

NOTICE DATE: February 11, 2022

NOTICE TYPE: M-A050720-01 Legal

SHORT DESCRIPTION: Resolution of ADR Proceedings between ERCOT and Viridity Energy Solutions, Inc. (ADR No. 2021-VES-01)

INTENDED AUDIENCE: Market Participants

DAY AFFECTED: February 16-19, 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 Viridity Energy Solutions, Inc. (Viridity). Viridity identified Engie Energy Marketing NA, Inc. (Engie) as an affected party.¹

Relevant Facts:

Viridity is a Qualified Scheduling Entity (QSE) that represents Resource Entities that are Load Resources. On February 15, 2021, Viridity's Load Resources had a Responsive Reserve (RRS) responsibility of approximately 124.7 Megawatts (MW).² On that day, at around 1:10 a.m., ERCOT instructed Viridity to deploy its Load Resources that were carrying an RRS responsibility.³ Viridity responded by deploying approximately 75 MW of Load Resources.⁴ Because the Load Resources were deployed during Emergency Conditions, they were required to remain off-line until recalled.⁵

When the Load Resources were deployed on February 15, Viridity's submissions in ERCOT's systems did not reflect that the Load Resources had any RRS responsibilities for February 16-19. After deployment, Viridity did not submit any trades and did not offer into the Day Ahead Market (DAM) to provide RRS for February 16-19. Viridity's Current Operating Plans (COPs) and telemetry submitted during February 16-19 did not reflect any RRS responsibility. Viridity's COPs and

¹ Viridity and Engie were parties to an agreement relating to Responsive Reserve (RRS) obligations during the dates at issue.

² According to telemetry, Viridity's Load Resource RRS responsibilities for all intervals on February 15 typically ranged from around 117 to 124.7 MW.

³ The deployment instructions were communicated via Extensible Markup Language (XML) to QSEs representing Resource Entities that are Load Resources with RRS responsibilities. Around 2:09 a.m., ERCOT sent an electronic instruction recalling the Load Resources but then re-sent an instruction around 4:17 a.m. confirming that the Load Resources were deployed. The last electronic dispatch instruction Viridity received for the dates at issue was on February 15 at around 11:32 p.m. instructing the Load Resources to deploy until February 16 at around 11:59 p.m. It appears that Viridity's telemetry resulted in ERCOT's Ancillary Services Manager application not sending further electronic dispatch instructions for the subsequent dates at issue.

⁴ The specific MW amounts that Viridity's telemetry reported as deployed during February 15 varied by interval but generally ranged around 74-80 MW.

⁵ See ERCOT Protocols § 6.5.7.6.2.2(8).

telemetry for the Load Resources at issue reflected a Resource status code of “OUTL” during those dates. On February 19, at 9:00 a.m., ERCOT recalled the deployment of all Load Resources as it moved from Energy Emergency Alert (EEA) Level 3 to EEA Level 2.

Viridity complains that, although its Load Resources remained off-line during February 16-19, 2021, it was not compensated as providing RRS for that time period. Viridity argues that it did not submit offers to provide RRS into the DAM because it believed such an offer would give ERCOT's Energy and Market Management System (EMMS) a false impression that the Load Resources were available if selected in the DAM. Viridity arranged a conference call with ERCOT on February 18 to discuss whether its Load Resources could restore Load. Viridity complains that during the call ERCOT did not advise that it could submit offers in the DAM to provide RRS by the Load Resources that were off-line at the time.

Viridity filed settlement and billing disputes regarding the RRS deployment which ERCOT denied because Viridity did not submit offers in the DAM to receive compensation for providing RRS.⁶ Viridity initiated this ADR to challenge the denial of its settlement and billing dispute and claims its damages could range from \$67.4 million (based on market clearing prices of \$9,000 per MWh), up to \$140.55 million (based on published DAM Clearing Prices for RRS) for those dates.⁷

ERCOT's Disposition/Reasoning:

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

RRS is an Ancillary Service that is intended to resolve frequency decay or deviation, provide back-up regulation, and provide energy or continued Load interruption during an EEA.⁸ There are two market processes through which a QSE representing a Resource Entity that has a Load Resource may seek compensation from the ERCOT market for providing Ancillary Services: 1) through an offer submitted in the DAM; or 2) an offer submitted in a Supplemental Ancillary Service Market (SASM).⁹ An offer to provide an Ancillary Service (A/S), like RRS, is only valid if ERCOT determines that it meets the requirements of the Protocols.¹⁰ If a QSE seeks to provide RRS through the DAM, it must submit the offer to ERCOT by 1000 in the Day-Ahead.¹¹ A valid offer to provide RRS through a SASM must be submitted before the applicable deadline set by ERCOT for that SASM.¹² A valid A/S offer submitted in the DAM or a SASM must include several different categories of

⁶ Viridity filed two settlement and billing disputes based upon the same facts under two different charge type codes. Those settlement and billing disputes have been consolidated into one ADR because they involve the same underlying facts and issues.

