

PROJECT NO. 39948

RULEMAKING TO AMEND SUBST. R.	§	PUBLIC UTILITY COMMISSION
§25.507, RELATING TO ELECTRIC	§	
RELIABILITY COUNCIL OF TEXAS	§	OF TEXAS
ERCOT EMERGENCY	§	
INTERRUPTIBLE LOAD SERVICE	§	
(EILS)	§	

**ORDER ADOPTING REPEAL OF §25.507 AND NEW §25.507
AS APPROVED AT THE MARCH 22, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS), with no changes to the proposed text and new §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS), with changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9150). The new rule expands the repealed rule to include dispatchable distributed generation that is not registered with ERCOT as a generation resource and consequently changes the name of the service to ERS. In addition the new rule promotes reliability through energy emergencies through provisions that provide ERCOT flexibility in the implementation and administration of ERS. The new rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 39948 is assigned to this proceeding.

The commission received comments on the proposed rule changes from Exelon Generation, LLC (Exelon), Enchanted Rock, Ltd. (Enchanted Rock), North America Power Partners (NAPP), CMC Steel Texas (CMC), Chaparral Steel (Chaparral), Luminant Energy Company (Luminant), Frontier Associates (Frontier), EnerNOC, Inc. (EnerNOC), Nucor Steel – Texas (Nucor),

Electric Reliability Council of Texas (ERCOT), Public Citizen, Alliance for Retail Markets (ARM), Texas Industrial Energy Consumers (TIEC), Steering Committee of Cities Served by ONCOR (ONCOR Cities), EnergyConnect, Inc. (ECI), NRG Energy, Inc. (NRG), Texas Competitive Power Advocates (TCPA), and the Lone Star Chapter of Sierra Club (Sierra Club).

After notice in the Texas Register, commission staff conducted a public hearing on January 31, 2012. Verbal comments were received at that hearing from EnerNOC, Sierra Club, NRG, Chaparral, and Public Citizen.

To the extent ERCOT is referenced in this rule or this order the term refers to the professional staff of the Electric Reliability Council of Texas rather than to the Stakeholder process at ERCOT.

(1) Issues Relating to the Pricing Mechanism for ERS

In the preamble to the Proposal for Publication in this project the commission requested comment regarding the pricing mechanism for ERS. Specifically, the commission asked the following question: “The current EILS rule provides for “pay as bid” settlement, which is different from other ERCOT services that typically use a market clearing price mechanism. Should the rule require ERCOT to use a particular mechanism, or should the rule leave this to ERCOT’s discretion?”

NAPP recommended that the commission require ERCOT to use a market clearing price mechanism, arguing that this mechanism would help attract additional resources while retaining

current pricing safeguards. Alternatively, NAPP recommended that, if the commission is concerned about moving to a market clearing price mechanism until more resources are bidding in the market, the commission could establish a trigger at a certain number of megawatts of capacity procured, at which point ERCOT would be required to establish a market clearing price mechanism.

CMC Steel also recommended that the commission require ERCOT to adopt a market clearing price mechanism, stating that it would increase participation in the ERS program.

Chaparral argued that the current pay-as-bid pricing mechanism creates upward pressure on bidding, as no market participant wants to feel as if it has “left money on the table.” A market clearing price mechanism, on the other hand would tend to reduce bid offers, thus reducing the overall cost of the service. Chaparral believes that the market clearing price mechanism should be required in the rule, rather than left to ERCOT’s discretion, as the primary focus of ERCOT is ensuring the reliable operation of the grid rather than optimizing market design.

Frontier stated that the ERS market is not yet sufficiently developed to permit a market clearing price mechanism, and recommended that the commission direct ERCOT to develop a uniform price for ERS that would be pegged at between 75% and 90% of the price for responsive reserve service.

EnerNOC stated that the market clearing price mechanism, rather than “pay as bid,” is more efficient, as it is for procuring electric energy, and fair, stating that there is no reason that other customer-providers should receive higher or lower prices for the service they provide.

Nucor stated that the rule should require ERCOT to use a clearing mechanism instead of the current “pay as bid” process. Nucor stated that the pay as bid process places a damper on ERS participation because pressure to make a bid that is low enough to be chosen may be substantially lower than the value of ERS in a given emergency situation, which has the effect of suppressing participation. Nucor also offered a third approach as an alternative to pay as bid or clearing mechanism. Nucor calls this “a standard offer” approach. Under this approach, a price would be set for the standard offer at some percentage of the price paid for RRS, which Nucor states would eliminate the need to bid a price.

ERCOT supported giving ERCOT the flexibility to determine the appropriate clearing methodology. This would be consistent with the treatment of other ERCOT-administered ancillary services in the commission’s rules, and would permit ERCOT the flexibility to implement a market clearing price mechanism based on the number of participants in the program and the bidding behavior of those participants.

TIEC stated that it has no issues with the current settlement process, but that a market clearing price (MCP) based settlement process might have merit. TIEC commented that MCP is a more efficient pricing mechanism and it would support either requiring EILS to be settled with MCP

or, most preferably, removing the pay-as-bid requirement from the rule so that ERCOT could make settlement changes through protocol revisions.

The ONCOR Cities stated that the rule should continue to mandate the pay as bid settlement mechanism. The commission already considered settlement mechanisms in Project Number 33457, the original EILS project, and concluded that there was no reason for ERCOT to develop a MCP auction. Cities recalled that the commission found that pay as bid would produce adequate results in the EILS auction process considering that the products are not homogenous and may be geographically balanced if necessary. ERS will also require specific, differentiated products, dispatched geographically and therefore the pay as bid settlement mechanism and differentiated prices are still valid. With the proposed cost cap, a MCP settlement mechanism could result in less contracted service for the same cost to load. Cities recommended that the proposed §25.507(e)(1) be amended to require ERCOT to make payments using a pay as bid settlement basis.

ECI preferred a market clearing mechanism over the current pay as bid system and suggested that the commission express a preference for a market clearing mechanism but allow ERCOT flexibility to develop the market mechanism and a the objective function rather than specifying the mechanism in the rule.

NRG stated that the rule should be amended to prohibit ERCOT from pay-as-bid settlement for EILS/ERS, arguing that a marginal clearing price will result in more efficient market outcomes. NRG supported a market clearing price mechanism for EILS. An auction mechanism can be

referenced in the rule and preamble language can provide direction to ERCOT on implementing detailed business practices.

Sierra Club supported a combination of pay-as-bid settlement and an MCP based energy payment, and stated that it might support a price floor or ceiling to provide surety to customers. Sierra Club commented that it believes exact contact and payment mechanisms should be handled through the ERCOT process, rather than specified in the rule.

Commission Response

The concept of establishing a market clearing price mechanism would appear to have the potential for solving some problems that exist in establishing prices for the service, and the commission encourages ERCOT staff to expeditiously explore the feasibility of implementing such a mechanism. The commission declines to require a market clearing price mechanism in this rule. The rule as published permits ERCOT staff the flexibility to implement a market clearing price mechanism at such time as it deems such a mechanism to be appropriate, given the number of participants in the program and the bidding behavior of participants. However, to make it clear that ERCOT does have the flexibility to implement market clearing price mechanism, the proposed rule has been changed at §25.507(e)(1) to provide that ERCOT may implement a pricing mechanism other than pay-as-bid, to include the use of a market clearing price mechanism.

(2) Issues Relating to the Pricing of Energy Under Conditions of Scarcity

In the preamble to the Proposal for Publication in this project the commission requested comment regarding the impact on scarcity pricing of the deployment or procurement of ERS. Specifically, the commission asked the following question: “What impact, if any, does the deployment or procurement of the proposed Emergency Response Service have on scarcity pricing?”

Exelon stated that the core assumption underlying the energy-only market policy is that when additional capacity resources are needed, the high price for energy will signal the need for new supply resources and will elicit investment. Accordingly, Exelon recommended that emergency resources that are deployed should be priced at the system-wide offer cap.

NAPP commented that the only way the commission can assure that there is no inconsistency with scarcity pricing during an emergency is to price all energy – whether injections from generators or created by load interruption – at the system-wide offer cap.

CMC stated that the deployment of ERS will have little, if any, impact on scarcity pricing, because ERS would be deployed during an Energy Emergency Alert (EEA) event, when prices are already at or near the system-wide offer cap.

Chaparral noted that Nodal Protocol Revision Request (NPRR) 427, adopted by the ERCOT board in December, 2011, already requires the energy offer curve to be set at the system-wide offer cap whenever responsive reserves are dispatched at a level above the high ancillary services limit. This would always be the case when ERS is deployed, because ERS is deployed

at a later stage during an EEA event. A small window where price suppression might occur may exist after responsive reserves are restored and before ERS is recalled. If the commission is concerned about this very short interval, Chaparral would not oppose imposition of a scarcity pricing mechanism for that time period.

Luminant stated that deployment of ERS could result in a price reversal that is not reflective of the actual scarcity condition that exists when it is deployed. Luminant recommended that the rule should instruct ERCOT to implement a Security Constrained Economic Dispatch (SCED) solution that will create an additional mechanism to determine and set prices based on what the price would have been in the absence of the ERS deployment.

Nucor stated that the current ERS load has not reached the level at which it would have a significant effect on scarcity pricing. Nucor stated that if curtailed load does affect scarcity pricing in the future, the commission can set price floors for energy during ERS deployment.

ERCOT stated that ERS could have the effect of reducing prices to some extent, but that such an impact is justified in the context of a grid emergency.

ARM stated that it supports an energy-only market design and ERS deployments could inappropriately mitigate the scarcity pricing needed to encourage new generation in such a market. ARM commented that in theory an energy emergency event should trigger both scarcity pricing and emergency measures such as load curtailment and small generation deployment, but

in the event scarcity prices are not accurately reflected in the wholesale market, an administrative adjustment should be made to remedy the prices.

TIEC stated that it does not believe potential scarcity pricing impacts are prudent or necessary to take up in this rulemaking. Due to time constraints regarding finalizing the rule before the 2012 procurement period, TIEC recommended that the issue continue to be holistically analyzed by ERCOT's Reliability Deployments Task Force. Again, this would allow ERCOT to implement any needed changes to protocols or pricing requirements without a commission rulemaking proceeding. TIEC cited suggestions that ERCOT price EILS at the System Wide Offer Cap for the duration of the deployment. Analysis would show such a suggestion to be inappropriate since EILS deployments do not necessarily coincide with depletion of reserves and may last much longer than scarcity conditions. TIEC stated that it is critical to examine actual deployment conditions before making pricing assumptions.

The ONCOR Cities stated that ERS pricing impacts are not clear at this time. ERS procurement will not affect the market, and ERS deployment may have minimal impact in view of recent changes to the overall market design as well as ancillary service pricing. The proposed rule would give ERCOT discretion in determining how and when to deploy ERS, so the historical pricing trends that could be drawn from the EILS program may not necessarily apply with the proposed ERS program. Further, if the program is deployed at EEA Level Two, such as EILS, pricing mechanisms are not needed to prevent SCED from prematurely accessing the deployments from this new service. Cities commented that it cautions the commissions against applying additional measures with the intent of increasing wholesale prices.

ECI stated that EILS or the proposed ERS service would not have an impact on scarcity pricing.

NRG made two specific recommendations to mitigate the impact of ERS deployment on scarcity pricing. First, the commission should require that the energy deployed from ERS/EILS be added back to SCED so that the reliability actions taken by ERCOT do not damage scarcity pricing signals. Second, the commission should require that loads receiving capacity payments from ERS also offer to shed load with a price curve in SCED.

TCPA urged the commission to require that energy be priced at the system-wide offer cap when ERS is deployed, in order to prevent ERS deployments from having a price dampening impact.

Sierra Club supported the \$50 million cost caps as a mechanism to prevent a significant strain on the market. Sierra Club commented that since ERS should only be used to prevent emergency grid situations, allowing ERCOT to review payment methodology and adjust the linking of settlement with actual energy prices might help to avoid undercutting the market and the need to produce appropriate price signals for the market.

Commission Response

While there may be some impact on energy prices due to the deployment of ERS during an energy emergency, the commission declines to adopt a specific mechanism to mitigate such price impacts in this rule. The commission notes that discussions currently are taking place in the Reliability Deployments Task Force of the Wholesale Markets Subcommittee

regarding a global approach to mitigating the pricing impact of all reliability measures taken by ERCOT during energy emergencies, including not only ERS, but other services such as Load Resources, Non-Spinning Reserve Service, and Reliability Unit Commitments. The commission believes that that forum is the correct venue to address any pricing impacts of the deployment of ERS, rather than to attempt to codify a solution in this rule.

(3) Issues Relating to the Annual Procurement Cap

CMC supported the elimination of the \$50 million annual ERS procurement cap, and recommended that the commission allow ERCOT staff to determine how much ERS to procure and the price to be paid for ERS. This would make the ERS program consistent with other ancillary services procured by ERCOT, which are not subject to a cap, and would eliminate the need for future rulemaking proceeding to increase the cap as the ERS program grows.

Chaparral proposed that the current annual procurement cap be replaced with a requirement that ERCOT may spend no more in any year on ERS than ERCOT has spent on responsive reserve service in the preceding calendar year. Chaparral is concerned that elimination of any cap could result in the imposition of a very low procurement limit through the stakeholder process. Adoption of a cap tied to the annual cost of responsive reserves would permit headroom for future growth of the ERS program without requiring a commission rulemaking to periodically lift the cap.

EnerNOC stated that the \$50 million cap should be eliminated or replaced with a mechanism for increasing the cap without the need for a rulemaking. EnerNOC stated that the current EILS program is spending about half the cap amount per year and as ERS improvements are phased in, it would be beneficial for ERCOT to have flexibility to procure additional ERS resources.

Nucor supported increasing the \$50 million annual procurement cap to \$200 million.

TIEC stated that it would oppose the increase or elimination of the \$50 million cap on ERS, as this would create uncertainty and risk in the market. Even with the cap in place, TIEC commented that the proposed rule should still require contracts providing for the most beneficial and cost-effective service for the market. The rule should not grant ERCOT the authority to define ERS on a contract-specific basis as long as the cap is observed.

ECI recommended elimination of the annual procurement limit.

The Sierra Club supported elimination of the cap on the amount of ERS procured, but argued for retaining the \$50 million annual procurement limit.

Commission Response

The commission declines to change or eliminate the annual procurement cap at this time. In no year since the inception of the EILS program have total expenditures exceeded even half of the existing \$50 million annual procurement cap. While the changes to the rule adopted in this order may, and hopefully will, increase participation in the program, it

seems unlikely that expenditures for this program will more than double in the near term. As the ERS program grows, the commission is willing to revisit the size of the cap or the continued need for the cap.

(4) Issues Relating to the Inclusion of Distributed Generation in the ERS Program

Both Public Citizen and Sierra Club expressed concern about expanding the ERS program to allow participation by distributed generation (DG). Public Citizen stated that Texas Commission on Environmental Quality (TCEQ) and federal Environmental Protection Agency (EPA) rules establish strict standards on the emissions of pollutants and limit the number of hours that small generators may operate. Public Citizen also stated that small generators may need to be re-engineered to ensure safe operation if they are to feed power to the grid, and that the participation of DG may raise issues of market fairness if the feeders on which they are located are designated as priority feeders in the event of a load shedding event. Public Citizen recommended that if DG units are permitted to participate in ERS, that only the lowest emission (Tier 4) engines be permitted to participate in the program, that guidelines be established for the operation of DG units, that only units that meet TCEQ 117 rules be permitted to participate, that warnings be required on feeders where DG units participate, and that non-toxic load shedding should be encouraged.

Sierra Club raised similar concerns, noting the TCEQ limits on the number of hours that backup generators may operate, and stating that the TCEQ rules permit backup generators to operate only to meet local power needs, and specifically exclude generators that feed power to the grid.

In Sierra Club's view, generators wishing to put power on the grid would not meet TCEQ's narrow definition and would have to apply for a standard permit. Sierra Club recommends that, if DG units are permitted to participate in the ERS program: (1) ERCOT should reject any offer placed on behalf of any resource that is found not to comply with emissions requirements adopted by the EPA and/or the TCEQ, (2) that any resource wishing to participate in ERS must comply with all EPA and TCEQ emissions requirements and provide proof of compliance to the qualified scheduling entity (QSE) representing the resource, (3) that ERCOT limit participation by DG units to no more than 50% of the total ERS program, and (4) that any resource found not to comply with EPA or TCEQ regulations be prohibited from participating in the ERS program until it provides proof that it is in compliance with such regulations.

EnerNOC also proposed that the commission limit the participation of DG in the ERS program to 20% of the total program, expressing concern that participation by DG in the program could "crowd out" loads that are willing to curtail demand.

NRG commented that the inclusion of Distributed Generation (DG) capacity payments in this program is a creative approach but should not be a permanent part of ERS. While including DG payments can help address concerns over the adequacy of resources for the next few years, participation of DG providing ERS/EILS should be limited only until the end of the summer contract period in 2015, at which point direct participation by DGs be "sunsetting." In NRG's view allowing capacity payments for only one group of generators while excluding other generators from receiving such payments is inequitable.

Commission Response

The commission declines to incorporate environmental regulations as part of this rule. Operators of distributed generation units are responsible for being aware of and ensuring their compliance with all applicable rules and regulations pertaining to their operations. If operators of such units are not able to participate in the ERS program in a manner consistent with regulations imposed by other agencies, the commission would expect them to refrain from participating in the program.

The commission also declines to set an arbitrary limitation on the amount of distributed generation that may participate in the program. Given that the rule adopted in this order removes the limitation on the total amount of capacity that may be procured through the ERS program, it is unclear how the participation of DG in the program could act to “crowd out” participation by load resources. If experience gained in the future shows that the participation of DG presents any obstacle to the participation of load resources, the commission may consider the appropriate role of DG in the ERS program at that time.

(5) Issues Relating to ERS Program Design

Several parties argued that the commission’s rule should specify various aspects of the ERS program design. Nucor proposed that the rule should require ERCOT to establish separate classes of ERS service, with no-notice (direct control), 10-minute, and 30-minute response times, with appropriate differences in compensation. Frontier had a similar recommendation,

arguing that the commission's rule should require ERS classes for instantaneous, 30-minute, and 60-minute response times. ECI proposed ERS classes with 30 and 60-minute response times.

Some parties also recommended that the rule specify details regarding contract renewals, limitations on ERS deployment, and compensation for providing ERS capacity or for deployment during EEA events. Nucor, Frontier, and ECI suggested that the rule be modified to pay ERS participants based on the amount of load actually curtailed in any event. ECI also recommended that the rule be modified to eliminate suspension as a penalty, and that loads be compensated upon deployment. EnerNOC requested that ERCOT be required to deploy ERS participants for a minimum of two hours during an EEA event, and that ERS resources have the option to decline to renew their contract after being deployed for eight hours.

TIEC recommended that the commission's rule require uniform contract periods and a nondiscriminatory competitive bidding process.

Commission Response

The commission's intent in repealing the existing rule and adopting this new rule is to permit ERCOT additional flexibility in managing the ERS program. The existing rule was, compared to many other commission rules governing the operations of ERCOT, quite prescriptive and detailed. Such detail can present a problem because, as occurred in February of 2011, the rule can have unintended or unforeseen consequences. In February 2011, the EILS resources available to ERCOT for managing energy emergencies were exhausted very early in an EILS contract period, leaving ERCOT vulnerable if another

energy emergency were to have occurred between early February and the end of May. ERCOT was forced to petition the commission for an emergency rulemaking to enable it to establish a new contract period to restore EILS until the June-September contract period commenced.

The features of the ERS program design may be implemented by ERCOT staff under the new rule through ERCOT staff's technical requirements document for the ERS program or through input from the stakeholder process. The commission believes that many of the suggestions made by the parties have merit. The suggestion that ERCOT establish classes of ERS participants with differing response times appears to have merit, and could encourage participation in the program by more load resources than currently participate. The commission encourages ERCOT to expeditiously explore the feasibility and usefulness of implementing this feature. If ERCOT determines that the program should include classes of ERS participants with differing response times, the commission encourages ERCOT to implement this feature as soon as possible but not later than the summer of 2013.

The commission, however, declines to adopt in the rule any of the design features suggested by the parties. The commission's rule regarding ERS establishes the broad outlines of the service and expresses the commission's policy regarding the service. The details of the program design are better left to the professional staff at ERCOT rather than set forth more permanently in the commission's rules. ERCOT and the stakeholder

process have the ability to change the program design expeditiously if unintended or unforeseen consequences result from features of the program's design.

The commission has, however, modified subsection (d)(7) and (8) of the rule to ensure that ERCOT has the flexibility to develop procedures that would govern the ability of ERS resources to return from deployment after the maximum eight cumulative hours of deployment is reached during a contract period. Some potential ERS participants may not be able to stay offline for more than a given number of hours, or may incur unexpected or unreasonable costs with extended deployments, and the commission encourages ERCOT to explore program rules that satisfy ERCOT's reliability needs and also provide participants with certainty about the maximum duration of a deployment and financial feasibility of participation in the program.

One element of the rule, which ECI proposed to be eliminated, is the provision for suspension of an ERS program participant in the event of a failure of that participant to perform the service for which it has contracted. As the commission stated in the earlier rulemakings pertaining to this service in Project Numbers 33457 and 34706, the nature of this service – availability of interruptible load to forestall the need for firm load shed in an energy emergency -- makes it absolutely essential that participants in the program perform when called upon. When a program participant fails to fulfill its contracted duties, that participant has demonstrated its inability to deliver this very valuable service, and should be excluded from the program until it has demonstrated its ability to do so. The commission declines to make this change in the rule.

(6) Commission Policy Regarding ERS

Some commenters, including Nucor and Frontier, requested that the commission clearly state its policy at the beginning of the rule, where the commission states the purpose of the rule. Nucor suggested that the commission explicitly state in the rule that the commission's policy is to eliminate unnecessary restrictions on the provision of ERS, to assure continued participation of current EILS load, to attract new participants, to increase the value of ERS, and to increase participation to reach an optimal level for system reliability purposes. Frontier recommended that the commission explicitly state that the purpose of the ERS program is to retain and enhance current demand response while attracting additional demand response.

Commission Response

The commission made it clear in the previous rulemakings pertaining to this service that it regards a robust demand response program as an essential tool for ERCOT in fulfilling its responsibilities to ensure reliable operation of the grid. The commission has acted in the past to expand and increase participation in the program. The commission restates here that this continues to be the policy of the commission. EILS has, in the EEA event of February 2011 and in the peak demand periods of the summer of 2011, demonstrated its value in forestalling the need for firm load shedding. The commission will view unfavorably any action taken by ERCOT or by participants in the stakeholder process that would have the effect of limiting the development of or participation in the ERS program.

(7) Rule Clarifications Requested by ERCOT

ERCOT proposed two clarifications to the rule as published by the commission. One proposed change in §25.507(c)(2) would clarify that both loads and distributed generation must be contracted to provide ERS. The second change in §25.507(d)(8) would eliminate the requirement that a renewal of an ERS contract within a contract period is subject to the same contract terms as the expired contract.

Commission Response

The commission agrees that these changes are helpful, and has changed the rule accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The repeal and new section are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §39.151, which provides the commission with the authority to oversee ERCOT.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

REPEAL §25.507. Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).

NEW §25.507. Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS).

- (a) **Purpose.** The purpose of this section is to promote reliability during energy emergencies through provisions that provide ERCOT flexibility in the implementation and administration of ERS.
- (b) **ERS procurement.** ERCOT shall procure ERS, a special emergency response service that is intended to be deployed by ERCOT in an Energy Emergency Alert (EEA) event.
- (1) ERCOT shall determine the ERS contract periods during which ERS resources shall be obligated to provide ERS, including any additional ERS contract periods ERCOT deems necessary due to the depletion of available ERS.
- (2) ERCOT may spend a maximum of \$50 million per calendar year on ERS. ERCOT may determine cost limits for each ERS contract period in order to ensure that the ERS cost cap is not exceeded. To minimize the cost of ERS, ERCOT may reject any offer that ERCOT determines to be unreasonable or outside of the parameters of an acceptable offer. ERCOT may also reject any offer placed on behalf of any ERS resource if ERCOT determines that it lacks a sufficient basis to verify whether the ERS resource complied with ERCOT-established performance standards in an EEA during the preceding ERS contract period.

(c) **Definitions.**

- (1) ERS contract period -- A period defined by ERCOT for which an ERS resource is obligated to provide ERS.
- (2) ERS resource: A resource contracted to provide ERS that meets one of the following descriptions:
 - (A) A load or aggregation of loads; or
 - (B) A dispatchable generator that is not registered with ERCOT as a Generation Resource, or an aggregation of such generators.
- (3) ERS time period -- Sets of hours designated by ERCOT within an ERS contract period.
- (4) ERCOT -- The staff of the Electric Reliability Council of Texas, Inc.

(d) **Participation in ERS.** In addition to requirements established by ERCOT, the following requirements shall apply for the provision of ERS:

- (1) An ERS resource must be represented by a qualified scheduling entity (QSE).
- (2) QSEs shall submit offers to ERCOT on behalf of their ERS resources.
 - (A) Offers may be submitted for one or more ERS time periods within an ERS contract period.
 - (B) QSEs representing ERS resources may aggregate multiple loads to reach the minimum capacity offer requirement established by ERCOT. Such aggregations shall be considered a single ERS resource for purposes of submitting offers.

- (3) ERCOT shall establish qualifications for QSEs and ERS resources to participate in ERS.
 - (4) A resource shall not commit to provide ERS if it is separately obligated to provide response with the same capacity during any of the same hours.
 - (5) ERCOT shall establish performance criteria for QSEs and ERS resources.
 - (6) When dispatched by ERCOT, ERS resources shall deploy consistent with their obligations and shall remain deployed until recalled by ERCOT.
 - (7) ERCOT may deploy ERS resources as necessary, subject to the annual expenditure cap. Deployment of an ERS resource shall be limited to a maximum of eight cumulative hours in an ERS contract period. However, if an instruction causes the cumulative total ERS deployment time to exceed eight hours within a contract period, each ERS resource shall remain deployed until permitted by ERCOT procedures or by ERCOT instructions to return from deployment.
 - (8) Upon exhaustion of an ERS resource's obligation in any contract period , ERCOT shall have the option to renew that obligation, subject to the consent of the ERS resource and its QSE. ERCOT may renew the obligation on each occasion that the resource's obligation is exhausted.
 - (9) ERCOT shall establish procedures for testing of ERS resources.
- (e) **ERS Payment and Charges.**
- (1) ERCOT shall make a payment to each QSE representing an ERS resource on an as-bid basis, a market clearing price mechanism, or such other mechanism as ERCOT deems appropriate, subject to modifications determined by ERCOT

based on the ERS resource's availability during an ERS contract period and the ERS resource's performance in any deployment event.

- (2) ERCOT shall charge each QSE a charge for ERS based upon its load ratio share during the relevant ERS time period and ERS contract period.
 - (3) ERCOT shall settle an ERS contract period within 80 days following the completion of the ERS contract period.
- (f) **Compliance.** A QSE representing ERS resources is subject to administrative penalties for non-compliance, by the QSE or the ERS resources it represents, with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall establish criteria for reducing a QSE's payment and/or suspending a QSE from participation in ERS for failure to meet its ERS obligations, and shall also establish criteria for subsequent reinstatement. In addition, ERCOT shall establish criteria under which an ERS resource shall be suspended for non-compliance, and shall also establish criteria for subsequent reinstatement. ERCOT shall notify the commission of all instances of non-compliance with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall maintain records relating to the alleged non-compliance.
- (g) **Reporting.** Prior to the start of an ERS contract period, ERCOT shall report publicly the number of megawatts (MW) procured per ERS time period, the number and type of ERS resources providing the service, and the projected total cost of the service for that ERS contract period. ERCOT shall review the effectiveness and benefits of ERS and report

its findings to the commission annually by April 15 of each calendar year. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EEA events, and the number and duration of deployments.

- (h) **Implementation.** ERCOT shall develop additional procedures, guides, technical requirements, protocols, and/or other standards that are consistent with this section and that ERCOT finds necessary to implement ERS, including but not limited to developing a standard form ERS Agreement and specific performance guidelines and grace periods for ERS resources.

- (i) **Self Provision.** ERCOT shall establish procedures for self-provision of ERS by any QSE.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the repeal of §25.507 relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS) is hereby adopted with no changes to the text as proposed and new §25.507 relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS) is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF MARCH, 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER