

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter S. WHOLESALE MARKETS.

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

- (a) **Purpose.** The purpose of this section is to protect the public from harm when wholesale electricity prices in markets operated by the Electric Reliability Council of Texas (ERCOT) in the ERCOT power region are not determined by the normal forces of competition.
- (b) **Applicability.** This section applies to any entity, either acting alone or in cooperation with others, that buys or sells at wholesale energy, capacity, or any other wholesale electric service in a market operated by ERCOT in the ERCOT power region; any agent that represents such an entity in such activities; and ERCOT. This section does not limit the commission's authority to ensure reasonable ancillary energy and capacity service prices and to address market power abuse.
- (c) **Definitions.** The following terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.
- (1) **Competitive constraint** – A transmission element on which prices to relieve congestion are moderated by the normal forces of competition between multiple, unaffiliated resources.
 - (2) **Generation entity** – an entity that owns or controls a generation resource.
 - (3) **Market location** – the location for purposes of financial settlement of a service (*e.g.*, congestion management zone in a zonal market design or a node in a nodal market design).
 - (4) **Noncompetitive constraint** – A transmission element on which prices to relieve congestion are not moderated by the normal forces of competition between multiple, unaffiliated resources.
 - (5) **Resource** – a generation resource, or a load capable of complying with ERCOT instructions to reduce or increase the need for electrical energy or to provide an ancillary service (*i.e.*, a “load acting as a resource”).
 - (6) **Resource entity** – an entity that owns or controls a resource.
- (d) **Control of resources.** Each resource entity shall inform ERCOT as to each resource that it controls, and provide proof that is sufficient for ERCOT to verify control. In addition, the resource entity shall notify ERCOT of any change in control of a resource that it controls no later than 14 calendar days prior to the date that the change in control takes effect, or as soon as possible in a situation where the resource entity cannot meet the 14 calendar day notice requirement. For purposes of this section, “control” means ultimate decision-making authority over how a resource is dispatched and priced, either by virtue of ownership or agreement, and a substantial financial stake in the resource's profitable operation. If a resource is jointly controlled, the resource entities shall inform ERCOT of any right to use an identified portion of the capacity of the resource. Resources under common control shall be considered affiliated.
- (e) **Reliability-must-run resources.** Except for the occurrence of a forced outage, a generation entity shall notify ERCOT in writing no later than 90 calendar days prior to the date on which it intends to cease or suspend operation of a generation resource for a period of greater than 180 calendar days. Unless ERCOT has determined that a generation entity's generation resource is not required for ERCOT reliability, the generation entity shall not terminate its registration of the generation resource with ERCOT unless it has transferred the generation resource to a generation entity that has a current resource entity agreement with ERCOT and the transferee registers that generation resource with ERCOT at the time of the transfer.
- (1) **Complaint with the commission.** If, after 90 calendar days following ERCOT's receipt of the generation entity's notice, either ERCOT has not informed the generation entity that the generation resource is not needed for ERCOT reliability or both parties have not signed a reliability-must-run (RMR) agreement for the generation resource, then the generation entity

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may file a complaint with the commission against ERCOT, pursuant to §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) conduct).

- (A) The generation entity shall have the burden of proof.
 - (B) Pursuant to §22.251(d) of this title, absent a showing of good cause to the commission to justify a later deadline, the generation entity's deadline to file the complaint is 35 calendar days after the 90th calendar day following ERCOT's receipt of the notice.
 - (C) The dispute underlying the complaint is not subject to ERCOT's alternative dispute resolution procedures.
 - (D) In its complaint, the generation entity may request interim relief pursuant to §22.125 of this title (relating to Interim Relief), an expedited procedural schedule, and identify any special circumstances pertaining to the generation resource at issue.
 - (E) Pursuant to §22.251(f) of this title, ERCOT shall file a response to the generation entity's complaint and shall include as part of the response all existing, non-privileged documents that support ERCOT's position on the issues identified by the generation entity pursuant to §22.251(d)(1)(C) of this title.
 - (F) The scope of the complaint may include the need for the RMR service; the reasonable compensation and other terms for the RMR service; the length of the RMR service, including any appropriate RMR exit options; and any other issue pertaining to the RMR service.
 - (G) Any compensation ordered by the commission shall be effective the 91st calendar day after ERCOT's receipt of the notice. If there is a pre-existing RMR agreement concerning the generation resource, the compensation ordered by the commission shall not become effective until the termination of the pre-existing agreement, unless the commission finds that the pre-existing RMR agreement is not in the public interest.
 - (H) If the generation entity does not file a complaint with the commission, the generation entity shall be deemed to have accepted ERCOT's most recent offer as of the 115th calendar day after ERCOT's receipt of the notice.
- (2) **Out-of-merit-order dispatch.** The generation entity shall maintain the generation resource so that it is available for out-of-merit-order dispatch instruction by ERCOT until:
- (A) ERCOT determines that the generation resource is not required for ERCOT reliability;
 - (B) any RMR agreement takes effect;
 - (C) the commission determines that the generation resource is not required for ERCOT reliability; or
 - (D) a commission order requiring the generation entity to provide RMR service takes effect.
- (3) **RMR exit strategy.** Unless otherwise ordered by the commission, the implementation of an RMR exit strategy pursuant to ERCOT Protocols is not affected by the filing of a complaint pursuant to this subsection.
- (f) **Noncompetitive constraints.** ERCOT, through its stakeholder process, shall develop and submit for commission oversight and review protocols to mitigate the price effects of congestion on noncompetitive constraints.
- (1) The protocols shall specify a method by which noncompetitive constraints may be distinguished from competitive constraints.
 - (2) Competitive constraints and noncompetitive constraints shall be designated annually prior to the corresponding auction of annual congestion revenue rights. A constraint may be redesignated on an interim basis.

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- (3) The protocols shall be designed to ensure that a noncompetitive constraint will not be treated as a competitive constraint.
- (4) The protocols shall not take effect until after the commission has exercised its oversight and review authority over these protocols as part of the implementation of the requirements of §25.501 of this title, (relating to Wholesale Market Design for the Electric Reliability Council of Texas) so that these protocols shall take effect as part of the wholesale market design required by that section. Any subsequent amendment to these protocols shall also be submitted to the commission for oversight and review, and shall not take effect unless ordered by the commission.
- (5) ERCOT, through its stakeholder process, may adopt protocols that categorize all constraints as noncompetitive constraints. Protocols adopted pursuant to this paragraph shall terminate no later than the 45th day after ERCOT begins to use nodal energy prices for resources pursuant to §25.501(f) of this title. Protocols adopted pursuant to this paragraph need not be submitted to the commission for oversight and review prior to taking effect.