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**CY 2023 REVIEW OF RULES
ADOPTED BY THE INDEPENDENT
ORGANIZATION**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**JOINT COMMENTS TO ERCOT NODAL PROTOCOL
REVISION REQUEST (“NPRR”) 1186**

On November 30, 2023 at the Open Meeting of the Public Utility Commission of Texas (“PUCT” or the “Commission”), the Commissioners had a robust discussion regarding the impacts of NPRR 1186, *Improvements Prior to the RIC B Project for Better ESR State of Charge Awareness, Accounting, and Monitoring*,¹ on Energy Storage Resources (“ESRs”), Qualified Scheduling Entities (“QSEs”), the Electric Reliability Council of Texas, Inc. (“ERCOT”) and ERCOT market as a whole. The operational characteristics of ESRs tend to be unique and varied, and imposing a one-size-fits-all policy on all ESRs can result in substantially dissimilar impacts to ESRs. This, coupled with the technical nature of the changes in NPRR 1186 have created varied positions among ESRs. Therefore, this filing is intended to provide the Commission with the collective position and recommendation of several owners, operators, investors and developers of ESRs that currently participate in the ERCOT wholesale market or have ESR projects in the ERCOT interconnection queue. In addition, a member of the independent Retail Electric Provider (“REP”) segment has joined these Joint Comments due to concerns that NPRR 1186 will create disparate treatment on certain Resources in providing Ancillary Services, which may serve to impede development of new Resources, and potentially create unnecessary reliability problems and a regulatory takings scenario. Accordingly, Eolian, LP, Plus Power, LLC, Spearmint Renewable Development Company, LLC, and Octopus Energy, LLC (collectively, “Joint Commenters”) respectfully submit these Joint Comments for consideration by the Commission.

Joint Commenters sincerely appreciate the time and effort spent by ERCOT Staff, Commission Staff, the Office of Public Utility Counsel (“OPUC”), the ERCOT Board of Directors (“ERCOT Board”), and each Commissioner to understand the issues and complexities associated

¹ See NPRR1186, Board Report (Oct.17, 2023).

with NPRR 1186. Joint Commenters understand the importance of collaboration with regulators, other market segments, and investors to derive the most effective and appropriate rules and regulations to accommodate new technologies, such as energy storage. Accordingly, Joint Commenters support Commissioner Glotfelty’s recommendation to remand NPRR 1186 to ERCOT to allow ERCOT to delete all state of charge (“SOC”) requirements and compliance provisions in NPRR 1186 (i.e., remove proposed Protocol Section 8.1(4) in its entirety), prior to requesting approval by the ERCOT Board of Directors and the Commission.²

Additionally, Joint Commenters respectfully request that the Commission: (a) instruct ERCOT to withdraw NPRR 1209, *Board Priority State of Charge Ancillary Service Failed Quantity Allocations under NPRR1149*, which was sponsored by ERCOT for the sole purpose of supplementing NPRR 1186 with additional compliance penalties;³ and (b) advise ERCOT, the Reliability Monitor (“ERM”), and the Commission’s Division of Compliance and Enforcement (“DICE”) against initiating enforcement proceedings on QSEs or ESRs based on SOC metrics that have not been approved by the Commission, for determining that the QSE or ESR could/would not have satisfied its Ancillary Service Resource Responsibilities if the ESR was not dispatched to provide the Ancillary Service in Real-Time.

With respect to NPRR 1186, all of Protocol Section 8.1(4) should be struck prior to Commission approval of NPRR 1186. The removal of the “grey box” language in Protocol Section 8.1(4), as proposed by ERCOT at the November 30, 2023 Open Meeting, is not sufficient to remedy the discriminatory treatment of ESRs. The entirety of Protocol Section 8.1(4) in NPRR 1186, not the grey box, creates the new SOC requirements because it creates an obligation for a QSE with an ESR with an Ancillary Service Resource Responsibility to meet and maintain a specific SOC threshold (even if the ESR is not dispatched, and even if the ESR is dispatched and provides its Ancillary Service Resource Responsibility)—i.e., failure to meet the SOC requirements would be a violation of the ERCOT Protocols. The grey box language—directing ERCOT to report non-compliance to the ERM—and the original language directing ERCOT to

² See PUC Proj. No. 54445, CY 2023 Review of Rules Adopted by the Independent Organization, Commissioner Glotfelty Memo (Nov. 29, 2023).

³ “ERCOT will need stronger compliance and financial penalties for QSEs representing ESRs in the form of charges for failures to provide that are automatically imposed when minimum/maximum SOC requirements are violated.” NPRR 1186, *ERCOT Comments* (Sept. 19, 2023).

report an ESR’s non-compliance to its Qualified Scheduling Entity (“QSE”), does not create the compliance requirement; rather, that language only creates a reporting requirement. In other words, if the Commission approved NPRR 1186 as is, Protocol Section 8.1(4) will require ERCOT to report “any identified instances of non-compliance to the QSE,” and after three months of system implementation, report non-compliance to the ERM. However, under the existing Protocols, nothing precludes ERCOT from notifying the ERM or DICE if it believes a QSE or ESR could not have met its Ancillary Service Responsibilities.

