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PROJECT NO. 54233

TECHNICAL REQUIREMENTS AND	§	
INTERCONNECTION PROCESSES	§	PUBLIC UTILITY COMMISSION
FOR DISTRIBUTED ENERGY	§	OF TEXAS
RESOURCES (DERS)		

**COMMENTS ON DISCUSSION DRAFT RULE OF HUNT ENERGY NETWORK,
JUPITER POWER AND BROAD REACH POWER (JOINT STORAGE
COMMENTERS)**

Hunt Energy Network, L.L.C. (“HEN”), Jupiter Power LLC (“Jupiter”) and Broad Reach Power LLC (“Broad Reach”) (collectively “Joint Storage Commenters”) develop, own, and operate energy storage facilities, including Distribution Energy Storage Resources (“DESRs”), throughout the ERCOT region. On March 3, 2022, Joint Storage Commenters requested that the Commission address interconnection and cost recovery issues associated with DESRs.¹ After the Commission agreed to consider these issues at its March 31, 2022 Open Meeting, Commissioners Glotfelty and McAdams facilitated a months-long informal collaborative stakeholder process to discuss these issues. These discussions were limited to the interconnection of distribution-voltage, stand-alone, “front of the meter” energy storage resources (DESRs) and Distribution Generation Resources (“DGRs”) as defined by ERCOT.² The discussions did not address resources that are co-located with retail customer load (i.e. “behind the meter” resources) or located in non-ERCOT regions. As a result of these discussions, Joint Storage Commenters and the investor-owned transmission distribution utilities (“TDUs”) developed an interconnection timeline, standard interconnection agreement, and a draft rule addressing the interconnection of DESRs, which were filed in Project No. 51603 by HEN on October 5, 2022 at the request of Commissioner McAdams.³

Joint Storage Commenters appreciate the substantial time and effort that the Commission Staff has clearly committed to developing a draft rule since these documents were filed and we welcome this opportunity to offer these comments, which include general comments regarding the scope of the discussion draft of rule amendments to 16 Tex. Admin. Code (“TAC”) §25.211 and

¹ *Review of Wholesale Electric Market Design*, Project No. 52373, filing made by Hunt Energy Network L.L.C. on March 3, 2022, “Request for Project Initiation Related to Battery Energy Storage Systems at Distribution Voltage.” (Commission Interchange Filing No. 352).

² “Front of the meter” refers to a generation resource that is not co-located with a retail customer load and is metered through an ERCOT Polled Settlement (“EPS”) generation meter.

³ *Review of Distributed Energy Resources*, Project No. 51603, Hunt Energy Network L.L.C., Letter to Commissioners filed on October 5, 2022 (Commission Interchange Filing No. 70).

25.212 filed in this Project on November 22, 2022 (“Discussion Draft Rule”), as well as comments on specific sections of the proposed rules with proposed language revisions.

As it has been nearly a year since we first requested a project be opened, and many Parties and several Commissioners have spent months considering these issues, Joint Storage Commenters strongly encourage the Commission to move forward and (i) resolve the policy issues associated with cost recovery for DESRs and (ii) publish a proposed rule which reflects both those policy determinations and the interconnection process set forth in the Discussion Draft Rule with the modifications suggested below. We believe this can be accomplished quickly and holistically incorporate both Project Nos. 54224 and 54233, at least for stand-alone, front of the meter resources that will be registered as “Resources” with ERCOT, dispatched by ERCOT and capable of supplying energy and ancillary services to the ERCOT grid, as was the intended scope of the original request.

Establishing Commission policy and expectations through a rule is critically important for DESRs because we are trying to interconnect Resources to monopoly utility systems. The utilities are not subject to losing our business based upon their performance and yet their role is essential for us to interconnect and operate our assets to serve the ERCOT market and our customers. Joint Storage Customers appropriately have capital at risk to develop these Resources, and we need the same policy leadership and guidance for distribution-connected resources that the Commission provided in 1997 for transmission-connected resources. That is, establishment of clear, consistently-applied interconnection policies with limited utility discretion to create a level playing field for all Resources – regardless of what voltage through which they interconnect.

Joint Storage Commenters have provided a section-by-section analysis and recommendations on the proposed new 16 TAC §25.211 and §25.212 and the proposed Standard Distribution Resource Interconnection Agreement (“SDRIA”) in the comments below. However, we want to highlight one important concern in the SDRIA that may get lost among the myriad of issues. Section 4(A)(i) addresses the Generator Interconnection Facilities (“GIF”), which are the interconnection facilities constructed, owned and operated solely by the Generator, on the Generator’s side of the Point of Interconnection (“POI”). This provision appropriately states that the GIF is to be designed, constructed, installed, operated and maintained by the Generator at its

sole cost. However, the provision substantially limits the Generator's ability to control and manage this obligation by giving the DSP the obligation to approve all third-party contractors hired by the Generator to assist in meeting the Generator's obligations to operate not only the GIF, but also its Distribution Resource. As written, we believe this would include the EPC (Engineering, Procurement and Construction) contractor, software service providers, and even on-site security services. This places the Generator in an untenable situation to operate and manage its assets, will create concerns for project lenders, and could expose the DSP to increased liability. This restriction has never been imposed on transmission-interconnected Resources in ERCOT and it should be removed from the SDRIA.

The Executive Summary of these comments is attached at the end of these comments. These comments are timely filed based upon the deadlines set forth in the Commission Staff's memo dated December 8, 2022.

I. SCOPE OF THE DISCUSSION DRAFT RULE

a. Inclusion of Cost Recovery Issues Under Consideration in Project No. 54224

Joint Storage Commentors understood from the Commission Staff's memo in Project No. 51603 issued on October 18, 2022 that cost recovery issues related to DESRs would be bifurcated and addressed in a separate proceeding (Project No. 54224) and that Project No. 54233 would be used separately to address the technical requirements and interconnection process for the interconnection of distribution energy resources ("DERs"), including DESRs. However, rather than being limited only to the technical interconnection process and requirements, the Discussion Draft Rule directly addresses the cost recovery issues by requiring a Contribution in Aid of Construction ("CIAC") payment to DSPs from interconnecting "distribution resources" which the rule defines as including DESRs⁴. In addition, §25.211(d) addressing DSP charges could be read to implicitly allow a DSP to also charge a DESR monthly demand charges when it is charging its facility. Joint Storage Commentors understand that the issue of cost allocation is integral to interconnection best practices, but ask the Commission to provide policy guidance in an intentional

⁴ Discussion Draft Rule §25.211(g) and Draft Interconnection Agreement Section 4.

way through the issues raised in Project No. 54224, not through policy determinations that are incidental to addressing the method for paying CIAC.

Consistent with the Commission's Staff's October 18, 2022 memo, Joint Storage Commentors would respectfully request that the CIAC provisions in the discussion draft not be included in a proposal for publication until the cost recovery issues in Project No. 54224 have been decided by the Commission. If the Commission Staff believes that §25.211 is the appropriate rule in which to address cost recovery for ERCOT distribution Resources, then the Commission should first provide policy guidance on the cost recovery issues, then modify this Discussion Draft Rule to incorporate that guidance, and formally publish the revised proposed rules for comment.

If instead the Commission decides to move forward with the proposal for publication of this rule and to address cost recovery in this Project, then the Discussion Draft Rule §25.211(d) and (g) should be amended to place distribution-interconnected ERCOT Resources on a more level playing field with transmission-interconnected Resources. Section 2 of the ERCOT Protocols defines a "Resource" as a "Generation Resource, Energy Storage Resource or a Load Resource. It explicitly does not include Settlement Only Generators ("SOG") or Emergency Response Service ("ERS") Resources. A "Resource" is registered with ERCOT, dispatched by ERCOT through the Security Constrained Operation Dispatch (SCED) model, and is capable of providing energy and ancillary services to the ERCOT system. By contrast, an SOG or an ERS Resource is not dispatched by ERCOT and cannot qualify to provide ancillary services. DESRs and DGRs (each as defined by ERCOT in the Protocols) are fully qualified, front of the meter, stand-alone Resources, permitted to provide energy offers, dispatched by ERCOT through SCED, and capable of providing ancillary services, just like their transmission-interconnected Resource competitors. However, transmission-interconnected Resources are not required to pay any CIAC for interconnection costs incurred by the utility. Rather, the Resource posts security equal to the utility's interconnection capital costs and that security is returned when the Resource achieves commercial operation. Treating distribution-interconnected Resources differently from transmission-interconnected Resources clearly place DESRs and DGRs at a competitive disadvantage and disincentivizes the development of Resources on the distribution system, closer to load.

The same is true for the imposition of monthly utility demand charges on DESRs. Transmission-interconnected energy storage Resources are not charged monthly utility demand charges when they are charging their battery systems. Imposing these charges on DESRs places them at a competitive disadvantage vis a vis their transmission-interconnected energy storage competitors and makes distribution-interconnected storage uneconomic for storage developers and their investors.

Joint Storage Commentors fully explained its position regarding monthly charges and CIAC in its comments filed on November 17, 2022 in Project No. 54224 (See responses to Questions 1, 2 and 3). For convenience, the Executive Summary of Joint Storage Commentors comments filed on November 17, 2022 are attached as Attachment A to this filing (hereinafter referred to as “Joint Storage Commentors Cost Recovery Comments”).

Joint Storage Commentors note that the applicability and use of CIAC as a cost recovery mechanism should vary between an ERCOT Resource, such as a DESR or DGR, that is dispatched through SCED and providing energy and ancillary services, and one that is located behind a retail customer’s load, not dispatched by ERCOT and only occasionally providing excess energy to the grid. DESRs and DGRs are in direct competition with, and provide the same services and benefits to the grid as, their transmission-interconnected counterparts. The only difference is the voltage at which the resource is interconnecting. It is not equitable to treat the distribution-interconnected Resources differently from the transmission-interconnected Resources. The same may not be true of a generation facility that is located on a retail customer’s site and is interconnecting primarily to serve the load of a retail customer. Joint Storage Commentors have provided language revisions to 25.211(d) and (g) under Part II of these comments to address these issues.

b. Applicability of Discussion Draft Rule to FTM and BTM generation

As noted above, the Discussion Draft Rule also appears to address the interconnection of both “front of the meter” (“FTM”) Resources (i.e. a free-standing generation resource that is not co-located with retail load) and “behind the meter” (“BTM”) Resources (i.e. a generation resource that is located on-site at a retail customer load and typically serves that customer’s needs with excess energy injected into the grid.) The discussions between the Joint Storage Commentors and the TDUs only addressed stand-alone, FTM Resources that have registered with ERCOT as a

Resource. Joint Storage Commentors do not know whether the interconnection process and timelines that were developed between Joint Storage Commentors and the TDUs are also appropriate for interconnection of BTM resources. In fact, as discussed above, there may be legitimate policy reasons to distinguish between a resource that is dispatched by ERCOT and participating in the ERCOT energy and ancillary services markets from a generator that is not dispatched by ERCOT and is only occasionally providing excess energy to the grid. Further, Joint Storage Commentors believe that it is possible that the technical requirements included in §25.212 may create unintended barriers to entry for smaller, BTM resources, including aggregated DERs. If, based upon the comments filed by the affected Parties, it becomes clear that there are significant differences in the treatment of FTM and BTM generation, then Joint Storage Commentors would respectfully suggest that the rules be bifurcated and the Commission move forward at this time with a rule for interconnection and operation of FTM, stand alone Resources interconnected at distribution voltage, as was proposed in the draft rule filed by HEN on October 5, 2022 at the request of the Commission in Project No. 51603. This approach would also allow the Commission to incorporate the experiences and processes learned from the Aggregated Distribution Energy Resource ("ADER") pilot project that is moving forward under Project No. 53911 for a rule focused solely on BTM generation. While Joint Storage Commentors appreciate the desire of the Commission Staff to have one rule with broad applicability, it may be that the policy and practical issues are sufficiently varied between FTM and BTM facilities that separate, tailored rules will produce a better policy outcome for both types of generation facilities.

c. Applicability of Discussion Draft Rule outside ERCOT

As drafted, the Discussion Draft Rule would apply both inside and outside of ERCOT. (See §25.211(a) of the Discussion Draft Rule). Joint Storage Commentors note that the stakeholder discussions described above only contemplated establishing standard interconnection requirements for DSPs and distribution resources within ERCOT. While Joint Storage Commentors are not necessarily opposed to expanding the rule into the non-ERCOT areas, it is quite possible that there may be implications for how the other ISOs interact with generation resources, including energy storage, that have not been fully considered. If that becomes clear with the comments filed, Joint Storage Commentors would respectfully request that the Commission move forward at the present time with an ERCOT-only rule.

