

PROJECT NO. 40150

**PUC RULEMAKING PROCEEDING § PUBLIC UTILITY COMMISSION
CONCERNING AN ERCOT PILOT §
PROJECT § OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §25.361
AS APPROVED AT THE MAY 18, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.361, relating to the Electric Reliability Council of Texas (ERCOT), with changes to the text as proposed in the March 9, 2012 issue of the *Texas Register* (37 TexReg 1581). The amendments add a new subsection (k) that would give ERCOT the authority to conduct pilot projects and allow ERCOT to grant temporary exceptions from ERCOT rules, as necessary to effectuate the purposes of the pilot projects. The amendments constitute a competition rule subject to judicial review as specified in Public Utility Regulatory Act §39.001(e). The amendments are adopted under Project Number 40150.

The commission received initial comments from AES Energy Storage (AES), Chamisa CAES at Tulia LLC (Chamisa), ConocoPhillips Company (ConocoPhillips), The Electric Reliability Council of Texas (ERCOT), EnerNOC, Inc. (EnerNOC), the Environmental Defense Fund, Incorporated (EDF), Lone Star Chapter of the Sierra Club (Sierra Club), NRG Energy, Inc. (NRG), North America Power Partners (NAPP), Public Citizen, Texas Energy Storage Alliance (TESA), and Texas Industrial Energy Consumers (TIEC). Edison Mission Marketing and Trading, Inc. (EMMT) filed initial comments after the initial comment deadline, but prior to the reply comment deadline. Reply comments were received from AES, Chamisa, ERCOT, TESA, and TIEC.

General Comments

AES, Chamisa, EDF, EnerNOC, ERCOT, NAPP, NRG, Public Citizen, Sierra Club, and TESA supported the proposed rule. EDF, EnerNOC, and NRG stated their support for the proposed rule as published while AES, Chamisa, ERCOT, NAPP, Public Citizen, Sierra Club, and TESA proposed additional amendments. EMMT and TIEC opposed the rulemaking and stated that ERCOT-funded pilot projects for new technologies are unnecessary and inappropriate. ERCOT should not be functioning like a research lab.

TIEC stated that there is no need for pilot projects; any technology may participate in the market as long as it can meet the applicable ERCOT protocol requirements. Further, TIEC commented that ERCOT has the necessary flexibility to develop new ancillary services without the need to create a pilot project. Entities seeking to introduce new technologies should be responsible for researching and developing these technologies to ensure that they are capable of complying with the standards for market participation. The market should not be put in the position of testing new technologies that cannot meet the appropriate performance requirements and reliability protocols. TIEC stated that as a general rule the commission should not create special services, favorable treatments, subsidies, or exemptions to reliability and performance requirements for specific technologies, as such treatment is anti-competitive, creates artificial winners and losers, and interferes with the dynamics of the competitive market. According to TIEC, the fact that certain technologies believe a pilot project is needed before they can participate in the market indicates that these technologies cannot meet performance requirements and are seeking a pilot

project as an avenue to special treatment. TIEC stated that the Federal Energy Regulatory Commission (FERC) recently rejected similar calls for a pilot program.

EMMT also argued that the entire proposed rule should be struck; they supported continuing the current process that has worked and allowed for the participation of new entrants and the development of new protocols. EMMT stated that it is discriminatory to expect certain technologies to abide by reliability rules, while ERCOT would develop different tests or test results to determine compliance for other technologies. EMMT further stated that retail consumers should not be obligated to support the development of technologies of ERCOT's choosing and that the requirement for ERCOT to consult with "affected market participants" should include all market participants, because each market participant segment will be affected in some way.

ERCOT stated that TIEC's and EMMT's assumption that all discrimination would violate PURA is incorrect. ERCOT noted that, according to the faulty reasoning provided by TIEC, one could argue that settling different resources based on different locational marginal prices (LMPs) or requiring different response times for different ancillary services would be discriminatory. ERCOT further commented that the anti-discrimination provisions of PURA have not been interpreted to prohibit all discrimination, but to prohibit unjust and unreasonable discrimination in the competitive market. ERCOT stated that pilot projects would not create unjust or unreasonable discrimination, and the existence of special standards is not in itself a reason to reject pilot projects. ERCOT rules already recognize special standards for certain generation technologies and services, so the fact that other technologies, processes, and services might be

subject to special rules under a “pilot” is not meaningfully different. ERCOT stated that a rule allowing for pilot projects is justified in that such projects would facilitate the testing of new technologies that might otherwise be impossible in the absence of cooperation between pilot participants and ERCOT. Also, ERCOT commented that it should be presumed that they will act in good faith to balance the costs and benefits of a proposed pilot, and that the oversight function of the commission will ensure that ERCOT’s actions are legal and made in good faith.

