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**COMPLAINT OF DGSP2, LLC  
AGAINST THE ELECTRIC  
RELIABILITY COUNCIL OF TEXAS,  
INC.**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMPLAINT OF DGSP2, LLC AGAINST  
THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. AND REQUEST FOR  
GOOD CAUSE EXCEPTION**

COMES NOW, DGSP2, LLC ("DGSP2" or "Complainant") and pursuant to P.U.C. PROC. R. 22.251,<sup>1</sup> brings this complaint ("Complaint") against the Electric Reliability Council of Texas, Inc. ("ERCOT"), and requests that the Public Utility Commission of Texas ("Commission") find that ERCOT violated the ERCOT Protocols<sup>2</sup> and that the Commission order ERCOT to re-compute settlement data and clearing prices for February 15 and 16, 2021, and order ERCOT to resettle markets to include these price corrections for February 15 and 16, 2021. Additionally, given the urgency of the matter and the potential magnitude of the issues associated with this docket, DGSP2 respectfully requests that the Commission issue a good cause exception to the requirement that DGSP2 first enter into alternative dispute resolution with ERCOT prior to filing this Complaint. In support of this Complaint and Motion, DGSP2 respectfully shows the following:

**I. IDENTITY OF PARTIES AND CONTACT INFORMATION**

Complainant and its counsel:

Barry Hammond  
General Counsel  
DGSP2, LLC  
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<sup>1</sup> 16 Tex. Admin. Code § 22.251 (TAC).

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings set forth in Section 2 of the current ERCOT Nodal Protocols (the "Protocols").

To the best of DGSP2's knowledge, ERCOT's authorized representative is:

Chad V. Seely  
Vice President and General Counsel  
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## II. STATEMENT OF THE CASE

The recent Texas winter storm that struck the ERCOT region continues to impact all Market Participants in ERCOT, and parties continue to identify problems that need to be addressed. As it relates to this Docket, both Commission Chairman Deann Walker and ERCOT CEO Bill Magness have noted in recent Legislative Hearings that ERCOT's Security-Constrained Economic Dispatch ("SCED") related systems and algorithms suffered a "glitch" in the periods in which load was shed pursuant to an Energy Emergency Alert-3 ("EEA3") instruction such that the market clearing price of energy was artificially depressed in a way not contemplated in the ERCOT Protocols. The EEA3 event began at 1:20 AM on February 15, 2021, and ended on February 19, 2021.<sup>3</sup> On February 16, 2021, the Commission instructed ERCOT to correct this error and directed "ERCOT to ensure that firm load that is being shed in EEA3 is accounted for in ERCOT's scarcity pricing signals" *after* the February 16 order. The same phenomenon underlying the Commission's instruction to correct pricing after February 16 existed during the firm load shed in the EEA3 *prior* to the February 16 order. Because the February 16 order corrects the pricing glitch on a forward-looking basis, DGSP2 does not seek a suspension of ERCOT's conduct at this time. However, there is a two-day period in which ERCOT algorithms incorrectly applied the ERCOT Protocols and the ERCOT market design, and that error currently remains uncorrected.

The Commission already has noted that the load shed during the EEA3 event caused prices to artificially drop by approximately 85% (instead of pricing at the offer cap of \$9,000/MWh,

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<sup>3</sup> See *Review of February 2021 Extreme Cold Weather Event – ERCOT Presentation*, Bill Magness President & Chief Executive Officer ERCOT, Texas Legislative Hearings: Senate Business and Commerce Committee House Joint Committee on State Affairs and Energy Resources (Feb. 25, 2021) available at [http://www.ercot.com/content/wcm/lists/226271/Texas\\_Legislature\\_Hearings\\_2-25-2021.pdf](http://www.ercot.com/content/wcm/lists/226271/Texas_Legislature_Hearings_2-25-2021.pdf)

prices were around \$1,200/MWh in many periods).<sup>4</sup> DGSP2 has been directly affected by this anomaly as its Resources have not been properly compensated as required by the ERCOT Nodal Protocols.