II. SECTION-BY-SECTION ANALYSIS: DISCUSSION DRAFT RULE §25.211

a. §25.211(a): Application

As discussed above, §25.211(a) states that the rule applies to all DSPs and distribution resources located within Texas. If the Commission were to limit the rule's application within ERCOT, this section would need to be revised.

b. §25.211(b): Definitions

The definition of a “distribution resource” is confusing because of the reference to of a “customer’s point of interconnection.” First, is the intent that the “customer” is a retail customer or is the generator itself the “customer”? If the intent is that “customer” refers to a retail customer, then it is unclear whether, for a DESR to be included in the definition, it must also be located at a retail customer’s premise. It is also unclear whether “a source of electric power” means a single source or an aggregated source of power (which could be the case for certain BTM facilities). Joint Storage Commenters recommend that the definition be revised as follows:

Distribution resource – A “distribution resource” includes each of the following: (i) A source, or sources, of electric power that is located at a retail customer's point of interconnection of ten MW or less, connected at a voltage of less than 60 kilovolts (kV), that can be interconnected in parallel operation to the distribution system and not directly connected to a bulk power system, ~~Distribution resource also includes both generators and energy storage technologies, including a DESR, capable of exporting energy to a distribution system;~~ (ii) a DESR; (iii) a DGR; and (iv) ~~Distribution resource includes a distributed renewable generation facility as defined in § 25.217 of this title (relating to Distributed Renewable Generation).~~

Distribution generation resource (DGR) — As defined in the Electric Reliability Council of Texas (ERCOT) Protocols.

c. §25.211(c): Requirement for interconnection

§25.211(c)(2) provides that a DESR must have a seasonal net maximum sustainable rating of ten MW or less or otherwise be limited to 10 MW or less in output capacity. The 10 MW limit is an unreasonable restraint and should be removed. The ERCOT Protocol definition of a DESR does not limit this resource to 10 MW or less. Rather, the Protocols define both a DGR and a

DESR as either (i) “greater than ten MW and not registered with the Public Utility Commission of Texas (PUCT) as a self-generator” or (ii) “greater than one MW that chooses to register as a Generation Resource to participate in the ERCOT markets.” The only distinction made in the Protocols with regard to the 10 MW distinction is whether the Resource must go through the ERCOT “large generator” (10 MW or greater) or “small generator” (less than 10 MW) interconnection process.⁵ Further, IEEE Standard 1547 addressing the interconnection and operation of distribution resources was amended in 2018 to remove the 10 MW limitation for distribution resources that it had previously required, recognizing that there are instances in which the distribution system can support a larger resource.⁶

If the DSP’s interconnection studies find that the distribution system at the point of interconnection can accommodate a larger resource than 10 MW, then there is not a legitimate policy reasons to limit the maximum capacity to 10 MW. In fact, there may be circumstances where reliable service to the DSP’s retail customers would be strengthened by a larger distribution resource since resources located within the DSP’s system inject energy into the DSP system and provide resiliency in the event of transmission outages that impact service to retail load. Distribution resources are located closer to load and provide a resiliency benefit, which does not need to be capped as 10 MW (unless the DSP’s interconnection studies demonstrate that the system cannot accommodate capacity greater than 10 MW). **Joint Storage Commenters therefore recommend striking §25.211(c)(2).**

d. §25.211(d): Terms of Service

§25.211(d)(1) provides that a DSP may not charge a distribution resource provider for charges assessed for the export of energy by the distribution resource or charges for operation and maintenance of the DSP’s system. Joint Storage Commenters agree with this provision, insofar as it goes. However, if cost recovery issues are to be addressed in this proceeding, Joint Storage

⁵See ERCOT Planning Guide Section 5.2.1(3).

⁶ IEEE 1547-2003 included a 10 MW limitation in Section 1.3 of the standard. This was removed in IEEE 1547-2018 in Section 1.4. This change was expressly noted in several guides to the IEEE changes, including, for example, the National Rural Electric Cooperative Association *Guide to the IEEE 1547-2018 Standard and its Impacts on Cooperatives*, p. 7, published in 2019, available at <https://www.cooperative.com/programs-services/bts/Documents/Reports/NRECA-Guide-to-IEEE-1547-2018-March-2019.pdf>.

Commenters would expand this section to address DSP rates when a DESR is charging its energy storage system. As fully discussed in the comments of the Joint Storage Commenters Cost Recovery Comments and summarized in Attachment A to this filing, the energy used to charge a DESR's battery is not consumed by the battery; the battery is simply a way station, holding that energy until it can be discharged and continue to be delivered to the end use customer. It has long been the policy in ERCOT that retail customers pay for the delivery of energy, and they should pay only once. Costs for delivery should not also be charged to generators, including energy storage, since those costs would ultimately be passed on to the end use customer, who is already paying delivery charges for the distribution system. This policy determination has already been made for transmission-interconnected energy storage Resources and the same policy should apply for energy storage Resources interconnected at distribution voltage. Therefore, Joint Storage Commenters would revise subsection 25.211(d) as follows:

(d) Terms of service. A DSP must provide service to an interconnected distribution resource under the following terms.

(1) Prohibited costs. A DSP must not charge a distribution resource provider the following costs associated with a distribution resource interconnected with the DSP's distribution system.

(A) Charges assessed for the export of energy by the distribution resource to the DSP's distribution system or charges assessed for the import of energy used by the distribution resource to charge a DESR.

(B) Charges assessed for operation and maintenance of the DSP's distribution system due to the exports of energy by a distribution resource or imports of energy used by the distribution resource to charge a DESR.

(C) Charges assessed for the export of energy by the distribution resource to the transmission system or charges assessed for the import of energy used by the distribution resource to charge a DESR.

(D) Charges assessed for the disconnection of a distribution resource at the order of a DSP as a result of the DSP's distribution system conditions under clauses (2)(A)(v)-(vi) of this subsection.

e. §25.211(e): Pre-screen study

The language in §25.211(e) is generally consistent with the process and timeline developed between Joint Storage Commenters and the TDUs for DESRs. Joint Storage Commenters have several suggested changes to this section.

First, if the rule is going to apply to more than DESRs, then subsection §25.211(e)(1) should apply for pre-screen studies for both DESRs and DGRs, both of which are stand-alone FTM resources. Thus, Subsection §25.211(e)(1) should be revised as follows:

(1) Results from a pre-screen study for a DESR or DGR must:

Second, the performance requirement for DSPs in subsection §25.211(e)(3) should be revised from “commercially reasonable efforts” to “best efforts.” This was the standard used in the draft rule developed by Joint Storage Commenters and the TDUs. In addition, the performance standard should be included in the last sentence. Thus, subsection §25.211(e)(3) should be revised as follows:

(3) Upon payment of the pre-screen study cost by the distribution resource provider, the DSP must perform a pre-screen study. A DSP must use best effort~~commercially reasonable efforts~~ to provide the results of a pre-screen study within 15 business days of the date the pre-screen study request is received by the DSP. Such time may be extended if a distribution resource provider and its affiliates collectively request pre-screen studies for more than ten sites currently pending with the DSP, or if the total number of pre-screen studies pending with the DSP exceeds 30 sites. If a DSP cannot provide a pre-screen study within 15 business days, the DSP must notify the distribution resource provider of the delay, ~~and~~ provide an estimated completion date for the pre-screen study, and use best efforts to meet such estimated completion date.

f. §25.211(f): Interconnection Process

1. §25.211(f)(1)

Joint Storage Commenters are concerned that §25.211(f)(1) is ambiguous and will create the potential for interconnection delay. The last sentence of this section states that a DSP must “approve” a complete interconnection application and notify the distribution resource in writing. However, it is not clear what would be meant by the DSP’s “approval.” At this stage in the interconnection process, the only determination that the DSP should be making is that the

application is complete and the utility has the information it needs to begin the system impact study. The DSP is not “approving” the interconnection at this point. In the draft rule developed by Joint Storage Commenters and the TDUs, this provision was drafted to focus on a notice from the DSP that the application is complete and the cost of the system impact study. This language is incorporated in the Discussion Draft Rule at §25.211(f)(2)(A). **Joint Storage Commenters recommend that the last sentence of §25.211(f)(1) be deleted and replaced with the language currently in §25.211(f)(2)(A).**

2. §25.211(f)(2)(D)

The second sentence of §25.211(f)(2)(D) allows the DSP to require a new system impact study if the in-service date, design configuration, operational requirements or easement requirements are changed. Because a new system impact study could significantly delay a project’s commercial operation, it is important that this section be very clear. Therefore, for clarity, Joint Storage Commenters propose the following revision to § 25.211(f)(2)(D):

(D) No later than 45 business days following the distribution resource provider’s receipt of the impact study results, the distribution resource provider must notify the DSP whether the distribution resource provider plans to proceed with the interconnection process. If the DSP determines that changes requested by the distribution resource provider to the distribution resource’s in-service date, design configuration, equipment, operational requirements, or easement requirements would potentially change the results of the impact study, the DSP may require a new impact study to be performed.

3. §25.211(f)(2)(E)(ii)

Section 25.211(f)(2)(E)(ii) provides that the DSP may require a new impact study if the distribution resource provider has not provided a CIAC to the DSP. This presumes that a CIAC will be required. As discussed above, the policy decisions with respect to cost recovery issues, including CIAC, have not yet been made by the Commission. To address all possible scenarios with respect to CIAC, Joint Storage Commenters recommend revising this provision as follows:

(ii) The distribution resource provider has not provided the DSP a CIAC if required, and, if applicable, a security, as required by paragraph (g)(3) of this subsection; or

g. §25.211(g): Responsibilities during interconnection process

1. §25.211(g)(1): Communications

Joint Storage Commenters have experienced communication challenges with the DSPs during the interconnection process, including delays by the DSPs in responding or in providing a status update. In the draft rule developed by the DSPs and the Joint Storage Commenters, a requirement was included that the DSP and the DESR will communicate to resolve outstanding issues, at least once every two weeks and such communication would be confirmed in writing. A similar provision should be incorporated into §25.211(g)(1) as follows:

(1) Communications. A distribution resource provider must provide the DSP with complete and detailed written information concerning the proposed distribution resource during each stage of the interconnection process. During the system impact study phase and the project execution phase under the interconnection agreement, the DSP and the distribution resource provider will communicate to resolve outstanding issues, at least once every two weeks. Communication should be confirmed in writing. Communications concerning the nature of a proposed distribution resource must be consistent with §25.84 of this title (relating to Reporting of Affiliate Transactions for Electric Utilities), §25.272 of this title (relating to Code of Conduct for Electric Utilities and their Affiliates), and §25.273 of this title (relating to Contracts between Electric Utilities and their Competitive Affiliates).

2. §25.211(g)(3): CIAC

As discussed above, §25.211(g)(3) makes a policy determination that a CIAC may be required from all distribution resource providers, including DESRs and DGRs. Joint Storage Commenters had understood that the CIAC policy determination would be made by the Commission in Project No. 54224. As fully explained in Joint Storage Commenters Cost Recovery Comments, Resources which are registered with ERCOT, regardless of whether they are interconnected at transmission or distribution voltage (i.e. DESRs and DGRs), should not be required to pay a CIAC since that is not required of their transmission-interconnected competitors and both types of Resources provide the same energy and ancillary service benefits to the ERCOT system. Instead, the DSP's interconnection costs should be included in transmission cost of service ("TCOS") and recovered on a system-wide basis, just as the utilities' interconnection costs for transmission-interconnected Resources are recovered.

However, we also provided a compromise position for DESRs, recognizing the concerns of certain consumer groups regarding location incentives for new generation. We proposed the cost of interconnection facilities located within the DSP substation would be treated the same as for transmission energy storage Resources -- they would be recovered through TCOS and the DESR would post collateral to be returned at commercial operation of the DESR. Costs for utility interconnection equipment located outside the substation fence to the Point of Interconnection would be paid by the DESR through a CIAC.

A second issue not addressed in the Discussion Draft Rule was a provision that required the DSP to provide a detailed line-item invoice for any CIAC required and a true-up between the estimated CIAC and the actual costs incurred by the DSP for the interconnection facilities. It has been the Joint Storage Commenters' experience that a CIAC invoice includes little to no detail or cost breakdown; it is simply a single amount (sometimes quite large) with no explanation. There is no way for a distribution resource provider to know whether the amount is reasonable. While the true-up was appropriately included in the Commission Staff Draft Interconnection Agreement, it was not addressed in the rule itself. Given the challenges that Joint Storage Commenters have had with CIAC invoices, this requirement should also be incorporated into the rule.

In addition to a more detailed CIAC invoice, as a check on the reasonableness of the CIAC amount and as a means to shorten the interconnection time and reduce the burden on the DSP, the distribution resource provider should have the option to construct and pay for the interconnection facilities directly, provided that the distribution resource provider uses a contractor approved by the DSP and that meets all of the DSP's requirements and specifications.

Therefore, Joint Storage Commenters urge that if the CIAC issues are to be resolved in this Discussion Draft rule, then §25.211(g)(3)(A) should be revised as follows:

(A) A DSP may require a CIAC from a distribution resource provider for the reasonably estimated costs that a DSP incurs to construct, install, or upgrade any distribution system or interconnection facilities that are necessary to operate the distribution resource at its requested service level, ~~including such facilities inside the DSP's substation~~, and for the costs of any acquisitions of the additional facilities that would affect the tax liability of a DSP. Such reasonably estimated costs are limited to those specified in an executed interconnection agreement and, if applicable, exceed the allowable expenditure amount included in a DSP's tariff.

- (i) If the distribution resource will be registered with ERCOT as a Resource and will be dispatched by ERCOT in accordance with the ERCOT Protocols, then any CIAC required from such distribution resource provider shall not include costs for the DSP's interconnection facilities located within the DSP's substation. Such interconnection facilities within the DSP's substation shall be deemed to be transmission facilities recoverable by the DSP as a component of the DSP's transmission cost of service.⁷
- (ii) If a CIAC is required, the distribution resource provider shall have the option to construct and pay for such interconnection facilities directly if the distribution resource provider contracts with a vendor approved by the DSP, such vendor meets the requirements and specifications established by the DSP for its own vendors, and the DSP takes title to such interconnection facilities upon completion.
- (iii) The DSP shall true-up the amount of any CIAC payment against the actual costs incurred by the DSP. The DSP shall invoice the distribution resource provider for any additional amount due, or shall reimburse the distribution resource provider for any overpayment of the actual costs incurred, and shall provide a reasonably detailed invoice and documentation of the actual costs incurred.

3. §25.211(g)(1)(B)(i)

This provision states that the DSP must return any security posted by the distribution resource provider within 20 business days after commencement of commercial operation. However, the draft Standard Distribution Resource Interconnection Agreement (“SDRIA”) attached to the Discussion Draft Rule requires return of the security within five business days, which is consistent with the ERCOT Standard Generation Interconnection Agreement (“SGIA”) used for transmission-connected resources in ERCOT. We recommend that the 20 business days be changed to five business days in §25.211(g)(1)(B)(i).

⁷ Joint Storage Commenters note that, for clarity, a corresponding change to 16 TAC §25.192(c)(1) should be made to include a new subsection (F) as follows: “interconnection facilities located within a DSP’s substation and associated with the interconnection of a distribution service provider described in 16 TAC §25.211(g)(3)(A)(i).”

III. SECTION-BY-SECTION ANALYSIS: DISCUSSION DRAFT RULE §25.212

Many of the technical requirements set forth in the Discussion Draft Rule §25.212 are also set forth in the ERCOT Nodal Operating Guidelines and in the Institute of Electrical and Electronic Engineers (“IEEE”) Standards 1547 – 2018 (Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces). The tables and some of the text in the Discussion Draft Rule appear to be directly sourced from those technical documents including harmonics, flicker, over/under-voltage, and voltage and frequency ride through. This creates two concerns: (i) ongoing consistency between the Commission’s rules and these technical documents and (ii) enforcement of these standards.

While it is prudent to fully define the parameters to which distribution resources must adhere to ensure contribution to grid reliability and resilience, the governance and watchdog responsibilities of these parameters should be placed upon those who are in the best position to enforce the requirements and the standard should adjust based on industry evolution. The administration of these distribution requirements should naturally lie with a distribution system operator (“D-ISO”) because of such an entity’s familiarity with the system operations, direct ties to the transmission system operator, and, ultimately, the market. However, because of the nature of the existing ERCOT market and regulatory structure, the technical responsibilities should reside with ERCOT in the Nodal Operating Guidelines, in close collaboration with DSPs. By placing the detailed requirements within the Commission rules, the market may be less reactive to industry advancements and be forced to change at the pace of the regulatory environment.

Joint Storage Commenters are not in a position to opine on whether the technical and operational requirements are appropriate for non-ERCOT power regions, but would note that DSPs operating in non-ERCOT regions may have different operating requirements defined by their regional ISOs, potentially placing the Commission rule in conflict with those ISO requirements. This is another reason to reference existing IEEE and applicable ISO Requirements in the rule, rather than restate the specific standard.

Joint Storage Commenters have the following comments on specific sections of §25.212.

a. §25.212(b)(3): Legacy distribution resources

Section 25.212(b)(3) provides a compliance transition period for legacy distribution resources. As entities that have operating distribution Resources as well as Resources under active development, Joint Storage Commenters appreciate the understanding that a transition period is required for existing resources to comply with the requirements of the new rule. However, we do not believe that 90 days is sufficient. It will be difficult to design, engineer, procure and install the necessary equipment required to meet the operational requirements of §25.212 within 90 days, especially with supply chain delays that still exist for certain protective equipment. Procurement alone could easily take 90 days and likely longer.

This is particularly of concern with respect to the requirements in §25.212(b)(3)(A), which requires, after 90 days from the effective date of the rule that any equipment or facilities being installed on a legacy distribution resource comply with the standards. This will be a problem for legacy facilities are that under active construction when the rule is adopted (i.e. facilities captured under §25.212(b)(2)(B)). These facilities would be required to procure new or different equipment with only 90 days notice; that is simply insufficient time. **Joint Storage Commenters therefore propose that the 90 day requirements in §25.212(b)(3)(A) and (B) be extended to 365 days.**

b. §25.212(c): Operational standards

Several of the provisions in this section appear to come directly from the IEEE Standard 1547. For example, the flicker requirements in §25.212(2)(C) and the distortion requirement in §25.212(2)(D). It is our understanding the IEEE 1547, which addresses operation of generation resources on the distribution system, has already been revised once and many market participants expect that further revisions will be forthcoming. **Rather than restate the IEEE standard, which likely will change through time, Joint Storage Commenters propose that these provisions be amended to require the distribution resource to meet the IEEE Standard 1547, rather than stating the specific standard.** Thus, if the standard changes, the rule requirement would also change and there is not the possibility of conflicting standards between IEEE and the Commission's rules.

Regarding the specific voltage ride-through and trip requirements for inverter-based resources set forth in §25.212(c)(L) – (M), Joint Storage Commenters can comply with these requirements, but want to point out that we have experienced significant and frequent voltage

excursions and related power quality issues arising from certain DSP systems. These DSP voltage issues cause our facilities to trip off-line frequently. When this occurs, our projects are idled and cannot participate in the market until the DSP resolves its voltage issue and we can bring the project back on-line. Thus, we would respectfully request that the Commission should enforce compliance by the DSPs with respect to voltage and power quality requirements.

c. §25.212(e)(4): General interconnection and protection requirements

Section 25.212(e)(4)(A) provides that a DSP may impose different or additional certification criteria for a distribution resource's equipment. Subsection (B) requires that certified equipment of the distribution resource provider must be reviewed and approved by the DSP and subsection (C) provides that the protective settings and operations must be those specified by the DSP. Taken together, these provisions provide essentially unlimited discretion for the DSP to impose unnecessary or onerous requirements on specific resources. The draft rule also does not require the DSP to publish its equipment requirements or its protective settings which means that the utility's requirements could be imposed on an inconsistent basis. Joint Storage Commenters recommend adding a new subsection §25.212(e)(4)(D) as follows:

(D) No later than 120 days after the effective date of this section, each DSP shall file with the Commission its certification criteria for distribution resource equipment, the review process used by the DSP to comply with §25.212(e)(4)(B), and any required protective devices and related settings and operation requirements for distribution resource providers.

d. §25.212(e)(7): Redundancy

Section 25.212(e)(7) requires a redundant circuit breaker for a distribution resource greater than 2 MW. Joint Storage Commenters agree with a redundancy requirement, but this already exists in our configurations with the DSPs because there are at least three layers of protection: first, the DSP has a breaker installed at its substation which can trip a DESR facility off-line. Second, the DSP has a recloser installed on its side of the POI which can trip the DESR facility and finally, the DESR also has a reclosure on its side of the POI which can trip the DESR facility. It should be noted that currently, the DESR is paying not only for its own recloser, but also for the DSP's recloser and circuit breaker through the CIAC payment. These three layers should be more than sufficient protection and the Distribution Resource should not be required to install and pay

for yet a fourth layer of protection with a second circuit breaker on its side of the POI, which seems to be required under § 25.212(e)(7). Joint Storage Commenters therefore recommend that §25.212(e)(7) be revised as follows:

(7) Circuit breakers or other interrupting devices at the point of interconnection must be capable of interrupting maximum available fault current. A distribution resource that has a seasonal net maximum sustainable rating greater than 2 MW and exporting energy to the DSP's distribution system must have a redundant circuit breaker unless a listed device suitable for the rated application is used or the DSP has a circuit breaker or other interrupting device on the DSP's side of the POI capable of interrupting current to the distribution resource.

e. §25.212(f)(2)(C)(4): transfer trip requirements

The last sentence of §25.212(f)(2)(C)(4) provides that, in addition to the protection equipment already required in this section and in §25.212(e)(7), a DSP may also require a communication-based telemetry and transfer trip. This is yet another layer of protection equipment, which is expensive, and not necessary if the interconnection configuration already has three levels of protection, as described above. Since the distribution resource provider is already paying (either directly or through CIAC) for three levels of protection, it should not be required to also pay for a transfer trip; this is part of the DSP's system and the DSP should be required to demonstrate that the transfer trip is a reasonable and necessary expense and recover the cost from its ratepayers. Joint Storage Commenters therefore recommend that §25.212(f)(2)(C)(4) be revised to delete the last sentence as follows:

(iv) A distribution resource that has a seasonal net maximum sustainable rating of more than two MW but not more than ten MW must have an interconnect disconnect device, a generator disconnect device, an over-voltage trip, an under-voltage trip, an over-frequency and under-frequency trip, either a ground over-voltage trip or a ground over-current trip depending on the grounding system if required by the DSP, an automatic synchronizing check and AVR for facilities with stand-alone capability, and reverse power sensing if the distribution resource is not exporting energy. If the distribution resource is exporting energy, the power direction protective function may be used to block or delay the under-frequency trip if the DSP agrees in writing to such use. ~~A DSP may also require communication-based telemetry and transfer trip by the company as part of a transfer tripper or blocking protective scheme.~~

f. §25.212(i): Maintenance

This section requires the distribution resource provider to maintain a log of its maintenance activities, which is not objectionable. However, the DSPs are also required to review the log at least once every 30 days. While the Joint Storage Commenters defer to the DSPs on this issue, this seems like a potentially onerous requirement for the DSPs as the number of distribution resources increase. The provision already provides the DSP the discretion to review a distribution resource provider's logs on a reasonable basis. Joint Storage Commenters believe this is sufficient and a monthly review should not be mandated. Further, to the extent that the DSPs are already facing personnel resource constraints to process the existing interconnection requests, a requirement to review operation logs every month for every distribution resource will further strain the DSP resources.

IV. DRAFT STANDARD DISTRIBUTION RESOURCE INTERCONNECTION AGREEMENT (SDRIA)

Joint Storage Commenters appreciate the substantial time and effort that was clearly spent by the Commission Staff in reviewing and incorporating components of the interconnection agreement developed by the Joint Storage Commenters and the TDUs into the draft SDRIA included in the Discussion Draft Rule. The changes made by the Commission Staff in many places clarified and improved the draft interconnection agreement. Joint Storage Commenters are concerned, however, that the Discussion Draft Rule SDRIA clearly requires ERCOT Resources interconnected at distribution voltage (DESRs and DGRs) to pay a CIAC for all of the interconnection costs incurred by the DSP, despite the fact that transmission-interconnected Resources are not required to pay CIAC and both provide the same system benefits to ERCOT. Consistent with our comments above on this issue, Joint Storage Commenters respectfully request that the SDRIA not be finalized until the Commission has had the opportunity to make a policy determination on the cost recovery issues for DESRs. However, in the event that the Commission decides to move forward with the Discussion Draft Rule and the associated SDRIA, then Joint Storage Commenters request that Section 4(A) be amended consistent with the Joint Storage Commenters' compromise recommendations set forth above in the discussion of §25.211 with respect to CIAC, which would require that the costs incurred by the DSPs for interconnection facilities located within the DSP's substation be treated as transmission costs and recovered through TCOS.

For ease of review, Joint Storage Commenters have provided a redlined draft of the SDRIA included with the Discussion Draft Rule as Attachment B, which shows the changes we propose as further described below.

a. Section 3(B): Payment of Costs in Event of Termination

In the event of a termination of the SDRIA that is caused by an event described in Section 3(A), Section 3(B) requires the distribution resource provider to pay the costs reasonably incurred by the DSP prior to a termination of the Agreement. Joint Storage Commenters agree with this provision, but note that if certain equipment has been procured by the DSP and can be transferred to another project of the distribution resource provider that is also being interconnected, this should be permitted. Further, if a CIAC is paid, and the costs incurred by the DSP at the date of termination are less than the amount of the CIAC already paid by the distribution resource provider, then that excess amount of CIAC should be refunded to the distribution resource provider. Section 3(B) should therefore be revised to require a netting of the CIAC paid and the reasonable costs incurred as of the date of termination, with any remaining CIAC left after payment of the DSP's costs to be refunded to the distribution resource provider.

b. Section 4(A)(i): Generator Performance

This section provides that a "Generator must design, procure, install, construct and maintain the Generator's Interconnection Facilities ("GIF") "at its sole expense", which is the same requirement that is in the Standard Generation Interconnection Agreement ("SGIA") approved by the Commission for use with transmission-connected Resources in ERCOT and with which Joint Storage Commenters agree. This is appropriate since the GIF are the facilities located on the Generator's side of the point of interconnection that are solely owned and operated by the Generator.

However, the language included in Section 4(A)(i), which was not in the draft interconnection agreement developed by the Joint Storage Providers and the TDUs, added a restriction on the Generator's ability to meet its performance obligations by requiring the DSP to approve any "independent third-party contractors" that are hired by the Generator to perform any of the Generator's obligations under the Agreement (including, presumably, procurement and

construction of the GIF and the Distribution Resource).⁸ Under the proposed language, the Generator must submit a written request to the DSP requesting approval of a specific contractor that the Generator intends to hire to meet any of its obligation under the agreement. The draft provision gives the DSP the right to reject the use of any contractor selected by the Generator and then work to find a replacement contractor for the Generator. If the Parties cannot reach agreement, then they must “determine an alternative means of performance” by the Generator.

On its face, this provision would require the DSP to approve most, if not all, of the third-party contractors utilized by the Generator to construction and operate its facility, including, engineering and design firms, EPC contractors, metering and communications service providers, software companies that provide asset monitoring services, and even project security services, since all of these entities provide services related to the performance of the Generator’s obligations to construct and operate its facilities in accordance with applicable law. Typically, for both transmission and distribution-interconnected generation resources, a Generator can and generally does contract with one or more of these various entities to assist the Generator in meeting its obligations and operating its resource.

This provision is a very unusual contractual requirement and places an unreasonable restriction on the ability of the Generator to appropriately control and manage its business and its performance and compliance obligations, not only under the SDRIA, but also under applicable law. The Generator retains ownership and control over the GIF and its Distribution Resource and it should therefore retain full responsibility and control over the development, construction and operation of these facilities. The Discussion Draft Rule and the SDRIA set forth the specific performance requirements for the GIF and the Distribution Resource and clearly states that the Generator is liable to the DSP for meeting these requirements, which protects the DSP without the need for becoming directly involved in the hiring of third-party entities by the Generator. The Generator remains responsible and liable for its performance under the Interconnection Agreement (including the performance of any service providers with which it contracts). In fact, one of the

⁸ The Generator’s obligations under the SDRIA are not limited to construction and operation of the GIF, but also extend to the construction and operation of the Distribution Facility itself, including the obligation to design, install and construct the GIF and the Distribution Resource in accordance with the NEC and Applicable Law (Section 4(D)) and to install, operate and maintain metering, telemetry and communications equipment associated with the operation of the Distribution Resource (Sec. 8(B)).

fundamental reasons that the ownership of generation transitioned to a competitive market in the mid-1990s was precisely to remove the ownership and control (and attendant risks) away from the backs of ratepayers and onto private companies. This provision is step towards placing control (and risk) for generation resource back onto the utility.

There is no comparable provision in the SGIA which has been in existence for over 20 years, and to the knowledge of the Joint Storage Commenters, performance of contractors such as EPC contractors has not been an issue. Further, existing developers such as each of the Joint Storage Commenters have well-established relationships with various third-party entities such as EPC service providers that would appear to fit within this provision and we are unaware of any concerns raised by the DSPs with regard to these entities. This provision could also create a significant concern for project lenders because it removes substantial control over the development and operation of the project from the Generator and places it in the control of the DSP, with whom the lenders have no contractual relationship.

Further, we believe that this provision will have the unintended consequence of creating a potential legal liability for the DSP. A legal argument could be made that a DSP is liable for damage sustained at a Generator's facility that is caused by a contractor effectively selected by the DSP because the DSP rejected the Generator's selection of its own contractors. Finally, this approval requirement will only serve to further delay what has already become a lengthy interconnection process. Joint Storage Commenters therefore strongly urge that this provision, as drafted, be removed.

Notably, the provision also provides that if the third-party contractor is retained for performance "that may incur a cost to DSP" then the Generator must provide an estimated cost to the DSP. However, we cannot envision a situation in which the DSP incurs a cost for the construction and operation of the Generator's interconnection facilities. To be clear, these are not the interconnection facilities owned or operated by the DSP; rather, they are the facilities solely owned and operated by the Generator, "at its sole expense."

Given the inclusion of this provision relating to the DSP's costs, it is possible that the intent of this provision was not to address the construction and operation of the GIF, but rather to address the proposal that Joint Storage Commenters have made to permit the Generator to hire an

independent contractor directly to construct the *DSP's* Interconnection Facilities, the *DIF*, rather than charging the Generator a CIAC. We have proposed changes to the provision to reflect this interpretation. However, if this was not the intent, then perhaps there is an issue with certain BTM generation arrangements that this provision is designed to address. If that is the case, then the provision should be tailored to address the specific situation, but it is not appropriate for the interconnection of a stand-alone facility that is registering with ERCOT as a Resource to limit the ability of the Generator to control and manage the development and operation of its own assets.

c. Section 4(A)(ii): Substation Land Rights

This provision states that the “Generator must acquire land rights necessary for a DSP substation or switchyard at its sole expense.” While Joint Storage Commenters and TDUs have agreed that the Generator will be responsible for obtaining necessary land rights, the DSP reimburses the Generator up to the market value for any land rights acquired by the Generator for a new DSP substation or switchyard. This requirement is set forth in Section 22(B), but as drafted, Section 4(A)(ii) could be read to be in conflict with Section 22(B). Joint Storage Commenters have proposed clarifying language to be incorporated into Section 4(A)(ii).

d. Section 4(A)(v)-(vii): CIAC

As discussed above, this provision assumes a Commission policy determination has been made that DESRs must pay all of the interconnection capital costs of the DSP through a CIAC even though the same is not required of its transmission-interconnected competitors. For all of the reasons set forth above and in the Joint Storage Commenters Cost Recovery Comments, if the Commission moves forward with publication of the Discussion Draft Rule, this provision should be revised to reflect that it is not appropriate for ERCOT-registered Resources to pay for all of the interconnection capital costs incurred by the DSP. We have proposed changes to reflect this position by amending the definition of CIAC to provide that for a distribution resource provider that will be a registered Resource with ERCOT (or the equivalent for another ISO) as of its commercial operation date, the CIAC only includes those costs associated with the portion of the DSP's Interconnection Facilities (“DIF”) that are located outside of the DSP's substation.

That said, to the extent that CIAC is required to be paid by any distribution resource provider, Joint Storage Commenters believe that the draft Section 4(A)(v) - (vii) and Section 4(B) sets forth a balanced and reasonable process for the DSP to estimate and true-up the CIAC.

e. Section 4(d): Applicable Standards

This provision requires each party to comply with various technical standards, including IEEE and ISO Requirements. If the proposed 16 TAC §25.212 retains the technical standards included in the Discussion Draft Rule, then this provision should address what requirements will take precedence in the event of a conflict between the 16 TAC §25.212, ISO Requirements and IEEE Standards, which could occur if changes are made to the IEEE Standards or the ERCOT Operating Guides before the Commission completes an update 16 TAC §25.212. The likelihood of a conflict would be lessened if the draft rule were revised as proposed by Joint Storage Commenters to reference the appropriate ISO or IEEE standard, rather than restating the standard in the rule.

f. Section 12(b): Outages

Section 12(B) includes a requirement for a distribution resource to update its COP (Current Operating Plan – an ERCOT term) and the Applicable ISO's outage scheduler. Joint Storage Commenters note that as drafted, the SDRIA is applicable to BTM and other generation facilities that may not be required to submit a current operating plan or outage scheduling to the Applicable ISO. Joint Storage Commenters have proposed clarifications to this section to reflect this fact.

g. Exhibits G and H: Interconnection Studies and Applications

Exhibit G requires all interconnection studies to be included and Exhibit H requires the interconnection application to be included. Joint Storage Commenters do not oppose this requirement, but note that these documents include significant confidential information regarding the Generator entity and information that could be considered highly sensitive, confidential critical infrastructure information. Including these documents in the interconnection agreement which must be filed with the Commission will almost ensure that all of the agreements are, or should be, filed confidentially.

Joint Storage Commenters appreciate the significant effort and time provided by the Commission Staff to develop this Discussion Draft Rule and we remain ready to provide any additional comments or assistance to develop a draft rule for publication.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Pat Wood III". The signature is stylized with a large initial "P" and a cursive "W".

Pat Wood III
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On behalf of

HUNT ENERGY NETWORK L.L.C.
JUPITER POWER LLC
BROAD REACH POWER LLC

ATTACHMENT A

JOINT STORAGE COMMENTERS' SUMMARY OF COMMENTS IN PROJECT NO 54224

1. Energy storage is an existing and much-needed, instantaneously-responding, dispatchable generation resource for ERCOT. The Commission should re-affirm its policy set forth in 16 TAC §25.501(m) and §25.192(a) and expressly extend that policy to wholesale energy storage interconnected at distribution voltage (Distribution Energy Storage Resources or “DESRs”).
2. DESRs are Power Generation Companies and registered Resources with ERCOT that provide the same services to the ERCOT grid as other registered Resources. DESRs are fully qualified by ERCOT to provide ancillary services and they are dispatched by ERCOT to provide energy through SCED, in exactly the same manner as transmission-connected ESRs.
3. It is appropriate to uplift into TCOS the utilities’ costs incurred to interconnect DESRs, just as these costs are uplifted into TCOS for transmission-interconnected Resources, because DESRs provide the same system-wide benefits as their transmission-interconnected counterparts.
 - a. This is consistent with PURA §35.004(b), requiring that utilities provide non-discriminatory access to wholesale transmission service, including transmission service at distribution voltage.
 - b. As a Resource providing energy and ancillary services, DESRs provide systemwide benefits to all customers within ERCOT, not just to the customers within a utility’s service area.
 - c. DESRs provide at least the same level of congestion relief as transmission-interconnected resources. By being decentralized and located close to load, a DESR may even have a greater impact on resolving congestion in the area where the DESR is located as compared to a transmission-connected Resource located further from the load.
 - d. DESRs are incented by market signals to charge and discharge the battery in a manner that supports congestion relief since DESRs generally charge the storage facility when prices are low (i.e. congestion is not occurring) and discharge when prices are higher (i.e. congestion is occurring).
4. However, Joint Storage Commenters have proposed a compromise for DESRs. Interconnection facilities located within the utility substation would be treated the same as for transmission energy storage resources -- they would be recovered through TCOS and the DESR would post collateral to be returned at commercial operation. Costs for utility interconnection equipment located outside the substation fence to the Point of Interconnection would be paid by the DESR through an upfront Contribution In Aid of Construction.
5. DESRs should not be required to pay a monthly utility charge for wholesale transmission service provided at distribution voltage. No other Power Generation Company is subject to charges for wholesale transmission service (including transmission-level energy storage and distribution-level non-storage PGCs).
 - a. Since the enactment of wholesale competition in 1995, the Commission has maintained a policy that retail customers pay for delivery service, and they pay only once. Generators have never been required to pay for wholesale delivery service when the energy was being delivered to serve retail customers within ERCOT.
 - b. Assessing these monthly rates on DESRs for wholesale transmission service at distribution voltage is contrary to the actions of the Legislature and the Commission in 2011 and 2012, which support equal treatment of PGCs, including energy storage.
 - c. 16 TAC §25.192(a) requires a utility to establish tariffs for wholesale transmission service that shall apply on a non-discriminatory basis, and expressly states that the tariff shall not apply to wholesale energy storage. Both PURA and the Commission’s rules define “transmission service” as including service at distribution voltage. Singling out DESRs as the only PGC required to pay monthly wholesale charges, makes a policy decision to discourage the reliability offered by DESRs by placing them at a competitive disadvantage and making these Resources uneconomic to operate.

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Figure: 16 TAC §25.211(m)

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ATTACHMENT B

DISTRIBUTION RESOURCE INTERCONNECTION AGREEMENT

This Distribution Resource Interconnection Agreement ("Agreement") is made and entered into this ____ day of ____, 20____, by _____ ("Distribution Service Provider"

or "DSP"), and _____ ("Generator"), each hereinafter may be referred to individually as "Party" or both referred to collectively as the "Parties."

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. Objective and Scope. DSP represents that it is a public utility that owns and operates facilities for the distribution of electricity within the state of Texas. Generator represents that it will own and operate a Distribution Resource, and seeks to interconnect that Distribution Resource to the Distribution System operated by DSP. This Agreement states the terms and conditions under which Generator's Distribution Resource will be interconnected to DSP's Distribution System.

2. Definitions. The following capitalized terms, when used in this Agreement, have the following meanings, except as otherwise specified:

- a. "Affiliates" means a Party's corporate parent company, associated and affiliated companies and the respective directors, officers, agents, servants and employees of such companies.
- b. "Agreement" means this Agreement, including Exhibits A through G, and any additional exhibits, schedules and attachments added as required by this Agreement, or added by any authorized amendment to this Agreement.
- c. "ANSI Standards" means the American National Standards Institute Standards in effect at the time a new **POI** is constructed or an existing **POI** is modified.
- d. "Applicable Independent System Operator" or "Applicable ISO" means the independent system operator that has authority in the power region where Generator seeks to interconnect to the **DSP's** Distribution System.
- e. "Applicable ISO Requirements" means any applicable rules, regulations, criteria, standards, procedures, operating requirements, other binding documents, and related amendments adopted by an Applicable ISO or its successor. Applicable ISO Requirements includes the Electric Reliability Council of Texas (ERCOT) Nodal Protocols, Midcontinent Independent System Operator Business Practice Manuals, and Southwest Power Pool Criteria, as amended from time to time. Applicable ISO Requirements also includes, as applicable, Western Electricity Coordinating Council Balancing Authority Standards, NERC Standards and Federal Energy Regulatory Commission regulations, orders, and standards.
- f. "Applicable Law" means any valid constitution, statute, law (including common law), ordinance, rule, regulation, rate, ruling, order, judgment, legally binding guideline, restriction, requirement, writ, injunction, notice, or decree which has

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been enacted, issued or promulgated by, and any tariffs approved by, any Governmental Authority that affect a Party, a Party's standard course of business, or performance of a Party under this Agreement.

