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PUBLIC UTILITY COMMISSION

COMPLAINT OF CALPINE  
CORPORATION AND NRG ENERGY,  
INC. AGAINST THE ELECTRIC  
RELIABILITY COUNCIL OF TEXAS  
AND APPEAL OF DECISION  
CONCERNING THE HOUSTON  
IMPORT PROJECT

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**COMMISSION STAFF'S COMMENTS**

Pursuant to Order No. 1 in this proceeding, Staff now provides the following comments regarding the Complaint, the positions of the responding parties, and Staff's position.

**I. BACKGROUND**

**A. The Complaint.**

On May 13, 2014, Calpine Corporation (Calpine) and NRG Energy, Inc. (NRG) (collectively, Complainants) filed a complaint against the Electric Reliability Council of Texas (ERCOT) and appeal of the ERCOT Board's approval of the Houston Import Project (HIP) pursuant to P.U.C. PROC. R. 22.251. Complainants allege that ERCOT's methodology and choices in its determination of a reliability need for the HIP collectively amount to an abuse of ERCOT's discretion, in contravention to the protocols and procedures that ERCOT has developed.<sup>1</sup> Therefore, Complainants request that the Commission find ERCOT's Board of Director's Resolution of April 8, 2014, an abuse of discretion and contrary to law, Protocols, and standards, and instruct ERCOT to re-examine its recommendation for the HIP without erroneous methodologies and assumptions.<sup>2</sup>

In July and August of 2013, three different Regional Planning Group (RPG) proposals were submitted by transmission service providers after identifying a reliability need to improve the import capability into Houston.<sup>3</sup> ERCOT conducted a combined single independent review

<sup>1</sup> Calpine Corporation's and NRG Energy, Inc.'s Complaint Against the Electric Reliability Council of Texas and Appeal of Decision Concerning the Houston Import Project at 6 (May 13, 2014) (Complaint).

<sup>2</sup> *Id.* at 6 and 39.

<sup>3</sup> *Id.*, Attachment 3 at 1.

of the HIP proposals, and based on the result of that independent review concluded that transmission reinforcement was needed to meet reliability criteria under the 2018 summer peak condition.<sup>4</sup> Ultimately, ERCOT recommended a new Limestone-Gibbons Creek-Zenith 345 kV double-circuit line and upgrades to other transmission facilities as the best solution for the HIP and recommended that the project be in service by 2018.<sup>5</sup> On April 8, 2014, the ERCOT Board of Directors adopted a resolution endorsing the need for the HIP, and deemed the double-circuit line critical to the reliability of the ERCOT system.<sup>6</sup>

Complainants alleged that ERCOT did not validly demonstrate the need for the HIP because ERCOT's determination was based on an inadequate and incomplete study, which they alleged contained many inconsistencies and untenable assumptions.<sup>7</sup> Specifically, Complainants argued that by not conducting a full economic analysis, ERCOT failed to comply with Protocol and Planning Guide requirements that ERCOT attempt to meet reliability criteria as economically as possible and in a cost-efficient manner.<sup>8</sup> Additionally, Complainants argued that ERCOT did not establish that a reliability problem exists because ERCOT used transmission service provider forecasts in its study, instead of ERCOT's load forecasts, which was not a reasonable variation in the load forecast allowed pursuant to the Planning Guides.<sup>9</sup> Complainants claimed that the use of either of ERCOT's load forecasts, either the Capacity, Demand, and Reserves Reports (CDR) or the 90/10 extreme weather cases, demonstrated that no reliability problem exists.<sup>10</sup>

Finally, Complainants alleged that ERCOT used inconsistent and conflicting standards and assumptions about resource development within different areas of ERCOT, and used scaling methodologies not sanctioned by the Protocols or Planning Guides.<sup>11</sup> Complainants argued that

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, Attachment 2 at 11.

<sup>7</sup> Complaint at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3 and 26.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 4-5, and 37; *see id.* at 19-22.

what ERCOT has labeled a reliability problem is actually a need for additional Houston area resource investment.<sup>12</sup> As a whole, Complainants contended that ERCOT's methodology and choices amount to an abuse of ERCOT's discretion that is contrary to Protocols and procedures.<sup>13</sup>

On June 10, 2014, ERCOT filed its response to the Complaint pursuant to Order No. 1.<sup>14</sup> On June 20, 2014, CenterPoint Energy Houston Electric (CenterPoint) filed a motion to intervene and response to the complaint, in addition to a motion to dismiss. At the time of this filing, Texas Industrial Energy Consumers (TIEC), City of Bryan, Gulf Coast Coalition of Cities (GCCC), City of Houston, City of Garland, Luminant, and Cross Texas Transmission, LLC (CTT) have also filed motions to intervene. The motions of TIEC, City of Bryan, and GCCC have been granted, the remaining motions have not been ruled upon at this time.

## **B. ERCOT's Response**

ERCOT responded to each of the Complainant's allegations, outlining the processes and procedures ERCOT employed in reaching its determination regarding the need for the HIP. Specifically, ERCOT claimed that the need for the HIP had been consistently identified since 2006, based on the Long Term System Assessment, the RPG Process, and various analyses that revealed multiple reliability criteria violations in 2018 under N-1 and G-1+N-1 conditions.<sup>15</sup>

ERCOT also argued that the load forecasts used in its analysis were reasonable, and load scaling techniques did not affect the identification of the project need.<sup>16</sup> Additionally, ERCOT maintained that it considered the economic consequences of the project, and accounted for planned generation resources, in accordance with Commission rules and ERCOT Planning

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> Electric Reliability Council of Texas, Inc.'s Response to Calpine Corporation's and NRG Energy, Inc.'s Complaint Against the Electric Reliability Council of Texas and Appeal of Decision Concerning the Houston Import Project at Attachment 1 (June 10, 2014) (ERCOT Response).

<sup>15</sup> *Id.* at 8-16.

<sup>16</sup> *Id.* at 17 and 20.

Guides.<sup>17</sup> In response to the Complainants contention that the actual issue to be addressed in the HIP area is a lack of resource investment rather than transmission infrastructure, ERCOT conceded that the retirement of generation along with a lack of new generation has caused reliability issues in the area; however, ERCOT asserted that current transmission planning requirements do not permit ERCOT to recommend generation or load resources to address a transmission reliability criteria violation.<sup>18</sup>

Furthermore, ERCOT contended that because several of the issues raised by the Complainants implicitly seek changes to existing planning criteria, a contested case proceeding at the Commission is not the proper avenue for such issues.<sup>19</sup> Rather, ERCOT argued, such changes to transmission planning requirements are policy issues that should be raised in a rulemaking, Nodal Protocol Revision Request (NPRR) or Planning Guide Revision Request (PGRR), as required by P.U.C. PROC. R. 22.251(c).<sup>20</sup> Ultimately, ERCOT maintained that its independent analysis was reasonable, appropriate, and in accordance with applicable planning requirements.<sup>21</sup>

### **C. CenterPoint's Response**

In its response to the Complaint, CenterPoint argued that the Complainants have not filed a complaint over which the Commission's rule applies.<sup>22</sup> Alternatively, CenterPoint contends that the facts will show that the ERCOT Board did not abuse its discretion in determining the need for the HIP because ERCOT complied with all applicable laws, rules, and protocols in assessing the need.<sup>23</sup> CenterPoint incorporated its responses contained in its motion to dismiss

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<sup>17</sup> *Id.* at 18-19.

<sup>18</sup> *Id.* at 19.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> ERCOT Response at 6-7, and 27.

<sup>21</sup> ERCOT Response at 3.

<sup>22</sup> CenterPoint Energy Houston Electric, LLC's Motion to Intervene and Response to the Complaint at 4 (Jun. 20, 2014) (CenterPoint Response).

<sup>23</sup> *Id.*

which was filed contemporaneously with the response to the Complaint. Staff has responded to CenterPoint's motion to dismiss in a separate filing.

#### **D. CTT and Garland's Joint Response**

On June 26, 2014, CTT and Garland (CTT/Garland) filed a joint response to the complaint in which they argued that the Complainants do not have a valid complaint because they have not alleged a violation pursuant to P.U.C. PROC. R. 22.251.<sup>24</sup> CTT/Garland claimed that Complainants are simply unhappy with the determination ERCOT reached after its study and desire to amend ERCOT Protocols and Guides.<sup>25</sup> Additionally, CTT/Garland contended that the abuse of discretion standard of appellate review of the agency actions alleged by the Complainants does not apply in this proceeding, as P.U.C. PROC. R. 22.251 sets out the appropriate standard.<sup>26</sup>

Specifically, CTT/Garland responded that ERCOT conducted a thorough analysis and considered many potential remedies to identified reliability violations.<sup>27</sup> CTT/Garland argued that ERCOT used the appropriate load forecast in its analysis as the Planning Guide explicitly allows for reasonable variations of load forecast.<sup>28</sup> Furthermore, CTT/Garland claimed that ERCOT used appropriate assumptions regarding the Coastal Zone Resources, and properly excluded generation that did not meet Planning Guide requirements.<sup>29</sup> CTT/Garland also contended that the Complainants claims regarding cogeneration are nothing more than speculation.<sup>30</sup> Finally, CTT/Garland argued that under Commission rules the HIP does not require an economic cost-benefit analysis since it is a transmission line that is "necessary to meet

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<sup>24</sup> Cross Texas Transmission, LLC's and Garland's Joint Response to Calpine and NRG Energy's Complaint against ERCOT at 2 (June 26, 2014) (CTT/Garland Response).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 9

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.* at 10-11.

<sup>29</sup> *Id.* at 12.

<sup>30</sup> *Id.* at 13.

state or federal reliability standards”<sup>31</sup> CTT/Garland ultimately claimed that ERCOT acted reasonably and in accordance with its Protocols and Guides, and therefore agreed with and adopted the facts and arguments contained in ERCOT’s response.<sup>32</sup>

## II. STAFF’S RESPONSE

Simultaneously with the filing of these comments, Staff is filing a response supporting CenterPoint’s Motion to Dismiss on the limited grounds that Complainants have failed to allege any violation of an applicable protocol or planning guide noting that NRG and Calpine have actually conceded, on multiple occasions, throughout the ERCOT stakeholder process leading up to ERCOT’s April 8, 2014 decision that ERCOT followed all relevant protocols, guides and other relevant requirements.<sup>33</sup> However, in the event this proceeding is not dismissed, as defined in Staff’s list of issues filed on June 26, 2014, the scope should be limited to a single issue of whether ERCOT violated any relevant law, rule, order, protocol, planning guide, or procedure in endorsing the need for the HIP.

Staff recommends that this proceeding remain at the Commission at this time and not be referred to the State Office of Administrative Hearings (SOAH). As discussed above, in the event this case is not dismissed, this proceeding should be limited to a single issue<sup>34</sup> solely addressing whether ERCOT’s April 8, 2014 decision endorsing the need for the HIP violated an applicable law, ERCOT protocol, planning guide, or other relevant requirement. While the scope of this proceeding should be narrowly tailored along the lines specified in Staff’s list of issues, properly addressing this issue may nonetheless require the development of record evidence.

## III. CONCLUSION

It is Staff’s position that in the event this case is not dismissed, the scope should be limited to a single issue of whether ERCOT violated relevant law, ERCOT protocol, planning guide, or other requirement. Further, Staff requests that this proceeding remain at the Commission at this time.

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<sup>31</sup> *Id.* at 14.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> CenterPoint Energy Houston Electric, LLC’s Motion to Dismiss at 3-4 (June 20, 2014).

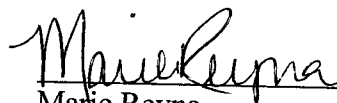
<sup>34</sup> Commission Staff’s List of Issues at 1-2 (June 26, 2014).

**DATED: June 27, 2014**

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record by June 27, 2014, in accordance with P.U.C. Procedural Rule 22.74.

  
Marie Reyna