

NOTICE DATE: April 7, 2023

NOTICE TYPE: M-A050720-01 Legal

SHORT DESCRIPTION: Resolution of ADR Proceedings between ERCOT and Austin Energy (ADR No. 2021-AUS-01)

INTENDED AUDIENCE: All Market Participants

DAYS AFFECTED: February 14-15, 2021

LONG DESCRIPTION: Upon ERCOT's determination of the disposition of an Alternative Dispute Resolution (ADR) proceeding, ERCOT Protocols 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 Austin Energy

Relevant Facts:

This Market Notice addresses compensation requested by the City of Austin d/b/a Austin Energy (hereinafter AE) pursuant to ERCOT Protocols Section 6.6.3.6 (*Real-Time High Dispatch Limit Override Energy Payment*) for losses incurred on Operating Days February 14-15, 2021, as a result of compliance with ERCOT's High Dispatch Limit Override (HDLO) instructions.¹ AE is a Non-Opt-In Entity (NOIE) that meets its Load obligations using its generation fleet, Day-Ahead Market (DAM) purchases, and bilateral trades.

The Fayette Power Plant, the Resource that is the subject of this ADR, is a power generating facility that is jointly owned by AE and the Lower Colorado River Authority (LCRA). AE uses 600 MW of the Fayette Power Plant as part of its generation mix to serve its customer Load.²

Starting at Settlement Interval 77 (ending at 19:15) on February 14, 2021, AE Unit Operators for Resources FPPYD1_FPP_G1_J02 and FPPYD1_FPP_G2_J02 (hereinafter referred to as the "Fayette Power Plant") complied with ERCOT Dispatch Instructions to reduce real power output due to the manual HDLO issued by ERCOT. The manual HDLO lasted through Settlement Intervals 77-96 on Operating Day February 14, 2021 and Settlement Intervals 1-3 on Operating Day February 15, 2021.

By complying with Dispatch Instructions to reduce real power output at the Fayette Power Plant, AE claims that it was not able to fully serve its native Load and incurred financial losses during

¹ At the time that AE submitted this ADR, a compensation request for a Real-Time HDLO payment would be filed under Protocols § 6.6.3.7. The numbering of this Protocols Section has since changed to 6.6.3.6.

² See Austin Energy, Power Plants, available at: <https://austinenergy.com/about/company-profile/electric-system/power-plants>.

Settlement Intervals 77-96 on February 14 and Settlement Intervals 1-3 on February 15. Due to the reduction of generation from the Fayette Power Plant, AE asserts that it had to purchase power on the ERCOT Real-Time Market to cover its contractual obligations to its customers, and states that it incurred financial losses during the aforementioned Settlement Intervals as a result.

AE subsequently submitted this ADR request for a Real-Time HDLO Energy Payment under Protocols Section 6.6.3.6, seeking compensation for losses it incurred in connection with the HDLO instruction.

ERCOT's Disposition/Reasoning:

ERCOT determines that the appropriate disposition of this ADR proceeding is to grant AE's request for relief in part and deny its request in part:

- **Compensation Granted:** AE should receive a Real-Time HDLO Energy Payment in the amount of approximately \$2.86 million to cover losses incurred during Settlement Intervals 85-96 on February 14, 2021 and the first three Settlement Intervals on February 15, 2021.
- **Compensation Denied:** AE is not entitled to compensation for Settlement Intervals 77-84 on February 14, 2021, because AE's total generation and trade energy purchases were higher than its total Load obligations during this period. Thus, AE did not incur losses during these Settlement Intervals that are compensable under Protocols Section 6.6.3.6.

The basis for ERCOT's determination is as follows:

Under Protocols Section 6.6.3.6(1), if a Resource's real power output is reduced by a manual HDLO at the direction of ERCOT, a QSE may be eligible for a Real-Time HDLO Payment if it suffered a demonstrable financial loss associated with variable cost components of DAM obligations or the energy purchase or sale provisions of bilateral contracts. Under Protocols Section 6.6.3.6(1)(c), a QSE is *not* entitled to recover lost opportunity costs incurred due to an HDLO.

To qualify for a Real-Time HDLO Energy Payment, a QSE must meet the following minimum requirements (in addition to those described above):

- The QSE must have complied with ERCOT Dispatch Instructions to reduce real power output;
- The QSE must have received a SCED Base Point equal to the Resource's HDLO during the 15-minute Settlement Interval;
- Have incurred a demonstrable financial loss associated with variable cost components of DAM obligations or energy purchase or sale provisions of bilateral contracts (as opposed to lost opportunity costs), in consequence of the HDL override; and

- The QSE must file a timely dispute that includes items required in Protocols Section 6.6.3.6(1)(d).³

ERCOT determines that AE meets Protocols Section 6.6.3.6's requirements for receiving a Real-Time HDLO Energy Payment. AE has demonstrated that:

- AE is a QSE that complied with ERCOT Dispatch Instructions to reduce real power output at the Fayette Power Plant on February 14-15, 2021;
- AE received a SCED Base Point equal to that Resource's HDLO during the 15-minute Settlement Intervals for which ERCOT has determined AE may receive compensation; and
- AE incurred a demonstrable financial loss associated with energy purchase or sale provisions of bilateral customer contracts.

