

PROJECT NO. 33490

RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
ADDRESS PRICING SAFEGUARDS IN §
MARKETS OPERATED BY THE § OF TEXAS
ELECTRIC RELIABILITY COUNCIL §
OF TEXAS §

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §25.505
AS APPROVED AT THE FEBRUARY 22, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region. The proposed amendment will revise the disclosure requirements for some entity-specific information by delaying the disclosure date from 30 days to 60 days after the day for which the information was accumulated. The proposed amendment also will establish an event trigger that would require more expedited disclosure of some information if the market clearing price for energy (MCPE) or the market clearing price for capacity (MCPC) exceeds a certain level. Finally, the proposed amendment will establish deadlines for implementation of the new provisions. This amendment is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 33490 is assigned to this proceeding.

Dr. Eric S. Schubert, Senior Market Economist, Electric Industry Oversight Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Schubert has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to provide

transparency to the public concerning the prices in ERCOT-operated energy and ancillary service capacity markets and thereby increase the public confidence that such prices are not the result of market power abuse or other market failures. The commission recently adopted new rules increasing offer caps in the ERCOT market and requiring greater transparency by implementing more rapid disclosure of certain market information. See, *Rulemaking Concerning Resource Adequacy and Market Power in the ERCOT Power Region*, Project No. 31972, Order, as published in the September 8, 2006 edition of the *Texas Register* (31 TexReg 7317). Two market participants appealed a portion of the new rules and obtained a court order staying the implementation of the new transparency provisions contained in §25.505(f)(3), relating to publication of resource and load information in ERCOT markets. (*Constellation Energy Commodities Group, Inc. v. Public Utility Commission of Texas*, Cause No. 03-06-00552-CV, Texas Court of Appeals, Third District, Order of September 29, 2006; *City of Garland v. Public Utility Commission of Texas*, Cause No. 03-06-00571-CV, Texas Court of Appeals, Third District, Order of September 29, 2006.) The court subsequently lifted the stay as applied to the 48 hour disclosure of the highest offer price selected or dispatched by ERCOT for each interval. However, the court order did not also lift the stay related to other entity-specific information.

Rather than waiting for further consideration of this issue by the court, the commission has decided that it should re-examine the previously-adopted disclosure requirements. The commission is pleased that the court has lifted the stay related to the 48 hour disclosure provisions. Because of the rapid availability of this information to the public, the commission finds that it can delay the disclosure of some entity-specific information. Accordingly, the commission proposes to delay the disclosure provisions for entity-specific information from 30

days, as found in the current version of §25.505, to 60 days as stated in the proposed amendment. The commission finds that this delay in disclosure will not cause a loss of public confidence because much of the time prices in the ERCOT-administered markets are not subject to extreme spikes that could create an impression of market power abuses or other market failures. In unusual events, however, prices may spike to high levels and cause public concern and the need for more public information. In order to address such events, the proposed amendment includes an event trigger that would require the public release of entity-specific information on a much quicker timeframe. The proposed amendment requires that, when the trigger is exceeded, the portion of every market participant's offer curve that is equal to or exceeds the trigger level will be disclosed within seven days after the day for which the information is submitted. The commission finds that the disclosure of this limited type of entity-specific information is sufficient to retain public confidence in the ERCOT markets.

Dr. Schubert has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amendment. There will be no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Dr. Schubert has also determined that for each year of the first five years the proposed amendment is in effect there should be no negative effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the APA, 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 Wednesday, April 11, 2007, at 9:30 a.m., if a written request for a public hearing is submitted within 21 days after publication of the proposed amendment.

Comments on the proposed amendment (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 21 days after publication. Reply comments may be submitted within 28 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the proposed amendment. All comments should refer to Project Number 33490.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §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.

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

- (a) (No change.)
- (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) **Event trigger** -- a calculated value that is equal to 50 times the Houston Ship Channel natural gas price index for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour (MW/h). The event trigger shall be applied solely for the purpose of establishing the timing of the publication of certain market data and shall not be construed to establish the legitimacy of any offer, whether such offer is less than, equal to, or higher than the event trigger.
- (3)(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.
- (4)(3) **Resource entity** – an entity that is a generation entity or a load entity.
- (c) – (e) (No change.)
- (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 than October 1, 2006, the information required pursuant to this subsection.
- (1) - (2) (No change.)

(3) 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 ~~6030~~ days after the day for which the information is accumulated beginning ~~June 1, 2007~~~~October 1, 2006~~, except that, for the highest-priced offer selected or dispatched by ERCOT for each interval after January 12, 2007, ERCOT shall post the offer price and the name of the entity submitting the offer 48 hours after the day for which the information is accumulated. In the event of interzonal congestion, ERCOT shall post, separately for each zone, the offer price and the name of the entity submitting the highest-priced offer selected or dispatched.

(ii) If the market clearing price for energy (MCPE) or the market clearing price for capacity (MCPC) exceeds the event trigger during any interval, the portion of every market participant's offer curve that is at or above the event trigger shall be posted seven days after the day for which the information is submitted. ERCOT shall implement the requirements of this clause by June 1, 2007.

~~(iii)(ii)~~ Other offer-specific information for each type of service and for each area where available shall be posted 90 days after the day for which the information is accumulated beginning March 1, 2007.

Effective March 1, 2008, this information shall be posted 60 days after the day the information was accumulated. The information subject to this disclosure requirement is as follows:

- (I) final energy schedules for each QSE;
- (II) final ancillary services schedules for each QSE;
- (III) resource plans for each QSE representing a resource;
- (IV) actual output from each resource; and
- (V) all dispatch instructions from ERCOT for balancing energy and ancillary services.

~~(iv)(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) Two months after the start of operation of the market under a nodal market design:

- (i) Offer curves (prices and quantities) for each type of ancillary service and for energy at each settlement point in the real time market, shall be posted ~~60~~ days after the day for which the information is accumulated except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT shall post the offer price and the name of the entity submitting the offer 48 hours after the day for which the information is accumulated.

(ii) If the MCPE or the MCPC exceeds the event trigger during any interval, the portion of every market participant's offer curve that is at or above the event trigger shall be posted seven days after the day for which the information is submitted.

~~(iii)(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 ~~60~~ days after the day for which the information is accumulated.

~~(iv)(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 90 days after the day for which the information is accumulated beginning March 1, 2007. Effective March 1, 2008, the information required by this subparagraph shall be posted 60 days after the day for which the information is accumulated. ~~Two months after the start of operation of the market under~~

~~a nodal market design, the information required by this subparagraph shall be posted 30 days after the day for which the information is accumulated.~~

(D) (No change.)

(g) – (h) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 22nd DAY OF FEBRUARY, 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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