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OPEN MEETING COVER SHEET

PUBLIC UTILITY COMMISSION
FILING CLERK

MEETING DATE: August 14, 2015

DATE DELIVERED: August 6, 2015

AGENDA ITEM NO.: 11

CAPTION: Project No. 44650 – Rulemaking Proceeding
to Amend P.U.C. SUBST. R. 25.503,
Relating to Oversight of Wholesale Market
Participants (Draft Adoption Preamble)

ACTION REQUESTED: Discussion and possible action with respect
to Rulemaking

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1

Public Utility Commission of Texas

Memorandum

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PUBLIC UTILITY COMMISSION
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TO: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

FROM: Thomas S. Hunter
Agency Counsel

Jennifer Littlefield
Attorney, Oversight & Enforcement Division

DATE: August 6, 2015

SUBJECT: August 14 Open Meeting; Item No. 11; Project No. 44650-- *Rulemaking Proceeding to Amend P.U.C. SUBST. R. 25.503, Relating to Oversight of Wholesale Market Participants* (Draft Adoption Preamble)

Introduction

Attached is a draft Proposal for Adoption pertaining to P.U.C. SUBST. R. 25.503. The primary purpose of the proposed amendments is to update the process used by ERCOT to meet its obligation to monitor compliance by market participants with the ERCOT wholesale market reliability-related requirements. First, the ERCOT Compliance Office (the entity responsible for overseeing the Compliance Process approved by the Commission in 2006) no longer exists. Second, the 2006 Compliance Process is outdated and needs to be replaced by a monitoring process similar to that currently used by ERCOT and the Texas RE. As amended, §25.503 would require the Commission and ERCOT to contract with a third party selected by the Commission to serve as the Commission's Reliability Monitor for the ERCOT Region.

Comments were submitted by Luminant Energy Company, LLC, Luminant Generation Company, LLC and Exelon Corp. (collectively Joint Commenters), Texas Competitive Power Advocates (TCPA), the Lower Colorado River Authority (LCRA), LCRA Transmission Services Corporation (LCRA TSC), CPS Energy (CPS), and CenterPoint Energy Houston Electric, LLC (CenterPoint Energy). The attached redlined rule reflects changes made by Staff to the published version of the rule in response to comments received.

Summary of Staff Recommendation

Commenters offered both substantive and non-substantive comments on the rule. Staff is recommending adoption of a number of the changes recommended by the commenters. Staff is recommending that the Commission not adopt three changes suggested by the commenters. Staff's recommendations are outlined below.

Commenter Changes That Should Be Adopted

Staff recommends adoption of confidentiality language to subsection (k) suggested by several commenters that expressly requires the Reliability Monitor to protect competitively sensitive information that they may obtain from market participants during the course of their monitoring and investigating activities. Staff also agrees with those commenters who noted that a formal enforcement action is not always appropriate when violations occur and recommends adoption of language to expressly authorize Staff to work with a market participant for whom formal enforcement is not warranted. This reflects current practices in which Commission Staff routinely resolves instances of immaterial non-compliance without recommending administrative penalties or other formal enforcement actions.

Staff also recommends adoption of suggested language in subsection (l) that ensures each of the criteria used for selection of the Reliability Monitor are considered by the Commission when choosing a Reliability Monitor.

The commenters also recommended a number of minor, mostly non-substantive changes to the rule with which Staff agreed. These minor changes are reflected in the attached redlined draft of the adoption preamble.

Commenter Changes That Should Not Be Adopted

Staff recommends that the Commission not adopt several changes suggested by the commenters. First, several commenters suggested that the definition of “Reliability Monitor” be changed to state that the Reliability Monitor is only responsible for monitoring compliance with the ERCOT Protocols and Operating Guides rather than “ERCOT procedures including protocols, processes and any other operating standards” as originally proposed. Staff believes that use of the term “ERCOT procedures” is appropriate because it mirrors the language in subsection (d) of the rule that describes the scope of activities that the Commission is tasked with monitoring. The Reliability Monitor’s duties include more than enforcement; they include oversight as well. Monitoring the activities of market participants may include examining market activities beyond the ERCOT Protocols and Operating Guides to allow the Reliability Monitor to evaluate the reliability of the market as a whole. Moreover, §25.503(c) defines ERCOT Procedures as:

Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols and ERCOT Operating Guides as amended from time to time but excluding ERCOT’s internal administrative procedures. The Protocols generally govern when there are inconsistencies between the Protocols and the Operating Guides, except when ERCOT Staff, consistent with subsection (i) of this section, determines that a provision contained in the Operating Guides is technically superior for the efficient and reliable operation of the electric network.

Staff believes that this existing definition addresses the concerns raised by commenters and should alleviate any concerns about the rule’s reference to “other ERCOT procedures” being overbroad.

Second, Staff recommends that the Commission not adopt a suggestion to change subsection (k)(1) to limit the Reliability Monitor to monitoring, investigating, auditing, and reporting on only material occurrences of non-compliance. The ability of the Reliability Monitor to conduct overarching compliance monitoring and auditing is a necessary component of identifying material instances of non-compliance. The broad monitoring function is also necessary for the Reliability Monitor to carry out the requirement in §25.503(k)(2) to provide reliability-related subject matter advice, expertise, and

assistance to the Commission's oversight activities, such as monitoring the general effectiveness of compliance standards. Industry practice often informs the interpretation of the protocols and widespread non-compliance may indicate the need for a change in the rules. Additionally, whether an occurrence of non-compliance rises to a level of materiality is a determination for the Commission to make when considering the facts surrounding the violation and weighing each of the penalty factors set out in PURA and Commission rules.

Finally, Staff requests that the Commission not adopt certain changes to subsection (o) recommended by the commenters. Specifically, some commenters argued that two subsections of the existing rule (subsections (d) and (j)(4)) recognize that formal enforcement is not always appropriate and that the concepts embodied in these two subsections should be explicitly incorporated into subsection (o) and should be considered by Commission Staff in deciding whether to pursue formal enforcement against a market participant. Subsection (d) includes standards and criteria for enforcement and requires the Commission to consider whether a market participant's activity adversely affected specific aspects of the market. Subsection (j)(4) allows ERCOT to treat an issue of non-compliance as resolved if it is discontinued and is not repeated more than once in a six month period. Staff believes that these proposed changes are unnecessary because the existing factors in PURA §15.023(c), which the Commission must consider when imposing an administrative penalty, already provide clear guidance on the factors the Commission should consider before imposing an administrative penalty. Additionally, the Commission is required to consider the multiple guidelines set out in all of §25.503, including subsection (d), but also including subsection (f) which examines whether the market participant had a duty to comply with the ERCOT procedure and subsection (g) which governs whether the conduct of the market participant constituted a prohibited activity. Identifying substantive rule §25.503(d) as the singular consideration improperly implies that these other relevant sections of PURA and Commission rules are excluded from the evaluation of whether to bring a formal enforcement action.

Proposed timeline

If the rule amendments are adopted at the August 14 Open Meeting, Staff intends to issue a Request for Proposals for a Reliability Monitor as soon as possible. Because the existing contract with the Texas RE expires on December 31, 2015, the Commission needs to have a contract for a Reliability Monitor in place by no later than December 31, 2015.

Please let me know if you have any questions about the proposed adoption preamble.

PROJECT NO. 44650

RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
AMEND P.U.C. SUBST. R. 25.503 §
RELATING TO OVERSIGHT OF § OF TEXAS
WHOLESALE MARKET §
PARTICIPANTS §

(STAFF RECOMMENDATION)
ORDER ADOPTING AMENDMENT OF § 25.503 FOR CONSIDERATION AT THE
AUGUST 14, 2015 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.503, relating to Oversight of Wholesale Market Participants, with changes to the proposed text as published in the June 5, 2015 issue of the *Texas Register* (40 *TexReg* 3294). The primary purpose of the amendments is to update the process used by the Electric Reliability Council of Texas (ERCOT) to meet its obligation to monitor compliance by market participants with the ERCOT wholesale market reliability-related requirements. The rule as originally adopted by the commission required ERCOT to develop and submit for commission approval an internal process to monitor occurrences of non-compliance with the ERCOT Protocols that could impede ERCOT operations or represent a risk to system security. In response to this requirement, ERCOT staff developed the ERCOT Compliance Process. The Compliance Process was approved by the commission in 2006. The Compliance Process was originally overseen by the ERCOT Compliance Office (ERCOT Compliance). Based on developments since 2006, ERCOT Compliance was eliminated as part of ERCOT. The functions formerly overseen by ERCOT Compliance were assigned to the Texas Reliability Entity (Texas RE), which was formed as a stand-alone, Texas non-profit corporation in 2010. ERCOT and the Texas RE continue to follow the relevant portions of the

1 ERCOT Compliance Process. It is necessary to amend §25.503 to reflect the changes that have
2 occurred since the rule was adopted in 2004.

3

4 PURA §39.151(d) permits the commission to delegate monitoring and enforcement of rules
5 related to the reliability of the regional electrical network to the ERCOT independent system
6 operator. The rule as adopted will continue the delegation that exists under the current rule, but
7 will restructure it by requiring ERCOT and the commission to contract with an independent third
8 party to ensure that the actions of the ERCOT independent system operator itself are reviewed in
9 the same objective manner as the actions of other market participants. In order to ensure
10 transparency, the commission will utilize applicable state contracting procedures in selecting the
11 Reliability Monitor

12

13 Under the rule as adopted, the commission and ERCOT will enter in a contract with an entity
14 selected by the commission to be the commission's Reliability Monitor. While ERCOT will
15 continue to fund the operations of the Reliability Monitor from the system administrative fee, the
16 amendments clarify that the Reliability Monitor works under the direction and supervision of the
17 commission. The adopted rule also outlines the criteria to be used by the commission in
18 selecting the Reliability Monitor.

19

20 The commission received comments on the proposed amendments from Luminant Energy
21 Company, LLC, Luminant Generation Company, LLC and Exelon Corp. (collectively Joint
22 Commenters), Texas Competitive Power Advocates (TCPA), the Lower Colorado River

1 Authority (LCRA), LCRA Transmission Services Corporation (LCRA TSC), CPS Energy (CPS),
2 and CenterPoint Energy Houston Electric, LLC (CenterPoint Energy).

3

4 **Summary of Comments**

5 The Joint Commenters, TCPA, LCRA, LCRA TSC, CPS and CenterPoint Energy, all supported
6 the overall goal of updating and clarifying the existing oversight and enforcement process.
7 LCRA, LCRA TSC and CPS supported the commission's purpose in revising the rule and noted
8 that the rule should accurately reflect the responsibilities of the entities that perform oversight
9 functions. The Joint Commenters provided the most detailed and comprehensive comments.
10 TCPA, LCRA, LCRA TSC, CPS and CenterPoint Energy all generally supported the comments
11 made by the Joint Commenters.

12

13 **Comments on subsection (c)**

14 LCRA, LCRA TSC and CPS recommended that the definition of "Reliability Monitor" be
15 modified to recognize that market participants are only required to comply with binding ERCOT
16 procedures and not standards that are merely advisory. Similarly, the Joint Commenters also
17 recommended that the definition of "Reliability Monitor" be changed to state that the Reliability
18 Monitor is only responsible for monitoring compliance with the ERCOT Protocols and Operating
19 Guides rather than "ERCOT procedures including protocols, processes and any other operating
20 standards" as originally proposed. Joint Commenters noted that the ERCOT Protocols and
21 Operating Guides are the ERCOT requirements primarily related to reliability and that the
22 reference to other ERCOT procedures in the proposed rule is potentially overbroad and could be
23 read to include documents not directly related to reliability.

1 Joint Commenters also suggested that the definitions in subsection (c) be reorganized in
2 alphabetical order.

3

4 Finally, Joint Commenters also recommended that an outdated reference to “loads acting as
5 resources” be stricken in favor of a reference to “generation and load” resources, which is
6 consistent with current Nodal Protocols.

7

8 ***Commission Response***

9 The commission declines to adopt the suggestion by LCRA, LCRA TSC CPS and Joint
10 Commenters to limit the duties of the “Reliability Monitor” to monitoring compliance with the
11 ERCOT Protocols and Operating Guides rather than “ERCOT procedures including protocols,
12 processes and any other operating standards” as originally proposed because subsection (d)
13 instructs the commission to monitor the activities of market entities to determine if such
14 activities are consistent with ERCOT procedures. The commission finds that use of the term
15 “ERCOT procedures” is appropriate because it mirrors the language in subsection (d) that
16 describes the scope of activities that the commission is tasked with monitoring. The Reliability
17 Monitor’s duties include more than enforcement; they include oversight as well. Monitoring the
18 activities of market participants may include examining market activities beyond the ERCOT
19 Protocols and Operating Guides to allow the Reliability Monitor to evaluate the reliability of the
20 market as a whole.

