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<b>PRIORITY POWER MANAGEMENT,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LLC'S COMPLAINT AND APPEAL</b>	<b>§</b>	
<b>OF THE DECISIONS OF THE</b>	<b>§</b>	
<b>ELECTRIC RELIABILITY COUNCIL</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF TEXAS</b>	<b>§</b>	

**PRIORITY POWER MANAGEMENT LLC'S COMPLAINT AND APPEAL OF THE  
DECISIONS OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS**

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**PRIORITY POWER MANAGEMENT § PUBLIC UTILITY COMMISSION  
LLC’S COMPLAINT AND APPEAL §  
OF THE DECISIONS OF THE §  
ELECTRIC RELIABILITY COUNCIL § OF TEXAS  
OF TEXAS §**

**PRIORITY POWER MANAGEMENT LLC’S COMPLAINT AND APPEAL OF THE  
DECISIONS OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS**

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

Pursuant to 16 TAC § 22.251, Priority Power Management, LLC (“PPM”) complains of and appeals certain conduct and decisions by the Electric Reliability Council of Texas (“ERCOT”) in Alternative Dispute Resolution (“ADR”) proceedings<sup>1</sup> held pursuant to Section 10 of the Market Participant Agreement between PPM and ERCOT and Section 20 of the ERCOT Nodal Protocols. The ADR proceedings are related to various Settlement and Billing Disputes during the severe winter weather event in February 2021 known as Winter Storm Uri (“Uri”). The ADR proceedings concluded on February 28, 2022, and no more than thirty-five days have elapsed since the completion of the ADR proceedings. Accordingly, this complaint and appeal is timely filed. By this proceeding, PPM seeks review of the decisions by ERCOT to deny PPM’s recovery of charges incurred as a result of Uri.

**I. EXECUTIVE SUMMARY**

PPM is an ERCOT Market Participant (“MP”) operating as a qualified scheduling entity (“QSE”) and was the QSE for Resource Entities with Load Resources that had ancillary service obligations for most of the intervals during the Winter Storm Uri Energy Emergency Alert Level 3 (“EEA3”) event, occurring February 15 through February 19, 2021. At approximately 1:09AM

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<sup>1</sup> ADR No. 2021-PPM-01, the ADR Settlement Dispute numbers associated with this appeal are 1-2326761837 and 1-2326761821. Both were consolidated as noted below.

on February 15, 2021, PPM received a curtailment instruction to PPM's Qualified Scheduling Entity (QSE) for a Responsive Reserve ("RRS") deployment due to the emergency presented to the ERCOT system as a result of Uri.

PPM continued its RRS deployment for the next several days. It wasn't until February 18, 2021 around 10:00am that PPM was advised by ERCOT that Load Resources without obligations that were deployed on February 15th could restore load. However, just a few hours later, ERCOT rescinded its directive that Load Resources deployed on February 15th could restore load and instead directed that they should remain shut down.

By this time, however, PPM had already started efforts to restore load, which it had to quickly reverse when ERCOT changed its instructions. Because the Load Resources had been deployed to provide RRS, PPM incurred Ancillary Service imbalance charges for the intervals during which the Load Resources were deployed on February 15-19, 2021. This resulted in ERCOT assessing PPM \$6,209,668.19 in RTASIAMT charges and \$59,879,475.76 in RTRDASIAMT charges. Pursuant to § 9.14 of the ERCOT Protocols, PPM submitted Settlement and Billing Disputes for these RTASIAMT charges and RTRDASIAMT charges<sup>2</sup> for February 15-19, 2021.

PPM contends that charges assessed by ERCOT after the Maximum Deployment time stipulated in the Load Resource Asset Registration Form ("RARF") were improper because PPM provided to ERCOT the load resources that ERCOT deployed throughout Uri. ERCOT maintains that it was authorized to assess these charges due to the existence of the EEA3 emergency situation presented by Uri. That is inconsistent with or not supported by authority found in the ERCOT

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<sup>2</sup> RTRDASIAMT is defined as: "The total payment or charge to QSE for the Real-Time Ancillary Service imbalance associated with Reliability Deployments for each 15-minute Settlement Interval." ERCOT Protocols § 6.7.5(7). RTASIAMT is defined as: "The total payment or charge to QSE for the Real-Time Ancillary Service imbalance associated with Operating Reserve Demand Curve (ORDC) for each 15-minute Settlement Interval." *Id.*

Protocols. The Protocols provide ERCOT no authority to levy these charges to a load resource that remains deployed after its commitment time during a system emergency. During the worst reliability event in Texas history, PPM worked within the framework of the ERCOT Protocols, followed Commission rules and PURA, and helped contribute to ERCOT reliability. Its reward should not be a bill for nearly \$65 million in imbalance charges that do not relate to imbalances that actually occurred. Accordingly, the RTASIAMT and RTRDASIAMT charges assessed by ERCOT should be refunded or alternatively, reduced to reflect that these resources remain deployed and providing service to the ERCOT system.

