

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter S. WHOLESALE MARKETS.

§25.502. Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas.

- (a) **Purpose.** The purpose of this section is to protect the public from harm when wholesale electricity prices in markets operated by the Electric Reliability Council of Texas (ERCOT) in the ERCOT power region are not determined by the normal forces of competition.
- (b) **Applicability.** This section applies to any entity, either acting alone or in cooperation with others, that buys or sells at wholesale energy, capacity, or any other wholesale electric service in a market operated by ERCOT in the ERCOT power region; any agent that represents such an entity in such activities; and ERCOT. This section does not limit the commission's authority to ensure reasonable ancillary energy and capacity service prices and to address market power abuse.
- (c) **Definitions.** The following terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.
- (1) **Competitive constraint** -- A transmission element on which prices to relieve congestion are moderated by the normal forces of competition between multiple, unaffiliated resources.
 - (2) **Generation entity** -- an entity that owns or controls a generation resource.
 - (3) **Market location** -- the location for purposes of financial settlement of a service (e.g., congestion management zone in a zonal market design or a node in a nodal market design).
 - (4) **Must-run alternative (MRA) service** -- a service that ERCOT may procure as an alternative to reliability must-run service.
 - (5) **Noncompetitive constraint** -- A transmission element on which prices to relieve congestion are not moderated by the normal forces of competition between multiple, unaffiliated resources.
 - (6) **Reliability must-run (RMR) service** -- a service provided by a generation resource to meet a reliability need resulting from the planned suspension of operation of that generation resource for a period of greater than 180 calendar days.
 - (7) **Resource** -- a generation resource, or a load capable of complying with ERCOT instructions to reduce or increase the need for electrical energy or to provide an ancillary service (*i.e.*, a "load acting as a resource").
 - (8) **Resource entity** -- an entity that owns or controls a resource.
 - (9) **Suspension date** -- the date specified by a generation entity in a notice to ERCOT as the date on which it intends to suspend operation of a generation resource for a period of greater than 180 calendar days.
- (d) **Control of resources.** Each resource entity shall inform ERCOT as to each resource that it controls, and provide proof that is sufficient for ERCOT to verify control. In addition, the resource entity shall notify ERCOT of any change in control of a resource that it controls no later than 14 calendar days prior to the date that the change in control takes effect, or as soon as possible in a situation where the resource entity cannot meet the 14 calendar day notice requirement. For purposes of this section, "control" means ultimate decision-making authority over how a resource is dispatched and priced, either by virtue of ownership or agreement, and a substantial financial stake in the resource's profitable operation. If a resource is jointly controlled, the resource entities shall inform ERCOT of any right to use an identified portion of the capacity of the resource. Resources under common control shall be considered affiliated.
- (e) **RMR resources.** Except for the occurrence of a forced outage, a generation entity shall submit to ERCOT in writing a notice of suspension of operation no later than 150 calendar days prior to the suspension date. If a generation resource is to be mothballed on a seasonal basis in accordance with ERCOT protocols, the generation entity shall submit in writing a notice of suspension of operation no later than 90 calendar days prior to the suspension date. ERCOT shall issue a final determination of

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the need for RMR service within 60 calendar days of ERCOT's receipt of the notice. If ERCOT determines that the generation resource is not needed for RMR service, the generation entity may suspend operation of the generation resource before the suspension date, subject to ERCOT approval. Unless ERCOT has determined that a generation entity's generation resource is not required for ERCOT reliability, determined that the resource is needed for reliability but is not a cost-effective solution to the reliability concern, or entered into an MRA service agreement as an alternative to an RMR service agreement, the generation entity shall not terminate its registration of the generation resource with ERCOT unless it has transferred the generation resource to a generation entity that has a current resource-entity agreement with ERCOT and the transferee registers that generation resource with ERCOT at the time of the transfer.