21 Furthermore, subsection (c) defines ERCOT Procedures as:

22 Documents that contain the scheduling, operating, planning, reliability, and
23 settlement procedures, standards, and criteria that are public and in effect in the
24 ERCOT power region, including the ERCOT Protocols and ERCOT Operating

1 Guides as amended from time to time but excluding ERCOT's internal
2 administrative procedures. The Protocols generally govern when there are
3 inconsistencies between the Protocols and the Operating Guides, except when
4 ERCOT staff, consistent with subsection (i) of this section, determines that a
5 provision contained in the Operating Guides is technically superior for the
6 efficient and reliable operation of the electric network.
7

8 The commission concludes that this existing definition addresses the concerns raised by
9 commenters and should alleviate any concerns about the rule's reference to "other ERCOT
10 procedures" being overbroad.
11

12 The commission agrees with Joint Commenters' suggestion to reorganize the definitions in
13 alphabetical order and has made this change. The commission also agrees with Joint
14 Commenters' proposal to delete the reference to "loads acting as resources." The commission
15 agrees that the language suggested by Joint Commenters is a more accurate description of this
16 service and has also made this change in the rule as adopted.
17

18 **Comments on subsection (j)**

19 Joint Commenters suggested minor changes to the list of examples of potential material
20 occurrences of non-compliance in subsection (j)(1). Joint Commenters also recommended that
21 the term "Reliability Monitor" be capitalized throughout §25.503.
22

23 ***Commission Response***

24 The commission adopts the changes to subsection (j) suggested by Joint Commenters. The
25 commission agrees the new language eliminates references to obsolete terms and appropriately
26 capitalizes Reliability Monitor as a defined term.

1

2 **Comments on subsection (k)**

3 Joint Commenters, TCPA, LCRA, LCRA TSC, CPS and CenterPoint Energy recommended that
4 confidentiality language be added to subsection (k) to expressly require the Reliability Monitor to
5 protect competitively sensitive information that they may obtain from market participants during
6 the course of their monitoring and investigating activities. TCPA supported adding language in
7 this rule that mirrors the confidentiality provisions applicable to the Independent Market Monitor
8 (IMM) found in §25.365, relating to Independent Market Monitor.

9

10 Joint Commenters further suggested that the reference to laws, rules and ERCOT procedures in
11 subsection (k)(1) should be changed to mirror Joint Commenters' suggested language in
12 subsection (c)(6) to describe the responsibilities of the Reliability Monitor. Finally, Joint
13 Commenters recommended that subsection (k)(1) be revised to reflect that the Reliability
14 Monitor will monitor, investigate, audit, report to the commission only "material occurrences of
15 non-compliance" consistent with Joint Commenters' suggested changes to the list of non-
16 compliance indicators in subsection (j).

17

18 ***Commission Response***

19 The commission agrees with those commenters suggesting the addition of confidentiality
20 language to subsection (k) and has added the language suggested by Joint Commenters in the rule
21 as adopted.

22

1 The commission declines to adopts Joint Commenters' suggested change to subsection (k)(1)
2 regarding ERCOT procedures because ERCOT procedures is a defined term in §25.503(c).
3 The commission declines to adopt Joint Commenters' recommended change to subsection (k)(1)
4 limiting the Reliability Monitor to monitoring, investigating, auditing, and reporting on only
5 material occurrences of non-compliance. The ability of the Reliability Monitor to conduct
6 overarching compliance monitoring and auditing is a necessary component of identifying
7 material instances of non-compliance. The broad monitoring function is also necessary for the
8 Reliability Monitor to carry out the requirement in §25.503(k)(2) to provide reliability-related
9 subject matter advice, expertise, and assistance to the commission's oversight activities, such as
10 monitoring the general effectiveness of compliance standards. Industry practice often informs
11 the interpretation of the protocols and widespread non-compliance may indicate the need for a
12 change in the rules.

13

14 Additionally, whether an occurrence of non-compliance rises to a level of materiality is a
15 determination for the commission to make when considering the facts surrounding the violation
16 and weighing each of the penalty factors set out in PURA and commission rules. For example,
17 determination of materiality is not defined by the type of violation that occurred. Materiality may
18 be influenced by situational elements, such as whether a violation occurred during an emergency
19 event, or continued over an extended period of time, or had a system-wide impact versus a
20 geographically isolated impact. Similarly, multiple instances of immaterial non-compliance
21 could rise to the level of material non-compliance, especially where a market participant has been
22 previously notified of the issue. If the Reliability Monitor only monitored, investigated, and
23 audited material instances of non-compliance, these repeated instances of non-material non-

1 compliance might go undetected. While the Reliability Monitor functions as a resource for staff
2 in making a determination about materiality, the commission finds the ultimate determination of
3 materiality lies with the commission.

4
5 **Comments on subsection (l)**

6 LCRA, LCRA TSC, and CPS urged the commission to adopt rigorous standards for the approval
7 of the Reliability Monitor and proposed that the criteria listed in subsection (l) should not be
8 merely suggested criteria to be considered, but should be mandatory requirements for the
9 selection of the Reliability Monitor. LCRA, LCRA TSC and CPS further suggested changes to
10 subsection (l) designed to insure the selection of a Reliability Monitor with demonstrated
11 technical qualifications and infrastructure as well as specific knowledge and understanding of the
12 ERCOT market, the types and configuration of facilities in ERCOT and the ERCOT stakeholder
13 committees and processes. Joint Commenters suggested the term "Reliability Monitor" be
14 capitalized in subsection (l).

15
16 ***Commission Response***

17 The commission agrees with LCRA, LCRA TSC, and CPS that the criteria listed in (l) should be
18 mandatory considerations for selection of the Reliability Monitor and adopts the suggested
19 language. The commission also agrees with Joint Commenters' request to capitalize the term
20 "Reliability Monitor" throughout the rule.

21

22

23

1 **Comments on subsection (m)**

2 Joint Commenters recommended that the term “Reliability Monitor” be capitalized in subsection
3 (m).

4
5 ***Commission Response***

6 As noted previously, the commission agrees with the Joint Commenters’ recommendation and
7 has made this change in the rule as adopted.

8
9 **Comments on subsection (n)**

10 Joint Commenters recommended several clarifying changes to make terminology used in the rule
11 consistent with terminology in the current ERCOT Nodal Protocols.

12
13 ***Commission Response***

14 The commission agrees with the revisions to subsection (n) suggested by Joint Commenters and
15 has made these changes in the adopted rule.

16
17 **Comments on subsection (o)**

18 Joint Commenters suggested that two provisions of the existing rule recognize that formal
19 enforcement is not always appropriate and that these two provisions be incorporated into
20 subsection (o) as adopted and should be considered by commission staff in deciding whether to
21 pursue formal enforcement against a market participant. One of these provisions is subsection
22 (j)(4), which was deleted in the proposed rule, and which allows ERCOT to treat non-compliance
23 issues as resolved if they are discontinued and not repeated more than once over a six-month

1 period. Joint Commenters' suggest that this indicates that the robustness of a market
2 participant's compliance program is relevant to pursuit of an enforcement action. The other
3 subsection referenced by Joint Commenters is §25.503(d) which requires the commission to
4 consider whether a market participant's activity adversely affected specific aspects of the market.
5 Joint Commenters, TCPA and LCRA, LCRA TSC, and CPS argued that market participants will
6 be incented to invest in internal systems and controls for monitoring and correcting problems if
7 staff, ERCOT and the Reliability Monitor work with market participants to promptly remediate
8 immaterial non-compliance issues rather than pursuing formal enforcement action and that the
9 rule should expressly authorize staff to do this. The Joint Commenters also noted that perfection
10 is not a realistic standard, regardless of how strong a company's internal compliance program
11 may be.

12

13 The Joint Commenters asserted that the criteria in subsection (d) of the rule are consistent with
14 PURA provisions to foster and protect competition, to ensure reliability and to protect customers
15 from abusive practices. The Joint Commenters cited to PURA §§ 35.004(e), 39.001(a), 39.151
16 and 39.157 as examples of these responsibilities. Joint Commenters requested that subsection
17 (o) be revised to clarify that the process described in this subsection applies when commission
18 staff learns of potential material issues of non-compliance from ERCOT, the Reliability Monitor
19 or the IMM. Joint Commenters argued that this process should be used by commission staff
20 regardless of how staff learns about the potential violation and even if there has already been a
21 preliminary determination made by ERCOT, the Reliability Monitor, or the IMM regarding an
22 occurrence of material non-compliance. Joint Commenters suggest that a report from ERCOT,
23 the Reliability Monitor, or IMM should not substitute for a separate fact finding investigation by

1 staff to determine whether to pursue enforcement. Joint Commenters recommended that staff
2 take into account the criteria in subsection (d) and the robustness of a market participant's
3 compliance program in determining whether a formal enforcement action is necessary. LCRA,
4 LCRA TSC and CPS stated that inclusion of the criteria of subsection (d) into subsection (o) will
5 enhance administrative efficiency and will promote a compliance culture for ERCOT market
6 participants. Additionally, LCRA, LCRA TSC, and CPS argued that inclusion of the criteria of
7 subsection (d) in subsection (o) of the rule would increase transparency of both the enforcement
8 process and market participants' compliance processes.

9
10 ***Commission Response***

11 The commission adopts in part and declines to adopt in part the revisions to subsection (o)
12 suggested by Joint Commenters, LCRA, LCRA TSC, CPS and which were generally supported
13 by TCPA and CenterPoint Energy. The commission agrees with those commenters who asserted
14 that a formal enforcement action is not always appropriate when violations occur and adopts
15 suggested language to expressly authorize staff to work with a market participant for whom
16 formal enforcement is not warranted. This reflects current practices in which commission staff
17 routinely resolves instances of immaterial non-compliance without recommending administrative
18 penalties or other formal enforcement actions.

19
20 The commission declines to adopt the recommendation to incorporate §25.503(d) and the
21 robustness of a market participant's compliance program into the determination of whether to
22 pursue formal enforcement. PURA §15.023(c) identifies the following factors for the
23 commission to consider when imposing an administrative penalty:

- 1 (1) The seriousness of the violation;
- 2 (2) The economic harm to property or the environment caused by the violation;
- 3 (3) The history of previous violations;
- 4 (4) The amount necessary to deter future violations;
- 5 (5) Efforts to correct the violation; and
- 6 (6) Other matters that justice may require.

7

8 Additionally, the commission is required to consider the multiple guidelines set out in all of

9 §25.503, including subsection (d), but also including subsection (f) which examines whether the

10 market participant had a duty to comply with the ERCOT procedure and subsection (g) which

11 governs whether the conduct of the market participant constituted a prohibited activity.

12 Identifying substantive rule §25.503(d) as the singular consideration implies that these other

13 relevant sections of PURA and commission rules are excluded from the evaluation of whether to

14 bring a formal enforcement action. Therefore, the commission declines to incorporate a

15 reference to subsection (d) into subsection (o).

16

17 Similarly, while the commission agrees with commenters that the robustness of a market

18 participant's compliance program is a factor to consider in the enforcement process, the

19 commission finds that the current enforcement framework established in PURA §15.023 and

20 commission rules effectively provides for consideration of a market participant's compliance

21 program as it relates to the violation at hand. Evaluating the robustness of a market participant's

22 compliance program is inherent in considering an entity's history of previous violations, the

23 amount of administrative penalties necessary to deter future violations, and an entity's efforts to

16

1 correct its violations. Requiring consideration of a market participant's overall compliance
2 program in the absence of its effect on the individual violation is unnecessary and inefficient. In
3 a market as complex as the ERCOT wholesale market, nearly all market participants have robust,
4 well-established compliance programs. However, the robustness of a market participant's overall
5 compliance program may not be relevant to the compliance of a specific matter. Considering the
6 robustness of a compliance program's relevance to a particular violation as one factor in the
7 commission's overall determination, as required by PURA and current commission rules, is the
8 more tailored and appropriate methodology for use in an enforcement context. For these reasons,
9 the commission declines to adopt the recommended language.

10
11 The commission recognizes the concerns expressed by Joint Commenters regarding perfection as
12 an unrealistic standard. The current rules and protocols provide existing avenues for a market
13 participant should something beyond their control contribute to an instance of non-compliance.
14 For example, §25.503(f)(2)(C) provides circumstances in which non-compliance is excused, such
15 as when the violation is due to equipment failure beyond the reasonable control of the market
16 participant, or if compliance would jeopardize public health and safety or the reliability of the
17 electric grid. Additionally, subsection (h)(2) of the rule establishes affirmative defenses that may
18 be asserted by a party that conducted an act or practice that is a prohibited activity. The
19 commission finds that the existing statutory administrative penalty framework and commission
20 rules, as well as the adopted language recognizing an alternative to formal enforcement
21 adequately address the concerns of the Joint Commenters regarding perfection as a compliance
22 standard.

