PROJECT NO. 33457

PUC RULEMAKING CONCERNING A DEMAND-RESPONSE PROGRAM FOR ERCOT EMERGENCY CONDITIONS	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW §25.507
AS APPROVED AT THE MARCH 20, 2007 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.507 relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service with changes to the proposed text as published in the February 16, 2007 issue of the *Texas Register* (32 TexReg 603). The rule implements an emergency demand response program that can be deployed in system emergencies. The new rule will create a new service to be available to ERCOT to maintain electric service for customers if an emergency arises in which electric generation resources are not adequate to supply customers' demand. In such circumstances, ERCOT has the discretion to instruct utilities to interrupt firm service to a limited number of customers who have offered to be interrupted for a price, in order to prevent a broader service interruption. The new emergency interruptible load service is intended to provide a means of reducing demand by interrupting service to such customers rather than interrupting service to customers who expect to have continuous, reliable service. This new rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). This new section is adopted under Project Number 33457.

A public hearing on the proposed section was held at commission offices on March 6, 2007, at 10:00 a.m. Representatives from Chaparral Steel Company (Chaparral), Cirro Energy Services (Cirro), City Public Service (CPS), Demand Response Coalition, EnerNOC Inc (EnerNOC),

ERCOT, Potomac Economics, Reliant Retail Energy Power Supply (Reliant), Steering Committee of Cities Served by TXU Electric Delivery (Cities), Texas Retail Energy (TRE) and Texas Industrial Energy Consumers (TIEC) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new section from Alliance for Retail Markets (ARM), City Public Service and Austin Energy (CPS and Austin), Chaparral, Cirro. EnerNOC, ERCOT, Good Company, Nucor Steel-Texas (Nucor), Occidental Chemical Corporation (Oxy), Reliant, Texas Competitive Power Advocates (CPA), TIEC, TRE and Xtend Energy (Xtend).

To the extent ERCOT is referenced in this rule it refers to the professional staff of the Electric Reliability Council of Texas rather than to the Stakeholder process at ERCOT.

The commission posed two questions in this proceeding.

Question1: Establishing the correct baseline is important to insure that there is actual load available when called upon for interruption. Please comment as to the requirements necessary to create an effective baseline.

ERCOT expressed agreement that the goal of establishing an appropriate baseline was to hold loads accountable for meeting their curtailment obligations and voiced its confidence that the

methodologies it developed in Protocol Revision Request (PRR) 705 will be successful in meeting the goal and are consistent with the proposed rule. ERCOT made the distinction between interpreting the baseline as meaning the load's actual level of consumption at the moment of dispatch and estimating the load's level of consumption under "business as usual" conditions at the moment of dispatch, and will measure the load's performance following the verbal deployment instruction (VDI) against those "business as usual" conditions.

To determine that baseline, ERCOT proposes to apply the methodology and software it uses for its load profiles to develop load-specific models for the loads participating in the Emergency Interruptible Load Service (EILS) program. Use of the models will result in interval-by-interval load estimates for each location. ERCOT expects that the load estimates produced by the models should be highly dependable estimates of the expected demand that would have been present at the location in the absence of an EILS event. This baseline will provide the standard for determining whether an EILS resource performed as required when dispatched and continued to perform throughout the duration of the EILS event.

To accommodate highly fluctuating batch process loads that can be of value to the system during an emergency by remaining offline throughout an EILS deployment, ERCOT has proposed an alternate baseline methodology whereby each candidate will declare a minimum load level below which it cannot curtail and its load reduction capacity bid would be capped at the average load over the preceding 12 months minus the declared minimum load.

TRE agreed that establishing the correct baseline must be carefully reviewed and cautioned that care should be taken so as not to discourage proactive demand response that is helpful to reliability. TRE is concerned that if the baseline is set at a level that does not allow for any fluctuation of demand regardless of market prices until the load is required to curtail that runs counter to an open market and is more indicative of a regulated regime. TRE stated that reducing loads during periods of high prices will increase price elasticity, reduce the occurrence of high price periods, and reduce system contingencies overall. TRE indicated that the baseline calculation should be well understood, transparent, and should account for the extreme nature of scarcity periods; and therefore, any type of averaging to calculate the baseline can underestimate the total contribution of proactive load curtailment and expose the customer to the risk of an underperformance penalty. As a result, TRE proposed that the baseline be set on a historical peak basis with a contracted level of reduction of MW consumed and, to the extent demand responds to pricing during the operating day, such action should be consistent with any EILS program such that disciplining load for assisting with reliability by responding to market signals becomes unnecessary.

Chaparral commented that the baseline should be known and knowable in advance of the bid submission process, should encourage broad participation, and should not be structured such that loads are encouraged to increase their demand during an Emergency Electric Curtailment Plan (EECP) Stage 1 event. Chaparral supports the proposed rule as successfully adhering to all of those principles and supports adoption of the proposed baseline.

Nucor disagreed with the premise of the question. It argued that unlike Responsive Reserve Service (RRS) which must be "on" at all times in order to be interrupted when called, EILS loads agreed to be off-line or to operate at a reduced load level when called. Nucor stated that in an emergency the benefit to the ERCOT system if an EILS load is off-line prior to being ordered off-line by ERCOT is that it has already reduced the need to call for a curtailment and reduced the severity of any emergency. At this point in the emergency, ERCOT's call to the EILS resource would ensure that the resource would remain off-line for the duration of the emergency event.

Nucor commented that it believes the rule as proposed contains sufficient guidance for ERCOT staff to establish individual baselines for each EILS resource. Nucor stated that it does not believe the proposed rule needed to be made more specific based on how ERCOT intends to implement the EILS program and ERCOT's original call for the rule.

Conversely, Oxy submitted comments insisting that an effective baseline must measure the resource's consumption immediately prior to deployment. Oxy believes that ERCOT's proposed method will not work since there is no guarantee that any EILS load will be available for interruption when needed. Oxy postulated that loads already engaged in passive response will most likely become EILS resources and therefore ERCOT will get little or no actual response if and when it deploys EILS. Oxy stated that in order for the market to get what it will be paying for and for ERCOT to ensure a response that is consistent with the identified reliability needs, the baseline should be a snapshot of each EILS resource's consumption immediately prior to deployment and evaluation of performance should be from this point.

CPS and Austin concurred that a more appropriate baseline methodology should be one that measures load just prior to EILS deployment, which should be the average load over the full interval preceding the VDI. CPS and Austin suggested that using a 12-month average could result in ERCOT paying a load to curtail megawatts that it does not have and expecting a load to provide a service that it cannot provide. CPS and Austin stated that the rule's proposed baseline language is inadequate, but if data for a longer time is to be examined, then the lowest value for that time period should be used as the baseline.

TIEC also expressed its opinion that the baseline should take into account the level of energy consumed by the EILS resource during the interval immediately preceding the deployment by ERCOT. TIEC disagrees that merely ensuring the load is offline during the EECP event is just as valuable as the load staying online until it is deployed by ERCOT. TIEC explained that ERCOT operators will assume during the early stages of an EECP event that they still have EILS load available to them as a dispatchable part of the system. As the baseline determination is proposed however, they will have no way of knowing whether any or all of the EILS load has self-deployed and ERCOT will be uncertain of what system response will occur as a result of the deployment of EILS. TIEC insisted it is critical to revise the rule to gain a higher probability that EILS loads will be available when called upon by ERCOT, giving operators a predictable response. TIEC stated the proposed rule lacks specificity on the determination of the baselines, other than suggesting that it will be based on the most recent 12 months of Interval Data Recorder (IDR) data. TIEC contended that using the methodology proposed in PRR 705 will not provide a reliable, useful tool to ERCOT operators and suggested that the baseline methodology

proposed in PRR 702 contains alternate baseline definitions that will provide a more useful and reliable EILS service.

EnerNOC agreed that establishing the correct baseline is important to ensure there is load available when called upon for interruption. EnerNOC stated its experience has shown the most successful demand response programs require near-real-time five-minute load data to calibrate a load resource's baseline. EnerNOC recognized ERCOT's limited resources and its desire to keep the implementation cost of the EILS program low. To that end, EnerNOC supported using 15-minute IDR meter data. EnerNOC expressed its view that 12 months of data were not necessary to develop an accurate baseline for an EILS resource. It opined that ERCOT cannot assume enough insight into a load's business operations to understand what is seasonal variation and what is permanent change and the ideal baseline should account for business changes unrelated to the EILS program, such as load growth or contraction. EnerNOC suggested that ERCOT use a baseline calculation for the EILS that is a rolling average of the most recent, similar ten days of demand, with a linear asymmetric weather adjustment. EnerNOC proposed the following replacement language to proposed subsection (c)(3):

> Baseline shall be a weighted average an EILS Resource's hourly consumption during the previous ten (10) "like" days. The past ten (10) "like" days shall exclude (i) those days when ERCOT deploys EILS, and (ii) those days when ERCOT implements rotating outages. An asymmetric weather adjustment will then be applied such that the weather adjustment during an EILS deployment is equal to the average difference between calculated baseline and an EILS Resource's actual energy usage during the two hour period prior to the initiation of an EILS deployment. If the adjustment would result in a decrease the baseline, then no adjustment is applied.

EnerNOC stated that its proposed methodology would avoid many of the problems associated with baselines that consider extremely short or long periods of data. EnerNOC also felt that by emphasizing only recent data, their proposed methodology is a good proxy for an EILS resource's average consumption profile. EnerNOC also urged the commission to consider implementing ISO New England's baseline methodology for the EILS.

Reliant proposed that the relevant points when establishing the baseline were the contract period and the EECP event period. The contract quantity of EILS from a resource should be based on the load's historical demand over the same period from the prior year, adjusted for any changes in load patterns. The baseline for the EECP event period should be based on the load's average demand during the two hours immediately prior to the VDI. Reliant contended that this approach would measure the load's performance and true contribution the EILS resource makes to alleviate the EECP condition. Reliant noted that if the baselines were set based on a 12-month average as proposed in the rule, the seasonal, prime and non-prime hourly load fluctuations are smoothed out such that the determination of availability factors would not be as accurate. Reliant also raised the possibility that EILS resources might be paid for capacity that was not actually available for interruption at the time of ERCOT's VDI and thus would provide no benefit to relieving the EECP condition, while still being paid for capacity.

Reliant further opined that in an energy-only market, a baseline is not required for products appropriately structured in the energy-only context. Demand response products are predicated on the price of energy reaching a point where loads voluntarily turn off. The EILS program

discourages loads from responding to prices because it provides an additional subsidy to loads to stay on past the time when they might otherwise stop consuming energy.

Cities noted a large majority of the customers can't participate in this program but will bear its cost. Cities pointed out that there are really two choices, a very firm inflexible baseline and strict penalties for non-performance or a flexible baseline with less rigid performance requirements. The rigid baseline, would require sufficient load to be online, but the emergency might be accelerated due to load not coming off until the program is called. The less rigid baseline would allow load to come off early but would provide no way for customers to ensure that they are getting what they paid for.

Commission response

The commission agrees with most commenters that designing the correct baseline is fundamental to both establishing the maximum number of megawatts an EILS resource could bid into the program during a given contract period and verifying compliance as compared to the resource's contracted capacity during an EILS deployment event. The commission supports ERCOT's proposal to have two different methodologies to create baseline formulae that will predict what an EILS resource's load would have been but for the curtailment, as embodied in PRR 705. The commission also approves of ERCOT's use of load profiling methodology to determine the EILS candidate's business-as-usual load consumption pattern. Thus, loads that already have some price responsive behavior built in to their business plans will have that reflected in their availability factor for their baseline for a comparable period.

The fundamental issue addressed by commenters on establishing the correct baseline with regard to verifying compliance is whether the capacity payments should compensate an EILS resource for a certain number of megawatts of load that ERCOT can hold in reserve to curtail when the operator issues the VDI or whether that same load can be price responsive (or voluntarily turn off for any reason) during a declared system emergency (EECP 1), but ultimately fulfill its contract obligation to ERCOT by turning off and remaining off after receiving a VDI regardless of any other economic incentive to remain online.

The commission agrees with ERCOT, Chaparral, TRE and others who argued that load remaining on the system after an emergency is announced can be detrimental to the reliability of the system and further increase the need for firm load shed. If an EILS resource reduces its load before the VDI from ERCOT, but after ERCOT has declared EECP 1, as is allowed in ERCOT's proposed baseline methodology, it has provided a benefit to the system. The commission agrees that it is appropriate for an EILS resource to be compensated for such a load reduction.

In response to parties that opined ERCOT was not getting "what it paid for" because the EILS loads would not be holding back in reserve every megawatt of EILS load for which ERCOT contracted, the commission finds that the EILS service is not analogous to RRS service and holding every megawatt of EILS load online and in reserve is not necessary for the program to be effective. As ERCOT suggested, the EILS service is different but brings

a reliability value to the system. By allowing the EILS loads the ability to drop consumption as early as EECP Stage 1, the system possibly could avoid moving deeper into the emergency; if the emergency does worsen, the system operator has the authority to require the EILS contract loads that have already shed to remain offline and can call any remaining EILS loads to curtail and remain offline. The ERCOT operator has concluded that this service is a useful tool to help avert firm load shed in the event of a system emergency. Moreover, ERCOT believes that the EILS program, with the baseline definition discussed above, will provide reliability benefits. The commission agrees with ERCOT with respect to both the need for this service and the likely effectiveness of the program with the definition of baseline discussed above.

Question 2: For the EILS program to be effective, participating load cannot curtail on its own leading up to an interruption. What provisions are necessary, if any, to keep load online until ERCOT calls for an interruption?

