

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter S. WHOLESALE MARKETS.

§25.504. Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

- (a) **Application.** This section applies to all generation entities in the Electric Reliability Council of Texas (ERCOT). This section defines the term “market power,” as that term is used in §25.503 of this title (relating to Oversight of Wholesale Market Participants).
- (b) **Definitions.** The following terms, when used in this section, shall have the following meanings, unless the context or specific language of a section indicates otherwise:
- (1) **Generation entity** – An entity that controls a generation resource. An entity affiliated with a generation entity shall be considered part of that generation entity.
 - (2) **Market power** – The ability to control prices or exclude competition in a relevant market.
 - (3) **Market power abuse** – Practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. Market power abuses include predatory pricing, withholding of production, precluding entry, and collusion.
- (c) **Exemption based on installed generation capacity.** A single generation entity that controls less than 5% of the installed generation capacity in ERCOT, as the term “installed generation capacity” is defined in §25.5 of this title (relating to Definitions), excluding uncontrollable renewable resources, is deemed not to have ERCOT-wide market power. Controlling 5% or more of the installed generation capacity in ERCOT does not, of itself, mean that a generating entity has market power.
- (d) **Withholding of production.** Prices offered by a generation entity with market power may be a factor in determining whether the entity has withheld production. A generation entity with market power that prices its services substantially above its marginal cost may be found to be withholding production; offering prices that are not substantially above marginal cost does not constitute withholding of production.
- (e) **Voluntary mitigation plan.** Any generation entity may submit to the commission a mitigation plan for ensuring compliance with §25.503(g)(7) of this title or with the Public Utility Regulatory Act §39.157(a). Any plan that is submitted may be revised, with the agreement of the market participant, and approved or rejected by the commission. Adherence to a plan approved by the commission constitutes an absolute defense against an allegation of market power abuse with respect to behaviors addressed by the plan. Failure to adhere to a plan approved by the commission does not, of itself constitute a violation of §25.503(g)(7) of this title, but may be treated in the same manner as any other violation of a commission order.