BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF OKLAHOMA GAS AND ELECTRIC COMPANY FOR A FINANCING ORDER PURSUANT TO THE FEBRUARY 2021 REGULATED UTILITY CONSUMER PROTECTION ACT APPROVING SECURITIZATION OF COSTS ARISING FROM THE WINTER WEATHER EVENT OF FEBRUARY 2021	)))))))	**CAUSE NO. PUD 2021-000072**

Public Comment re: Customer Exposure to Winter Storm Uri Costs

Ladies and Gentlemen:

On March 31, 2022, Brandy Wreath, Director of the Public Utility Division ("PUD"), filed a letter in the Oklahoma Corporation Commission's ("OCC" or "the Commission") Case PUD 2021-000072 in response to a white paper written by the firm Intelometry and commissioned by NRG Energy.[1] That white paper, entitled *Beyond Texas: Evaluating Customer Exposure to Energy Price Spikes: A Case Study of Winter Storm Uri, February 2021* ("the Report"), evaluates 15 jurisdictions impacted by Winter Storm Uri and concludes that regulated utilities will pass through substantially all costs from surging power and gas prices during the Winter Storm to consumers. By contrast, the Report concludes that, in places where customers who have a choice in their energy supplier, competition restrains competitive retailers from being able to pass through these extraordinary costs in future prices. Instead, the energy supplier, and not the customer, is exposed to the risks of escalating wholesale pricing—and indeed bore that risk—during an event like the Winter Storm.

We have asked Intelometry to carefully consider the PUD's criticisms and respond to them. At the same time, Intelometry has undertaken to publish an up-to-date, second version of its Report, as regulatory proceedings have continued to progress in the 15 jurisdictions affected by Winter Storm Uri. We include both Intelometry's narrative response to the PUD and its up-to-date report in this filing. We also want to take the opportunity to correct the record with respect to a number of incorrect assertions that the PUD has made.

[1] NRG is a leading integrated power company serving millions of customers throughout North America through its retail operating licenses. Additionally, NRG owns and operate power plants, provides demand-response services, and manufactures and sells resilient battery-power devices to consumers.

The Purpose of the Report: Proper Allocation of Wholesale Market Risk

The Report from Intelometry was intended to address the financial fallout of extreme wholesale energy prices caused by Winter Storm Uri, and not any of its myriad other important aspects, which NRG has addressed elsewhere.[2]

The traditional regulated utility model mis-assigns the risks inherent in sometimes-volatile energy commodity wholesale markets to everyday households. One of the virtues of Texas' restructured market is that it took that risk off of ratepayers and put it on Retail Electric Providers ("REPs") and their shareholders. REPs must actively mitigate their wholesale market risks with hedging—buying financial or physical products to ensure they have sufficient supply to meet their customers' needs. If they do not do so, even if they acted with the best of intentions and in a way that a typical utility regulator would find "prudent," the impacts nevertheless fall on the REP. In short, this model acknowledges that in a marketplace where risks are inherent, those risks are more appropriately assigned to the businesses that have a hand in actively managing those risks—rather than the consuming public.

The Report is a stark case study that validates this theory, taking account of the evidence of cost pass-throughs by regulated utilities to conclude that "utilities usually pay little or no price if those hedging strategies fail."[3] The PUD responds by portraying an exhaustive regulatory process entailing how financial and physical hedging plans are filed with the OCC, reviewed for reasonableness, and subject to audits and public hearings.[4] Respectfully, this is beside the point. The OCC's and other commissions' prior review and approval of hedging strategies are, in fact, an indication of what is wrong with the utility-monopoly business model: It makes the outcome of risk management policies the responsibility of the consumer, and not the supplier. NRG does not dispute that OCC has a substantial amount of regulatory procedure and litigation devoted to evaluating utility hedging; still and all, Oklahoma ratepayers will pay more than $2.8 billion in extraordinary costs from Uri.[5] This is a stunning outcome, because it suggests that even with the best regulatory protections, consumers are left badly exposed by the overarching utility-monopoly regulatory model the State of Oklahoma has chosen to adopt. To put the

[2] For example, we have advocated for an ERCOT market design that ensures a sufficient amount of operable power generation is available to meet firm demand during "tail" events driven by extreme weather. See: Zach Ming, Arne Olson, Jack Moore, and Nick Schlag, *The Load-Serving Entity Reliability Obligation: A Market Design Reform to Ensure Electric Reliability in Texas*, Energy+Environmental Economics, September 2021.
[3] Guy Sharfman and Jeffrey Merola, *Beyond Texas: Evaluating Customer Exposure to Energy Price Spikes: A Case Study of Winter Storm Uri, February 2021, Version Update*, Intelometry, June 2022, p. 13.
[4] Letter from Brandy Wreath, Director of the Public Utility Division of the Oklahoma Corporation Commission, "RE: Winter Storm Comparisons and Deregulation," March 30, 2022, Case PUD 2021-000079, p. 3.
[5] Sharfman, p. 7.

figures in the context of just a single utility, Oklahoma Natural Gas Company has asked to recover $1.28 billion for one week's worth of gas through securitization,[6] which is equal to nearly three-quarters of all capital the utility has invested in its entire Oklahoma system, net of depreciation, to serve its customers.[7]

So, to be clear, NRG is not criticizing the OCC for being derelict. Where we disagree is that the PUD apparently believes that regulatory oversight is an adequate substitute for strong financial incentives that place the utility in a place of losing or gaining in its procurement strategy on behalf of customers. We do not believe the PUD's viewpoint on this issue is a viable one in light of the Winter Storm.

Nor is NRG singling out Oklahoma. The Report evaluates 15 different jurisdictions. Indeed, the observations the Report makes about Oklahoma are equally relevant to the utility-monopolies that do business in Texas in both the power and gas sectors. Unfortunately, consumers of these Texas utilities also will pay extraordinary costs—estimated at $7.6 billion—despite the oversight of the Texas Railroad Commission, which regulates the rates of gas local distribution companies, and the governing bodies of municipal and cooperative electric utilities that remain monopolies in the state.[8]

The same cannot be said of the competitive areas of Texas. Some financial relief through securitization was made available to all firms in ERCOT, including both competitive and utility-monopoly businesses, for extraordinarily high non-energy costs that are not easily hedged. However, energy supply costs fell directly onto the REPs, who cannot surcharge their residential customers for these costs. Instead, their shareholders bear that loss. The Report estimated that REPs in Texas lost at least $3.3 billion.[9] This cost would have been passed to ratepayers in a regulated paradigm.

Retail Competition did not Cause Negative Reliability Outcomes in ERCOT

It is notable that no authoritative report, including FERC/NERC's comprehensive root cause analysis,[10] blames retail competition and the ability of customers to choose their provider for the negative reliability outcomes of the Texas ERCOT market during the Winter Storm. It is unfortunate that the PUD has chosen to make this insinuation.

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[6] Corporation Commission of Oklahoma, Final Financing Order, Order No. 723033, Cause No. PUD 202100079, January 25, 2022, p. 6.
[7] The utility's total rate base is $1.73 billion. One Gas, Inc. Form 10-K (2021), p. 7.
[8] Sharfman, Table 1, p. 7.
[9] Sharfman, Table 12, p. 26.
[10] Federal Energy Regulatory Commission (FERC), North American Electric Reliability Commission (NERC), and Regional Entities, *The February 2021 Cold Weather Outages in Texas and the South Central United States*, November 2021.

In fact, the ERCOT market includes utility-monopolies that own their own generation as well as competitive generators. Monopoly-owned power plants performed *worse* than competitively owned power plants during the event, with a significantly higher rate of forced outages.[11] The PUD does not grapple with or even acknowledge this startling fact.

As the FERC/NERC Report concludes, the cause of insufficient power generation was due to both weather conditions affecting generation (freezing temperatures, wind speeds, and precipitation all playing a role) and because the same weather conditions also diminished the available supply of natural gas, on which the U.S. electricity system has become significantly dependent. To the extent the PUD is critical of ERCOT's energy-only wholesale marketplace, NRG partially agrees, and it is heartening that the Public Utility Commission of Texas is considering what more can be done to ensure that adequate investments in generation are made. NRG has addressed the resource-adequacy dimension of Winter Storm Uri through other work on resource adequacy.[12]

However, the conversation on wholesale market design for resource adequacy is one that does not depend on whether or not retail competition is present. Retail choice can be built on top of energy-only wholesale markets, as it is in Texas, Alberta, and Australia, or on top of markets that do centrally measure and drive investments in capacity, as in PJM and other eastern U.S. electricity markets.

In addition to resource adequacy as a component of wholesale electricity market design, weatherization of energy infrastructure also received significant attention after Uri, both in the power and the gas system. Weatherization is again an issue that is not driven by retail choice—as evidenced by the poorer performance of utility-monopoly utilities' generation in ERCOT, noted above. In the aftermath of the storm, the Texas Legislature passed laws and the Public Utility Commission and the Railroad Commission of Texas adopted regulations that require weatherization throughout the system. For power generation, these standards apply regardless of ownership or fuel type of generator.

Texas also has been criticized for maintaining its own grid entirely within the borders of the state, with few interconnections to import or export power to neighboring grids. The decision of Texas to retain ERCOT as an entirely intrastate interconnection again is unrelated to retail competition.

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[11] Josiah Neely, "Surprise! Competitive generation outperformed regulated monopolies during the Texas winter storm" (June 28, 2021). https://www.rstreet.org/2021/06/28/surprise-competitive-generation-outperformed-regulated-monopolies-during-the-texas-winter-storm/, *citing to* Foss, et. al. "The Texas Freeze Out: Power Systems, Markets and the Future," *International Ass'n for Energy Economics, p. 7.* https://www.bakerinstitute.org/media/files/files/bc261393/00-foss-online-texas-freeze-iaee.pdf

[12] *Supra* fn 3.

The PUD puts particular blame on Texas' unregulated gas exploration and production industry for its costs from Uri. Not only does this industry not face price regulation in Texas or Oklahoma, it does not face price regulation anywhere in the country. Subject to international competitive forces and extreme weather disruptions, natural gas markets can be extremely volatile. It is precisely because of the volatility of oil and natural gas markets that regulators must take measures to safeguard their utility customers from those wholesale market risks. Oklahoma has elected to regulate utility-monopoly buyers of gas in such a way that they have little or no financial incentive in their purchases of gas, as described above. Meanwhile, the sellers of gas have profound, profit-maximizing incentives. This asymmetry of incentives should give defenders of utility-monopolies pause.

Conclusion

The purpose of the Intelometry Report focused on just one of the many salient issues that Winter Storm Uri highlighted: the assignment of risk around wholesale price spikes in utility-monopoly vs. competitive-retail jurisdictions. We welcome further conversation on this topic, and more generally about giving customers the right to choose their provider. We also welcome conversations about the paramount importance of electric reliability, even though electricity reliability does not depend on monopolizing a customer base—indeed, monopolies are observed to have had worse outcomes in the ERCOT electric market during the Winter Storm.

We would like to thank the PUD for its willingness to engage on these issues, and we welcome further discussions on these important topics. We may be reached directly at the contacts below.

Respectfully submitted,

/s/ Travis Kavulla

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