ERCOT again expressed its belief that a normalized baseline approach would be more effective than using a "snapshot" approach. ERCOT is concerned that using a "snapshot" baseline could create an incentive for EILS resources to ramp up their demand in anticipation of a likely deployment. This could create the unintended consequence of additional load showing up on the system during the early stages of an emergency. ERCOT's baseline approach would not penalize EILS resources that choose to respond to the public appeal by curtailing load prior to the EILS deployment. Accordingly, ERCOT encouraged the commission to leave intact the baseline-

related language in proposed subsection (c)(3) and to allow ERCOT to operate the EILS program using its proposed baselines as detailed in PRR 705.

TRE commented that there should be no distinction between proactively reducing demand due to a market signal and reducing demand due to a reliability signal. Reduction in demand due to either assists in remedying system issues and if these two issues are divorced from one another, the result may be that loads that would otherwise provide demand response would have to be compensated at a much higher level because they would be forced to remain on the system consuming during periods of scarcity when prices are high. TRE contended that this type of incentive neither provides the best reliability result nor rewards behavior consistent with supporting reliability.

Chaparral stated that no additional provisions were necessary or appropriate for the purpose of keeping a resource online during a potential emergency. Chaparral insisted that ERCOT should want participating loads offline during an emergency. If they are offline to begin with, they should remain offline and that should be viewed as a good thing. With respect to non-emergency periods, the baselines called for by the proposed rule are to be tailored to reflect the normal, operational characteristics of each participating EILS load, and compensation and penalties are based on individual baselines. Chaparral commented that it believes those penalties are more than sufficient to ensure that participating loads comply with their performance commitments under the program.

Nucor again disagreed with the premise of the question and argued that no additional provisions needed to be added to the rule. Nucor believed that the important point is that relevant criteria will be outlined in the contracts with EILS resource and subsection (e) of the proposed rule addresses relevant compliance issues. Nucor stated that it believes the penalties for non-compliance were stringent enough to ensure that program participants will fulfill their contractual obligations.

Oxy commented that in order to keep loads online until ERCOT issued its VDI, a meaningful penalty for non-performance was essential. Oxy proposed that not only should the capacity payments be recovered, but the EILS resource should be disqualified from providing EILS service for a period of time thereafter and incur an additional monetary penalty.

CPS and Austin averred that EILS participants should not curtail until called upon by ERCOT during an EECP event, meaning that they might have to endure high prices and not be price responsive. CPS and Austin proposed language be added to subsection (c)(4)(E) of the proposed rule.

CPS and Austin noted that what they argued in their comments is counter-intuitive in an energy-only market. They suggested that the EILS program has loads acting contrary to the desired behavior. Non-EILS loads should always be encouraged to respond to price signals and provisions that keep loads online that otherwise would have self-curtailed would be in contradiction to market principles. CPS and Austin also cautioned that this could result in

reaching the latter steps of EECP more easily by keeping load online that would otherwise have responded to energy scarcity.

EnerNOC and Reliant both commented that if their baseline methodologies were adopted, the proper incentives would be in place for resources to be online when an EILS curtailment VDI was issued.

Commission response

The commission agrees with parties that compliance with the parameters of the EILS programs is of paramount importance to its success. As noted in the previous discussion, while the commission disagrees with Oxy and others that the parameters of the EILS program should entail having the load stay online until the VDI is issued. The commission agrees with Oxy about the consequences of non-compliance. The commission supports contract provisions that deny payment by ERCOT in cases of non-adherence to contract terms. The commission also supports disqualification from participation for a period of six months as a penalty for non-compliance. In addition, the commission reserves the right to impose administrative penalties pursuant to PURA §15.023 and P.U.C. PROC. R. §22.246. The commission amends subsection (e) accordingly.

General Comments

Cities noted that the reliability of the ERCOT system is important to them. Yet, Cities pointed out, even in the area of reliability, cost and other practical considerations must be considered.

Cities opined that the EILS as proposed would impose an additional capacity-based cost on the vast majority of consumers who would not qualify to participate and may not improve the reliability of the ERCOT system and may negatively affect reliability by ensuring that participating consumers that might otherwise be price responsive stay at their baseline while emergency conditions develop on the grid. Cities added that under the commission's resource adequacy rule consumers are exposed to the possibility of very high energy prices in the expectation that this will attract additional generation investment.

Reliant supported the development of demand response and deemed it a necessary condition for a successful energy-only market, reducing emissions and the need for fossil fuels. However, Reliant did not necessarily support the EILS program.

CPA also did not favor the EILS program particularly the capacity payments, and stated that it dampens price responsiveness in what is supposed to be an energy-only market. CPA stated that putting ad-hoc capacity service band-aids on an energy-only market will introduce confounding variables in the market and make it difficult to analyze effectively and identify problems that may arise with the market's economic results. CPA believes that EILS is suboptimal for the following reasons:

- There is no guarantee that the EECP will progress in a step-wise fashion or that firm load shedding will be avoided;
- At up to $20 million per year, the cost is likely to far outweigh the benefit to firm load customers;

- Discouraging price-responsive behavior by more sophisticated loads will actually push ERCOT deeper into EECP conditions more frequently, possibly resulting in deployment of firm load shedding when it might otherwise not occur;
- Service that is dependent on verbal instructions has inherent inefficiencies.

Several parties noted events that have occurred since the April 17, 2006 load shedding event that they believe will reduce the need for this service. Reliant listed the following measures that ERCOT has taken:

- Applied a discount factor to the amount of Responsive Reserves which effectuates the declaration of Step 1 EECP conditions more frequently;
- Modified the EECP steps through operating guide revisions to provide ERCOT with more flexibility in communication and control steps during EECP conditions;
- Revised its short-term and mid-term load forecasting methodologies;
- Implemented improved frequency response metrics with monetary penalties for non-performance;
- Received approval from EMS to back-up on-line non-spinning reserve resources by using additional Replacement Reserve Service; and
- Proposed disqualification of Loads acting as a Resource for non-performance.

TIEC urged the commission to take a critical look at the proposed rule and to consider the serious shortcomings of the rule, such as the cost exceeds the benefit.

Xtend stated that the draft rule is analogous to the design for a great car and should be built. Xtend quoted the recent Loss of Load Probability Study, and noted that a reserve margin of 10% is projected to result in five rolling blackouts in ten years.

Chaparral noted that ERCOT is going into a period in which it will be perilously close to its minimum installed reserve requirement, and in which both anticipated and unanticipated adverse system load and operational conditions can be expected to increase in frequency and magnitude. Under these circumstances, it continued, every MW of suitable capacity that can be used to avoid the involuntary shedding of firm load in emergency situations should be placed under an EILS contract. Nucor agreed that the EILS was a good alternative to acquiring expensive resources when supplies are tight and/or interrupting service to customers who rely on the provision of firm service. Nucor also requested the commission issue a specific directive to ERCOT to implement the EILS program approved in this proceeding immediately, otherwise there is a real likelihood that the stakeholder process will devolve into another endless debate over implementation and participation and will neuter the effectiveness of the rule and render the commission's efforts ineffective.