⁷ Because ERCOT has determined that Viridity's claims should be denied, this Market Notice does not analyze the method of calculating the alleged damages, but it should be noted that if damages were granted, any award would have to be reduced by the amount of Ancillary Service Imbalance Charges that would have been assessed for all hours during which the Load Resources were deployed for RRS. Because Viridity did not submit any offers in the DAM or report any trades for RRS indicating that it was carrying an RRS responsibility during the time-period at issue, it avoided incurring the Ancillary Service Imbalance Charges associated with an RRS deployment.

⁸ ERCOT Protocols § 2.1 (definition of Responsive Reserve).

⁹ *Id.* at § 4.4.7.2(1)-(2). ERCOT notes there were no SASMs issued in the time window of February 16-19, consequently this option was not available to Viridity.

¹⁰ *Id.* at § 4.4.7.2.2(1).

¹¹ *Id.* at § 4.4.7.2(2).

¹² *Id.* at § 4.4.7.2.1(2).

the information listed in the ERCOT Protocols.¹³ ERCOT validates all offers to provide A/S and notifies the submitting QSE if the offer was rejected or invalid.¹⁴ If notified that an offer was rejected or invalid, “the QSE may then resubmit the offer within the appropriate market timeline.”¹⁵

A QSE that represents a Resource must submit a COP to ERCOT which reflects the expected operating conditions for each of its Resources for each hour in the next seven Operating Days.¹⁶ A QSE must update its COP reflecting changes in availability as soon as reasonably practicable, but in no event later than 60 minutes after the event that caused the change.¹⁷ A valid COP must include certain information, including the expected Resource status for each hour and the Resource’s Ancillary Service Resource Responsibility capacity in MW for RRS as well as other types of Ancillary Services.¹⁸ If a QSE has an A/S responsibility, by 1430 the QSE must submit a COP notifying ERCOT which Resources will provide the capacity necessary to meet the QSE’s A/S Supply Responsibility, specified by Resource, hour, and service type.¹⁹ A QSE representing a Resource Entity that has a Load Resource that has an RRS responsibility must reflect a Resource status code of “ONRL” for all times that it carries an RRS responsibility both before and during deployment.²⁰

QSEs have similar obligations regarding the Real-Time telemetry they are required to submit to ERCOT. For example, a QSE representing a Resource Entity that has a Load Resource must provide telemetry for each Load Resource which includes: Load Resource net real power consumption (in MW); Low Power Consumption (LPC); Maximum Power Consumption (MPC); A/S Schedule (in MW) for each quantity of RRS and Non-Spin, which is equal to the A/S Resource Responsibility minus the amount of A/S deployment; A/S Resource Responsibility (in MW) for each quantity RRS and Non-Spin for all Load Resources; and the Resource Status.²¹ If deployed for RRS, within one minute following a deployment instruction, the QSE must update the telemetered Ancillary Service Schedule for RRS to reflect the deployment amount for the Load Resources.²²

When Viridity’s Load Resources were deployed on February 15, it had a couple of options for how to manage the possibility of its Load Resources being required to remain off-line for subsequent days after deployment. It could have submitted a trade or an offer in the DAM to provide RRS for February 16-19 (in which case it would reflect a Resource status of “ONRL”) or it could have elected to remain off-line without submitting a trade or an offer seeking compensation from the market (in which case it would reflect a Resource status code of “OUTL”).²³ In this case, Viridity remained off-line and submitted a Resource status of OUTL.²⁴ Viridity claims that it should be

¹³ *Id.* at § 4.4.7.2.1(1)(a)-(h).

¹⁴ *Id.* at § 4.4.7.2.2(1)-(3).

¹⁵ *Id.* at § 4.4.7.2.2(3).

¹⁶ *Id.* at § 3.9.1(1). A QSE must also provide an updated COP when it submits an offer to provide Ancillary Services in the DAM. *Id.* at § 4.3(1)(a).

¹⁷ *Id.* at § 3.9.1(2)-(3).

¹⁸ *Id.* at § 3.9.1(5)(a)-(g).

¹⁹ *Id.* at § 4.4.7.4(3).