DGSP2 owns Resources that were deployed in ERCOT during the EEA3 event and were subject to the pricing "glitches" that occurred, including on February 15 and 16, 2021. As a result, DGSP2's Resources have been assigned significantly and incorrectly understated prices which would materially affect DGSP2's earnings.

The Commission has jurisdiction over this Complaint pursuant to PURA § 39.151 and 16 TAC § 22.251.

### **III. ISSUES PRESENTED FOR COMMISSION REVIEW**

1. Whether ERCOT energy prices clearing at less than \$9,000/MWh,<sup>5</sup> during a load shed event conflicts with the fundamental design of the ERCOT market as established by the Public Utility Regulatory Act ("PURA"), Commission Rules, and the ERCOT Nodal Protocols.
2. Whether energy prices between the beginning of the EEA3 load shedding in ERCOT and the February 16 Commission Order should be corrected to match the pricing anticipated by the market design established by PURA, Commission Rules, and the ERCOT Nodal Protocols and which is being applied since the February 16 Order.
3. Whether Qualified Scheduling Entities ("QSEs") with ERCOT accounts that held underpriced energy are entitled to corrected settlement from ERCOT.

### **IV. STATEMENT OF FACTS**

On February 15, 2021, ERCOT declared its highest state of emergency, an EEA3, due to exceptionally high electric demand exceeding supply. ERCOT directed transmission operators in the ERCOT region to curtail more than 10,000 megawatts (MW) of firm load.

Following the event, Chairman Walker and ERCOT CEO Mr. Magness each testified to House and Senate Committees that a pricing glitch existed during the EEA3 event. In that

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<sup>4</sup> *Oversight of the Electric Reliability Council of Texas*, Project No. 51617, Second Order Directing ERCOT to Take Action and Granting Exception to Commission Rules (Feb. 16, 2021) at 1.

<sup>5</sup> \$9,000/MWh is the current system-wide offer cap pursuant to 16 TAC § 25.505(g)(6)(B).

testimony at the Legislature, Chairman Walker and CEO Magness explained that pricing anomalies resulted from software "glitches."

The effects of the glitch on February 15 were particularly stark and adversely affected Market Participants who relied upon the ERCOT Protocols in making hedging decisions. For example, on a February 26, 2021 earnings call, Vistra Energy Corporation ("Vistra") CEO Curt Morgan disclosed,

- "The other thing that hurt us is that there was a pricing glitch on Monday. ... Price was trading at LMPs, in some instances, \$1,000 below our cost."
- "Nobody expected when we're in a EEA3 that the price will be anything, but at the cap. How could it be when you have negative reserves. It absolutely is preposterous, and yet that's what happened."<sup>6</sup>

The price of Vistra stock dropped by more than 24% following that earnings call.

On March 1, 2021, the Independent Market Monitor ("IMM") filed a letter in Project No. 51812 that also identified flaws in ERCOT's pricing algorithms.<sup>7</sup> The IMM noted the flaw in the context of the ancillary services ("AS") market and the fact that ERCOT's systems could not perform the "failure to provide" settlement and ERCOT did not take manual actions to effectuate "failure to provide" settlements. The IMM recommended that "ERCOT should ... resettle the day-ahead market to cap the AS prices first, then initiate the 'failure to provide' settlement."<sup>8</sup>

The IMM also in the March 1 filing correctly noted that the ERCOT market sets the Value of Lost Load ("VOLL") at \$9,000/MWh.<sup>9</sup> It was on this basis that the IMM recommended the

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<sup>6</sup> *Vistra Energy Corp. (NYSE: VST) Q4 2020 earnings call dated Feb. 26, 2021*, available at <https://news.alphastreet.com/vistra-energy-corp-vst-q4-2020-earnings-call-transcript/>. A copy is attached as Attachment A. See also, *Vistra Reports 2020 Results Above Top End of Raised Guidance Range and Estimates One-Time Impact of Winter Storm Uri*, Feb. 26, 2021, available at <https://finance.yahoo.com/news/vistra-reports-2020-results-above-113000169.html> ("While the financial impacts of Winter Storm Uri to Vistra are not yet finalized, Vistra management preliminarily estimates the one-time adverse impact will be in the range of \$900 million to \$1,300 million.")

