

PROJECT NO. 50602

**REVIEW OF 16 TAC § 25.503,
OVERSIGHT OF WHOLESALE
MARKET PARTICIPANTS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.503
AS APPROVED AT THE JULY 31, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.503, relating to oversight of wholesale market participants. The proposed amendments will update the process used by the commission to select the entity to monitor wholesale market reliability-related requirements for Electric Reliability Council of Texas (ERCOT). Specifically, the proposed amendments will broaden the pool of candidates eligible to serve as the reliability monitor for the ERCOT wholesale market. The proposed amendments will also make other minor changes.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Smeltzer, Agency Counsel, Rules Division, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Smeltzer has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be a broadening of the pool of candidates eligible to serve as reliability monitor. This increased competition will result in a more efficient process used by the commission to monitor market participants' compliance with wholesale market reliability requirements. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 4, 2020, if requested in accordance with Texas Government Code §2001.029. In light of the pending public emergency related to the coronavirus disease (COVID-19), this public hearing will be conducted remotely. The request for a public hearing must be received by August 27, 2020. If no request

for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing. If a request for public hearing is received, commission staff will file in this project instructions on how a member of the public can participate in the hearing remotely.

Public Comments

Comments on the proposed amendment may be filed through the interchange on the commission's website as long as the commission's order filed in Docket No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019*, is in effect. Should the commission's order entered into in Docket No. 50664 no longer be in effect, then parties may file written comments by submitting sixteen copies to the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, by August 27, 2020. 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 rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to project number 50602.

Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code (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 grants the commission authority to adopt and enforce rules concerning reliability of the

regional electrical network. Section 39.151 further provides that the commission may delegate to an independent organization responsibilities for establishing or enforcing such rules, which are subject to commission oversight and review.

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

§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 wholesale electricity markets, including markets administered by the Electric Reliability Council of Texas (ERCOT), and enforcing the Public Utility Regulatory Act (PURA) and ERCOT procedures relating to wholesale markets. The standards contained in this rule are necessary to:

(1)-(8) (No change.)

- (9) prescribe ERCOT's role in enforcing ERCOT procedures relating to the reliability of the regional electric network and accounting for the production and delivery among generators and all other market participants, and monitoring and obtaining compliance with operating standards within the ERCOT regional network.

- (b) (No change.)

- (c) **Definitions.** The following words and terms when used in this section ~~shall~~ have the following meaning, unless the context indicates otherwise:

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

- (3) **ERCOT procedures** -- Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols, ~~and~~ ERCOT Operating Guides, and Other Binding Documents as amended from time to time but excluding ERCOT's internal administrative procedures. The

Protocols generally govern when there are inconsistencies between the Protocols and the Operating Guides, except when ERCOT staff, consistent with subsection (i) of this section, determines that a provision contained in the Operating Guides is technically superior for the efficient and reliable operation of the electric network.

(4)-(8) (No change.)

(d)-(e) (No change.)

(f) **Duties of market entities.**

- (1) Each market participant mustshall be knowledgeable about ERCOT procedures.
- (2) A market participant mustshall comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the commission.
 - (A) (No change.)
 - (B) A market participant appealing an official interpretation of the Protocols or seeking an amendment to the Protocols mustshall comply with the Protocols unless and until the interpretation is officially changed or the amendment is officially adopted.
 - (C) (No change.)
- (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 mustshall act in accordance with the requirement unless:
 - (A)-(D)(No change.)

- (4) (No change.)
- (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 mustshall provide a response that is detailed and reasonably complete, explaining the circumstances surrounding the alleged failure, and mustshall provide documents and other materials relating to such alleged failure to comply. The response mustshall be submitted to the commission staff within five business days of a written request for information, unless commission staff agrees to an extension.
- (6) A market participant's bids of energy and ancillary services mustshall be from resources that are available and capable of performing, and mustshall be feasible within the limits of the operating characteristics indicated in the resource plan, as defined in the Protocols, and consistent with the applicable ramp rate, as specified in the Protocols.
- (7) All statements, data and information provided by a market participant to market publications and publishers of surveys and market indices for the computation of an industry price index mustshall be true, accurate, reasonably complete, and mustshall be consistent with the market participant's activities, subject to generally accepted standards of confidentiality and industry standards. Market participants mustshall exercise due diligence to prevent the release of materially inaccurate or misleading information.

- (8) A market entity has an obligation to provide accurate and factual information and mustshall not submit false or misleading information, or omit material information, in any communication with ERCOT or with the commission. Market entities mustshall exercise due diligence to ensure adherence to this provision throughout the entity.
- (9) A market participant mustshall 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 mustshall immediately notify ERCOT when capacity changes or resource limitations occur that materially affect the availability of a unit or facility, the anticipated operation of its resources, or the ability to comply with ERCOT dispatch instructions.
- (10) A market participant mustshall 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.
- (11) When a Protocol provision or its applicability is unclear, or when a situation arises that is not contemplated under the Protocols, a market entity seeking clarification of the Protocols mustshall use the Nodal Protocol Revision Request (NPRR) process provided in the Protocols. If the NPRR process is impractical or inappropriate under the circumstances, the market entity may use the process for requesting formal Protocol clarifications or interpretations described in subsection

(i) of this section. This provision is not intended to discourage day to day informal communication between market participants and ERCOT staff.

(12) A market participant operating in the ERCOT markets or a member of the ERCOT staff who identifies a provision in the ERCOT procedures that produces an outcome inconsistent with the efficient and reliable operation of the ERCOT-administered markets ~~must~~shall call the provision to the attention of ERCOT staff and the appropriate ERCOT subcommittee. All market participants ~~must~~shall cooperate with the ERCOT subcommittees, ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.

(13) A market participant ~~must~~shall establish and document internal procedures that instruct its affected personnel on how to implement ERCOT procedures according to the standards delineated in this section. Each market participant ~~must~~shall establish clear lines of accountability for its market practices.

(g) **Prohibited activities.** Any act or practice of a market participant that materially and 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.” 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 or other legal authority. 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 competitive market forces or to adversely affect the reliability of the electric network:

- (1) A market participant ~~must~~ shall not schedule, operate, or dispatch its generating units in a way that creates artificial congestion.
 - (2) A market participant ~~must~~ shall not execute pre-arranged offsetting trades of the same product among the same parties, or through third party arrangements, which involve no economic risk and no material net change in beneficial ownership.
 - (3) A market participant ~~must~~ shall not offer reliability products to the market that cannot or will not be provided if selected.
 - (4) A market participant ~~must~~ shall not conduct trades that result in a misrepresentation of the financial condition of the organization.
 - (5) A market participant ~~must~~ shall not engage in fraudulent behavior related to its participation in the wholesale market.
 - (6) A market participant ~~must~~ shall not collude with other market participants to manipulate 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.
 - (7) A market participant ~~must~~ shall not engage in market power abuse. Withholding of production, whether economic withholding or physical withholding, by a market participant who has market power, constitutes an abuse of market power.
- (h) (No change.)

- (i) **Official interpretations and clarifications regarding the Protocols.** A market entity seeking an interpretation or clarification of the Protocols mustshall use the NPRR process contained in the Protocols whenever possible. If an interpretation or clarification is needed to address an unforeseen situation and there is not sufficient time to submit the issue to the NPRR process, a market entity may seek an official Protocol interpretation or clarification from ERCOT in accordance with this subsection.
- (1) ERCOT mustshall 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. ERCOT mustshall respond to the requestor within ten business days of ERCOT's receipt of the request for interpretation or clarification with either an official Protocol interpretation or a recommendation that the requestor take the request through the NPRR process.
- (2) ERCOT mustshall designate one or more ERCOT officials 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.
- (3) The designated ERCOT official mustshall provide a copy of the clarification request to commission staff upon receipt. The ERCOT official mustshall consult with ERCOT operational or legal staff as appropriate and with commission staff before issuing an official Protocol clarification or interpretation.

- (4) 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 inform the requestor, who may take the request through the NPRR process provided for in the Protocols.
- (5) All official Protocol clarifications or interpretations that ERCOT issues in response to a market participant's formal request or upon ERCOT's own initiative mustshall be sent out in a market bulletin with the appropriate effective date specified to inform all market participants, and a copy of the clarification or interpretation mustshall be maintained in a manner that is accessible to market participants. Such response mustshall not contain information that would identify the requesting market participant.
- (6) (No change.)
- (j) **Role of ERCOT in enforcing operating standards.** ERCOT mustshall monitor material occurrences of non-compliance with ERCOT procedures, which ~~shall~~means occurrences that have the potential to impede ERCOT operations; or represent a risk to system reliability. Non-compliance indicators monitored by ERCOT mustshall include, but are~~shall~~ not ~~be~~-limited to, material occurrences of failing resource performance measures as established by ERCOT, failure to follow dispatch instructions within the required time, failure to meet ancillary services obligations, failure to submit mandatory bids or offers, and other instances of non-compliance of a similar magnitude.

- (1) ERCOT ~~mustshall~~ keep a record of all such material occurrences of non-compliance with ERCOT procedures and ~~mustshall~~ develop a system for tracking recurrence of such material occurrences of non-compliance.
 - (2) ERCOT ~~mustshall~~ promptly provide information to and respond to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures. However, this requirement does not relieve the market participant's operator from responding to the ERCOT operator's instruction in a timely manner and shall not be interpreted as allowing the market participant's operator to argue with the ERCOT operator as to the need for compliance.
 - (3) ERCOT ~~mustshall~~ keep a record of the resolution of such material occurrences of non-compliance and of remedial actions taken by the market participant in each instance.
 - (4) ERCOT ~~mustshall~~ promptly provide information to and respond to questions posed by the Reliability Monitor and the commission;
 - (5) ERCOT ~~mustshall~~ provide to the Reliability Monitor and the commission the support and cooperation the commission determines is necessary for the Reliability Monitor and the commission to perform their functions.
- (k) **Responsibilities of the Reliability Monitor.** The Reliability Monitor ~~mustshall~~ gather and analyze information and data as needed for its reliability monitoring activities. The Reliability Monitor works under the direction and supervision of the commission. The Reliability Monitor ~~mustshall~~ protect confidential information and data in accordance

with the confidentiality standards established in PURA, the ERCOT protocols, commission rules, and other applicable laws. The requirements related to the level of protection to be afforded information protected by these laws and rules are incorporated into this section. The duties and responsibilities of the Reliability Monitor may include, but are not limited to:

- (1) Monitoring, investigating, auditing, and reporting to the commission regarding compliance with reliability-related ERCOT procedures, including Protocols, ~~and~~ Operating Guides, and Other Binding Documents, the reliability-related provisions of the commission's rules, and reliability-related provisions of PURA by ~~m~~Market ~~e~~Entities;
- (2)-(3) (No change.)

- (1) **Selection of the Reliability Monitor.** The commission ~~may select and ERCOT shall contract with~~ an entity ~~selected by the commission~~ to act as the commission's Reliability Monitor. ~~The Reliability Monitor shall be independent from ERCOT and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities.~~

In selecting the Reliability Monitor, the commission must consider whether the Reliability Monitor satisfies the following criteria:

- (1) Independence, objectivity, and the absence of potential conflicts of interest ~~Independent, objective, and without conflicts of interest;~~
- (2) Experience performing compliance monitoring of reliability-related laws;
- (3) Familiarity with the ERCOT Region and ~~demonstrated~~ understanding of ~~in~~ reliability-related ERCOT protocols, procedures, and other operating standards;

- (4) ~~Ability Demonstrated~~ ~~ability~~ to manage confidential information appropriately;
and
 - (5) Cost effectiveness.
- (m) **Funding of the Reliability Monitor.** ERCOT ~~must~~ fund the operations of Reliability Monitor from the fee authorized by PURA § 39.151.
- (n) **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 ~~must~~ maintain records to show scheduling, offer, and bidding information for all schedules, offers, and bids that its QSE has submitted to ERCOT on its behalf, by interval.
 - (2) All market participants and ERCOT ~~must~~ maintain records relative to market participants' activities in the ERCOT-administered markets to show:
 - (A)-(D) (No change.)
 - (3) After the effective date of this section, all records referred to in this subsection except verbally dispatch instructions (VDIs) ~~must~~ be kept for a minimum of three years from the date of the event. ERCOT ~~must~~ keep VDI records for a minimum of two years. All records ~~must~~ be made available to the commission for inspection upon request.
 - (4) A market participant ~~must~~, upon request from the commission, provide the information referred to in this subsection to the commission, and may, if

applicable, provide it under a confidentiality agreement or protective order pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and Other Material).

- (o) **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 entity has violated any provision of this section.
- (1) (No change.)
 - (2) If the market entity asserts that the information requested by commission staff is confidential, the information ~~must~~ be provided to commission staff as confidential information related to settlement negotiations or other asserted bases for confidentiality pursuant to §22.71(d)(4) of this title.
 - (3) (No change.)
 - (4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues ~~must~~ comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal

procedure established by this subsection, the commission staff ~~must~~shall include as part of its prima facie case:

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

(D) a statement that the staff has concluded that the market- entity failed to demonstrate, in the course of the investigation, the applicability of an exclusion or affirmative defense under subsection (h) of this section.

(5)-(6) (No change.)

(p) **Remedies.** If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues ~~will~~shall be imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

This agency 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 31st DAY OF JULY 2020 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**