

PROJECT NO. 34706

PUC RULEMAKING TO AMEND § PUBLIC UTILITY COMMISSION
ERCOT EMERGENCY §
INTERRUPTIBLE LOAD SERVICE § OF TEXAS

ORDER ADOPTING AMENDMENT TO §25.507
AS APPROVED AT THE NOVEMBER 1, 2007 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §25.507, relating to ERCOT Emergency Interruptible Load Service, with changes to the proposed text as published in the September 28, 2007 issue of the *Texas Register* (32 TexReg 3712). The amendment revises a demand response program as a resource for the Electric Reliability Council of Texas (ERCOT) to employ during an Emergency Electric Curtailment Plan (EECP) event that may reduce the risk of interruption of firm load customers' electricity. Under a demand response program, voluntary reductions in the consumption of specific customers participating in the program are used to help the system operator meet shortages of supply or other emergency situations. The commission adopted §25.507 in early 2007, but due to some limitations of the rule, demand resources have not been acquired. This amendment will remove certain restrictions in the current rule and make more likely that demand resources can be acquired. This amendment is adopted under Project Number 34706.

The commission received comments on the proposed amendment from BP Energy Company (BP), CenterPoint Energy (CenterPoint), Chaparral Steel Company (Chaparral), Cirro Energy Services (Cirro), City Public Service of San Antonio Energy, Austin Energy and Lower Colorado River Authority (LCRA subsequently withdrew its participation in the comments) (CPS and Austin), CMC Texas (CMC), Competitive ERCOT Market Participants (CEMT),

Comverge, EnerNOC, ERCOT, Exelon Generation (Exelon), Frontier Associates (Frontier), Fox Smolen and Associates (Fox Smolen), Good Company Associates (Good Company), Guadalupe Valley Electric Cooperative (GVEC), Luminant Energy (Luminant), Nucor Steel Texas (Nucor), Occidental Chemical Corporation (Oxy), Office of the Mayor of the City of Houston (Mayor White), Site Controls, Strategic Energy (Strategic), Texas Industrial Energy Customers (TIEC), Texas Retail Energy LLC (TRE), and Xtend Energy (Xtend).

General Comments on the value of the EILS program

EnerNOC, Site Controls, Comverge, Good Company, GVEC, Nucor, Chaparral, and Strategic generally supported the EILS program and amendments that would result in the acquisition of demand resources. Good Company, Site Controls, and Comverge commented that the value of this program was to establish the role of demand-response in providing reliability services in ERCOT by enlisting numerous market participants and other customer classes as providers of demand-response. Chaparral and Nucor believed that ensuring a successful EILS market would bring untapped demand resources to the market and assist in improving reliability and moderating operational costs for the benefit of all customers. EnerNOC stated that ERCOT was behind other markets in terms of demand-response penetration and this program could help improve the penetration of this resource. Strategic noted that Load Acting as Resource (LaaR) is the only viable demand-response program in ERCOT, and the LaaR program is limited to certain industrial customers. Strategic believed that it is in the public interest for the commission to expand the scope of demand-response through the implementation of EILS. Nucor pointed out that there has not been a demand-response program that the steel mills could participate in and

that this program will make it possible for steel mills to participate. GVEC believed this program was a good insurance policy for all loads, including Non-Opt-In Entity loads.

Nucor noted that the ERCOT market has at most, 1,150 MW of identifiable demand response at anytime compared to almost 68,000 MW of operational generation resources, which, in its opinion, is hardly equal footing or a full utilization of potential demand response. Nucor supported the development of the “widest possible array” of demand response programs and other effective means of offsetting declining reserve margins and increasing energy prices. Nucor opined that making EILS work will give the market another option to work with and develop.

Exelon, CPS, Austin, CEMP, Reliant, and TIEC generally did not endorse the EILS rule. CPS, Austin, and CEMP stated that, based on the fact that the EILS program has never cleared and is highly unlikely to effectively prevent firm load shedding if implemented as amended, it is important to investigate whether any other value is created by the program. TIEC did not believe that the EILS program with or without the proposed revisions is likely to operate as intended and will potentially cost ERCOT market participants hundreds of millions of dollars in payments to procure EILS services and may cause increased costs for other ancillary services. EnerNOC disagreed with the comments of TIEC and CEMP that the EILS program will add little value to the market. EnerNOC again cited ERCOT’s shrinking reserve margin as the rationale for the need for the EILS program.

Exelon emphasized that this program is counter to the energy-only market design that the commission strongly endorses and that all market resources, both supply and demand side, should be treated consistently and this rule does not accomplish that goal. Nucor and Chaparral disagreed with the notion that EILS is contrary to the energy-only market design. Chaparral pointed out that many programs: Black Start Service, Replacement Reserve Service, Responsive Reserves Service (RRS), Non-Spinning Reserves Service, and Reliability Must-Run Service, among others, are all capacity-based services that require capacity/reservation payments.

Reliant suggested that ERCOT should be encouraged to develop a report of all of the operational changes that have occurred since April 17, 2006 and to evaluate the overall impact of how the changes work in concert. Reliant added that ERCOT should conduct engineering studies required to determine the appropriate ancillary service reserve level.

Mayor White stated that he was an elected representative of one-tenth of the people in the state and the chief executive of the largest power consumer in this region. Mayor White urged the commission to provide appropriate market-based incentives to treat avoided demand as a resource, because in some ways it can be more valuable than the incremental cost of power generation.

Commission response

The commission continues to believe that there is value in the EILS service. The commission agrees with Good Company, Site Controls, Comverge and others that one of the important values of this program is to establish the role of demand-response in

providing reliability services in ERCOT by enlisting numerous customers as providers of demand-response, particularly customers in classes that have not participated in the LaaR program. The commission also finds value in having resources that have not participated in demand response programs being enabled to do so by this program. The commission encourages ERCOT to make an effort to attract such customers to the program. The commission further agrees with Strategic that it is in the public interest for the commission to expand the scope of demand-response through the implementation of EILS. While industrial customers whose loads are on under-frequency relays (UFRs) have some limited ability to participate in ancillary services, the commission would like to see this participation broadened to other customer classes and expanded to other products. One of the goals of the commission in the restructured market has been developing additional demand-response resources. In Docket 23220, *Petition of the Electric Reliability Council of Texas for Approval of the ERCOT Protocols*, the commission expressed its desire for greater load response opportunities and stated that “The commission is concerned that designing the markets for generation resources and requiring load resources to generally adhere to Protocols that were designed for generation resources, may unreasonably limit load resources’ participation in the ERCOT ancillary services markets.” The commission believes that in the many years that the ERCOT stakeholders have been working on this issue, little has been done to improve load participation in the ERCOT market. While the commission is adopting these amendments, with the objective of improving load participation in the market, it does not believe that the EILS should be the only new opportunity for loads to participate and will continue to work on programs to improve load participation.

The commission posed the following question in its proposed rule: Giving ERCOT some flexibility in setting the duration of the contract periods or in seeking resources in addition to the resources acquired for the periods established in the rule might help ERCOT deal with unexpected events, such as an extended outage of a large generating unit. Should the rule give ERCOT this flexibility?

TIEC opined that the EILS was unsuitable for anything other than a short-term “emergency” load reduction and therefore not appropriate for dealing with “an extended outage of a large generating unit.” TIEC commented that enlarging the scope of the service in this manner would likely make it more difficult to fully subscribe the program as it would add to the opportunity cost to those loads that would be needed to participate. TIEC also took exception to the rule giving ERCOT license to procure undefined resources that “might help [it] deal with unexpected events.” TIEC and Reliant believed that the existing rules and protocols provide ERCOT with sufficient flexibility to procure ancillary services and resources to deal with unexpected contingencies as well as processes to address needed changes to the protocols, should that be required.

TRE commented that because ERCOT was in the unique position to know what it needs in an emergency situation, it should be given the flexibility to implement EILS accordingly. EnerNOC agreed that ERCOT staff should have the flexibility imparted by the rule’s amendments. TRE also noted that EILS loads need sufficient certainty to determine the duration of the contract periods, the payments for those contract periods, and information on how to bid

into the program so the customer can appropriately evaluate its investment to comply with EILS requirements.

Nucor stated that it preferred not to give ERCOT the flexibility to change the contract periods. Nucor opined that it contemplates contract periods of four-month duration because that would keep initial commitments within a reasonable time frame yet short enough to terminate participation without long-term difficulty. Nucor did, however, support giving authority to acquire EILS resources in addition to the resources acquired for the periods established in the rule on an emergency basis, as long as the rule makes it clear that these resources are not counted against the \$50 million annual cost cap contemplated by amended Substantive Rule §25.507(b)(3), because this could undermine continuing participation of current EILS loads.

CEMP explained that the market already has effective ways to deal with generator outages. CEMP listed many of the tools the generator and ERCOT have to deal with the outages: the bilateral market, replacement reserves, real time prices, non-spinning reserves, RRS, and out-of-merit capacity. CEMP went on to state that the least effective and most costly approach to dealing with a generator outage would be to purchase additional EILS resources.

Austin and CPS stated that while their preference is to allow the TAC's decision to purchase an additional 500 MW of RRS to replace the EILS, should the commission choose to keep the service, giving ERCOT the flexibility may help the program be more responsive to unexpected events. CPS and Austin cautioned that giving ERCOT this flexibility could create a program offering less certainty for participants and put more responsibility on ERCOT regarding pricing

decisions. Austin and CPS also noted that this might make it more difficult for self-providers to offer into the market in a way that will cover their costs of providing EILS.

ERCOT answered the questioned by noting that feedback from the first three contract periods indicated that more flexibility could make the program more attractive to certain loads that are currently unable to participate because of seasonal maintenance schedules or the seasonal nature of the loads themselves. ERCOT, therefore, stated that they would be in favor of having the additional flexibility. ERCOT also pledged that given the flexibility, it would publish the annual contract period schedule at least ninety days in advance, to facilitate adequate planning on the part of prospective EILS resources.

In reply comments, Reliant disagreed with the comments of Nucor, EnerNOC, ERCOT, and TRE that ERCOT needed additional flexibility in reviewing offers to supply EILS and with the structure of the EILS program itself. Specifically, Reliant disagreed that giving ERCOT the flexibility to acquire additional resource during an emergency was justified on reliability grounds; Reliant contended that a reliability need for EILS has not been demonstrated. Further, Reliant objected to the additional costs to the market that are likely to result from such non-standard acquisition of resources. Reliant stated that the market Protocols provide ERCOT with the authority to procure additional ancillary services during the adjustment period, and this is sufficient to respond to changing system needs. Reliant reiterated in response to TRE's comments that ERCOT was in a unique position to determine what flexibility it might need in an emergency situation and that the Protocols provide ERCOT with a framework for taking actions to preserve system integrity.

EnerNOC specifically disagreed with TIEC with respect to the ability of demand response to deal with generation outages and generally reiterated its belief that demand response could be a useful tool dealing with operational problems. EnerNOC disagreed with stakeholders that commented on any alleged “lack of value” in the existing EILS program design, but it agreed with Austin and CPS “that giving ERCOT more flexibility may help the program be more responsive to unexpected events.”

Commission response

The commission finds that the EILS program does have reliability benefits for the ERCOT system. To that end, giving additional contracting flexibility to the ERCOT operator enhances ERCOT’s ability to optimize those benefits to address system anomalies. However, the commission notes that it is not authorizing ERCOT to exceed the \$50 million cap nor to exceed the 1,000 MW ceiling; but it is allowing ERCOT to allocate the resources as it deems necessary to address system needs. The commission further notes that ERCOT has pledged to publish the annual contract period schedule at least 90 days in advance. The commission is comfortable that this pledge will give parties adequate notice regarding the contracting periods and alleviate uncertainty.

Subsection (a)(1)

Exelon noted that the Reliability Operations Subcommittee found that this service does not improve the reliability of the grid. Therefore, Exelon proposed that if this service is truly an ancillary reserve service, comparable to those already existing in the market then it should be

paid only in the hours ERCOT believes it is needed and only a day in advance. Exelon stated that all market participants would like a guaranteed payment stream to increase their participation in the market and encouraged the commission to consider the long term needs of the grid rather than the short term desires of the few loads that would get special benefits through this program.

EnerNOC addressed the concern of the lack of value in the program by stating that this program could be thought of as an insurance policy that can help prevent blackouts similar to the April 17, 2006 event by providing ERCOT's system operators additional capacity that can be called upon in an emergency. EnerNOC added that if the concern is that this program does not provide sufficient protection given the cost of the program, then the "coverage" could be extended and the EILS could be called earlier in the process rather than later.

ERCOT suggested a change to indicate that it would publicly announce any changes to the contract period schedule prior to the next contract period starting date.

Commission response

The commission concludes that the EILS program, if it results in the acquisition of additional demand resources, will have value to the market by reducing the likelihood of an interruption of firm load. As previously addressed in response to the question above, the commission finds it appropriate to give ERCOT the additional flexibility to choose the appropriate contract periods. The commission agrees with the changes suggested by ERCOT and makes the changes to the rule accordingly.

Subsection (a)(2)

CEMP noted that the proposed amendment does not provide guidelines as to how a bid will be deemed unreasonable or how acceptable parameters are defined. Based on the response from previous solicitations, CEMP assumed that the 1,000-MW cap proposed in subsection (a)(3) will not be reached and concluded that this will place ERCOT in the position of selecting all bids, unless ERCOT deems any of these bids to be unreasonable. If ERCOT decides to adopt a certain price level as “reasonable” all potential suppliers will know their bid will be accepted as long as their bid is at or below that level and that price level will then become the standard offer for suppliers-not illustrative of a properly functioning market. CEMP added that ERCOT is supposed to clear prices based on market forces, but it is highly unlikely that a true market will exist under this scenario. Conversely, if ERCOT does not pre-determine a price level then it is possible for EILS providers to have market power. EnerNOC countered by stating that bids are confidential market data and other participants bidding in would have no knowledge about other bids. Specifically, EnerNOC opposed CEMP’s statement that allowing ERCOT this flexibility would result in ERCOT’s ability to set the bid price.

Commission response

The rule contemplates that ERCOT will determine the reasonable maximum price for this service and that it will not announce the maximum price at which it will procure the resource. The commission also agrees with EnerNOC that bids are likely to be treated as confidential, and market participants should not have knowledge of bids from other providers. The commission expects that ERCOT will acquire resources offered at

reasonable prices, recognizing the value of the service, the cost and value of other reliability services, and the limits in the rule. In this context, the commission concludes that ERCOT is not under any obligation to procure EILS at a cost that it concludes is unreasonable, and that there are thus no market power concerns with respect to the service. The commission rennumbers this subsection as (a)(3).

Subsection (a)(3), formerly (a)(5)

Strategic, Chaparral, GVEC, Nucor, ERCOT, EnerNOC, Xtend, Cirro, and Good Company generally supported the removal of the 500 MW floor for EILS. ERCOT believed that this is the single most important proposed amendment. ERCOT added that although it has consistently stated that less than 500 MW is not an optimal operational amount, a substantial number of potential participants have reported that they have not bid into the program because of uncertainty about whether EILS would reach the 500 MW floor. EnerNOC believed that the 500 MW threshold created a vicious cycle in which failure to meet the threshold in one bidding period has caused potential providers to believe the program is not viable and therefore, not to participate in subsequent bidding rounds. Chaparral noted that it is painfully apparent from the bid quantities received during the last three contract terms that the threshold requirement must be eliminated. Nucor stated that it has attempted to participate by submitting bids in every prior EILS contract period but that each time total bids have failed to reach the threshold of 500 MW. Good Company stated it believes that the higher price cap will elicit sufficient bids to surpass the 500 MW but that it may take multiple auctions to reach that level.

Nucor believed that, over time, subscription to EILS is likely to exceed 500 MW once the program gets off the ground with the improved incentive for participation provided by a higher cap. Nucor also pointed out that the current RRS program is oversubscribed by about 650 MW of LaaR. Consequently, some or all of the 650 MW could shift to EILS and be added to total demand response resources available in ERCOT in a given hour, rather than “sitting on the sidelines” as it currently does, Nucor argued.

TIEC, CEMP, Austin and CPS, and Reliant opposed the removal of the 500 MW floor. CEMP stated that the level was determined based on the amount of interruptible load necessary to produce a 0.1 Hz change in system frequency. If the minimum is reduced or eliminated, CEMP opined, the necessary effect on system frequency cannot be assured and the system operator will not be able to expect a sustainable correction in frequency decay through the deployment of EILS. Therefore, CEMP concluded that the system operator will be forced to shed firm load even as the signal is being sent to operate the loads subscribed in the program and as a result the goal of preventing a broader service interruption cannot be achieved. Austin and CPS stated that if an amount below 500 MW were procured, that the program would probably be ineffective.

Reliant agreed with these comments, and recalled that ERCOT stressed that 500 MW was the minimum effective requirement for the program to be useful, but it noted that some amendments might be beneficial in jump-starting the service. Reliant questioned why ERCOT seemed intent on “jump starting” this program. TIEC also opposed removing the 500 MW floor. TIEC argued that if the floor is to be removed for the limited purpose of attempting to get the program off the ground, then the removal should be temporary and the floor reinstated after a stated period of

time (one year at the most) with no further action by the commission. EnerNOC opposed this suggestion and stated that adding any other uncertainty about the future of the program would only continue to stifle participation.

EnerNOC, in its reply comments, stressed the importance of eliminating the 500 MW floor in an attempt to reduce the barriers to participation by commercial demand, including those that would potentially be included in EnerNOC's portfolio. EnerNOC asserted that the comments filed by Austin, CPS and CEMP failed to recognize the significant impediment the 500 MW floor has created for potential participants in the EILS program.

Commission response

The commission finds that this program provides an opportunity for many different types of loads to participate in demand response. The commission concludes that the 500 MW floor has created significant uncertainty and has deterred companies from bidding into the program. The commission agrees with Strategic, Chaparral, GVEC, Nucor, ERCOT, EnerNOC, and Good Company that the 500 MW floor should be removed to facilitate the program. Therefore, the commission makes no changes to this section.

Subsection (a)(6), Long-term solution

Chaparral, EnerNOC, Good Company, and Nucor supported the elimination of the provisions relating to a long-term solution. Chaparral reasoned that loads cannot be expected to participate in EILS without assurance that the program will be in place for some reasonable amount of time. Nucor stated that discarding this section provides two important positive signals to participants:

a long-term commitment exists to encourage customers to provide demand-response services and a range of demand-response programs should be made available by ERCOT. Nucor also strongly supported elimination of this language suggesting that EILS is not part of a long-term effort to fully utilize demand-response resources in the ERCOT system. In its view, the existing language virtually invites ERCOT stakeholders to engage in a continuing squabble over EILS. Nucor added that such unnecessary activities waste all parties' resources that could be better spent designing new demand-side programs and result in the unintended consequence of further concentration by ERCOT on responsive reserve as a solution to all problems.

EnerNOC agreed that a major disincentive to participation in the program has been the uncertainty caused by the provision that would allow the ERCOT stakeholders to substitute another resource in place of the EILS program; because of this uncertainty, customers are unwilling to invest their time to sign up for a program that could be cancelled in a matter of months. EnerNOC added that it does not see a viable cost-effective alternative solution to EILS emerging from the stakeholder process. Good Company opined that because a long-term solution will impact both the market and the self-interest of market participants, it should be the product of a PUC process, where all parties can participate and provide input and an impartial arbiter whose primary concern is the public interest can make the final decisions.

TIEC urged the commission not to delete subsection (a)(6) from the rule, as EILS was proposed as a temporary solution. It argued that ERCOT should continue to have the option to terminate the EILS program if and when an alternative long-term solution is implemented that renders EILS unnecessary.

CEMP was disheartened that references to any long term solution are proposed to be stricken from the rule. CEMP believed that the stakeholder process has made significant progress and should be viewed as a far more effective and less expensive alternative to EILS.

Nucor responded to CEMPs concern by arguing that the long-term solution language in the original rule gave impetus for RRS supporters in ERCOT to proceed along the same tired course of putting all of their demand-response eggs in the LaaR portion of the RRS basket. Therefore, Nucor argued that demand response in ERCOT has been one-dimensional.

Commission response

The commission disagrees that the long-term solution provisions should remain in subsection (a) or (h) and makes no changes to the proposed amendment to remove them. The commission agrees with the comments that indicated the possibility of eliminating EILS if a long-term solution is developed has created significant uncertainty for companies that might have been interested in participating in EILS. The commission appreciates the work that has gone into developing a long-term solution to satisfy the requirements of this rule. However, recent events indicate that the ERCOT stakeholder process is unlikely to produce a long-term solution that provides meaningful demand response opportunities for all customer classes of load, and therefore removes the long-term solution options from this rule. The proposal considered by the ERCOT Board of Directors in its October 2007 meeting would have increased the level of responsive reserves acquired by ERCOT, without any immediate increase in load participation in RRS and little likelihood that

commercial customers would be able to participate in RRS or other existing ancillary service markets.

Subsection (b)(3)

TIEC, Reliant, Oxy, Luminant and CEMP opposed the proposed increase of the cap to \$50 million. TIEC believed the increase will have the effect of increasing charges to the market to procure a smaller amount of capacity for a program that is unlikely to provide the expected benefits if it is called upon to prevent firm load shedding. TIEC added that as it presently exists there is a highly unfavorable cost-benefit ratio and the proposed changes make it much worse. TIEC expressed concern that if enough money is offered, EILS will cannibalize load participation in other services, such as RRS and there will be an increase in the cost of RRS as ERCOT moves higher up the bid stack to obtain the desired capacity amount. Reliant stated that there is no evidence that the program is cost-effective at the current level, therefore there is no reason to raise the cost cap. CEMP noted that planning guidelines state that outages of the nature contemplated by EILS are likely to occur only once in a ten-year time period. CEMP calculated that with ERCOT procuring 200 MW, for a once per ten-year period for four hours that the value of lost load would be \$625,000/MWh. CEMP argued this was excessive and pointed out that most studies do not place the value of load lost in a forced outage above \$20,000 per MWh. Nucor disagreed with CEMP, and argued that the “rather excessive” calculation as quoted by CEMP is based on a number of faulty assumptions: (1) subscription would be only 200 MW despite high prices, (2) all \$50 million will be paid out each year to the 200 MW, and (3) EILS will be used only once in 10 years for four hours. Nucor added that parties claimed that a portion of LaaR may leave RRS for EILS. Nucor argued that given that the LaaR participation

in RRS is oversubscribed by 650 MW, this is likely the case if priced correctly. Nucor opined that deploying EILS only once every 10 years for only four hours is highly unlikely, given declining reserve margins.

Luminant calculated the capacity at a cost of \$250,000 per MW-year (for 200 MW) and pointed out that ERCOT calculated the value of RRS at \$130,000 per MW-year. Luminant also noted that the RRS capacity is a more valuable product to ERCOT and questioned whether EILS provided good value for its likely cost.

Good Company, EnerNOC, GVEC, Nucor, Xtend, Cirro, and Chaparral supported the increase in the cap. Good Company commented that it was not surprised at the failure of three EILS auctions, and pointed out that traditional load management programs in ERCOT paid around \$50/kW-year and a payment closer to \$20 per kW-yr would neither entice former load-management participants nor encourage new sources of load response to make the necessary investment in time and equipment to come forth in large numbers. EnerNOC believed that the commercial demand-response resources can be much more cost-effective than ERCOT's current LaaR which is roughly \$140 kW-year while programs with high penetration levels in other areas of the country range from \$40-80/kW-year. Xtend commented that in discussion with a wide variety of potential customers, very few of them were interested in a program with a cap of \$20 million but many more were interested in a program with a cap of \$40-50 million, as the lower limit simply does not pay enough to make it worth the trouble for most loads. Xtend also noted that it is easier to retain customers than to obtain customers, and lowering the cap in a

succeeding program was better than to raise the cap on a succeeding program. Cirro believed the cap should be higher than \$50 million based on an avoided cost of installing peaking generation.

Nucor preferred a bid-driven market clearing price-based EILS procurement with no cost cap but acknowledged that the elimination of minimum capacity and the cap increase go a long way towards eliminating the shortcomings of the existing rule.

EnerNOC, in its reply comments, reemphasized the importance of increasing the cap for the program to \$50 million. Evidence cited includes the fact that ERCOT was unable to attract the necessary amount of load for the program to be implemented in the previous contract periods and that industrial customers were not willing to make the investment in the necessary equipment to participate in the program at the current cap of \$20 million. EnerNOC remained optimistic about being able to attract commercial loads to the program if the new price cap is implemented. Further, EnerNOC argued that the any proposal to either change the price cap or eliminate the 500-MW floor was illogical and would only accomplish the goal of making it more difficult to attract participants to the program.

Strategic did not oppose increasing the cap beyond \$20 million if the commission deems an increase is appropriate, but to Strategic \$50 million seemed excessive without first attempting to improve the program through other modifications. Strategic stated that it was a load serving entity (LSE) that will help fund the program, and it does believe that the cost must correspond with the benefit. Strategic opined but that the other changes in the rule will improve the likelihood of success of the program and concluded that the cap increase may not be necessary.

Commission response

The commission agrees with many parties that the previous \$20 million cap and with the 500-MW procurement floor were key factors that resulted in not procuring resources under the EILS program in 2007. The commission agrees with Good Company, Cirro, Xtend, EnerNOC, GVEC, Nucor and Chaparral that the cap should be increased. The commission concludes that ERCOT should have the flexibility to use up to \$50 million annually for this program if it deems it necessary.

Subsection (c)(1)(B)

Nucor, Fox Smolen, Strategic, Cirro and Chaparral stated that the elimination of the 500-kW aggregation restriction is a real improvement and will offer an opportunity for more customers to participate in EILS and as a result offer more sources of demand-response to the ERCOT system.

Commission response

The commission agrees that removal of the 500-kW aggregation restriction for EILS resources will result in opportunities for smaller customers to participate in EILS and adopts the proposed amendment on this issue.

Subsection (c)(2)(B)

CMC Texas stated that it is a large industrial electricity customer located in ERCOT that is served by a Non-Opt-In Entity (NOIE). CMC noted that the rule expressly permits loads served

by NOIEs to participate in the program and this allows CMC to fully capitalize on its demand side capabilities. It supported the changes to the rule.

Nucor believed the expansion to permit QSEs to aggregate resources without IDR meters sets forth an additional opportunity for small loads to participate in EILS. Chaparral noted that EILS was never intended to attract residential load, but it can and will make available to ERCOT additional small commercial, large commercial and industrial load resources for use as an operating tool, provided the proposed rule amendments are adopted.

Good Company, Site Controls and Comverge agreed and suggested that this language could be used as the template for loads to participate in all ERCOT ancillary services. ERCOT requested a clarification that a customer's meter and its use are subject to ERCOT approval.

Commission response

The commission agrees that all customer classes should be provided the opportunity to participate in EILS and agrees to include changes to that effect in the rule. The commission also makes ERCOT's requested clarification to this section.

Subsection (c)(2)(C)

ERCOT suggested a clarification to eliminate potential ambiguity relative to resources assigned to the alternate baseline.

In its reply comments, Good Company agreed with ERCOT's proposal to allow participants to use the equivalent of an IDR meter but cautioned that ERCOT should use reasonable standards and should develop an alternative baseline methodology if load data is inadequate for developing a default baseline.

Commission response

The commission agrees with the changes suggested by ERCOT and changes the rule accordingly.

Subsection (c)(2)(F)

ERCOT suggested a modification to avoid confusion over how EILS Resources are registered with ERCOT.

Commission response

The commission agrees with the changes suggested by ERCOT and changes the rule accordingly.

Subsection (c)(3)(A)

ERCOT proposed to modify this section to conform with earlier suggested changes relating to IDR meter equivalents and to provide clarification of the alternative baseline.

Commission response

The commission agrees with the changes suggested by ERCOT and changes the rule accordingly.

Subsection (c)(4)

Nucor endorsed the additional language in this section, which strengthens ERCOT's deployment of EILS by ensuring that EILS resources, while interrupted, cannot return to service. ERCOT requested a language clarification to clarify that a single Verbal Dispatch Instruction (VDI) will be issued to deploy EILS. TRE stated that the requirements require a Level 4 QSE relationship and most customers do not have access to a Level 4 QSE, and suggested ERCOT simultaneously send e-mail messages and post messages on a secure website. Reliant thought the language was confusing and proposed a clarification to this section to clarify its view that EILS was contracting for a total of eight hours rather than eight hours per deployment.

Commission response

At the public hearing in Project Number 33457, *PUC Rulemaking Concerning a Demand-Response Program for ERCOT Emergency Conditions*, Kent Saathoff, the Vice President of Systems Operations stated, "We would prefer the actual dispatch to be solely by verbal dispatch instruction. We don't feel like e-mail is reliable enough to depend on operationally." Therefore, the commission does not amend the rule in accordance with TRE's suggestion. ERCOT may choose to send a courtesy e-mail, but this would not change the level of QSE required to communicate with ERCOT.

The commission agrees with Reliant that changes are necessary to improve clarity and amends the rule accordingly.

Subsection (d)

Reliant proposed modifying the payment structure to eliminate the capacity payment and provide a side payment equal to 50% of the Balancing Energy Service (BES) Market Clearing Price for Energy (MCPE) during the period of ERCOT deployment. Reliant also proposed a clarification to state that ERCOT may develop penalties to reduce payments for underperformance. Reliant also suggested eliminating public access to the methodology used to develop baseline formulas.

Chaparral pointed out that many programs: Black Start Service, Replacement Reserve Service, Responsive Reserves Service (RRS), Non-Spinning Reserves Service, and Reliability Must-Run Service, among others, are all capacity-based services that require capacity/reservation payments.

Commission response

The commission agrees with Chaparral that many ERCOT ancillary services allow reservation payments or capacity payments and is not convinced that these services should not allow a capacity payment. Reserve services, in particular, are compensated for primarily with capacity payments, so that the supplier is paid to be available to supply energy (or a load reduction) when called upon. The use of capacity payments for EILS providers is consistent with this approach. Additionally, the commission finds that Reliant has not provided a clear methodology in its proposal, has not furnished the analysis

supporting the 50% of BES MCPE payment level, and does not explain how the 50% side payment will encourage enough resources to participate in the program. Therefore, the commission does not adopt Reliant's suggestions.

Subsection (f)

Nucor believed that the additional reporting requirements added a welcome symmetry to ERCOT reporting of EILS.

Commission response

The commission agrees that the additional market reporting requirements add value and adopts them in this rule. The commission finds that the additional market reporting requirements diminish the need for reporting to the commission. Accordingly, the commission reduces the reporting requirement to the commission to once per year.

Subsection (h)

Chaparral stated that loads have had absolutely no assurance that the program, if successfully launched, would extend beyond a single contract term. If loads are to be encouraged to participate, Chaparral believed, there needs to be concrete assurance that if they make the substantial investment in management time, personnel training and new equipment that the program will not be abruptly terminated without adequate payback opportunity. Nucor agreed that language suggesting that a long-term solution would terminate EILS sends wrong signals to prospective EILS participants.

CenterPoint proposed leaving the provision relating to a long-term solution in place and proposed a requirement that any long-term solution must consider the price-responsive customer behavior that might be achieved once advanced metering and the corresponding necessary retail and ERCOT programs are sufficiently implemented.

Chaparral opined that the provision of an “alternative solution” in the original EILS rule has encouraged the majority of stakeholders who oppose the entire concept of EILS, to attempt to develop various proposals, none of which do what EILS is designed to do, and should not be viewed as “alternative solutions.” Chaparral noted that this has resulted in a “Sword of Damocles” hanging over the EILS program and has greatly impeded the program’s ability to achieve a successful launch.

Chaparral also argued that EILS offers benefits to ERCOT beyond those resulting from LaaR-provided Responsive Reserves. According to Chaparral, the LaaR program is hugely oversubscribed, and it is infinitely more flexible and far more profitable for the providers than is EILS.

TAC recommendation, is it the long-term solution?

The Technical Advisory Committee (TAC) asked the Wholesale Market Subcommittee (WMS) to work on a long-term solution that would satisfy the rule requirements in subsections (a) and (h). The WMS created a Long-Term Solution Task Force to address the issues. Many stakeholders participated in the process. Simultaneously, the Qualified Scheduling Entity Managers Working Group (QSE Managers) was working on a solution to a separate market

problem. At its October meeting, TAC passed a resolution to increase the procurement of RRS in the hours ending six through twenty-two from 2,300 MW to 2,800 MW. Subsequently, the ERCOT Board of Directors (Board) remanded the issue back to TAC to address a number of issues with the proposal; the Board has asked to have a response from TAC by its December 2007 meeting.

TIEC, Oxy, CPS, Austin, Luminant, and CEMP generally supported the TAC resolution. CEMP asked that the increase in RRS be allowed to work and stated that the EILS should be permitted a timely demise. Oxy supported the TAC proposal for several reasons, most importantly because RRS is procured from the market with prices established by using a market clearing price, and it is market based and can be provided from either load or generation. Oxy added that other benefits include reducing implementation costs by utilizing existing ancillary service systems, reducing alerts regarding shortages, increasing the number of units providing RRS, increasing the quantity of balancing energy available in the bid stack and increasing the amount of governor response and inertia on the system, and potentially reducing the number of North American Electric Reliability Corporation (NERC) reportable events. CPS and Austin stated that adding 500 MW of RRS guarantees ERCOT will have additional reserves ready to be deployed as needed to avoid rolling blackouts or brownouts and also has the added benefit of correcting a significant problem in the ERCOT market. CPS and Austin also noted that the addition of 500 MW works in harmony with the energy-only resource adequacy mechanism.

ERCOT commented that the TAC resolution would enhance reliable operation of the system and that 500 MW of additional RRS would meet ERCOT's objective of acquiring additional

operating tools to reduce the likelihood of firm load shedding. ERCOT believed that it would be an acceptable stakeholder-developed long-term alternative to EILS as provided for in §25.507(a)(6)(A). However, this conclusion is based on a grid-reliability perspective only. ERCOT recognized that other issues exist such as the cost effectiveness of additional RRS and the value of any demand-side management tools that EILS might bring. ERCOT pointed out that the TAC recommendation, unlike the EILS rule, covers only seventeen hours a day rather than twenty-four but noted there are both less risk of firm load shedding and less societal cost in the hours not covered by the TAC resolution. ERCOT added that to the extent the commission intends that EILS serve as a load-participation recruitment tool, TAC's proposal is not a substitute.

EnerNOC and Good Company argued that the suggestion by ERCOT and its stakeholders to replace EILS with 500 MW of responsive reserves would not address the pressing reliability concerns because of the shrinking reserve margin and does not meet the requirements for a long-term solution, as set forth in the subsections (a)(6) and (h). EnerNOC went on to state that the amended rule provides ERCOT with the necessary "tools" to avoid rolling blackouts in an EECF event.

Chaparral argued that the proposed increase in RRS provides a margin of error with which to smooth over current market price inequities, rather than attempting to directly address the underlying market design flaws. Chaparral went on to state that under the TAC proposal, the financial impacts of the current market flaws are effectively shifted from generators to all consumers.

TRE pointed out that absent further study by ERCOT, there is no way to confirm what the costs of the expansion of the RRS are, and the costs may exceed \$100 million. Luminant stated and Reliant agreed that a comprehensive approach to addressing ERCOT's supply and demand needs is the best way to efficiently operate the market. Reliant added that the only way to ensure a comprehensive approach is to evaluate all of the actual and proposed changes that have been implemented since April 17, 2006 and determine how they work together and the reliability benefits that they afford.

Good Company and EnerNOC expressed concern that the stakeholder process is not the optimal setting to arrive at a comprehensive solution that will redistribute potentially billions of dollars between generators and consumers. EnerNOC pointed out that there are two linked proposals (the increase in RRS and PRR 739, which will administratively set prices during alerts and EECF steps) currently being considered by the ERCOT stakeholder process. Neither proposal has been approved by the ERCOT Board or shown to meet the commission's cost-benefit standards under PUC SUBST. R. 25.362(c)(2). Chaparral added that a successful EILS program does not mean that ERCOT should forego an increase in Responsible Reserves if such is found to be warranted. Chaparral continued that EILS and Responsive Reserves are designed for different purposes and provide separate sets of benefits.

TIEC expressed its belief that because of both the ERCOT staff's support and the support of the independent market monitor, the increase in RRS will garner the Board's support at the December Board meeting. TIEC stated that ERCOT staff has supported the TAC resolution as a

replacement for EILS. An increase in RRS and implementation of EILS will both increase costs in the market. TIEC members oppose having to pay for both EILS and the increase in RRS procurement. TIEC added that it believes additional RRS is preferable to EILS as a way to add operating reserves to the market because it reduces the likelihood of system-wide capacity shortfalls and it reduces the needs for ERCOT to dispatch resources out-of-merit, thereby distorting balancing energy prices.

In its reply comments, Good Company summarized the events leading up to the ERCOT Board of Directors' vote on October 16, 2007. Good Company concluded that stakeholders had not presented a protocol revision request (PRR) or a cost study for the proposal to increase responsive reserves, nor did they present any studies on alternative options. Good Company noted several criticisms that were made at the Board meeting concerning the RRS proposal, including the proponents' inability to estimate the cost for the additional 500 MW of responsive reserves and the impact the additional responsive reserves would have on the balancing energy market. The proposal was remanded back to TAC to consider a number of issues, including those stated above, and to provide a report to the Board at the December 2007 Board meeting.

Oxy, BP, Luminant and others requested that the commission wait to take action until after the December Board meeting. Oxy concluded that it is unnecessary for the commission to take action on EILS, as Oxy believes that the adoption of the long-term solution will eliminate the need to continue EILS. Luminant and BP urged the commission to wait on the ERCOT decision-making process before adopting a rule. BP added that given the events at the Board meeting, the commission should postpone the adoption of the proposed rule in this proceeding

until at least December when the Board will have reviewed a set of optimized proposals that TAC is currently developing. BP believed that it was likely that the ERCOT stakeholders can develop workable and cost effective proposals for increasing operating reserves procurement that would address the reliability concerns of ERCOT operators and the market concerns of the IMM. In view of the Board's actions and direction to the TAC, TIEC asked the commission to defer any decision on the amendments to the EILS rule until after the December 7 Board meeting so that the commission would be in a better position to determine whether EILS would still be needed.

Nucor further stated that it supports development and implementation of an EILS program that works, regardless of where RRS and other programs end up.

Are Administrative Pricing and better price signals the solution?

BP stated that this rule is a response to the April 17, 2007, event and that a key cause of that event was that ERCOT operators had insufficient generation and load resources available in real time to respond to ERCOT's reliability needs despite the fact that the peak demand for that day was far below typical summer peak demand. BP acknowledged that the tools that ERCOT currently has to respond to falling responsive reserves, replacement reserve services and out of merit deployment of online generation, can access only the resources that are available for service on a very short notice. BP pointed out that when ERCOT uses these tools they have the unintended consequence of lowering prices in the real-time market, price signals that do not properly reinforce the reliability needs of the grid. BP concluded that the lack of functional scarcity pricing in the ERCOT market is the major reason why insufficient generation and load

resources are available to ERCOT operators in real time. BP and Exelon believed that the lowest cost manner over time by which to address potential shortfalls of available generation resources in real time is to shift the reliability risk from a regulatory solution to a mechanism under which price risk can be more efficiently addressed in the real-time energy market (scarcity pricing) by competitive market participants. BP believed that if scarcity pricing is implemented, over time the marginal value of electric power, rather than just the marginal cost of generation will be reflected whenever scarcity conditions exist and market participants will have a significant incentive to develop the appropriate mix of generation and load resources to insure against unwanted exposure to potentially high prices, and ERCOT operators will have a more adequate and diverse set of resources. Exelon agreed that price-responsiveness must be married to price signals.

Chaparral commented that the current ERCOT market is highly price-inelastic. Chaparral believed that there are currently no price signals in the market to which most loads can respond. Further, most loads are incapable of receiving the price signals were they to be sent. Chaparral argued that this is one of the primary benefits of EILS in that it assures demand response during emergency events. Therefore Chaparral stated it opposes the implementation of administrative price floors during EECF events, at least for the present, because of the inability of the vast majority of consumers to receive price signals and alter consumption. Chaparral cautioned that administrative price floors would accomplish little more than the transference of wealth from loads to generation.

Nucor pointed out that *ex-post* pricing, sends absolutely no price signal to the market, and argued that the market simply pays more as the price is adjusted the next day, which “enriches generators who provide day-behind supply.” Nucor further stated that if administrative scarcity pricing is ever to be imposed in ERCOT, it is absolutely critical that customers receive advanced price notice so that demand-response can actually occur. Reliant also disagreed with administrative pricing for ERCOT and expressed its belief that the only argument that can be made for administrative scarcity pricing is when all generators are ex-ante mitigated administratively as occurs in other markets.

Is Advanced Metering the long term solution?

CenterPoint recognized that the EILS is a program sanctioned by both ERCOT and the PUC as a means of preventing firm load interruptions. CenterPoint offered that the long-term alternative to EILS is the price responsiveness of customers that can be achieved once an advanced metering infrastructure (AMI) is implemented in ERCOT along with the relevant necessary retail and ERCOT programs. BP agreed that the best way to increase demand response is for the PUC to oversee the full implementation of advanced metering technology and the installation of computer, telecommunications, and data storage capacity across the ERCOT system sufficient in scope to allow all competitive loads to settle on fifteen-minute intervals during the waking hours of residential customers and the operating hours of small commercial customers. Reliant supported the advanced meter deployment as a solution to the problem and noted that deployment is not enough. Significant resources need to be directed toward development of settlement protocols, data transport and storage solutions, and market processes to provide for fifteen-minute settlement of mass market meters. In its reply comments, Good Company echoed

Reliant's comments and stated that the implementation of necessary infrastructure and processes would allow REPs to offer demand-response products.

Chaparral commented that it has been and remains a strong proponent of residential advanced metering given its potential ability to moderate prices within the wholesale market and alleviate capacity shortages. Good Company also agreed that an advanced metering system may be able to achieve price-responsiveness on the part of customers, but this should not be viewed as a long-term substitute for EILS. Nucor stated that it strongly supports advanced metering, but argued that it has its limitations, and that it is not a "panacea" for all reliability and demand response issues and is likely to take a number of years to achieve its promise.

Exelon disagreed that advanced meters were needed for effective demand-response. Exelon pointed out in its comments in the Federal Energy Regulatory Commission Advanced Notice of Proposed Rulemaking that significant demand response can be effective without universal installation of high-tech meters and other expensive equipment. For example, Exelon offered, during a short-supply day in the Pennsylvania Jersey Maryland (PJM) market, as the supply margin shrank the locational marginal price (LMP) increased to \$250-\$400 in the PECO zone, PECO employees called and e-mailed demand-response customers to convey the price signal. Exelon stated that many of the customers volunteered to curtail usage for a share of the market value of energy before PJM called the involuntary load reduction event.

Nucor argued that the expansion of RRS, as well as administrative scarcity pricing and advanced metering, are not real substitutes for EILS, and none will produce the additional demand

response that can be produced by EILS. Nucor believes that most of the opponents of EILS have substantial financial motives to prefer other alternatives to EILS. Nucor added that while RRS is a valuable but limited tool in a “range of tools” using demand response, it must not be the only demand response tool in the ERCOT arsenal.

Commission response

The commission appreciates the thought that has gone into developing a long-term solution to satisfy the requirements of this rule. The commission notes that to meet the requirements for a long-term solution, the current version of the rule requires an ERCOT Protocol revision that meets the requirements in subsection (h) to be implemented 30 days prior to the start of the next contract period. This solution must be implemented so that there is a solution continuously in place with no interruption in the protection offered by EILS. Putting aside the merits of each of the proposals that stakeholders have developed, none of the proposed long-term solutions meets the requirement of subsections (a)(6) and (h). The commission has initiated a proceeding for advanced metering implementation, but the infrastructure is not currently in place, nor will it be 30 days prior to the start of the next contract period. Advanced metering will require a number of infrastructure developments and broad deployment by the utilities before it could be considered an effective long-term solution. These elements are not likely to be implemented in the next year, much less in the next 30 days. PRR 739, relating to administrative pricing, has yet to be approved. Even if PRR 739 were approved, it likely would not be in place 30 days prior to the start of the next contract period. The TAC proposal relating to additional responsive reserves is still under investigation, and various refinements to the proposal are

likely to be submitted to TAC, before it finalizes a proposal for Board review in December. There is no PRR proposed for this proposal, nor will it be adopted 30 days prior to the start of the next contract period. Additionally, subsection (h) required better price signals leading up to an EECF event, bringing more resources (both interruptible and generation) online through existing ancillary services. The TAC proposal does not meet these requirements. The purchase of additional RRS is intended to provide better price signals leading up to an EECF event, but it does not bring more interruptible resources online. (Further ancillary services studies would be required before LaaRs would be eligible to supply RRS at a level beyond the current limit.) Therefore, the conditions for terminating the EILS program under the current rule have not been met. The commission is interested in providing avenues for the participation of demand resources in the ERCOT market. Based on developments to date in the stakeholder process, it seems unlikely that the ERCOT stakeholder process will produce a long-term solution that provides meaningful demand response opportunities for all customer classes. The proposal considered by the ERCOT Board of Directors in its October 2007 meeting would have increased the level of responsive reserves acquired by ERCOT, without any immediate increase in load participation in RRS and little likelihood that commercial customers would be able to participate in RRS or other existing ancillary service markets.

This discussion does not suggest that the proposals that have been advanced in the stakeholder process are without merit. There has been broad support for increasing the level of RRS that ERCOT acquires, to provide enhanced reliability, without the negative market consequences of relying on out-of-merit generating resources. The October TAC

proposal or a variation on it may be considered by the Board at the December meeting and may merit adoption. The commission concludes, however, that EILS has a value, even if a proposal involving acquisition of additional responsive reserves is adopted. Beyond the benefits pointed out by its proponents, EILS may provide a benefit that additional generating resources do not. In the period since ERCOT began competitively acquiring ancillary services, there have been several occasions in which generating resources have been severely tested in meeting customer needs. In February 2003, problems with the delivery of natural gas resulted in supply shortages and high wholesale electricity prices. In April 2006, high demand and unexpected generator outages resulted in the need to cut supply to firm-load customers. It appears that EILS would provide an enhancement of reliability for firm-service customers if events like these were to recur, and it might provide a better resource in such events than additional RRS.

Additional comments, Administrative Penalties

TRE believed that a factor that keeps many customers from participating in the EILS program is the possibility of failure to respond in a timely manner and the ambiguity of the penalties for such failure. TRE stated that because of the complexity and the highly manual nature of the process, the probability of failure is high and even with the best intentions a customer may expose itself or its QSE to commission-ordered administrative penalties. To the extent these penalties are not clearly defined, TRE concluded, the customer cannot make a coherent business decision as to whether to participate in the EILS program.

In its reply comments, Good Company remained undecided on TRE's proposal to set administrative penalties for non-compliance. Good Company argued that penalties may serve as a disincentive to some potential participants; however, if penalties for non-performance are to be set, they should be similar to those imposed upon generators performing reliability functions.

Commission response

The commission understands that not having administrative penalties set in the proceeding causes uncertainty for some participants. However, the commission does not generally set administrative penalties by rule, as each situation of non-compliance is different and the commission allows itself flexibility to look at the circumstances of each situation before administering a penalty. Therefore, the commission does not make any changes to the rule to reflect the comments.

New AS study for LaaR

Oxy stated that currently the total amount of LaaR allowed to provide responsive reserves is limited to the lesser of 50% or the amount determined by ERCOT. Chaparral noted that a new LaaR responsive reserve study has been ordered because of the increased potential for frequency over-shoot. Chaparral pointed out that the last study was performed in 2002, when there was very little wind generation in place. Currently, there are thousands of additional MWs of uncontrollable wind generation on the ground, and thousands more MWs will be added year after year. Chaparral stated that the combination of increased uncontrollable wind generation and the necessary use of Under-Frequency Relays (UFR) by LaaRs providing RRS places very real

limits on how much UFR load the ERCOT system can handle without encountering frequency overshoot problems.

Commission response

The commission is interested in having as much load response as possible without sacrificing reliability. The commission would encourage ERCOT to complete any studies necessary to facilitate this as quickly as possible.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).

- (a) **EILS procurement.** ERCOT shall procure EILS, a special emergency service that is intended to be deployed by ERCOT in an Emergency Electric Curtailment Plan (EECP) event prior to or in conjunction with ERCOT instructing transmission and distribution service providers to interrupt firm load.
- (1) EILS may be procured for one or more of three contract periods:
 - (A) February through May;
 - (B) June through September; and
 - (C) October through January.
 - (2) Notwithstanding the foregoing, ERCOT may restructure the contract periods to facilitate additional load participation in EILS. ERCOT must publicly announce any changes to the contract period schedule described above at least 90 days prior to the next contract period start date.
 - (3) ERCOT may determine cost limits for each EILS contract period in order to ensure that the EILS cost cap is not exceeded. To minimize the cost of EILS, ERCOT may reject any bid that ERCOT determines to be unreasonable or outside of the parameters of an acceptable bid.
 - (4) ERCOT may contract for any number of MW in an EILS contract period not to exceed 1,000 MW.

(b) **Definitions.**

- (1) EILS -- A special emergency service procured and used by ERCOT in accordance with this section.
- (2) EILS contract period -- As defined in subsection (a) of this section.
- (3) EILS cost cap -- The maximum amount ERCOT may spend on the EILS program in a year, February-January. The cost cap is set at \$50 million.
- (4) EILS resource -- Load that is contracted to provide EILS.
- (5) EILS time period -- Sets of hours designated by ERCOT within an EILS contract period.
- (6) ERCOT -- The professional staff of the Electric Reliability Council of Texas, Inc.

(c) **Participation in EILS.** In addition to requirements established by ERCOT, the following requirements shall apply for the provision of EILS:

- (1) EILS bids may be submitted to ERCOT by a qualified scheduling entity (QSE) on behalf of an EILS resource.
 - (A) Bids may be submitted for one or more time periods within a contract period.
 - (B) The minimum amount of EILS that may be offered in a bid to ERCOT is one MW. QSEs representing EILS resources may aggregate multiple resources to reach the one MW bid requirement. Such aggregated bids will be considered a single EILS resource.
- (2) To qualify to participate in the EILS program, an EILS resource shall meet the technical requirements set out in this paragraph.

- (A) Each EILS resource, including each EILS resource participating in an aggregated bid, shall have an ESI ID or unique service identifier, as defined by ERCOT.
- (B) Each EILS resource shall have a dedicated installed Interval Data Recorder (IDR) meter or equivalent. If the IDR meter or equivalent is not used for settlement with ERCOT, then the meter and the method and format used to collect and transfer the meter data are subject to ERCOT approval. This subsection also applies to meters behind a Non-Opt-In Entity (NOIE) meter point, to meters behind a private network's settlement meter point, and to separately metered loads behind a single ESI ID. This requirement shall not apply to customers participating in aggregations of EILS resources if a statistically valid alternative to universal IDR metering for measurement and verification consistent with industry best practices can be developed and approved by ERCOT.
- (C) An EILS resource shall be capable of reducing its load by its contracted capacity within ten minutes of an ERCOT verbal dispatch instruction (VDI) to its QSE and shall be capable of maintaining its performance at contracted levels for the entire period of the EILS deployment.
- (D) EILS resources, once deployed, shall be able to return to their contracted operating level for providing EILS within ten hours following the recall instruction.
- (E) EILS resources shall be subject to qualification, testing, and performance requirements as developed and administered by ERCOT.

- (F) An EILS resource shall be registered as part of its QSE agreement with ERCOT.
 - (G) The QSE shall execute a standard form EILS agreement as developed by ERCOT.
 - (H) The EILS resource shall be served by a QSE qualified to provide ancillary services and capable of communicating with ERCOT and the EILS resource.
 - (I) An EILS resource shall not provide other ancillary services, including balancing energy services with the same capacity, while under an EILS Agreement.
- (3) ERCOT shall establish an individual load baseline for each proposed EILS resource. If the EILS resource is an aggregation of ESI IDs, ERCOT shall take into account the load characteristics of each ESI ID represented by the EILS resource.
- (A) ERCOT shall review IDR data or equivalent from the most recent available 12-month period to determine an EILS Resource's consumption. If 12 months of IDR data are not available, ERCOT may use reliable meter data for a shorter period or from a different source, at its reasonable discretion. If ERCOT does not possess sufficient data, the EILS Resource or its QSE must provide data to ERCOT according to ERCOT's specifications.

- (B) ERCOT may establish an alternate baseline methodology to accommodate loads for which a sufficiently accurate default baseline cannot be established.
 - (C) Baselines shall be used to verify or establish an EILS Resource's maximum contract amount and to verify the EILS resource's performance as compared to its contracted capacity during an EILS deployment event.
- (4) EILS shall be deployed by ERCOT by VDIs in a single phone call to all QSEs providing EILS.
- (A) When ERCOT issues a VDI, 100% of the available contracted EILS resources shall be deployed.
 - (B) ERCOT may deploy EILS at any time during a settlement interval.
 - (C) An EILS resource shall be subject to a maximum of two deployments per EILS contract period, lasting no more than a total of eight hours per contract period, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deployment shall continue until ERCOT releases the EILS resource. EILS resources may return to service only after being released by ERCOT.
 - (D) ERCOT may conduct a load-shedding test of each EILS resource once a year unless the EILS resource has met its performance obligations during an EILS deployment during the preceding 12 months. ERCOT tests are not "deployments" under subparagraph (C) of this paragraph.

(d) **EILS Payment and Charges.**

- (1) ERCOT shall pay a capacity payment to each QSE representing an EILS resource on an as-bid basis subject to modifications determined by ERCOT based on the EILS resource's availability during an EILS contract period, and the EILS resource's performance in a deployment event.
- (2) ERCOT shall charge each QSE a capacity charge for EILS based upon its load ratio share during the relevant EILS time period and EILS contract period.
- (3) There shall be no energy payments for providing EILS above and beyond typical load imbalance payments pursuant to the ERCOT protocols.
- (4) ERCOT shall settle an EILS contract period through payments and charges on a settlement statement of a single operating day within 70 days following the completion of the EILS contract period.
- (5) ERCOT shall make the following available to market participants through market notices and by posting on a publicly accessible section of the ERCOT web site:
 - (A) Methodology used to develop baseline formulas;
 - (B) Formulas used for wholesale market settlement; and
 - (C) Equations used to determine an EILS resource's compliance with its obligations in an EILS deployment.

- (e) **Compliance.** QSEs representing EILS resources are subject to penalties for failure to meet their obligations under this section. ERCOT shall withhold all or part of an EILS resource's capacity payment for a contract period and suspend participation in EILS for six months if the EILS resource fails to make its committed load available during its

committed hours, or fails to meet its load reduction obligations in an EILS deployment event. In order to be reinstated after the suspension the load must demonstrate its capability of performing the service by satisfactorily performing a test conducted by ERCOT.

- (f) **Reporting.** Within 10 days of the EILS awards for a contract period, ERCOT shall report publicly the number of MW procured per time period, the number of resources providing the service, and the projected total cost of the service for that contract period. ERCOT shall review the effectiveness and benefits of the EILS and report its findings to the commission annually within 70 days of the completion of the EILS program year. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EECF events, and the number and duration of deployments.
- (g) **Implementation.** ERCOT shall develop additional procedures, guides, and/or protocols that are consistent with this section and that ERCOT finds necessary to implement EILS, including but not limited to developing a standard form EILS Agreement and specific performance guidelines and grace periods for EILS Resources.
- (h) **Self Provision.** ERCOT shall maintain procedures for self provision of EILS by any QSE.

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 §25.507 relating to ERCOT Emergency Interruptible Load Service is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 8th DAY OF NOVEMBER 2007.

PUBLIC UTILITY COMMISSION OF TEXAS

PAUL HUDSON, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

BARRY T. SMITHERMAN, COMMISSIONER