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EMERGENCY PRICING PROGRAM

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PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER ADOPTING AMENDMENTS TO 16 TAC §25.509

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region. The commission adopts this rule with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5606). The adopted rule implements Section 18 of Senate Bill (SB) 3, passed in the 87th Texas Legislative Session (R.S.), by establishing an emergency pricing program (EPP) for the wholesale electric market as required by Public Utility Regulatory Act (PURA) §39.160.

The commission received comments on the proposed rule from East Texas Electric Cooperative, Inc. (ETEC), Electric Reliability Council of Texas (ERCOT), Lower Colorado River Authority (LCRA), NRG Energy, Inc. (NRG), Office of Public Utility Counsel (OPUC), Potomac Economics (IMM), Steering Committee of Cities Served by Oncor (OCSC), Texas Coalition for Affordable Power (TCAP), Texas Competitive Power Advocates (TCPA), Texas Energy Association for Marketers (TEAM), Texas Electric Cooperatives, Inc. (TEC), Texas Industrial Energy Consumers (TIEC), and Texas Public Power Association (TPPA).

General Comments

Ancillary services cap

The adopted rule language sets the emergency offer cap (ECAP) equal to the value of the low system-wide offer cap (LCAP). The value of the LCAP is set to \$2,000 per MWh for energy offers and \$2,000 per MW per hour for ancillary service offers.

ETEC stated that the rule should apply the ECAP to all market clearing prices, including ancillary service prices, during an EPP event to conform with the requirements of SB 3.

TEC noted that the proposed rule does not set or otherwise address an ancillary services cap in order to conform with PURA §39.160(d). However, TEC did not recommend a value for the ancillary services cap. As an alternative, TEC asserted that implementation of ERCOT nodal protocol revision request (NPRR) 1080, *Limiting Ancillary Service Price to System-Wide Offer Cap*, could be used to meet this statutory requirement.

Commission Response

The commission does not agree that the proposed rule fails to address a cap on ancillary services. By definition, a system-wide offer cap is applied system wide, meaning it applies to both energy and ancillary services in all markets, including the day-ahead market (DAM) and the real-time market (RTM). Much like the LCAP and high system-wide offer cap (HCAP), ECAP applies an offer cap to both energy and ancillary services in the DAM and RTM.

However, to provide clarity and regulatory certainty for market participants, the commission modifies the proposed rule to explicitly state that the LCAP, HCAP, and ECAP apply to both energy and ancillary service offers.

Applicability of the Performance Credit Mechanism (PCM) during EPP

TPPA requested clarification in the rule preamble on whether the commission anticipates or intends PCM, once implemented, to be applicable when the EPP is activated.

Commission Response

The impact of the activation of the EPP on the PCM is beyond the scope of this rulemaking.

Cap on marginal cost recovery

At the September 14, 2023 open meeting, the commission discussed whether the ability of a generator to recover its reasonable, verifiable operating costs should be capped at the HCAP. Commissioner McAdams requested that commenters address this topic.

TEAM supported the imposition of a cap on marginal cost recovery and recommended that this cap be set equal to the value of HCAP at \$5,000 per MWh and \$5,000 per MW per hour. ERCOT commented that the implementation of a cap on marginal cost recovery is operationally feasible—at either a value matching the HCAP or another value—but stated that such a cap would disincentivize generators from running during times of scarcity due to the risk of incurring unrecoverable costs.

NRG, OCSC, TCAP, TCPA, and TEC stated that a cap on marginal cost recovery will both disincentivize generators from running and negatively impact reliability in times of scarcity and increased demand. TEC argued that a marginal cost recovery cap would force not-for-profit entities, like electric cooperatives, to pass all unrecovered costs down to member owners.

TEC also contended that “the commission’s jurisdiction does not extend to...the natural gas industry” and OCSC and TCAP noted that “competitive [natural] gas pricing” is beyond the commission’s jurisdiction. Further, TCPA stated that this rule is “not the appropriate channel” to address these concerns.

NRG, TCPA, and TEC suggested that the rule mirror PURA §39.160, allowing generators to be reimbursed for “reasonable, verifiable operating costs that exceed the emergency cap.” NRG, TCPA, and TEC noted that the proposed rule’s current provision regarding reimbursement for costs exceeding the ECAP mirrors the LCAP reimbursement structure under §25.509(b)(7) by limiting cost recovery to only marginal costs.

Commission Response

The commission agrees with commenters that a cap on the recovery of costs for resource entities is not specifically contemplated in PURA §39.160. However, the commission modifies the rule to require a more stringent and transparent review process for the recovery of marginal costs over the HCAP. Under these requirements, a resource entity must submit to ERCOT an attestation stating that any and all fuel costs submitted for recovery are primarily related to the provision of fuel, or services directly tied to the provision of the

purchased fuel, and any resource entity requesting cost recovery above HCAP must provide any additional documents or information requested by ERCOT including fuel purchase contracts.

Effective date of the adopted rule

ERCOT requested that the effective date of the rule fall on the same date as the commission's approval of the necessary protocol revisions for EPP implementation. If the commission prefers that the EPP be implemented prior to system changes necessary to automate the EPP, ERCOT requested that the rule preamble clarify that activation of the EPP may be as soon as practicable, including by the start of the next operating day.

Commission Response

The commission declines to modify the rule to make the effective date of the rule fall on the same day as the commission's approval of the necessary protocol revisions to automate the EPP. Instead, the commission modifies the rule to require ERCOT to implement the EPP immediately to ensure the EPP is available this winter. To account for ERCOT's concerns surrounding the automation of the EPP, the commission also modifies the rule to authorize ERCOT to use a manual activation process until the necessary protocol and system changes are complete.

One-time price adjustment for REPs

TEAM requested that the rule allow REPs a one-time price adjustment to existing fixed rate contracts that will account for any cost recovery mechanism for out-of-market costs paid under the

EPP. TEAM argued that the activation of the EPP is a change resulting from a state law that imposes new or modified costs on REPs that are beyond the REP's control.

Commission Response

TEAM's comment concerns provisions of §25.475, relating to general retail electric provider requirements and information disclosures to residential and small commercial customers, which is beyond the scope of this rulemaking.

§25.509(c)(1) – Activation of the EPP

Section 25.509(c) establishes how the emergency pricing program (EPP) is administered and how it operates. Under §25.509(c)(1), the EPP will activate if the average system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

NRG supported the EPP activation parameters as proposed. However, several other commenters requested clarification around the criteria for EPP activation.

TPPA stated that the rule should clarify whether the 12 hours with energy prices at HCAP within a 24-hour period must be consecutive, or if they can be any combination of 12 hours within the 24-hour window. Additionally, TPPA requested clarification on whether an hour at the HCAP is meant to be four consecutive 15-minute settlement intervals at which the price of energy is at HCAP.

OPUC suggested a similar clarification. Specifically, OPUC requested that the rule clarify that the EPP may be triggered if the average system-wide energy price has been at the HCAP for “a total of 12 hours” within a rolling 24-hour period.

Commission Response

The commission disagrees with commenters that the rule would benefit from additional clarification surrounding the EPP’s activation criteria. The proposed rule adequately clarifies that the EPP is activated when the system-wide energy prices, as determined by the ERCOT, are at HCAP for 12 hours within a rolling 24-hour period. The commission further clarifies that these 12 hours at HCAP need not be consecutive but they must occur within a rolling 24-hour period.

ERCOT argued that during an extended system-wide energy emergency, an “average system-wide energy price” could remain just below the HCAP because of transmission congestion and offer mitigation considerations. In this scenario, the EPP would not be triggered. ERCOT suggested the removal of the word “average” from the phrase “average system-wide energy price” provision to address this issue.

Commission Response

The commission agrees that transmission congestion and offer mitigation should not prevent the activation of the EPP. Accordingly, the commission modifies the proposed rule by removing the word “average” before “system-wide energy price” as requested by ERCOT.

LCRA requested that the commission direct ERCOT to assign a specific settlement point price for the average system-wide energy price in the nodal protocols. Specifically, LCRA suggested using the ERCOT Hub Average 345-kV settlement point price for this purpose.

Commission Response

The commission declines to modify the proposed rule to direct ERCOT to set this value equal to the ERCOT Hub Average 345-kV settlement point price as requested by LCRA. Removing “average” from the “system-wide energy price” in the proposed rule, as previously discussed, effectively allows ERCOT to set the system-wide energy price as equal to the real-time energy price, exclusive of congestion. Allowing the system-wide energy price to be set equal to the real-time energy price exclusive of congestion ensures that the EPP will be activated in response to energy prices that are truly system-wide, instead of energy prices that are tied to averaged locational marginal pricing.

§25.509(c)(2) – Emergency Offer Cap (ECAP)

Section 25.509(c)(2) sets the system-wide offer cap value for when the EPP is active equal to the value of the LCAP at \$2,000 per MWh for energy offers and \$2,000 per MW per hour for ancillary service offers.

LCRA, NRG, and TIEC supported the proposed rule language of setting the ECAP equal to the LCAP.

TEAM recommended that the ECAP be set below the LCAP at \$1,500 per MWh. TEAM argued that the EPP will only be triggered when “normal market principles are not appropriate,” specifically at times when economics is likely not the limiting factor for generation to be online and available in real-time. TEAM stated that setting the ECAP at \$1,500 per MWh will “reduce the risk premiums priced into the market,” protect market participants and consumers from exposure to costs far above actual operating costs during emergency conditions, and ensure that each resource recovers its actual costs.

ETEC commented that the ECAP should be set equal to the lesser of either the LCAP or the market clearing price that would result under normal ERCOT operations. ETEC argued that the ECAP as proposed administratively sets a price that is unnecessary if load is capable of being met at a market clearing price below \$2,000 per MWh or \$2,000 per MW per hour.

Commission Response

The commission declines to modify the proposed rule to set the value of the ECAP at \$1,500 per MWh as recommended by TEAM. Setting the ECAP equal to the value of the LCAP at \$2,000 per MWh and \$2,000 per MW per hour is appropriate because it provides consumers with sufficient protection from high prices during emergency energy situations while also minimizing the potential for uplift from covering costs above ECAP.

In response to ETEC, the commission notes that the ECAP establishes a system-wide offer cap, but does not administratively set the market price at a certain value. If the market

clearing price is lower than ECAP while the EPP is active, that price will be the prevailing energy or ancillary services price.

§25.509(c)(3) – Duration of the EPP

Section 25.509(c)(3) sets the termination of the EPP as the later of: (A) 72 hours after the activation of the EPP, or (B) 24 hours after ERCOT exits emergency operations.

OCSC and TCAP argued that the proposed rule does not provide adequate flexibility for consideration of individual EPP events. Further, OCSC and TCAP proposed language that gives the commission discretion to adjust the EPP's duration parameters under "extraordinary conditions" provided that the commission acts in accordance with PURA §39.1514 and Texas Government Code §551.045.

TCAP commented that the rule should direct ERCOT to establish automatic activation and duration parameters for the EPP with specific attention to maintaining DAM incentives for generators. Further, TCAP commented that subparagraphs (A) and (B) should both align with the beginning of an operational day in order to accommodate the day-ahead market.

Commission Response

The commission declines to add a provision for explicit commission discretion over adjusting the EPP's duration parameters as circumstances may require, because it is unnecessary. The commission has the discretion to act in "extraordinary circumstances," and will follow the

relevant legal requirements, including both the Texas Government Code and PURA as applicable, to exercise it.

Regarding TCPA's comments about aligning the entry and exit times of the EPP with DAM operations, the proposed rule has clearly defined entry and exit criteria, as well as requirements for notices. A market participant should be able to determine whether DAM offers will be impacted based on the timing of the notices. Protocols revisions could also be made to clarify further if needed.

Multiple commenters addressed subparagraph (A) of the EPP duration provision which establishes that the EPP may be terminated 72 hours after activation.

TPPA proposed alternative language that establishes the EPP termination triggers as either upon ERCOT's recall of any involuntary load shed instructions, or, if ERCOT did not issue instructions for involuntary load shed, 24 hours after EPP activation.

NRG proposed language that would limit the duration of the EPP to 72 hours after EPP activation, unless the EPP is activated during emergency conditions. In the case that EPP is activated during emergency conditions, NRG suggests maintaining the duration timelines proposed in the rule.

LCRA and TCPA proposed that the first exit provision be changed to "24 hours after the activation of the EPP." TCPA further commented that a minimum of 72 hours at an administratively set

price cap has no basis in statute and is too long of a duration if ERCOT is not in emergency operations.

TEC and TPPA stated that the “72 hours after EPP activation” provision should be removed entirely.

TIEC proposed an increase in the minimum EPP duration from 72 hours after EPP activation to 120 hours. TIEC stated that this was necessary because, during extreme operational events, generators with forced outages may require more than 72 hours to reliably return to service and changing weather can cause uncertain conditions.

ETEC proposed language that would terminate the EPP after the end of ERCOT emergency operations but prior to the start of the next operating day.

Commission Response

The commission agrees with the commenters that a period of 72 hours is too long for EPP to remain in effect in the absence of ERCOT entering into emergency operations and modifies the rule to lower the minimum duration to 24 hours after activation of the EPP.

Multiple commenters requested clarity around the definition of “emergency operations” in subparagraph (B). TCPA proposed two versions of language to address the definition of “emergency operations.” One version replaced the term “emergency operations” with “firm load

shed” while the second version maintained the “emergency operations” language as proposed but defined it as “a period in which ERCOT experiences firm load shed.”

Two commenters proposed the same or similar changes to TCPA’s first version of language. TEC proposed the same change but expressed that the rule should also account for the possibility of EPP activation outside of a firm load shed event. TEC did not propose language to address this consideration. LCRA proposed a similar change but replaced “emergency operations” with “Energy Emergency Alert (EEA) Level 3 firm load shed.”

Two commenters proposed similar changes to TCPA’s second version of language. ETEC proposed defining “emergency operations” as “a period in which ERCOT experiences firm load shed.” NRG proposed replacing “emergency operations” with “emergency conditions as declared by ERCOT in accordance with applicable protocols.”

Commission Response

The commission agrees with commenters that the term “emergency operations” should be clearly defined in the rule. However, the commission disagrees that this definition should be tied to firm load shed. Once the EPP has been activated, it should remain active while ERCOT is under conditions that necessitate an energy emergency alert (EEA), even if the conditions do not result in firm load shed. Accordingly, the commission modifies the rule to define “emergency operations” as ERCOT entering into any level of EEA.

ERCOT requested clarity around the EPP's general termination criteria. Because it is not specified that emergency conditions must be present for the activation of the EPP, ERCOT recommended the addition of clarifying language that states that subparagraph (B) applies only when a system-wide energy emergency has been declared.

Additionally, ERCOT requested clarity on whether the EPP is extended if ERCOT exits an EEA condition but then re-enters an EEA within 24 hours. ERCOT provided language that addresses both respective outcomes.

Commission Response

The commission agrees with ERCOT's suggestions and modifies the rule accordingly. Specifically, the modifications clarify that the duration provision in subparagraph (B) applies only if ERCOT has entered into emergency operations, and that the EPP will terminate 24 hours after ERCOT exits emergency operations as long as emergency operations have not been re-entered during that 24-hour period. If ERCOT exits but then re-enters emergency operations within 24 hours, the EPP will remain in effect.

§25.509(c)(4) – Market Notice

Section 25.509(c)(4) requires ERCOT to issue a market notice both when an EPP event is activated and deactivated.

LCRA and NRG supported the requirement for ERCOT to issue a market notice when the EPP is activated and deactivated as proposed. However, NRG requested that the date and time of activation and deactivation of the EPP be included in the respective notices.

OPUC provided language that requires the notice to be issued to both market participants and the public. OPUC states that expanding this notice requirement to the public is important for both increasing transparency on market conditions and supporting a positive relationship between ERCOT and the public.

ERCOT and OPUC requested that the rule language replace “market notice” with “notice.” ERCOT reasoned that, while they intend to provide market notices on the activation and deactivation of the EPP as soon as practicable, a market notice is a formal process defined in ERCOT protocols that could take several hours to issue. Additionally, ERCOT stated that using the term “notice” would allow it to provide notice to stakeholders in near real-time via postings to the Operations Messages or Public Notices pages of the ERCOT website.

Commission Response

The commission agrees with commenters that the EPP notice should include the date and time of the respective activation or deactivation of the EPP and modifies the rule accordingly.

The commission agrees with ERCOT that prompt issuance of the EPP notice is paramount to ensuring that market participants and the public are sufficiently informed during emergency energy situations. The commission also agrees with OPUC that the public should

be made aware of the activation of the EPP. Both goals can be accomplished by replacing “market notice” with “notice,” and the commission modifies the rule accordingly.

§25.509(c)(5) – Reimbursement for Costs That Exceed the ECAP

Section 25.509(c)(5) requires ERCOT to reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource.

OCSC, NRG, TCAP, TCPA, and TEC requested that the rule allow generators to be reimbursed for actual operating costs, not just marginal costs as provided in the proposed rule language.

TCPA stated that the rule language should mirror the authorizing statute, PURA §39.160(g), by allowing generators to be reimbursed for “reasonable, verifiable operating costs” that exceed the ECAP. TEC recommended that ERCOT use the verifiable cost manual to the extent practicable to verify a resource entity’s operating costs for reimbursement.

The IMM, OPUC, TEAM, and TIEC supported the reimbursement language as proposed. The IMM argued that the costs appropriate for reimbursement under the authorizing statute are any energy costs accepted by ERCOT under the RUC Make-Whole payment mechanism, including marginal costs.

Commission Response

The commission declines to modify the rule to provide reimbursement for actual operating costs instead of marginal costs as requested by stakeholders. PURA §39.160 requires generators be reimbursed for “reasonable, verifiable operating costs.” Interpreting this to mean verifiable, marginal costs gives effect to the term “reasonable” in the statute, because using marginal costs is consistent with ERCOT’s market design and with similar mechanisms such as RUC make-whole payments.

The commission agrees with the IMM that reimbursement of resource entities’ marginal costs following an EPP event is reasonable because recovery of marginal costs provides adequate compensation for resource entities. The ERCOT energy-only market is not designed to guarantee complete recovery of a resource entity’s costs across all intervals. Rather, the market is designed to provide recovery of marginal costs for most intervals and other costs across the lifetime of an asset. Fuel costs are precisely the type of costs that this make-whole provision provides protection against. Finally, it is not reasonable or consistent with the current market structure to require ERCOT to reimburse resource entities beyond recovery of a resource’s marginal costs.

Multiple commenters requested clarity on how charges to recover reimbursable costs are allocated after the EPP. TEAM requested that, if the commission adopts a mechanism for awarding out-of-market costs to generators, those costs are allocated in a manner that is consumer-friendly and competitively neutral. ERCOT recommended the commission consider using load ratio share as an appropriate cost allocation methodology to equitably allocate charges for recoverable costs

across the market. Additionally, ERCOT reasoned that specifying a cost allocation methodology would assist if ERCOT is required to utilize a manual process to activate the EPP prior to any system and protocol changes that effectuate EPP. OPUC proposed language that would prohibit any costs related to the EPP and generator reimbursement from being passed on to retail customers.

Commission Response

The commission declines to modify the rule to prohibit costs associated with the EPP from being recovered by an electric utility or retail electric provider either directly or indirectly from retail customers as requested by OPUC. There is no statutory basis for completely insulating the retail market segment from costs, especially indirect costs, associated with the EPP.

The commission agrees with ERCOT that a load ratio share cost allocation methodology will allocate costs equitably across the market and be easy to implement. This methodology should also address TEAM's concerns surrounding the competitive neutrality of the cost allocation methodology. The commission modifies the rule accordingly.

§25.509(c)(6) – Report

Section 25.509(c)(6) requires ERCOT to file a report to the commission within 60 calendar days of the termination of an EPP event to provide: (A) a summary of the EPP event trigger, (B) an analysis of the EPP's performance while active, (C) the number of generators that filed for cost recovery and resulting total amount of recovered costs, and (D) any recommendations to modify or improve the EPP.

OCSC and TCAP supported the proposed reporting and timeframe requirements but requested the reporting timeframe for subparagraphs (A) and (B) be shortened to five days. OCSC and TCAP argued that these two elements of the report are feasible for to ERCOT deliver within five days of an EPP event and are important for providing timely information to market participants and the public. Further, OCSC and TCAP requested that ERCOT use the remaining 55 days to curate a more detailed, final response for subparagraphs (A) and (B).

Commission Response

The commission agrees with commenters that an initial report containing a summary of the EPP event trigger and an analysis of the EPP's performance while active should be delivered by ERCOT earlier than 60 calendar days after an EPP event to provide timely information to market participants and the public. However, the commission disagrees that the timeframe for this report should be set to five days after an EPP event. To provide ERCOT with sufficient time to compile and analyze data following an EPP event, the commission modifies the rule to allow ERCOT ten working days to file this initial report.

ERCOT requested that the EPP event report deadline be extended from 60 days to 90 days after an EPP event. ERCOT commented that if a cost recovery process similar to the one used for costs that exceed LCAP is adopted for EPP, QSEs would not be required to file their resources' recoverable costs until 60 days after an EPP event. Further, ERCOT argued that this constraint would limit its ability to sufficiently analyze QSEs' cost recovery information and compile it into a report in a timely manner.

Alternatively, ERCOT proposed rule language that would allow it to file the report in two phases. The first phase of the report would be delivered within 60 days of an EPP event and contain an EPP event trigger summary and performance analysis, while the second phase of the report would be delivered within 90 days of an EPP event and contain cost recovery information.

Commission Response

The commission agrees that requiring ERCOT to file a comprehensive report to the commission 60 days after an EPP event does not provide sufficient time for ERCOT to analyze data from the EPP event and provide recommendations. Accordingly, the commission modifies the rule to extend the reporting deadline for ERCOT to 90 calendar days. Additionally, the commission includes language to clarify that the 90-day report should include the dollar amounts of costs submitted and costs approved by fuel type, quantity, and any other information ERCOT finds relevant.

In addition to this comprehensive report, ERCOT must file an initial report containing a summary of the EPP event trigger and a performance analysis of the EPP while active within 10 working days of the termination of the EPP.

§25.509(d) – Review of System-Wide Offer Cap Programs

Section 25.509(d) requires the commission to review each of the system-wide offer cap programs every five years to determine whether to update aspects of each program.

OCSC and TCAP stated that the commission should review each system-wide offer cap program, including EPP, every two years instead of every five years as proposed.

Commission Response

The commission declines to modify the proposed rule to require a review of each system-wide offer cap program every two years as requested by commenters. The five-year timeframe for review of the system-wide offer cap programs is a minimum requirement, and the commission will review the system-wide offer cap programs more frequently if necessary.

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.160, which directs the commission to establish an emergency pricing program for the wholesale electric market.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.160.

§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.

(a) **Definitions.** The following terms, when used in this section, have the following meanings, unless the context indicates otherwise:

- (1) **Emergency operations** -- ERCOT entering into any level of Energy Emergency Alert.
- (2) **Generation entity** -- an entity that owns or controls a generation resource.
- (3) **Generation resource** -- a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.
- (4) **Load entity** -- an entity that owns or controls a load resource.
- (5) **Load resource** -- a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.
- (6) **Resource entity** -- an entity that is a generation entity or a load entity.

(b) **Scarcity Pricing Mechanism (SPM).** ERCOT will administer the SPM. The SPM will operate as follows:

- (1) The SPM will operate on a calendar year basis.
- (2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

- (3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.
- (4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum((\text{RTEP} - \text{POC}) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when $\text{RTEP} - \text{POC} > 0$.
- (5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).
- (6) **System-Wide Offer Caps.**
 - (A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh for energy offers and \$2,000 per MW per hour for ancillary service offers.
 - (B) The high system-wide offer cap (HCAP) will be \$5,000 per MWh for energy offers and \$5,000 per MW per hour for ancillary service offers.
 - (C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.
 - (D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

- (7) **Reimbursement for Operating Losses when the LCAP is in Effect.** When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.
- (c) **Emergency Pricing Program (EPP).** ERCOT will administer the EPP. The EPP will operate as follows.
- (1) **Activation of the EPP.** The EPP must be activated if the system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.
- (2) **Emergency Offer Cap (ECAP).** While the EPP is active, the system-wide offer cap will be set to the ECAP for both energy and ancillary service offers. The ECAP will be set equal to the value of the LCAP.
- (3) **Duration of the EPP.** The EPP will remain in effect until the later of:
- (A) 24 hours after the activation of the EPP; or
- (B) if ERCOT has entered into or remained in emergency operations while the EPP is activated, 24 hours after ERCOT exits emergency operations without re-entering emergency operations.
- (4) **Market Notice.** ERCOT will issue a notice both when the EPP is activated and when the EPP is terminated. The notice must include the date and time of the activation or termination of the EPP.

(5) **Reimbursement for Costs That Exceed the ECAP.**

- (A) While the EPP is active, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent practicable to verify the resource entity's costs for reimbursement.
- (B) For reimbursement of actual marginal costs in excess of the HCAP, a resource entity must submit a reimbursement request in the manner prescribed by ERCOT. If a resource entity fails to provide information to ERCOT in its reimbursement request, as required by this subparagraph, ERCOT must not approve the reimbursement of the resource entity's fuel costs. This reimbursement request must include:
 - (i) for a resource entity requesting recovery of fuel costs, an attestation that the costs submitted for recovery are solely related to the provision of fuel or services directly related to the provision of the purchased fuel; and
 - (ii) any additional documents or information requested by ERCOT, including fuel purchase contracts.
- (C) ERCOT must allocate costs associated with this paragraph on a load ratio share basis.

(6) **Report.**

(A) Within 10 working days from the date the EPP is terminated, ERCOT must file an initial report with the commission that contains the following information:

- (i) a summary of the event that triggered the EPP; and
- (ii) an analysis of the EPP's performance while the program was active.

(B) Within 90 calendar days from the date the EPP is terminated, ERCOT must file a final report with the commission that contains the following information:

- (i) a final summary of the event that triggered the EPP;
- (ii) a final analysis of the EPP's performance while the program was active;
- (iii) the number of generators that filed for cost recovery under paragraph (5) of this subsection;
- (iv) the total dollar amount of costs submitted and costs recovered under paragraph (5) of this subsection, including the fuel type, MW per hour, and number of units associated with recovered costs; and
- (v) any recommendations to modify or improve the EPP.

(7) **Immediate Implementation.** ERCOT must implement the EPP immediately. Notwithstanding any conflicting language in this subsection, ERCOT may utilize a manual process to activate the EPP and may consider the real-time energy price, exclusive of any congestion, to determine the system-wide energy price, until any

system and protocol changes are complete. ERCOT must issue a market notice when it transitions from a manual to an automated EPP activation process.

- (d) **Review of System-Wide Offer Cap Programs.** Beginning January 1, 2026, and every five years thereafter, the commission will review each of the system-wide offer cap programs to determine whether to update aspects of each program.
- (e) **Development and Implementation.** ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the 30th day of November 2023.

PUBLIC UTILITY COMMISSION OF TEXAS


KATHLEEN JACKSON, INTERIM CHAIR


WILL MCADAMS, COMMISSIONER


LORI COBOS, COMMISSIONER


JIMMY GLOTFELTY, COMMISSIONER