23

1 The commission declines to adopt the Joint Commenters recommended language authorizing
2 staff to initiate an investigation following a report regarding material instances of non-
3 compliance received from ERCOT, the Reliability Monitor, or the Independent Market Monitor.
4 These circumstances are effectively included within the umbrella of staff opening an
5 investigation upon its own initiative. For the previously discussed reasons, the commission finds
6 that the determination of what constitutes material non-compliance is best made by the
7 commission. The commission agrees that while staff may rely upon the facts and analysis
8 disclosed in such reports to form an initial determination of whether a violation has occurred, a
9 report from ERCOT, the Reliability Monitor, or the IMM does not preclude staff from
10 conducting a further fact finding investigation, nor does it preclude a market participant from
11 being afforded the opportunity to respond to allegations that have been made. The commission
12 agrees with the Joint Commenters that the process outlined in subsection (o) should be followed
13 regardless of the manner in which staff learns of a potential violation and finds that the existing
14 rule language sufficiently encompasses this concept.

15

16 These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code
17 Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility
18 Commission with the authority to make and enforce rules reasonably required in the exercise of
19 its powers and jurisdiction, and specifically, PURA §39.151 which grants the commission
20 authority to adopt and enforce rules concerning the reliability of the regional electrical network.
21 Section 39.151 further provides that the commission may delegate to an independent
22 organization responsibilities for establishing or enforcing such rules, which are subject to
23 commission oversight and review.

1

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

3

1

2 **(a) Purpose.** The purpose of this section is to establish the standards that the commission will
3 apply in monitoring the activities of entities participating in the wholesale electricity markets,
4 including markets administered by the Electric Reliability Council of Texas (ERCOT), and
5 enforcing the Public Utility Regulatory Act (PURA) and ERCOT procedures relating to
6 wholesale markets. The standards contained in this rule are necessary to:

- 7 (1) protect customers from unfair, misleading, and deceptive practices in the wholesale
8 markets, including ERCOT-administered markets;
- 9 (2) ensure that ancillary services necessary to facilitate the reliable transmission of
10 electric energy are available at reasonable prices;
- 11 (3) afford customers safe, reliable, and reasonably priced electricity;
- 12 (4) ensure that all wholesale market participants observe all scheduling, operating,
13 reliability, and settlement policies, rules, guidelines, and procedures established in the
14 ERCOT procedures;
- 15 (5) clarify prohibited activities in the wholesale markets, including ERCOT-administered
16 markets;
- 17 (6) monitor and mitigate market power as authorized by the Public Utility Regulatory Act
18 (PURA) §39.157(a) and prevent market power abuses;
- 19 (7) clarify the standards and criteria the commission will use when reviewing wholesale
20 market activities;
- 21 (8) clarify the remedies for non-compliance with the Protocols relating to wholesale
22 markets; and

(9) prescribe ERCOT's role in enforcing ERCOT procedures relating to the reliability of the regional electric network and accounting for the production and delivery among generators and all other market participants, and monitoring and obtaining compliance with operating standards within the ERCOT regional network.

(b) **Application.** This section applies to all market entities, as defined in subsection (c) of this section. .

(c) **Definitions.** The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

(1) **Artificial congestion** -- Congestion created when multiple foreseeable options exist for scheduling, dispatching, or operating a resource, and a market participant chooses an option that is not the most economical, that foreseeably creates or exacerbates transmission congestion, and that results in the market participant being paid to relieve the congestion it caused.

(2) **Efficient operation of the market** -- Operation of the markets administered by ERCOT, consistent with reliability standards, that is characterized by the fullest use of competitive auctions to procure ancillary services, minimal cost socialization, and the most economical utilization of resources, subject to necessary operational and other constraints.

(3) **ERCOT procedures** -- Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols and ERCOT Operating Guides as amended from time to time but excluding ERCOT's internal administrative procedures. The Protocols generally govern when there are inconsistencies between the

1 Protocols and the Operating Guides, except when ERCOT staff, consistent with
2 subsection (i) of this section, determines that a provision contained in the Operating
3 Guides is technically superior for the efficient and reliable operation of the electric
4 network.

5 (4) **Excess Revenue** -- Revenue in excess of the revenue that would have occurred absent
6 a violation of PURA §39.157 or this section.

7 (5) **Market entity** -- Any person or entity participating in the ERCOT-administered
8 wholesale market, including, but not limited to, a load serving entity (including a
9 municipally owned utility and an electric cooperative,) a power marketer, a transmission
10 and distribution utility, a power generation company, a qualifying facility, an exempt
11 wholesale generator, ERCOT, and any entity conducting planning, scheduling, or
12 operating activities on behalf of, or controlling the activities of, such market entities.

13 (76) **Market participant** -- A market entity other than ERCOT.

14 (7) **Reliability Monitor**—A person or entity selected by the commission to monitor
15 compliance with all state reliability-related laws, rules, and ERCOT procedures including
16 protocols, processes and any other operating standards applicable to the ERCOT Region.

17 (8) **Resource** -- Facilities capable of providing electrical energy or load capable of
18 reducing or increasing the need for electrical energy or providing short-term reserves into
19 the ERCOT system. This includes generation and load resources ~~and loads acting as~~
20 resources (LaarRs).

21 (d) **Standards and criteria for enforcement of ERCOT procedures and PURA.** The
22 commission will monitor the activities of market entities to determine if such activities are
23 consistent with ERCOT procedures; whether they constitute market power abuses or are unfair,

1 misleading, or deceptive practices affecting customers; and whether they are consistent with the
2 proper accounting for the production and delivery of electricity among generators and other
3 market participants. When reviewing the activities of a market entity, the commission will
4 consider whether the activity was conducted in a manner that:

- 5 (1) adversely affected customers in a material way through the use of unfair, misleading,
6 or deceptive practices;
- 7 (2) materially reduced the competitiveness of the market, including whether the activity
8 unfairly impacted other market participants in a way that restricts competition;
- 9 (3) disregarded its effect on the reliability of the ERCOT electric system; or
- 10 (4) interfered with the efficient operation of the market.

11 **(e) Guiding ethical standards.** Each market participant is expected to:

- 12 (1) observe all applicable laws and rules;
- 13 (2) schedule, bid, and operate its resources in a manner consistent with ERCOT
14 procedures to support the efficient and reliable operation of the ERCOT electric system;
15 and
- 16 (3) not engage in activities and transactions that create artificial congestion or artificial
17 supply shortages, artificially inflate revenues or volumes, or manipulate the market or
18 market prices in any way.

19 **(f) Duties of market entities.**

- 20 (1) Each market participant shall be knowledgeable about ERCOT procedures.
- 21 (2) A market participant shall comply with ERCOT procedures and any official
22 interpretation of the Protocols issued by ERCOT or the commission.

