

PROJECT NO. 53493

**ELECTRIC RELIABILITY COUNCIL
OF TEXAS (ERCOT) EMERGENCY
RESPONSE SERVICE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF 16 TAC §25.507 AS APPROVED AT THE
JUNE 16, 2022, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes to amend Texas Administrative Code (TAC) §25.507 relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS). Revised 16 TAC §25.507 increases the annual budget for ERS, allows ERCOT the flexibility to contract ERS for up to 24 hours in a contract term to better address seasonal needs, and makes other administrative changes to the program.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rule will not repeal an existing regulation;
- (7) the same number of individuals will be subject to the proposed rule's applicability as were subject to the applicability of the rule it is being proposed to replace; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Shawnee Claiborn-Pinto, senior market economist with the market analysis division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Ms. Claiborn-Pinto has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the improved ability of the grid operator to avoid emergency conditions. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Ms. Claiborn-Pinto has determined that the economic costs to persons required to comply with the proposed rule will vary on an individual basis.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on Thursday, July 7, 2022, at 1:00 P.M. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by July 5, 2022. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by July 5, 2022, by 3:00 P.M. 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 rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53493.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The rule is proposed under the following provisions of PURA: §14.002, which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The rule is also proposed under §39.151, which provides the commission the authority to oversee ERCOT.

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

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS).

- (a) **Purpose.** The purpose of this section is to promote reliability ~~during energy emergencies~~ through provisions that provide ERCOT flexibility in the implementation and administration of ERS.
- (b) **ERS procurement.** ERCOT ~~must shall~~ procure ERS, a special emergency response service ~~that is intended~~ to be deployed by ERCOT ~~in~~ to help prevent or alleviate an actual or anticipated Energy Emergency Alert (EEA) event.
- (1) ERCOT ~~will shall~~ determine the ERS standard contract terms under contract periods ~~during~~ which ERS resources are obligated to ~~shall be obligated to~~ provide ERS, including renewal of any additional ERS contract periods ERCOT deems necessary due to the depletion of available ERS.
- (2) ERCOT may spend a maximum of \$~~7550~~ million in a 12-month period per calendar year on ERS, unless otherwise determined by the commission. During that 12-month period, ERCOT may exceed the \$75 million maximum by up to an additional \$25 million for ERS contract renewals under paragraph (d)(9) of this section during a period where ERS has been exhausted. ERCOT may determine cost limits for each ERS standard contract term ~~contract period~~ in order to ensure that the ERS cost cap is not exceeded. To minimize the cost of ERS, ERCOT may reject any offer that ERCOT determines to be unreasonable or outside of the parameters of an acceptable offer. ERCOT may also reject

any offer placed on behalf of any ERS resource if ERCOT determines that it lacks a sufficient basis to verify whether the ERS resource complied with ERCOT-established performance standards in an ERS deployment event during the preceding ERS standard contract termperiod.

(c) **Definitions.**

(1) ERS contract period -- A period defined by ERCOT for which an ERS resource is obligated to provide ERS, consisting of all or part of the hours in an ERS standard contract term.

(2) ERS resource -- A resource contracted to provide ERS that meets one of the following descriptions:

(A) A load or aggregation of loads; or

(B) A dispatchable generator that is not registered with ERCOT as a Generation Resource, or an aggregation of such generators.

~~(3)~~ -ERS standard contract term—Periods for which ERCOT may procure ERS.

~~(4)(3)~~ ERS time period -- Sets of hours designated by ERCOT within an ERS standard contract termperiod.

~~(5)(4)~~ ERCOT -- The staff of the Electric Reliability Council of Texas, Inc.

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

(1) An ERS resource must be represented by a qualified scheduling entity (QSE).

- (2) ~~The~~ QSEs ~~must~~~~shall~~ submit offers to ERCOT on behalf of ~~its~~~~their~~ ERS resources.
- (A) ~~An offer~~Offers may be submitted for one or more ERS time periods within an ERS contract period.
- (B) QSEs representing ERS resources may aggregate multiple loads to reach the minimum capacity offer requirement established by ERCOT. Such aggregations ~~will~~~~shall~~ be considered a single ERS resource for purposes of submitting offers.
- (3) ERCOT ~~will~~ ~~shall~~ establish qualifications for QSEs and ERS resources to participate in ERS.
- (4) A resource ~~must~~ ~~shall~~ not commit to provide ERS if it is separately obligated to provide response with the same capacity during any of the same hours.
- (5) ERCOT ~~must~~~~shall~~ establish performance criteria for QSEs and ERS resources.
- (6) When dispatched by ERCOT, ~~an~~ ERS resources ~~must~~ ~~shall~~ deploy consistent with ~~its~~ ~~their~~ obligations and ~~must~~ ~~shall~~ remain deployed until recalled by ERCOT.
- (7) ERCOT may deploy ~~an~~ ERS ~~resources~~ as necessary, subject to the annual expenditure cap.
- (8) Deployment of an ERS resource ~~must~~ ~~shall~~ be limited to the number of hours for which the service was contracted, up to a maximum of ~~24~~ ~~eight~~ cumulative hours in an ERS contract period. However, if an instruction causes the cumulative total ERS deployment time to exceed the number of hours contracted ~~eight hours~~ within a ERS contract period, each ERS resource ~~must~~