One element of AE's claim that involved extensive analysis, given AE's status as a NOIE, was the requirement to prove a demonstrable financial loss associated with energy purchase or sale provisions of *bilateral contracts*.⁴ To establish this element, AE showed that it has a legal obligation to "use reasonable diligence" to provide "constant utility service" to customers who have entered into its service contracts.⁵ The Austin City Code specifically provides that once a service contract is created between the City and a customer, the City has a "**duty** to provide utility services to a customer who is not in arrears."⁶ On the Operating Days in question, AE incurred demonstrable financial losses due to compliance with ERCOT's HDLO instructions because AE had to purchase additional power in the Real-Time Market to serve its Load after reducing the generation level at the Fayette Power Plant. Based on the foregoing, ERCOT has confirmed that AE meets the Protocols Section 6.6.3.6(1)(c) requirement to prove a demonstrable financial loss associated with energy purchase or sale provisions of bilateral contracts.

Compensation Granted

ERCOT grants a Real-Time HDLO Energy Payment in the amount of approximately \$2.86 million to cover losses that AE incurred during Settlement Intervals 85-96 on February 14, 2021 and the first three Settlement Intervals on February 15, 2021 as a consequence of complying with ERCOT HDLO instructions for the Fayette Power Plant. AE supplied sufficient documentation to substantiate the aforementioned losses, and ERCOT applied the methodology described in Protocols Section 6.6.3.6 in determining the compensation amount.

³ Under Protocols § 6.6.3.6(1)(d), the Settlement and billing dispute must include: an attestation signed by an officer or executive with authority to bind the QSE; the dollar amount and calculation of the financial loss by Settlement Interval; an explanation of the nature of the loss and how it was attributable to the HDLO; and sufficient documentation to support the QSE's calculation of the amount of its financial loss.

⁴ Austin Energy did not demonstrate a right to repayment based on variable cost components of DAM obligations. As a result, ERCOT's analysis of Austin Energy's claim focused on whether it suffered financial losses associated with the energy purchase or sale provisions of bilateral contracts.

⁵ Austin City Code § 15-9-32(A). Under Austin City Code § 15-9-35(A), a service contract can be created when: (1) the City and a person execute a written service agreement; (2) the City accepts a written, electronic, or verbal application for utility services; (3) the City provides utility services to a person; or (4) other circumstances obligate a person to pay the City for utility service.

⁶ Austin City Code § 15-9-35(C)(2) (emphasis added).

Providing a Real-Time HDLO Energy Payment to AE in this circumstance is also consistent with ERCOT's prior actions. As noted above, the Fayette Power Plant is jointly owned by AE and LCRA, and ERCOT has already provided LCRA with a Real-Time HDLO Energy Payment for the period from February 14-15, 2021, arising from the same HDLO instruction upon which AE's claim is based. Providing an equivalent payment to AE is consistent with ERCOT's determination regarding LCRA's claim.⁷

Compensation Denied

ERCOT determines that cost recovery for Settlement Intervals 77-84 on February 14, 2021 should be denied because AE had enough generation and energy trades to cover its Load during this time period. On May 16, 2022, AE accepted ERCOT's proposal not to include attested losses for Settlement Intervals 77-84, resulting in a reduction in AE's total estimated financial loss of approximately \$733,000.

Prior to accepting ERCOT's determination, AE argued that even though there was more generation than Load for this period, AE's Load charges were greater than total generation revenues due to congestion. AE also asserted that if the Fayette Power Plant had not received HDLO instructions, AE would have had more revenue to cover its Load charges.

ERCOT disagrees with this argument because congestion results in price differences between the Load Zone and prices at the generation node. In other words, even if total generation were equal to total Load, AE could have been charged more for serving Load during congestion periods. Furthermore, recovery of demonstrable financial losses must be associated with DAM obligations or Real-Time energy trades. Congestion costs are not part of the equation for the recovery of these losses. Allowing cost recovery for Settlement Intervals 77-84 on February 14, 2021 would result in a payment for lost opportunity costs, which ERCOT is specifically prohibited from making under the Protocols.⁸

In sum, ERCOT determines that AE should receive a Real-Time HDLO Energy Payment in the amount of approximately \$2.86 million to cover losses incurred during Settlement Intervals 85-96 on February 14, 2021 and the first three Settlement Intervals on February 15, 2021, as permitted in Protocols Section 6.6.3.6.

⁷ ERCOT issued Market Notice M-A081121-01 on August 11, 2021, announcing that it had granted three Settlement disputes involving one QSE (LCRA) that complied with HDLO instructions for Operating Days February 14-15, 2021. That Market Notice is available at: https://www.ercot.com/services/comm/mkt_notices/archives/5994. The LCRA HDLO matter was presented to ERCOT's Wholesale Market Subcommittee (WMS) on October 6, 2021. More information about that matter can be found in that presentation, which is available as Item 10 (*HDL LDL Override Report WMS*) at the following link: <https://www.ercot.com/calendar/10062021-WMS-Meeting-by-Webex>.

⁸ See Protocols § 6.6.3.6(1)(c), stating that to qualify for a Real-Time HDLO Energy Payment, a QSE must "have incurred a demonstrable financial loss associated with variable cost components of DAM obligations or energy purchase or sale provisions of bilateral contracts (**as opposed to lost opportunity costs**), in consequence of the HDL override" (emphasis added).

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.