

PROJECT NO. 49788

**RULEMAKING TO AMEND
16 TAC § 25.502**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO § 25.502
AS APPROVED AT THE AUGUST 29, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to § 25.502, relating to pricing safeguards in markets operated by the Electric Reliability Council of Texas. The proposed amendments will remove provisions relating to commission approval of ERCOT protocol amendments related to non-competitive constraints that are no longer needed, and make stylistic updates.

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 limit an existing regulation by eliminating a requirement for commission approval of ERCOT protocol revisions related to non-competitive constraints;
- (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

Paula Mueller, Rules Director, 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

Ms. Mueller 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 elimination of regulatory approvals that are no longer needed and removal of obsolete provisions. 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, if requested in accordance with 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 October 22, 2019 at 9:00 a.m. The request for a public hearing must be received within 15 days after publication.

Public Comments

Comments on the proposed amendments may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 15 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed by 16 TAC §22.71(c). 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 adopt the rule. All comments should refer to project number 49788.

Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (West 2016 and Supp. 2017) (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 the authority to adopt rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among generators and all other market participants.

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

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

- (a) (No change)
- (b) (No change)
- (c) (No change)
- (d) **Control of resources.** Each resource entity must inform ERCOT as to each resource that it controls, and provide proof that is sufficient for ERCOT to verify control. In addition, the resource entity must notify ERCOT of any change in control of a resource that it controls no later than 14 calendar days prior to the date that the change in control takes effect, or as soon as possible in a situation where the resource entity cannot meet the 14 calendar day notice requirement. For purposes of this section, “control” means ultimate decision-making authority over how a resource is dispatched and priced, either by virtue of ownership or agreement, and a substantial financial stake in the resource’s profitable operation. If a resource is jointly controlled, the resource entities must inform ERCOT of any right to use an identified portion of the capacity of the resource. Resources under common control will be considered affiliated.
- (e) **RMR resources.** Except for the occurrence of a forced outage, a generation entity must submit to ERCOT in writing a notice of suspension of operation no later than 150 calendar days prior to the suspension date. If a generation resource is to be mothballed on a seasonal basis in accordance with ERCOT protocols, the generation entity must submit in writing a notice of suspension of operation no later than 90 calendar days prior to the suspension date. ERCOT must issue a final determination of the need for RMR service within 60 calendar days of ERCOT’s receipt of the notice. If ERCOT determines that the generation resource is not needed for RMR service, the generation entity may suspend operation of the generation resource before the

suspension date, subject to ERCOT approval. Unless ERCOT has determined that a generation entity's generation resource is not required for ERCOT reliability, determined that the resource is needed for reliability but is not a cost-effective solution to the reliability concern, or entered into an MRA service agreement as an alternative to an RMR service agreement, the generation entity must not terminate its registration of the generation resource with ERCOT unless it has transferred the generation resource to a generation entity that has a current resource-entity agreement with ERCOT and the transferee registers that generation resource with ERCOT at the time of the transfer.

(1) Complaint with the commission. If, by the suspension date, ERCOT has not notified the generation entity that the continued operation of the generation resource is not required for reliability or is not a cost-effective solution to the reliability need, and has not entered into an RMR service agreement with the generation entity for the generation resource or an MRA service agreement as an alternative to an RMR service agreement, then the generation entity may file a complaint with the commission against ERCOT, under §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) conduct).

(A) The generation entity will have the burden of proof.

(B) As required by §22.251(d) of this title, absent a showing of good cause to the commission to justify a later deadline, the generation entity's deadline to file the complaint is 35 calendar days after the suspension date.

(C) The dispute underlying the complaint is not subject to ERCOT's alternative dispute resolution procedures.

(D) In its complaint, the generation entity may request interim relief under §22.125 of this title (relating to Interim Relief), an expedited procedural schedule, and identify any special circumstances pertaining to the generation resource at issue.

(E) As required by §22.251(f) of this title, ERCOT must file a response to the generation entity's complaint and must include as part of the response all existing, non-privileged documents that support ERCOT's position on the issues identified by the generation entity as required by §22.251(d)(1)(C) of this title.

(F) The scope of the complaint may include the need for the RMR service; the reasonable compensation and other terms for the RMR service; the length of the RMR service, including any appropriate RMR exit options; and any other issue pertaining to the RMR service.

(G) Any compensation ordered by the commission will be effective the first calendar day after the suspension date. If there is a pre-existing RMR service agreement concerning the generation resource, the compensation ordered by the commission will not become effective until the termination of the pre-existing agreement, unless the commission finds that the pre-existing RMR service agreement is not in the public interest.

(H) If the generation entity does not file a complaint with the commission, the generation entity will be deemed to have accepted ERCOT's most-recent offer as of the suspension date.

(2) **Out-of-merit-order dispatch.** The generation entity must maintain the generation resource so that it is available for out-of-merit-order dispatch instruction by ERCOT until:

(A) ERCOT determines that the generation resource is not required for ERCOT reliability;

(B) any RMR service agreement takes effect;

(C) the commission determines that the generation resource is not required for ERCOT reliability; or

(D) a commission order requiring the generation entity to provide RMR service takes effect.

(3) (No change)

(4) (No change)

(5) **Approval of RMR and MRA service agreements.** All recommendations by ERCOT staff to enter into an RMR or MRA service agreement will be subject to approval by the ERCOT governing board. If ERCOT identifies a reliability need for RMR or MRA service but recommends against entering into an RMR or MRA service agreement, ERCOT staff's recommendation will be subject to approval by the ERCOT governing board. In its request for governing board approval, ERCOT staff must present information that justifies its recommendation.

(6) **Refund of payments for capital expenditures.** A resource entity that owns or controls a resource providing RMR or MRA service must refund payments for capital expenditures made by ERCOT in connection with the RMR or MRA service agreement if the resource participates in the energy or ancillary service markets at any time following

the termination of the agreement. ERCOT may require less than the entire original amount of capital expenditures to be refunded to reflect the depreciation of capital over time.

(7) **Implementation.** ERCOT, through its stakeholder process, must establish protocols and procedures to implement this subsection.

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

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

(2) Competitive constraints and noncompetitive constraints must be designated annually prior to the corresponding auction of annual congestion revenue rights. A constraint may be redesignated on an interim basis.

(3) The protocols must be designed to ensure that a noncompetitive constraint will not be treated as a competitive constraint.

This agency certifies that the 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 29th DAY OF AUGUST 2019 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**

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