

PROJECT NO. 26201

RULEMAKING TO ADDRESS § PUBLIC UTILITY COMMISSION
ENFORCEMENT OF WHOLESALE §
MARKET RULES § OF TEXAS

PROPOSAL FOR PUBLICATION OF NEW §25.503
AS APPROVED AT THE JULY 25, 2003 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §25.503, relating to Oversight of Wholesale Market Participants. The proposed new rule is necessary to protect the public interest by facilitating the effective and efficient operation of electricity markets and the reliable delivery of electricity during the transition to and the establishment of a fully competitive electric power industry in Texas. Project Number 26201 is assigned to this proceeding.

The proposed new rule, if adopted, will establish: (1) the standards that the commission will use in monitoring the activities of entities participating in the wholesale electric market in Texas and enforcing the statutory provisions, rule requirements, market Protocols, and operating guidelines applicable in that market; (2) the standards and criteria for enforcement of market Protocols adopted by the Electric Reliability Council of Texas (ERCOT); and (3) the ethical standards that will apply to market participants and define the duties and prohibitions applicable to market participants. In addition, the proposed new rule will require market participants to maintain certain records to demonstrate their compliance with the rule, create a procedure for obtaining official interpretations and clarifications of ERCOT Protocols, identify the role of ERCOT in

enforcement actions, and describe an informal fact-finding review procedure that may be used by commission staff in reviewing compliance with the rule.

Patrick J. Sullivan, Attorney, Legal and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Patrick J. Sullivan, Legal and Enforcement Division, has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be facilitating the effective and efficient operation of electricity markets and the reliable delivery of electricity during the transition to a fully competitive electric power industry in Texas. The Texas Legislature has determined that Texas should change from a system in which electric power is fully regulated by the commission to a system in which competitive forces will determine the rates, operations, and services that are available to the public. The Legislature has directed that the commission implement these changes in a manner that provides customers safe, reliable, and reasonably priced electricity. Recent experience in other states has shown that during the transition to competition, the developing wholesale and retail markets can be subject to practices by market participants that serve the private interests of the participants at the expense of the public interest. These practices have resulted in unjustified increased prices to customers and market participants, reduced reliability of

the electric power grid, and ultimately threaten the implementation of a successful competitive electric market. As an example, in California, market manipulation by market participants contributed to elevated retail prices that were estimated to be \$3 billion to \$11 billion higher than would have occurred in a properly functioning market. These high prices also contributed to higher prices for long-term contracts for wholesale electric power. The impact on the California economy was enormous, including the bankruptcy of a major electric utility and many days of rolling blackouts that further crippled the economy and threatened the public health and safety. To protect the public interest from these possible effects, the commission finds that it is important that the obligations and restrictions applicable to market participants be specified. The purpose of this proposed rule is to establish those standards. The public benefits anticipated as a result of this rule include the protection of customers and market participants from unfair, misleading and deceptive practices; the availability of reliable transmission and ancillary services at reasonable prices to all market participants; clarification of the obligations and restrictions applicable to market participants to reduce uncertainty in the wholesale markets; clarification of the commission's procedures and standards for overseeing the activities of market participants; and the protection of the developing wholesale market from potential market power abuses. Each of these benefits is important to meeting the Legislative directive to protect the public interest by facilitating the effective and efficient operation of electricity markets and the reliable delivery of electricity during the transition to a fully competitive electric power industry.

Mr. Sullivan has determined that, for each year of the first five years the proposed section is in effect, there may be economic costs to persons who are required to comply with the proposed section. These costs are associated with the record-retention requirement included in the rule. The amount of such costs is likely to vary from business to business, and is difficult to ascertain. The rule requires market participants to maintain certain records for a period of four years. To the extent that a market participant already maintains such records for that period, the rule would impose no new costs. If a particular market participant does not maintain such records or maintains them for a shorter period, the rule would impose some costs on that particular participant. Such costs would be related to the expense of storing the documents for the required time and would vary from business to business, but should be relatively minor. However, it is believed that the other public benefits, outlined above, accruing from implementation of the proposed section will far outweigh these costs.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Most of the market participants in ERCOT do not qualify as small businesses or micro-businesses. Certain power generation companies may be micro-businesses or small businesses. Like larger power generation companies, they may face additional costs related to the record retention requirements included in the rule. Using the rates of commercial record-retention companies as a proxy, the commission estimates that the cost of storing and accessing the required records would be approximately fifty dollars (\$50) per month. For a small business with \$500,000 in

annual gross receipts, this would be equivalent to approximately one cent (\$.01) per \$100 of sales. The largest businesses affected by this rule may already be subject to reporting and record keeping requirements of the Federal Energy Regulatory Commission and would probably have in-house record retention facilities. Although they would have a larger volume of records, their annual gross receipts would also be larger than a small business. The cost of compliance for the largest businesses affected by this rule is less than one cent (\$.01) per \$100 of sales. As indicated above in the discussion of the public benefits of the rule, the commission believes that the implementation of the proposed rule will have a beneficial impact on market participants, including small businesses and micro-businesses, by ensuring the availability of reliable transmission and ancillary services at reasonable prices. This will reduce the costs incurred by small or micro-sized power generation companies and enable them to deliver their product to their customers. The cost savings and benefits to small businesses and micro-businesses generated by the rule will more than offset the compliance costs, resulting in a net economic benefit to small businesses and micro-businesses. For this reason the commission concludes that the adoption of the proposed rule would not have an adverse economic effect on small businesses and micro-businesses.

Patrick J. Sullivan, Legal and Enforcement Division, has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, October 7, 2003 at 10:00 a.m.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 26201.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge"

examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

On June 26, 2003, the Federal Energy Regulatory Commission (FERC) issued an order in Docket Nos. EL01-118-000 and EL01-118-001, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, proposing changes to the tariffs applicable to public utilities authorized to charge market-based rates. The proposed changes would impose provisions prohibiting a seller from engaging in anticompetitive behavior or the exercise of market power. The proposed tariff provisions identify certain transactions and practices that are prohibited and impose reporting and record retention requirements on sellers. The order indicated that a violation of these proposed provisions would constitute a tariff violation and the seller could be subject to disgorgement of unjust profits, suspension of its market-based rate authorization, or other appropriate non-monetary penalties. Because the FERC order and proposed tariff provisions address much of the same subject matter that the commission is addressing in the proposed new section, the commission invites comments from interested persons concerning the two proposals. Specifically the commission requests that interested persons answer the following questions:

1. Compare and contrast the differences between the commission's proposed rule and each of the six market behavior rules in the proposed tariff revisions in the FERC order. What aspect of each proposal is best suited to prevent potential anti-

- competitive and deceptive practices by market participants in the ERCOT market, and why ?
2. Should the commission attempt to harmonize the proposed new section to the FERC's proposed tariff revisions? If so, what steps can and should the commission take to that end?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §15.023, which authorizes the commission to impose an administrative penalty against a person who violates the statute or the commission's rules; PURA §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, predatory, or anticompetitive; PURA §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; PURA §39.101, which establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and directs the commission to adopt and enforce rules to carry out this provision and to ensure that retail customer protections are established that afford customers safe, reliable, and reasonably priced electricity; PURA §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; PURA §39.157, which directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses; PURA §39.356, which allows the commission to revoke certain certifications and registrations for violation of an independent organizations procedures, statutory provisions, or the commission's rules; and PURA §39.357, which authorizes the commission to impose administrative penalties in addition to revocation, suspension, or amendment of certificates and registrations.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 35.004, 39.001, 39.101, 39.151, 39.157, 39.356, and 39.357.

§25.503. Oversight of Wholesale Market Participants.

(a) **Purpose.** The purpose of this section is to establish the standards that the commission will apply in monitoring the activities of entities participating in the markets administered by the Electric Reliability Council of Texas (ERCOT) and enforcing the Protocols and Operating Guides of ERCOT (Protocols). The standards contained in this rule are necessary to:

- (1) protect customers from unfair, misleading and deceptive practices, including practices in the ERCOT-administered market;
- (2) ensure that ancillary services necessary to facilitate the reliable transmission of electric energy are available at reasonable prices;
- (3) afford customers safe, reliable, and reasonably priced electricity;
- (4) ensure that all wholesale market participants observe all scheduling, operating, reliability, and settlement policies, rules, guidelines, and procedures established in the ERCOT Protocols;
- (5) clarify prohibited activities in the ERCOT-administered markets;
- (6) monitor and mitigate market power as authorized by the Public Utility Regulatory Act (PURA) §39.157(a) and prevent market power abuses;
- (7) clarify the standards and criteria the commission will use when reviewing market activities;
- (8) clarify the remedies for non-compliance with the Protocols; and

- (9) prescribe ERCOT's role in enforcing operating standards within the ERCOT regional network.
- (b) **Application.** This section applies to all market participants, as defined in subsection (c) of this section.
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:
- (1) **Artificial congestion** — Congestion created when a market participant schedules, dispatches or operates a resource in a way that creates or exacerbates transmission congestion when an economically viable alternative exists to dispatch its resources for meeting existing obligations in a way that would not cause new congestion or worsen existing congestion.
- (2) **Artificial shortage** — Shortage created when a resource owner or operator undertakes non-emergency maintenance, declares false or unnecessary outages, or falsely represents the operational capabilities of its generation facilities, in a manner that affects market prices through withholding of production. An artificial shortage can also be created when a resource owner or operator in other ways operates and schedules its facilities in a manner intended to affect market prices through withholding of production.

- (3) **Economically viable resource** — Resource able to recover its costs of production, including variable costs and short run fixed costs, under prevailing market prices.
- (4) **Efficient operation of the market** — Market characterized by the optimal utilization of resources, as happens when resources are economically dispatched, subject to transmission constraints, and when the costs of resolving transmission congestion are limited to costs necessary to justly compensate market participants who effectively contribute to resolving the congestion.
- (5) **Market participant** — Any person or entity participating in the ERCOT-administered wholesale market, including, but not limited to, a load serving entity (including a municipally owned utility and an electric cooperative,) a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, ERCOT, and any entity conducting planning, scheduling, or operating activities on behalf of such market participants.
- (6) **Market power abuses** — Practices 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. Predatory pricing, withholding of production, precluding entry, collusion, and a violation of §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates,) or

§25.273 of this title (relating to Contracts Between Electric Utilities and Their Competitive Affiliates) are also market power abuses for purposes of this section.

- (7) **Official interpretation of the Protocols** — Clarification of a provision of the Protocols issued by a designated ERCOT official in consultation with the commission staff as delineated in subsection (h) of this section. Commission orders, including interim orders, also constitute official interpretations of the Protocols.
 - (8) **Protocols** — The document that contains the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria in effect in the ERCOT-administered markets, including the ERCOT Protocols and Operating Guides as approved by the commission, and as amended from time to time.
 - (9) **Resource** — Facilities capable of providing electrical energy or load capable of reducing or increasing the need for electrical energy or providing short-term reserves into the ERCOT system. This includes generation resources and loads acting as resources (LaaRs).
- (d) **Standards and criteria for enforcement of Protocols.** The commission will monitor the activities of market participants to determine if such activities are consistent with the Protocols, and whether they constitute market power abuses or are unfair, misleading, or deceptive practices affecting customers. If an activity is

not expressly addressed in the Protocols, or if portions of the Protocols related to an activity are ambiguous, the commission will be guided by the purposes and intent of the Protocols to determine whether the activity is consistent with the Protocols.

- (1) The Protocols are intended to serve the following purposes:
 - (A) to ensure that the reliability of the ERCOT electric system is maintained at all times;
 - (B) to support the efficient operation of the market; and
 - (C) to ensure that all market participants have an equal opportunity to participate and compete in the ERCOT-administered markets in a manner that is not unduly discriminatory.

- (2) When reviewing the activities of a market participant, the commission will consider whether the activity was conducted in a manner that:
 - (A) adversely affected customers through the use of unfair, misleading, or deceptive practices;
 - (B) reduced the competitiveness of the market or in other ways unfairly impacted other market participants;
 - (C) disregarded its effect on the reliability of the ERCOT electric system;
 - (D) undermined the efficient operation of the market; or
 - (E) unduly restricted another market participant's participation in the market.

- (e) **Guiding ethical standards.** Each market participant is expected to:
- (1) conduct its business activities in accordance with the purpose and intent of the Protocols as described in subsection (d) of this section;
 - (2) observe all applicable laws, regulations, and rules;
 - (3) schedule, bid, and operate its resources in a manner consistent with the Protocols to ensure the efficient and reliable operation of the ERCOT electric system; and
 - (4) not engage in activities and transactions that create artificial congestion or artificial supply shortages, artificially boost revenues or volumes, or manipulate the market or market prices in any way.
- (f) **Duties of market participants.**
- (1) Each market participant shall be knowledgeable about the Protocols.
 - (2) Market participants shall comply with the Protocols and any official interpretation of the Protocols issued by ERCOT or the commission.
 - (A) If a market participant disagrees with any provision of the Protocols or any official interpretation of the Protocols, it may seek an amendment of the Protocols as provided for in the Protocols, appeal an ERCOT official interpretation to the commission, or both.

- (B) A market participant appealing an official interpretation of the Protocols or seeking an amendment to the Protocols shall comply with the Protocols unless and until the interpretation is officially changed or the amendment is officially adopted.
 - (C) A market participant may be excused from compliance with ERCOT instructions or Protocol requirements only if such non-compliance is due to communication or equipment failure beyond the reasonable control of the market participant; when compliance would jeopardize public health and safety or the reliability of the ERCOT transmission grid, or create risk of bodily harm or damage to the equipment, or would be inconsistent with facility licensing, environmental, or legal requirements. A market participant is excused under this subparagraph only for so long as the condition continues.
- (3) Whenever the Protocols require that a market participant make its "best effort" or a "good faith effort" to meet a requirement, or similar language, the market participant shall act in accordance with the requirement unless:
- (A) it is not technically possible to do so;
 - (B) doing so would jeopardize public health and safety or the reliability of the ERCOT transmission grid, or would create a risk of bodily harm or damage to the equipment; or

- (C) doing so would be inconsistent with facility licensing, environmental, or legal requirements.
- (4) In each instance when a market participant is not able to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT, the market participant has an obligation to notify ERCOT immediately upon learning of such constraints. A market participant who does not comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT, has the burden to demonstrate why it cannot comply with the Protocol requirement or official interpretation of the requirement, or honor the commitment.
- (5) The commission staff may request information from a market participant concerning a notification of failure to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT. The market participant shall provide a complete response to the commission staff within seven days of a request for information demonstrating the claimed inability to comply.
- (6) A market participant's bids of energy and ancillary services shall be from resources that are available and capable of performing, and shall be feasible within the limits of the operating characteristics indicated in the resource plan, as defined in the Protocols, and consistent with the portfolio ramp rate specified in the bid, as defined in the Protocols.

- (7) All statements, data and information provided by a market participant to ERCOT, the commission, a reporter, or a publisher, shall be true and accurate, complete, and consistent with the market participant's actual or anticipated operations of its resources. The market participant is responsible for the information contained in all statements, data, and information it issues through its personnel.
- (8) A market participant shall comply with all reporting requirements governing the availability and maintenance of a generating unit or transmission facility, including outage scheduling reporting requirements. A market participant shall immediately notify ERCOT when capacity changes or resource limitations occur that affect the availability of a unit or facility, the anticipated operation of its resources, or the ability to comply with ERCOT dispatch instructions.
- (9) Market participants shall comply with requests for information or data by ERCOT as specified by the Protocols or ERCOT instructions within the time specified by ERCOT instructions, or such other time agreed to by ERCOT and the market participant.
- (10) When a Protocol provision or its applicability is unclear, or when a situation arises that is not contemplated under the Protocols, a market participant seeking clarification of the Protocols shall use the process for requesting formal Protocol clarifications or interpretations described in subsection (h) of this section.

- (11) A market participant operating in the ERCOT markets or a member of the ERCOT staff who identifies a provision that produces outcomes inconsistent with the efficient and reliable operation of the ERCOT-administered markets shall call the provision to the attention of the appropriate ERCOT subcommittee. All market participants shall proactively work with the ERCOT subcommittees, ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.
- (12) Each market participant shall establish internal procedures that instruct its personnel on how to implement the Protocols according to the standards delineated in this section. Each market participant shall establish clear lines of accountability for its market practices.
- (g) **Prohibited activities.** Any act or practice of a market participant that adversely affects the reliability of the regional electric network or the proper accounting for the production and delivery of electricity among market participants is considered a "prohibited activity." Activities that constitute market power abuses are also prohibited. The term "prohibited activity" in this subsection excludes acts or practices expressly allowed by the Protocols or by official interpretations of the Protocols and acts or practices conducted in compliance with express directions from ERCOT or commission rule or order. The term "prohibited activity" includes, but is not limited to, the following acts and practices that have been found to cause prices that are not reflective of market forces or to adversely affect

the reliability of the electric network and the proper accounting for market transactions:

- (1) A market participant shall not schedule, operate, and dispatch its generating units in a way that creates artificial congestion or artificially worsens existing congestion.
- (2) A market participant shall not, through the scheduling or operation of its facilities, create artificial supply shortages. However, market participants may decide not to operate their facilities or bid and schedule such facilities under the following circumstances:
 - (A) when such actions would jeopardize public health and safety or damage their facilities;
 - (B) in order to comply with facility licensing, environmental or other legal requirements; or
 - (C) when such actions would not be economically viable under the given circumstances.
- (3) A market participant shall not arrange and execute simultaneous offsetting buy and sell trades with the same counterparty, price, commodity, location and quantity terms, in a manner that artificially inflates reported revenues, trading volumes, or prices.
- (4) Market participants shall not offer reliability products to the market that cannot or will not be provided if selected.

- (5) Market participants shall not conduct trades that result in a misrepresentation of the financial condition of the organization.
- (6) Market participants shall not engage in fraudulent behavior related to their participation in the wholesale market.
- (7) Market participants shall not collude with other market participants to affect the price or supply of power, allocate territories, customers or products, or otherwise unlawfully restrain competition. This provision should be interpreted in accordance with federal and state antitrust statutes and judicially-developed standards under such statutes regarding collusion.
- (8) A market participant shall not engage in economic withholding. For the purposes of this subsection, "economic withholding" means an offer of energy or capacity by a market participant in an amount sufficiently large that the market cannot clear without the offer, and part or all of which is priced above competitive market levels, resulting in a price that is not reflective of a competitive market.
- (9) A market participant shall not engage in any bidding strategy that increases market prices above competitive levels when operational emergencies, extreme weather events, intentional acts of harm, or other situations require ERCOT to deploy or procure all energy or capacity that has been offered into the market.

- (10) A market participant shall not engage in any other conduct that violates the ethical standards established in subsection (e) of this section or the duties imposed by subsection (f) of this section.
- (h) **Official interpretations and clarifications regarding the Protocols.** ERCOT shall develop a process for formally addressing requests for clarification of the Protocols submitted by market participants or issuing official interpretations regarding the application of Protocol provisions and requirements.
- (1) ERCOT shall designate an ERCOT official who will be authorized to receive requests for clarification from, and issue responses to market participants, and to issue official interpretations on behalf of ERCOT regarding the application of Protocol provisions and requirements.
- (2) The designated ERCOT official shall provide a copy of the clarification request to commission staff upon receipt. The ERCOT official shall consult with ERCOT operational or legal staff as appropriate and with commission staff before issuing an official Protocol clarification or interpretation.
- (3) The designated ERCOT official may decide, in consultation with the commission staff, that the language for which a clarification is requested is ambiguous or for other reason beyond ERCOT's ability to clarify, in which case the ERCOT official shall instruct the requestor to take the

request through the Protocol revision process provided for in the Protocols.

- (4) All official Protocol clarifications or interpretations that ERCOT issues in response to a market participant's formal request or upon ERCOT's own initiative shall be sent out in a market bulletin with appropriate effective date specified to inform all market participants, and a copy of the clarification or interpretation shall be maintained in a manner that is accessible to market participants. Such response shall not contain information that would identify the requesting market participant.
 - (5) The opinion of individual ERCOT staff members not specifically authorized to respond to market participant's requests for protocol clarifications do not constitute official clarifications or interpretations of the Protocols.
- (i) **Role of ERCOT in enforcing operating standards.** ERCOT shall develop and submit for commission approval a process to monitor occurrences of non-compliance with the Protocols that have the potential to impede ERCOT operations, create significant burden or place significant costs on other market participants, or represent a risk to system security. Non-compliance indicators monitored by ERCOT shall include, but should not be limited to, schedule control error, failing resource plan performance measures as established by ERCOT, failure to follow dispatch instructions within the required time, failure to perform

ancillary services obligations, failure to submit mandatory bids, and other instances of Protocols non-compliance of a similar magnitude.

- (1) ERCOT shall keep a record of all such instances of non-compliance with the Protocols and shall develop a system for tracking recurrence of such instances of non-compliance.
- (2) ERCOT shall keep a record of the resolution of such instances of non-compliance and of remedial actions taken by the market participant in each instance.
- (3) ERCOT shall inform the commission staff immediately if the issue is not resolved after the system operator has orally informed the market participant of the problem, or if the same instance of non-compliance is repeated more than once in a six-month period.

(j) **Standards for record keeping.**

- (1) A market participant who schedules through a qualified scheduling entity (QSE) that submits schedules to ERCOT on behalf of more than one market participants shall maintain records to show scheduling and bidding information for all schedules and bids that its QSE has submitted to ERCOT on its behalf, by interval.
- (2) All market participants shall maintain records relative to their activities in the ERCOT-administered markets to show:

- (A) transaction information, including the date, type of transaction, amount of transaction, and entities involved;
 - (B) all verbally dispatched instructions (VDIs) received from ERCOT;
 - (C) information and documentation of all planned and forced generation and transmission outages including all documentation necessary to document the legitimacy of the outage;
 - (D) information disclosed to the media, including market publications and publishers of surveys and price indices, including the date, information disclosed, and entities involved; and
 - (E) reports of financial information, including the date, financial results reported, and the official of the market participant to whom financial information was reported, if applicable.
- (3) All records except VDIs shall be kept for a minimum of three years from the date of the event. VDIs records shall be kept for a minimum of two years. All records shall be made available to the commission for inspection upon request.
- (4) Market participants may provide such information to the commission under a confidentiality agreement or protective order pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and Other Material).

(k) **Investigation.** The commission staff may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any market participant has violated any provision of this section.

- (1) The commission staff will contact the market participant whose activities are in question to provide the market participant an opportunity to explain its activities. The commission staff may require the market participant to provide information reasonably necessary for the purposes described in this subsection.
- (2) If the market participant asserts that the information requested by commission staff is confidential, the information shall be provided to commission staff as confidential information related to settlement negotiations pursuant to §22.71(d)(4) of this title.
- (3) If after conducting its fact-finding review, the commission staff determines that a market participant may have violated this section, it may request that the commission initiate a formal investigation against the market participant pursuant to §22.241 of this title (relating to Investigations).
- (4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market participant, it may request that the commission initiate appropriate enforcement action

against the market participant, including but not limited to, revocation, suspension, or amendment of a certificate, license or registration issued by the commission, assessment of administrative penalties, or actions for civil or criminal penalties. The commission may also direct ERCOT to suspend or terminate its agreement with a QSE.

- (5) A market participant subject to an informal fact-finding review or a formal investigation by the commission has an obligation to fully cooperate with the investigation, to make company representatives available to discuss the subject of the investigation with the commission staff, and to respond to the commission staff's requests for information in a reasonable time frame as requested by the commission staff.
- (6) The procedure for informal fact-finding review established in this subsection does not prevent an aggrieved person or commission staff from filing a formal complaint with the commission pursuant to §22.242 of this title (relating to Complaints) or pursuing other relief available by law.
- (1) **Remedies.** If the commission finds that a market participant is in violation of this section, the commission shall order the market participant to take corrective action as necessary. Additionally, the commission may seek criminal prosecution under the Public Utility Regulatory Act (PURA) or seek other remedies as it determines appropriate for the violation involved.

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

**ISSUED IN AUSTIN, TEXAS ON THE 31st DAY OF JULY 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**