

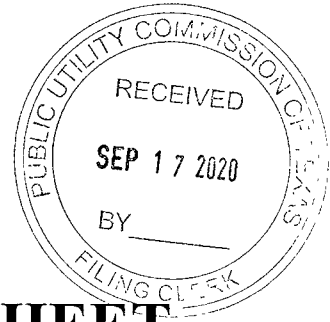


Control Number: 50602



Item Number: 11

Addendum StartPage: 0



OPEN MEETING COVER SHEET

MEETING DATE: September 24, 2020

DATE DELIVERED: September 17, 2020

AGENDA ITEM NO.: 15

CAPTION: Project no. 50602 – *Review of 16 TAC § 25.503, Oversight of Wholesale Market Participants*

DESCRIPTION: Discussion and possible action with respect to Proposal for Adoption

Distribution List:
Commissioners' Offices (6)
Central Records (Open Meeting Notebook)
Robles, Rachelle (5)
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Agenda
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Public Utility Commission of Texas

Commissioner Memorandum

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: David Smeltzer, Rules Division

DATE: September 17, 2020

RE: September 24, 2020 Open Meeting – Item No. 15
Project No. 50602 – Review of 16 TAC § 25.503, Oversight of Wholesale Market Participants (Proposal for Adoption)

Attached for your consideration is a draft proposal for adoption of amendments to 16 Texas Administrative Code (TAC) §25.503, relating to oversight of wholesale market participants. These amendments update the process used by the Commission to select the entity to monitor wholesale market reliability-related requirements for the Electric Reliability Council of Texas (ERCOT). These amendments also provide the Commission discretion over whether to select such an entity. These amendments also make other minor changes.

The Commission received comments on the proposed amendments from the Office of Public Utility Counsel (OPUC); ERCOT; and the Texas Industrial Electric Consumers (TIEC). Commission Staff recommends changes to the proposal in response to these comments.

PROJECT NO. 50602

REVIEW OF 16 TAC § 25.503, § PUBLIC UTILITY COMMISSION
OVERSIGHT OF WHOLESALE §
MARKET PARTICIPANTS § OF TEXAS

(STAFF RECOMMENDATION)
ORDER AMENDING §25.503
FOR CONSIDERATION AT THE SEPTEMBER 24, 2020 OPEN MEETING

1 The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas
2 Administrative Code (TAC) §25.503, relating to oversight of wholesale market participants, with
3 changes to the proposed text as published in the August 14, 2020 issue of the *Texas Register* (45
4 TexReg 5569). These amendments update the process used by the commission to select the
5 entity to monitor wholesale market reliability-related requirements for the Electric Reliability
6 Council of Texas (ERCOT). These amendments also provide the commission discretion over
7 whether to select such an entity. These amendments are adopted under Project Number 50602.

8

9 The commission received comments on the proposed amendments from the Office of Public
10 Utility Counsel (OPUC), ERCOT, and Texas Industrial Energy Consumers (TIEC).

11

12 ***General Comments***

13 OPUC filed comments supporting the commission's efforts to broaden the pool of candidates
14 that are eligible to serve as the Reliability Monitor in the ERCOT wholesale market and
15 recommending that the commission adopt the proposed amendments. OPUC argued that
16 expanding the pool of candidates would introduce more competition to the selection process and
17 ultimately lower costs for residential and small commercial customers in the ERCOT market.

18

1 TIEC filed comments explaining that the Reliability Monitor serves an important role in ensuring
2 compliance with reliability standards under PURA, commission rules, and ERCOT requirements.
3 TIEC also indicated that it could envision scenarios where it would be beneficial for entities
4 other than the current Reliability Monitor, such as ERCOT, to act as the Reliability Monitor.
5 TIEC stated that the commission should have the flexibility to select the appropriate entity as
6 circumstances warrant. TIEC further emphasized the importance of the Reliability Monitor
7 performing its role with “[i]ndependence, objectivity, and the absence of potential conflicts of
8 interest,” as required by the commission’s proposed amendments.

9

10 *Commission Response*

11 **The general comments filed by the commenters did not request any changes to the**
12 **proposed amendments, pose any questions, or present any issues requiring the**
13 **commission’s response.**

14

15 *Changes to §25.503(j), Role of ERCOT in Enforcing Operating Standards*

16 The commission added language to §25.503(j) in response to comments made by TIEC related to
17 §25.503(k). These changes are discussed in the commission’s response under §25.503(k).