- (1) **Complaint with the commission.** If, by the suspension date, ERCOT has not notified the generation entity that the continued operation of the generation resource is not required for reliability or is not a cost-effective solution to the reliability need, and has not entered into an RMR service agreement with the generation entity for the generation resource or an MRA service agreement as an alternative to an RMR service agreement, then the generation entity may file a complaint with the commission against ERCOT, under §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) conduct).
 - (A) The generation entity shall have the burden of proof.
 - (B) As required by §22.251(d) of this title, absent a showing of good cause to the commission to justify a later deadline, the generation entity's deadline to file the complaint is 35 calendar days after the suspension date.
 - (C) The dispute underlying the complaint is not subject to ERCOT's alternative dispute resolution procedures.
 - (D) In its complaint, the generation entity may request interim relief under §22.125 of this title (relating to Interim Relief), an expedited procedural schedule, and identify any special circumstances pertaining to the generation resource at issue.
 - (E) As required by §22.251(f) of this title, ERCOT shall file a response to the generation entity's complaint and shall include as part of the response all existing, non-privileged documents that support ERCOT's position on the issues identified by the generation entity as required by §22.251(d)(1)(C) of this title.
 - (F) The scope of the complaint may include the need for the RMR service; the reasonable compensation and other terms for the RMR service; the length of the RMR service, including any appropriate RMR exit options; and any other issue pertaining to the RMR service.
 - (G) Any compensation ordered by the commission shall be effective the first calendar day after the suspension date. If there is a pre-existing RMR service agreement concerning the generation resource, the compensation ordered by the commission shall not become effective until the termination of the pre-existing agreement, unless the commission finds that the pre-existing RMR service agreement is not in the public interest.
 - (H) If the generation entity does not file a complaint with the commission, the generation entity shall be deemed to have accepted ERCOT's most-recent offer as of the suspension date.
- (2) **Out-of-merit-order dispatch.** The generation entity shall maintain the generation resource so that it is available for out-of-merit-order dispatch instruction by ERCOT until:
 - (A) ERCOT determines that the generation resource is not required for ERCOT reliability;
 - (B) any RMR service agreement takes effect;
 - (C) the commission determines that the generation resource is not required for ERCOT reliability; or
 - (D) a commission order requiring the generation entity to provide RMR service takes

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- effect.
- (3) **RMR exit strategy.** Unless otherwise ordered by the commission, the implementation of an RMR exit strategy in conformance with the ERCOT Protocols is not affected by the filing of a complaint under this subsection.
 - (4) **Evaluation of RMR and MRA service.** ERCOT may decline to enter into an RMR or MRA service agreement based on an evaluation that considers the costs and benefits of the RMR or MRA service, subject to the requirements of paragraph (5) of this subsection. ERCOT may enter into an MRA service agreement if it identifies a resource or group of resources that will address a reliability need resulting from a planned suspension of operation of a generation resource in a more cost-effective manner than entering into an RMR service agreement, subject to the requirements of paragraph (5) of this subsection. ERCOT may incorporate the economic value of lost load into its evaluation.
 - (5) **Approval of RMR and MRA service agreements.** All recommendations by ERCOT staff to enter into an RMR or MRA service agreement shall be subject to approval by the ERCOT governing board. If ERCOT identifies a reliability need for RMR or MRA service but recommends against entering into an RMR or MRA service agreement, ERCOT staff's recommendation shall be subject to approval by the ERCOT governing board. In its request for governing board approval, ERCOT staff shall present information that justifies its recommendation.
 - (6) **Refund of payments for capital expenditures.** A resource entity that owns or controls a resource providing RMR or MRA service shall refund payments for capital expenditures made by ERCOT in connection with the RMR or MRA service agreement if the resource participates in the energy or ancillary service markets at any time following the termination of the agreement. ERCOT may require less than the entire original amount of capital expenditures to be refunded to reflect the depreciation of capital over time.
 - (7) **Implementation.** ERCOT, through its stakeholder process, shall establish protocols and procedures to implement this subsection.
- (f) **Noncompetitive constraints.** ERCOT, through its stakeholder process, shall develop and submit for commission oversight and review protocols to mitigate the price effects of congestion on noncompetitive constraints.
- (1) The protocols shall specify a method by which noncompetitive constraints may be distinguished from competitive constraints.
 - (2) Competitive constraints and noncompetitive constraints shall be designated annually prior to the corresponding auction of annual congestion revenue rights. A constraint may be redesignated on an interim basis.
 - (3) The protocols shall be designed to ensure that a noncompetitive constraint will not be treated as a competitive constraint.
 - (4) The protocols shall not take effect until after the commission has exercised its oversight and review authority over these protocols as part of the implementation of the requirements of §25.501 of this title, (relating to Wholesale Market Design for the Electric Reliability Council of Texas) so that these protocols shall take effect as part of the wholesale market design required by that section. Any subsequent amendment to these protocols shall also be submitted to the commission for oversight and review, and shall not take effect unless ordered by the commission.
 - (5) ERCOT, through its stakeholder process, may adopt protocols that categorize all constraints as noncompetitive constraints. Protocols adopted pursuant to this paragraph shall terminate no later than the 45th day after ERCOT begins to use nodal energy prices for resources pursuant to §25.501(f) of this title. Protocols adopted pursuant to this paragraph need not be submitted to the commission for oversight and review prior to taking effect.