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COMMISSION PROCEEDING TO §
ENSURE RESOURCE ADEQUACY IN §
TEXAS §
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2013 DEC 18 AM 10:39
BEFORE THE PUBLIC UTILITY COMMISSION
OF TEXAS

COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC (“Noble Solutions”) respectfully submits the following comments regarding the consideration by the Public Utility Commission of Texas (“Commission”) of capacity markets as a solution to perceived resource adequacy issues in Texas.

I. INTRODUCTION

Noble Solutions is one of the largest non-residential retail electric providers (“REPs”) in the United States with operations in regions both with and without capacity markets. It is Noble Solutions’ experience that the current market design in ERCOT is superior to capacity market designs in PJM, NYISO, or New England, or to load obligation designs such as in California. The energy plus ancillary services market in ERCOT allows for a market-based determination of electricity prices paid by consumers without administratively driven surcharges as expressed in a capacity obligation. The current ERCOT market design has provided reliable and competitively priced electricity and is largely responsible for creating the most competitive retail electric market in the United States.

In contrast, regions with mandated capacity obligations have proven to be costly to consumers and ineffective in bringing new capacity to the market. The continuing debate over the inputs to the determination of the price for capacity in these regions provides insights into what capacity markets represent. Specifically, capacity markets are not markets but regulatory

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established surcharges that move and operate more similarly to rate cases than markets. The administrative inputs have been a source of frequent litigation in regions with a capacity obligation giving rise to ever evolving costs and compliance requirements. The inability to manage the cost associated with a capacity obligation combined with the lack of demonstrative goods realized by customers in regions with such obligations should lead the Commission away from any type of capacity construct. Further, Noble Solutions encourages the Commission to allow recent changes to the market design an opportunity to achieve the targeted objectives before investigating further changes to the market, particularly changes that would fundamentally shift away from the competitive principles underpinning the energy-only market in Texas.

II. STATUTORY AUTHORITY

PURA 39.001(d) directs the Commission to use competitive methods rather than regulatory methods to the greatest extent feasible in designing the restructured market. It is undisputed that reliability and adequacy of the regional network are essential in any market design. It is also indisputable that a capacity obligation is an artificial product created by regulation. Accordingly, Noble Solutions asserts that an administratively-driven capacity obligation is inconsistent with the statutory requirements that favor competitive outcomes over regulatory intervention.

It should also be noted that the Legislature has historically taken the role of establishing mandated payments to achieve certain policy objectives such as those set forth for renewables and energy efficiency. The absence of such a mandate for capacity raises questions about the ability of ERCOT or the Commission to set up an individual mandate for customers to purchase capacity, and to then establish the demand curve and price for that capacity. Further, it is unclear whether the Commission has the authority to require municipal utilities and cooperatives to participate in any administrative capacity obligation. However, exclusion of these entities from such a requirement may create market distortions that disadvantage customers in the competitive

market relative to customers in regions served by municipal or cooperative utilities. These uncertainties and complexities will mean that any move toward a mandated capacity obligation will be lengthy and include appeals to the courts.

III. EXPERIENCE IN OTHER MARKETS

Noble Solutions participates in markets that administer the capacity obligation through a centralized market and in those that impose the capacity obligation by way of mandate on the load serving entity. Neither of these constructs provides greater reliability than has been experienced in ERCOT; however, it is certain that costs are higher for retail customers when there is an administrative requirement to purchase capacity. Many consumers view the higher costs from capacity surcharges as a tax and the REP as a tax collector. This reaction can lead to negativity toward the overall market and general customer dissatisfaction. Accordingly, Noble Solutions encourages the Commission to assess the cost impacts of any additional capacity surcharge on customers and weigh the value of such cost against tangible benefits. Additionally, if customers are to be presented with a significant surcharge for new capacity, customers should be assured the new capacity is provided.

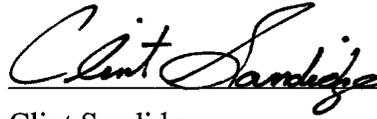
Another major source of customer dissatisfaction is the constant controversy over the administrative inputs that determine the capacity price as stakeholders fight over how to achieve their aims. This is a far cry from the operation of the forces of competition setting price, and the resulting uncertainty limits the choices that REPs can provide to consumers. It is also Noble Solutions' experience that the process is heavily influenced by the incumbent stakeholders with existing generation, resulting in a capacity construct that tends to extend the life of older, inefficient generation units to the detriment of newer more efficient resources. Implementation of a capacity market would substantially move Texas away from a market design that relies upon competitive forces to dictate electricity prices toward a design that relies upon regulatory determinations.

Noble Solutions' experience is that mandating capacity obligations on the load-serving entity is also problematic. In a retail choice environment, no one can determine what REPs' load will be years hence, nor can REPs or anyone else carry the financial risk associated with being assigned a capacity obligation but not having acquired or priced the load associated with that obligation. Thus, long-term investment in generation cannot be encouraged by establishing such mandatory requirements on REPs, because it cannot give rise to a contract that lenders or investors will rely upon. It will give rise to burdensome compliance requirements and administrative costs, but it will not ensure resource adequacy.

IV. CONCLUSION

The existing framework in Texas has resulted in the most successful competitive retail market in the United States. A retail market can only be successful where the wholesale market is driven by the forces of competition. ERCOT has been just such a market since restructuring took place. The market has survived and thrived over the last twelve years in the face of cyclical input prices, changing demand, and once in a hundred year weather. In the face of that volatility, the market has delivered reliable and competitively priced power, just as it was designed to do. ERCOT is making progress in improving its load forecast, and the Operating Reserve Demand Curve ("ORDC") is just being implemented. Noble Solutions believes the Commission should allow the recent changes to the market design an opportunity to achieve the targeted objectives before evaluating any further modifications to the ERCOT market. In the meantime, Noble Solutions urges the Commission to support the current energy-only market and avoid any type of administrative capacity construct. Such constructs are not seen as successful in other regions, have not provided any more reliability than exists in ERCOT, are more costly, and represent a step backward from competition towards regulation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Clint Sandidge". The signature is written in black ink and is positioned above a solid horizontal line.

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