TESA stated that the commission should reject TIEC’s and EMMT’s arguments that pilot projects would discriminate against other market participants, and agreed with ERCOT that a rule allowing for pilot projects is justified in that such projects enable the thorough testing of new technologies or services that might otherwise be impossible without a pilot project. TESA noted that FERC allows other Independent System Operators to conduct pilots in order to understand the issues that might arise with incorporating advanced technologies. Further, the ability to pilot new processes and services could allow modifications to protocols that would enhance the reliability of traditional resources in ERCOT, and information developed as a result of a pilot would promote the optimal alignment of commission rules, ERCOT protocols, and ERCOT market systems with the capabilities of new programs or technologies. TESA stated that competition from new technologies may disadvantage the owners of existing resources, but it is important for ERCOT protocols to establish a fair and open market for all resources to ensure the reliability and the future of the grid and the competitive market.

Commission Response

The commission disagrees with TIEC and EMMT that creating pilot projects for certain resources, technologies, services, and processes is unreasonably discriminatory. The primary purpose of a pilot project is to examine the benefit to the ERCOT market, not the particular market participants participating in the pilot project. A pilot project will allow ERCOT to gain experience with the item in question before consideration of its full deployment. As stated in the rule, to be eligible for a pilot project, an item must demonstrate the potential to advance the operational and market functions of the ERCOT system. The limited scope of any pilot project created under this rule, the review of any proposed pilot project by market participants and the ERCOT Board, and the oversight by the commission will ensure that a pilot project will be used only for appropriate purposes.

Items Eligible for Pilot Projects

TESA proposed that the rule be amended so that pilot projects may also be used to evaluate new services, in addition to “resources, technologies, and processes;” AES, ERCOT and NAPP agreed. TESA stated that giving ERCOT the flexibility to bring in new technologies and develop new services will benefit the market as a whole.

TIEC replied that the rule should only allow for the evaluation of services in a technology-neutral manner and should apply indiscriminately to all market participants. TIEC commented that creating a service tailored to a specific technology’s characteristics would be anti-competitive and discriminatory, and would confer an artificial advantage for the selected technologies. TIEC stated that pilot projects should not allow a particular technology to provide

a service under different requirements than those applied to other resources providing the same service. Further, the aim of a pilot project should not be to determine whether certain market participants are eligible to receive special exemptions from protocol requirements. TIEC commented that exempting certain resources from protocol requirements would diminish reliability or force other market participants to compensate, and neither outcome would be acceptable. TIEC also noted that temporary exemptions inevitably spawn arguments that such treatment should continue even as the technology increases, or that a technology operating under pilot projects somehow creates an entitlement to allow the investment to be recovered.

TESA disagreed with TIEC's proposal to only evaluate services, and to remove "resources, technologies, and proposals" from the rule language. TESA stated that the purpose of a pilot is to test a new technology or process that could provide a benefit to the ERCOT market. Without operational experience, the specific protocol changes needed to incorporate new technologies or processes may be uncertain. TESA noted that the rule gives ERCOT broad discretion in what should be evaluated in a pilot, and that it may so happen that some technologies or processes do not provide the expected benefits, which is the reason for doing a pilot project in the first place. ERCOT should not be limited in what it can evaluate in a pilot.

EMMT stated that a "pilot" project would put ERCOT in the position of having to determine winners and losers by choosing one technology over another and questioned how this would be reconciled with the non-discriminatory requirement in PURA. EMMT also stated that other significant questions should be explored, such as the size limit and timing of a pilot, and how the impacts of a project on real-time pricing will be accounted for and support long-term resource

adequacy plans. EMMT commented that if ERCOT were to undertake pilot activities, it would be competing with market participants to provide different services. TESA disagreed and stated that EMMT misunderstood the concept of ERCOT conducting a pilot project. In this case, countered TESA, ERCOT is simply providing a platform for new technologies and services to operate so that new protocol revisions can be appropriately considered.

Sierra Club recommended that the rule be limited in duration and scope in order to limit costs passed through to consumers, and that any pilot projects utilize a RFP process to promote competition and allow multiple vendors to participate. TESA stated that Sierra Club's suggestion is inconsistent with the proposed rule. TESA commented that a pilot would be open to any entity that could participate, and an RFP process is not appropriate since the pilot does not require a purchase to be made by ERCOT. AES recommended that the rule give ERCOT the authority to approve pilots which may be limited in scale or scope rather than requiring that pilots be temporary. AES also commented that the boundaries of a specific pilot should be determined after the nature of the pilot, the pilot's objectives, and the pilot's potential impact to the ERCOT system have been considered. TIEC responded that AES's recommendation advocates long-term market participation on an uneven playing field.

EDF supported the rule, and stated that the current market prevents business from taking advantage of opportunities in Texas if they do not fit easily within the current protocol structure. EDF stated that the proposed rule will help ERCOT investigate new mechanisms and technologies to advance innovation in the utility sector and will help alleviate the capacity crunch facing Texas. EDF also noted that pilot projects should create positive impacts on local

economies by giving Texas a reputation of being open and accessible while stimulating job creation and growth.

Commission Response

The commission agrees that “services” should be included in the scope of projects that may be considered for a pilot. Services under a pilot project may be considered from any market participant and could lead to benefits for the ERCOT market. The commission disagrees with TIEC that only “services” should be included in a pilot project. As explained above, the commission does not believe that a pilot project for a specific technology will be unreasonably discriminatory. Rather, the limited nature of a pilot project will minimize any potential disruptions to the transmission system and wholesale market. The costs and benefits for any pilot project will be evaluated by ERCOT staff, stakeholders, and, ultimately, the ERCOT Board prior to approval of a pilot project.

The commission disagrees with Sierra Club that there should be a request for proposals (RFP) process to solicit multiple vendors. Any entity that can participate in a pilot project will be free to do so within the prescribed scope set by the project. The commission also disagrees with AES that pilot projects should not be of limited duration. The purpose of a pilot project is to gain information and determine whether there should be permanent changes made to ERCOT protocols. Pilot projects themselves are not intended to create permanent operating structures. The commission agrees with EDF’s statements that use of pilot projects will enhance Texas’ reputation of being open and accessible while stimulating job creation and growth.

Transition from pilot project

TESA expressed concern that granting pilot participants exemptions from certain protocols for a specific time period may not allow enough time for the appropriate protocol changes to be in place at the end of the pilot period to enable a seamless integration of storage devices or other technologies into the market. TESA proposed language that would allow a successful pilot project to operate until any permanent protocols changes needed to incorporate the project into ERCOT's operations could be approved. NAPP supported a process to transition a temporary pilot into a full service operation under approved protocols. AES stated that a gap between the expiration of the pilot project and approval of permanent market changes could discourage pilot participation and agreed that the rule should provide approved pilot projects with a plan to address any potential gap. Chamisa stated that it did not oppose the recommendations made by TESA and NAPP.

ERCOT agreed that a successful pilot project should result in permanent changes to the protocols so that the new resource, technology, service, or process can be fully integrated into the market. However, ERCOT expressed concern that market participants and the ERCOT Board understand the standard for when a pilot project has been deemed successful. ERCOT proposed amending the rule to add a clarification on the criteria and reporting mechanism for the successful completion of a pilot project in the proposal of a pilot project to the ERCOT Board.

Public Citizen stated that it would be unfair to market participants that invested considerable time in a pilot if there are no changes to the market rules after it is determined that the pilot has

benefit to the market. Public Citizen also commented that it is unclear as to whom ERCOT should inform regarding the results of a pilot project, and suggested language to inform the ERCOT Board and market participants of possible market modifications resulting from a pilot.

Commission Response

The commission recognizes the desire of participants in a pilot project to have the opportunity to continue with the project after the pilot has ended. However, the commission regards the initial “success” of a pilot project as the ability to gain useful operational information and ultimately, to make a decision on whether changes should be made to ERCOT’s rules. Only when these objectives have been met can ERCOT make the decision as to whether a pilot project should be transitioned to full operation within the market. It is not necessary for an adopted pilot project’s criteria to contain a path for the transition from pilot project status before it is determined if there should be permanent changes to ERCOT’s rules as a result of the pilot project. In this respect, the commission agrees with ERCOT and has added a provision concerning criteria and reporting mechanisms for moving forward with rule changes based on a pilot project.

If it is determined that rule changes should be made based on the information obtained from a pilot project and that the participants in a pilot can operate successfully in the ERCOT market, ERCOT should transition the participants from the pilot project. This process should be implemented on a case-by-case basis, and therefore the rule should not prescribe a specific transition process.

Cost of Pilot Projects

TIEC stated that the market should not have to pay for the research and development of new technologies and commented that there is no limit on the cost of the pilot project, except potentially by the requirement to obtain ERCOT Board approval. TIEC proposed that the costs associated with a pilot project should be paid for by the participants in the pilot project. EMMT questioned who would pay for the ERCOT staff time devoted to a research or pilot project. ERCOT noted that every pilot project will have a different scope and purpose, therefore costs will vary. If a pilot participant meets the responsibilities and performance criteria for the pilot, then the participant deserves to be compensated for those services that benefit the ERCOT system. ERCOT recommended that pilot implementation costs be allocated under the System Administration Fee. ERCOT noted that the ERCOT Board would have the responsibility of deciding whether potential costs outweigh the benefits of any pilot project.

TESA disagreed with TIEC's proposal and stated that ERCOT will not fund new technologies; instead, the funding of individual projects is up to the investor in the project. TESA noted that ERCOT is active in stakeholder processes where changes to the protocols and other rules are discussed. TESA contended that ERCOT's costs with a pilot would be related to essentially the same functions. TESA argued that TIEC's proposal would create additional costs and uncertainties, which could discourage potential pilot participants and impede the integration of advanced technologies and improved processes in the ERCOT market. AES agreed with TESA, and commented that the consideration of the near-term costs by TIEC ignores benefits, such as ERCOT experience and information gained from a pilot project. AES also questioned whether costs and risks should be included in a rule that will apply to all pilots, rather than considerations

of specific proposals and potential appeals to the commission. The determination of who pays for what costs should be part of each pilot proposal.

Commission Response

The costs to an entity to participate in a pilot project will be borne by that entity. Concerning costs to ERCOT for a pilot project, the ERCOT Board will consider costs along with benefits when considering the approval of the pilot project and can determine whether the costs are appropriate. ERCOT may compensate pilot project participants for services that benefit the ERCOT system. The Commission expects that the details of these costs would be part of the scope of any pilot project proposed by ERCOT staff.

In this rulemaking, the commission is not addressing the recovery of ERCOT's costs for a pilot project. Most types of costs incurred by ERCOT are recovered through its system administration fee. Under PURA & 39.151(d), the commission has complete authority to oversee ERCOT's finances, budget, and operations. ERCOT also has the discretion to impose user fees, subject to commission review, pursuant to §25.363(f) (relating to ERCOT Budget and Fees).

Requirement to Participate in Pilot Projects

ConocoPhillips commented that participation in a pilot project should be voluntary for compressed air energy storage (CAES) projects and should not be a prerequisite for interconnection or operation in ERCOT. ConocoPhillips requested that the proposed rule specifically exclude CAES from the pilot project requirement. Chamisa agreed that a pilot

project should not be a condition for any technology that can meet existing ERCOT rules such as CAES. Chamisa recommended clarifying the proposed rule so that a pilot project should not be imposed as a condition or serve to delay any resource, technology or process that meets current ERCOT requirements; ERCOT agreed. AES supported Chamisa's proposed language, and stated that the language would help clarify that participation in a pilot project is voluntary for any resource that complies with then-existing ERCOT rules and would discourage attempts to delay ERCOT rule changes that do not depend on a pilot project's outcome. TESA also noted that the pilot process should be voluntary.

Commission Response

The commission agrees with the commenters that pilot projects should be voluntary and that no entity should be forced or required to participate in a pilot project. If an entity can participate in the ERCOT market without rule changes, then that entity can do so immediately without being required to participate in a pilot project. However, the commission modifies the rule to make this intent explicit.

Review of Pilot Projects

NRG supported the proposed rule and stated that requiring ERCOT Board approval on the scope and purpose of any pilot gives the ERCOT Board the opportunity to prudently consider information prior to approving a pilot project; ERCOT Board decisions relating to a pilot project could be appealed to the commission. This will provide a safeguard to ensure that pilots do not impose undue costs on other market participants.

EnerNOC recommended that ERCOT staff consult with market participants as it develops proposed pilot projects. TESA noted that the provision of “consultation with affected market participants” could be construed to require that the proposal be subject to the ERCOT stakeholder process and proposed to clarify the intent as “potential market participants.” TIEC disagreed and stated that since the market will pay for the costs of any pilot project, market participants, particularly consumers, are entitled the opportunity to weigh in on the merits, risks, and costs of a pilot project. Also, TIEC noted that the ERCOT Board relies on the technical expertise of the Technical Advisory Committee, and this expertise should be applied to the project before it is presented to the ERCOT Board. TIEC recommended that the current language be retained and a formal process for reviewing a pilot project be added to the protocols.

ERCOT stated that the proposed rule balances the need for ERCOT to have the legal authority to undertake pilot projects with the appropriate safeguards to ensure that stakeholders have ample opportunities to make comments and suggestions during the pilot project approval process. This is done by requiring that ERCOT staff consult with affected market participants and commission staff designated by the executive director, and that the ERCOT Board of Directors approve any pilot project, which could then be appealed to the commission for final review. ERCOT stated that the process provided by the proposed amendments ensures every interested party the right to review a pilot project proposal and challenge such proposal before commencement of the pilot. ERCOT agreed with TESA that a pilot should not go through the normal stakeholder process, but believed that stakeholders should have the opportunity to review and comment on any proposal. ERCOT proposed modification to the rule language to allow for stakeholder comment.

Commission Response

The commission agrees with ERCOT that stakeholders should be able to provide input on the review of any pilot project. The knowledge and experience of market participants could help to improve a pilot project by identifying potential issues involved with the pilot project and help focus the pilot project on the specific issues it is intended to address. The commission adopts ERCOT’s proposed language and amends the rule to ensure that there is an opportunity for stakeholder input before Board approval of any pilot project. The commission disagrees with TESA that “consultation with affected market participants” implies that a pilot project must go through the formal stakeholder process and rejects its proposed language amendments.

Pilot project approval process

TESA noted that the proposed language to establish requirements for the pilot project refers to the proposal from ERCOT staff rather than referring to the project approved by the ERCOT Board. TESA proposed an amendment to clarify that the criteria refers to the pilot project approved by the ERCOT Board; ERCOT agreed. TESA also proposed language requiring the governing board to develop procedures for the development and approval of pilot projects by July 31, 2012.

Commission Response

The commission agrees with TESA’s proposal that the criteria should apply to the pilot project approved by the ERCOT Board rather than that proposed by ERCOT staff, and makes the appropriate change to the rule. The commission declines to require ERCOT to

develop pilot project procedures by a certain time. The commission is confident that ERCOT will proceed with due speed to develop those procedures.

All comments, including any not specifically referenced herein, were fully considered by the commission. The commission has changed the proposed amendments consistent with the discussion above and for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT.

Cross Reference to Statutes: PURA §14.002 and §39.151.

§25.361. Electric Reliability Council of Texas (ERCOT).

- (a) **Applicability.** This section applies to the Electric Reliability Council of Texas (ERCOT). It also applies to transmission service providers (TSPs) and transmission service customers, as defined in §25.5 of this title (relating to Definitions), with respect to interactions with ERCOT. For the purpose of this section and §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance), an ERCOT rule is a market protocol, operating guide, market guide, or other procedure that constitutes a statement of general policy and that has an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system in the ERCOT region.
- (b) **Functions.** ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) §39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region. ERCOT shall:
- (1) administer, on a daily basis, the operational and market functions of the ERCOT system, including procuring and deploying ancillary services, scheduling

resources and loads, and managing transmission congestion, as set forth in this chapter, commission orders, and ERCOT rules;

- (2) administer settlement and billing for services provided by ERCOT, including assessing creditworthiness of market participants and establishing and enforcing reasonable security requirements in relation to their responsibilities under ERCOT rules;
- (3) serve as the single point of contact for the initiation of transmission services;
- (4) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;
- (5) provide for non-discriminatory access to the transmission system, consistent with this chapter, commission orders, and ERCOT rules;
- (6) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;
- (7) coordinate and schedule planned transmission facility outages;
- (8) perform system screening security studies, with the assistance of affected TSPs;
- (9) plan the ERCOT transmission system, in accordance with this section;
- (10) establish and administer procedures for the registration of market participants;
- (11) manage and operate the customer registration system;
- (12) administer the renewable energy program, unless the commission designates a different person to administer the program;
- (13) monitor generation planned outages;

- (14) disseminate information relating to market operations, market prices, and the availability of services, in accordance with this chapter, commission orders, and the ERCOT rules;
 - (15) operate an electronic transmission information network; and
 - (16) perform any additional duties required under this chapter, commission orders, and ERCOT rules.
- (c) **Liability.** ERCOT shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities.
- (d) **Planning.** ERCOT shall conduct transmission system planning and exercise comprehensive authority over the planning of bulk transmission projects that affect the transfer capability of the ERCOT transmission system. ERCOT shall supervise and coordinate the other planning activities of TSPs.
- (1) ERCOT shall evaluate and make a recommendation to the commission as to the need for any transmission facility over which it has comprehensive transmission planning authority.

- (2) A TSP shall coordinate its transmission planning efforts with those of other TSPs, insofar as its transmission plans affect other TSPs.
 - (3) ERCOT shall submit to the commission any revisions or additions to the planning guidelines and procedures prior to adoption. ERCOT may seek input from the commission as to the content and implementation of its guidelines and procedures as it deems necessary.
- (e) **Information and coordination.** Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this chapter, commission orders, and ERCOT rules. ERCOT shall maintain the confidentiality of competitively sensitive information and other protected information, as specified in §25.362 of this title. Providers of transmission and ancillary services shall maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.
- (f) **Interconnection standards.** ERCOT may prescribe reliability and security standards for the interconnection of generating facilities that use the ERCOT transmission network. Such standards shall not adversely affect or impede manufacturing or other internal process operations associated with such generating facilities, except to the minimum extent necessary to assure reliability of the ERCOT transmission network.
- (g) **ERCOT administrative fee.** ERCOT shall charge an administrative fee, and the fees it charges are subject to commission approval, in accordance with this chapter.

- (h) **Reports.** Each TSP and transmission service customer in the ERCOT region shall on an annual basis provide to ERCOT historical information concerning peak loads and resources connected to the TSP's system.
- (i) **Anti-trust laws.** The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.
- (j) **Decertification.** ERCOT shall be subject to decertification as an independent organization in accordance with §25.364 of this title (relating to Decertification of an Independent Organization).
- (k) **Pilot Projects.**
 - (1) ERCOT may conduct pilot projects to provide a temporary platform to evaluate resources, technologies, services, and processes that demonstrate the potential to advance the operational and market functions of the ERCOT system. The pilot projects will allow ERCOT to validate performance claims of alternative technologies, evaluate the extent to which new technologies or processes can provide services that comply with federal and state reliability standards, and review how resources perform in various operational and market scenarios. As part of a pilot project, ERCOT may grant temporary exceptions from ERCOT rules, as necessary to effectuate the purposes of the pilot project. ERCOT may use information gained from pilot projects to inform the development of permanent changes to ERCOT rules.

- (2) Process for Development and Approval of Pilot Projects. ERCOT may conduct a pilot project upon approval of the scope and purposes of the pilot project by the governing board of ERCOT. Proposals for approval of pilot projects shall be made to the governing board only by ERCOT staff, after consultation with affected market participants and commission staff designated by the executive director. The ERCOT governing board shall ensure that there is an opportunity for adequate stakeholder review and comment on any proposed pilot project. Pilot project proposals approved by the ERCOT governing board shall include:
- (A) The scope and purposes of the pilot project;
 - (B) Designation of temporary exceptions from ERCOT rules that ERCOT expects to authorize as part of the pilot project;
 - (C) Criteria and reporting mechanisms to determine whether and when ERCOT should propose changes to ERCOT rules based upon results of a pilot project;
 - (D) An estimate of costs ERCOT will incur attributable to the pilot project;
and
 - (E) An estimated date of completion for the pilot project.
- (3) Participation in a pilot project shall not be required as a condition to the deployment of any resource, technology, or process that complies with existing ERCOT rules. The existence of a pilot project does not prohibit any market participant from proposing changes to ERCOT rules that are not dependent on the outcome of the pilot project.

- (4) A decision of the ERCOT governing board approving a pilot project pursuant to this subsection constitutes “ERCOT conduct” for purposes of appeal to the commission pursuant to §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.361, relating to the Electric Reliability Council of Texas, are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 22nd DAY OF MAY 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER