order at 1 (Feb. 15, 2021); *id.*, Order at 1 (Feb. 16, 2021).

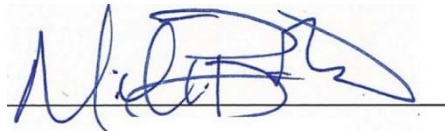
statutes cannot be reconciled.” *Tex. Indus. Energy Consumers v. CenterPoint Energy Houston Elec., LLC*, 324 S.W.3d 95, 107 (Tex. 2010). Former Section 6.3(6)(a) and Section 9.5.6(1) can be read together and applied in a manner that gives effect to both.

Former Section 6.3(6)(a) applies to ERCOT-initiated price reviews, while Section 9.5.6(1) applies to Board-directed resettlements. Former Section 6.3(6)(a) provides: “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. Failure to notify Market Participants within this timeline precludes the ERCOT Board from reviewing such prices.” (emphasis added). This provision provides a procedural deadline for ERCOT-initiated price corrections, not a constraint on the general authority of the Board. The 30-day deadline is applicable when ERCOT has made the determination that prices should be corrected and seeks Board review. Here, ERCOT has not initiated any such review process, and former Section 6.3(6)(a) is inapplicable.

Because Section 6.3(6)(a) is inapplicable, effect can be given to Section 9.5.6(1) without creating any conflict. As described above, these are “unusual circumstances” that warrant the Board’s exercise of its discretion “to direct ERCOT to run a resettlement” of the February 18 and 19 Operating Days. Nodal Protocol § 9.5.6(1) (emphasis added).

Thank you for the opportunity to provide these comments.

Very Truly Yours,



Michael Boldt  
Attorney for Exelon Generation Company,  
LLC