Commission response

On April 17, 2006, ERCOT was forced to interrupt firm-load customers. ERCOT has stated in a public meeting at the Public Utility Commission of Texas that it believes this could have been prevented with additional resources in the form of interruptible load. The commission believes that most customers count on uninterrupted electric service and this level of service is important as matters of comfort, convenience and safety for customers,

maintaining a strong economy, and to assure continuity of essential services to the public. ERCOT has reported that experience has shown that there is a subset of people willing to shed firm load for a price with appropriate terms and conditions and notifications for interruption. The commission agreed with this premise and allowed the ERCOT stakeholders to develop such a program to be in place prior to the 2007 spring maintenance season. The ERCOT Stakeholder process produced four PRRs but failed to agree on one proposal that was workable and that could be implemented by April 2007. The commission proposed this rule to put a program in place by April as it feels it is vitally important that ERCOT have this resource in place to avoid repeating the event of April 17, 2006. The commission finds that firm load interruptions are not acceptable and this is the best proposal to address this challenge at this time. Therefore the commission adopts this rule on EILS.

Austin and CPS argued that the rule should encourage Non-opt-in Entity (NOIE) participation as it would give ERCOT a greater population of load for possible selection and would allow NOIEs a way to hedge what may be large EILS charges over which they have no control.

Subsection (a)

Reliant commented that it does not believe the EILS program qualifies as an ancillary service and proposed to strike the term from the description. Reliant stated that instead of providing daily operating reserves as an ancillary service would, EILS would only be used on those rare occasions when ERCOT is faced with shedding firm load to maintain grid reliability. Reliant also found it difficult to agree that EILS would restore system frequency when it would likely

only be used to arrest frequency decay. Reliant mentioned that while ancillary services that provide operating reserves invite participation of both generators and loads, EILS excludes generators from participation.

ERCOT noted that the definition of "ancillary service" in the ERCOT Protocols is "those services, described in ERCOT Protocols Section 6, necessary to support the transmission of energy from Resources to Loads while maintaining reliable operation of transmission provider's transmission systems in accordance with Good Utility Practice." ERCOT agreed that this service does not meet this definition and proposed to change "ancillary services" to "special emergency service."

Commission response

The commission agrees to change "ancillary" service to "special emergency" service in subsections (a) and (c) as Reliant suggested.

Nucor and EnerNOC were concerned that the sunset provision would cause the EILS to fail, or at the very least provide a disincentive to participation. EnerNOC stated that no demand response provider or customer is likely to spend time or effort investing in the EILS program only to find that the rule will change in six months or that the ERCOT stakeholder process, which it views as hostile to demand response, adopts a new design. Nucor recommended that the sunset provision be eliminated entirely and stated that if a better program is developed (which history has shown to be an excruciatingly slow process) to replace the ERCOT program, the commission could sunset the rule at that time. Chaparral stated that October of this year is

too soon for a long-term solution to be developed and recommended that these provisions be amended to sunset after the introduction of the nodal market, currently scheduled for January 2009 to allow this proposed program time to work, and to allow participants more time to focus on the successful introduction of the nodal market. CPA stated that it believes the stakeholder process will succeed in developing a demand response product to effectively satisfy ERCOT's needs without violating the principles upon which an energy-only market is based and without blunting the price signals necessary for an energy-only market to work. CPA agreed to work hard on a solution through the stakeholder process.

Commission response

The commission agrees that this program should expire when a better program is implemented. The commission also notes that the intent is for the program to continue until such time that a new program meeting the commission's goals in subsection (h) and ERCOT's requirements is put into effect, or a long term solution is in existence making this program unnecessary. The commission makes clarifications to subsection (a)(6) in accordance with this understanding.

EnerNOC also proposed two contract periods instead of three, as it appreciated that some potential EILS resources will not participate in the program from June through September because of the 4-Coincident Peak (4CP). It proposed one contract period of June-September and one eight-month contract period from October through May, which it viewed as providing the participant with more certainty and requiring fewer ERCOT resources to administer.

Commission response

The commission does not find it necessary to combine the two contract periods into one for an eight-month contract. Leaving the three contract periods allows ERCOT flexibility to procure the resource as it deems necessary. Under this scenario ERCOT may, at its discretion, choose to procure for eight months or two four-month contracts. Therefore, the commission makes no changes to subsection (a)(1) as proposed by EnerNOC.

ERCOT proposed adding language clarifying that EILS may also be used in conjunction with interruption of firm load if events do not allow EILS use prior to interrupting firm load. TIEC stated that it was surprised that ERCOT planned to use this in conjunction with rotating outages. ERCOT clarified that it planned to use in conjunction with rotating outages during rapid deterioration or if it didn't see frequency improvements with the deployment of EILS.

Commission response

The commission proposed this rule in an effort to make the loss of firm load during emergency conditions less likely. The commission recognizes that frequency may decay quickly and require ERCOT to interrupt firm load prior to or in conjunction with the interruption of firm load. A deployment of EILS in connection with the interruption of firm load may permit less firm load to be interrupted and permit any firm load that is interrupted to be restored more quickly. Therefore, the commission makes the requested changes to the rule.

Subsection (a)(4)

CPA proposed changes to the rule that would require that the MW minimum and maximum limits be applied to all hours in a single 24-hour strip, both business and non-business hours, because an EECP event can occur at any time of the day.

Commission response

The commission believes that ERCOT should be responsible for determining when it should procure this service. The commission desires to provide ERCOT with the maximum flexibility to operate this program and declines to put these proposed limits on the program.

Subsection (a)(5)

Nucor recommended that the minimum amount of EILS be deleted or reduced (Nucor suggested to 200 MW), as any new program may not immediately secure widespread consumer acceptance and participation. Nucor recognized that there may be some minimum threshold beneath which the EILS program might not have significant impact on an EECP event but stated that it cannot recall any historical evidence of this prior to restructuring and does not believe the commission need adopt a minimum standard as high as 500 MW prior to implementing EILS. EnerNOC argued that the 500 MW minimum procurement level was a disincentive to participation. EnerNOC stated that potential program participants could invest time and money negotiating contracts and enabling facilities for participation, only to find that ERCOT will not sponsor the program for a given contract period because fewer than 500 MW were available.

EnerNOC proposed a phase-in approach of the 500 MW allowing an opportunity to ramp up the program. ERCOT stated that procurement of less than 500 MW provides no operational value; however, it agreed that it could consider ramping up to the cap if it occurred over a short period of time.

Commission response

The commission disagrees with having a lower minimum requirement as proposed by Nucor or a phased in minimum as proposed by EnerNOC. ERCOT has consistently stated that there are no operational benefits to procuring less than 500 MW. Therefore, the commission declines to adopt the changes proposed in this section.

