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Reliable operation of the transmission system in the ERCOT power region is governed by two separate sets of regulations. The North American Electric Reliability Corporation develops and enforces federal reliability and security regulations, which are subject to Federal Energy Regulatory Commission oversight. Most entities operating on the transmission system in the ERCOT power region are subject to NERC’s reliability rules. Additionally, the Public Utility Regulatory Act requires the Public Utility Commission of Texas to adopt and enforce rules related to the reliable operation of the ERCOT power region electrical network.\textsuperscript{1} PURA also allows the Commission to delegate to an independent organization the responsibility for adopting or enforcing these rules.\textsuperscript{2} As the certified independent organization for the power region, ERCOT, Inc. has for years adopted reliability-related regulations, which can be found in various nodal protocols, operating guides, and other binding documents.

From 2010 to 2020, the Commission contracted with the Texas Reliability Entity to provide monitoring services related to ERCOT’s reliability-related rules and to assist the Commission with its obligation to enforce these rules. The Commission contracted with the Texas RE because of its role as the regional entity for the ERCOT power region. Regional entities are delegated authority by NERC to monitor and investigate compliance with federal reliability rules. Since the conclusion of the Texas RE’s contract to monitor ERCOT-related reliability, ERCOT, Inc. and Commission Staff have jointly monitored and investigated acts

\textsuperscript{1} PURA § 39.151(d).
\textsuperscript{2} Id.
of potential non-compliance with ERCOT’s reliability rules. This collaboration has resulted in several enforcement investigations, many that have already been decided by the Commission and others that are ongoing. Now that the Division of Compliance & Enforcement has had an opportunity to develop its processes and procedures, Commission Staff recommends that the Commission formalize this collaboration through selection of ERCOT, Inc. as the reliability monitor for the ERCOT power region.

The Commission’s substantive rules provide that the Commission may direct ERCOT, Inc. to assume all or part of the duties and responsibilities of the reliability monitor. When directed by the Commission, ERCOT, Inc. must establish, in a manner prescribed by the Commission, safeguards to prevent conflicts of interest and to ensure the independence of ERCOT personnel working on reliability monitor activities. The Commission’s rules also delineate the reliability monitor’s responsibilities, including such key provisions as:

- Gathering and analyzing information;
- Protecting confidential information;
- Providing expert advice to Commission Staff in the investigation, prosecution, and litigation of reliability-related enforcement proceedings; and
- Working under the direction of the Commission.

Finally, the Commission’s rules also outline ERCOT, Inc.’s obligation to cooperate and comply with the activities of the reliability monitor.

Commission Staff recommends that the Commission enter an order directing ERCOT, Inc. to assume the duties and responsibilities of the reliability monitor for the ERCOT power region. Consistent with the requirements of the Commission’s rules, attached to this memorandum is a minimum set of conditions Commission Staff recommends ERCOT, Inc. adopt when establishing the required reliability monitor safeguards and scope of work. Commission Staff further recommends that ERCOT, Inc. be ordered to file in this project its

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3 Selection of a reliability monitor under PURA has no impact on the Texas RE’s mandate to investigate potential non-compliance with NERC’s reliability-related rules.
5 Id.
6 16 TAC § 25.503(k).
7 16 TAC § 25.503(j)(4) and (j)(5).
planned scope of work, a code of conduct that, at a minimum, meets the standards delineated in Attachment 1, a communications plan, and publicly accessible quarterly reliability monitoring reports. For the Commission’s consideration, a draft proposed order is appended to this memorandum as Attachment 2.

I look forward to discussing this proposal with you during the November 3, 2022 open meeting.
ATTACHMENT 1
Conditions to the Selection of the ERCOT Reliability Monitor
Conditions for Selection and Safeguards as ERCOT Reliability Monitor

Basic Scope of Work
1. The ERCOT Reliability Monitor (ERM) will monitor, investigate, audit, and report to the PUCT matters related to the compliance of ERCOT, Inc. and ERCOT market participants with the reliability-related provisions of the Public Utility Regulatory Act, the PUCT’s substantive rules, and ERCOT protocols and other binding documents (OBD).
2. The ERM will provide subject matter advice, expertise, and assistance with the PUCT’s reliability-related compliance and enforcement activities.
3. The ERM will provide expert advice, analysis, reporting, and testimony related to the ERM’s analysis and findings as part of PUCT’s enforcement proceedings.
4. The ERM will develop a communication plan, including necessary single points of contact, with PUCT staff to ensure effective coordination and communication.

Monitoring & Investigative Activities
1. The ERM may use a variety of processes to monitor and investigate reliability compliance, including data submittal, compliance audits, self-certifications, spot checks, self-reports, complaints, data requests, and post-event analysis.
2. The ERM must develop procedures to monitor compliance with reliability-related laws and rules, including identifying and monitoring on a regular basis:
   a. Key reliability indices related to both generation and transmission operations;
   b. ERCOT, Inc. reliability operations and processes; and
   c. Key policy developments and proposed changes to reliability rules that could alter compliance requirements or monitoring mechanisms.
3. The ERM must develop procedures to investigate, gather evidence, and document a potential violation, including processes to:
   a. Open and close an investigation;
   b. Notify market participants of the start and end of an investigation and whether the matter will be referred to the PUCT for enforcement processing;
   c. Issue and receive responses to requests for information (RFIs); and
   d. Deliver investigation results and corresponding evidence to PUCT staff.