<sup>7</sup> *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Project No. 51812, Independent Market Monitor Letter to Commissioners (Mar. 1, 2021).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

repricing of ancillary services at the \$9,000/MWh cap. This focus on the VOLL should hold true equally for energy provided during the EEA3 load shed, which should be entitled to pricing at the same \$9,000/MWh level. As noted in this Complaint, the price of energy during the load shed often did not converge on the \$9,000/MWh. As such, if the ancillary services market should be repriced, so too should the energy market in the same period.

## V. ARGUMENT

### A. **Good cause exists to bypass the use of Applicable ERCOT Procedures.**

DGSP2 asks that the Commission apply Procedural Rule 22.251(c)(2) to hear this case without waiting for Applicable ERCOT Procedures. Procedural Rule 22.251(c) includes a general requirement that a party seek to use Applicable ERCOT Procedures prior to filing a formal complaint at the Commission. Under normal circumstances, price corrections and resettlement could be achieved through ERCOT processes such as Alternative Dispute Resolution under Nodal Protocols Section 20 or the dispute process in Nodal Protocols Section 9.14.4. However, current circumstances are far from normal and DGSP2 asks the Commission to apply Procedural Rule 22.251(c)(2) to hear this Complaint.

Under Procedural Rule 22.251(c)(2), the Commission may waive the requirement for using the Applicable ERCOT Procedures where there is good cause, which certainly exists in this case. First, the fundamental issues related to this Complaint already have been posed at the Commission. The Complaint asks that the price correction that the Commission granted after February 16 also apply to the first two days of the same EEA3 event. Addressing the Complaint at the same time as the Commission addresses other price correction issues lessens the potential for conflicting findings or unintended effects. Second, a prompt resolution to this issue will provide DGSP2 and other Market Participants with vital clarity regarding market pricing for generation on February 15 and February 16, 2021. Requiring this Complaint to first go through the dispute resolution process at ERCOT before being considered by the Commission would likely significantly delay resolution of the issue. The two days of trading implicates amounts large enough that a Market Participant as large as Vistra needed to discuss it on an earnings call. Prompt consideration of the issue can have significant effect on the cash flow and viability of Market Participants. Similarly, secondary markets like the Intercontinental Exchange ("ICE") rely on ERCOT pricing to settle

trades and a prompt resolution will help reduce the risk that the final prices in the ERCOT market and the secondary markets might differ. Waiting for the ERCOT processes would prolong resolution of this issue to the detriment of many, and DGSP2 asks that the Commission apply the waiver provided in Procedural Rule 22.251(c)(2). Third, the Commission is likely to be asked to consider issues related to the facts in this Complaint, and scattering consideration and resolution of these issues risks inconsistent resolutions and inefficiency.

**B. ERCOT must comply with its own Protocols, including in applying the offer cap.**

Market Participants and ERCOT alike must comply with the ERCOT Nodal Protocols. The Standard Form Market Participant Agreement, which appears as Section 22, Attachment A of the Nodal Protocols, expressly requires ERCOT to comply with the Nodal Protocols.<sup>10</sup> DGSP2 has no reason to believe that ERCOT's violations of its Protocols was a purposeful act, but, nonetheless, the violation that led to the mispricing of energy during the EEA3 event had significant impacts and must be fully corrected.

The Nodal Protocols plainly require the correction of the pricing glitches that occurred on February 15-16, 2021. Section 6.3(4) of the Nodal Protocols explain:

***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. The following are some reasons that may cause these conditions.***

(c) **Hardware/Software error:** These include unpredicted hardware or software failures, planned market system or database outages, planned application or database upgrades, software implementation errors, and failure of the market run to complete.

(d) **Inconsistency with the Protocols or Public Utility Commission of Texas (PUCT) Substantive Rules:** Pricing errors may occur when specific circumstances result in prices that are in conflict with such Protocol language or the PUCT Substantive Rules. (emphasis added)

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<sup>10</sup> Nodal Protocols Sec. 22, Attachment A at Sec. 6(A).

