

herein, the City would be irreparably harmed and would suffer probable imminent and irreparable injury.

The Court concludes that the City has carried its burden to show the merit of its underlying claims and its probably right of recovery.

The Court further finds that if the Defendants are not restrained from taking the actions listed specifically herein, the City would be debited automatically, and its personal property, in the form of money, would be automatically transferred to ERCOT. Because of the complexity of the ERCOT electric market, such funds, once transferred, could not be traced and could not be recovered. Moreover, recovery of the funds would prove impossible due to ERCOT's lack of liquidity, ERCOT's role in the marketplace as a government-created clearinghouse for payments, and the insolvency of other market participants.

In addition, the Court finds that if Defendants are not restrained from taking the actions listed specifically herein, the City's financial standing and credit would be imminently, severely, and irreparably harmed. The payment of the Default Uplift Invoices charged by ERCOT in conjunction with the costs for electricity incurred in connection with the Valentines' week winter storm would compel Denton to issue debt, which would necessarily lower the amount of debt that the City could issue for other purposes. The issuance of such debt would also increase the cost to the City of issuing additional debt for other purposes.

The Court also concludes that, unless Defendants are restrained as set forth herein, the City would be imminently and irreparably harmed by being faced with a

Hobson's Choice: either (1) refuse to pay default uplift charges, and thereby incur possible penalties under the ERCOT Nodal Protocols, or (2) pay the default uplift charges, and violate the Constitution's restriction on incurring unfunded debts. See Tex. Const. art. XI, § 5. The Court concludes that imposing penalties on a governmental entity for its refusal to violate the Constitution constitutes an irreparable harm, which, in this case as set forth by the timelines of the ERCOT Nodal Protocols, is imminent.

The Court concludes further that the City does not have an adequate remedy at law for the imminent and irreparable injuries that it would suffer in the event Defendants take the actions restrained herein.

The Court further concludes that a bond of \$100,000 is necessary to protect Defendants from any harm they may sustain as a result of this Order. The Court observes that ERCOT is a nonprofit entity, which serves merely as a clearinghouse for payments between market participants. In not collecting the uplift charges that are the subject of this Order, ERCOT itself suffers no injury.

IT IS THEREFORE ORDERED that Defendants are RESTRAINED from taking the following actions:

- a) Requiring the City to pay any Default Uplift Invoice, short-pay statement, or any obligation pursuant to Section 9.19 of the ERCOT Nodal Protocols;
- b) Applying payment from the City for any Default Uplift Invoice, short-pay statement, or any obligation pursuant to Section 9.19 of the ERCOT Nodal Protocols;

- c) Applying any funds otherwise due and owed to the City to the payment of any Default Uplift Invoice, short-pay statement, or any obligation pursuant to Section 9.19 of the ERCOT Nodal Protocols;
- d) Requiring the collateralization of the City's alleged obligation for any Default Uplift Invoice, short-pay statement, or any obligation pursuant to Section 9.19 of the ERCOT Nodal Protocols;
- e) Restricting the City's access to the wholesale electric market, including the day-ahead or real-time markets for non-payment of any Default Uplift Invoice, short-pay statement, or any obligation pursuant to Section 9.19 of the ERCOT Nodal Protocols; or
- f) Taking any action against the City for non-payment of any Default Uplift Invoice, short-pay statement, or any obligation pursuant to Section 9.19 of the ERCOT Nodal Protocols.

This Order is necessary to preserve the status quo and to prevent imminent and irreparable injury to the City.

This Order is binding on Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them. Defendants are further required to provide all such persons with actual notice of this Order and the restraints herein.


This Temporary Restraining Order shall remain in force through 14 days from the date and time of signature of this Order. This Order shall expire on March 11, 2021, unless extended.

IT IS FURTHER ORDERED that (i) the hearing on Plaintiffs' Application for Temporary Injunction is set for March 9 2021, at 9:00 a.m. in this Court; and (ii) the clerk of the Court shall forthwith issue a temporary restraining order in conformity with the law and the terms of this Temporary Restraining Order.

IT IS FURTHER ORDERED that bond on this Order be set at \$100,000.

The Clerk of the Court is instructed to prepare a writ of injunction for issuance complying with the requirements of Texas Rule of Civil Procedure 687.

SIGNED this 25th day of February, 2021 at 4:45 p.m.



JUDGE PRESIDING
Sherry Shipman