1 (A) If a market participant disagrees with any provision of the Protocols or any
2 official interpretation of the Protocols, it may seek an amendment of the Protocols
3 as provided for in the Protocols, appeal an ERCOT official interpretation to the
4 commission, or both.

5 (B) A market participant appealing an official interpretation of the Protocols or
6 seeking an amendment to the Protocols shall comply with the Protocols unless and
7 until the interpretation is officially changed or the amendment is officially
8 adopted.

9 (C) A market participant may be excused from compliance with ERCOT
10 instructions or Protocol requirements only if such non-compliance is due to
11 communication or equipment failure beyond the reasonable control of the market
12 participant; if compliance would jeopardize public health and safety or the
13 reliability of the ERCOT transmission grid, or create risk of bodily harm or
14 damage to the equipment; if compliance would be inconsistent with facility
15 licensing, environmental, or legal requirements; if required by applicable law; or
16 for other good cause. A market participant is excused under this subparagraph
17 only for so long as the condition continues.

18 (3) Whenever the Protocols require that a market participant make its "best effort" or a
19 "good faith effort" to meet a requirement, or similar language, the market participant shall
20 act in accordance with the requirement unless:

21 (A) it is not technically possible to do so;

21

1 (B) doing so would jeopardize public health and safety or the reliability of the
2 ERCOT transmission grid, or would create a risk of bodily harm or damage to the
3 equipment;

4 (C) doing so would be inconsistent with facility licensing, environmental, or legal
5 requirements; or

6 (D) other good cause exists for excusing the requirement.

7 (4) When a market participant is not able to comply with a Protocol requirement or
8 official interpretation of a requirement, or honor a formal commitment to ERCOT, the
9 market participant has an obligation to notify ERCOT immediately upon learning of such
10 constraints and to notify ERCOT when the problem ceases. A market participant who
11 does not comply with a Protocol requirement or official interpretation of a requirement,
12 or honor a formal commitment to ERCOT, has the burden to demonstrate, in any
13 commission proceeding in which the failure to comply is raised, why it cannot comply
14 with the Protocol requirement or official interpretation of the requirement, or honor the
15 commitment.

16 (5) The commission staff may request information from a market participant concerning a
17 notification of failure to comply with a Protocol requirement or official interpretation of a
18 requirement, or honor a formal commitment to ERCOT. The market participant shall
19 provide a response that is detailed and reasonably complete, explaining the circumstances
20 surrounding the alleged failure, and shall provide documents and other materials relating
21 to such alleged failure to comply. The response shall be submitted to the commission
22 staff within five business days of a written request for information, unless commission
23 staff agrees to an extension.

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1 (6) A market participant's bids of energy and ancillary services shall be from resources
2 that are available and capable of performing, and shall be feasible within the limits of the
3 operating characteristics indicated in the resource plan, as defined in the Protocols, and
4 consistent with the applicable ramp rate, as specified in the Protocols.

5 (7) All statements, data and information provided by a market participant to market
6 publications and publishers of surveys and market indices for the computation of an
7 industry price index shall be true, accurate, reasonably complete, and shall be consistent
8 with the market participant's activities, subject to generally accepted standards of
9 confidentiality and industry standards. Market participants shall exercise due diligence to
10 prevent the release of materially inaccurate or misleading information.

11 (8) A market entity has an obligation to provide accurate and factual information and
12 shall not submit false or misleading information, or omit material information, in any
13 communication with ERCOT or with the commission. Market entities shall exercise due
14 diligence to ensure adherence to this provision throughout the entity.

15 (9) A market participant shall comply with all reporting requirements governing the
16 availability and maintenance of a generating unit or transmission facility, including
17 outage scheduling reporting requirements. A market participant shall immediately notify
18 ERCOT when capacity changes or resource limitations occur that materially affect the
19 availability of a unit or facility, the anticipated operation of its resources, or the ability to
20 comply with ERCOT dispatch instructions.

21 (10) A market participant shall comply with requests for information or data by ERCOT
22 as specified by the Protocols or ERCOT instructions within the time specified by ERCOT
23 instructions, or such other time agreed to by ERCOT and the market participant.



1 (11) When a Protocol provision or its applicability is unclear, or when a situation arises
2 that is not contemplated under the Protocols, a market entity seeking clarification of the
3 Protocols shall use the Protocol Revision Request (PRR) process provided in the
4 Protocols. If the PRR process is impractical or inappropriate under the circumstances, the
5 market entity may use the process for requesting formal Protocol clarifications or
6 interpretations described in subsection (i) of this section. This provision is not intended to
7 discourage day to day informal communication between market participants and ERCOT
8 staff.

9 (12) A market participant operating in the ERCOT markets or a member of the ERCOT
10 staff who identifies a provision in the ERCOT procedures that produces an outcome
11 inconsistent with the efficient and reliable operation of the ERCOT-administered markets
12 shall call the provision to the attention of ERCOT staff and the appropriate ERCOT
13 subcommittee. All market participants shall cooperate with the ERCOT subcommittees,
14 ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.

15 (13) A market participant shall establish and document internal procedures that instruct
16 its affected personnel on how to implement ERCOT procedures according to the
17 standards delineated in this section. Each market participant shall establish clear lines of
18 accountability for its market practices.

19 (g) **Prohibited activities.** Any act or practice of a market participant that materially and
20 adversely affects the reliability of the regional electric network or the proper accounting for the
21 production and delivery of electricity among market participants is considered a “prohibited
22 activity.” The term “prohibited activity” in this subsection excludes acts or practices expressly
23 allowed by the Protocols or by official interpretations of the Protocols and acts or practices

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1 conducted in compliance with express directions from ERCOT or commission rule or order or
2 other legal authority. The term “prohibited activity” includes, but is not limited to, the following
3 acts and practices that have been found to cause prices that are not reflective of competitive
4 market forces or to adversely affect the reliability of the electric network:

5 (1) A market participant shall not schedule, operate, or dispatch its generating units in a
6 way that creates artificial congestion.

7 (2) A market participant shall not execute pre-arranged offsetting trades of the same
8 product among the same parties, or through third party arrangements, which involve no
9 economic risk and no material net change in beneficial ownership.

10 (3) A market participant shall not offer reliability products to the market that cannot or
11 will not be provided if selected.

12 (4) A market participant shall not conduct trades that result in a misrepresentation of the
13 financial condition of the organization.

14 (5) A market participant shall not engage in fraudulent behavior related to its participation
15 in the wholesale market.

16 (6) A market participant shall not collude with other market participants to manipulate the
17 price or supply of power, allocate territories, customers or products, or otherwise
18 unlawfully restrain competition. This provision should be interpreted in accordance with
19 federal and state antitrust statutes and judicially-developed standards under such statutes
20 regarding collusion.

21 (7) A market participant shall not engage in market power abuse. Withholding of
22 production, whether economic withholding or physical withholding, by a market
23 participant who has market power, constitutes an abuse of market power.

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1 (h) **Defenses.** The term “prohibited activity” in subsection (g) of this section excludes acts or
2 practices that would otherwise be included, if the market entity establishes that its conduct served
3 a legitimate business purpose consistent with prices set by competitive market forces; and that it
4 did not know, and could not reasonably anticipate, that its actions would inflate prices, adversely
5 affect the reliability of the regional electric network, or adversely affect the proper accounting for
6 the production and delivery of electricity; or, if applicable, that it exercised due diligence to
7 prevent the excluded act or practice. The defenses established in this subsection may also be
8 asserted in instances in which a market participant is alleged to have violated subsection (f) of
9 this section. A market entity claiming an exclusion or defense under this subsection, or any other
10 type of affirmative defense, has the burden of proof to establish all of the elements of such
11 exclusion or defense.

12 (i) **Official interpretations and clarifications regarding the Protocols.** A market entity
13 seeking an interpretation or clarification of the Protocols shall use the PRR process contained in
14 the Protocols whenever possible. If an interpretation or clarification is needed to address an
15 unforeseen situation and there is not sufficient time to submit the issue to the PRR process, a
16 market entity may seek an official Protocol interpretation or clarification from ERCOT in
17 accordance with this subsection.

18 (1) ERCOT shall develop a process for formally addressing requests for clarification of
19 the Protocols submitted by market participants or issuing official interpretations regarding
20 the application of Protocol provisions and requirements. ERCOT shall respond to the
21 requestor within ten business days of ERCOT’s receipt of the request for interpretation or
22 clarification with either an official Protocol interpretation or a recommendation that the
23 requestor take the request through the PRR process.

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1 (2) ERCOT shall designate one or more ERCOT officials who will be authorized to
2 receive requests for clarification from, and issue responses to market participants, and to
3 issue official interpretations on behalf of ERCOT regarding the application of Protocol
4 provisions and requirements.

5 (3) The designated ERCOT official shall provide a copy of the clarification request to
6 commission staff upon receipt. The ERCOT official shall consult with ERCOT
7 operational or legal staff as appropriate and with commission staff before issuing an
8 official Protocol clarification or interpretation.

9 (4) The designated ERCOT official may decide, in consultation with the commission
10 staff, that the language for which a clarification is requested is ambiguous or for other
11 reason beyond ERCOT's ability to clarify, in which case the ERCOT official shall inform
12 the requestor, who may take the request through the PRR process provided for in the
13 Protocols.

14 (5) All official Protocol clarifications or interpretations that ERCOT issues in response to
15 a market participant's formal request or upon ERCOT's own initiative shall be sent out in
16 a market bulletin with the appropriate effective date specified to inform all market
17 participants, and a copy of the clarification or interpretation shall be maintained in a
18 manner that is accessible to market participants. Such response shall not contain
19 information that would identify the requesting market participant.

20 (6) A market participant may freely communicate informally with ERCOT employees,
21 however, the opinion of an individual ERCOT staff member not issued as an official
22 interpretation of ERCOT pursuant to this subsection may not be relied upon as an
23 affirmative defense by a market participant.

1 **(j) Role of ERCOT in enforcing operating standards.**

2 (1) ERCOT shall monitor material occurrences of non-compliance with ERCOT
3 procedures, which shall mean occurrences that have the potential to impede ERCOT
4 operations, or represent a risk to system reliability. Non-compliance indicators monitored
5 by ERCOT shall include, but shall not be limited to, material occurrences of ~~schedule~~
6 ~~control error~~, failing resource plan performance measures as established by ERCOT,
7 failure to follow dispatch instructions within the required time, failure to meet ancillary
8 services obligations, failure to submit mandatory bids or offers that may apply, and other
9 instances of non-compliance of a similar magnitude.

10 (A) ERCOT shall keep a record of all such material occurrences of non-
11 compliance with ERCOT procedures and shall develop a system for tracking
12 recurrence of such material occurrences of non-compliance.

13 (B) ERCOT shall promptly provide information to and respond to questions from
14 market participants to allow the market participant to understand and respond to
15 alleged material occurrences of non-compliance with ERCOT procedures.

16 However, this requirement does not relieve the market participant's operator from
17 responding to the ERCOT operator's instruction in a timely manner and shall not
18 be interpreted as allowing the market participant's operator to argue with the
19 ERCOT operator as to the need for compliance.

20 (C) ERCOT shall keep a record of the resolution of such material occurrences of
21 non-compliance and of remedial actions taken by the market participant in each
22 instance.

1 (D) ERCOT shall promptly provide information to and respond to questions
2 posed by the Reliability Monitor and the commission;

3 (E) ERCOT shall provide to the Reliability Monitor and the commission the
4 support and cooperation the commission determines is necessary for the
5 Reliability Monitor and the commission to perform their functions.

6 (k) **Responsibilities of the Reliability Monitor.** The Reliability Monitor shall gather and
7 analyze information and data as needed for its reliability monitoring activities. The
8 Reliability Monitor works under the direction and supervision of the commission. The
9 Reliability Monitor shall protect confidential information and data in accordance with the
10 confidentiality standards established in PURA, the ERCOT protocols, commission rules,
11 and other applicable laws. The requirements related to the level of protection to be
12 afforded information protected by these laws and rules are incorporated into this section.
13 The duties and responsibilities of the Reliability Monitor may include, but are not limited
14 to:

15 (A1) Monitoring, investigating, auditing, and reporting to the commission
16 regarding compliance with reliability-related ERCOT procedures, including
17 Protocols and Operating Guides, the reliability-related provisions of the
18 commission's rules, and reliability-related provisions of PURA by Market
19 Entities;

20 (B2) Providing reliability-related subject-matter advice, expertise, and assistance
21 to the commission in the conduct of the commission's oversight and enforcement
22 activities; and

1 ~~(C3)~~ Providing expert advice, analysis, reports, and testimony services relating to
2 the Reliability Monitor's analysis and findings as part of the commission staff's
3 case in enforcement proceedings.

4
5 (l) **Selection of the Reliability Monitor.** The commission and ERCOT shall contract with
6 an entity selected by the commission to act as the commission's Reliability Monitor. The
7 Reliability Monitor shall be independent from ERCOT and is not subject to the
8 supervision of ERCOT with respect to its monitoring and investigative activities.

9 (1) In selecting the Reliability Monitor, the commission must consider whether the
10 Reliability Monitor satisfies ~~will give great weight to~~ the following criteria:

11 (A) Independent, objective, and without ~~Avoidance of possible conflicts of~~
12 interest;

13 (B) Experience performing compliance monitoring of reliability-related laws;

14 (C) Familiarity with the ERCOT Region and demonstrated understanding in
15 reliability-related ERCOT protocols, procedures, and other operating standards;

16 (D) Demonstrated ability to manage confidential information appropriately; and

17 (E) Cost effectiveness.

18 (m) **Funding of the Reliability Monitor.** ERCOT shall fund the operations of Reliability
19 Monitor from the fee authorized by PURA § 39.151.

20 ~~(k)~~ (n) **Standards for record keeping.**

21 (1) A market participant who schedules through a qualified scheduling entity (QSE)
22 that submits schedules to ERCOT on behalf of more than one market participants
23 shall maintain records to show scheduling, offer, and bidding information for all

1 schedules, offers, and bids that its QSE has submitted to ERCOT on its behalf, by
2 interval.

3 (2) All market participants and ERCOT shall maintain records relative to market
4 participants' activities in the ERCOT-administered markets to show:

5 (A) information on transactions, as defined in §25.93(c)(3) of this title
6 (relating to Quarterly Wholesale Electricity Transaction Reports),
7 including the date, type of transaction, amount of transaction, and entities
8 involved;

9 (B) information and documentation of all planned, maintenance, and forced
10 generation and transmission outages including all documentation
11 necessary to document the reason for the outage;

12 (C) information described under this subsection including transaction
13 information, information on pricing, settlement information, and other
14 information that would be relevant to an investigation under this section,
15 and that has been disclosed to market publications and publishers of
16 surveys and price indices, including the date, information disclosed, and
17 the name of the employees involved in providing the information as well
18 as the publisher to whom it was provided; and

19 (D) reports of the market participant's financial information given to external
20 parties, including the date, financial results reported, and the party to
21 whom financial information was reported, if applicable.

22 (3) After the effective date of this section, all records referred to in this subsection
23 except verbally dispatch instructions (VDIs) shall be kept for a minimum of three

1 years from the date of the event. ERCOT shall keep VDI records for a minimum
2 of two years. All records shall be made available to the commission for inspection
3 upon request.

4 (4) A market participant shall, upon request from the commission, provide the
5 information referred to in this subsection to the commission, and may, if
6 applicable, provide it under a confidentiality agreement or protective order
7 pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and
8 Other Material).

9 (o) **Investigation.** The commission staff may initiate an informal fact-finding review based
10 on a complaint or upon its own initiative to obtain information regarding facts, conditions,
11 practices, or matters that it may find necessary or proper to ascertain in order to evaluate
12 whether any market entity has violated any provision of this section.

13 (1) The commission staff will contact the market entity whose activities are in
14 question to provide the market entity an opportunity to explain its activities. The
15 commission staff may require the market entity to provide information reasonably
16 necessary for the purposes described in this subsection.

17 (2) If the market entity asserts that the information requested by commission staff is
18 confidential, the information shall be provided to commission staff as confidential
19 information related to settlement negotiations or other asserted bases for
20 confidentiality pursuant to §22.71(d)(4) of this title.

21 (3) If after conducting its fact-finding review, the commission staff determines that a
22 market entity may have violated this section, the commission staff may request

1 that the commission initiate a formal investigation against the market entity
2 pursuant to §22.241 of this title (relating to Investigations).

3 (4) If, as a result of its investigation, commission staff determines that there is
4 evidence of a violation of this section by a market entity, the commission staff
5 may request that the commission initiate appropriate enforcement action against
6 the market entity. A notice of violation requesting administrative penalties or
7 disgorgement of excess revenues shall comply with the requirements of §22.246
8 of this title (relating to Administrative Penalties). Adjudication of a notice of
9 violation requesting both an administrative penalty and disgorgement of excess
10 revenues may be conducted within a single contested case proceeding.
11 Additionally, for alleged violations that have been reviewed in the informal
12 procedure established by this subsection, the commission staff shall include as part
13 of its prima facie case:

14 (A) a statement either that –

15 (i) the commission staff has conducted the investigation allowed by
16 this section; or

17 (ii) the market entity has failed to comply with the requirements of
18 paragraph (5) of this subsection;

19 (B) a summary of the evidence indicating to the commission staff that the
20 market entity has violated one of the provisions of this section;

21 (C) a summary of any evidence indicating to the commission staff that the
22 market entity benefited from the alleged violation or materially harmed the
23 market; and

- 1 (D) a statement that the staff has concluded that the market entity failed
2 to demonstrate, in the course of the investigation, the applicability of an exclusion
3 or affirmative defense under subsection (h) of this section.
- 4 (5) A market entity subject to an informal fact-finding review or a formal
5 investigation by the commission staff has an obligation to fully cooperate with the
6 investigation, to make its company representatives available within a reasonable
7 period of time to discuss the subject of the investigation with the commission
8 staff, and to respond to the commission staff's requests for information within a
9 reasonable time frame as requested by the commission staff.
- 10 (6) The procedure for informal fact-finding review established in this subsection does
11 not prevent any person or commission staff from filing a formal complaint with
12 the commission pursuant to §22.242 of this title (relating to Complaints) or
13 pursuing other relief available by law.
- 14 (7) If, in the course of its investigation under this subsection, commission staff
15 determines that formal enforcement action is not warranted, the commission staff
16 may work with the market entity to ensure any issues of concern are addressed and
17 appropriate remedial actions have been taken.
- 18 (p) **Remedies.** If the commission finds that a market entity is in violation of this section, the
19 commission may seek or impose any legal remedy it determines appropriate for the violation
20 involved, provided that the remedy of disgorgement of excess revenues shall be imposed for
21 violations and continuing violations of PURA §39.157 and may be imposed for other violations
22 of this section.
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9 This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be
10 a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility
11 Commission of Texas that §25.503, relating to relating to Oversight of Wholesale Market
12 Participants, is hereby adopted with changes to the text as proposed.

13

14 **SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2015.**

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PUBLIC UTILITY COMMISSION OF TEXAS

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DONNA L. NELSON, CHAIRMAN

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KENNETH W. ANDERSON, JR., COMMISSIONER

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BRANDY MARTY MARQUEZ, COMMISSIONER

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