Section 6.3(4) plainly explains that ERCOT must correct prices when events like those on February 15-16 occur. First, as noted in the Commission's February 16 Order, the pricing failed to produce a market solution as it undervalued Resources when the market situation was so dire that load shedding was required. Second, Section 6.3(4)(c) expressly cites hardware and software errors as a basis for correcting prices. In testimony at the Legislature, Chairman Walker and CEO Magness explained that the pricing anomalies resulted from software "glitches." As discussed below, the errant pricing also conflicts with several Commission Substantive Rules, calling for correction under Section 6.3(4)(d). To date, ERCOT has not corrected the pricing on February 15-16 though the Nodal Protocols clearly demand this action, and the "glitch" is known. As such, it appears that ERCOT has violated Section 6.3(4) of the Nodal Protocols.

**C. ERCOT's failure to accurately price electric energy during the recent EEA3 event violates PURA and Commission Rules.**

The continued use of pricing that is acknowledged to conflict with basic economic principles conflicts with Commission Rules. Substantive Rule 25.501(a) plainly explains:

Except as otherwise directed by the commission, ERCOT shall determine the market clearing prices of energy and other ancillary services that it procures through auctions and the congestion rents that it charges or credits, using economic concepts and principles such as: shadow price of a constraint, *marginal cost pricing*, and *maximizing the sum of consumer and producer surplus*. (emphasis added)

Applying an incorrect market clearing price that may be as much as 85% too low conflicts with marginal cost pricing and with the maximization of the combined consumer and producer surplus. With the significant spikes in natural gas prices during the EEA3 event, the artificially low ERCOT prices may not have consistently covered fuel costs, much less the other marginal costs associated with the generation of electricity.

Similarly, Substantive Rule 25.501(j) provides, "ERCOT shall apply pricing safeguards to protect against market failure, including market power abuse, consistent with direction provided by the commission." The events of the EEA3 period constitute a market failure, and in its February 16 Order, the Commission found as much by finding that the ERCOT computers failed to produce proper pricing results.

**D. Precedent exists for the correction of pricing due to ERCOT computer glitches.**

Price correction to address computer errors has occurred in ERCOT previously. On December 10, 2019, the ERCOT Board of Directors approved a Day-Ahead Market ("DAM") price correction for Operating Days September 16-23, 2019, pursuant to ERCOT Protocol Section 4.5.3(5), after determining that prices on those days were significantly affected by a software error.<sup>11</sup> ERCOT then resettled the DAM for the relevant Operating Days pursuant to this authorization by re-solving the DAM with the software error corrected and then applying the resulting prices to the MW volumes originally awarded in the DAM. Three months elapsed between the Operating Days and the correction in this 2019 instance, which illustrates that short-term reliance on preliminary pricing reports should not be determinative in the effort to set prices accurately. DGSP2 asks the Commission to order similar resolution of the computer "glitches" during the EEA3 which all seem to acknowledge occurred. DGSP2 also notes that any potential reliance on the price levels reported in September 2019 yielded to the higher priority of achieving accurate pricing that complied with the Protocols.

**VI. QUESTIONS OF FACT REQUIRING AN EVIDENTIARY HEARING**

At this time, DGSP2 does not believe that this Complaint presents any disputed questions of fact. Accordingly, the Commission can decide the issues in this Complaint through briefing and/or argument without referring this proceeding to the State Office of Administrative Hearings.

**VII. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, DGSP2 respectfully requests that the Commission find that as result of its computer glitches ERCOT violated the ERCOT Nodal Protocols, Commission Rules, and PURA; that the Commission order ERCOT to re-compute settlement data and clearing prices for February 15 and February 16, 2021; and that the Commission order ERCOT to resettle those days. DGSP2 further requests any other relief to which it shows itself entitled.

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<sup>11</sup> A copy of the ERCOT Board Resolution is attached as Attachment B.



Respectfully submitted,

/s/Barry Hammond  
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*Attorney for DGSP2, LLC*

**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, and the Office of Public Utility Counsel by hand delivery, fax, or first class United States mail, postage prepaid on this the 5th day of March, 2021.

/s/ Barry Hammond

Barry Hammond