Records and Reporting
1. The ERM must develop a quarterly report to be delivered to PUCT staff and filed publicly that documents routinely monitored reliability indices and summarizes ERM activities of the previous quarter. The report will include:
   a. Indications of when a change to a rule, protocol, or OBD is recommended to promote improved reliability;
b. Demonstration of the overall state of reliability of the ERCOT network, with flags for areas of concern, and possible remedial actions that could address those concerns; and

c. Identification of areas for future audit by either ERM staff or PUCT staff based on risk to reliability.

2. The ERM must report to PUCT staff any potential occurrence of non-compliance with reliability-related laws and rules. The report of non-compliance must include any information necessary for PUCT staff to conduct enforcement action, including:

a. Citations to and explanations of relevant laws or rules;

b. Detailed descriptions of the circumstances leading to non-compliance;

c. Evidence and other documentation supporting the conclusion of a potential violation; and

d. Relevant communications with the entity investigated.

3. The ERM must maintain records of its investigations and a system to track its investigations

Support for PUCT’s Enforcement Division

1. The ERM must provide advice and analysis, on request from PUCT staff, related to reliability enforcement investigations. This includes providing assistance in settlement discussions as deemed necessary by PUCT staff.

2. The ERM must provide written and live testimony and assistance with drafting post-hearing briefs and exceptions and replies to proposals for decision, on request from PUCT staff, related to reliability enforcement proceedings.

3. The ERM must provide analysis on opposing parties’ testimony, briefing, and exceptions and replies to proposals for decisions on request from PUCT staff, related to reliability enforcement proceedings.

Independence

1. The ERM must be led by individuals free from the undue influence of any individuals whose actions may impact the outcomes of any ERM activity. For purposes of this document, individuals conducting ERM activities will be known as “ERM employees.”

2. If ERCOT, Inc. is selected as the ERM, each ERCOT, Inc. employee and agent that conducts ERM activities must be objective and independent in judgement. Such independence must include, in addition to all other conditions listed herein, the ability to:

a. Require ERCOT, Inc. staff to respond to RFIs and expect timely and complete responses;

b. Maintain the confidentiality of the contents and status of any investigation of an ERCOT, Inc. action, procedure, or policy, or of a reliability-related event involving an ERCOT, Inc. employee or agent; and
c. Be explicitly free from retribution as a result of any investigation of an ERCOT, Inc. action, procedure, or policy, or of a reliability-related event involving an ERCOT, Inc. employee or agent.

3. The ERM must create a code of conduct applicable to all ERM employees. The ERM code of conduct must include at least the following:
   a. The ERM must not share information related to an ERM investigation or its results with anyone except:
      i. Designated PUCT staff for the purpose of performing the ERM duties and reporting to the PUCT.
      ii. ERCOT market participants or affiliates for the purpose of, and limited in scope to, communications necessary to conduct reliability compliance investigations.
      iii. As required by law.
   b. The ERM must maintain records of its audits and investigations in a manner which cannot be accessed by non-ERM employees.
   c. ERM employees must not concurrently serve as an ERM employee and provide any service to an ERCOT market participant where such services might create a conflict of interest or an appearance of impropriety.
   d. ERM employees must not have an interest, direct or indirect, in a member of ERCOT, Inc. or an ERCOT market participant or its affiliate.
   e. ERM employees must not have a known interest, direct or indirect, in any other entity dealing with ERCOT, Inc., if the interest is of such an extent or nature that the ERM’s decision might be affected or determined by it.
   f. ERM employees cannot be directly related to any PUCT commissioner within the second degree of affinity or the third degree of consanguinity.
   g. ERM employees cannot own a company that provides reliability-related consulting services to an ERCOT market participant.
   h. ERM employees cannot accept a gift, gratuity, or entertainment from any person, employee, or agent of an entity monitored by the ERM.
   i. Any other condition necessary to promote the independence of ERM employees to conduct good-faith investigations of ERCOT, Inc. and ERCOT market participants freely and expertly and to report those investigations to PUCT staff without undue influence of any entity.

4. The ERM must file its code of conduct within 60 days of its selection as the ERM in the control number the PUCT used to make its selection of the ERM.
   a. The Commission or the director of the Division of Compliance and Enforcement may direct the ERM to make changes to its code of compliance at any time to improve the ability of the ERM to perform its duties in an unbiased manner.
   b. Any update to the ERM code of conduct must be subsequently filed in the same control number within 30 days of the effective date of the change.

5. The ERM must report any deviation from its code of conduct. The report must:
   a. Be filed in the control number the PUCT used to make its selection of the ERM;
   b. Be filed within 60 days of the date of the deviation;
   c. Include the date and circumstances of the deviation; and
d. Include any corrective action taken or to be taken to prevent future occurrences.

6. The ERM must report potential or actual violations of ERCOT Inc. reliability-related rules directly to PUCT staff for evaluation and assessment.

Confidentiality

1. Confidential Information includes:
   a. all information related to the business, services, or products of ERCOT, Inc., an ERCOT market participant or its consultants or affiliates, or an ERCOT member. It includes, without limitation:
      i. Any research, products, services, developments, inventions, processes, techniques, designs, scientific, technical, engineering, distribution, marketing, financial, merchandising and sales information, that is disclosed to the ERM within the scope of the ERM’s activities.
      ii. Market information that is deemed confidential or “Protected Information” under ERCOT protocols, PUCT rules, Section 1500 of the North American Electric Reliability Corporation (NERC) Rules of Procedure, or other law.
      iii. Information disclosed to the ERM that is credibly marked confidential by a disclosing party, unless and until the PUCT and ERM have been able to determine that the disclosing party does not have a confidentiality interest in the information and the information is not otherwise Confidential Information.
   b. all information confidential by law.
   c. information that reflects the advice, opinion, or recommendation regarding ERM work that is not purely administrative in nature, between or among PUCT or ERM representatives, unless confidentiality is waived in writing by the PUCT.

2. The ERM must not disclose Confidential Information for any purpose other than as necessary to conduct ERM activities or as required by law, including public information laws, or court orders. If the ERM believes it must disclose Confidential information, it must notify PUCT staff as soon as possible and give PUCT staff the opportunity to make arguments to protect the information.

3. The ERM must take reasonable actions and precautions to prevent unauthorized disclosure of Confidential Information.
   a. The ERM agrees to immediately notify the “disclosing party” (the party that originally disclosed Confidential Information to the ERM) upon discovery of any unauthorized disclosure of Confidential Information and to cooperate in any reasonable way to help the disclosing party regain possession of the Confidential Information and prevent further unauthorized disclosure.

4. The ERM must promptly provide Confidential Information to PUCT staff on request and must include distinctive designations on or in any such information that the information is or includes Confidential Information.
5. The ERM must maintain confidentiality of all communications with PUCT staff made in anticipation of litigation or in furtherance of PUCT staff’s enforcement matters as privileged under the Texas Rules of Civil Procedure and the Texas Rules of Evidence.

6. ERM employees must abide by these confidentiality rules notwithstanding the expiration or termination of the PUCT’s selection of the ERM or an individual’s termination of employment from conducting ERM activities.
ATTACHMENT 2
Draft Proposed Order
ORDER DIRECTING ERCOT, INC. TO SERVE AS RELIABILITY MONITOR

This order addresses Commission Staff’s October 27, 2022 request for an order directing the Electric Reliability Council of Texas, Inc. (ERCOT, Inc.) to assume the duties and responsibilities of the reliability monitor of the ERCOT power region under 16 Texas Administrative Code (TAC) § 25.503(j)(6).

The Commission finds that Commission Staff’s request and recommendations on the conditions and safeguards under which ERCOT, Inc. should be directed to serve as the reliability monitor are reasonable, and approves the request as provided for herein.

ERCOT, Inc. is directed to assume the duties and responsibilities of the reliability monitor in accordance with 16 TAC § 25.503(j)(6). Within 60 days of this order, ERCOT must file in this control number:

1. A description of the basic scope of work the ERM will undertake which, at a minimum, addresses each of the monitoring and investigative activities identified in Attachment 1 to Commission Staff’s October 27, 2022 memorandum.

2. A code of conduct or other safeguards consistent with Attachment 1 to Commission Staff’s October 27, 2022 memorandum and with 16 TAC § 25.503(k).

3. A communications plan, with necessary single points of contact identified.

ERCOT, Inc. must file in this control number any change to its communications plan or its code of conduct no later than 30 days after the effective date of the change.

ERCOT, Inc. must file in this control number a report on any deviation from its code of conduct no later than 60 days of the date of the deviation.
No later than April 15, 2023 and then at least once every three months thereafter, ERCOT, Inc. must file a report summarizing its ERM activities of the prior quarter in a format accessible by the public and that does not include confidential or protected information.

In accordance with 16 TAC § 25.503(m), ERCOT, Inc. must fund the operations of the ERM from the fee authorized by PURA § 39.151. Starting in April 2024 and then included with the first quarter report every year thereafter, ERCOT, Inc. must provide a report of ERM activities that summarizes expenses paid related to the operations of the ERM for the prior year.

Signed at Austin, Texas the _____ day of ______________ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

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PETER LAKE, CHAIRMAN

______________________________
WILL MCADAMS, COMMISSIONER

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LORI COBOS, COMMISSIONER

______________________________
JIMMY GLOTFELTY, COMMISSIONER

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KATHLEEN JACKSON, COMMISSIONER