## II. PARTIES

The name and address of PPM and its authorized representatives are as follows:

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Brooks Antweil  
Priority Power Management, LLC  
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PPM agrees to accept electronic service requests that service of all pleadings be made on Chris Reeder and Brooks Antweil.

PPM seeks relief against ERCOT. ERCOT's contact information is set forth below:

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Vice President-General Counsel  
Electric Reliability Council of Texas  
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Austin, Texas 78744  
(512) 225-7000  
Fax (512) 225-7020  
Email: chad.seely@ercot.com

### **III. STATEMENTS REQUIRED BY 16 TAC SECTION 22.251(d)(1)(B)**

#### **A. Description of Underlying Proceedings**

On August 19, 2021, PPM initiated two related ADR proceedings in connection with Settlement and Billing disputes between it and ERCOT. At the conclusion of the ADR proceedings, which ERCOT ultimately consolidated with PPM's agreement,<sup>3</sup> ERCOT issued a Market Notice<sup>4</sup> (Attachment A) setting forth the basis for its decision denying PPM's request totaling \$66,015,112.62 on February 28, 2021. This is an appeal by PPM to the Commission of ERCOT's decisions. PPM has appealed the decision by ERCOT within 35 days of the completion of the ERCOT ADR process, and this appeal is therefore timely filed as required by Rule 22.251(d).

#### **B. Persons Affected by Commission Decision**

PPM is affected by the Commission's decision in this docket because its ability to be made whole rests upon the favorable outcome of this proceeding. ERCOT is a party to the settlement disputes out of which this proceeding arises and therefore is also affected.

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<sup>3</sup> Each ADR request addressed one of the two categories of ancillary service charges assessed during the same period, for the same resource deployment. Some of the bases asserted for disputing these charges, however, were severed into a separate ADR proceeding, which remains in the ERCOT ADR process and subject to abatement by mutual agreement of PPM and ERCOT. This appeal therefore does not assert those severed and abated grounds for disputing these charges at issue, and PPM reserves the right to pursue the severed ADR to appeal should that become necessary.

<sup>4</sup> Attachment A, ERCOT Market Notice (PPM).

**C. Concise Description of Conduct from Which Relief is Sought**

As a result of ERCOT's decision in the ADR proceedings, PPM seeks relief from the Commission to rescind certain ancillary services imbalance charges assessed by ERCOT as a result of the February 2021 severe winter weather event, Uri. The charges assessed by ERCOT should be calculated in accordance with the ERCOT Protocols and Commission rules in effect during Uri, an EEA3 emergency event. These do not allow ERCOT to assess ancillary service imbalance charges for intervals occurring after a resource deployment has exceeded the Load Resources' maximum deployment time while it remains deployed.

**D. Applicable Statutes, Rules, and ERCOT Protocols**

Both Rule 22.251(c) and Section 20 of the ERCOT Protocols require parties complaining of an act or omission by ERCOT to engage in ADR at ERCOT before bringing a complaint proceeding at the Commission. PPM and ERCOT engaged in and completed ADR proceedings. PPM alleges that the following Protocols are at issue in this matter and were violated by ERCOT or are relied upon in bringing forth this complaint:

PURA § 39.151(d) – An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section.

PURA § 35.004(e) (now found in 35.004(f)) – The commission shall ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.

PURA § 39.151(a)(4) – ERCOT must ensure the reliability and adequacy of the regional electric network and ensure that electricity production and delivery are accurately accounted for among generators and wholesale buyers and sellers in the region.



PURA § 39.151(d) – The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants....

16 TAC § 22.251 – This section prescribes the procedure by which an entity, including the commission staff and the Office of Public Utility Counsel, may appeal a decision made by ERCOT.

16 TAC § 25.361 (b) – Functions. ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) § 39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer’s choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region. ERCOT shall:

(1) administer, on a daily basis, the operational and market functions of the ERCOT system, including procuring and deploying ancillary services, scheduling resources and loads, and managing transmission congestion, as set forth in this chapter, commission orders, and ERCOT rules;

16 TAC § 25.503(f)(6) – A market participant’s bids of energy and ancillary services must be from resources that are available and capable of performing, and must be feasible within the limits of the operating characteristics indicated in the resource plan, as defined in the Protocols, and consistent with the applicable ramp rate, as specified in the Protocols.

16 TAC § 25.503(g)(3) – Any act or practice of a market participant that materially and adversely affects the reliability of the regional electric network or the proper accounting for the production and delivery of electricity among market participants is considered a “prohibited activity”... the term “prohibited activity” includes, but is not limited to,...: (3) A market participant must not offer reliability products to the market that cannot or will not be provided if selected.

Protocol Section 8.1.1.4.2(4) – For QSEs with Load Resources, excluding Controllable Load Resources, ten minutes following deployment instruction the sum of the QSE’s Load Resource response shall not be less than 95% of the requested MW deployment, nor more than 150% of the lesser of the following:

The QSE’s Responsibility for RRS from Non-Controllable Load Resources; or  
The requested MW deployment.

The QSE’s portfolio shall maintain this response until recalled or the Resource’s obligation to provide RRS expires.

Protocol § 6.5.7.6.2.2(8) – Once RRS is deployed, the QSE’s obligation to deliver RRS remains in effect until specifically instructed by ERCOT to stop providing RRS.

Protocol § 6.7.5(1)-(7) – Based on the Real-Time On-Line Reliability Deployment Price Adders, Real-Time On-Line Reserve Price Adders and a Real-Time Off-Line Reserve Price Adders, ERCOT shall calculate Ancillary Service imbalance Settlement, which will make Resources indifferent to the utilization of their capacity for energy or Ancillary Service reserves, as set forth in this Section.

Protocol § 6.5.9.1(2) – ERCOT shall, to the fullest extent practicable, utilize the Day-Ahead process, the Adjustment Period process, and the Real-Time process before ordering Resources to specific output levels with Emergency Base Point instructions. It is anticipated that, with effective and timely communication, the market-based tools available to ERCOT will avert most threats to the reliability of the ERCOT System. However, these Protocols do not preclude ERCOT from taking any action to preserve the integrity of the ERCOT System.

Protocol § 4.6.4.2.3 – Each QSE shall pay to ERCOT or be paid by ERCOT an RRS charge for each hour.

**E. Statement Related to Suspension.**

Complainant does not request the Commission suspend ERCOT’s decision while this case is pending

**IV. JURISDICTION**

The Commission has jurisdiction over this matter under § 39.151(d-4)(6) of the Public Utility Regulatory Act (“PURA”), which authorizes the Commission to resolve disputes between ERCOT and persons affected by ERCOT’s acts or omissions. PURA § 39.151 provides the Commission complete oversight authority over ERCOT and ERCOT’s administration of the Protocols adopted in furtherance of PURA and Commission Rules. The Commission also has jurisdiction under 16 TAC § 22.251 of the Commission’s Rules, which prescribes the procedure by which an entity may appeal a decision by ERCOT or any successor in interest to ERCOT.

## V. NOTICE

PPM will provide notice of this complaint to ERCOT’s General Counsel and the Office of Public Utility Counsel pursuant to 16 TAC § 22.251(d)(4). Complainant requests that the Commission direct ERCOT to provide notice of this complaint by email to all QSEs and any relevant ERCOT committees and subcommittees pursuant to 16 TAC § 22.251(e).

## VI. PROPOSED PROCEDURAL SCHEDULE

<b>Event</b>	<b>Deadline</b>
Complaint Filed	April 4, 2022 (within 35 days after market notice received)
Deadline for ERCOT to provide notice per 16 TAC § 22.251(e)	April 18, 2022 (14 days after ERCOT receives complaint)
Deadline for responses to Complaint by ERCOT, 16 TAC § 22.251(f)	May 2, 2022 (28 days after receipt of complaint)
Deadline for Commission Staff’s comments, 16 TAC § 22.251(g)	May 19, 2022 (45 days after the filing of the complaint)
Deadline to intervene and for Intervenor Comments 16 TAC § 22.104(b)	May 19, 2022 (45 days after the filing of the complaint)
Deadline for reply by Complainants to a party’s response or Commission Staff’s comments 16 TAC § 22.251(h)	May 30, 2022 (55 days after complaint is filed)
Deadline for parties to request a hearing	June 30, 2022 (30 days after reply)

## VII. STATEMENT OF ISSUES

16 TAC § 22.251(d)(1)(F) requires a complainant to provide “a statement of all questions of fact, if any, that the complainant contends require an evidentiary hearing.” Accordingly, PPM presents the following questions of fact and law to the Commission:

- Issue No. 1: During an “Emergency Condition,” is the imposition of ancillary service imbalance charges appropriate if a market participant provided the service deployed and procured by ERCOT?
- Issue No. 2: May ERCOT assess Imbalance Charges for Settlement Intervals once the Maximum Deployment Time as set forth in the Load Resource Asset Registration Form was exhausted?

## VIII. STATEMENT OF FACTS

PPM is an ERCOT Market Participant operating as a QSE. During Winter Storm Uri, PPM was the QSE for Resource Entities with Ancillary Service obligations. Beginning at 1:09AM on February 15, 2021, at the direction of ERCOT, PPM curtailed its customer loads, a curtailment that lasted several days (“RRS Deployment”). The duration of this curtailment is atypical because it extended beyond the operating day, which is the time period for which ancillary service obligations are applied and after which the Load Resource would return to normal operations. However, due to Uri, ERCOT declared an EEA 3 condition, which constituted an “emergency condition” under the Protocols preventing a deployed Load Resource from restoring load after the commitment expired until ERCOT releases it to restore load. ERCOT began imposing ancillary service imbalance charges to PPM on the grounds that it was not fulfilling its ancillary services obligations.

On February 17, 2021, PPM requested a meeting with ERCOT to discuss the need to allow critical Oil & Gas operations to return to service, but due to the ongoing emergency from Uri, PPM was unable to discuss the situation with ERCOT until February 18, 2021 at 10:00 a.m. During this discussion, ERCOT instructed PPM that it could restore load (as the Load Resource in question is a critical gas facility), which PPM’s customer did by dispatching personnel and other resources. However, several hours later, ERCOT contacted PPM and rescinded its earlier release; instead requiring that PPM cause its Load Resources to remain offline. Later the same day, at 4:49 p.m., ERCOT issued PPM a written waiver for oil and gas customers to return to service. In the end, ERCOT assessed and collected from PPM a total of \$59,879,475.76 in RTRDASIAMT charges and \$6,209,668.19 in RTASIAMT charges for Operating Days February 15, 2021 through February 19, 2021.

On February 26, 2021, PPM submitted Settlement and Billing Disputes to ERCOT in accordance with Protocol § 9.14. On August 19, 2021, PPM initiated ADR proceeding with ERCOT, which resulted in ERCOT denying PPM’s claims on February 28, 2022. PPM appealed ERCOT’s ADR decision on April 4, 2022.

## IX. ARGUMENT

### A. ERCOT’s factual determinations are not entitled to any deference from the Commission

Rule 22.251(l) provides the standard for Commission review of ERCOT’s acts of omissions in a complaint proceeding such as this one:

**Standard for review.** If the factual determinations supporting the conduct complained of have not been made in a manner that meets the procedural standards specified in this subsection, or if factual determinations necessary to the resolution of the matter have not been made, the commission will resolve any factual issues on a de novo basis. If the factual determinations supporting the conduct complained have been made in a manner that meets the procedural standards specified in this subsection, the commission will reverse a factual finding only if it is not supported by substantial evidence or is arbitrary and capricious. The procedural standards in this subsection require that facts be determined:

- (1) In a proceeding to which the parties have voluntarily agreed to participate; and
- (2) By an impartial third party under circumstances that are consistent with the guarantees of due process inherent in the procedures described in the Texas Government Code Chapter 2001 (Administrative Procedure Act).

Under this part of the rule, ERCOT’s factual determinations must be reviewed on *a de novo* basis unless those factual determinations were made by an impartial third party under circumstances that are consistent with guarantees of due process inherent in the Texas Administrative Procedures Act (“APA”).<sup>5</sup>

The factual determinations that ERCOT relied upon were not made by an impartial third party, but instead were made solely by ERCOT staff and are therefore not entitled to any degree

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<sup>5</sup> The APA is codified in Chapter 2001 of the Texas Government Code.

of deference. Moreover, the due process guarantees inherent in the APA procedure include rights to participate in a hearing and present evidence.

**B. No basis exists for ERCOT to assess ancillary services imbalances charges to a load resource on extended deployment during a system emergency that remains deployed.**

The ERCOT Protocols require that compensation be paid in exchange for providing RRS.<sup>6</sup> In fact, the RRS Load Resource program exists to compensate Load Resources for providing additional capacity in times of need by reducing or eliminating load from the ERCOT system—which is why compensation is provided for the RRS. PPM’s load resource remained deployed for the balance of the emergency event (save for when ERCOT’s control desk allowed it to restore load at approximately 9:00AM on February 19, 2021). Yet, ERCOT assessed imbalance charges as if though PPM had not met its ancillary service obligation during these extended intervals. It is PPM’s position that ancillary service imbalance charges should not be assessed when a resource has been utilized by ERCOT beyond the **limits** contained in the Resource Asset Registration Form.

ERCOT’s ostensible basis for assessing imbalance charges relies on language that does not exist in the Protocols. ERCOT appears to rely on the requirement that a resource remain *deployed* beyond its commitment time during an emergency, as authority to *assess* imbalance charges for that period.<sup>7</sup> But the former does not speak to, much less authorize, the latter. The emergency extended deployment is not the same as associated imbalance charges during that time. The Protocols are silent on how or whether to schedule RRS that is under a current Dispatch Instruction. Moreover, Protocol § 6.5.7.6.2.2(8) explicitly compels RRS providers to continue providing service beyond its obligation during a period of emergency. However, this is typically only for a matter of hours, not days, as was the case during Uri. The RTRDASIAMT and RTASIAMT

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<sup>6</sup> See ERCOT Protocol 4.6.4.2.3.

<sup>7</sup> ERCOT Market Notice at 2.

provisions of Protocol 6.7.5 do not contain language allowing the imposition of these charges during an extended emergency condition deployment.

Further, the Protocols themselves, as ERCOT interpreted and applied them, set forth what appears to represent inconsistent positions concerning the recall of a deployed RRS resource, which should be construed in a way that does not penalize an entity such as PPM or its Load Resources. PPM and its Load Resources not only complied with ERCOT instructions but **acted in accordance with the protocols to keep the Load Resources offline, worked in good faith with ERCOT to return natural gas customers back to service, worked with the Commission to obtain a declaration that the Commission would exercise enforcement discretion so that load resources could resume operations to provide critical services and products, and ERCOT is penalizing PPM and its customers for following ERCOT directives.** Under Protocol § 8.1.1.4.1(4), PPM's Load Resources could have restored their Ancillary Service obligation without regard for the language of Protocol § 6.5.7.6.2.2(8) at the end of the Operating Day in order to be available to redeploy the next operating day. Nevertheless, due to the emergency condition, PPM did not attempt to restore its responsibility without ERCOT's express authorization. Nor did PPM seek to submit an offer into the ERCOT market for the Load Resources, because they were remained on deployment and therefore were not available to the ERCOT system.<sup>8</sup> PPM's Load Resources continued providing RRS, through the extended deployment, to the ERCOT system, they just did not go through the exercise of restoring load, scheduling for the next day, and being deployed again such that ERCOT recognized them in the settlement system. Yet, PPM is in essence being penalized for not restoring its obligation, which would have violated the very Protocol

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<sup>8</sup> See 16 TAC §25.503 (f)(6) and (g)(3) requiring generally that ancillary services bids must be for resources that are available and capable of performing if struck, and that a market participant cannot offer ancillary services that are not capable of performing.

section ERCOT relies on as authority for the charges. PPM's compliance with the Protocols protected the ERCOT system, yet ERCOT is penalizing that compliance with the imposition of staggering imbalance charges against PPM and the Load Resources. Read together, and considering the nature of the emergency and PPM's careful approach in proactively consulting with ERCOT personnel and going as far as to secure a waiver allowing their recall and Commission agreement to exercise enforcement discretion when they restored operation, rejecting the settlement dispute is wholly contrary to the Protocols and the overall policy objective of incenting all available resources to deploy during the emergency. The Commission adopted orders throughout the emergency with that very objective—eliminating every Protocol or rule it felt inhibited maximum resource response. That objective should carry through in considering whether to impose what amounts to penalty charges for PPM having acted to support the ERCOT system.

After the fact, ERCOT's market notice now identifies what it frames as the legal basis for assessing these charges. In short, ERCOT contends that had PPM terminated its obligations to counter parties to provide RRS, it could have avoided the imbalance charges at issue.<sup>9</sup> But ERCOT lacks authority to require Market Participants to cancel trades, and certainly does not offer to cover the significant penalties PPM would have incurred had it done so. More importantly, even if a Market Participant could have taken actions to mitigate the impact of the charges, that in no way grants ERCOT the legal authority to assess the charges in the first place if it does not exist in the Protocols or other law. It is akin to saying that someone is exempt from traffic laws because other cars may be able to avoid them. Also, ERCOT's footnote acknowledges that canceling such trades would simply shift the imbalance charges over to the entity who bore them originally, meaning

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<sup>9</sup> ERCOT Market Notice at 3: "PPM could have canceled the trades during the Adjustment Period and eliminated the underlying RRS responsibilities for the A/S Imbalance Charges assessed during the relevant time-period. If PPM had timely canceled the trades, the Load Resources would have been required to remain off-line for reliability purposes, but it would not have incurred the A/S Imbalance Charges at issue in this ADR."



that ERCOT would still be assessing imbalance charges to someone on emergency extended deployment without any legal authority to support it doing so.

**C. The imbalance charges violated PURA and Commission Substantive Rules.**

ERCOT is obligated to settle the market accurately, and in a manner that ensures ancillary services are not priced unreasonably, or in a manner that is preferential, prejudicial, discriminatory, predatory, or anticompetitive.<sup>10</sup> The settlements here, assessing imbalance charges when no such “imbalance” existed but rather to seemingly solve for a technicality created by inconsistencies in the Protocols, and in the absence of any express authority to do so, violates these standards. Additionally, it violates ERCOT’s obligations under 16 TAC § 25.361(b) to administer the ancillary services markets according to Commission rules and ERCOT Protocols and accurately account for the production and delivery of electricity. In lacking legal authority to assess imbalance charges in situations of an extended emergency deployment, without an actual “imbalance” existing, ERCOT has violated this fundamental requirement.

**D. Policy reasons support PPM’s appeal.**

The Legislature amended PURA § 35.004 to require the Commission to study the type, volume, and cost of ancillary services to determine whether those services will continue to meet the needs of the electricity market.<sup>11</sup> In these circumstances, where PPM deployed its Load Resources beyond their commitment time, proactively sought to engage the ERCOT control desk and senior management to reinstate the load as consistent with reliability needs, refused to game the system in a way contrary to the objectives of reliability so that it could realize greater profits, it is unjust and contrary to the public policy goal of ensuring that Market Participants support reliability and act transparently for the good of the overall system to assess these imbalance

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<sup>10</sup> PURA § 39.151 (d), 35.004(e).

<sup>11</sup> PURA § 35.004 (g)(1).

charges. PPM did everything right. Despite ERCOT's suggestion that it should have violated its contractual obligations to shift costs over to someone else, PPM worked within the framework of the ERCOT Protocols, followed Commission rules and PURA, and helped contribute to ERCOT reliability during the worst reliability event in Texas history. Accordingly, as noted at the outset, PPM's reward should not be a bill for nearly \$65 million in imbalance charges that do not relate to imbalances that actually occurred.

#### **X. CONCLUSION AND PRAYER FOR RELIEF**

For the reasons outlined above, PPM prays that the Commission grant the following relief:

1. PPM respectfully requests that the Commission return the RTASIAMT charges applied and collected by ERCOT from PPM during Uri for Operating Days February 15, 2021 through February 19, 2021 totaling \$6,134,931.56.
2. PPM respectfully requests that the Commission return the RTRDASIAMT charges assessed and collected by ERCOT from PPM during Uri for Operating Days February 15, 2021 through February 19, 2021, totaling 59,880,181.06

PPM further prays for any other relief to which it may be entitled.

Respectfully submitted,

By: /s/ Miguel Suazo

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this pleading has been forwarded by electronic mail, fax, U.S. first class mail, hand-delivery, or by courier service to all parties of record on the 4<sup>th</sup> day of April, 2022.

*/s/ Miguel Suazo*

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Miguel Suazo



**Attachment A**

**Market Notice M-A050720**

**NOTICE DATE:** February 28, 2022

**NOTICE TYPE:** M-A050720-01 Legal

**SHORT DESCRIPTION:** Resolution of ADR Proceedings between ERCOT and Priority Power Management, LLC (ADR No. 2021-PPM-01)

**INTENDED AUDIENCE:** All Market Participants

**DAY AFFECTED:** February 15-19, 2021

**LONG DESCRIPTION:** Upon ERCOT's determination of the disposition of an Alternative Dispute Resolution (ADR) proceeding, ERCOT Protocol Section 20.9 requires ERCOT to issue a Market Notice providing a description of the relevant facts, a list of the parties involved in the dispute, and ERCOT's disposition of the proceeding and reasoning in support thereof.

**Parties:** ERCOT and Priority Power Management, LLC (PPM).

**Relevant Facts:**

PPM is a Qualified Scheduling Entity (QSE) that represents Resource Entities that have Load Resources. On February 15, 2021, at 1:09 a.m., some of the Load Resources represented by PPM had a Responsive Reserve (RRS) responsibility during all hours of the February 16-19 time-period and were deployed to provide RRS during Winter Storm Uri.<sup>1</sup>

Because the Load Resources were deployed to provide RRS, PPM incurred Ancillary Service (A/S) Imbalance Charges for the intervals during which the Load Resources were deployed on February 15-19. The underlying source of the A/S Imbalance Charges at issue were the Real-Time Reliability Deployment Ancillary Service Imbalance Amount (RTRDASIAMT) and the Real-Time Ancillary Service Imbalance Amount (RTASIAMT).<sup>2</sup> PPM disputes the A/S Imbalance Charges incurred during the February 15-19 time period. PPM complains that the Load Resources at issue were deployed in excess of the limitations contained in the Resource Asset Registration Forms (RARFs) for the Load Resources.

