



Control Number: 44650



Item Number: 8

Addendum StartPage: 0

PROJECT NO. 44650

RECEIVED

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

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PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION
OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENT OF §25.503
AS APPROVED AT THE MAY 21, 2015 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.503, relating to Oversight of Wholesale Market Participants. The primary purpose of the proposed 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 ERCOT Compliance Process. It is necessary to amend §25.503 to reflect the changes that have occurred since the rule was adopted in 2004.

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

Under the rule as proposed, the commission and ERCOT would enter in a contract with an entity selected by the commission to be the commission's reliability monitor. While ERCOT will continue to fund the operations of the reliability monitor from the system administrative fee, the proposed rule clarifies that the reliability monitor works under the direction and supervision of the commission. The proposed rule also outlines the criteria to be used by the commission in selecting the reliability monitor.

Project Number 44650 is assigned to this proceeding.

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

Mr. Hunter 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 adoption of a more efficient process to be used by ERCOT and the commission to monitor market participants' compliance with wholesale market reliability requirements. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 10:00 a.m. on Tuesday, July 7, 2015. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a

manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 44650.

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

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

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

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

(1)-(5) (No change.)

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

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

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

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

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

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

- (1) ERCOT shall keep a record of all such material occurrences of non-compliance with ERCOT procedures and shall develop a system for tracking recurrence of such material occurrences of non-compliance. ERCOT shall inform commission staff and the reliability monitor of any material occurrences of non-compliance by any market participant.
- (2) ERCOT shall promptly provide information to and respond to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures. However, this requirement does not relieve the market participant's operator from responding to the ERCOT operator's instruction in a timely manner and ~~shall~~ not be interpreted as allowing the market participant's operator to argue with the ERCOT operator as to the need for compliance.
- (3) ERCOT shall keep a record of the resolution of such material occurrences of non-compliance and of remedial actions taken by the market participant in each instance.
- ~~(4)~~ ERCOT shall promptly provide information to and respond to questions posed by the reliability monitor and the commission;
- ~~(5)~~ ERCOT shall provide to the reliability monitor and the commission the support and cooperation the commission determines is necessary for the reliability monitor and the commission to perform their functions.
- ~~(4)~~ ~~ERCOT shall inform the commission staff immediately if the material occurrence of non-compliance is not resolved after the system operator has orally informed the market participant of the problem. The occurrence is not resolved if:~~

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

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

(k) Responsibilities of the Reliability Monitor. The reliability monitor shall gather and analyze information and data as needed for its reliability monitoring activities. The reliability monitor works under the direction and supervision of the commission. The duties and responsibilities of the reliability monitor may include, but are not limited to:

- (1) Monitoring, investigating, auditing, and reporting to the commission regarding compliance with reliability-related ERCOT procedures, including Protocols and Operating Guides, the reliability-related provisions of the commission's rules, and reliability-related provisions of the commission's rules, and reliability-related provisions of PURA by Market Entities;
- (2) Providing reliability-related subject matter advice, expertise, and assistance to the commission in the conduct of the commission's oversight and enforcement activities; and
- (3) Providing expert advice, analysis, reports, and testimony services relating to the reliability monitor's analysis and findings as part of the commission staff's case in enforcement proceedings.

(l) In selecting the reliability monitor, the commission will give great weight to the following criteria:

- (1) Avoidance of possible conflicts of interest;
- (2) Experience performing compliance monitoring of reliability-related laws;
- (3) Familiarity with the ERCOT Region;
- (4) Demonstrated ability to manage confidential information appropriately; and
- (5) Cost effectiveness.

(m) ERCOT shall fund the operations of reliability monitor from the fee authorized by PURA §39.151.

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

- (1) A market participant who schedules through a qualified scheduling entity (QSE) that submits schedules to ERCOT on behalf of more than one market participants shall maintain records to show scheduling and bidding information for all schedules and bids that its QSE has submitted to ERCOT on its behalf, by interval.
- (2) All market participants and ERCOT shall maintain records relative to market participants' activities in the ERCOT-administered markets to show:
 - (A) information on transactions, as defined in §25.93(c)(3) of this title (relating to Quarterly Wholesale Electricity Transaction Reports), including the date, type of transaction, amount of transaction, and entities involved;

- (B) information and documentation of all planned and forced generation and transmission outages including all documentation necessary to document the reason for the outage;
 - (C) information described under this subsection including transaction information, information on pricing, settlement information, and other information that would be relevant to an investigation under this section, and that has been disclosed to market publications and publishers of surveys and price indices, including the date, information disclosed, and the name of the employees involved in providing the information as well as the publisher to whom it was provided; and
 - (D) reports of the market participant's financial information given to external parties, including the date, financial results reported, and the party to whom financial information was reported, if applicable.
- (3) After the effective date of this section, all records referred to in this subsection except verbally dispatch instructions (VDIs) shall be kept for a minimum of three years from the date of the event. ERCOT shall keep VDI records for a minimum of two years. All records shall be made available to the commission for inspection upon request.
- (4) A market participant shall, upon request from the commission, provide the information referred to in this subsection to the commission, and may, if applicable, provide it under a confidentiality agreement or protective order pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and Other Material).

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

- (1) The commission staff will contact the market entity whose activities are in question to provide the market entity an opportunity to explain its activities. The commission staff may require the market entity to provide information reasonably necessary for the purposes described in this subsection.
- (2) If the market entity asserts that the information requested by commission staff is confidential, the information shall be provided to commission staff as confidential information related to settlement negotiations or other asserted bases for confidentiality pursuant to §22.71(d)(4) of this title.
- (3) If after conducting its fact-finding review, the commission staff determines that a market entity may have violated this section, the commission staff may request that the commission initiate a formal investigation against the market entity pursuant to §22.241 of this title (relating to Investigations).
- (4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues shall comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of

violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal procedure established by this subsection, the commission staff shall include as part of its prima facie case:

- (A) a statement either that –
 - (i) the commission staff has conducted the investigation allowed by this section; or
 - (ii) the market ~~entity~~participant has failed to comply with the requirements of paragraph (5) of this subsection;
 - (B) a summary of the evidence indicating to the commission staff that the market ~~entity~~participant has violated one of the provisions of this section;
 - (C) a summary of any evidence indicating to the commission staff that the market ~~entity~~participant benefited from the alleged violation or materially harmed the market; and
 - (D) a statement that the staff has concluded that the market ~~entity~~participant failed to demonstrate, in the course of the investigation, the applicability of an exclusion or affirmative defense under subsection (h) of this section.
- (5) A market entity subject to an informal fact-finding review or a formal investigation by the commission staff has an obligation to fully cooperate with the investigation, to make its company representatives available within a reasonable period of time to discuss the subject of the investigation with the commission

staff, and to respond to the commission staff's requests for information within a reasonable time frame as requested by the commission staff.

- (6) The procedure for informal fact-finding review established in this subsection does not prevent any person or commission staff from filing a formal complaint with the commission pursuant to §22.242 of this title (relating to Complaints) or pursuing other relief available by law.

~~(p)(m)~~ **Remedies.** If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues shall be imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

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 22nd DAY OF MAY 2015 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**