



Control Number: 44650



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PUBLIC UTILITY COMMISSION  
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# OPEN MEETING COVER SHEET

**MEETING DATE:** May 1, 2015

**DATE DELIVERED:** April 28, 2015 (CORRECTED)

**AGENDA ITEM NO.:** 12

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

**ACTION REQUESTED:** Discussion and possible action with respect to Proposal for Publication

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# *Public Utility Commission of Texas*

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## **Memorandum**

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

FROM: Thomas S. Hunter  
Agency Counsel

DATE: April 28, 2015

SUBJECT: May 1, Open Meeting; Item No. 12; Project No. 44650-- *Rulemaking Proceeding to Amend P.U.C. SUBST. R. 25.503, Relating to Oversight of Wholesale Market Participants* (Draft Proposal for Publication)

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Attached is a corrected draft Proposal for Publication pertaining to P.U.C. SUBST. R. 25.503. This version should be substituted for the version filed on April 24, 2015. The April 24 version of the preamble failed to highlight many of the proposed amendments to §25.503 as new language. This was an inadvertent formatting error. Other than the formatting issues, there are no other changes to the preamble filed on April 24. I apologize for any confusion.

1 PROJECT NO. 44650

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

3  
4 (STAFF RECOMMENDATION)  
5 PROPOSAL FOR PUBLICATION OF AMENDMENT OF § 25.503 FOR  
6 CONSIDERATION AT THE MAY 1, 2015 OPEN MEETING  
7

8 The Public Utility Commission of Texas (commission) proposes amendments to §25.503,  
9 relating to Oversight of Wholesale Market Participants. The proposed amendments will revise  
10 the process the Electric Reliability Council of Texas (ERCOT) uses to monitor wholesale market  
11 participants. The primary purpose of the proposed amendments is to update the process used by ERCOT  
12 to meet its obligation to monitor compliance by market participants with the ERCOT wholesale market  
13 reliability-related requirements. Project Number 44650 is assigned to this proceeding.

14  
15 Thomas S. Hunter, Agency Counsel, has determined that for each year of the first five-year  
16 period the proposed section is in effect there will be no fiscal implications for state or local  
17 government as a result of enforcing or administering the section.

18  
19 Mr. Hunter has determined that for each year of the first five years the proposed section is in  
20 effect the public benefit anticipated as a result of enforcing the section will be the adoption of a  
21 more efficient process to be used by ERCOT and the commission to monitor market participants'  
22 compliance with wholesale market reliability requirements. There will be no adverse economic  
23 effect on small businesses or micro-businesses as a result of enforcing this section. Therefore,

1 no regulatory flexibility analysis is required. There is no anticipated economic cost to persons  
2 who are required to comply with the section as proposed.

3

4 Mr. Hunter has also determined that for each year of the first five years the proposed section is in  
5 effect there should be no effect on a local economy, and therefore no local employment impact  
6 statement is required under Administrative Procedure Act (APA), Texas Government Code  
7 §2001.022

8

9 The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to  
10 the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's  
11 offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas  
12 78701 at 10:00 a.m. on Wednesday, June 17, 2015. The request for a public hearing must be  
13 received within 30 days after publication.

14

15 Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility  
16 Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-  
17 3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment  
18 are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a  
19 manner consistent with the organization of the proposed rule(s). The commission invites specific  
20 comments regarding the costs associated with, and benefits that will be gained by,  
21 implementation of the proposed section. The commission will consider the costs and benefits in  
22 deciding whether to adopt the section. All comments should refer to Project Number 44650.

23

1 This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code  
2 Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility  
3 Commission with the authority to make and enforce rules reasonably required in the exercise of  
4 its powers and jurisdiction, and specifically, PURA §39.151 which grants the commission  
5 authority to adopt and enforce rules concerning the reliability of the regional electrical network.  
6 Section 39.151 further provides that the commission may delegate to an independent  
7 organization responsibilities for establishing or enforcing such rules, which are subject to  
8 commission oversight and review.

9

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

11

1 (a)-(b) (No change).

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

4 (6) **Reliability Monitor**—A person or entity selected by ERCOT and approved by  
5 the commission to monitor compliance with all state reliability-related laws, rules,  
6 protocols, processes and any other operating standards applicable to the ERCOT region  
7 on behalf of the commission.

8 ~~(6)~~(7) **Market participant** -- A market entity other than ERCOT.

9 ~~(7)~~ (8) **Resource** -- Facilities capable of providing electrical energy or load capable of  
10 reducing or increasing the need for electrical energy or providing short-term reserves into  
11 the ERCOT system. This includes generation resources and loads acting as resources  
12 (LaaRs).

13 (d)-(i) (No change).

14 (i) **Role of ERCOT in enforcing operating standards.**

15 (1) ERCOT shall ~~develop and submit for commission approval a process to monitor~~  
16 material occurrences of non-compliance with ERCOT procedures, which shall mean  
17 occurrences that have the potential to impede ERCOT operations, or represent a risk to  
18 system reliability. Non-compliance indicators monitored by ERCOT shall include, but  
19 shall not be limited to, material occurrences of schedule control error, failing resource  
20 plan performance measures as established by ERCOT, failure to follow dispatch  
21 instructions within the required time, failure to meet ancillary services obligations, failure  
22 to submit mandatory bids or offers that may apply, and other instances of non-compliance  
23 of a similar magnitude.

1 |           (4A) ERCOT shall keep a record of all such material occurrences of non-  
2 |           compliance with ERCOT procedures and shall develop a system for tracking  
3 |           recurrence of such material occurrences of non-compliance.

4 |           (2B) ERCOT shall promptly provide information to and respond to questions  
5 |           from market participants to allow the market participant to understand and  
6 |           respond to alleged material occurrences of non-compliance with ERCOT  
7 |           procedures. However, this requirement does not relieve the market participant's  
8 |           operator from responding to the ERCOT operator's instruction in a timely manner  
9 |           and should not be interpreted as allowing the market participant's operator to  
10 |          argue with the ERCOT operator as to the need for compliance.

11 |          (3C) ERCOT shall keep a record of the resolution of such material occurrences of  
12 |          non-compliance and of remedial actions taken by the market participant in each  
13 |          instance.

14 |          (D) ERCOT shall promptly provide information to and respond to questions  
15 |          posed by the Reliability Monitor and the commission.

16 |          (4) ~~ERCOT shall inform the commission staff immediately if the material occurrence of~~  
17 |          ~~non-compliance is not resolved after the system operator has orally informed the market~~  
18 |          ~~participant of the problem. The occurrence is not resolved if:~~

19 |                (A) ~~the same instance of non-compliance is repeated more than once in a six-~~  
20 |                ~~month period; or~~

21 |                (B) the occurrence continues after ERCOT has first orally notified the operator of  
22 |                the market participant, and subsequently notified, orally or in writing, the  
23 |                supervisor of the operator of the market participant.



1       (2) To fulfill its responsibilities under subsection (1), ERCOT shall select and the  
2       commission shall approve a third party to serve as the commission's Reliability Monitor  
3       for the ERCOT Region. The Reliability Monitor will perform the following functions:

4               (A) Monitor, investigate audit, and report to the commission regarding  
5               compliance with reliability-related ERCOT Protocols and Operating Guides, the  
6               reliability-related provisions of the commission's rules, and reliability-related  
7               provisions of PURA by Market Entities;

8               (B) Review proposed changes to reliability-related ERCOT Protocols and  
9               Operating Guides, and report concerns about reliability impacts to the  
10              commission;

11              (C) Provide reliability-related subject-matter advice, expertise, and assistance to  
12              the commission in the conduct of the commission's oversight and enforcement  
13              activities; and

14              (D) Provide expert advice, analysis, reports, and testimony services relating to the  
15              Reliability Monitor's analysis and findings as part of the commission staff's case  
16              in enforcement proceedings.

17       (3) In selecting the Reliability Monitor, ERCOT shall give great weight to the following  
18       criteria:

19       \_\_\_\_\_ (A) Avoidance of possible conflicts of interest;

20       \_\_\_\_\_ (B) Experience performing compliance monitoring of reliability-related laws;

21       \_\_\_\_\_ (C) Familiarity with the ERCOT Region;

22       \_\_\_\_\_ (D) Demonstrated ability to manage confidential information appropriately; and

23       \_\_\_\_\_ (E) Cost effectiveness.

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

4 (5) ERCOT shall use money from the fee authorized by Section 39.151(e) to pay for the  
5 Reliability Monitor's activities.

6 (6) The Reliability Monitor and ERCOT shall operate under the supervision and  
7 oversight of the commission. The commission shall retain all enforcement authority  
8 related to possible non-compliance of ERCOT procedures. The Reliability Monitor and  
9 ERCOT act as the commission's representatives with regard to enforcement matters.

10 Communications among the commission, the reliability monitor, and ERCOT are subject  
11 to attorney-client privileges and materials prepared, mental impressions developed, and  
12 communications made in anticipation of litigation are subject to work-product privileges,  
13 except communications by or from ERCOT when ERCOT is the subject of the  
14 enforcement matter.

15 (7) ERCOT and the commission shall enter into a memorandum of understanding (MOU)  
16 to specify ERCOT's duties and responsibilities to the commission in fulfilling the  
17 requirements of this section.

18 (k)-(m) (No change).

19

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

3

4           **ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015 BY THE**  
5                           **PUBLIC UTILITY COMMISSION OF TEXAS**  
6                           **ADRIANA A. GONZALES**

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