The following references in Protocol Section 8.1(4) illustrate that the SOC thresholds, as defined in Protocol Sections 8.1(4)(a) and 8.1(4)(b), are in fact Protocol requirements, and therefore constitute Protocol violations if not met: “continuously capable of complying with its *SOC requirements*” and “instances of *non-compliance*.”⁴ Protocol Sections 8.1(4)(a) and 8.1(4)(b) define the SOC threshold and a violation thereof as “any time within the hour”—i.e., “Telemetered SOC *at any time within the hour* must be. . .”⁵ Under NPRR 1186, it does not matter if ERCOT is required to report or voluntarily reports a SOC threshold violation to the QSE or ERM. It is the act of breaching the SOC threshold “at any time within the hour” that results in the violation. Once a violation occurs, the QSE and ESR are deemed unable to meet their Ancillary Service Responsibilities. Therefore, the moment an ESR falls below its SOC threshold, the ESR and its QSE are deemed to be in violation of the ERCOT Protocols and PUC Rules, and may be subject to a penalty as high as \$25,000 for each five (5)-minute SCED interval that the ESR was below its required SOC threshold.⁶ This is in addition to an automatic clawback of its Ancillary Service payment if the ESR was dispatched and did not provide; and if NPRR 1209 is approved, in addition to an automatic clawback even if the ESR provides its obligation in Real-Time.⁷

⁴ See NPRR 1186.

⁵ See 16 Tex. Admin. Code (“TAC”) §§ 22.246(c)(1) and (2) (emphasis added).

⁶ *Id.*

⁷ NPRR 1209, *Board Priority – State Of Charge Ancillary Service Failed Quantity Allocations under NPRR1149*. (The failure to provide charges become automatic once NPRR1149 is implemented, which ERCOT expects in May/June 2024. However, until that time, under the current Protocols, a ‘failure to provide’ event occurs when “ERCOT determines, in its sole discretion, that some or all of the QSE’s Resource-specific Ancillary Service capacity will not be available in Real-Time.” When this happens, ERCOT is required to charge the QSE of the Resource that failed to provide Ancillary Service. See Protocol Sections 6.4.9.1.3(1), (3) and 6.7.3.)

Simply removing the grey box in Protocol Section 8.1(4), does not solve the discrimination problem. Nor does removing all of the SOC reporting requirements from NPRR 1186. That is because the SOC threshold *is* the requirement. The mere establishment of a SOC threshold subjects ESRs and their QSEs to the risk of exorbitant penalties under Commission rules.

Joint Commenters are not seeking preferential treatment through these requests; rather, Joint Commenters just ask that ESRs be treated in the same way as other Resources (and their QSEs) that are subject to ERCOT’s existing compliance obligations under the Protocols.⁸ Sections 25.503(f)(6) and (g)(3) in the current Commission rules apply to ESRs in the same manner as they do to any other “entity participating in the ERCOT-administered wholesale market,” and, are therefore, subject to the same penalties for nonperformance in the Operating Hour. Thus, there is no need for further requirements or penalties for ESRs.

Joint Commenters encourage the Commission to resolve this NPRR. Energy storage investors and developers, including energy storage projects currently in the ERCOT interconnection queue, continue to be undermined as a result of the uncertainty of the requirements and treatment of ESRs—it is stymying development. Regulatory certainty on these issues is critical to allow the industry to move forward and allow batteries to continue to strengthen the ERCOT grid. Again, however, the SOC requirements and excessive penalties of NPRR 1186 (and NPRR 1209) are unnecessary. In conclusion, Joint Commenters ask that the Commission undertake the following actions:

1. Decline to approve NPRR 1186 with any SOC requirements or compliance metrics, and remand NPRR 1186 to ERCOT to make changes to conform with the Commission’s guidance;
2. Instruct ERCOT to withdraw NPRR 1209; and
3. Advise ERCOT, the ERM, and DICE against initiating enforcement proceedings based on SOC metrics that have not been approved by the Commission, for determining that the QSE or ESR could/would not have satisfied its Ancillary Service Resource Responsibilities if the ESR was not dispatched to provide in Real-Time.

⁸ See e.g., PUC Proj. No. 54445, Eolian, L.P.’s Comments to Commission Staff’s November 21, 2023 Memorandum to Commissioners at 6-8, (Nov. 28, 2023).

Joint Commenters appreciate the Commission's attention to this matter and will have representatives available for questions at the December 14, 2023 Open Meeting.

Respectfully,

/s/ Stephanie Smith

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