- g. "Change in Law" means any material change in Applicable Law that makes a Party's performance impossible or makes one or more obligations or requirements under this Agreement illegal.
- h. "Commercial Operation" means construction of the Distribution Resource has been substantially completed, testing and commissioning of the Distribution Resource has been completed, and the Distribution Resource is ready to generate power and, if the Distribution Resource is a **DESR**, to receive charging power for storage and subsequent generation.
- i. "Commercial Operation Date" means the date that Commercial Operation commences.
- j. "Confidential Information" means any information that a Party claims is competitively sensitive, commercial or financial information under this Agreement.
- k. "CIAC" means a Contribution in Aid of Construction payment made by Generator to DSP to pay for all or a portion of the capital and overhead costs incurred by the DSP to construct or modify the DIF. If the Generator's Distribution Resource will be registered or qualified as a Resource with the Applicable ISO as of the date of Commercial Operation, then the CIAC shall only consist of those capital and overhead costs incurred by the DSP for that portion of the DIF that are located outside of the DSP's substation into which the GIF is interconnecting.
- l. "Default" means the failure of either Party to perform any obligation in the time or manner provided by this Agreement. No Default exists where such failure to discharge an obligation is expressly excused under this Agreement or is the result of an act or omission of the other Party or any of its agents, such as by Force Majeure.
- m. "DGR" means Distribution Generation Resource and has the meaning provided under Section 2 of the ERCOT Protocols.
- n. "DESR" means Distribution Energy Storage Resource and has the meaning provided under Section 2 of the ERCOT Protocols.
- o. "Distribution Resource" has the meaning provided under §25.211 of the PUCT Substantive Rules, and, as context indicates in this Agreement, the specific Distribution Resource described on Exhibit A
- p. "Distribution System" has the meaning provided under §25.211 of the PUCT Substantive Rules.

q. "DIF" means DSP Interconnection Facilities which are the electrical,

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communication, and other equipment and facilities specifically described and listed under Exhibit A that are under the ownership or control of DSP and are to be utilized to connect the Distribution System to the Distribution Resource at the POI. DIF include any upgrades, modifications or reconfigurations of existing DSP equipment and facilities to accommodate interconnection.

- r. "Force Majeure" means any cause beyond the reasonable control of the Party claiming Force Majeure, and without the fault or negligence of such Party, which materially prevents or impairs the performance of such Party's obligations under this Agreement or would otherwise constitute a Default, including storm, flood, lightning, earthquake, fire, explosion, failure or imminent threat of failure of facilities, civil disturbance, pandemic, strike or other labor disturbance, sabotage, war, national emergency, or restraint by any Governmental Authority. A scheduled or unscheduled outage under Section 12 of this Agreement is not a Force Majeure.
- s. "GIF" means Generator Interconnection Facilities which are the Generator electrical, communication, and other equipment and facilities specifically described and listed under Exhibit A that are under the ownership or control of Generator and are utilized to connect the Distribution Resource to the Distribution System at the POI, GIF include any upgrades, modifications or reconfigurations of existing GIF equipment and facilities to accommodate interconnection.
- t. "Good Utility Practice" has the meaning provided under § 25.5 of the PUCT Substantive Rules.
- u. "Governmental Authority" means an Applicable ISO providing services in the state of Texas, the PUCT, the NERC, and any other duly constituted federal, state, local or municipal body having jurisdiction over a Party in the United States of America.
- v. "IEEE Standards" means the Institute of Electrical and Electronic Engineers Standards in effect at the time a new **POI** is constructed or an existing **POI** is modified.
- w. "Interconnection Studies" means the technical studies required by the **DSP**, the Applicable **ISO**, and any other applicable Governmental Authority in order to interconnect the Distribution Resource with the Distribution System in accordance with all DSP operating requirements and the Applicable ISO Requirements, and which identify the additional necessary upgrades, improvements, or changes needed to support safe and reliable operations through the Distribution System and into the applicable transmission system resulting from such interconnection. Such technical studies must be provided by Generator at its cost, unless otherwise prescribed by this Agreement or agreed to by the Parties in an amendment to this Agreement.
- x. "In-Service Date" means the date stated in Exhibit F, that indicates when the DIF will be ready to connect to the GIF at the POI.

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- y. "Intrastate Operation" means a synchronous or an asynchronous interconnection between ERCOT and any other transmission facilities operated outside of ERCOT unless ordered by the Federal Energy Regulatory Commission under Section 210 of the Federal Power Act.
- z. "NEC" means the National Electrical Code published by the National Fire Protection Association in effect at the time a new POI is constructed or an existing POI is modified.
- aa. "NESC" means the National Electrical Safety Code published by the IEEE Standards in effect at the time a new POI is constructed or an existing POI is modified.
- bb. "NERC" means the North American Electric Reliability Corporation, and any regional entity exercising the expressly delegated authority of NERC, including Texas Reliability Entity Inc.
- cc. "Notice to Proceed" means the notice from Generator to DSP authorizing DSP to commence the design, procurement and construction of the DIF.
- dd. "Person" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity.
- ee. "POI" means the Points of Interconnection specified in Exhibit A and has the meaning provided under § 25.5 of the PUCT Substantive Rules.
- ff. "PUCT" means the Public Utility Commission of Texas or its successor in function.
- ff. "PUCT Substantive Rules" means the regulations promulgated by the PUCT and codified in Title 16, Chapter 25 of the Texas Administrative Code.
- gg. "Resource" means a generation or energy storage facility that is recognized by the Applicable ISO for the region in which the facility is located as qualified to submit offers to sell energy or ancillary services and be dispatched by the Applicable ISO. For the ERCOT region, a Generation Resource, Energy Storage Resource and a Load Resource (as each such term is defined in the ERCOT Nodal Protocols) are each a "Resource."

3. Term and Termination; Cost Recovery Upon Termination; Disconnection

This Agreement is effective upon execution by both Parties and is effective until terminated by a Party for any of the reasons specified by Subsection 3(A). Upon termination of this Agreement, both Parties must use commercially reasonable efforts to mitigate the damages and costs that each respective Party may incur as a consequence of termination. Subsection 3(A) and Subsection 3(B) will survive termination of this Agreement until all applicable obligations under those subsections are performed.

A This Agreement may be terminated for any of the following reasons:
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- (i) Generator may terminate this Agreement at any time by providing sixty (60) calendar days' advance written notice to DSP.
 - (ii) DSP may terminate this Agreement by providing written notice to Generator if the Commercial Operation Date does not occur within twelve (12) months after the In-Service Date.
 - (iii) DSP may terminate this Agreement by giving written notice to Generator if the Generator does not issue a Notice to Proceed, a CIAC, and, if applicable, a security, by the date specified in Exhibit F or fails to provide the required CIAC and, if applicable, security to DSP in the manner and in the amount specified by Section 4 and in Exhibit E within three (3) months of the Effective Date.
 - (iv) A Party may terminate this Agreement upon an uncured Default of the other Party, in accordance with the terms of Section 18.
 - (v) DSP may terminate this Agreement by providing Generator at least sixty (60) calendar days' advance written notice, if practicable, in the event of a Change in Law. Upon such advance written notice, (i) DSP must cease any activities relating to the engineering or construction of the DIF or connecting the DIF to the GIF; and (ii) Parties must use commercially reasonable efforts to either amend this Agreement or execute a new agreement to reflect the Change in Law.
- B. If DSP or Generator terminates this Agreement for a reason specified in Subsection 3(A) including termination due to an uncured Default by Generator in accordance with the terms of Section 18, within thirty (30) calendar days from the date of termination, DSP must provide Generator a written invoice reasonably detailing all costs reasonably incurred by DSP in association with Generator's performance under this Agreement up to the date of termination and subtracting all amounts that have been already paid as a CIAC. ~~DSP's reasonably incurred costs are limited to those that have not already been paid by Generator as a CIAC or security under Section 4.~~ DSP's reasonably incurred costs do not include costs that were incurred after the date of termination, unless such costs were committed to be incurred prior to the date of termination. Within fifteen business (15) calendar days from receipt of a reasonably detailed invoice from DSP, Generator must pay the net of all costs listed on the invoice that were reasonably incurred by DSP minus all CIAC paid by Generator and not excluded by this subsection. If the resulting net amount is negative, then the DSP shall refund any remaining CIAC to Generator. Reasonable costs incurred by DSP that Generator is responsible for paying include:
- (i) The costs associated with construction of the DIF and connection of the DIF to the GIF, including costs that DSP has incurred for licensing, planning, designing, engineering, installing, maintaining, procuring equipment and materials, acquiring rights of way, and any other related costs such as taxes and the increased tax liability of DSP as a result of Generator's payments to

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DSP under Subsection 4.

- (ii) The costs that DSP has committed to incur under this Agreement that it is unable to avoid using commercially reasonable steps.
 - (iii) Capital and operational costs incurred by DSP after the date of termination to return the Distribution System to a condition consistent with DSP's construction standards and all Applicable Law.
 - (iv) Costs incurred by DSP in association with disconnection of the GIF from the DIF, or removal of the GIF and, if applicable, the DIF from the premises of DSP under Subsection 4(C). Such costs also include removal of the GIF and Generator's equipment from the DSP's premises and restoration of the Distribution System to the condition prior to interconnection of the Generator.
- C. Upon termination of this Agreement, the Parties will disconnect the GIF from the DIF. The Parties must use commercially reasonable efforts to coordinate such disconnection and the removal of the GIF from any property owned or controlled by DSP. If the GIF is not disconnected within thirty (30) calendar days of written notice by DSP to Generator and commercially reasonable efforts to coordinate disconnection have failed, DSP will have the right to disconnect the GIF from the DIF without coordinating with Generator. If, after sixty (60) calendar days after disconnection of the GIF, the GIF is not removed by the Generator and commercially reasonable efforts to coordinate removal have failed, DSP will have the right to remove the GIF from property owned or controlled by DSP, and restore the Distribution System to a condition consistent with DSP's construction standards and Applicable Law.

4. Performance Obligation; Cost Allocation; CIAC and Security

- A. Parties agree to interconnect the GIF and the DIF in accordance with the terms and conditions of this Agreement. Costs associated with performance under this Agreement other than termination under Section 3 or Default under Section 18, will be allocated in the following manner.
- (i) Generator must design, procure, install, construct and maintain the GIF at its sole expense and responsibility. ~~Upon written approval from DSP, Generator may retain one or more independent third party contractors to delegate any or all of Generator's performance obligations under this Agreement. At any time prior to the completion of the GIF or the In-Service Date, whichever is later, Generator may submit a written request to DSP that must include the business name and contact information of each contractor and the scope of work to be performed by each contractor, including the estimated term or duration each respective contractor will be retained by Generator. If an independent third party contractor is retained for performance that may incur a cost to DSP, Generator must also provide to DSP the estimated cost associated with retaining the contractor as part of its written request. Within ten (10) business days from receiving the request from~~

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~~Generator to retain an independent third-party contractor, DSP must approve or deny the request in writing. If such a request from Generator is denied by DSP, both Parties must make reasonable efforts to find a replacement independent third-party contractor that is acceptable to both Parties. If Parties cannot agree on such a replacement contractor, Parties must determine an alternative means of performance for the specific obligation or obligations Generator intended to delegate.~~

- (ii) Generator must pay all costs associated with modifications to the GIF, including costs incurred by DSP for modifications to the DIF to accommodate a modification to the GIF and for upgrades to the GIF, DIF, or Distribution Resource that are necessary to comply with changes in Applicable Law.
- (iii) Except as set forth in Section 22(B), Generator must acquire land rights necessary for a DSP substation or switchyard at its sole expense.
- (iv) Costs incurred by Generator or DSP as a result of a delay under Subsection 5(C), Section 22, or Section 25, are the responsibility of Generator.
- (v) Unless Generator hires a third-party contractor in accordance with subsection (vii) below, then Generator must pay DSP a CIAC for the reasonably estimated costs associated with the construction of the DIF and interconnection of the DIF to the GIF. If DSP's tariff includes an allowable expenditure amount for interconnection, the CIAC must account for such an allowable expenditure amount. DSP may also require Generator to provide a reasonable means of security to cover the costs associated with such construction and interconnection that may not be covered by the CIAC. The CIAC and, if applicable, the security, must be included as part of this Agreement as Exhibit E. The CIAC and, if applicable, the security must be paid by Generator to DSP in the amounts described in Exhibit E and payment from the CIAC or security must be delivered to DSP by Generator on or before the date specified in Exhibit E. The CIAC must be in an amount sufficient to pay for the reasonably estimated costs of construction of DIF and connection of GIF to DIF, including licensing, planning, designing, engineering, installing, maintaining, procuring equipment and materials, acquiring rights of way, and any other related costs such as taxes or any increased tax liability of DSP. The CIAC also includes overhead and labor expenses that the **DSP** normally and reasonably applies to construction projects of this nature increased by an adder agreed to by the Parties and specified as part of Exhibit E to cover the effects of Generator's payment on **DSP's** tax liability and, where applicable, costs associated with the recovery of franchise fees for conducting business that were necessary for **DSP** to incur in order to perform its obligations under this Agreement.
- (vi) DSP must provide to Generator a reasonably detailed written invoice for the CIAC every thirty (30) calendar days from the date specified for delivery of the CIAC in Exhibit F until the occurrence of the In-Service Date. Within

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thirty (30) calendar days from the date the In-Service Date occurs, DSP must provide to Generator a reasonably detailed invoice for all actual costs incurred by DSP for construction of the DIF and connecting the GIF to the DIF.