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<sup>1</sup> On February 15, PPM had an RRS responsibility of 137MW for all hours of the February 16-19 time-period. On February 18, PPM sought a waiver for part its RRS responsibility because certain Load Resources were critical gas infrastructure. ERCOT granted a waiver of the RRS responsibility for the critical gas infrastructure (which consisted of 105.9 MW) beginning February 18 at 16:54 through February 19 at 10:45. During this period PPM had a remaining RRS responsibility of 31.1MW. For all other periods outside of the waiver period PPM's RRS responsibility was 137MW.

<sup>2</sup> RTRDASIAMT is defined as: "The total payment or charge to QSE q for the Real-Time Ancillary Service imbalance associated with Reliability Deployments for each 15-minute Settlement Interval." ERCOT Protocols § 6.7.5(7). RTASIAMT is defined as: "The total payment or charge to QSE q for the Real-Time Ancillary Service imbalance associated with Operating Reserve Demand Curve (ORDC) for each 15-minute Settlement Interval." *Id.*

PPM filed settlement and billing disputes regarding the A/S Imbalance Charges and ERCOT denied the disputes. PPM initiated this ADR to challenge the denial of the settlement and billing disputes and seeks relief in the total amount of \$66,015,112.62 for the February 15-19 time-period.<sup>3</sup>

**ERCOT's Disposition/Reasoning:**

ERCOT has determined that the appropriate disposition of this ADR proceeding is to deny PPM's request for relief.

PPM contends that it should not have been assessed the A/S Imbalance Charges at issue. However, ERCOT Protocols require that when a Resource is deployed to provide an Ancillary Service, like RRS, the QSE will incur A/S Imbalance Charges for all intervals during which the Resource is deployed.<sup>4</sup> It is undisputed that the A/S Imbalance Charges were assessed for intervals during which PPM was deployed for RRS. PPM claims that the length of the RRS deployment exceeded deployment limits listed in the RARFs for the Load Resources. Even if the RARFs for the Load Resources contained limitations that were exceeded during the deployment, such limitations do not restrict the actions ERCOT may take to preserve the integrity of the ERCOT System.<sup>5</sup> ERCOT Protocols Section 6.5.7.6.2.2(8) contemplates the extended deployment of RRS during an Emergency Condition and provides as follows:

Once RRS is deployed, the QSE's obligation to deliver RRS remains in effect until specifically instructed by ERCOT to stop providing RRS. However, except in an Emergency Condition, the QSE's obligation to deliver RRS may not exceed the period for which the service was committed.

The above language reflects that, in an Emergency Condition,<sup>6</sup> a QSE representing Resource Entities that are Load Resources that have been deployed for RRS may not restore Load until recalled by ERCOT.<sup>7</sup> Even if a QSE's Load Resources are not carrying an RRS responsibility during a given hour, if necessary to preserve reliability, ERCOT may instruct the Load Resource to remain off-line until conditions improve.<sup>8</sup> For example, if a QSE representing a Resource Entity's Load Resources offered to provide RRS for only one hour on a given day and was deployed during that hour, in an Emergency Condition, the Load Resources might be required to remain off-line for the remaining hours of the day if necessary. When a QSE representing a Resource Entity's Load Resources assumes an RRS responsibility, there is a risk that if an Emergency Condition occurs the Load Resources may be deployed and required to remain off-line longer than the QSE anticipated.

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<sup>3</sup> Because ERCOT has determined that PPM's claims should be denied, this Notice does not analyze the method of calculating the alleged damages.

<sup>4</sup> See ERCOT Protocols § 6.7.5(1)-(7).

<sup>5</sup> See *id.* at § 6.5.1.1(1)(e) (authorizing ERCOT to "Perform additional actions required to prevent an imminent Emergency Condition or to restore the ERCOT Transmission Grid to a secure state in the event of an ERCOT Transmission Grid Emergency Condition."); and *id.* at § 6.5.9.1(2) ("However, these Protocols do not preclude ERCOT from taking any action to preserve the integrity of the ERCOT System.").

<sup>6</sup> Emergency Condition is defined as "An operating condition in which the safety or reliability of the ERCOT System is compromised or threatened, as determined by ERCOT." ERCOT Protocols § 2.1.

<sup>7</sup> There are different types of Resources that deliver RRS in different ways. The phrase "deliver RRS" as used in this section should be interpreted as "remain off-line" in the context of Non-Controllable Load Resources providing RRS.

<sup>8</sup> See *id.* at § 6.5.9.1(2) ("It is anticipated that, with effective and timely communication, the market-based tools available to ERCOT will avert most threats to the reliability of the ERCOT System. However, these Protocols do not preclude ERCOT from taking any action to preserve the integrity of the ERCOT System.").



Further, if an Emergency Condition rises to EEA Level 3, Load Resources may be subject to Load shed, the same as any other Load on the ERCOT System, to preserve reliability.

PPM does not dispute ERCOT's authority to extend the length of the RRS deployment beyond the limits listed in the RARF during an Emergency Condition. However, PPM argues that the Protocols do not authorize ERCOT to assess A/S Imbalance Charges for intervals occurring after the deployment has exceeded the Resources' maximum deployment time. ERCOT disagrees. PPM entered into trades with counter-parties to voluntarily assume the financial obligations and RRS responsibilities at issue and confirmed those trades in the Energy and Market Management System (EMMS). PPM could have canceled the trades during the Adjustment Period and eliminated the underlying RRS responsibilities for the A/S Imbalance Charges assessed during the relevant time-period. If PPM had timely canceled the trades, the Load Resources would have been required to remain off-line for reliability purposes, but it would not have incurred the A/S Imbalance Charges at issue in this ADR.<sup>9</sup> The Day-Ahead Market (DAM) and the Real-Time Market (RTM) were functioning properly – they were not suspended or restarted during the dates at issue.<sup>10</sup>

ERCOT Protocols, Section 6.7.5, requires that ERCOT calculate A/S Imbalance Charges and assess the charges to QSEs based on certain criteria. One of the criteria upon which A/S Imbalance Charges are based includes “[t]he amount of Ancillary Service Resource Responsibility for Reg-Up, RRS and Non-Spin for all Generation and Load Resources represented by the QSE for the 15-minute Settlement Interval.”<sup>11</sup> It is undisputed that PPM had A/S responsibilities for RRS during all intervals in which it incurred the A/S Imbalance Charges at issue. There is no language in the ERCOT Protocols exempting QSEs from A/S Imbalance Charges for any intervals during which a QSE had an RRS responsibility and the Resource was deployed in excess of its maximum deployment time during an Emergency Condition. The formulas utilized by ERCOT to calculate the amount of the A/S Imbalance Charges are clearly established in the ERCOT Protocols.<sup>12</sup> It is undisputed that ERCOT applied the formulas in the ERCOT Protocols in calculating the A/S Imbalance Charges assessed to PPM.

ERCOT has analyzed the underlying data upon which the A/S Imbalance Charges incurred by PPM were based and determined that they were calculated correctly. PPM has not identified any error in the calculations and has not demonstrated that ERCOT violated any obligation under the ERCOT Protocols or other applicable law.<sup>13</sup> As a result, the claims asserted by PPM are denied. This Market Notice serves to conclude the ADR proceedings between ERCOT and PPM.

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<sup>9</sup> If PPM canceled the trades, then the counter-party with the original RRS obligation, presumably a Load Serving Entity (LSE), would have incurred 'failure to provide' charges if it was unable to arrange for the RRS obligation to be covered by itself or another QSE. PPM made the choice to fulfill its contractual obligations with its counter-parties, preventing those counter-parties from incurring failure to provide charges, and now is attempting to escape the A/S Imbalance Charges that are associated with the RRS obligations. If this ADR were granted, then the failure to provide charges would need to be assessed against the counter-party.

<sup>10</sup> See generally *id.* at § 25 (describing the procedures for Market Suspension and Restart).

<sup>11</sup> *Id.* at § 6.7.5(2)(c).

<sup>12</sup> See *id.* at § 6.7.5(7).

<sup>13</sup> ERCOT Protocols Section 20.1(1) provides that the ADR procedure only applies to a “claim by a Market Participant that ERCOT has violated or misinterpreted any law, including any statute, rule, Protocol, Other Binding Document, or Agreement, where such violation or misinterpretation results in actual harm, or could result in imminent harm, to the Market Participant.”

## **ATTACHMENT A**

**CONTACT:** If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number at (512) 248-3900 or contact ERCOT Client Services via email at [ClientServices@ercot.com](mailto:ClientServices@ercot.com).