EnerNOC contended that limiting participation to resources with a peak demand of 500 kW or greater could make the program less cost effective. Reducing the minimum peak demand from 500 kW to 250 kW in subsection (c)(1)(B) would capture more potential load resources that have the potential to aggregate with other loads to meet the 1 MW minimum bid requirement.

ERCOT proposed 500 kW in its Protocol Revision Request as it felt this was the minimum acceptable demand that was worth the administration. Since this suggestion could potentially create an administrative burden to administer, the commission declines to accept that change. The commission disagrees that the kW amount should be reduced.

Subsection (a)(5)

TIEC suggested that the proposed rule define what ERCOT would do if it receives bids between 500 and 1000 MW for a given contract period.

Commission response

The commission believes that this rule should give ERCOT the maximum flexibility in procuring this service, within the floor and ceiling, and declines to adopt the suggestion of TIEC.

CPA suggested adding a requirement for ERCOT to geographically balance EILS across the system so that the deployment of EILS does not create unintended consequences. Potomac inquired whether ERCOT would need to do any geographic balancing. ERCOT responded that it did not anticipate a need to balance geographically unless the bids were mostly from one area. ERCOT stated that it has the ability to geographically balance in its Black Start ancillary service and it believes the rule gives it the flexibility it needs to do so for EILS if needed.

Commission response

The commission declines to make this change. The commission finds that this rule gives ERCOT the flexibility to geographically balance EILS if ERCOT system operators believe it is necessary to do so.

Subsection (b)(3)

Chaparral opined that it is too early to establish caps for the ERCOT EILS program. Chaparral noted that in the ERCOT stakeholder process, a number of market participants developed a wide range of estimates for a cost cap and stated that there are many calculations and assumptions that can be made to support virtually any cost cap level. Chaparral stated that the competitive market will determine what level of compensation is required to meet the program's minimum required subscription level. Chaparral suggested that the program should authorize a set level of MWs procured, and then fix a cap after some market experience has been gained. Setting a program cap prior to program implementation could inadvertently ensure that the program does not attract sufficient participants to be viable, notwithstanding that the market required price for achieving the program's target subscription will likely drop as loads gain experience with this service.

Nucor recommended that the commission drop any references to an EILS cost cap in the proposed rule or, at minimum, double the suggested caps to $35 million for 2007 and $40 million in 2008. As a frame of reference, Nucor pointed to ERCOT's Report to the commission on Tiered Frequency Response (TFR) filed on February 1, 2007. The report noted that ERCOT spent $158 million on RRS in 2005 and $130 million in 2006. In contrast, the proposed EILS rule would have a cap of $17 million in 2007, even if the participants contributed the maximum 1,000 MW to EILS.

Nucor opined that capping the EILS at too low a level runs the risk that if the amount of funding available for the EILS program is low and the participation level high, the EILS could fail because the compensation for EILS participation does not offset the risks and costs of

interruption. Nucor averred that the value in avoiding firm service interruptions annually is only worth $20 million annually. The remedy, Nucor continued, was to set a more realistic cap or no cap at all.

Good Company opined that a $20 million cap for 1,000 MW EILS program implies an average cost of $20/kW-year, which is considerably lower than the prices paid for reliability-based demand resources in most other US markets or ERCOT. Good Company noted that integrated utilities offered their large industrial customers interruptible rates that reportedly cost in the $50 per kW range. Good Company noted that the Load Acting as a Resource (LaaR) program evolved out of these interruptible power programs. The value to participants and cost to the market can be inferred from market operations reports to the ERCOT Board of Directors. The January 2007 report that the cost of RRS was between $13,000 to $17,000 per MW-hr, and $116 kW-yr to $147 kW-yr. Good Company noted that the cost of LaaRs is set by the generator offer stack, which in turn, reflects both operating costs and the opportunity costs of not participating in the energy market.

Good Company, EnerNOC and Cirro noted that the value of load reductions during the 4CP months that ERCOT used in its assessment of the cost of an EILS program is a misleading indicator of the cost to participants of providing demand response services. Good Company noted that the types of market participants who engage in 4CP load reduction strategies are unlikely to be prime candidates for inexpensive demand response services. For these market participants to take part in the EILS program, they would probably need to discontinue their current practices, thus raising peak demand and reducing planning reserve margins. Good

Company and Cirro noted that the strategy behind 4CP reduction contemplates that a customer will have notice of a day or more before a potential 4CP event, which allows for much longer lead times than ten-minute notice of interruption. EnerNOC noted that EILS participation requirements would dictate an entirely different set of systems and costs than would participation in a 4CP program. Good Company, EnerNOC and Cirro opined that the $20,000 price per MW implicit in the proposed rule grossly underestimates the incentives required to encourage their participation in an EILS type program.

Good Company, EnerNOC and Cirro noted that in a similar fashion, the TXU energy efficiency standard offer load management program does not provide good information on the cost of obtaining large scale participation in the EILS. Cirro noted that the cap for the TXU program was $19.62/kW. The TXU program, Good Company and EnerNOC noted, has limited participation (less than 30 MW) and provides one hour notification. EnerNOC noted that the cap in the TXU program was a negotiated compromise between several stakeholder groups and should not be used in the determination of the value of EILS resources. Cirro also noted current enrollees in the TXU program might be prohibited from simultaneously participating in the EILS program.

Good Company contended that experience in other jurisdictions supports the conclusion that $20/kW year is insufficient to garner substantial participation in this type of demand response program. Good Company asserted that programs with low payments have struggled to garner substantial participation and compliance. Programs in the ISO-NE, Connecticut, New York

City, Long Island and California, with payments that are much higher than proposed in this rule, ranging from $7-14/kW-month ($84-$168/kW-year), have shown substantial participation.

Good Company averred that experience in both ERCOT and elsewhere suggested that a minimum price in the range of $40-$60/kW-year will be required to induce a sufficient response by potential providers of demand response to reach the targets in the proposed rule. Cirro stated that the price cap for the program should be at the avoided cost of a peaker unit, which is about $78/kW. EnerNOC agreed, stating that the EILS program is a replacement of peaking units that would be needed to be built to meet demand in emergency situations. Based on its experience across the US, EnerNOC asserted that programs with incentive levels in the $20-$40/kW per year range have very low participation rates, in contrast to programs with incentive levels of $40-$100+/kW, which have significantly higher enrollments. EnerNOC opined that the EILS program will fail to attract a large number of commercial customers to participate in the program who otherwise have the willingness to curtail non-essential electricity use during peak times.

Xtend recommended that the price cap for the EILS program be raised substantially in both years to $40-$50/kW-year, which would increase interest by loads and would translate into significant enough payments to defray the costs and risks associated with EILS. Xtend provided reasoning for the inappropriateness of the $20 million cap. Xtend reasoned that $20 million per year averages out to $2.25 per MWh and that LaaR pays $11 or more per MWh. Loads that can consistently shed 1 MW of load will participate in LaaR and lack economic incentives to participate in this program, which leaves the variable loads that are likely already taking

advantage of 4CP programs. Xtend contended that loads less than 1 MW will need an incentive greater than this to participate in any service.

EnerNOC noted that the LaaR participation in RRS has been at the $140/kW-year level, exceeding the payment to many DR resources in programs elsewhere in the country, making it one of the most expensive DR programs in the country.

EnerNOC opined that setting the price cap based on estimates of VOLL was flawed because estimates of VOLL vary widely.

CPS and Austin proposed to add language to subsection (b)(3) that they believe would assure the contribution of NOIEs to EILS and also would reduce the amount spent by ERCOT on the program. Under this proposal, the ERCOT budget for EILS would be reduced by the value of NOIE contribution to EILS. Without this change, the value of self-provision by NOIEs would not be recognized in the budget spent by ERCOT.

At the public hearing, TIEC, Cities and Reliant argued against raising the cap beyond $20 million. TIEC stated that the cost already exceeds the benefit and questioned why the cap should be higher.

Commission response

The commission finds that the $17 million cap for the portion of year and a $20 million cap each year thereafter is an appropriate cap for this program. This is not a service that

should replace a peaking unit nor is it similar to LaaR service, which is higher in the deployment stack and faces more frequent interruptions. Essentially this is a service provided by volunteers who agree to be interrupted at a late stage of emergency for an agreed payment. Absent this service, the participating loads risk interruption with no payment. The commission understands that this is not analogous to the 4CP avoidance strategy and the standard offer program but agrees with ERCOT that, given the structure of the EILS service, some loads should be willing to participate under the proposed cap.

Subsection (b)(6)

CPS and Austin proposed additional language that would adjust the definition of EILS resource to allow NOIEs to self-provide without adding ESI IDs to the load participating in the program.

Commission response

The commission agrees that NOIEs should be allowed to self-provide this service. However, a framework in which to accomplish this has not yet been developed. Therefore, the commission directs ERCOT to draft protocols for NOIE self-provision as soon as possible. The NOIE self-provision language shall not, however, delay the implementation of this rule.

Subsection (c)

CPS and Austin recognized that without an ESI ID, they lack the technical requirements set forth in subsection (c)(2) of the proposed rule. However, they argued that NOIEs have control over a significant portion of load resources and can allow ERCOT to access this load by "allowing

NOIE self-provision and extending the metering point to where ERCOT measures NOIE load." CPS and Austin contended that adding ESI IDs to load in a NOIE's service area would impose a financial burden and contradict their decision to opt out of competition. Further, NOIEs currently respond to ERCOT's instructions to shed firm load, and they could also voluntarily participate in EILS if ERCOT treated each NOIE as a single resource.

ERCOT agreed that NOIE participation was valuable but noted that NOIE self-provision of EILS increased the complexity of administering the program. ERCOT also pointed out that only NOIEs with boundary meters should be eligible for self-provision.

Commission response

The commission finds that barring a large administrative burden to ERCOT, NOIEs should be eligible to participate in EILS especially given that some of the NOIEs have current demand response programs that might be a resource in this program and the ability to develop new demand response programs. The commission agrees to allow self-provision by NOIEs and directs ERCOT to develop rules for NOIE self-provision. These rules should include adequate metering of a NOIE's performance. To allow ERCOT and the market maximum flexibility, the commission supports allowing self-provision by all QSEs, to the extent that implementation is feasible and there is not undue administrative burden on ERCOT. The commission finds that this is beneficial as it could reduce the overall cost of the program to the market.

Reliant contended that the use of the EILS program with regard to deployment and metering requirements needs to be refined. Reliant proposed rule language that would increase the documentation requirements for resources participating in the EILS program by requiring EILS resources to provide metering drawings and process information to ERCOT.

Reliant contented that as subsection (c)(2)(C) of the proposed rule is written, the distinction between the deployment of LaaRs, which entails the reduction of capacity within ten minutes of a VDI from ERCOT, and the EILS program, which also has a ten-minute response requirement, needs to be clarified. Reliant argued that the proposed rule would allow load resources that go offline prior to a VDI from ERCOT to still receive EILS capacity payments.

Commission response

The commission notes that ERCOT did not see the need to require participants in this program to provide the information requested by Reliant. Therefore, the commission does not choose to require it either. Reliant's issue of loads going offline prior to a VDI is addressed in response to the questions proposed in this rulemaking.

Reliant pointed out that the current language in proposed subsection (c)(2)(D) does not specify whether a QSE is responsible for recovering capacity if EILS resources do not return ten hours after a recall from ERCOT. In the LaaRs program, a QSE must provide responsive reserves to cover the deficiencies caused by loads that do not respond to a recall. If the same requirement were set forth in the proposed rule, QSEs might be forced to contract for more EILS capacity than is actually needed to ensure sufficient response. Further, this requirement could reduce

participation in the LaaRs program and voluntary load response, in general. Reliant believed that clearly defining the responsibilities of EILS resources and QSEs may help avoid this potential impediment.

Commission response

The commission believes that participating loads should be able to come back online within ten hours or the following day if the business hour or non-business hour period in which they bid has ended. The commission declines to revise the rule based on Reliant's comments.

TIEC argued that the language in subsection (c)(2)(I) should be clarified to allow independent loads to participate in more than one ancillary service program. If one portion of the load resource is under agreement to provide an ancillary service this should not prohibit another independent load resource that is behind the same meter from participating in the EILS program. Reliant commented on the need to designate a load resource as an EILS load. Reliant's suggestion would prohibit the same independent load from participating in an ancillary service such as the LaaRs program.

Commission response

The commission understands that the baseline will capture two independent loads behind the same meter. However, the commission does not believe the rule need be amended to specifically allow that to occur.

EnerNOC argued that ERCOT's requirement that each EILS resource must provide 12 months of IDR meter data creates a barrier to entry for resources that have added IDR meters within the last year. As explained in subsection (c)(3), 12 months of data is unnecessary and does not accurately measure a load's potential availability. Subsection (c)(3)(A) should also be modified such that ERCOT would review an "EILS resource's most recent ten days of consumption in like time periods."

Commission response

The commission does not believe that EnerNOC's changes are necessary. The rule gives ERCOT the latitude to use less than 12 months of IDR data.

Reliant believed that the appropriate baseline calculation would include the load's historical demand during a contract period, including prime and non-prime hours and the load's average demand during the two hours prior to a VDI from ERCOT during an EECP event. Setting baselines using historical data from the previous 12-month period would "smooth out" the differences between seasonal and prime and non-prime load fluctuations and would provide an inaccurate conclusion regarding the load's availability.

Another proposal for the appropriate baseline calculation was submitted by TIEC. According to TIEC, the baseline should be defined as the EILS resource's load capacity in the settlement intervals prior to deployment. Therefore, the baseline would be calculated by comparing the load's estimated capacity ten minutes after the VDI from ERCOT during an EECP event to the

load's average capacity in the last eight settlement periods prior to deployment, as discussed in PRR 702.

Commission response

The baseline and the commission's conclusions on this issue are discussed in response to Question 1.

EnerNOC stated that ERCOT's VDI should be accompanied by electronic deployment instructions to QSEs to mitigate the "possibility of human error" during an EECP event. ERCOT noted a concern that e-mail was not reliable and that it preferred to send an e-mail only after the VDI and only if it did not provide an additional burden to the operator.

Commission response

The commission agrees that the system operator should not be burdened during an emergency with the requirement of sending an e-mail. Since the event begins after the operator has verified that all of the resources are represented on the call, an e-mail should not be necessary.

Subsection (c)(4)(D) of the proposed rule discusses ERCOT's authority to conduct load-shedding tests for each EILS resource on an annual basis. CPA argued that ERCOT should be given the discretion to decide whether an EILS resource, including QSEs, should be tested on an annual basis or more frequently, if the situation warrants. Likewise, CPS and Austin proposed a minor clarification to this section. To ensure accurate communication among ERCOT, QSEs

and EILS resources, the word "simulated" should be included in the phrase "ERCOT may conduct a load-shedding test." CPS stated that if ERCOT conducts a test, it should decrease the allowable deployments or expect that the service will be more expensive. Oxy, CPS and Austin argued that one of the most important goals of the EILS program is the deployment of contracted EILS resources when verbally instructed by ERCOT.

Commission response

As many parties argued, there is some concern that resources in this program will not be there when they are needed. There has been a history of LaaR failure to respond in a timely manner to the VDI instructions, and a Protocol Revision Request has been proposed to require testing of resources for that service. Given the expense of the EILS service, the commission agrees that the participants should be tested to prove that they can perform the service they have agreed to perform and for which they are receiving capacity payments. Therefore the commission will amend the rule to require a yearly actual interruption of each participating load to test this service. This test shall not count as one of the deployments. ERCOT shall have the discretion to test in any of the three contract periods.

Subsection (d)

Austin and CPS proposed changes to accommodate NOIE self-provision of the service, specifically to eliminate the capacity payment and the charge to the NOIE for this service.

TCPA argued that language should be added to this subsection to ensure that the EIL resources are paid only when their curtailment is actually used by ERCOT to assist in an EECP event.

Commission response

The commission disagrees that this service should be paid only when there is a curtailment, as this service is a standby service and compensation is needed to entice participants to participate in this service rather than be price-responsive. As is noted above, the commission agrees that changes should be made to permit NOIEs to provide this service.

ERCOT proposed to clarify that it would publicly post the *methodology* used to develop default baselines rather than the actual baselines themselves, as the baselines are specific to each resource and would be protected information.

Commission response

The commission agrees with ERCOT and makes the appropriate change to the rule.

ARM encouraged the commission to reject the pay-as-bid approach as it is not a service subject to daily or numerous auctions and the lack of data associated with the true value of EILS could result in distorted prices under a pay-as-bid structure until the transparency of pricing allows the true values to become known. At the public hearing, Chaparral stated that it would support a market clearing price auction. Potomac Economics expressed concern with ARM's proposal. ERCOT stated that if there is a price cap, a clearing price model could result in a reduction of the

amount of interruptible load service that ERCOT would be able to obtain, assuming that the clearing price was higher than the average price of all bids.

Commission response

The commission finds no compelling reason to change the rule as proposed. Since ERCOT has said these services may be geographically balanced if necessary, the commission finds that these are not homogeneous products and that a pay-as-bid auction will produce adequate results. Therefore, there is no reason for ERCOT to develop a market clearing price auction at this time.

Subsection (e)

CPA stated that withholding payment is an insufficient penalty for non-performance, as the penalty should be sufficient to provide a significant disincentive for enjoying the capacity payments and then choosing not to comply when needed. It recommended that the subsection be revised to include non-payment of the period of non-compliance as well as disgorgement of past capacity payments for an appropriate period.

The commission agrees that given the cost and nature of this service, performance is very important. The commission agrees to require ERCOT to test each load participating in the service once a year, which it feels will be a strong predictor of actual performance. In addition to forfeiting all payments, the commission will institute a penalty of not allowing the EILS load to participate for six months if it fails to perform under the program and

therefore declines to add additional penalties as suggested by CPA. See Question 2 discussion.

Subsection (h)

Oxy noted that the intent of this section appears to be to encourage ERCOT stakeholders to consider other options in lieu of EILS for avoidance of firm load shedding. Since option (4) refers to other options in combination with an EILS program, Oxy proposed to delete that option.

Commission response

The commission agrees with Oxy that the long term approach may not require the EILS program to be operational and agrees to delete this requirement.

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

This new section is adopted 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, in particular, §39.151, which provides that the commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants. This new section also gives the commission complete authority to oversee the budget and operations of an independent organization (such as ERCOT), to ensure that it adequately performs its functions.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §15.023 and §39.151.

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

(a) **EILS procurement.** ERCOT shall procure EILS, a special emergency service that is intended to be deployed by ERCOT in an Emergency Electric Curtailment Plan (EECP) event prior to or in conjunction with ERCOT instructing transmission and distribution service providers to interrupt firm load.

(1) EILS may be procured for one or more of three contract periods:

(A) February through May;

(B) June through September; and

(C) October through January.

(2) Notwithstanding the foregoing, the first EILS contract period shall be from the effective date of this section through May of 2007.

(3) ERCOT may determine cost limits for each EILS contract period in order to ensure that the EILS cost cap is not exceeded.

(4) The maximum amount of EILS for which ERCOT may contract in an EILS contract period is 1,000 megawatts (MW).

(5) The minimum amount of EILS for which ERCOT may contract in an EILS contract period is 500 MW. If ERCOT does not receive enough offers to meet the required minimum amount for a period in which it seeks to procure EILS or cannot procure at least 500 MW for a period in which it seeks to procure EILS due to the EILS cap, ERCOT shall not contract for EILS.

(6) This section will no longer be effective provided the following conditions are met:

(A) An alternative long-term solution is approved in the form of a Protocol Revision that meets the requirements of subsection (h) of this section and ERCOT.

(B) The Protocol Revision is implemented so that ERCOT has a solution continuously in place with no interruption of the protection offered by EILS.

(C) If an alternative long-term solution is developed, but cannot be implemented 30 days prior to the beginning of the next contract period EILS will be extended for an additional contract period.

(b) **Definitions.**

(1) EILS -- A special emergency service procured and used by ERCOT in accordance with this section.

(2) EILS contract period -- As defined in subsection (a) of this section.

(3) EILS cost cap -- The maximum amount ERCOT may spend on the EILS program in a year, February-January. The cost cap is set at $17 Million for 2007 (April 2007 - January 2008) and $20 Million for 2008 (February 2008 - January 2009).

(4) EILS non-prime hours -- Any hours not defined as EILS prime hours.

(5) EILS prime hours -- Hours occurring on a business day (as defined by ERCOT Protocols) during the time frame of hour ending 0900 through hour ending 2000.

(6) EILS resource -- Load that is contracted to provide EILS.

(7) EILS time period -- EILS prime hours or EILS non-prime hours.

(8) ERCOT-- The professional staff of the Electric Reliability Council of Texas, Inc.

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

(1) EILS bids may be submitted to ERCOT by a qualified scheduling entity (QSE) on behalf of an EILS resource.

(A) Bids may be submitted for EILS prime hours or EILS non-prime hours.

(B) The minimum amount of EILS that may be offered in a bid to ERCOT is one MW. QSEs representing EILS resources may aggregate multiple resources to reach the one MW bid requirement, provided that each Electric Service Identifier (ESI ID) in an EILS Resource aggregation has a peak demand of 500 kilowatts (kW) or greater. Such aggregated bids will be considered a single EILS resource.

(2) To qualify to participate in the EILS program, an EILS resource shall meet the technical requirements set out in this paragraph.

(A) Each EILS resource, including each EILS resource participating in an aggregated bid, shall have an ESI ID.

(B) Each EILS resource shall have a dedicated installed Interval Data Recorder (IDR) meter. If the IDR meter is not used for settlement with ERCOT, then the IDR meter and the method and format used to collect and transfer the meter data are subject to ERCOT approval. This subsection also applies to meters behind a Non-Opt-In Entity (NOIE) meter point and behind a private network’s settlement meter point.

(C) An EILS resource shall be capable of reducing its load by its contracted capacity compared to its baseline capacity within ten minutes of an ERCOT verbal dispatch instruction (VDI) to its QSE and shall be capable of maintaining its performance at contracted levels for the entire period of the EILS deployment.

(D) EILS resources, once deployed, shall be able to return to their contracted operating level for providing EILS within ten hours following the recall instruction.

(E) EILS resources shall be subject to qualification, testing, and performance requirements as developed and administered by ERCOT.

(F) An EILS resource shall be registered as a Resource Entity with ERCOT.

(G) The QSE shall execute a standard form EILS agreement as developed by ERCOT.

(H) The EILS resource shall be served by a QSE qualified to provide ancillary services and capable of communicating with ERCOT and the EILS resource.

(I) An EILS resource shall not provide other ancillary services, including balancing energy services with the same capacity, while under an EILS Agreement.

(3) ERCOT shall establish an individual load baseline for each proposed EILS resource. If the EILS resource is an aggregation of ESI IDs, ERCOT shall take into account the load characteristics of each ESI ID represented by the EILS resource.

(A) ERCOT shall review IDR data from the most recent available 12-month period to determine the baseline consumption. If 12 months of IDR data is not available, ERCOT may use reliable meter data for a shorter period or from a different source, at its reasonable discretion in establishing baselines, including establishing alternate baselines for highly fluctuating batch process loads. If ERCOT does not possess sufficient data, the EILS Resource or its QSE must provide data to ERCOT according to ERCOT's specifications.

(B) The baseline shall be used to verify or establish an EILS Resource's maximum contract amount and to verify the EILS resource's performance as compared to its contracted capacity during an EILS deployment event.

(4) EILS shall be deployed by ERCOT by VDIs in a single phone call to all QSEs providing EILS.

(A) When ERCOT issues a VDI, 100% of the available contracted EILS resources shall be deployed.

(B) ERCOT may deploy EILS at any time during a settlement interval.

(C) An EILS resource shall be subject to a maximum of two deployments per EILS contract period, lasting no more than eight hours total, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deployment shall continue until ERCOT releases the EILS resource.

(D) ERCOT may conduct a load-shedding test of each EILS resource once a year unless the EILS resource has met its performance obligations during

an EILS deployment during the preceding 12 months. ERCOT tests are not "deployments" under subparagraph (C) of this paragraph.

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

(1) ERCOT shall pay a capacity payment to each QSE representing an EILS resource on an as-bid basis subject to modifications determined by ERCOT based on the EILS resource's availability during an EILS contract period, and the EILS resource's performance in a deployment event.

(2) ERCOT shall charge each QSE a capacity charge for EILS based upon its load ratio share during the relevant EILS time period and EILS contract period.

(3) There shall be no energy payments for providing EILS above and beyond typical load imbalance payments pursuant to the ERCOT protocols.

(4) ERCOT shall settle an EILS contract period through payments and charges on a settlement statement of a single operating day within 70 days following the completion of the EILS contract period.

(5) ERCOT shall make the following available to market participants through market notices and by posting on a publicly accessible section of the ERCOT web site:

(A) Methodology used to develop baseline formulas;

(B) Formulas used for wholesale market settlement; and

(C) Equations used to determine an EILS resource's compliance with its obligations in an EILS deployment.

(e) **Compliance.** QSEs representing EILS resources are subject to penalties for failure to meet their obligations under this section. ERCOT shall withhold all or part of an EILS resource's capacity payment for a contract period and suspend participation in EILS for six months if the EILS resource fails to make its committed load available during its committed hours, or fails to meet its load reduction obligations in an EILS deployment event. In order to be reinstated after the suspension the load must demonstrate its capability of performing the service by satisfactorily performing a test conducted by ERCOT.

(f) **Reporting.** At the completion of each contract period, ERCOT shall review the effectiveness and benefits of the EILS and report its findings to the commission within 70 days of the completion of the contract period. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EECP events, and the number and duration of deployments.

(g) **Implementation.** ERCOT shall develop additional procedures, guides, and/or protocols that are consistent with this section and that ERCOT finds necessary to implement EILS, including but not limited to developing a standard form EILS Agreement and specific performance guidelines and grace periods for EILS Resources.

(h) **Long-term solution.** Any long-term solution must offer ERCOT the ability to avoid shedding firm load by bringing more resources online or curtailing load voluntarily. In this context the commission is interested in:

(1) Better price signals leading up to an EECP event;

(2) Bringing more resources (both interruptible load and generation) online through existing ancillary services; and

(3) Examining the priorities set by TDSPs when shedding firm load.

(i) **Non-Opt In Entity (NOIE) Self Provision**. ERCOT shall develop procedures for NOIE self provision as soon as possible. If no procedures for NOIE self-provision are developed by the effective date of this rule, ERCOT shall implement procedures no later than the beginning of the following contract period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS), is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 21st DAY OF MARCH 2007.

PUBLIC UTILITY COMMISSION OF TEXAS

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PAUL HUDSON, CHAIRMAN

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JULIE PARSLEY, COMMISSIONER

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BARRY T. SMITHERMAN, COMMISSIONER

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