(vii) In lieu of paying a CIAC and upon written approval from DSP, Generator may retain and directly pay one or more independent third-party contractors to construct the DIF, under the direction of the DSP and subject to the specifications identified by the DSP and as set forth in this Agreement. At any time prior to the construction of the DIF, Generator may submit a written request to DSP that must include the business name and contact information of each contractor and the scope of work to be performed by each contractor, including the estimated term or duration each respective contractor will be retained by Generator. Within ten (10) business days from receiving the request from Generator to retain an independent third-party contractor, DSP must approve or deny the request in writing. If such a request from Generator is denied by DSP, both Parties must make reasonable efforts to find a replacement independent third-party contractor that is acceptable to both Parties or to agree upon a reasonable estimated CIAC.

(viii) DSP must design, procure, install, construct and maintain the DIF at its sole expense. DSP must use funds from the CIAC to recover such expenses, as specified under Paragraph 4(A)(v). DSP must begin procurement and construction of the DIF within fifteen (15) calendar days of receiving the CIAC in the amounts described in Exhibit E. DSP is not obligated to begin procurement or construction of the DIF until the CIAC or security is received by DSP in the amounts described in Exhibit E. A DSP's failure to perform its obligations in the event of an insufficient or delinquent CIAC is not a Default of this Agreement.

B. Within sixty (60) calendar days from the date the In-Service Date occurs, DSP must true-up the actual costs incurred by DSP for construction of the DIF and connecting the GIF to the DIF against the amount of the CIAC and the initial costs estimates for the project. Upon such a true-up of actual incurred costs, DSP must either invoice Generator for any additional amount due, or reimburse Generator for any overpayment, relating to the actual costs incurred by DSP. DSP must provide to Generator a reasonably detailed invoice and reasonable documentation of the actual costs incurred and of the true-up performed by DSP. Settlement of true-up invoicing or reimbursement must occur within thirty (30) calendar days after the date on which all DSP work orders associated with the DIF have been closed out. If the cost estimates, the actual costs incurred, or supporting documentation, including documents related to independent third-party contractors retained by Generator, contain confidential information, the DSP must identify the information as confidential and Generator must maintain such confidential information in accordance with Section 23. If required by the DSP, any third-party contractor retained by Generator, Generator must execute a non-disclosure agreement or similar agreement for the benefit of such a third-party.

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- C. Security paid by Generator to DSP in accordance with Paragraph 4(A)(iii) must be returned to Generator within five (5) business days after DSP receives notice from Generator that the Distribution Resource is operational as of the Commercial Operation Date and has verified the Distribution Resource is operational. DSP must verify the Distribution Resource is operational within five (5) business days of receiving the notice of operation from Generator. DSP may retain the security to cover any costs that that DSP incurs upon termination of this Agreement as described in Section 3(B) and may draw upon such security if Generator does not pay DSP the amounts due by the date specified in Subsection 3(B).
- D. The Parties agree to design, install and construct their respective facilities in accordance with: (i) Good Utility Practice; (ii) Applicable Law and (iii) applicable provisions of the NESC, ANSI Standards, and IEEE Standards in effect at the time of construction and installation of the GIF, the DIF, and the Distribution Resource. Generator must also design, install and construct the GIF and the Distribution Resource in accordance with the NEC and Applicable Law. Applicable ISO Requirements will govern in the event there is a conflict between the NEC and any Applicable ISO Requirements and Applicable Law will govern if there is a conflict between the Applicable Law and either the NEC or any Applicable ISO Requirements.
- E. Exhibit F prescribes the Parties' anticipated dates for completion of their respective construction and performance activities. Exhibit E prescribes the terms and specific amount to be included in the CIAC and, if applicable, a security to be paid by Generator to DSP for the reasonably estimated costs listed under Paragraph 4(A)(v) and Paragraph 4(A)(vii). Exhibit E also includes other information necessary to remit payment from Generator to DSP for such costs. Generator acknowledges that DSP has no obligation to commence any construction or performance activities under this Agreement until DSP has received the Notice to Proceed, the CIAC, and, if applicable, a security, by the date specified in Exhibit F. Generator also acknowledges that DSP has no such obligations to commence or perform under this Agreement unless the amount of the CIAC and, if applicable, a security provided by the Generator to the DSP is in the amount specified in Exhibit E.
- F. Generator and DSP must communicate to resolve outstanding issues related to ~~cost allocation~~, performance obligations, or other responsibilities under this Agreement on a regular basis. The first date of such communication between DSP and Generator must occur at least 20 business days from the date the DSP has received the Notice to Proceed as specified in Exhibit F and at least once every 20 business days thereafter until the Commercial Operation Date. The Parties may, upon mutual agreement, establish in Exhibit F a more frequent communication schedule than what is specified by this Subsection. All such communications between a Generator and DSP must be reduced to writing. Some communications must comply with certain provisions of the PUCT Substantive Rules as specified by §25.211 of the PUCT Substantive Rules.

5. Right of Access; Equipment Installation; Removal and Inspection

- A Upon reasonable notice prior to the Commercial Operation Date, DSP will be

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granted access to Generator's premises to inspect the GIF and observe the commissioning (including any testing, startup, and initial operation) of the Distribution Resource.

- B. Generator warrants that it has obtained all necessary rights, permits, or agreements to provide DSP access to Generator's premises, to the extent required for DSP to exercise its rights and perform its obligations under this Agreement.
- C. Generator must secure and maintain access agreements for ingress, egress, survey, geotechnical, and environmental assessments on behalf of DSP on all lands for which land rights or interests will be conveyed to DSP under Section 22 until the In-Service Date. Such access agreements must be obtained in a timely manner to minimize any delay by DSP associated with completion of the DIF by the In-Service Date. Any delay of the In-Service Date by DSP that is caused by Generator's failure to timely obtain such access agreements will not be considered a Default of this Agreement by the DSP. Failure of Generator to timely provide such access agreements may delay the In-Service Date at no fault of the DSP.
- D. To the extent that the DSP accesses Generator's premises in accordance with this Agreement, DSP must require its personnel, including independent third-party contractors hired by the DSP, to comply with all safety requirements and procedures provided by Generator and Applicable Law.

6. Modifications of Generator Facilities

- A. Generator agrees to provide DSP with a description of the service, including ancillary services, the Generator anticipates providing for the duration of this Agreement as part of Exhibit A. If a modification is necessary to provide service under this Agreement, Generator must obtain approval for the modification in the manner prescribed by Subsection 6(B).
- B. Generator agrees that prior to making any modifications to the Distribution Resource or the GIF that vary from the Distribution Resource or GIF studied by the DSP as part of the interconnection request, Generator must submit to DSP a written notification and receive written approval from DSP prior to making such modifications, including but not limited to changes in the operating parameters studied at the time of interconnection that substantially affect the interconnection facilities associated system protection equipment, system protection settings, or other parameters associated with the interconnection between the DIF and the GIF (including but not limited to the installation of new or upgraded facilities).
- C. DSP must approve a requested modification by Generator in writing within ten (10) business days of receipt of the notification, unless such modification would impair the standard operation of DSP's facilities, or violate DSP's safety requirements and procedures, a requirement of this Agreement, or Applicable Law. If a requested modification is denied for such a reason, DSP must notify Generator within ten (10) business days and describe with reasonable specificity the grounds for the denial.

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7. Service Interruptions

- A DSP will have the right to suspend service where continuance of service to Generator will foreseeably endanger Persons or property. During an unscheduled outage of the DIF, DSP will have the right to suspend service to effect immediate repairs of the DIF.

- B. DSP has the right to disconnect the Distribution Resource from the DIF under the conditions specified by the applicable provisions of the PUCT Substantive Rules and Applicable ISO Requirements. Generator must coordinate with DSP to promptly disconnect the Distribution Resource from the DIF when required by, and in accordance with, the applicable provisions of the PUCT Substantive Rules or Applicable ISO Requirements. DSP has the right to disconnect the Distributed Resource from the DIF if Generator fails to comply with any such disconnection requirement.

8. Metering, Telemetry, and Communication Requirements

- A Metering, telemetry, and communication of data by **DSP** and Generator under this Agreement must be in accordance with Applicable Law and Good Utility Practice. DSP must, in accordance with Applicable ISO Requirements, install, own, operate, inspect, test, and maintain polled settlement metering, if required by Applicable ISO, and certain telemetry and communications equipment associated with the interconnection of the GIF to the DIF and the operation of the Distribution Resource. DSP must specify the data, including the form, manner, and frequency of such data, Generator must provide to DSP using DSP's communication equipment in Exhibit A.

- B. Generator must, in accordance with Applicable Law and Good Utility Practice, install, own, operate, inspect, test, calibrate, and maintain certain metering, telemetry, and communications equipment associated with the interconnection and operation of the Distribution Resource. The interconnection of the Distribution Resource to the Distribution System must not interfere with the operation of DSP's metering, telemetry, or communications equipment.

- C. DSP must notify Generator no less than five (5) business days in advance of any planned maintenance, inspection, testing, or calibration of metering equipment, telemetry, or communications equipment unless otherwise agreed to in writing. Generator has the right to be present for any maintenance activities performed by DSP. DSP must provide to Generator copies of appropriate documents related to the maintenance procedures and results of such maintenance within five (5) business days of such an activity.

- D. Prior to the interconnection of the Distributed Resource to the Distribution System, acceptance tests must be performed by the Parties to ensure the proper functioning of all metering, telemetry and communications equipment associated with the interconnection and operation of the Distribution Resource, and to verify the accuracy of data received by and Generator. All acceptance tests

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will be performed consistent with PUCT Substantive Rules, the Applicable ISO Requirements, and Good Utility Practice.

- E. Generator must obtain and install the necessary communications equipment and facilities for provision of Supervisory Control and Data Acquisition communications and telemetry to Generator's energy management system and to DSP's system dispatch center consistent with the Applicable ISO Requirements. All communications facilities delivery data to DSP must meet DSP's data requirements set forth in Exhibit A, which may exceed the minimum standards of the Applicable ISO Requirements with respect to communications facilities.
- F. DSP must, in accordance with Good Utility Practice and Applicable Law, specify the communications facilities necessary to transmit data from Generator's metering and telemetry facilities to DSP's system dispatch center.
- G. Each Party must promptly advise the other Party in writing if any metering, telemetry or communications equipment error or malfunction that requires attention is detected or otherwise learned of The Party owning or controlling such equipment must correct such error or malfunction as soon as reasonably feasible in accordance with the Applicable ISO Requirements and promptly notify the other Party of the correction in writing.
- H. Any change or modification by Generator to the Distribution Resource's metering, telemetry or communication equipment that affect communications or data transmitted to or received by the DSP must be approved in writing by DSP in the manner specified by Subsection 6(C) prior to Generator making such a change or modification.

9. System Protection and Other Controls Requirements

- A. Generator must install and maintain equipment necessary to automatically disconnect the GIF from the DIF in the event of a fault on the bulk power system or the Distribution System, or to prevent an unintentional island. Design of the GIF, and the Distribution Resource is subject to DSP review for safe, compatible, and reliable interconnection and operation with the Distribution System so as to not reduce or adversely impact the quality or continuity of electric service provided by DSP to all customers. Generator must provide to DSP a relaying one-line diagram as part of Exhibit C and any related drawings or other documents pertaining to system protection as part of Exhibit D. The GIF must include a fault interrupting device at the **POI** capable of interrupting the available fault current. For an unintentional islanding event in which the Distribution Resource energizes a portion of the Distribution System through the **POI**, the Generator's system protection facilities must detect such islanding, automatically disconnect the Distributed Resource from the Distribution System, and cease to energize the Distributed Resource within the timeframe specified by DSP in Exhibit A.
- B. The Distribution Resource and the GIF will comply with the Applicable ISO Requirements concerning voltage ride-through, under-frequency and over-

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frequency relaying, and primary frequency response. The Distribution Resource must not cause objectionable interference with the continuity of electric service provided to other customers of DSP nor jeopardize the security of the DSP's distribution system or the bulk power system.

10. System Disturbance Analysis; Testing and Commissioning

- A. Each Party must test, operate and maintain system protection equipment in accordance with DSP requirements and the Applicable ISO Requirements. Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent must perform all required testing of system protection equipment. Generator agrees that acceptable relay test reports will be provided to DSP and on- site commissioning acceptance testing must be performed prior to final commissioning of the Distribution Resource. Generator agrees to submit to DSP preliminary relay settings for all applicable relaying. After DSP and Generator agree on the applicable relay settings, Generator will provide final relay settings to DSP. Upon completion of acceptance testing, Generator will provide its relay testing documentation to DSP certifying that all relaying and protection equipment has been properly tested as a condition to the Distribution Resource achieving the Commercial Operation Date.
- B. At intervals suggested by Good Utility Practice, or at intervals described in the Applicable ISO Requirements, if defined, and following any apparent malfunction of the system protection equipment, each Party must perform required testing or functional tests of its system protection equipment. Each Party must provide reasonable advance notice to the other Party of testing of its system protection equipment under this section and, if requested, allow the Party to have representatives present during testing of its system protection equipment.
- C. Recording equipment must be installed to analyze all system disturbances in accordance with the Applicable ISO Requirements.

11. System Operation and Maintenance

- A. Each Party must operate and maintain its facilities in accordance with Applicable Law and Good Utility Practice. The Generator must operate and maintain the Distribution Resource in accordance with NEC standards.
- B. Subject to any necessary approval by the Applicable ISO, each Party must provide necessary equipment outages to allow the other Party to perform periodic maintenance, repair or replacement of the GIF, the Distribution Resource, or the DIF. Such outages must be scheduled at mutually agreeable times, unless conditions exist which a Party believes, in accordance with Good Utility Practice,

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may endanger Persons or property, provided, in the event that the Parties make all commercially reasonable efforts to schedule an outage but are unable to agree on a mutually agreeable schedule, DSP's schedule will control.

- C. No changes will be made in the normal operation of the POI without the mutual agreement of the Parties except as otherwise provided in this Agreement. All testing of the Distribution Resource that will affect the operation of the GIF, the DIF, or the Distribution System must be coordinated between DSP and Generator, and will be conducted in accordance with the Applicable ISO Requirements and DSP requirements.
- D. Any switching or clearances of the GIF or DIF will be done in accordance with the Applicable ISO Requirements, DSP's switching procedures, and Good Utility Practice.
- E. Consistent with the Applicable ISO Requirements and the Parties' mutually acceptable procedure, Generator must be responsible for the proper synchronization of the Distribution Resource with the Distribution System.
- F. Generator must procure, install, maintain and operate power system stabilizers in accordance with the Applicable ISO Requirements, if required.
- G. The Parties must maintain network operating model updates in accordance with the Applicable ISO Requirements.
- H. Each Party must establish and maintain a response plan that requires immediate response in the event of an emergency. Each Party must have a control center that is staffed twenty-four (24) hours per day, seven (7) calendar days per week, with personnel capable of operating and controlling the respective DIF and GIF ~~by of the~~ DSP and Generator, respectively, at the POI (or make appropriate arrangements for a third-party, including for the Generator, its Qualified Scheduling Entity (QSE), to establish and maintain such a control center on a Party's behalf). For purposes of communications between the Parties' control centers or the assigned contact personnel, all contact information must be exchanged and each Party must be notified of any changes on an ongoing basis.
- I. DSP must promptly notify Generator of any scheduled, or as soon as practicable after any unscheduled outage under Section 12, of any distribution facility controlled by DSP that impacts, or that foreseeably could impact, the operation of the Distribution Resource. Following such notification, Generator must, within the time specified by the Applicable Requirements, update the Distribution Resource's Current Operating Plan (COP), if appropriate the telemetered status, and as required, the Applicable ISO's outage scheduler to reflect the unavailability of the Distribution Resource consistent with the impact of that outage or of any other

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scheduled outage or unscheduled outage of distribution facilities under the ownership or control of DSP.

12. Scheduled and Unscheduled Outages; Clearances

- A. Each Party must provide outage notification to the other Party, including for unscheduled outages and unscheduled outages, in accordance with Applicable ISO Requirements and Good Utility Practice.
- B. In the event of an unscheduled outage, including involuntary load shed imposed by the Applicable ISO, occurring within the Distribution System that will affect service to the Distribution Resource, DSP must promptly notify Generator and Generator's QSE in writing or by telephone as soon as practicable after the occurrence of the outage. Telephone notices given under to this Section must be confirmed in writing as soon as reasonably possible. Notice involving unscheduled outages must specifically state all details regarding the unscheduled outage, the time and date when the unscheduled outage occurred and when the unscheduled outage is reasonably expected to cease. Generator must update its current operating COP status with the Applicable ISO, if applicable, and if appropriate, the telemetered status, and if required by the Applicable ISO Requirements, the Applicable ISO's outage scheduler accordingly. Following restoration of the affected Distribution System facilities, DSP must promptly notify Generator when the Distributed Resource is ready to be re-energized. Re-energization of the Distributed Resource must be coordinated among DSP, Generator, the Applicable ISO, and QSE, as necessary.
- C. In the event of an unscheduled outage of the Distribution Resource or GIF, Generator must promptly notify DSP and provide all details of the outage in writing, including GIF affected, expected duration of the outage, request for clearance, and any other relevant information as soon as practicable after the outage occurrence. Generator must update the Applicable ISO's outage scheduler, if required, in accordance with the Applicable ISO Requirements. If clearance is requested, Generator must not perform restoration of the affected GIF until DSP has notified Generator that it may proceed with restoration. Following restoration of the GIF, Generator must promptly notify **DSP** when the GIF are ready to be re-energized. Re-energization of the GIF will be coordinated among **DSP**, Generator, the Applicable ISO, and QSE, as necessary.
- D. In the event of a scheduled outage of the Distribution System affecting the DIF, DSP must notify Generator no less than five (5) business days prior to the scheduled outage. DSP must notify Generator when the Distributed Resource is ready to be re-energized. Re-energization of the Distributed Resource must be coordinated among DSP, Generator, the Applicable ISO, and QSE, as necessary.
- E. In the event of a scheduled outage of the Distribution Resource, Generator must notify DSP no less than five (5) business days prior to the requested outage and

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provide DSP details of the outage in writing, including GIF affected, expected duration of the outage, request for clearance, and any other relevant information. Generator must notify DSP when the Distributed Resource is ready to be re-energized. Re-energization of the Distributed Resource will be coordinated among DSP, Generator, the Applicable ISO, and QSE, as necessary.

13. Insurance

Each Party must, at its own expense, maintain in force throughout the period of this Agreement and until released by the other Party, with insurers authorized to do business in Texas, the following minimum insurance coverages and requirements:

- A. Employers' liability and worker's compensation insurance providing statutory benefits in accordance with the laws and regulations of the State of Texas. The minimum limits for the employer's liability insurance must be one million dollars (\$1,000,000) each accident bodily injury by accident, one million dollars (\$1,000,000) each employee bodily injury by disease, and one million dollars (\$1,000,000) policy limit bodily injury by disease.
- B. Commercial general liability insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification), products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of one million dollars (\$1,000,000) per occurrence/one million dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
- C. Comprehensive automobile liability insurance for coverage of owned, non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum combined single limit of one million dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- D. Excess public liability insurance over and above the employer's liability, commercial general liability and comprehensive automobile liability insurance coverage, with a minimum combined single limit of fifteen million dollars (\$15,000,000) per occurrence/fifteen million dollars (\$15,000,000) aggregate.
- E. The commercial general liability insurance, comprehensive automobile liability insurance, and excess public liability insurance policies must name the other Party and that Party's Affiliates as additional insured. All policies must contain provisions by which the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the other Party's Affiliates and provide

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thirty (30) calendar days' advance written notice to the other Party's Affiliates prior to anniversary date of cancellation or any material change in coverage or condition.

- F. The commercial general liability insurance, comprehensive automobile liability insurance and excess public liability insurance policies must contain provisions that specify that the policies are primary and will apply to such extent without consideration for other policies separately carried and will state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party is responsible for its respective deductibles or retentions.
- G. The commercial general liability insurance, comprehensive automobile liability insurance and excess public liability insurance policies, if written on a claims first made basis, will be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- H. The requirements contained in this Agreement to the types and limits of all insurance to be maintained by each Party are not intended to and do not in any manner, limit or qualify the liabilities and obligations assumed by each Party under this Agreement.
- I. Within ten (10) calendar days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or within ninety (90) calendar days from the renewal of the insurance policy, each Party must provide to the other Party certification of all insurance required by this Agreement, executed by each insurer or by an authorized representative of each insurer.
- J. A Party may self-insure to the extent it maintains a self-insurance program, provided that such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's or Moody's Investor's Service. For any period of time that such Party's senior secured debt is unrated by Standard & Poor's and Moody's Investor's Service or is rated at less than investment grade by Standard & Poor's and Moody's Investor's Service, such Party must comply with the insurance requirements applicable to it under Sections 13(A) through (J). Otherwise, if a Party is permitted to self-insure under this Section, such Party is not required to comply with the applicable insurance requirements under Sections 13(A) through (J).
- K. Each Party must report to the other Party in writing as soon as practicable all accidents or occurrences resulting in injuries to any Person, including death, and any property damage arising out of this Agreement.

14. Limitation of Liability and Indemnification

- A Neither Party is liable to the other for damages for any act that is beyond such Party's control, including any event that is a result of an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, pandemic or epidemic, storm or

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flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or by the making of necessary repairs upon the property or equipment of either Party.

- B. Notwithstanding the provisions of Section 14(A), Each Party must assume all liability for, and must indemnify each other for, any losses resulting from (i) negligence or other fault in the design, construction, or operation of their respective facilities, including the DIF, GIF, and Distribution Resource; or (ii) negligent acts of a Party or such Party's representatives while such Party or its representative is located on, or is attempting to access, the other Party's premises. Such liability includes Party's monetary losses, costs and expenses of defending an action or claim made by a third Person, payments for damages related to the death or injury of any Person, damage to the property of the Party, payments for damages to the property of a third Person, and damages for the disruption of the business of a third Person. This paragraph does not create a liability on the part of any Party to a customer or other third Person, but requires indemnification where such liability exists. The indemnification required under this paragraph does not include responsibility for any Party's costs and expenses of prosecuting or defending an action or claim against the other, or damages for the disruption of the business of a Party. The limitations on liability described in this Section do not apply in cases of gross negligence or intentional wrongdoing by a Party.
- C. Unless specifically included in Subsection 3B or Section 4, in no event will either Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential or punitive damages, including loss of profit or revenue, loss of the use of equipment, cost of capital, or the cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; unless, that damage for which a Party may be liable to the other Party under another agreement will not be considered special, indirect, incidental, consequential or punitive damages under this Agreement.
- D. DSP will make reasonable provisions to meet the In-Service Date but does not guarantee the completion or suitability of the DIF by that date for Generator's specific uses. Except in cases of DSP's gross negligence or willful misconduct, DSP will not be liable for any damages, whether direct or consequential, including, without limitation, loss of profits, loss of revenue, or loss of production capacity, occasioned by the failure to meet the In-Service Date.
- E. DSP and Generator must use commercially reasonable efforts to avoid or mitigate respective damages or losses suffered as a result of the other Party's culpable behavior.

15. Notices

Except as otherwise provided in Exhibit B or as otherwise specified by this Agreement, any formal notice, demand or request provided for in this Agreement must be in writing and may be delivered

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physically or electronically, such as through electronic mail, fax, or physical mail delivered in person, by courier, or by the United States Postal Service. Physical mail includes registered or certified mail, postage prepaid mail, and overnight mail. An obligation by a Party to provide, submit, or respond to a formal notice, demand or request under this Agreement is deemed satisfied upon issuance by the sender to the address or number identified in Exhibit B. Either Party may change the notice information in Exhibit B by giving five (5) business days' written notice to the other Party prior to the effective date of the change.

16. Successors and Assignments

- A This Agreement may be assigned by either Party only with the written consent of the other Party; provided that either Party may assign this Agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Generator will have the right to assign this Agreement, without the consent of DSP, for collateral security purposes to aid in providing financing for the Distribution Resource, provided that Generator will require any secured party, trustee or mortgagee to notify DSP of any such assignment.
- B. Any financing arrangement entered into by Generator in accordance with this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify DSP of the date and particulars of any such exercise of assignment right(s).
- C. Any attempted assignment that violates this Section is void. Any assignment under this Agreement does not relieve a Party of its obligations, nor will a Party's obligations be enlarged, in whole or in part, by any assignment. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

17. Governing Law and Applicable Tariffs

- A This Agreement for all purposes is construed in accordance with and governed by the laws of the State of Texas, excluding conflicts of law principles that would refer to the laws of another jurisdiction. The Parties submit to the jurisdiction of the federal and state courts in the State of Texas.
- B. This Agreement is subject to all Applicable Law.
- C. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.
- D. This Agreement is applicable only to the interconnection of Distribution Resource to the Distribution System at the POI and does not obligate either Party to provide, or entitle either Party to receive, any service not expressly provided for in this Agreement. Each Party is responsible for making the arrangements necessary for it to receive any other service that it may desire from the other Party or any third

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Person. This Agreement does not address the sale or purchase of any electric energy or ancillary services by either Party, either before or after the Commercial Operation Date.

- E. This Agreement, including all exhibits hereto, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the Distributed Resource at the POI expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof if not set forth or provided for herein. This Agreement replaces all other agreements and undertakings, oral and written, between the Parties with regard to the subject matter of this Agreement. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for by this Agreement and that; such agreements are unaffected by this Agreement.

18. Default and Force Majeure

- A. Upon discovery of a Default, the non-defaulting Party may give written notice of such Default to the defaulting Party. Except as provided in the next paragraph, the defaulting Party will have thirty (30) calendar days from receipt of the Default notice within which to cure such Default; provided, however, if such Default is not capable of cure within thirty (30) calendar days, the defaulting Party will commence such cure within twenty (20) calendar days after receipt of the Default notice and continuously and diligently exercise its efforts to complete such cure within ninety (90) calendar days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice will cease to exist.
- B. If a Default is not cured as provided in this Section, or if a Default is not capable of being cured within such period, the non-defaulting Party will have the right, subject to receipt of any regulatory approvals required by Applicable Law, (i) to terminate this Agreement and disconnect the Distributed Resource, in its sole discretion, by written notice at any time until cure occurs (ii) to be relieved of any further obligation under this Agreement (other than obligations associated with its own Defaults, if any, occurring prior to termination) if that Party has elected to terminate

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this Agreement and, (iii) if the Generator is the defaulting Party, to recover from the defaulting Party all amounts due under Subsection 3(B) and receive all other remedies to which it is entitled under this Agreement. The provisions of this Section will survive the termination of this Agreement.

- C. If the defaulting Party is the Generator, the DSP may recover costs as described under Section 3(B). If the defaulting Party is the DSP, the Generator will invoice the DSP for the full amount of funds it provided to the DSP as the CIAC and, as applicable, the security.
- D. Neither Party will be considered to be in Default with respect to any obligation of this Agreement, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any such obligation by reason of Force Majeure must give notice and all details regarding such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given under to this Section must be confirmed in writing as soon as reasonably possible. Notice involving Force Majeure must specifically state all details regarding the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected must exercise due diligence to remove such disability with reasonable dispatch, but will not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance. The In-Service Date will be extended by one calendar day for each day that DIF construction is delayed due to Force Majeure. The Commercial Operation Date will be extended by one calendar day for each day that the construction of the GIF or the Distribution Resource construction is delayed due to Force Majeure, provided that nothing in this Agreement limits DSP's right to require additional Interconnection Studies or increase the CIAC in accordance with Section 25.
- E. The failure of a Party to insist, on any occasion, upon strict performance of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties by this Agreement.

19. Interconnection Outside of the ERCOT region

The operation of the Distribution Resource by Generator must not cause or create circumstances resulting in Intrastate Operation. The Parties recognize and agree that any such Intrastate Operation will constitute an adverse condition giving DSP the right to immediately disconnect the Distribution Resource from the Distribution System, until such interconnection has been disconnected.

20. Representations and Warranties

- A DSP represents and warrants to Generator that DSP has authority to construct the DIF and to interconnect the Distribution System with the GIF and Distribution Resource at the POI in accordance with all Applicable Law and Governmental Authorities having

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jurisdiction over DSP.

- B. Generator represents and warrants to DSP that Generator has authority to construct and operate the Distribution Resource and the GIF, and to interconnect the Distribution Resource with the DIF and the Distribution System at the POI in accordance with all Applicable Law and Government Authorities having jurisdiction over Generator.
- C. Generator also represents and warrants to DSP that as of the Commercial Operation Date, the Distribution Resource, as applicable, will be registered with the Applicable ISO (for ERCOT, as either a DGR or DESR as defined in the ERCOT Protocols) and the Distribution Resource will have satisfied all Applicable ISO Requirements for Commercial Operation.
- D. Generator represents and warrants that it does not meet any of the ownership, control, or headquarters criteria listed in Lone Star Infrastructure Protection Act, Chapter 113 of the Texas Business & Commerce Code, as added by Act of June 18, 2021, 87th Leg., RS., Ch. 975 (S.B. 2116) (relating to China, Iran, North Korea, Russia, and any other country designated by the Texas governor under such legislation).

21. Invoicing and Payment

Unless the Parties otherwise agree (in a manner permitted by applicable PUCT Substantive Rules or DSP's tariff), invoicing and payment rights and obligations under this Agreement will be governed by the DSP's tariff and PUCT Substantive Rules or the rules and regulations of the applicable Governmental Authority. Invoices must be rendered by the paying Party to the recipient Party at the address specified in Exhibit E of this Agreement, and payments must be made in accordance with this Agreement.

22. Land Rights and Easements

- A. Generator must deliver to DSP the grant of all necessary land rights, including but not limited to, fee ownership, easements, and third-party access agreements, in a written medium reasonably acceptable to DSP, so as not to delay DSP's access to the property to perform its obligations under this Agreement. Except as provided in Subsection (B) of this Section, any costs incurred by DSP for the acquisition of such land rights must be reimbursed by Generator to the extent such costs are not included in the CIAC.
- B. DSP must reimburse Generator up to market value of the acquired land rights necessary for a DSP substation or switchyard. DSP reserves the right to a certified appraisal for the land rights acquired.
- C. Terms and conditions addressing the rights of DSP and Generator regarding any facilities located on the other Party's property must, if necessary, be addressed in a separate, duly executed and recorded easement agreement between the Parties.
- D. Generator must provide DSP copies of any underlying land right acquisition

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agreements entered into between Generator and a third-party landowner concerning any land that will contain DIF or any other DSP equipment or facilities required for the interconnection.

23. Confidentiality

Subject to the exceptions in this Section, Confidential Information must not be disclosed by the other Party to any Person not employed or retained by the other Party, except to the extent disclosure is:

- A. Required by Applicable Law or. Reasonably deemed by the disclosing Party to be required to be disclosed in connection with effectuating the terms of this Agreement, a dispute between or among the Parties, or litigation or a dispute by the other Party with any third-party that relates to this Agreement.
- B. Permitted by consent of the other Party. Such consent must not to be unreasonably withheld by the other Party.
- C. Necessary for a DSP to fulfill its obligations under this Agreement or as a distribution service provider, including disclosure of the Confidential Information to the PUCT and/or the Applicable ISO. The Party asserting confidentiality must promptly notify the other Party in writing of the information claimed as confidential. Prior to any disclosures of the other Party's Confidential Information under this Section, or if any third-party or Governmental Authority makes any request or demand for a Party's Confidential Information, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures. This provision does not apply to any information that was or will be in the public domain (except as a result of a breach of this provision). Each Party agrees to:
 - (i) Furnish Confidential Information to the other party, upon reasonable request of the other Party in accordance with the requirements of this Section;
 - (ii) Execute and deliver to the other Party such documents, including Confidential Information to the extent necessary to fulfill the reasonable request of the other Party; and
 - (iii) At the reasonable request of the other Party, perform other acts for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement. At any time after the execution of this Agreement, Generator may reasonably request for DSP to prepare and provide such information, including Confidential Information, in connection with this Agreement as may be reasonably required by any potential lender to Generator under a proposed loan agreement. The fulfillment of such a request will be at Generator's expense. Such information may include, if available, resolutions, authorizations, agreements, certificates, opinions of counsel, financial statements, or other documents relating to DSP's corporate authorization and ability to enter into

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and undertake the obligations of this Agreement. DSP will use commercially reasonable efforts to obtain any document reasonably requested by Generator, but DSP will not be in Default of any obligation under this Agreement if DSP is unable to provide any document or documents that will satisfy any potential lender to Generator. Specifically, upon the written request of a Party, the other Party must provide the requesting Party with a letter stating whether, up to the date of the letter, that Party is satisfied with the performance of the requesting Party under this Agreement.

24. No Annexation

All equipment placed on the premises of a Party will be and remain the personal property of the Party providing such equipment regardless of the manner of annexation or attachment of such equipment to real property, unless otherwise mutually agreed to in writing by the Parties. Equipment placed on the premises of a Party will not be considered to be abandoned, unless written confirmation by the Party providing such equipment is issued to the other Party.

25. Generator Construction Delay

Generator agrees that if substantial Generator project construction does not begin within six (6) months of the execution of this Agreement, then DSP may require repeat performance of the Interconnection Studies included in Exhibit G and Generator may be subject to revised DSP interconnection requirements which could result in an increase in the CIAC and, if applicable, security amount due under Exhibit E. If a construction delay requiring repeat performance of the Interconnection Studies is caused by a delay of the DSP, the DSP will perform or procure such Interconnection Studies at its cost.

26. Miscellaneous Provisions

- A. This Agreement must not affect the obligations or rights of either Party with respect to other agreements. Each Party represents to the other that there is no agreement or other obligation binding upon it, which, as such Party is presently aware, would limit the effectiveness or frustrate the purpose of this Agreement.
- B. This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.
- C. If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court having jurisdiction, such determination will not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

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This Agreement is fully executed only upon the signing and dating of this Agreement by each Party via their duly authorized representatives, in the manner prescribed below

The signing and dating of this Agreement by each Party indicates the Parties express and mutual acknowledgement of, and agreement to, the terms, conditions, and obligations of performance prescribed by this Agreement.

[DSP]

[DISTRIBUTION RESOURCE PROVIDER]

SIGNATURE OF REPRESENTATIVE:

SIGNATURE OF REPRESENTATIVE:

PRINTED NAME:_____

PRINTED NAME: _____

TITLE:_____

TITLE: _____

DATE:_____

DATE: _____

EXECUTIVE SUMMARY OF COMMENTS BY JOINT STORAGE COMMENTERS

(HUNT ENERGY NETWORK, L.L.C., JUPITER POWER LLC, BROAD REACH POWER LLC)

- Discussion Draft Rule §25.211 directly addresses the cost recovery issues that were bifurcated into Project No. 54224 by requiring a Contribution in Aid of Construction (“CIAC”) payment from interconnecting distribution resources, including DESRs. The Commission should first provide policy guidance on the cost recovery issues identified in Project No. 54224, then the Discussion Draft Rule §25.211 and draft Standard Distribution Resource Interconnection Agreement (“SDRIA”) should be modified to incorporate that guidance, then formally published for comment.
- The Discussion Draft Rule applies both inside and outside ERCOT and to both stand-alone, “front of the meter” (“FTM”) resources and “behind the meter” (“BTM”) resources that are co-located with retail load. If it becomes clear from stakeholder comments that there are significant issues with the draft rule for BTM generation and generation located outside ERCOT, then the rules should be bifurcated and the Commission should move forward at this time with rules addressing the interconnection and operation of FTM, stand-alone Resources interconnected at distribution voltage within ERCOT, as was proposed in the draft rule filed by HEN at the request of the Commission in Project No. 51603, and as has been discussed in the months-long stakeholder process.
- The SDRIA inappropriately limits the ability of the Distribution Resource Provider to control and manage assets it owns by requiring the DSP to approve third party contractors employed by the resource owner. This creates enhanced risk for the resource owner, concerns for lenders, and potentially submits the DSP to increased liability. Section 4(A)(i) should accordingly be deleted.

SPECIFIC COMMENTS ON §25.211 (language recommendations provided in our comments)

- a. Definition of “distribution resource” - confusing because of the reference to a “customer’s point of interconnection” which wouldn’t exist for a DESR or DGR if “customer” means “retail customer.”
- b. §25.211(c)(2) - 10 MW DESR limitation should be deleted.
- c. §25.211(d) - expand to state that a DSP may not charge a distribution resource provider for delivery charges for the import of energy used by the resource to charge a DESR.
- d. §25.211(e) - apply to both a DESR and a DGR (as defined by ERCOT). The DSP should use best efforts to complete the pre-screen study within 15 business days.
- e. §25.211(f) - remove the requirement that the DSP “approve” the interconnection application and instead incorporate the requirement that the DSP find that the application is complete.
- f. §25.211(g)(1) - require the DSP to communicate at least once every two weeks with the distribution service provider during the study and construction phases.
- g. §25.211(g)(3) - revise to reflect the Commission’s policy determinations with respect to CIAC; in the alternative, the provision should be revised to reflect that a portion of the utility’s interconnection costs for interconnection of an ERCOT Resource (i.e. a DESR or DGR) should be recovered through TCOS.

SPECIFIC COMMENTS ON §25.212 (language recommendations provided in our comments)

- a. §25.212(b)(3) - provide a longer time period for legacy resources to come into compliance to reflect supply chain delays that still exist.
- b. §25.212(c) – instead of restating IEEE or ISO technical standards, reference the applicable standards to reduce the likelihood of conflicting standards in the future.

- c. §25.212(e) - because the rule provides the DSP with significant discretion to impose additional or differing equipment from that set required in the rule, any individual standards established by a DSP should be published and filed with the Commission so there is clarity and uniform application of these standards.
- d. §25.212(g) - require the DSPs the ability to review a distribution resource provider's operation logs on a reasonable basis and not require a review of every distribution resource provider's logs every month.

SPECIFIC COMMENTS ON THE SDRIA (redline of the SDRIA provided)

- a. Section 3(B) - If the SDRIA is terminated prior to the In-Service Date and the amount paid by the distribution resource provider to cover all of the costs incurred, or committed to be incurred, by the DSP as of the termination date, it should receive a refund of any CIAC amounts paid in excess of the termination costs.
- b. Section 4(A)(i) - delete the requirement that the DSP approve the use of any third-party contractors hired by the distribution resource provider to design, construct or operate the Distribution Resource and the Generator Interconnection Facilities that are owned by the Generator on its side of the POI.
- c. Section 4(A)(ii) - revise so that it is not in conflict with Section 22(B) regarding land rights for DSP substations.
- d. Section 4(A)(v)-(vii) - reflect the Commission policy determination regarding recovery of interconnection costs through CIAC. Alternatively, these subsections should be revised to reflect that a portion of the utility's interconnection costs for interconnection of an ERCOT Resource (i.e. a DESR or DGR) should be recovered through TCOS.