

PROJECT NO. 49788

**RULEMAKING TO AMEND
16 TAC § 25.502**

§ **PUBLIC UTILITY COMMISSION**
§
§ **OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO 16 TAC §25.502
AS APPROVED AT THE NOVEMBER 14, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.502, relating to pricing safeguards in markets operated by the Electric Reliability Council of Texas (ERCOT) with changes to the proposed text as published in the September 13, 2019 issue of the *Texas Register* (44 TexReg 4923). The amendments remove provisions relating to commission approval of ERCOT protocol amendments related to non-competitive constraints that are no longer needed and make stylistic updates. These amendments are adopted under Project Number 49788.

The commission did not hold a public hearing on the proposed rule amendments because no hearing was requested.

The commission received comments in support of the proposed amendments from NRG Energy Inc. (NRG) and ERCOT.

NRG stated that the requirements in 16 TAC §25.502(f)(4) and (5) are no longer necessary, noting that 16 TAC §25.502(f)(5) has expired by its own terms. NRG observed that no other protocol changes require commission approval prior to implementation, and ERCOT

stakeholders have the ability to appeal ERCOT's actions to the ERCOT board of directors and the commission.

ERCOT stated that given the maturity of the wholesale market, 16 TAC §25.502(f)(4) and (5) no longer provide material value and serve only as an unnecessary administrative step in changing ERCOT rules. ERCOT further stated that the proposed deletion will allow ERCOT to more efficiently revise its rules impacting noncompetitive constraints without affecting the Commission's authority over these rules.

Commission response

The commission makes no substantive changes to the proposed amendments because the comments support the amendments as proposed.

In adopting this section, the commission makes other minor modifications for stylistic purposes.

These amendments are adopted under the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA) §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.151 which grants the commission the authority to adopt rules relating to the reliability of the regional electric network and accounting for the production and delivery among generators and all other market participants.

Cross reference to statutes: Public Utility Regulatory Act §§14.002 and 39.151.

§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, 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 must 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 must 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 must inform ERCOT of any right to use an identified portion of the capacity of the resource. Resources under common control will be considered affiliated.

(e) **RMR resources.** Except for the occurrence of a forced outage, a generation entity must 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 must submit in writing a notice of suspension of operation no later than 90 calendar days prior to the suspension date. ERCOT must issue a final determination of 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 must 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 will 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 must file a response to the generation entity's complaint and must 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 will 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 will 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 will be deemed to have accepted ERCOT's most-recent offer as of the suspension date.

(2) **Out-of-merit-order dispatch.** The generation entity must 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 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 will 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 will be subject to approval by the ERCOT governing board. In its request for governing board approval, ERCOT staff must 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 must 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, must establish protocols and procedures to implement this subsection.

(f) **Noncompetitive constraints.** ERCOT, through its stakeholder process, must develop protocols to mitigate the price effects of congestion on noncompetitive constraints.

(1) The protocols must specify a method by which noncompetitive constraints may be distinguished from competitive constraints.

(2) Competitive constraints and noncompetitive constraints must 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 must be designed to ensure that a noncompetitive constraint will not be treated as a competitive constraint.

This agency 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 amendments to §25.502 relating to pricing safeguards in markets operated by the Electric Reliability Council of Texas are hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of _____ 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D’ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER