

Company LLC (Luminant); NRG Texas LLC (NRG); Oncor Electric Delivery Company LLC (Oncor); Texas Electric Cooperatives, Inc. (TEC); and Texas Industrial Energy Consumers (TIEC).

General Comments

The Companies stated that the proposed changes to §25.53 were the result of a substantial effort by commission staff to work with interested parties to draft a proposal that gave due consideration to the parties' concerns. LCRA stated that the proposed amendments sufficiently addressed matters raised in previous comments. NRG commented that the proposal for publication strikes a fair balance between the costs of rule compliance and the public benefit of an increased level of preparedness to address issues resulting from emergency situations. Oncor continued to applaud the commission for its leadership and work on this very important topic. TIEC stated that it appreciated commission staff's efforts to draft a rule that meets the statutory emergency operations plan (EOP) requirements, while minimizing undue burden to registered power generation companies (PGCs).

Commission response

The commission appreciates the work that commenters engaged in with staff to formulate a proposed rule that sought to promote better emergency preparedness without creating undue burdens on market participants. The work of commission staff and commenters prior to publication of the proposed rule enabled the commenters to narrow their comments on the proposed rule to a few issues, which are discussed below.

Section 25.53(a)

As explained below in response to comments on subsection (c)(2)(I), the commission has added a sentence to subsection (a) to clarify that if a provision in the rule pertaining to an emergency operation plan does not apply to a market entity or electric cooperative, the market entity or electric cooperative shall include an explanation in its emergency operations plan of why the provision does not apply.

Section 25.53(b)

TIEC supported the proposed biannual deadlines for EOP updates, which align with ERCOT's weatherization declaration deadlines. The proposal would minimize administrative burdens and increase the efficiency in the overall reporting process.

Commission response

The commission agrees with TIEC and therefore adopts subsection (b) as proposed.

Section 25.53(c)(1)

The Companies recommended a clarification to subsection (c)(1) to make it clear that the provision applied only to transmission and distribution facilities.

Commission response

The commission agrees with the proposed clarification and has modified the provision with the language provided by the Companies.

Section 25.53(c)(2)

TIEC suggested clarifying in the preamble that the rule is intended to specify the required components of the overall EOP, and would not require separate plans to be drafted or submitted for the items listed in subsection (c)(2).

Commission response

The commission agrees that the EOP rule does not require separate plans for the items listed in subsection (c)(2). The commission has not prescribed the format for the EOP, but rather has developed requirements for certain items that must be addressed in the EOP. A market participant has discretion to determine how its EOP is structured. No changes to the rule are necessary.

Luminant commented that while it recognized that the recommendation came from the Quanta report, it disagreed with and did not support the proposed language in subsection (c)(2)(B) that would require EOPs to include a plan that addressed the effects of weather design limits. Luminant stated that both the existing and proposed rule requirements already require the EOP to address weatherization. Luminant stated that it would not be meaningful to require PGCs to identify the effects of weather design limits, as varying components may have varying weather design limits, complicating an analysis of the exact temperature that may impact a unit. Luminant commented that a precise weather design limit may or may not identify the “weak links” in protection against extreme temperatures. Luminant added that each weather event was dynamic and that any engineering analysis that attempted to identify a specific weather design limit would be rendered meaningless. Brazos Electric agreed with Luminant’s request to delete

proposed subsection (c)(2)(B). TIEC agreed with Luminant's comments, also commenting that there is no definition of "critical failure point," that most critical failure points are not known until there has actually been a failure, and that weather design limits are often not provided by a generation resource manufacturer. As an alternative, TIEC recommended that the provision be limited to any known critical failure points.

Commission response

The commission agrees with TIEC's alternative recommendation to limit the provision to any known critical failure points, including any effects of weather design limits. The provision, as adopted, requires a plan that addresses any known critical failure points, including any effects of weather design limits. The provision limits the relevance of weather design limits to those that are, or are related to, known critical failure points. The provision does not require the identification of specific weather design limits and does not delineate other contents of the plan. A plan that addresses known critical failure points is an important part of an EOP, because critical failure points are parts of the generation facility that can produce forced outages. Explicitly listing weather design limits as a type of potential critical failure point is appropriate because it ensures that a generation facility owner considers this potential source of an outage.

Luminant commented that the proposed broad language in subsection (c)(2)(I) should be limited to PGCs that have contractual obligations with ERCOT for alternative fuel capability. Luminant stated that the commission should not require PGCs to incur the significant expense of testing alternative fuels when PGCs have voluntarily made their units capable of using such fuels.

Requiring generators to operate their plants with alternative fuel for testing purposes would be uneconomic and potentially very expensive for generators. Luminant went on to state that imposing such a requirement on units capable of using fuel alternatives could significantly discourage generators from enabling their units of having such capabilities. Luminant proposed that the commission narrow the proposed requirement to apply only to PGCs that have contractual obligations with ERCOT, such as black start or reliability must run (RMR) facilities, to run units using alternative fuel. Brazos Electric supported Luminant's recommendation. Brazos Electric also stated that to the extent the commission changes subsection (c)(2)(I), similar changes will need to be made to the parallel provisions in subsection (h)(4) for electric cooperatives.

Commission response

The purpose of the rule is to ensure market participants prepare for emergencies. The rule does so by listing various issues that a market participant must consider in preparing for emergencies. The rule does not dictate a particular result. Subsection (a) of the rule as adopted states that the commission intends that a market participant apply the requirements of the rule in a manner that is appropriate to its particular circumstances. If an entity considers whether to have alternative fuel testing and explains in its EOP that it has decided not to do so and the reasons for that decision, then the requirements of this provision have been met. The commission has added a sentence to subsection (a) to clarify that if a provision in the rule pertaining to an emergency operation plan does not apply to a market entity or electric cooperative, the market entity or electric cooperative shall include an explanation in its emergency operations plan of why the provision does not apply.

Concerning subsection (c)(2)(E) and (G), Luminant stated that there was no need to plan for the inventory of pre-arranged supplies or create checklists for generating facility personnel in the context of non-weather emergencies. Luminant stated that limiting subsection (c)(2)(E) and (G) to extreme weather emergencies would be consistent with proposed subsection (c)(2)(F), which requires the EOP to include a plan that addresses staffing during severe weather events. Brazos Electric agreed with Luminant and stated that if the commission adopted Luminant's recommendations, similar revisions would need to be made to the parallel provisions in subsection (h)(3)(H) and (4)(D).

Commission response

The commission disagrees with Luminant's request. Pre-arranged supplies and checklists for generating facility personnel can apply to circumstances outside of a weather event, such as a fire or explosion at a generation facility.

TIEC offered comments regarding subsection (c)(2)(M) and (3), relating to the proposed requirement to submit an affidavit from the PGC's or retail electric provider's (REP's) operating officer affirming that all personnel are familiar with and committed to carrying out the EOP. TIEC stated that this proposed language was unclear and could be read to require the affirmation from the chief operating officer (COO) or similar executive. To resolve the ambiguity, TIEC suggested adopting language similar to other commission rules that would give the PGC or REP some discretion to identify the appropriate staff who may submit the affidavit.

Commission response

The commission agrees with TIEC and adopts its proposed language in subsection (c)(2)(M) and (3) to give the market participant discretion to identify the particular official with responsibility for the market participant's operations to sign the affidavit.

Section 25.53(d)

Oncor expressed the need to clarify subsection (d) regarding which entities were envisioned in the phrase "an electric utility that directly serves retail customers." Oncor questioned whether this means electric utilities, such as Oncor, that in one sense of the phrase do not directly serve retail customers.

Commission response

For clarification, the commission has changed the phrase quoted by Oncor to "provides retail delivery service to retail electric providers or makes retail sales to end-use customers." The provision in which this phrase is contained is not intended to apply to an electric utility that provides service only at wholesale. The provision requires notice to commission staff and Texas Division of Emergency Management (TDEM) District Coordinators of the date, time, and location of at least one of an electric utility's drills each year. By referring only to an electric utility that provides retail delivery service to retail electric providers or makes retail sales to end-use customers, the commission has limited the applicability of the provision to electric utilities that may need to have extensive interaction with the public during an emergency.

Oncor sought clarification that the requirement in subsection (d) for a transmission and distribution utility (TDU) to provide notice to the appropriate TDEM District Coordinators is limited to TDEM District Coordinators in the TDU's service area.

Commission response

The commission agrees with Oncor and has added “in the electric utility’s service area” for clarification.

Section 25.53(h)

TEC proposed to retain the reference to Public Utility Regulatory Act (PURA) §11.003 in the current subsection (h)(1), because the definition of electric cooperative in §25.5(35) is different from the statutory definition of electric cooperative in PURA §11.003(9) and would create confusion. TEC proposed that the statutory reference be retained in this provision because it reflects the current definition of electric cooperative.

Commission response

The commission declines to adopt TEC’s proposal. The outdated definition of electric cooperative in §25.5(35) includes all entities currently defined as electric cooperatives under PURA §11.003(9). Therefore, TEC’s members are not adversely affected by the definition in §25.5(35). Section 25.35(35)(A) and (B) contain the current definition of electric cooperative in PURA §11.003(9); §25.35(35)(C) is outdated and will be deleted by the commission in a future rulemaking proceeding. In addition, the only entity implicated by §25.5(35)(C) is Sharyland Utilities, L.P. (Sharyland), and Sharyland is currently being

regulated as an electric utility. Therefore, Sharyland will need to continue to meet the requirements of this rule that apply to an electric utility rather than an electric cooperative.

TEC also provided comments related to subsection (h)(2). TEC suggested using the term “major” or “substantial” instead of “material” when referring to significant changes in the plan. TEC stated that using the term “material” would cause confusion for non-legal personnel. TEC stated using one of these terms would promote compliance and reduce confusion and provided sample language to demonstrate the proposed change.

Commission response

The sentence to which TEC referred was “A significant change to a plan includes, but is not limited to, a change that has a material impact on how the electric cooperative would respond to an emergency.” Under subsection (h)(2), if an electric cooperative makes a significant change to its emergency operations plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. The Merriam-Webster Online dictionary, © 2014 by Merriam-Webster, Incorporated, includes “having real importance” as a definition of material, whereas it includes “very important” as a definition of major and “important, essential” as a definition of substantial. Although it is difficult to precisely describe the threshold for filing a revised report or summary, inclusion of “major” or “substantial” rather than “material” would suggest a threshold that is higher than the commission intends. The commission encourages electric cooperatives to file revised plans

or plan revisions if they are unclear whether the threshold has been met. The commission therefore declines to make TEC's suggested change.

TEC and Brazos Electric commented on the use of the word "public" in the communications plan in subsection (h)(3)(B). TEC stated the use of this word is unclear because cooperatives have a local base of members who would be impacted by situations involving their electric service. They stated that resources used to communicate with its members will be greatly reduced by the need to communicate an additional message to the public. TEC proposed deleting the words "the public" from the communications plan requirement and retain the original wording. Brazos supported TEC's recommendation.

Commission response

As the commission explained previously in response to Luminant's comments on subsection (c)(2)(I), the purpose of the rule is to ensure market participants prepare for emergencies. The rule does so by listing various issues that a market participant must consider in preparing for emergencies. If an electric cooperative considers whether to include in its emergency communications plan procedures for communicating with the public and explains in its EOP that it has decided not to do so and the reasons for that decision, then the requirements of subsection (h)(3)(B) have been met. However, the commission encourages cooperatives to include in their plans procedures for communicating with the public. An emergency in an electric cooperative's service area may impact many people who are not members of the public, including persons who work in the cooperative's service area and persons traveling in the area. Low-cost examples of methods to

communicate to the public that cooperatives could use include social media outreach, press releases, and website postings. Many people could benefit from such communications, including the cooperative's members. The commission therefore declines to make changes to the proposed rule in response to these comments.

Brazos Electric commented that in subsection (h)(4)(B) it was concerned about the degree of specificity for weather design limits and critical failure points the commission intended for the new EOP requirement. Brazos Electric commented that if the intent is for the EOP to contain specific pieces of equipment or discreet components, the plan would become so large it would be unworkable. Brazos Electric stated that it was also unsure of the intent of the clause “including any effects of weather design limits” and recommended this phrase be deleted entirely. Brazos Electric noted that generation units are typically designed to meet specific “performance guarantees” and are rarely required to operate in extreme ambient conditions. The design and build of a generating facility is performed on best practices for the geographic region it is to be located. There are also redundant systems that impact critical failure points or determine weather design limits. Brazos Electric stated that generation plants do not come with a complete listing of weather design limits, and that each piece of equipment may have different design limits, and when working together with other equipment or components, the limits may be different than when working separately. They proposed deleting this subsection entirely. TEC agreed with Brazos Electric that this provision should be deleted.

Commission response

The commission has modified subsection (h)(4)(B) in the same manner that it modified the comparable provision located in subsection (c)(2)(B). The commission has limited the provisions to any known critical failure points, including any effects of weather design limits. The provision, as adopted, requires a plan that addresses any known critical failure points, including any effects of weather design limits. The provision limits the relevance of weather design limits to those that are, or are related to, known critical failure points. The provision does not require the identification of specific weather design limits and does not delineate other contents of the plan. A plan that addresses known critical failure points is an important part of an EOP, because critical failure points are parts of the generation facility that can produce forced outages. Explicitly listing weather design limits as a type of potential critical failure point is appropriate because it ensures that a generation facility owner considers this potential source of an outage.

TEC recommended that the word “drill” be deleted and replaced with “review” in subsection (h)(5). Brazos Electric agreed with TEC’s recommendation.

Commission response

The commission agrees with the recommendation and has changed the provision accordingly.

Section 25.53(i)

Brazos Electric requested the commission revise the effective date to June 30, 2015, because the proposed changes impact their transmission and generation divisions and functional areas. Changing the date to June 30 would allow adequate time to implement and document the changes. TEC supported this proposed revision.

Commission response

Given that the cooperatives are subject only to limited commission regulatory requirements and many cooperatives are small, some cooperatives may need more time than the March 31, 2015 deadline in the proposed rule allows. The commission has therefore amended the effective date for cooperatives to June 1, so that the deadline coincides with the beginning of the Atlantic Hurricane Season.

Section 25.362(i)(2)(H)

Brazos Electric expressed concern that the commission is proposing to unilaterally grant ERCOT the right to conduct generator site visits to review compliance with weatherization plans and allow ERCOT the right to obtain information concerning water supplies for generation purposes, including contracts, water rights, and other information, and expressed concern about granting such rights. Brazos Electric stated that there were liability issues when a third party was on site that needed to be considered as well as confidentiality obligations for contracts and related information that need be maintained. Brazos Electric recommended that specific reference be made in the proposed amendments to the ERCOT protocols because the protocols provide for

some liability limitations and specifically address the provision of confidential information to ERCOT. TEC supported Brazos's recommended revisions to this subsection.

ERCOT disagreed with Brazos Electric's proposal because ERCOT is already required to follow ERCOT protocols, except when they conflict with a higher authority. ERCOT stated that the ERCOT protocols already prohibit ERCOT disclosure of any resource-specific costs, design, and engineering data; the status of resources, including outages, limitations, or scheduled or metered resource data; and generation resource emergency operations and weatherization plans. ERCOT stated that the commission's rules require ERCOT to maintain the confidentiality of competitively sensitive information and other protected information. With regard to Brazos Electric's concern about liability arising out of ERCOT site visits, ERCOT stated that ERCOT employees can and should be entitled to all common law remedies, except where specifically limited by existing law, including the ERCOT protocols.

Commission response

The commission declines to make the revision requested by Brazos Electric. As indicated by ERCOT, the reference to ERCOT protocols requested by Brazos Electric is unnecessary because ERCOT is already required to follow ERCOT protocols, except when they conflict with a higher authority such as the commission's rules.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission has made changes to clarify its intent.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (West 2007 and Supp. 2013) (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied to carry out that power; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §31.001, which states that PURA Subtitle B was enacted to protect the public interest in establishing an adequate regulatory system to assure operations and services that are just and reasonable; §37.001, which defines an electric utility to include an electric cooperative for purposes of Chapter 37; §37.151, which provides that a certificate holder shall serve all customers within the certificated area and shall provide continuous and adequate service within that certificated area; §38.001, which provides that electric utilities and electric cooperatives shall furnish service that is safe, adequate, efficient, and reasonable; §38.002, which provides the commission with the authority to adopt reasonable standards for an electric utility to follow, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers, and requires electric utilities to maintain adequately trained and experienced personnel so that the utility may comply with the standards; §38.071, which

provides the commission with authority to order an electric utility to provide improvements in its service; §39.101, which provides the commission with the authority to ensure that customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity; §39.151(a)(2), which requires a power region to establish an independent organization to ensure the reliability and adequacy of the regional electrical networks; §39.151(d), which requires the commission to adopt and enforce rules relating to the reliability of the regional electrical network or delegate to an independent organization responsibilities for establishing or enforcing such rules; §39.151(j), which requires a retail electric provider (REP), municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or power generation company (PGC) to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT; §39.351, which requires a PGC to provide information required by commission rule and comply with the reliability standards adopted by an independent organization; §39.352, which requires a REP to demonstrate the financial and technical resources to provide continuous and reliable service and the resources needed to meet PURA's customer protection requirements, and to comply with all customer protection guidelines established by the commission and PURA, and §41.004, which provides the commission with jurisdiction to require electric cooperatives to report to the commission to the extent necessary to ensure the public safety.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.071, 39.101, 39.151, 39.351, 39.352, and 41.004.

§25.53. Electric Service Emergency Operations Plans.

- (a) **Application.** This section applies to electric utilities (including transmission and distribution utilities), power generation companies (PGCs), retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT), collectively referred to as “market entities,” and electric cooperatives. The commission intends that a market entity or electric cooperative apply the requirements of this section in a manner that is appropriate to its particular circumstances. If a provision in this section pertaining to an emergency operation plan does not apply to a market entity or electric cooperative, the market entity or electric cooperative shall include an explanation in its emergency operations plan of why the provision does not apply.
- (b) **Filing requirements.** A market entity shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan. A new market entity shall file with the commission a copy of its plan or a comprehensive summary before it begins commercial operations. If an electric utility, REP, or ERCOT makes a significant change to its plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. If a PGC makes a significant change to its plan that occurs during the time period November 1 through April 30, it shall file that change by June 1 and for a significant change that occurs during the time period May 1 through October 31, it shall file that change by December 1. A significant change includes but is not limited to a change that has a material impact on how the market entity would respond to an emergency.

(c) **Information to be included in the emergency operations plan.**

(1) An electric utility shall include in its emergency operations plans for its transmission and distribution facilities, but is not limited to, the following:

- (A) A registry of critical load customers, as defined in §25.497(a)(1)-(4) of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), directly served, if maintained by the electric cooperative. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and the process for training staff with respect to serving critical load customers.
- (B) A communications plan that describes the procedures for communicating with the public, media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan shall also address the electric utility's telephone system and complaint-handling procedures during an emergency.
- (C) Curtailment priorities, procedures for shedding load, rotating outages, and planned interruptions.
- (D) Priorities for restoration of service.

- (E) A plan to ensure continuous and adequate service during a pandemic.
- (F) A plan that addresses wildfire mitigation efforts.
- (G) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.
- (H) A plan for the inventory of pre-arranged supplies for emergencies.
- (I) A plan that addresses staffing during severe weather events.
- (J) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the [Texas Department of Public Safety Texas](#) Division of Emergency Management [\(TDEM\)](#)).
- (K) An affidavit from the electric utility's operations officer affirming that all relevant operating personnel of the electric utility are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency.
- (L) An affidavit from the electric utility that states that its transmission and distribution emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b.

- (2) An electric utility that operates an electric generation facility or a PGC shall include in its emergency operations plan for its generation facilities, but is not limited to, the following:
- (A) A plan that addresses severely cold weather and severely hot weather.
 - (B) A plan that addresses any known critical failure points, including any effects of weather design limits.
 - (C) A plan that addresses an emergency shortage of water.
 - (D) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.
 - (E) A plan for the inventory of pre-arranged supplies for emergencies.
 - (F) A plan that addresses staffing during severe weather events.
 - (G) Checklists for generating facility personnel to address emergency events.
 - (H) A summary of alternative fuel and storage capacity.
 - (I) A plan for alternative fuel testing if the facility has the ability to utilize alternative fuels.
 - (J) Priorities for recovery of generation capacity.
 - (K) A pandemic preparedness plan.
 - (L) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by TDEM.
 - (M) An affidavit from an owner, partner, officer, manager, or other official with responsibility for the PGC's operations affirming that all relevant

operating personnel of the PGC are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency.

- (3) A REP shall include in its emergency operations plan, but is not limited to, an affidavit from an owner, partner, officer, manager, or other official with responsibility for the REP's operations affirming that the REP is prepared to implement the plan in the event of an emergency affecting the REP.
- (4) ERCOT shall include in its emergency operations plan, but is not limited to, an affidavit from its operations officer affirming the following:
 - (A) ERCOT maintains crisis communications procedures that address communicating with the public, media, governmental entities, and market participants concerning events that affect the bulk electric system;
 - (B) ERCOT maintains a business continuity plan that addresses returning to normal operations after disruptions caused by a natural or manmade emergency; and
 - (C) ERCOT maintains a pandemic preparedness plan.
- (d) **Drills.** A market entity shall conduct or participate in one or more drills annually to test its emergency procedures if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If a market entity is in a hurricane evacuation zone (as defined by TDEM), at least one of the annual drills shall include a test of its hurricane plan/storm recovery plan. Following the annual drills, the market

entity shall assess the effectiveness of the drill and modify its emergency operations plan as needed. An electric utility that provides retail delivery service to retail electric providers or makes retail sales to end-use customers shall notify commission staff using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators in the electric utility's service area by email or other written form of the date, time, and location at least 30 days prior to the date of at least one drill each year.

- (e) **Emergency contact information.** A market entity shall submit emergency contact information using the method and form prescribed by commission staff, as described on the commission's website. A market entity shall notify commission staff regarding a change to its emergency contact information within 30 days of the change.

- (f) **Reporting requirements.** Upon request by commission staff during an activation of the State Operations Center (SOC) by TDEM, an affected market entity shall provide updates on the status of operations, outages, and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff. After an emergency event declared by the Governor of the State of Texas or the President of the United States of America, commission staff may require an affected market entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

- (g) **Copy available for inspection.** A market entity shall make available a complete copy of its emergency operations plan at its main office for inspection by the commission staff upon request.
- (h) **Electric cooperatives.**
- (1) **Application.** This subsection applies to an electric cooperative that operates generation, transmission, and/or distribution facilities
 - (2) **Reporting Requirements.** An electric cooperative shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan. A new electric cooperative shall file with the commission a copy of its plan or a comprehensive summary before it begins commercial operations. The filing shall also include an affidavit from the electric cooperative's operations officer affirming that all relevant operating personnel of the electric cooperative are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency. If an electric cooperative makes a significant change to its emergency operations plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. A significant change to a plan includes, but is not limited to, a change that has a material impact on how the electric cooperative would respond to an emergency.

- (3) **Information to be included in the emergency operations plan.** An electric cooperative's emergency operations plan shall include, but is not limited to, the following:
- (A) A registry of critical load customers, as defined in §25.497(a)(1)-(4) of this title, directly served, if maintained by the electric cooperative. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and the process for training staff with respect to serving critical load customers.
 - (B) A communications plan that describes the procedures for communicating with the public, the media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan shall also address the electric cooperative's telephone system and complaint-handling procedures during an emergency.
 - (C) Curtailment priorities, procedures for shedding load, rotating outages, and planned interruptions.
 - (D) Priorities for restoration of service.
 - (E) A plan to ensure continuous and adequate service during a pandemic.
 - (F) A plan that addresses wildfire mitigation efforts.

- (G) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.
 - (H) A plan for the inventory of pre-arranged supplies for emergencies.
 - (I) A plan that addresses staffing during severe weather events.
 - (J) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by TDEM).
 - (K) A statement from an electric cooperative that directly serves retail customers of whether or not its emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS 800.b, IS – 100.b, and IS-200.b.
- (4) In addition to the information required by paragraph (3) of this subsection, an electric cooperative that operates an electric generation facility shall include, but is not limited to, the following information in its emergency operations plan:
- (A) A plan that addresses severely cold weather and severely hot weather.
 - (B) A plan that addresses any known critical failure points, including any effects of weather design limits.
 - (C) A plan that addresses an emergency shortage of water.
 - (D) Checklists for generating facility personnel to address emergency events.

- (E) A summary of alternative fuel and storage capacity.
 - (F) A plan for alternative fuel testing if the facility has the ability to utilize alternative fuels.
 - (G) Priorities for recovery of generation capacity.
- (5) **Preparedness Review.** An electric cooperative shall conduct one or more reviews annually of its emergency procedures with key emergency operations personnel if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If the electric cooperative is in a hurricane evacuation zone, at least one of the annual reviews shall include its hurricane plan/storm recovery plan. Following the annual preparedness reviews, the electric cooperative shall assess the effectiveness of the review and modify its emergency operations plan as needed. An electric cooperative that directly serves retail customers shall notify commission staff using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators by email or other written form, of the location, date, and time at least 30 days prior to the date of at least one review each year.
- (6) **Emergency contact information.** An electric cooperative shall submit emergency contact information using the method and form prescribed by commission staff, as described on the commission's website. An electric cooperative shall notify commission staff regarding a change to its emergency contact information within 30 days of the change.

- (7) **Reporting requirements.** Upon request by commission staff during an activation of the SOC by TDEM, an affected electric cooperative shall provide updates on the status of operations, outages, and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff. After an emergency event declared by the Governor of State of Texas or the President of the United States of America, commission staff may require an affected electric cooperative to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.
- (8) **Copy available for inspection.** An electric cooperative shall make available a complete copy of its emergency operations plan at its main office for inspection by commission staff upon request.
- (i) **Effective date.** The effective date of the amendments made to this section in Project Number 39160 is March 31, 2015 for market entities and June 1, 2015 for electric cooperatives.

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

- (a) **Purpose.** This section provides standards for the governance of an independent organization within the ERCOT region.
- (b) **Application.** This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under PURA §39.151.
- (c) Adoption of rules by ERCOT and commission review. ERCOT shall adopt and comply with procedures concerning the adoption and revision of ERCOT rules.
- (1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of market protocols, operating guides, planning guides, and market guides, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.
 - (2) ERCOT staff, the independent market monitor, and the commission's reliability monitor may comment on any proposed change in ERCOT rules that affects the operation and competitiveness of markets operated by ERCOT or reliability of the electric network in ERCOT.
 - (3) If the findings of a commission-mandated audit of ERCOT operations or governance indicate the need for a change in operating practices or procedures or governance rules, ERCOT shall develop and submit to the commission a plan for implementing the changes. ERCOT shall implement the plan, as approved by the commission. Commission-mandated audits, as contemplated in PURA §39.151(d)

and (d-1), shall be funded by ERCOT and do not require approval by the governing board of ERCOT.

- (4) The commission may review a provision of ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule on the application of an interested person, including commission staff and the Office of Public Utility Counsel.
 - (5) The commission shall process requests for review of a provision of ERCOT's articles of incorporation or by-laws, a new or amended ERCOT rule, or ERCOT decision in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). A request for review under this subsection initiated by the commission, commission staff, or the Office of Public Utility Counsel is not subject to the alternative dispute resolution requirements in §22.251(c) of this title, (which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), Section 21 of the Protocols (Process for Protocol Revision), or other applicable ERCOT procedures. In addition, the commission may, for good cause, waive the requirement that a complaint be filed within the time prescribed in §22.251(d) of this title.
- (d) **Access to meetings.** ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the governing board shall be retained permanently, and

ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) **Access to information.** This subsection governs access to information held by ERCOT.

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operations, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT shall notify the requester of the expected delay and the anticipated date that the information may be available. ERCOT's procedures regarding access to records shall be consistent with this chapter and commission orders.

(A) Information submitted to or collected by ERCOT pursuant to requirements of ERCOT rules shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules, except as otherwise provided in this subsection.

(B) ERCOT shall promptly respond to a request from the commission, a commissioner, a commissioner's designee, the commission executive director, or the executive director's designee for information that ERCOT collects, creates or maintains, in order to provide the commission access to

information that the commission, a commissioner, a commissioner's designee, the executive director, or the executive director's designee determines is necessary to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets.

- (C) In the absence of a request for information under the Texas Public Information Act, Texas Government Code Annotated, the commission staff may seek to release information that the commission has in its possession or has access to that has been designated as Protected Information under ERCOT rules, and the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested-case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under law.
- (D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of the assertion.

- (2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in the Texas Public Information Act.
- (f) **Conflicts of interest.** ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.
- (g) **Qualifications, selection, and removal of members of the governing board.** ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.
- (1) The qualification criteria shall include:
- (A) Definitions of the market sectors;
 - (B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;
 - (C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

- (D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.
- (2) The procedures for removal of a member from service on the governing board shall include:
- (A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and
 - (B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection or violates an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute.
- (3) The procedures adopted under paragraph (2) of this subsection shall:
- (A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection or has violated an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute; and
 - (B) Specify how decisions concerning the qualification of an individual or whether an individual has violated an ERCOT rule or written ERCOT policy or procedure adopted under this section, or commission rule, or applicable statute will be made.

- (4) A decision concerning an individual or organization's qualification or an individual's removal from the governing board is subject to review by the commission.
- (5) ERCOT shall notify the commissioners when a vacancy occurs for an unaffiliated member of the governing board. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of an unaffiliated member of the governing board is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection. An unaffiliated board member whose three-year term has expired shall, if reappointed by the ERCOT governing board, cease serving as a member of the governing board until the reappointment is approved by the commission. The commission may remove an unaffiliated member of the governing board for cause. Compensation, per diem and travel reimbursements to be paid to unaffiliated members of the governing board shall be subject to commission review and approval. As used in this paragraph, "cause" shall mean:
- (A) a violation of a commission rule or applicable statute, an ERCOT rule, or written ERCOT policy or procedure adopted under this section;
 - (B) a director is indicted or charged with a felony or is convicted of a misdemeanor involving moral turpitude;

