



OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

CIVIL INVESTIGATIVE DEMAND

TO: Electric Reliability Council of Texas, Inc. *via CMRRR: 7018 0040 0000 6257 1964*
c/o Registered Agent *Return Date: March 15, 2021*
Bill Magness
7620 Metro Center Drive
Austin, TX 78744 USA

Pursuant to this office's specific authority under article IV, section 22 of the Texas Constitution and section 17.61 of the Texas Deceptive Trade Practices – Consumer Protection Act, sections 17.41-.63, Texas Business and Commerce Code ("DTPA"), Electric Reliability Council of Texas, Inc. is hereby directed to produce the items listed in Exhibit "A" attached hereto. Such production is governed by the instructions and definitions on this page and subsequent pages.

You are to make available the documentary material described in Exhibit "A" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on March 15, 2021. If providing documents electronically, please provide them to Javier Juarez at javier.juarez@oag.texas.gov. **Please contact one of the persons listed below upon receipt in order to discuss the return date and the logistics of producing the requested documents to the Consumer Protection Division.**

Pursuant to this office's specific authority under article IV, section 22 of the Texas Constitution and section 17.61 of the Texas Deceptive Trade Practices – Consumer Protection Act, sections 17.41-.63, Texas Business and Commerce Code, the Division believes that Electric Reliability Council of Texas, Inc. may be in possession, custody, or control of documentary material relevant to an investigation of possible violations of DTPA sections 17.46(a) and/or 17.46(b) with respect to the retail and/or wholesale electricity industry in the State of Texas during the month of February 2021.

TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 19th day of February, 2021.

/s/ Jennifer Jackson

Jennifer Jackson
Chief, Consumer Protection Division
T: (512) 463-9917 | F: (512) 473-8301
Email: jennifer.jackson@oag.texas.gov

Other Authorized Agents:
Stephanie Eberhardt, Assistant Attorney General
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Javier Juarez, Investigator
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Instructions

1. **Read These Instructions/Definitions Carefully.** Your production must comply with these instructions and definitions.
2. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this Civil Investigative Demand must be preserved. *Any ongoing, scheduled or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.* Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.
3. **Relevant Dates.** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from February 8, 2021, to the date of delivery of this Civil Investigative Demand, herein called “the relevant time period.”
4. **Custody and Control.** In responding to this Civil Investigative Demand, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control. A document is in your custody and control if it is the possession of another person and you have a right to possess that document that is equal or superior to that other person’s right of possession. On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:
 - a. The name of each author, sender, creator, and initiator of such document;
 - b. the name of each recipient, addressee, or party for whom such document was intended;
 - c. the date the document was created;
 - d. the date(s) the document was in use;
 - e. a detailed description of the content of the document;
 - f. the reason it is no longer in your possession, custody or control; and
 - g. the document’s present whereabouts.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.
5. **Non-identical Copies to be Produced.** Any copy of a document that differs in any manner, including but not limited to the presence of handwritten notations, different senders or recipients, etc. must be produced.
6. **No Redaction.** All materials or documents produced in response to this Civil Investigative Demand shall be produced in complete unabridged, unedited and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final editions of a document.
7. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

8. **Production of Documents.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, codes and programs necessary for translating it into usable form, or the information shall be produced in a finished usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

Definitions

1. **“You,” “your,” “the business,” “Electric Reliability Council of Texas, Inc.” and “ERCOT”** means the entity named on page one of this Civil Investigative Demand and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is total or partial ownership (25 percent or more) or control between the company and any other person or entity.
2. **“Document”** means the original and all non-identical copies (whether different from the original because of notes, underlining, attachments, or otherwise) of all computer files, and all written, printed, graphic or recorded material of every kind, regardless of authorship. It includes communications in words, symbols, pictures, photographs, sounds, films, and tapes, as well as electronically stored information, computer files, together with all codes and/or programming instructions and other materials necessary to understand and use such systems.
3. **“Communication”** is to be broadly construed and includes but is not limited to e-mails, notes, faxes, memos, text messages, social media posts, letters, notes of conversations and meetings and recordings of conversations and meetings, whether in text or audio form.
4. **“Complaint”** is to be broadly construed. It includes any documentation commemorating expressions of dissatisfaction with you, your business, or goods or services provided by you, dissatisfaction with your employees or agents, or the procedures or services utilized by them. The term includes complaints received directly by you from consumers, or complaints which have been forwarded to you from any entity, private or governmental.
5. **“Identify”** for an individual means providing the individual’s name and all contact information. For an entity it means providing the entity’s name and all contact information. For any other tangible thing it means providing a reasonably detailed description of the item and all contact information for the custodian or person who has possession, custody or control thereof.
6. **“Including”** means including, but not limited to.
7. **“Person”** includes you and means any entity or natural person.
8. **“Any”** means any and all.
9. **“Relate,” “related,” and “relating”** mean being in any way legally, logically, or factually connected with the subject matter of the request at issue.
10. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
11. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.
12. **“Retail electric provider”** means a person that sells electric energy to retail customers in Texas.

13. **“Transmission and Distribution Utility”** means a person that owns or operates for compensation in Texas equipment or facilities to transmit or distribute electricity.
14. **“Power Generation Company”** means a person that generates electricity that is intended to be sold at wholesale, does not own a transmission or distribution facility in Texas, and does not have a certificated service area.
15. **“Municipally Owned Utility”** means a utility owned, operated, and controlled by a municipality or by a nonprofit corporation the directors of which are appointed by one or more municipalities, and specifically includes the municipality and municipal utility districts.
16. **“PUCT”** means the Public Utility Commission of Texas.

EXHIBIT A: DOCUMENTS TO BE PRODUCED

1. All communications, including communications to and from ERCOT, PUCT, retail electric providers, transmission and distribution utilities, municipally owned utilities, or power generation companies, concerning power outages during the relevant time period, including without limitation all system operation directives, notifications or instructions.
2. All communications, including communications to and from ERCOT, PUCT, retail electric providers, transmission and distribution utilities, municipally owned utilities, or power generation companies, regarding shedding loads during the relevant time period, or the necessity to do so, including all directives, notifications or instructions as to how and when to effectuate any such load reductions.
3. All communications, including communications to and from ERCOT, PUCT, retail electric providers, transmission and distribution utilities, municipally owned utilities, or power generation companies, regarding the implementation of “rolling” power outages during the relevant time period, whether at ERCOT’s direction or otherwise, including without limitation all such correspondence and communications relating to the decision-making process in implementing or effectuating such outages.
4. All communications, including communications to and from ERCOT, PUCT, retail electric providers, transmission and distribution utilities, municipally owned utilities, or power generation companies, relating to or concerning energy pricing and/or price increases during the relevant time period. The scope of this request specifically includes all ERCOT communications with power generation companies regarding energy prices and scarcity conditions in the market.
5. All communications to and from Potomac Economics, Ltd. regarding pricing and/or grid loads, including without limitation all daily reports or “snapshots” of the ERCOT wholesale electricity market from February 1, 2021, to date.
6. Copies of any documents which identify the factors (including the cost of gas) which caused a significant increase in the cost of energy generation in the Texas market during the relevant time period.
7. All emergency plan(s) and operational contingency manuals, directives or instructions for cold weather operations in effect during the relevant time period.
8. All documents relating to winterization “spot checks” performed by ERCOT for the 2020 to 2021 winter season. The scope of this request is from January 1, 2020, to the present.
9. Any reports, analyses or studies commissioned of or received from third-party consultants, including without limitation Quanta Energy Advisors, Quanta Services, Inc. (or its affiliated companies), about, concerning or relating to efforts to harden or “winterize” the Texas electrical grid, or any components or equipment thereof, against winter weather or storm conditions generally, or specifically in the aftermath of the February 2011 winter storm. The scope of this request is from February 1, 2011, to the present.
10. A copy of any Resource Adequacy Assessments or similar studies or report(s) that refer or relate to winter weather/freeze risk scenarios, operational responses to same, and/or proposed or potential capital expenditures to address same and including without limitation any subsequent studies, reports, or compilations that refer or relate to it. The scope of this request is from January 1, 2016, to the present.

11. A copy of the PUCT's Resource Adequacy Project and/or Project No. 40000, undertaken in or around 2012, and any reports or studies referring or relating to the same subject matter that were subsequently commissioned by the PUCT or ERCOT. The scope of this request is from October 1, 2012, to the present.
12. All communications with the Texas Reliability Entity (Texas RE) concerning "winterizing" or hardening the Texas electric grid to withstand potential extreme winter weather conditions from January 1, 2011 to the present.
13. Documents relied upon by CEO Bill Magness for his statement that "[w]e're ready for the several days of pretty frigid temperatures to come our way" at ERCOT's February 9, 2021 Board Meeting.
14. All notices, including drafts and final versions, issued by ERCOT to generators in anticipation of the February 2021 Winter Storm, including the Operating Condition Notice ("OCN") for extreme cold weather issued by ERCOT on February 8, 2021, the Advisory issued February 10, 2021, and the Watch issued on February 11, 2021, and the internal and external communications relating to or provided with those notices. The scope of this request includes but is not limited to:
 - a. Any updated Current Operating Plans ("COPs") and High Sustained Limits ("HSLs");
 - b. Any notifications to ERCOT of known or anticipated fuel restrictions;
 - c. Documents related to any Planned Resource outages;
 - d. Documents related to implementation of winterization procedures; and
 - e. Notifications to ERCOT of changes or conditions that could affect system reliability.
15. Any documents which reference, request or demand additional financing or financial reserves/payments/lines of credit or financial guarantees made to retail electric providers.
16. Any documents and communications regarding any changes to TDU charges, ERCOT administrative fees charges to load, or any new or modified fees or costs on retail electric providers and municipally owned utilities.
17. All ERCOT invoices from February 1, 2021, to date, issued to retail electric providers, municipally owned utilities, and power generation companies.
18. All complaints received by you regarding energy prices.
19. All documents related to any state, local, or federal governmental inquiries and/or administrative actions regarding the February 2021 Winter Storm.
20. All documents and court filings in any lawsuit in which you are a party relating to weather occurring during the week of February 14, 2021.
21. Documents relating to or evidencing any state, local, or federal governmental investigation of and/or inquiry into you.