



3. ERCOT manages the flow of electric power to more than 26 million Texas customers, which represents approximately 90 percent of the state's electric load. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects more than 46,500 miles of transmission lines and more than 680 generation units. It also performs financial settlement for the competitive wholesale bulk-power market.

4. ERCOT and Raiden Commodities, L.P. previously entered into a Standard Form Market Participant Agreement (the "MPA") for Raiden Commodities, L.P.'s participation within ERCOT's electric power market. On or about March 6, 2018, ERCOT received notice that Raiden Commodities, L.P. changed its legal name to Aspire Power Ventures, LP.

5. Aspire Commodities, L.P. does not have a MPA with ERCOT. Based on information reasonably available, however, ERCOT believes that Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P. and Aspire Commodities, L.P. are related entities.

6. Based on information reasonably available to ERCOT, on September 22, 2020, ERCOT was in possession of cash collateral and a letter of credit belonging to Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P. Pursuant to the ERCOT Nodal Protocols (the "Protocols"), which carry the weight of state law,<sup>1</sup> ERCOT is prohibited from publicly disclosing the amounts that Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P. has on deposit with ERCOT. *See* Protocol § 1.3.1.1. Accordingly, ERCOT seeks a Protective order from this Court before disclosing any amounts held by ERCOT. *See* Protocol §§ 1.3.4(1) and 1.3.6(1)(a). In addition, under the Protocols that govern Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P.'s rights and obligations under the MPA, the cash collateral and letter of credit delivered by Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P. constitute Financial

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<sup>1</sup> *PUC v. Constellation Energy Commodities Grp., Inc.*, 351 S.W.3d 588, 595 (Tex. App.—Austin 2011, pet. denied) (holding that ERCOT rules "have the force and effect of statute").

Security to ERCOT. Section 16.11 of the Protocols creates a prior and superior security interest in favor of ERCOT in all Financial Security delivered by Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P., which secures all amounts owed to ERCOT. Garnishor's lien, if any, is taken subject to ERCOT's prior and superior interest in all Financial Security delivered by Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P. *See Nat'l City Bank v. Tex. Capital Bank, N.A.*, 353 S.W.3d 581, 586-589 (Tex. App.—Dallas 2011, no pet.).

7. Based on information reasonably available to ERCOT, on September 22, 2020, ERCOT was not indebted to, and was not in possession of effects belonging to, Aspire Commodities, L.P.

8. As of the date of this Answer, and subject to ERCOT's superior interest according to the MPA and Protocols, ERCOT is in possession of cash collateral and a letter of credit belonging to Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P.

9. As of the date of this Answer, ERCOT is not indebted to, and is not in possession of any effects belonging to, Aspire Commodities, L.P.

10. ERCOT has no knowledge of any other persons who are indebted to Aspire Power Ventures, LP f/k/a Raiden Commodities, L.P. and/or Aspire Commodities, L.P., or who have effects belonging to them in their possession. However, counsel for Garnishor disclosed previously that Garnishor had previously garnished Defendants funds at JP Morgan. And counsel for Defendants has disclosed that the amount of the judgment has been interplead in the registry of the Court that issued the underlying judgment.

11. Garnishor previously filed a similar writ of Garnishment against ERCOT in Cause No. 2019-79857A. On or about December 20, 2019, Defendants/Debtors filed an emergency motion to dissolve writ of garnishment asserting numerous defenses to Garnishor's first action.

Garnishor voluntarily nonsuited the first garnishment action. Defendants/Debtors have filed a Motion to Dissolve Writ of Garnishment in this proceeding asserting numerous defenses to Garnishor's action. The Motion to Dissolve stays any further proceedings under the writ until a hearing is had and the issue is determined. Tex. R. Civ. P. 664a.

12. ERCOT has engaged the undersigned counsel to represent it. ERCOT has agreed to pay said counsel reasonable attorneys' fees as well as costs associated with the garnishment proceedings filed by Garnishor, which ERCOT is entitled to recover in accordance with Texas Rule of Civil Procedure 677. At this time, ERCOT seeks recovery of fees and costs in an amount not less than \$17,000 for the undersigned counsel's work on behalf of ERCOT. In the event ERCOT is forced to incur additional fees and costs in connection with this matter, ERCOT reserves its right to seek recovery of such additional fees and costs

### **PLEA TO THE JURISDICTION**

13. A plea to the jurisdiction challenges the trial court's authority to determine the subject matter of a cause of action. *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). Whether a trial court has jurisdiction is a question of law. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). A trial court must determine at its earliest opportunity whether it has jurisdiction before allowing the litigation to proceed. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Sovereign immunity includes immunity from suit and immunity from liability. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). "[I]mmunity from suit defeats a trial court's subject matter jurisdiction and thus is properly asserted in a plea to the jurisdiction." *Jones*, 8 S.W.3d at 638. The immunity raised here is based on immunity from suit.

14. Subject matter jurisdiction is lacking here because ERCOT is entitled to sovereign immunity in the discharge of its regulatory responsibilities. *Elec. Reliability Council of Texas, Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 552 S.W.3d 297, 319 (Tex. App.—Dallas 2018, pet. filed). ERCOT is responsible for ensuring the reliability and adequacy of the electric grid serving most of Texas, as provided by the Public Utility Regulatory Act (“PURA”). TEX. UTIL. CODE § 39.151(a). ERCOT exists as the state’s independent system operator only because the PUC certified it as such. In 1999, Senate Bill 7 introduced competition in the generation and retail segments of the electric service industry in Texas. PURA was amended to effectuate this transition and establish the framework of Texas’ new deregulated, competitive market and to “protect the public interest during the transition to and in the establishment of a fully competitive electric power industry.” TEX. UTIL. CODE § 39.001(a). The PUC was tasked with designating an “independent organization” to oversee the operation of the transmission system and administer the competitive market. The PUC designated ERCOT to act as the independent organization. ERCOT is the PUC’s—and the State’s—servant with regard to its statutory duties. PURA requires ERCOT ensure:

- access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms;
- the reliability and adequacy of the regional electrical network;
- that information relating to a customer’s choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and
- that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.

TEX. UTIL. CODE § 39.151(a)-(c).

15. Governmental entities performing governmental functions are generally immune from garnishment proceedings. *See Veterans Admin. v. Kee*, 706 S.W.2d 101, 101 (Tex. 1986);

*see also Nat'l Surety Corp. v. Friendswood Indep. Sch. Dist.*, 433 S.W.2d 690, 694 (Tex. 1968); *Willacy Cty. Water Control & Improv. Dist. v. Abendroth*, 177 S.W.2d 936, 937 (Tex. 1944); *Addison v. Addison*, 530 S.W.2d 920, 921 (Tex. Civ. App.—Houston [1st Dist.] 1975, no writ). A governmental entity may waive this immunity, but any authority waiving immunity must be strictly construed. *See Kee*, 706 S.W.2d at 103; *see also, e.g.*, Tex. Civ. Prac. & Rem. Code § 63.007 (specifically waiving state's sovereign immunity to the extent necessary to authorize a garnishment action against funds held in inmate trust fund). Garnishor has not identified any authority that purports to waive ERCOT's sovereign immunity to Garnishor's action, and ERCOT does not consent to Garnishor's action. ERCOT's sovereign immunity, therefore, defeats this court's subject matter jurisdiction over Garnishor's action. *Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). This Court should grant ERCOT's plea to the jurisdiction and dismiss Garnishor's action with prejudice. *See id* at 639 (when sovereign immunity bars suit, dismissal is with prejudice).

### **PRAYER**

WHEREFORE, ERCOT respectfully requests that its plea to the jurisdiction be granted and this matter dismissed with prejudice. Alternatively, ERCOT respectfully requests that it be discharged from any and all liability arising from or relating to the Writ, that ERCOT recover its costs, expenses, and reasonable attorneys' fees, and that ERCOT be awarded such other and further relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

By: */s/ Elliot Clark*

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**ATTORNEYS FOR GARNISHEE  
ELECTRIC RELIABILITY COUNCIL OF  
TEXAS, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of October 2020, a true and correct copy of the foregoing was served via the Court's efilng system upon the following:

William C. Boyd  
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**ATTORNEY FOR DEFENDANTS/DEBTORS  
ASPIRE POWER VENTURES, LP f/k/a  
RAIDEN COMMODITIES, L.P. AND ASPIRE  
COMMODITIES, L.P.**

*/s/ Elliot Clark*

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Elliot Clark



**VERIFICATION**

STATE OF TEXAS

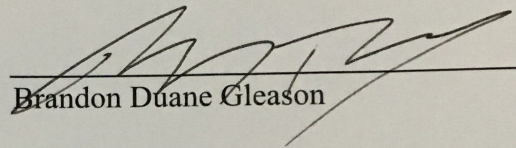
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COUNTY OF TRAVIS

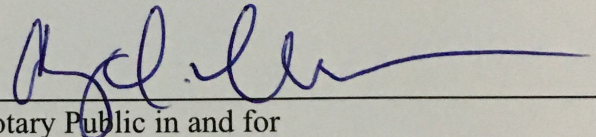
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BEFORE ME, the undersigned authority, appeared Brandon Duane Gleason, Senior Corporate Counsel for Electric Reliability Council of Texas, Inc. ("ERCOT"), and who after being by me duly sworn, upon his oath stated that the factual statements in ERCOT's Original Answer to Writ of Garnishment are true and correct and based on his personal knowledge.

  
\_\_\_\_\_  
Brandon Duane Gleason

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the 19th day of October, 2020.

  
\_\_\_\_\_  
Notary Public in and for  
The State of Texas

