



OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION

## CIVIL INVESTIGATIVE DEMAND

**TO:** CALPINE CORPORATION  
c/o CSC – Lawyers Incorporating  
Service Company  
211 E. 7<sup>th</sup> Street, Suite 620  
Austin, TX 79701

*via CMRRR: 7015 3010 0000 0793 6141*  
*Return Date: March 15, 2021*

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”), Calpine Corporation 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, 401 E. Franklin Ave., Ste. 530 El Paso, TX 79901 and is due on March 15, 2021. If providing documents electronically, please provide them to Javier Juarez at [javier.juarez@oag.texas.gov](mailto: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 Calpine Corporation 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.

Jennifer Jackson, Division Chief  
Consumer Protection Division

/s/ Richard L. Bischoff

Richard L. Bischoff

Assistant Attorney General

T: (915) 834-5801 | F: (915) 543-3862

Email: [Richard.bischoff@oag.texas.gov](mailto:Richard.bischoff@oag.texas.gov)

Other Authorized Agent:

Javier Juarez, Investigator

T: (512) 475-4637 | F: (512) 473-8301

Email: [javier.juarez@oag.texas.gov](mailto:javier.juarez@oag.texas.gov)

## 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,” “Calpine Corporation”** means the store, business or 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. **“Advertisement”** means any act to bring to the public’s attention the availability of goods and/or services and includes but is not limited to, brochures, newspaper advertisements, yellow pages, internet, web or social media advertisements, websites, signs posted in or outside the business and radio or television advertisements.
10. **“Relate,” “related,” and “relating”** mean being in any way legally, logically, or factually connected with the subject matter of the request at issue.
11. 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.

12. 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.
13. **“Retail electric provider”** means a person that sells electric energy to retail customers in Texas.
14. **“Transmission and Distribution Utility”** means a person that owns or operates for compensation in Texas equipment or facilities that transmit or distribute electricity.
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. **“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.
17. **“ERCOT”** means the Electric Reliability Council of Texas.
18. **“PUCT”** means the Public Utility Commission of Texas.

## EXHIBIT A: DOCUMENTS TO BE PRODUCED

1. All 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 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 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 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.
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 during the relevant time period.
6. Documents identifying the factors (including, the cost of gas) which caused a significant increase in the cost of energy generation in the State of Texas during the relevant time period.
7. Documents identifying all electricity generating facilities you own or operate, including partial or shared ownership, as of the date of this request.
8. All emergency plans and operational contingency manuals, directives or instructions for cold weather operations of your electricity generating facilities in effect during the relevant time period;
9. All documents relating to winterization “spot checks” performed by ERCOT at any of the facilities identified in response to Document Request No. 7 for the 2020 to 2021 winter season.
10. Documents identifying the retail electric providers and municipally owned utilities you have or had active contracts with since January 1, 2021.

In lieu of producing documents responsive to Document Request No. 10, you may produce a current, electronically searchable list (in Excel-compatible format), whether created as a query or report from existing applications or databases, or created separately, that contains the above-referenced information.

11. Documents identifying the rates you charged to the retail electric providers and municipally owned utilities you have identified in response to Document Request No. 10, including, but not limited to, any contracts entered into with each retail electric provider and municipally owned utility during the relevant time period.
12. Copies of all contracts with retail electric providers and municipally owned utilities identified in response to Document Request No. 10.
13. Documents identifying any retail electric provider to whom you have sold electricity through the wholesale market, from November 18, 2020, to date, as well as documents identifying the amount of electricity sold and the price charged for electricity in the transaction.
14. All complaints you have received from retail electric providers and/or municipally owned utilities concerning the availability of electricity and/or electricity prices.
15. All documents which reference, request or demand additional financing or financial reserves/payments/lines of credit or financial guarantees made to retail electric providers and/or municipally owned utilities.
16. Copies of all contracts between you and any transmission and distribution utilities in effect since January 1, 2021.
17. Copies of all ERCOT Operations Messages or Public Notices that you received or reviewed during the relevant time period.
18. Copies of all ERCOT Operations Messages or Public Notices that you received or reviewed from July 1, 2018, to date concerning or related to cold weather events.
19. Copies of all ERCOT Daily Settlement Statements for the Real-Time Market that you received or reviewed during the relevant time period.
20. All notices, including drafts and final versions, issued by ERCOT to power generation companies 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 related 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.
- 21. Copies of all complaints, communications, correspondence, and other documents submitted to you (including, your responses to each complaint and communication) regarding or related to energy prices.
- 22. All documents related to any state, local, or federal inquiries and/or administrative actions, inquiries or investigations related to the February 2021 Winter Storm and/or the increase of energy prices.
- 23. 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.