~~shall~~ remain deployed until permitted by ERCOT procedures or by ERCOT instructions to return from deployment.

(9)(8) Upon exhaustion of an ERS resource's obligation in any ERS contract period, ERCOT ~~may shall have the option to~~ renew that obligation, subject to the consent of the ERS resource and its QSE. ERCOT may renew the obligation on each occasion that the resource's obligation is exhausted. ERCOT may limit the renewal quantity to manage the overall cost of the service or for reliability needs.

(10)(9) ERCOT ~~must shall~~ establish procedures for testing of ERS resources.

(11)(10) A resource with a pre-existing contract to provide ERS may submit a proposal to serve as an alternative to a resource subject to reliability must-run (RMR) service for the same period. If the resource is selected, ERCOT ~~must shall~~ appropriately modify or terminate the resource's pre-existing ERS contract to allow the resource to participate as an RMR alternative.

(e) **ERS Payment and Charges.**

(1) ERCOT ~~must shall~~ make a payment to each QSE representing an ERS resource on an as-bid basis, a market clearing price mechanism, or such other mechanism as ERCOT deems appropriate, subject to modifications determined by ERCOT based on the ERS resource's availability during an ERS standard contract termperiod and the ERS resource's performance in any deployment event.

- (2) ERCOT ~~must~~shall charge each QSE a charge for ERS based upon its load ratio share during the relevant ERS time period and ERS standard contract term~~period~~.
- (3) ERCOT ~~must~~shall settle an ERS contract period within 80 days following the completion of the ERS standard contract term~~period~~.
- (f) **Compliance.** A QSE representing an ERS resources is subject to administrative penalties for noncompliance, by the QSE or the ERS resources it represents, ~~with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards.~~ ~~ERCOT shall establish criteria for reducing a QSE's payment and/or suspending a QSE from participation in ERS for failure to meet its ERS obligations, and shall also establish criteria for subsequent reinstatement. In addition, ERCOT shall establish criteria under which an ERS resource shall be suspended for non-compliance, and shall also establish criteria for subsequent reinstatement. ERCOT shall notify the commission of all instances of non-compliance with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall maintain records relating to the alleged non-compliance.~~
- (1) ERCOT ~~must~~ establish criteria for reducing a QSE's payment ~~or suspending a QSE from participation in ERS for failure to meet its ERS obligations, and ~~must~~ also establish criteria for subsequent reinstatement.~~

- (2) ERCOT must establish criteria under which an ERS resource will be suspended for non-compliance, and will also establish criteria for subsequent reinstatement.
- (3) ERCOT must notify the commission of all instances of non-compliance with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards.
- (4) ERCOT must maintain records relating to any alleged non-compliance.
- (g) **Reporting.** Prior to the start of an ERS standard contract termperiod, ERCOT must shall report publicly the number of megawatts (MW) procured per ERS time-period, the number and type of ERS resources providing the service, and the projected total cost of the service for that ERS standard contract termperiod. ERCOT must shall review the effectiveness and benefits of ERS and report its findings to the commission annually by April 15 of each calendar year. The report must shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EEA events, and the number and duration of deployments and the circumstances that led to each deployment.
- (h) **Implementation.** ERCOT must shall develop, in consultation with commission staff, additional procedures, guides, technical requirements, protocols, and/or other standards that are consistent with this section and that ERCOT finds necessary to implement ERS, including but not limited to developing a standard form ERS Agreement and specific performance guidelines and grace periods for ERS resources.

- (i) **Self Provision.** ERCOT ~~shall~~ must establish procedures for self-provision of ERS by any QSE.

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 16th DAY OF JUNE 2022 BY THE

PUBLIC UTILITY COMMISSION OF TEXAS

ANDREA GONZALEZ