

**PROJECT NO. 35392**

**PUC RULEMAKING TO ADDRESS § PUBLIC UTILITY COMMISSION  
INITIAL IMPLEMENTATION OF §  
THE NODAL MARKET § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.502 AND §25.505  
AS APPROVED AT THE APRIL 15, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.502, relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas, and §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region. The amendments will permit the Electric Reliability Council of Texas (ERCOT) to define all transmission network congestion constraints as non-competitive constraints during the first 45 days of the nodal market. The amendments will also permit ERCOT to impose lower system-wide offer caps than those currently imposed by §25.505 during the first 45 days of the nodal market. The amendments also include the deletion of subsection (d) of §25.502 because that subsection expired on October 1, 2006 by its own terms. The amendments also include the deletion of subsection (h) of §25.502 because the offer caps mentioned in this subsection are no longer effective as a result of the implementation of the system-wide offer caps required in §25.505(g)(6). Furthermore, the amendments include the deletion of subsection (i) of §25.502. This subsection states: “ERCOT shall terminate its use of the Modified Competitive Solution Method, ordered by the commission in Docket No. 24770, on October 1, 2006.” ERCOT complied with this requirement and therefore the provision is no longer necessary. This provision eliminated ERCOT’s obligation to use the Modified Competitive Solution Method ordered by the commission in Docket NO. 24770 and the deletion of this provision does not reinstate ERCOT’s prior obligation to use the Modified Competitive Solution Method ordered by

the commission in Docket No. 24770. The subsections following subsection (d) of §25.502 have been renumbered and the cross reference to §25.502(e) in subsection (f) of §25.505 has been corrected to reflect the appropriate renumbered subsection in §25.502. These rules are competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 35392 is assigned to this proceeding.

The nodal market is a large and complex system involving new software to manage the electric system and wholesale market and the interaction of many business entities that participate in the market. Despite the extensive development and testing efforts by ERCOT and market participants to prepare their systems and personnel for the new marketplace, it is possible that transitional issues may arise during the startup period of the nodal market. The amendments will allow ERCOT to adopt temporary safeguards to mitigate potential pricing anomalies that may result from unexpected system or market behavior.

The commission believes that any temporary startup safeguards adopted by ERCOT must:

- (1) be of a short duration;
  - (2) be consistent with existing nodal market design to ensure limited or no system changes;
  - (3) facilitate diagnosis of startup issues by removing high-priced offers as a possible contributing cause of unusual or unexpected market results;
  - (4) allow for market-based resolution of energy balance and congestion conditions;
- and

- (5) allow resources offered into the market to cover, at a minimum, their marginal production cost.

Stakeholder groups that are a part of the governance structure of ERCOT have been working on startup safeguards. It is the commission's expectation that such safeguards, if adopted, will be consistent with this rule and the objectives set out above.

Meena Thomas, Senior Market Economist, Competitive Markets Division, has determined that for each year of the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Thomas has determined that for each year of the first five years the amendments will be in effect the public benefit anticipated as a result of enforcing the amendments will be the ability of ERCOT to mitigate anomalous price spikes that could occur from nodal market implementation problems or unexpected bidding behavior by market participants. Another benefit will be the simplification of market startup diagnostics by eliminating high-priced offers from the variables reviewed during the startup of the nodal market. There may be a small economic cost to ERCOT to comply with the amendments, but the public benefits of the amendments are expected to greatly exceed that cost. Ms. Thomas does not believe that there will be an adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required.

Ms. Thomas has also determined that for each year of the first five years the amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. If requested, the public hearing will be conducted at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, June 2, 2010, at 10:00 a.m. The request for a public hearing must be received within 20 days after publication.

Initial comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication, and reply comments may be submitted within 35 days after publication. Sixteen copies of comments on the amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 35392.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (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, §35.004, which requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive; §39.001, which establishes the legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry; §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity, and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures.

Cross Reference to Statutes: PURA §§14.002, 35.004, 39.001, 39.101, and 39.151.

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

- (a) - (c) (No change.)
- (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) **Reliability-must-run resources.** Except for the occurrence of a forced outage, a generation entity shall notify ERCOT in writing no later than 90 calendar days prior to the date on which it intends to cease or suspend operation of a generation resource for a period of greater than 180 calendar days. Unless ERCOT has determined that a generation entity’s generation resource is not required for ERCOT reliability, 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, after 90 calendar days following ERCOT's receipt of the generation entity's notice, either ERCOT has not informed the generation entity that the generation resource is not needed for ERCOT reliability or both parties have not signed a reliability-must-run (RMR) agreement for the generation resource, then the generation entity may file a complaint with the commission against ERCOT, pursuant to §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) Pursuant to §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 90th calendar day following ERCOT's receipt of the notice.
  - (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 pursuant to §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) Pursuant to §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 pursuant to §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 91st calendar day after ERCOT's receipt of the notice. If there is a pre-existing RMR 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 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 115th calendar day after ERCOT's receipt of the notice.
- (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 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 effect.

- (3) **RMR exit strategy.** Unless otherwise ordered by the commission, the implementation of an RMR exit strategy pursuant to ERCOT Protocols is not affected by the filing of a complaint pursuant to 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.

**§25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region**

(a) - (e) (No change.)

(f) **Publication of resource and load information in ERCOT markets.** To increase the transparency of the ERCOT-administered markets, ERCOT shall post at a publicly accessible location on its website, beginning no later than October 1, 2006, the information required pursuant to this subsection, unless a different date is specified by a paragraph of this subsection.

(1) - (2) (No change.)

(3) The following information in entity-specific form, for each settlement interval, shall be posted as specified below.

(A) - (C) (No change.)

(D) ERCOT shall use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) as a basis for determining the control of a resource and shall include this information in its market operations data system.

- (g) **Scarcity pricing mechanism (SPM).** ERCOT shall administer the SPM. The SPM shall take effect on January 1, 2007, unless the commission by order changes this date. The SPM shall operate as follows:
- (1) - (5) (No change.)
  - (6) The system-wide offer caps shall be as follows:
    - (A) - (F) (No change.)
    - (G) ERCOT, through its stakeholder process, may adopt protocols setting the HCAP at a level below that specified in subparagraphs (C) and (D) of this paragraph. Protocols adopted pursuant to this subparagraph 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 (relating to Wholesale Market Design for the Electric Reliability Council of Texas). Protocols adopted pursuant to this subparagraph shall not set the HCAP so low that a resource would be required to offer service to the market below its marginal cost, unless the protocols provide a mechanism allowing the resource to recover such costs.
- (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 15<sup>th</sup> DAY OF APRIL 2010 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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