18

19 *Comments on 16 TAC §25.503(k), Responsibilities of the Reliability Monitor*

20 TIEC recommended that the commission include language that would limit the ability of
21 ERCOT personnel with operational responsibilities to participate in the activities of the
22 Reliability Monitor. In particular, with regard to the possibility that the commission select
23 ERCOT as the Reliability Monitor, TIEC stated that “[i]f the Reliability Monitor is a department

1 within ERCOT, it is important to take precautions to ensure that [the] Reliability Monitor's
2 personnel and activities will be appropriately segregated from the operational side."

3
4 TIEC argued that ERCOT operational personnel, through either their operational decisions or the
5 instructions, requests, or recommendations that they provide to market participants, may play a
6 role in or alongside the occurrence of a violation. TIEC contended that these personnel and their
7 supervisors might be relevant fact witnesses, but they should not be in a position to provide
8 expert analysis, testimony, or subjective recommendations in a compliance proceeding. TIEC
9 argued that in these situations, ERCOT's role in the enforcement action could be motivated by,
10 or perceived to be motivated by, self-interest.

11
12 TIEC recommended the addition of specific language to §25.503(k): "The Reliability Monitor
13 must not include any persons who currently have operational responsibilities within the ERCOT
14 market. The Reliability Monitor may rely on ERCOT personnel with operational responsibilities
15 to provide relevant facts, but shall not rely on such personnel for expert analysis, opinions, or
16 testimony."

17
18 *Commission Response*

19 **The commission declines to adopt the language recommended by TIEC that would limit the**
20 **ability of ERCOT personnel with operational responsibilities to participate in the activities**
21 **of the Reliability Monitor. The commission agrees with TIEC that actions taken by**
22 **ERCOT operational personnel can be material in wholesale investigations. However, the**
23 **level of separation between the Reliability Monitor and ERCOT operational personnel**

1 need not be as absolute as TIEC recommends. Rather, the Reliability Monitor must
2 operate with enough independence to provide an objective analysis of ERCOT's role in or
3 around occurrences of non-compliance. If the commission directs ERCOT to assume all or
4 part of the duties of the Reliability Monitor, the necessary degree of structural separation
5 between the Reliability Monitor and ERCOT will depend upon the duties and
6 responsibilities assumed.

7
8 By design, ERCOT plays an active role in the compliance process. §25.503(j) requires
9 ERCOT to "monitor material occurrences of non-compliance with ERCOT procedures,"
10 "promptly provide information to and respond to questions posed by the Reliability
11 Monitor and the commission," and "provide to the Reliability Monitor and the commission
12 the support and cooperation the commission determines is necessary for the Reliability
13 Monitor and the commission to perform their functions." To accomplish this, ERCOT
14 must, necessarily, provide expert analysis and opinions on whether a behavior was an
15 occurrence of non-compliance, whether the occurrence was material, and whether it posed
16 a reliability risk. TIEC's language prohibiting the Reliability Monitor from "rely[ing] on
17 [ERCOT operational] personnel for expert analysis, opinions, or testimony" could stifle the
18 exchange of information and expertise between ERCOT and the Reliability Monitor, and
19 may reduce the Reliability Monitor's ability to thoroughly investigate compliance issues.

20
21 The commission does, however, agree with TIEC that the Reliability Monitor needs to have
22 enough independence from ERCOT operational personnel to provide the commission with
23 objective analysis on the role of ERCOT in potential occurrences of non-compliance. The

1 degree of separation between ERCOT operational personnel and the Reliability Monitor
2 necessary to achieve adequate independence depends upon the entity that the commission
3 selects to assume the role.

4
5 Although stylistic changes were proposed to §25.503(l)(1), both existing §25.503(l)(1) and
6 proposed §25.503(l)(1) require the commission to consider the entity's independence,
7 objectivity, and the absence of potential conflicts of interest as a part of the selection
8 process. This requirement provides a significant safeguard against the ability of ERCOT
9 operational personnel, or any other market entity, to unduly influence the
10 recommendations that the Reliability Monitor provides to the commission.

11
12 To further address this issue, the commission adds the following language to §25.503(l): “If
13 the commission selects an entity other than ERCOT to act as the Reliability Monitor, the
14 Reliability Monitor must be independent from ERCOT and is not subject to the
15 supervision of ERCOT with respect to its monitoring and investigative activities.”

16 Together, these provisions provide sufficient protection against undue influence in the
17 future.

18
19 If the commission selects ERCOT to perform the duties of the Reliability Monitor, the risk
20 of ERCOT operational personnel influencing the activities of the personnel assigned to
21 perform those duties will increase. To address this scenario, the commission adds the
22 following language to §25.503(j): “If directed by the commission, ERCOT must assume all
23 or part of the duties and responsibilities of the Reliability Monitor under (k). ERCOT
24 must assume these duties and responsibilities, including establishing appropriate

1 safeguards to prevent conflicts of interest and ensure the independence and objectivity of
2 ERCOT personnel with respect to the duties and responsibilities assumed, in the manner
3 prescribed by the commission.”
4

5 Because the commission has authority under PURA §39.151 to direct ERCOT to assume all
6 or part of the duties and responsibilities of the Reliability Monitor, the types of safeguards
7 required will vary depending upon the duties transferred. This language will allow the
8 commission to appropriately tailor the safeguards it puts in place to the situation. These
9 safeguards will be further supplemented by a number of other provisions that ERCOT is
10 subject to, such as its obligation as a market entity under §25.503(f)(8) to “provide accurate
11 and factual information and...not submit false or misleading information, or omit material
12 information, in any communication with...the commission,” and to “exercise due diligence
13 to ensure adherence to this provision throughout [ERCOT].” In the context of ERCOT
14 personnel fulfilling the duties and responsibilities of the Reliability Monitor, the
15 commission considers the actions that any ERCOT employee played in or around an
16 occurrence of non-compliance reported to the commission to be material information, as
17 well as the name and position of any person who contributed to any recommendation
18 provided to the commission related to such an occurrence. The commission expects
19 commission staff to consider the possible influence of ERCOT personnel in or around an
20 occurrence of non-compliance when deciding whether to pursue an enforcement action and
21 what magnitude of penalty to seek.
22
23

1 *Comments on 16 TAC §25.503(l) – Selection of the Reliability Monitor*

2 ERCOT recommended that the commission retain the existing requirement in §25.503(l) that the
3 commission and ERCOT enter into a contract with the Reliability Monitor when the Reliability
4 Monitor is an entity other than ERCOT. ERCOT argued that §25.503 outlines the general roles
5 and responsibilities of ERCOT and the Reliability Monitor, but a requirement that the
6 commission and ERCOT contract with the Reliability Monitor ensures the parties will more
7 specifically detail their respective obligations and expectations. ERCOT explained that its
8 contract with the current reliability monitor “contains myriad terms and obligations that are not
9 identified in 25.503, and therefore helps provide additional guidance and accountability among
10 the parties to that agreement.” ERCOT further explained that, while the absence of a contractual
11 mandate would not prohibit the commission and ERCOT from contracting with a future
12 reliability monitor, an express requirement would provide clarity on the issue.

13

14 **Commission Response:**

15 **The commission agrees with ERCOT that §25.503 does not detail all of the obligations,**
16 **expectations, and relationships among the commission, ERCOT, and the Reliability**
17 **Monitor. The commission adds a requirement that if the commission selects an entity other**
18 **than ERCOT to act as the Reliability Monitor, the commission and ERCOT will enter into**
19 **a contract with the selected entity.**

20

21 All comments, including any not specifically referenced herein, were fully considered by the
22 commission. In adopting these amendments, the commission makes other minor modifications
23 for the purpose of clarifying its intent.

1

2 These amendments are adopted under the Public Utility Regulatory Act, Tex. Util. Code §14.002
3 which provides the commission with the authority to make and enforce rules reasonably required
4 in the exercise of its powers and jurisdiction; and §39.151, which grants the commission
5 authority to adopt and enforce rules concerning 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 and §39.151.

11

1 **§25.503. Oversight of Wholesale Market Participants.**

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

8 (1)-(8) (No change.)

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

13

14 (b) (No change.)

15

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

18 (1)-(2) (No change.)

19 (3) **ERCOT procedures** -- Documents that contain the scheduling, operating,
20 planning, reliability, and settlement procedures, standards, and criteria that are
21 public and in effect in the ERCOT power region, including the ERCOT Protocols,
22 ERCOT Operating Guides, and Other Binding Documents as amended from time
23 to time but excluding ERCOT's internal administrative procedures. The Protocols

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

5 (4)-(8) (No change.)

6
7 (d)-(e) (No change.)

8
9 (f) **Duties of market entities.**

10 (1) Each market participant must be knowledgeable about ERCOT procedures.

11 (2) A market participant must comply with ERCOT procedures and any official
12 interpretation of the Protocols issued by ERCOT or the commission.

13 (A) (No change.)

14 (B) A market participant appealing an official interpretation of the Protocols
15 or seeking an amendment to the Protocols must comply with the Protocols
16 unless and until the interpretation is officially changed or the amendment
17 is officially adopted.

18 (C) (No change.)

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

22 (A)-(D)(No change.)

23 (4) (No change.)

- 1 (5) The commission staff may request information from a market participant
2 concerning a notification of failure to comply with a Protocol requirement or
3 official interpretation of a requirement, or honor a formal commitment to
4 ERCOT. The market participant must provide a response that is detailed and
5 reasonably complete, explaining the circumstances surrounding the alleged
6 failure, and must provide documents and other materials relating to such alleged
7 failure to comply. The response must be submitted to the commission staff within
8 five business days of a written request for information, unless commission staff
9 agrees to an extension.
- 10 (6) A market participant's bids of energy and ancillary services must be from
11 resources that are available and capable of performing, and must be feasible
12 within the limits of the operating characteristics indicated in the resource plan, as
13 defined in the Protocols, and consistent with the applicable ramp rate, as specified
14 in the Protocols.
- 15 (7) All statements, data and information provided by a market participant to market
16 publications and publishers of surveys and market indices for the computation of
17 an industry price index must be true, accurate, reasonably complete, and must be
18 consistent with the market participant's activities, subject to generally accepted
19 standards of confidentiality and industry standards. Market participants must
20 exercise due diligence to prevent the release of materially inaccurate or
21 misleading information.
- 22 (8) A market entity has an obligation to provide accurate and factual information and
23 must not submit false or misleading information, or omit material information, in

- 1 any communication with ERCOT or with the commission. Market entities must
2 exercise due diligence to ensure adherence to this provision throughout the entity.
- 3 (9) A market participant must comply with all reporting requirements governing the
4 availability and maintenance of a generating unit or transmission facility,
5 including outage scheduling reporting requirements. A market participant must
6 immediately notify ERCOT when capacity changes or resource limitations occur
7 that materially affect the availability of a unit or facility, the anticipated operation
8 of its resources, or the ability to comply with ERCOT dispatch instructions.
- 9 (10) A market participant must comply with requests for information or data by
10 ERCOT as specified by the Protocols or ERCOT instructions within the time
11 specified by ERCOT instructions, or such other time agreed to by ERCOT and the
12 market participant.
- 13 (11) When a Protocol provision or its applicability is unclear, or when a situation
14 arises that is not contemplated under the Protocols, a market entity seeking
15 clarification of the Protocols must use the Nodal Protocol Revision Request
16 (NPRR) process provided in the Protocols. If the NPRR process is impractical or
17 inappropriate under the circumstances, the market entity may use the process for
18 requesting formal Protocol clarifications or interpretations described in subsection
19 (i) of this section. This provision is not intended to discourage day to day informal
20 communication between market participants and ERCOT staff.
- 21 (12) A market participant operating in the ERCOT markets or a member of the
22 ERCOT staff who identifies a provision in the ERCOT procedures that produces
23 an outcome inconsistent with the efficient and reliable operation of the ERCOT-

1 administered markets must call the provision to the attention of ERCOT staff and
2 the appropriate ERCOT subcommittee. All market participants must cooperate
3 with the ERCOT subcommittees, ERCOT staff, and the commission staff to
4 develop Protocols that are clear and consistent.

5 (13) A market participant must establish and document internal procedures that
6 instruct its affected personnel on how to implement ERCOT procedures according
7 to the standards delineated in this section. Each market participant must establish
8 clear lines of accountability for its market practices.

9
10 (g) **Prohibited activities.** Any act or practice of a market participant that materially and
11 adversely affects the reliability of the regional electric network or the proper accounting
12 for the production and delivery of electricity among market participants is considered a
13 “prohibited activity.” The term “prohibited activity” in this subsection excludes acts or
14 practices expressly allowed by the Protocols or by official interpretations of the Protocols
15 and acts or practices conducted in compliance with express directions from ERCOT or
16 commission rule or order or other legal authority. The term “prohibited activity” includes,
17 but is not limited to, the following acts and practices that have been found to cause prices
18 that are not reflective of competitive market forces or to adversely affect the reliability of
19 the electric network:

20 (1) A market participant must not schedule, operate, or dispatch its generating units in
21 a way that creates artificial congestion.

- 1 (2) A market participant must not execute pre-arranged offsetting trades of the same
2 product among the same parties, or through third party arrangements, which
3 involve no economic risk and no material net change in beneficial ownership.
- 4 (3) A market participant must not offer reliability products to the market that cannot
5 or will not be provided if selected.
- 6 (4) A market participant must not conduct trades that result in a misrepresentation of
7 the financial condition of the organization.
- 8 (5) A market participant must not engage in fraudulent behavior related to its
9 participation in the wholesale market.
- 10 (6) A market participant must not collude with other market participants to
11 manipulate the price or supply of power, allocate territories, customers or
12 products, or otherwise unlawfully restrain competition. This provision should be
13 interpreted in accordance with federal and state antitrust statutes and judicially-
14 developed standards under such statutes regarding collusion.
- 15 (7) A market participant must not engage in market power abuse. Withholding of
16 production, whether economic withholding or physical withholding, by a market
17 participant who has market power, constitutes an abuse of market power.
- 18
- 19 (h) (No change.)
- 20
- 21 (i) **Official interpretations and clarifications regarding the Protocols.** A market entity
22 seeking an interpretation or clarification of the Protocols must use the NPRR process
23 contained in the Protocols whenever possible. If an interpretation or clarification is

1 needed to address an unforeseen situation and there is not sufficient time to submit the
2 issue to the NPRR process, a market entity may seek an official Protocol interpretation or
3 clarification from ERCOT in accordance with this subsection.

4 (1) ERCOT must develop a process for formally addressing requests for clarification
5 of the Protocols submitted by market participants or issuing official
6 interpretations regarding the application of Protocol provisions and requirements.
7 ERCOT must respond to the requestor within ten business days of ERCOT's
8 receipt of the request for interpretation or clarification with either an official
9 Protocol interpretation or a recommendation that the requestor take the request
10 through the NPRR process.

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

15 (3) The designated ERCOT official must provide a copy of the clarification request to
16 commission staff upon receipt. The ERCOT official must consult with ERCOT
17 operational or legal staff as appropriate and with commission staff before issuing
18 an official Protocol clarification or interpretation.

19 (4) The designated ERCOT official may decide, in consultation with the commission
20 staff, that the language for which a clarification is requested is ambiguous or for
21 other reason beyond ERCOT's ability to clarify, in which case the ERCOT
22 official shall inform the requestor, who may take the request through the NPRR
23 process provided for in the Protocols.

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

8 (6) (No change.)
9

10 (j) **Role of ERCOT in enforcing operating standards.** ERCOT must monitor material
11 occurrences of non-compliance with ERCOT procedures, which means occurrences that
12 have the potential to impede ERCOT operations or represent a risk to system reliability.
13 Non-compliance indicators monitored by ERCOT must include, but are not limited to,
14 material occurrences of failing resource performance measures as established by ERCOT,
15 failure to follow dispatch instructions within the required time, failure to meet ancillary
16 services obligations, failure to submit mandatory bids or offers, and other instances of
17 non-compliance of a similar magnitude.

18 (1) ERCOT must keep a record of all such material occurrences of non-compliance
19 with ERCOT procedures and must develop a system for tracking recurrence of
20 such material occurrences of non-compliance.

21 (2) ERCOT must promptly provide information to and respond to questions from
22 market participants to allow the market participant to understand and respond to
23 alleged material occurrences of non-compliance with ERCOT procedures.

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

5 (3) ERCOT must keep a record of the resolution of such material occurrences of non-
6 compliance and of remedial actions taken by the market participant in each
7 instance.

8 (4) ERCOT must promptly provide information to and respond to questions posed by
9 the Reliability Monitor and the commission.

10 (5) ERCOT must provide to the Reliability Monitor and the commission the support
11 and cooperation the commission determines is necessary for the Reliability
12 Monitor and the commission to perform their functions.

13 (6) If directed by the commission, ERCOT must assume all or part of the duties and
14 responsibilities of the Reliability Monitor under (k). ERCOT must assume these
15 duties and responsibilities, including establishing appropriate safeguards to
16 prevent conflicts of interest and ensure the independence and objectivity of
17 ERCOT personnel with respect to the duties and responsibilities assumed, in the
18 manner prescribed by the commission.

19
20 (k) **Responsibilities of the Reliability Monitor.** The Reliability Monitor must gather and
21 analyze information and data as needed for its reliability monitoring activities. The
22 Reliability Monitor works under the direction and supervision of the commission. The
23 Reliability Monitor must protect confidential information and data in accordance with the

1 confidentiality standards established in PURA, the ERCOT protocols, commission rules,
2 and other applicable laws. The requirements related to the level of protection to be
3 afforded information protected by these laws and rules are incorporated into this section.
4 The duties and responsibilities of the Reliability Monitor may include, but are not limited
5 to:

6 (1) Monitoring, investigating, auditing, and reporting to the commission regarding
7 compliance with reliability-related ERCOT procedures, including Protocols,
8 Operating Guides, and Other Binding Documents, the reliability-related
9 provisions of the commission's rules, and reliability-related provisions of PURA
10 by market entities;

11 (2)-(3) (No change.)
12

13 (1) **Selection of the Reliability Monitor.** The commission may select an entity to act as the
14 Reliability Monitor. If the commission selects an entity other than ERCOT to act as the
15 Reliability Monitor, the Reliability Monitor must be independent from ERCOT and is not
16 subject to the supervision of ERCOT with respect to its monitoring and investigative
17 activities. If the commission selects an entity other than ERCOT to act as the Reliability
18 Monitor, the commission and ERCOT will enter into a contract with the selected entity.
19 In selecting the Reliability Monitor, the commission must consider whether the
20 Reliability Monitor satisfies the following criteria:

21 (1) Independence, objectivity, and the absence of potential conflicts of interest;

22 (2) Experience performing compliance monitoring of reliability-related laws;

- 1 (3) Familiarity with the ERCOT Region and understanding of reliability-related
2 ERCOT protocols, procedures, and other operating standards;
3 (4) Ability to manage confidential information appropriately; and
4 (5) Cost effectiveness.

5

- 6 (m) **Funding of the Reliability Monitor.** ERCOT must fund the operations of the Reliability
7 Monitor from the fee authorized by PURA §39.151.

8

- 9 (n) **Standards for record keeping.**

- 10 (1) A market participant who schedules through a qualified scheduling entity (QSE)
11 that submits schedules to ERCOT on behalf of more than one market participants
12 must maintain records to show scheduling, offer, and bidding information for all
13 schedules, offers, and bids that its QSE has submitted to ERCOT on its behalf, by
14 interval.
- 15 (2) All market participants and ERCOT must maintain records relative to market
16 participants' activities in the ERCOT-administered markets to show:
- 17 (A)-(D) (No change.)
- 18 (3) After the effective date of this section, all records referred to in this subsection
19 except verbal dispatch instructions (VDIs) must be kept for a minimum of three
20 years from the date of the event. ERCOT must keep VDI records for a minimum
21 of two years. All records must be made available to the commission for inspection
22 upon request.

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

6

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

11 (1) (No change.)

12 (2) If the market entity asserts that the information requested by commission staff is
13 confidential, the information must be provided to commission staff as confidential
14 information related to settlement negotiations or other asserted bases for
15 confidentiality pursuant to §22.71(d)(4) of this title.

16 (3) (No change.)

17 (4) If, as a result of its investigation, commission staff determines that there is
18 evidence of a violation of this section by a market entity, the commission staff
19 may request that the commission initiate appropriate enforcement action against
20 the market entity. A notice of violation requesting administrative penalties or
21 disgorgement of excess revenues must comply with the requirements of §22.246
22 of this title (relating to Administrative Penalties). Adjudication of a notice of
23 violation requesting both an administrative penalty and disgorgement of excess

1 revenues may be conducted within a single contested case proceeding.
2 Additionally, for alleged violations that have been reviewed in the informal
3 procedure established by this subsection, the commission staff must include as
4 part of its prima facie case:

5 (A)-(C) (No change.)

6 (D) a statement that the staff has concluded that the market entity failed to
7 demonstrate, in the course of the investigation, the applicability of an
8 exclusion or affirmative defense under subsection (h) of this section.

9 (5)-(7) (No change.)

10

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

16

1

2 This agency certifies that the adoption has been reviewed by legal counsel and found to
3 be a valid exercise of the agency’s legal authority. It is therefore ordered by the Public Utility
4 Commission of Texas that §25.503 relating to oversight of wholesale market participants is
5 hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D’ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER