

PROJECT NO. 31972

RULEMAKING ON WHOLESALE	§	PUBLIC UTILITY COMMISSION
ELECTRIC MARKET POWER AND	§	OF TEXAS
RESOURCE ADEQUACY IN THE	§	
ERCOT POWER REGION	§	

PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.502, NEW §25.504, AND NEW §25.505 AS APPROVED AT THE FEBRUARY 23, 2006, OPEN MEETING

The Public Utility Commission of Texas (commission) proposes amendments to §25.502, relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas, new §25.504, relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region, and new §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region. The proposed amended rule and new rules eliminate the Modified Competitive Solution Method (MCSM); define the term “market power” with respect to the wholesale electricity market in the Electric Reliability Council of Texas (ERCOT) power region, and establish mechanisms to address scarcity pricing and resource adequacy in the ERCOT power region. These rules are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA), Texas Utilities Code §39.001(e). Project Number 31972 is assigned to this proceeding.

Development of proposed new §25.504 took place under Project Number 29042, Rulemaking on Definition of Wholesale Electric Market Power in the ERCOT Power Region. Development of proposed new §25.505 took place under Project Number 24255, Rulemaking Concerning Planning Reserve Margin Requirements. In addition, on September 2, 2005, commission staff published in the *Texas Register* a request for public comment in Project Number 23100, PUC

Market Oversight Activities, on the Modified Competitive Solution Method (MCSM), which had been ordered in Docket Number 24770, Report of the Electric Reliability Council of Texas (ERCOT) to the PUCT Regarding Implementation of the ERCOT Protocols. Project Numbers 29042 and 24255, along with consideration of MCSM, have been combined into Project Number 31972.

The amendment and proposed new sections are intended to provide greater certainty to the public and to market participants concerning how the commission will determine the existence of market power in the ERCOT wholesale electricity markets and the actions the commission and ERCOT will take to assure an adequate supply of electricity in the ERCOT market. In 2004, the commission adopted §25.503, relating to Oversight of Wholesale Market Participants. That rule prohibited certain conduct by market participants who have market power, however, the term “market power” was not defined in the rule or in PURA. Subsequent investigations by the commission have demonstrated the need to define the term “market power,” both to assist the commission in its enforcement efforts and to provide assurances to market participants concerning how the prohibitions in §25.503 would be applied. Accordingly, proposed new §25.504 will provide a definition of “market power.”

Although Texas currently has an adequate and reliable supply of electricity available to meet its projected demands, recent growth in demand has indicated the need to assure that the ERCOT market sends the appropriate price signals to encourage continued growth in supply, both from generation resources and load resources. Proposed new §25.505 establishes mechanisms by which ERCOT can obtain needed information from market participants, assess resource

adequacy and provide its assessment to the market. The new section also allows ERCOT to enter into contracts to obtain additional supply to assure the reliability of the ERCOT grid. In order to encourage growth in the supply of generation resources, the proposed section allows for a structured increase in bid caps applicable in the ERCOT market and establishes a scarcity pricing mechanism. To encourage growth in the supply of load resources, the rule requires ERCOT to take steps designed to improve the ability of load resources to respond to price changes as a means of increasing the supply of electricity. Finally, the proposed section requires that certain information submitted by suppliers as confidential information be released to the market after an appropriate period of time, as a means of assuring that market participants can assess the competitiveness of the market. The commission anticipates that such action will enhance competition and will also enhance the commission's enforcement efforts by providing increased scrutiny of market participants by other market participants and the public.

Because of the significant changes being proposed in §25.505, the commission has determined that the existing disclosure provisions and system-wide offer cap contained in §25.502 should be eliminated, as indicated in the proposed amendment. For similar reasons, §25.502 is also being amended to eliminate the Modified Competitive Solution Method ordered by the commission in Docket No. 24770.

When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other areas already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same

policies. In doing so, parties are strongly encouraged to address the concerns of these rules, which are *how to identify market power* and *how to ensure resource adequacy*. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition, the commission invites comment on the following questions.

1. Definition of market power. The term "exclude competition" is used by the U.S. Supreme Court in the seminal antitrust case *U.S. v. E.I. Du Pont de Nemours & Co.* Earlier versions of this proposed rule replaced "exclude" with "impair." Please comment on which term would be more suited to a definition of market power applicable to a wholesale electricity market.
2. Disclosure of disaggregated data. With respect to proposed §25.505(f), the commission seeks comment on potential commercial impacts of disclosing disaggregated, resource/qualified scheduling entity (QSE) specific, offer and quantity information two days after real-time and disclosing other information after 30 days. The commission has received general comments on the potential impacts of the disclosure of disaggregated offer information, but requests that commenters please articulate clear examples of potential commercial impacts to your company that will result from disclosure of each specific type of information and how the rule could be revised to address those impacts.

3. Credit requirements. The commission seeks comment on whether the credit requirements for QSEs in the current ERCOT Protocols will be sufficient if the offer caps are raised to the levels proposed in §25.505(i). If the current credit requirements will not be sufficient after the adoption of the proposed rule, should modifications or additional credit requirements be specified in a commission-sponsored rulemaking, or left to the ERCOT stakeholder process? If such modifications or additional requirements should be specified in this rulemaking, then please provide recommended language and corresponding rationale, for possible adoption as part of §25.505.

4. Considerations in setting the levels of the system-wide offer cap. The commission seeks comment on the appropriate levels of the system-wide offer caps from the implementation date of §25.505 through 2009. When commenting on this issue, please address what factors impact your answers, including those listed below:
 - (a) The appropriate length (number of hours) and intensity (level of prices) of scarcity pricing for the ERCOT market. For instance, greater number of hours allowed for scarcity pricing would result in a lower cap applied in each hour to reach the \$150,000 threshold in proposed §25.505(i)(5)(iv). Conversely, a shorter time would allow a higher individual cap. The commission seeks input on how to balance these two variables.

 - (b) The appropriate level of the HCAP that would strongly encourage forward contracting for resources by load-serving entities.

(c) The projected reserve margin through 2010, as presented in ERCOT's most recent report on capacity, demand, and reserves.

(d) The level of HCAP that would encourage more demand-side participation (industrial loads, large commercial loads, small commercial loads, residential loads, energy efficiency programs) in current or planned ERCOT-operated markets (both real-time and centralized day-ahead). Please include a discussion of what factors, besides the level of the offer cap, may influence loads to increase their demand-side response in these markets.

5. Timing of the Annual Resource Adequacy Cycle. The commission seeks comment on the start date of the Annual Resource Adequacy Cycle. Proposed §25.505 has the start date as January 1 of each year. Other start dates the commission is considering are October 1, March 1, and May 1. Another alternative being considered is to enforce the low system-wide offer cap whenever the Peaker Net Margin for the previous 365 days is equal to or greater than \$150,000 per megawatt and reinstate the high system-wide offer cap when the Peaker Net Margin for the previous 365 days drops below \$75,000 per megawatt. Please state your preference for the start date and the reason for your preference. In particular, the commission seeks comments on the impact of the start date on the level and timing of scarcity pricing in the summer months and resource availability during extreme weather events in the winter months.

6. Resource Adequacy Backstop. The commission seeks comment from ERCOT and other parties on the circumstances and timing of events that may trigger the implementation of the procedures in §25.505(j), as well as other possible resource adequacy backstop mechanisms than the one described in §25.505(j). Please describe any alternative in detail, provide the rationale for preferring the alternative approach, and provide rule language that the commission could use to implement the alternative.

David Hurlbut, Senior Economist, Electric Division, and Eric Schubert, Senior Market Economist, Electric Division, have determined that for each year of the first five years the proposed amendment to §25.502, new §25.504, and new §25.505 will be in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues for state or local government.

Dr. Hurlbut has determined that for each year of the first five years the proposed amendment to §25.502 will be in effect, the public benefit expected as a result of adopting the proposed amendment to §25.502 will be an improvement in the orderly transition to an energy-only market. MCSM was designed to address “hockey stick” pricing, in which a supplier prices a small portion of its offer exorbitantly higher than the rest of its offer. The provisions of new §25.504 and §25.505 are expected to address most, if not all, of the concerns related to hockey-stick pricing, eliminating the need for MCSM. If there are any remaining concerns about hockey-stick pricing, the appropriate venue for considering those matters is in Project Number 31575, Improvements to the ERCOT Zonal Market Design. Dr. Hurlbut has also determined that for each year of the first five years the proposed amendment to §25.502 will be in effect, there

are no probable economic costs to persons required to comply with the proposed amendment to §25.502, because the amendment is limited to deletion of an existing pricing restriction.

Dr. Hurlbut has determined that for each year of the first five years the proposed new §25.504 will be in effect, the public benefit expected as a result of adoption of new §25.504 section will be increased certainty with respect to the determination of what entities, if any, possess market power within ERCOT. This will enable the commission to take appropriate action, through enforcement proceedings or mitigation measures, to protect the public interest from the possible abuse of market power by entities possessing market power. The rule will also provide greater certainty to market participants concerning the application of commission rules dealing with wholesale market activities. By enhancing the commission's ability to address any market power abuses, the proposed rule also provides greater assurance that changes in the wholesale price of electricity are indicative of scarcity or surplus of supply rather than the ability of any supplier to control prices through the exercise of market power. In order for high prices in an energy-only market to provide assurance that new capacity should be added and will be profitable, all market participants, the investment community, and the general public must be assured that no supplier has the ability to control energy prices without regard to scarcity.

In addition to providing a definition of market power applicable to all wholesale electricity-related markets in the ERCOT power region, the new §25.504 will provide some clarity about generation entities that are simply too small to have market power on a system-wide basis in ERCOT. The pricing activities of these smaller entities are sufficiently disciplined by competitive pressures that an ERCOT-wide market power review is not necessary. Accordingly,

an exemption is appropriate for such small entities. For larger generation entities, who could conceivably have market power, the proposed rule includes a provision for a generation entity to propose a voluntary mitigation plan for commission approval, although obtaining such a plan is not required. If approved, the voluntary mitigation plan would establish guidelines for pricing that would not be considered economic withholding. The additional certainty provided by the proposed rule will benefit all market participants and the public.

Dr. Hurlbut has determined that for each year of the first five years the proposed new §25.504 will be in effect, there are no probable economic costs to persons required to comply with new §25.504.

Dr. Hurlbut has determined that for each year of the first five years the proposed amended §25.502 and the proposed new §25.504 will be in effect, there will be no effect on a local economy, and therefore no local employment impact statement is required under Texas Government Code §2001.022.

Dr. Hurlbut has determined that proposed amended §25.502 and the proposed new §25.504 will not have an adverse economic effect on small businesses or micro-businesses.

Dr. Schubert has determined that for each year of the first five years the proposed new §25.505 will be in effect, the public benefit expected as a result of adoption of the proposed rule is assurance of resource adequacy in the ERCOT wholesale electricity market. In an energy-only market, like ERCOT, the economic incentive to build new capacity comes from scarcity-induced

price signals rather than direct payments that are charged to all load-serving entities (LSEs), as is done in some other regions. Spot market prices are more volatile in an energy-only market, and the expectation of price volatility should dissuade an LSE from relying on the spot market for a large portion of its regular demand. Greater reliance on bilateral power purchase agreements should increase suppliers' ability to plan for new capacity and to efficiently manage their existing capacity.

A significant characteristic of an energy-only market is that it encourages demand response. To the extent that demand response reduces peak demand, additional public benefits expected to be produced by the new section include reduced transmission costs, greater reliability, and better use of generation resources.

Dr. Schubert has determined that for each year of the first five years the proposed new §25.505 will be in effect, there are no probable economic costs to persons required to comply with new §25.505, although ERCOT will incur small costs to administer the scarcity pricing mechanism.

Dr. Schubert has determined that for each year of the first five years the proposed new §25.505 will be in effect, there will be no effect on a local economy, and therefore no local employment impact statement is required under Texas Government Code §2001.022.

Dr. Schubert has determined that the proposed new §25.505 will not have an adverse economic effect on small businesses or micro-businesses.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, May 2, 2006, at 9:30 a.m.

Comments on the proposed amended section and new sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment and sections. The commission will consider the costs and benefits in deciding whether to adopt the amendment and sections. All comments should refer to Project Number 31972.

This amendment and these new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §35.004, which requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, predatory, or anticompetitive; PURA §39.001, which establishes the Legislative policy to protect the public interest during the transition to and

in the establishment of a fully competitive electric power industry; PURA §39.101, which establishes that customers are entitled to protection from unfair, misleading, or deceptive practices, and gives the commission the authority to adopt and enforce rules to carry out this provision; PURA §39.151, which requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures; and PURA §39.157, which directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004, 39.001, 39.101, 39.151, and 39.157.

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

(a) – (c) (No change.)

(d) **Disclosure of offer prices.** ERCOT shall publish on its market information system:

(1) – (3) (No change.)

(4) The requirements of this subsection shall terminate upon ERCOT's implementation of §25.505(f) of this title (relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region).

(e) – (g) (No change.)

(h) **System-wide offer cap.** A supply offer shall not exceed \$1,000/MWh or \$1,000/MW/h. This offer cap shall be terminated on the date that the system-wide offer caps are implemented as required in §25.505(i)(6) of this title. ERCOT shall terminate its use of the Modified Competitive Solution Method, ordered by the commission in Docket No. 24770, on September 1, 2006.

§25.504. Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

- (a) **Application.** This section applies to all generation entities in the Electric Reliability Council of Texas (ERCOT). This section defines the term “market power,” as that term is used in §25.503 of this title (relating to Oversight of Wholesale Market Participants).
- (b) **Definitions.** The following terms, when used in this section, shall have the following meanings, unless the context or specific language of a section indicates otherwise:
- (1) **Generation entity** – An entity that controls a generation resource. An entity affiliated with a generation entity shall be considered part of that generation entity.
 - (2) **Market power** – The ability to control prices or exclude competition in a relevant market.
- (c) **Exemption based on installed generation capacity.** A single generation entity that controls less than 5% of the installed generating capacity in ERCOT, as the term “installed generating capacity” is defined in §25.5 of this title (relating to Definitions), is deemed not to have ERCOT-wide market power. Controlling 5% or more of the installed generating capacity in ERCOT does not, of itself, mean that a generating entity has market power.
- (d) **Withholding of production.** Prices offered by a generation entity with market power may be a factor in determining whether the entity has withheld production. A generation entity with market power that prices its services substantially above its marginal cost may be found to be withholding production; offer prices that are not substantially above marginal cost do not constitute withholding of production.

- (e) **Voluntary mitigation plan.** Any generation entity may submit to the commission a mitigation plan for ensuring compliance with §25.503(g)(7) of this title or with the Public Utility Regulatory Act §39.157(a). Any plan that is submitted may be revised, with the agreement of the market participant, and approved or rejected by the commission. Adherence to a plan approved by the commission constitutes an absolute defense against an allegation of market power abuse with respect to behaviors addressed by the plan. Failure to adhere to a plan approved by the commission does not, of itself constitute a violation of §25.503(g)(7) of this title, but may be treated in the same manner as any other violation of a commission order.

§25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region.

- (a) **General.** The purpose of this section is to prescribe mechanisms that the Electric Reliability Council of Texas (ERCOT) shall establish to provide for resource adequacy in the energy-only market design that applies to the ERCOT power region. The mechanisms are intended to encourage market participants to build and maintain a mix of resources that sustain adequate supply of electric service in the ERCOT power region, and to encourage market participants to take advantage of practices such as hedging, long-term contracting between market participants that supply power and market participants that serve load, and price responsiveness by end-use customers.
- (b) **Definitions.** The following terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:
- (1) **Generation entity** – an entity that owns or controls a generation resource.
 - (2) **Load entity** – an entity that owns or controls a load resource, including, but not limited to, a load acting as a resource (LaaR) or a balancing up load (BUL), as those terms are defined in the ERCOT Protocols.
 - (3) **Resource entity** – an entity that owns or controls a generation or load resource.
- (c) **Statement of opportunities (SOO).** ERCOT shall publish an SOO that provides market participants with a projection of the capability of existing and planned electric generation resources, load resources, and transmission facilities to reliably meet ERCOT's projected needs. An SOO published in even-numbered years shall use a ten-year study horizon and be published by December 31 of those years. An SOO published in odd-numbered years shall use a five-year study horizon and be published on or around October 1 of those

years. ERCOT shall prescribe reporting requirements for generation entities and transmission service providers (TSPs) to report to ERCOT their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also shall prescribe reporting requirements for load entities to report to ERCOT their plans for adding new load resources or retiring existing load resources.

(d) Projected assessment of system adequacy (PASA). Beginning no later than September 1, 2006, ERCOT shall provide market participants with information to assess the adequacy of resources and transmission facilities to meet projected demand in the following two reports:

- (1) Each month, ERCOT shall publish a Medium-Term PASA for each week of the subsequent three years beginning with the week after the Medium-Term PASA is published. At a minimum, each Medium-Term PASA shall include the following information:
 - (A) Load forecast by ERCOT zone or area;
 - (B) Ancillary service requirements;
 - (C) Transmission constraints, including planned outages; and
 - (D) Aggregated information on the availability of resources, including load resources.
- (2) Each day, ERCOT shall publish a Short-Term PASA for each hour for the seven days beginning with the day the Short-Term PASA is published. At a minimum, each Short-Term PASA shall include the following information:
 - (A) Load forecast by ERCOT zone or area;
 - (B) Ancillary service requirements;

- (C) Transmission constraints, including planned outages; and
 - (D) Aggregated information on the availability of resources, including load resources.
- (e) **Filing of resource and transmission information with ERCOT.** ERCOT shall prescribe reporting requirements for resource entities and TSPs for the preparation of PASAs. At a minimum, the following information shall be reported to ERCOT:
- (1) TSPs shall provide ERCOT with information on planned and existing transmission outages.
 - (2) Generation entities shall provide ERCOT with information on planned and existing generation outages.
 - (3) Load entities shall provide ERCOT with information on planned and existing availability of LaaRs, specified by type of ancillary service, and BULs.
 - (4) Generation entities shall provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:
 - (A) the net dependable capability of generation resources;
 - (B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and
 - (C) output limitations on generation resources that result from fuel or environmental restrictions.
 - (5) Load serving entities (LSEs) shall provide ERCOT with complete information on load response capabilities pursuant to bilateral agreements between LSEs and their customers.

- (f) **Publication of resource and load information in ERCOT markets.** To increase the transparency of the ERCOT-administered markets, ERCOT shall post at a publicly accessible location on its website, beginning no later September 1, 2006, the information required pursuant to this subsection.
- (1) The following information in aggregated form, for each settlement interval and for each area where available, shall be posted two calendar days after the day for which the information is accumulated.
- (A) Quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves.
- (B) Self-arranged energy and ancillary capacity services, for each type of service.
- (C) Actual resource output.
- (D) Load and resource output for all entities that dynamically schedule their resources.
- (E) During the operation of the market under a zonal market design, scheduled load and actual load. During the operation of the market under a nodal market design, firm scheduled load, scheduled load with “up to” limits on congestion charges, and actual load.
- (F) During the operation of the market under a nodal market design, the following day-ahead market information: load bids, including virtual loads, in the form of day-ahead bid curves, and cleared load.
- (2) The following information in entity-specific form, for each settlement interval, shall be posted as specified below.

- (A) During the operation of the market under a zonal market design,
 - (i) Portfolio offer curves for balancing energy and for each type of ancillary service, for each area where available, shall be posted 48 hours after the day for which the information is accumulated.
 - (ii) Other offer-specific information, as well as the amount of capacity on each resource in excess of the resource's planned operating level, self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each area where available shall be posted 30 days after the day for which the information is accumulated.
 - (iii) The information posted shall include the names of the resources in the portfolio that were committed, the name of the entity submitting the information, the name of the entity controlling each resource in the portfolio.
- (B) During the operation of the market under a nodal market design,
 - (i) Virtual offer curves (prices and quantities) and the other offer curves (prices and quantities) for energy and for each type of ancillary service, at each settlement point, shall be posted 48 hours after the day for which the information is accumulated.
 - (ii) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement

point shall be posted 30 days after the day for which the information is accumulated.

- (iii) The posted information shall be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT shall post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource.
- (C) The load and generation resource output for each zone, for each entity that dynamically schedules its resources, shall be posted 48 hours after the day for which the information is accumulated.
- (D) During the operation of the market under a zonal market design, scheduled load and actual load for each zone. During the operation of the market under a nodal market design, virtual load bids and the bid curve for each load, firm scheduled load, scheduled load with “up to” limits on congestion charges, and actual load for each settlement point. The information shall be posted 48 hours after the day for which the information is accumulated and shall be linked to the name of the entity submitting the information and the name of the entity serving the load.
- (E) ERCOT shall use §25.502(e) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) as the

basis for determining the control of a resource and shall include this information in its market operations data system.

(g) **Credit standards for qualified scheduling entities.** ERCOT shall maintain credit standards for qualified scheduling entities that are consistent with this section.

(h) **Improving price responsiveness of load.** ERCOT shall work with market participants to create the necessary conditions for, and remove impediments to, price response by load. As part of this process, ERCOT shall file progress reports at the commission six, eighteen, and thirty months after the effective date of this section that identify impediments to price response by load, proposed solutions that are cost-effective in addressing those impediments, and progress made in removing those impediments. The report shall include:

- (1) A review of the compatibility of existing load profiles with market-based demand-side options, such as time-of-use pricing and direct load control programs.
- (2) An estimate of the incremental costs of installing interval data recording meters for commercial and industrial customers that use load profiles for settlement.
- (3) A review of the ERCOT process for assigning a load profile to a customer, to assess the compatibility of the current process with providing appropriate price signals to loads; specifically addressing the range of profile types in use, the accuracy of the profile assignment process, and identification of the need for improvements.
- (4) A review of the ERCOT load profiling methodology to assess the compatibility of the current methodology with providing appropriate price signals to loads,

specifically addressing whether true- or lagged-dynamic profiles would improve the accuracy of those price signals.

(i) **Scarcity pricing mechanism (SPM).** ERCOT shall administer the SPM. The SPM shall take effect on January 1, 2007, unless the commission by order changes this date. The SPM shall operate as follows:

- (1) The SPM shall operate on an annual resource adequacy cycle, starting on January 1 and ending on December 31 of each year.
- (2) For each day of the annual resource adequacy cycle, the peaking operating cost (POC) shall be 10 times the daily Houston Ship Channel gas price index for the previous business day. The POC is calculated in dollars per megawatt-hour (MWh).
- (3) For the purpose of this section, the real-time energy price (RTEP) shall be measured as the price at an ERCOT-calculated ERCOT-wide hub.
- (4) In the annual resource adequacy cycle, the peaker net margin (PNM) shall be calculated as $\sum((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when $RTEP - POC > 0$.
- (5) Each day ERCOT shall post at a publicly accessible location on its website the updated value of the PNM, in dollars per megawatt (MW).
- (6) The system-wide offer caps shall be as follows:
 - (A) Beginning March 1, 2007, the high system-wide offer cap (HCAP) shall be \$2,000 per MWh and \$2,000 per MW per hour. The low system offer cap (LCAP) shall be set on a daily basis at the higher of:
 - (i) \$500 per MWh and \$500 per MW per hour; or

- (ii) 50 times the daily Houston Ship Channel gas price index of the previous business day, expressed in dollars per MWh and dollars per MW per hour.
 - (B) Beginning March 1, 2008, the HCAP shall be \$2,500 per MWh and \$2,500 per MW per hour.
 - (C) Beginning March 1, 2009, the HCAP shall be \$3,000 per MWh and \$3,000 per MW per hour.
 - (D) At the beginning of the annual resource adequacy cycle, the system-wide offer cap shall be set equal to the HCAP and maintained at this level as long as the PNM during an annual resource adequacy cycle is less than or equal to \$150,000 per MW. If the PNM exceeds \$150,000 per MW, the system-wide offer cap shall be reset at the LCAP for the remainder of the annual resource adequacy cycle.
 - (E) The Independent Market Monitor, as part of its responsibilities pursuant to Public Utility Regulatory Act §39.1515(h), may conduct an annual review of the effectiveness of the SPM.
- (j) **Authority to enter into emergency load response (ELR) contracts to maintain reliability.** If ERCOT concludes that the available generation and load resources are insufficient to maintain reliability, ERCOT may enter into ELR contracts with load resources to procure sufficient voluntary load curtailment under emergency conditions. ERCOT shall enter into ELR contracts pursuant to this subsection under the following conditions:

- (1) By October 1, 2006, ERCOT shall file a report with the commission that provides an assessment of the types of load resources that it would prefer to use for ELR contracts.
 - (2) ERCOT shall use the information provided in the PASAs as a benchmark for determining the need for ELR contracts.
 - (3) The ELR contracts shall have terms no shorter than 90 days but no longer than one year.
 - (4) ERCOT shall deploy ELR resources only as part of an Emergency Electric Curtailment Plan.
 - (5) ERCOT shall recover the costs of ELR contracts on a system-wide energy / load ratio share basis.
 - (6) This subsection does not limit ERCOT purchases for other reasons, such as the following:
 - (A) routine purchases of ancillary capacity services and energy in the ERCOT day-ahead and real-time markets;
 - (B) reliability unit commitment;
 - (C) black-start service; and
 - (D) reliability must-run or similar contracts that address local reliability concerns.
- (k) Development and implementation.** ERCOT shall use a stakeholder process to develop protocols that comply with this section. Nothing in this section prevents the commission from taking actions necessary to ensure that system reliability in ERCOT is maintained, including actions that are otherwise inconsistent with the other provisions in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 23RD DAY OF FEBRUARY 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**