²⁰ *See id.* at § 3.9.1(5)(b)(iii)(E).

²¹ *Id.* at § 6.5.5.2(5)(a)-(m).

²² *Id.* at § 8.1.1.4.2(1)(a).

²³ These options would only apply in the context of a Non-Controllable Load Resource.

²⁴ There are reasons that a QSE that has been deployed might not submit a trade or seek compensation by offering to provide RRS in the DAM or a SASM for subsequent days and instead remain off-line with an “OUTL” status. For

compensated for providing RRS on February 16-19, but Viridity did not submit an offer to provide RRS in the DAM for the dates at issue, as was necessary under the ERCOT Protocols, to receive compensation from the ERCOT market. The DAM was functioning properly – it was not suspended or restarted during the dates at issue.²⁵ Further, Viridity’s contention that it was carrying an RRS responsibility on February 16-19 is contrary to the information it submitted to ERCOT through COPs and telemetry during those dates, which reflected a Resource status of “OUTL” instead of “ONRL.”

Viridity complains that certain Protocol language regarding RRS deployment does not clearly describe the options that were available. Viridity specifically identifies ERCOT Protocols Section 6.5.7.6.2.2(8), which provides:

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,²⁶ a QSE representing Resource Entities that are Load Resources that have been deployed for RRS may not restore Load until recalled by ERCOT.²⁷ 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.²⁸ 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. 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.

ERCOT acknowledges that the Protocol language in Section 6.5.7.6.2.2(8) could be improved to provide more explicit description of the options a QSE representing a Resource Entity’s Load Resources has for subsequent days after deployment during an Emergency Condition (to submit trades or offers in the DAM or a SASM or to voluntarily remain off-line).²⁹ However, the fact that Protocol language could be clearer does not support granting this ADR.³⁰ All Market Participants

example, by not assuming an RRS responsibility through the DAM or a trade, the QSE would avoid incurring A/S Imbalance Charges for the hours that it must remain off-line beyond its original RRS responsibility. Also, a QSE’s deployment might occur after the deadline to offer into the DAM for the next day has passed.

²⁵ See *generally id.* at § 25 (describing the procedures for Market Suspension and Restart).

²⁶ 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.

²⁷ 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.

²⁸ 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.”)

²⁹ ERCOT has begun preparing a Nodal Protocol Revision Request (NPRR) to address the issue.

³⁰ See 16 TAC § 25.503(f)(11) (providing that the NPRR process or formal Protocol interpretation process are the appropriate procedures to resolve issues arising from Protocol language that is unclear.)

share in the obligation to ensure that Protocol language is clear and consistent.³¹ Moreover, there were other QSEs representing Load Resources who were similarly deployed on February 15 for RRS and required to remain off-line during February 16-19 who submitted offers into DAM for RRS and were compensated accordingly for those dates. These other QSEs presumably understood the Protocol language regarding how to receive compensation under the circumstances.

Viridity complains that ERCOT failed to accurately account for “electricity production and delivery” as required under the Protocols and the Public Utility Regulatory Act (PURA). ERCOT settled Viridity in accordance with the Protocols and the data submitted by Viridity pursuant to its obligations. As a result, ERCOT does not find that it failed to properly account for the production or delivery of electricity as asserted by Viridity.

Viridity complains that, during a conference call on February 18 between ERCOT and Viridity, ERCOT did not provide clear guidance regarding Viridity’s options. Even if ERCOT provided imperfect advice during the call, that conversation would not affect the resolution of this ADR.³² Viridity was responsible for understanding its obligations under the ERCOT Protocols.³³ Moreover, the call occurred on February 18 at 11:00 a.m., after the deadline to submit offers in the DAM for the dates at issue had passed.

Viridity has not demonstrated that ERCOT violated any obligation under the ERCOT Protocols or other applicable law.³⁴ As a result, the claims asserted by Viridity are denied. This Market Notice serves to conclude the ADR proceedings between ERCOT and Viridity.

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.

³¹ See *id.* at § 25.503(f)(12) (“All market participants must cooperate with the ERCOT subcommittees, ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.”)

³² See 16 TAC § 25.503(i)(6) (“A market participant may freely communicate informally with ERCOT employees, however, the opinion of an individual ERCOT staff member not issued as an official interpretation of ERCOT pursuant to this subsection may not be relied upon as an affirmative defense by a market participant.”)

³³ See 16 TAC § 25.503(f)(1) (“Each market participant shall be knowledgeable about ERCOT procedures.”)

³⁴ 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.”