- (C) conduct inconsistent with a director's fiduciary duty to ERCOT or that may reflect poorly upon the board or ERCOT; or
 - (D) a fundamental disagreement with the commission as to the policies or procedures that ERCOT shall adopt, in each case as determined by the commission at its sole discretion.
- (6) A member of the governing board of ERCOT appointed after the effective date of this paragraph who serves as an unaffiliated member may not represent a market participant before the governing board of ERCOT, the ERCOT technical advisory committee, or any of its subcommittees or working groups, for a period of one year after the person ceases to serve as a member of the governing board.
- (h) **Chief executive officer.** The appointment of the chief executive officer of ERCOT is subject to commission approval. ERCOT shall notify the commissioners when a vacancy occurs for the chief executive officer. ERCOT shall provide information to the commissioners concerning the process for selecting a new chief executive officer, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. A person may not seek the position of the ERCOT chief executive officer while serving as a commissioner. Compensation to be paid to the ERCOT chief executive officer shall be subject to commission review and approval.

(i) **Required reports and other information.** ERCOT shall file with the commission the reports and provide the information required by this subsection.

- (1) The qualification criteria shall include:
 - (A) Definitions of the market sectors;
 - (B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;
 - (C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and
 - (D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.
- (2) **Operations report and plan.** No later than January 15 of each year, ERCOT shall file an operations report and plan. The commission may initiate a review of the plan, at its discretion. The report and plan shall contain the following information:
 - (A) A copy of an independent audit of ERCOT's market operation for the report year;
 - (B) A summary of key market operations statistics, including prices and quantities of energy and capacity purchased in the markets operated by ERCOT;
 - (C) A summary of key reliability statistics;

- (D) A summary of transmission planning and generation interconnection activities and the most recent report on capacity, demand and reserves;
- (E) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, operation of energy and capacity markets, managing transmission congestion, transmission planning and interconnection of new generating plants, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers and to the North American Electric Reliability Corporation and Texas Reliability Entity;
- (F) A risk management plan that identifies any significant risks to system reliability, the operation of ERCOT's energy and capacity markets, its management of transmission congestion, and any other risks that would significantly disrupt the sale and delivery of electricity within the ERCOT region, and the measures that might be taken to mitigate such risks;
- (G) An emergency communications plan that describes how ERCOT will communicate with the public, media, governmental entities, and market participants concerning events that affect the bulk electric system;
- (H) An assessment of the reliability and adequacy of the ERCOT system during extremely cold or extremely hot weather conditions, or drought, for which purpose ERCOT has the right, upon reasonable notice, to conduct generator site visits to review compliance with weatherization plans and has the right to obtain from generators any information concerning water

supplies for generation purposes, including contracts, water rights, and other information; and

- (I) Identification of existing and potential transmission constraints, and the need for additional transmission, generation or demand response resources within the ERCOT region. The report shall include projections of changes in demand, the capability of generation, energy storage, and demand response resources, projected reserve margins, alternatives for meeting system needs, and recommendations for meeting system needs.
- (3) **Quarterly reports.** ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:
 - (A) Any internal audit reports that were produced during the reporting quarter;
 - (B) A report on performance measures, as prescribed by the commission;
 - (C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:
 - (i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;
 - (ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;
 - (iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and
 - (D) Any other information the commission may deem necessary.

- (4) **Emergency reports.** If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the operation or competitiveness of the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the chairman of the commission, or the chairman's designee, and the executive director of the commission, or the executive director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of the following business day after becoming aware of such event or situation, unless the executive director specifies, in writing, that the report may be delayed. The executive director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report.
- (5) **Meeting Periodicity Report.** Beginning with the effective date of this section, ERCOT shall recommend annually to the commission the periodicity of governing board meetings. ERCOT's recommendation shall be based on an examination of the frequency of meetings conducted by similar organizations and

shall include an estimate of the costs associated with meeting more frequently than once per quarter.

- (j) **Compliance with rules or orders.** ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, any provision of this chapter, or a commission order. If ERCOT fails to comply with PURA, any provision of this chapter, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.
- (1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.
 - (2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.
 - (3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.
 - (4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.
 - (5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

- (6) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.
- (k) **Priority of commission rules.** This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.

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 §25.53, relating to Electric Service Emergency Operations Plans, and §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance are hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER