

PROJECT NO. 57374

EXEMPTION PROCESS FOR ERCOT	§	PUBLIC UTILITY COMMISSION
TECHNICAL STANDARDS	§	
	§	OF TEXAS

ORDER ADOPTING AMENDMENTS TO 16 TAC §22.251

The Public Utility Commission of Texas (commission) amends 16 Texas Administrative Code (TAC) §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. The commission adopts this rule with changes to the proposed text as published in the January 3, 2025 issue of the *Texas Register* (50 TexReg 10). The amended rule modifies the process for contesting ERCOT decisions on exemptions at the commission and makes other minor and conforming changes. This amendment is adopted under Project Number 57374. In the same project, the commission adopts new 16 TAC §25.517, relating to Exemption Process for ERCOT Reliability Requirements. That rule allows ERCOT to promulgate reliability-related technical standards and lists general criteria by which ERCOT must decide whether to grant an exemption from those standards.

The commission received comments on proposed §22.251 from AEP Texas Inc. and Electric Transmission Texas, LLC (AEP Companies); Avangrid Renewables, LLC, Avangrid Texas Renewables, LLC, Karankawa Wind, LLC, Patriot Wind Farm, LLC, and True North Solar, LLC (collectively, Avangrid); Texas Public Power Association (TPPA); the Electric Reliability Council of Texas, Inc. (ERCOT); the Lower Colorado River Authority (LCRA); NextEra Energy Resources, LLC (NextEra); Oncor Electric Delivery Company LLC (Oncor); Texas Electric Cooperatives, Inc. (TEC); and Vistra Corporation (Vistra).

Representatives of the following entities testified at a public hearing on the proposed rule on February 20, 2025: Advanced Power Alliance and American Clean Power Association (APA and ACP); Avangrid; Invenenergy Renewables, LLC; LCRA; NextEra; Southern Power Company; Texas Solar and Storage Association and Solar Energy Industries Association; and Vistra.

General Comments

NextEra recommended that the proposed changes other than inclusion and reference to the new exemption process may not be problematic, but does not rise to the level of urgency to support a rule change at this time.

Commission Response

The commission declines to adopt NextEra’s recommendation not to adopt a rule change based on a lack of urgency. Clarity and transparency around commission processes and procedures are appropriate bases for a rule change, and the minor and conforming changes proposed in this project were adequately noticed for comment.

Precise language

ERCOT recommended replacing references to “entity” and “affected entity” throughout the proposed rule with “person” and “a person with legal standing” respectively. ERCOT noted that unlike the term “entity,” the term “person” is defined in §22.2 (relating to Definitions). Because the term “entity” is not defined, use of the term creates ambiguity as to whether an individual person is included by the term. Importantly, use of the broader term “person” would give full effect to the commission’s exclusive jurisdiction over ERCOT’s conduct as the independent

organization certified under PURA §39.151. Additionally, ERCOT recommended against replacing “entity” with “person” in instances where “affected” is directly before the word “entity” because “affected person” is defined in PURA to have a limited meaning not applicable to its use in the proposed rule. Use of “a person with legal standing” will ensure there is no confusion or ambiguity while giving effect to the intended meaning of “affected entity” as that term is used in the proposed rule.

Commission Response

The commission declines to adopt ERCOT’s recommendation because it is outside the scope of this rulemaking, which is to align with new §25.517 and make other noticed minor and conforming changes. Potentially modifying the applicability of the rule – to the extent that the recommended edit might do so – is beyond the possible revisions contemplated in this proceeding.

Procedural timelines

ERCOT recommended modifying proposed §22.251(g), proposed §22.251(h)(1)-(2), and proposed §22.251(i) to extend the deadlines for ERCOT’s response, commission staff’s comments, motions to intervene, and replies by seven days, all of which are based on the date a complaint is filed. ERCOT’s response to a complaint must be as comprehensive as the complaint itself, and the complaint and response must be detailed enough that the presiding officer has the option of entering a proposed order disposing of the case based solely on the pleadings and the record documents filed by the parties. Extending the response deadline in §22.251(g) from 28 days to 35 days after receipt of the complaint allows ERCOT the same amount of time as the complainant to

prepare the required pleadings and record. Adding an additional seven days to the other deadlines would maintain the procedural timeline between each of the filings.

Commission Response

The commission declines to adopt ERCOT’s recommendation because further consideration and comment are merited on this issue before changes are made. For example, in Project No. 25959, in which the commission initially adopted this rule, ERCOT argued for all of the timelines to be shortened because most complaints would have already been subject to some process and that prompt resolution of the issues is desirable. Balancing party preparation time and the prompt resolution of complaints against ERCOT is a substantive issue that is beyond the scope of this rulemaking proceeding.

Proposed §22.251(a) – Purpose

Proposed §22.251(a) provides that the purpose of the rule is to establish the procedure to appeal a decision made by ERCOT.

ERCOT recommended inserting “exclusive” in front of “procedure” to clarify that the procedure set forth in the rule is subject to the commission’s exclusive jurisdiction.

Commission Response

The commission disagrees with ERCOT’s recommendation and declines to modify the rule. This rule defines “conduct” extremely broadly, and other commission rules address or may address other methods of contesting aspects of ERCOT’s conduct.

Proposed §22.251(b) – Definitions

Proposed §22.251(b) sets forth definitions for (1) conduct and (2) applicable ERCOT procedures.

Conduct

ERCOT and Vistra observed that the rule uses the terms “a decision made by ERCOT,” “ERCOT decisions,” and “conduct or decisions” to refer to “conduct” as defined in §22.251(b)(1). ERCOT and Vistra recommended clarifying changes to the definition of “conduct” in proposed §22.251(b)(1) to capture all actions or inaction that the rule references. For additional clarity, ERCOT and Vistra also recommended using only the defined term “conduct” in the proposed rule and eliminating synonymous terms.

Commission Response

The commission agrees with ERCOT’s and Vistra’s recommendation and modifies the rule to define “conduct” to capture all actions or inaction that the rule references and to only use the term “conduct” to describe these actions or inaction, except as required for consistency with §25.517. In these limited instances, the adopted rule refers to “decisions by ERCOT.”

Applicable ERCOT Procedures

ERCOT noted that the proposed definition of “Applicable ERCOT Procedures” in proposed §22.251(b)(2) implies applicability only to the protocol revision process. Therefore, ERCOT recommended modifying the definition of “Applicable ERCOT Procedures” in §22.251(b)(2) to clarify that the definition applies to the revision process for all ERCOT procedures or rules.

TPPA noted that the term “resource” is an undefined term used in the rule and recommended defining the term in §22.251(b) using the same definition in proposed §25.517, relating to Exemption Process for ERCOT Reliability Requirements.

Commission Response

The commission agrees with ERCOT’s recommendation to clarify §22.251(b)(2) and modifies the paragraph accordingly. The commission also agrees that “resource” should be defined in this rule and modifies the rule to refer to the definition in §25.517.

Proposed §22.251(c) – Scope of complaints

Proposed §22.251(c) identifies the scope of a complaint filed with the commission and who may file a complaint.

Non-exhaustive list

To remove ambiguity in proposed §22.251(c)(1), relating to ERCOT responsibilities that are within the scope of a permitted complaint, ERCOT recommended reinserting “but not limited to” before the listed responsibilities. ERCOT asserted that deletion of the phrase “but not limited to” may be misconstrued as restricting the scope of the rule when the listed responsibilities are intended to serve as a non-exhaustive list of examples.

Commission Response

The commission declines to adopt ERCOT’s recommendation because it is unnecessary.

“Including” is a term of enlargement, not a term of limitation or exclusive enumeration. Therefore, the phrase “but not limited to” is surplusage. The commission acknowledges the risk that removal of “but not limited to” could wrongly imply that the list is intended to be exclusive. However, there are several instances in this rule where “including” serves an inclusive function, and uniform usage of the term throughout the rule supports the correct interpretation across these instances.

Who may file a complaint appealing an ERCOT decision under proposed new §25.517

Avangrid recommended deletion of §22.251(c)(3), relating to who may file a complaint appealing an ERCOT decision under §25.517 of this title. Avangrid reasoned that the procedural rule should not account for an exemption process that could violate state and federal law as well as PURA.

Commission Response

The commission disagrees that this amended procedural rule should not account for proposed new §25.517. Amended §22.251 provides a process for an affected entity to appeal ERCOT conduct, and a decision to grant or deny an exemption under proposed new §25.517 is ERCOT conduct. Therefore, any ERCOT conduct under proposed new §25.517 is already appealable under §22.251 without the reference to proposed new §25.517 in amended §22.251. Subsections (c)(3) and (r) of amended §22.251 only slightly modify the general procedure outlined in the rule for all ERCOT conduct. An appeal of ERCOT conduct under proposed new §25.517 could proceed without these modifications.

Proposed §22.251(d) – ERCOT Protocols compliance prerequisite

Proposed §22.251(d) sets forth procedural requirements to which a complainant must adhere before initiating a complaint with the commission.

TPPA recommended modifying §22.251(d) to specify that dismissal of a complaint for failure to use the applicable procedure should be made without prejudice and that a dismissal should not impact ERCOT's or the commission's decisions in future actions.

Commission Response

The commission disagrees with TPPA's recommendation because it outside the scope of this rulemaking—the recommendation is not specific to ERCOT decisions related to an exemption and is neither a minor nor conforming change. Dismissal of a complaint with or without prejudice is a decision that currently resides with the presiding officer based on the facts of the case. TPPA's recommendation would be a substantive change applicable to all complaints under this rule and removes the presiding officer's discretion to dismiss a complaint with or without prejudice.

Informal dispute resolution

ERCOT recommended modifying §22.251(d)(3) to limit informal dispute resolution ordered by the presiding officer to those that are non-binding because a binding form of dispute resolution would infringe on the commission's exclusive jurisdiction over ERCOT's conduct.

Commission Response

The commission disagrees with ERCOT's recommendation because it is unnecessary. The commission's jurisdiction is set forth in statute, and proposed §22.251(d)(3) has been encapsulated in existing §22.251(c)(3) of the rule since 2003. Additionally, the recommendation is outside the noticed scope of this rulemaking.

Proposed §22.251(e) – Formal complaint

Proposed §22.251(e) sets forth procedural deadlines and substantive requirements for formal complaints.

Facsimile transmission numbers

ERCOT and Vistra recommended striking the requirement in proposed §22.251(e)(2)(A) for a formal complaint to include facsimile transmission numbers because facsimile is an obsolete method of professional communication.

Commission Response

The commission agrees with ERCOT and Vistra's recommendation because it is a minor change that conforms with existing practices. The commission modifies subparagraph (e)(2)(A) accordingly.

Page limit for procedural and historical statement

TPPA and Vistra recommended modifying proposed §22.251(e)(2)(B), relating to page limits for a procedural and historical statement. TPPA recommended increasing the page limit from two to

five. Vistra recommended adding “as reasonably practicable” after the two-page limit so that important facts that cannot reasonably be summarized in two pages are not omitted.

Commission Response

To conform with existing §22.251(d)(1)(B), which provided a degree of flexibility by stating that the statement of the case should not *ordinarily* exceed two pages, the commission adopts Vistra’s recommendation and modifies the rule accordingly.

Entities directly affected

Vistra recommended modifying proposed §22.251(e)(2)(B)(ii) by replacing the requirement that a complainant identify all entities that would be directly affected by the commission’s decision in the complaint proceeding with a requirement that the complainant identify who the complainant seeks relief from. Identifying all entities that would be directly affected by the commission’s decision is a difficult task without knowing what the commission’s decision will be.

Commission Response

The commission disagrees with Vistra’s recommendation because it is outside the scope of this rulemaking—the recommendation is not specific to ERCOT decisions related to an exemption and is neither a minor nor conforming change—and declines to modify the rule. Additionally, the recommended change is unnecessary because the end of §22.251(e)(2)(B)(ii) states “as reasonably practical.”

Reference to another subsection

ERCOT recommended correcting a typographical error in proposed §22.251(e)(3)(B) by replacing the reference to §22.251(i) with §22.251(j) to maintain consistency with the proposed redesignation of §22.251(i) as §22.251(j).

Commission Response

The commission agrees with ERCOT's recommendation and modifies §22.251(e)(3)(B) accordingly.

Service of complaint

TEC recommended reinstating existing §22.251(d)(4), which requires a complainant to serve copies of the complaint on ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel, and any other party. TEC noted that it is unclear why this notice requirement was deleted in the proposed rule and voiced concerns that the deletion reduces transparency for market participants and the public.

Commission Response

This provision was removed from the proposed amended rule to align with current procedural rules in Chapter 22. However, the commission agrees that it improves clarity and reinstates the provision as subsection (e)(5) with minor changes to reflect practices and section titles as proposed in ongoing rulemaking projects. These edits will also ensure that this language remains up to date as the commission completes its review of its Chapter 22 rules.

Proposed §22.251(g) – Response to complaint

Proposed §22.251(g) sets forth procedural deadlines and substantive requirements for a response to a complaint.

TPPA noted that proposed §22.251(g) implies but does not state that the response to a complaint is ERCOT's. To avoid confusion, TPPA recommended modifying §22.251(g) to explicitly state such.

Commission Response

The commission agrees with TPPA's recommendation and modifies §22.251(g) to clarify that the deadline in §22.251(g) applies to ERCOT. However, the substance of what is included in a response to a complaint is applicable to all responses, including ERCOT and intervenors. The commission modifies the rule to state this explicitly.

Proposed §22.251(h) – Comments by commission staff and motions to intervene

Proposed §22.251(h) sets forth deadlines for commission staff comments, motions to intervene, and responses to a complaint.

ERCOT recommended modifying proposed §22.251(h)(2) to more clearly indicate that the deadline to file a response to the complaint is the same as the deadline to file a motion to intervene.

Commission Response

The commission agrees with ERCOT's recommendation and modifies §22.251(g) and (h)(2) accordingly. This change aligns with the existing rule.

Proposed §22.251(l) – Extension or shortening of time limits

Proposed §22.251(l) sets forth the circumstances and requirements for modifying the procedural deadlines set forth in the rule.

ERCOT recommended adding a paragraph that would prohibit discovery requests, unless agreed to by all the parties or ordered by the presiding officer, before the date that commission staff must file its comments under proposed §22.251(h). This prohibition would allow commission staff and ERCOT adequate time to prepare their respective comments and response to a complaint without the additional burden of responding to discovery requests during that time.

Commission Response

The commission declines to adopt ERCOT's recommendation because it is outside the scope of this rulemaking—the recommendation is not specific to ERCOT decisions related to an exemption and is neither a minor nor conforming change. ERCOT's recommended change is a substantive change to the existing procedure set forth in the rule.

Proposed §22.251(m) – Standard for review

Proposed §22.251(m) requires facts be determined by an impartial third party under circumstances that are consistent with due process. Further, the commission will only reverse a factual

determination that is not supported by substantial evidence or is arbitrary or capricious. Under the proposed rule, the commission will resolve any factual issues that are not determined on a *de novo* basis.

Vistra recommended clarifying that facts may also be determined by unanimous stipulation of the parties, which can serve as a means to narrow issues without spending significant time proving and determining uncontested facts.

Commission Response

The commission agrees with Vistra that stipulated facts can greatly increase the efficiency of a proceeding. Stipulated facts may be considered as part of the commission's *de novo* review, but the commission retains the discretion to determine the appropriate weight to assign to stipulated facts. Accordingly, the commission does not modify the rule to add stipulated facts in the procedural standards specified in the rule, as recommended by Vistra.

Proposed §22.251(p) – Granting of relief

Proposed §22.251(p) sets forth examples of the type of relief that the commission may grant in a complaint proceeding.

ERCOT, TPPA, and Vistra recommended deleting proposed §22.251(p)(4), which relates to ordering ERCOT to promptly develop protocol revisions for commission approval because the paragraph is duplicative of proposed §22.251(p)(2), which relates to ordering that appropriate protocol revisions be developed. ERCOT and Vistra recommended modifying proposed

§22.251(p)(2) to more clearly capture development and implementation.

Commission Response

The commission agrees with the recommendation to clarify §22.251(p)(2) and delete duplicative §22.251(p)(4). The commission modifies §22.251(p) accordingly.

Proposed §22.251(r) – Complaint regarding exemptions to ERCOT reliability requirements

Proposed §22.251(r) sets forth procedural and substantive requirements specific to complaints related to an exemption to ERCOT reliability requirements.

Avangrid recommended striking §22.251(r), reasoning that the commission's procedural rules should not account for an exemption process that could violate state and federal law as well as PURA.

Commission Response

The commission disagrees that this amended procedural rule should not account for proposed new §25.517. Amended §22.251 provides a process for an affected entity to appeal ERCOT conduct, and a decision to grant or deny an exemption under proposed new §25.517 is ERCOT conduct. Therefore, any ERCOT conduct under proposed new §25.517 is already appealable under §22.251 without the reference to proposed new §25.517 in amended §22.251. Subsections (c)(3) and (r) of amended §22.251 only slightly modify the general procedure outlined in the rule for all ERCOT conduct. An appeal of ERCOT conduct under proposed new §25.517 could proceed without these modifications.

However, the commission does modify the rule to reflect that the commission's decision to grant or deny an exemption or extension request under subsection (r) is not limited to whether there exists a threshold reliability risk, as that term is defined in §25.517. Under §25.517, ERCOT's decision to grant or deny such a request focuses on the reliability consequences of granting the request, because ERCOT is charged with maintaining the reliability of the grid. By contrast, it is appropriate for the commission to take broader, public interest concerns into account as it evaluates the request. Accordingly, adopted subsection (r)(5) clarifies that the commission may grant or deny an exemption or extension if doing so is in the public interest. Additionally, the adopted rule clarifies that the commission may impose conditions on an exemption or extension to protect the public interest.

Parties to a complaint

Proposed §22.251(r)(2) states that the parties to a §22.251(r) complaint proceeding are the complainant, the complainant's transmission service provider, ERCOT, OPUC, and commission staff.

ERCOT recommended modifying proposed §22.251(r)(2) to include a distribution service provider in the list of parties to a subsection (r) complaint proceeding.

LCRA and Oncor recommended that a complainant's TSP should have the option of intervening in a §22.251(r) complaint proceeding but should not automatically be made a party to every

complaint proceeding under §22.251(r). Oncor recommended adding a new paragraph that: (1) requires the complainant provide notice of the §22.251(r) complaint to its TSP; (2) recognizes the complainant's TSP has a standing right to intervene; and (3) states the complainant's TSP should be granted party status if it chooses to intervene.

LCRA, TEC, TPPA, and Vistra recommended not limiting the parties to a §22.251(r) complaint proceeding, asserting that any affected entity with a justiciable interest should be granted intervention in the proceeding. TPPA noted it is unclear what, if any, authority exists to limit the type of parties to an appeal in this manner and the commission should seek information from all relevant entities. TEC and TPPA recommended deleting proposed §22.251(r)(2) in its entirety. LCRA and Vistra recommended modifying proposed §22.251(r)(2) to read that OPUC, the TSP, ERCOT, and Commission Staff are not required parties in every complaint proceeding that relates to an exemption to ERCOT reliability requirements and that any party with a justiciable interest in the proceeding should be granted intervention status. Vistra noted that allowing parties with a justiciable interest to intervene better ensures that the Commission has all the relevant facts when making a determination. Moreover, Vistra contended that an added benefit of interventions in §22.251(r) complaints is the opportunity for negotiated settlements and innovative solutions, especially when only a subset of requestors can be granted an exemption due to limitations (e.g., there are 500 MW of exemptions "available" but 750 MW of requests).

AEP noted that §22.251(r)(2) appears to contemplate that the complainant is necessarily the resource that is denied an exemption request. AEP recommended that any affected market participant should be able to appeal a decision by ERCOT regarding exemptions and §22.251(r)(2)

should be modified to reflect this.

Commission Response

Who has a justiciable interest is a determination that should be made by the presiding officer based on the facts of the case. Similarly, whether a person that has not intervened is a necessary party to a proceeding is a determination that should be made by the presiding officer based on the facts of the case. Therefore, the commission agrees with TEC and TPPA's recommendation to delete §22.251(r)(2) and modifies the rule accordingly, which also addresses the concerns raised by ERCOT, LCRA, Oncor, and Vistra.

Notice requirements

Proposed §22.251(r)(3) states that ERCOT is exempt from the notice requirements of §22.251(f).

TPPA and Vistra recommended deleting §22.251(r)(3). Vistra asserted that market participants should be made aware of §22.251(r) complaints and have an opportunity to intervene because they may be affected by the reliability risk associated with the complaint.

Commission Response

The commission agrees with TPPA and Vistra's recommendation and modifies the rule accordingly.

ADR exemption

Section 22.251(r)(4) states that a §22.251(r) complaint proceeding is exempt from ADR or other

informal dispute resolution procedures. ERCOT recommended deleting §22.251(r)(4) because it is duplicative of §22.251(r)(1), which states that the complainant is not required to comply with the Applicable ERCOT Procedures prior to submitting a complaint to the commission.

Commission Response

The commission disagrees that the paragraphs are duplicative and declines to modify the rule. Proposed §22.251(r)(1) states that a complainant is not required to follow the Applicable ERCOT Procedures, which would otherwise be required before a complainant files its complaint at the commission. Proposed §22.251(r)(4) states that the complaint proceeding itself is exempt from ADR or other informal dispute resolution procedures, which could otherwise be ordered by the ALJ once a complaint has been filed.

History of violations

Section 22.251(r)(5) requires a complaint to include the resource's history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement that is the subject of the complaint. TPPA recommended deleting §22.251(r)(5), reasoning that the inclusion of publicly available documents is unnecessary.

Commission Response

The commission declines to adopt TPPA's recommendation. The resource entity is familiar with its history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement that is the subject of the complaint. It is reasonable and administratively efficient for the resource entity to provide this information.

However, the commission modifies the provision to require information on the resource's history of violations of reliability-related ERCOT protocols and remove "related to the reliability requirement that is the subject of the complaint." Because a complaint related to §25.517 will involve a reliability requirement that has recently been approved, and the resource entity is seeking an exemption from that requirement, it is improbable that a resource will have a history of violations related to that requirement. However, there may be related compliance issues that are pertinent to the evaluation of the complaint.

Information Commission Staff may address

Proposed §22.251(r)(6) identifies a non-exhaustive list of information that commission staff may address in its comments under §22.251(h).

Vistra recommended deleting proposed §22.251(r)(6) because it risks confusing or limiting commission staff's ability to introduce information in all proceedings. The instruction that commission staff "may" include certain information in their comments could lead to the conclusion that there is also information that commission staff may not include in their comments unless specifically authorized by rule or statute. Additionally, the information in proposed §22.251(r)(6) is unnecessary for commission staff to address. The list includes information that the resource will provide in its exemption request or complaint (i.e., the history of violations and information on cost to comply), and information outside of commission staff's purview that is more appropriately presented by ERCOT, if ERCOT deems it relevant (i.e., resource adequacy outlooks and the potential of new resources to affect system reliability).

Commission Response

The commission disagrees with Vistra's recommendation and declines to modify the rule. The rule specifies that the listed considerations that commission staff may address in comments are in addition to the specific claims by the complainant. Without this clarification, the rule could be interpreted to limit commission staff's comments to the same criteria for responses to the complaint. Therefore, removal of this provision would create ambiguity instead of clarification. Additionally, commission staff represents the public interest; therefore, it is common for commission staff to address matters and make recommendations related to information that is also presented by ERCOT and stakeholders.

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. The amended rule is also adopted under PURA §14.052, which authorizes the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings; §39.151(d), which allows the commission to delegate to an independent organization the responsibilities to adopt and enforce rules relating to the reliability of the regional electric network; and §39.151(d-4)(6), which allows the commission to resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052, 39.151(d), and 39.151(d-4)(6).

§22.251. Review of Electric Reliability Council of Texas (ERCOT) Conduct.

- (a) **Purpose.** This section establishes the procedure by which an entity, including commission staff and the Office of Public Utility Counsel (OPUC), may file a complaint regarding ERCOT's conduct as the independent organization certified under PURA §39.151 or any successor in interest to ERCOT.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise.
 - (1) **Applicable ERCOT Procedures** -- the applicable sections of the ERCOT protocols that are available to challenge or modify ERCOT conduct, including Section 20 (Alternative Dispute Resolution Procedures, or ADR) and Section 21 (Process for Protocol Revision), and other participation in an applicable revision process.
 - (2) **Conduct** -- a decision, act, or omission.
 - (3) **Resource** -- refers to a generation resource, load resource, or an energy storage resource, as defined and used in the ERCOT protocols.
 - (4) **Resource entity** -- an entity that owns or controls a resource.
- (c) **Scope of complaints.**
 - (1) The scope of permitted complaints includes ERCOT's performance as the independent organization certified under PURA §39.151, including ERCOT's promulgation and enforcement of standards and procedures relating to reliability,

transmission access, customer registration, and the accounting of electricity production and delivery among generators and other market participants.

- (2) An affected entity may file a complaint with the commission, setting forth any ERCOT conduct that is alleged to be in violation of any law that the commission has jurisdiction to administer, any order or rule of the commission, or any protocol, procedure, or binding document adopted by ERCOT in accordance with any law that the commission has jurisdiction to administer.
 - (3) A resource entity may file a complaint with the commission regarding a decision by ERCOT on the resource entity's exemption or extension request under §25.517 of this title (relating to Exemption Process for ERCOT Reliability Requirements) in accordance with this section, including the provisions in subsection (r) of this section. Any other affected entity may file a complaint with the commission regarding a decision by ERCOT on an exemption or extension request under §25.517 of this title as ERCOT conduct under the general provisions of this section.
- (d) **ERCOT Protocols compliance prerequisite.** An affected entity must attempt to challenge or modify ERCOT conduct using the Applicable ERCOT Procedures before filing a complaint with the commission under this section. If a complainant fails to use the Applicable ERCOT Procedures, the presiding officer may dismiss or abate the complaint to afford the complainant an opportunity to use the Applicable ERCOT Procedures.
- (1) A complainant may file a complaint with the commission directly, without first

using the Applicable ERCOT Procedures, if:

- (A) the complainant is commission staff or OPUC;
 - (B) the complainant is not required to comply with the Applicable ERCOT Procedures;
 - (C) the complainant seeks emergency relief necessary to resolve health or safety issues;
 - (D) compliance with the Applicable ERCOT Procedures would inhibit the ability of the affected entity to provide continuous and adequate service; or
 - (E) the commission has granted a waiver of the requirement to use the Applicable ERCOT procedures in accordance with paragraph (2) of this subsection.
- (2) An affected entity may file with the commission a request for waiver of the Applicable ERCOT Procedures. The waiver request must be in writing and clearly state the reasons why the Applicable ERCOT Procedures are not appropriate. The commission may grant the waiver for good cause shown.
- (3) For complaints for which ADR proceedings have not been conducted at ERCOT, the presiding officer may require informal dispute resolution.

(e) Formal complaint.

- (1) A formal complaint must be filed within 35 days of the ERCOT conduct that is the subject of the complaint, except as otherwise provided in this subsection. When an ERCOT ADR procedure has been timely commenced, a complaint concerning the ERCOT conduct or decision that is the subject of the ADR procedure must be filed

no later than 35 days after the completion of the ERCOT ADR procedure. The presiding officer may extend the deadline, upon a showing of good cause, including the parties' agreement to extend the deadline to accommodate ongoing efforts to resolve the matter informally, and the complainant's failure to timely discover through reasonable efforts the injury giving rise to the complaint.

- (2) A formal complaint must include the following information:
 - (A) a complete list of all complainants and the entities against whom the complainant seeks relief and the addresses and e-mail addresses of the parties or their counsel or other representatives;
 - (B) a procedural and historical statement of the case that does not exceed two pages, as reasonably practicable, and does not discuss the facts. The statement must contain the following:
 - (i) a concise description of any underlying proceeding or any prior or pending related proceedings;
 - (ii) the identity of all entities or classes of entities that would be directly affected by the commission's decision, to the extent such entities or classes of entities can reasonably be identified;
 - (iii) a concise description of the ERCOT conduct from which the complainant seeks relief;
 - (iv) a statement of the ERCOT procedures, protocols, binding documents, by-laws, articles of incorporation, or law applicable to resolution of the dispute;
 - (v) whether the complainant has used the Applicable ERCOT

Procedures for challenging or modifying the complained-of ERCOT conduct or decision as described in subsection (d) of this section and, if not, the provision of subsection (d) of this section upon which the complainant relies to excuse its failure to use the Applicable ERCOT Procedures;

- (vi) a statement of whether the complainant seeks a suspension of the ERCOT conduct complained of while the complaint is pending; and
 - (vii) a statement of the basis of the commission's jurisdiction, presented without argument.
- (C) a detailed and specific statement of all issues or points presented for commission review;
 - (D) a concise statement of the relevant facts, presented without argument. Each fact must be supported by references to the record, if any;
 - (E) a clear and concise argument for the contentions made, with appropriate citation to authorities and to the record, if any;
 - (F) a statement of all questions of fact, if any, that the complainant contends require an evidentiary hearing;
 - (G) a short conclusion that states the nature of the relief sought; and
 - (H) a record consisting of a certified or sworn copy of any document constituting or evidencing the matter complained of. The record may also contain any other item relevant to the issues or points presented for review, including affidavits or other evidence on which the complainant relies.
- (3) If the complainant seeks to suspend the ERCOT conduct complained of while the

complaint is pending, and all entities against whom the complainant seeks relief do not agree to the suspension, the complaint must include a statement of the harm that is likely to result to the complainant if the ERCOT conduct is not suspended.

(A) Harm may include deprivation of an entity's ability to obtain meaningful or timely relief if a suspension is not entered.

(B) A request for suspension of the ERCOT conduct must be reviewed in accordance with subsection (j) of this section.

(4) All factual statements in the complaint must be verified by affidavit made on personal knowledge by an affiant who is competent to testify to the matters stated.

(5) A complainant must file the formal complaint with the commission and serve a copy of the complaint and any other documents in accordance with §22.74 of this title (relating to Service of Pleadings and Documents) on:

(A) ERCOT's general counsel;

(B) each entity from whom relief is sought;

(C) OPUC; and

(D) any other party.

(f) **Notice.** Within 14 days of receipt of the complaint, ERCOT must provide notice of the complaint by email to all qualified scheduling entities and, at ERCOT's discretion, all relevant ERCOT committees and subcommittees. Notice must consist of an attached electronic copy of the complaint, including the docket number, but may exclude the record required by subsection (e)(2)(H) of this section.

(g) **Response to complaint.** ERCOT's response to a complaint is due within 28 days after receipt of the complaint by ERCOT. The deadline for other responses is 45 days after the date the complaint is filed. All responses must comply with the provisions of this subsection.

(1) A response to a complaint must be confined to the issues or points raised in the complaint and must otherwise conform to the requirements for the complaint established under subsection (e) of this section except for the following items:

- (A) the list of parties and counsel unless necessary to supplement or correct the list contained in the complaint;
- (B) a procedural and historical statement of the case, a statement of the issues or points presented for commission review, or a statement of the facts, unless the responding party contests that portion of the complaint;
- (C) a statement of jurisdiction, unless the complaint fails to assert valid grounds for jurisdiction, in which case the reasons why the commission lacks jurisdiction must be concisely stated; and
- (D) any item already contained in a record filed by another party.

(2) If the complainant seeks a suspension of the ERCOT conduct that is the subject of the complaint, the response to the complaint must state whether the responding party opposes the suspension and, if so, the basis for the opposition, specifically stating the harm likely to result if a suspension is ordered.

(h) **Comments by commission staff and motions to intervene.**

(1) Commission staff representing the public interest must file comments within 45

days after the date on which the complaint was filed.

- (2) Any party desiring to intervene in accordance with §22.103 of this title (relating to Standing to Intervene) must file a motion to intervene accompanied by a response to the complaint within 45 days after the date on which the complaint was filed.
- (i) **Reply.** The complainant may file a reply addressing any matter in a party's response or commission staff's comments. A reply, if any, must be filed within 55 days after the date on which the complaint was filed. The commission may consider and decide the complaint before a reply is filed.
- (j) **Suspension of conduct.** The ERCOT conduct that is the subject of the complaint remains in effect until the presiding officer issues an order suspending the conduct.
 - (1) If the complainant seeks to suspend the ERCOT conduct that is the subject of the complaint while the complaint is pending and all entities against whom the complainant seeks relief do not agree to the suspension, the complainant must demonstrate that there is good cause for suspension. A good cause determination under this subsection will be based on the presiding officer's assessment of:
 - (A) the harm that is likely to result to the complainant if a suspension is not ordered;
 - (B) the harm that is likely to result to others if a suspension is ordered;
 - (C) the likelihood of the complainant's success on the merits of the complaint; and
 - (D) any other relevant factors as determined by the commission or the presiding

officer.

- (2) The presiding officer may issue an order, for good cause, on such terms as may be reasonable to preserve the rights and protect the interests of the parties during the processing of the complaint, including requiring the complainant to provide reasonable security, assurances, or to take certain actions, as a condition for granting the requested suspension.
 - (3) A party may appeal a decision of a presiding officer granting or denying a request for a suspension, in accordance with §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Orders Issued by the Commission).
- (k) **Oral argument.** If the facts are such that the commission may decide the matter without an evidentiary hearing on the merits, a party desiring oral argument must comply with the procedures set forth in §22.262(d) of this title (relating to Commission Action After a Proposal for Decision). In its discretion, the commission may decide a case without oral argument if the argument would not significantly aid the commission in determining the legal and factual issues presented in the complaint.
- (l) **Extension or shortening of time limits.**
- (1) The presiding officer may grant a request to extend or shorten the time periods established by this rule for good cause shown.
 - (A) Any request or motion to extend or shorten the schedule must be filed prior to the date on which any affected filing would otherwise be due.

- (B) A request to modify the schedule must include a representation of whether all other parties agree with the request and a proposed schedule.
 - (2) For cases to be determined after the making of factual determinations or through commission ADR as provided for in subsection (o) of this section, the presiding officer will issue a procedural schedule.
- (m) **Standard for review.**
- (1) If the factual determinations related to the ERCOT conduct complained of have not been provided or established in a manner that meets the procedural standards under paragraph (3) of this subsection, or if factual determinations necessary to the resolution of the matter have not been provided or established, the commission will resolve any factual issues on a *de novo* basis.
 - (2) If the factual determinations supporting the ERCOT conduct complained of have been made in a manner that meets the procedural standards specified under paragraph (3) of this subsection, the commission will reverse a factual finding only if it is not supported by substantial evidence or is arbitrary and capricious.
 - (3) Facts must be determined:
 - (A) in a proceeding to which the parties have voluntarily agreed to participate;
and
 - (B) by an impartial third party under circumstances that are consistent with the guarantees of due process inherent in the procedures established by the Texas Government Code Chapter 2001 (Administrative Procedure Act).

(n) **Referral to the State Office of Administrative Hearings (SOAH).**

- (1) If resolution of a complaint does not require determination of any factual issues, the commission may decide the issues raised by the complaint on the basis of the complaint, including any comments and responses.
- (2) If factual determinations must be made to resolve a complaint brought under this section, disposition by summary decision under §22.182 of this title (relating to Summary Decision) is not appropriate, and the parties do not agree to the making of all factual determinations in accordance with a procedure described in subsection (o) of this section, the matter may be referred to SOAH .

(o) **Availability of alternative dispute resolution.** In accordance with Texas Government Code Chapter 2009 (Governmental Dispute Resolution Act), the commission will make available to the parties alternative dispute resolution procedures described by Civil Practices and Remedies Code Chapter 154, as well as combinations of those procedures. The use of these procedures before the commission for complaints brought under this section must be by agreement of the parties only.

(p) **Granting of relief.** Where the commission finds merit in a complaint and that corrective action is required by ERCOT, the commission will issue an order granting the relief the commission deems appropriate. The commission order granting relief may include:

- (1) entering an order suspending the ERCOT conduct complained of;
- (2) ordering that appropriate protocol revisions be developed and implemented; or
- (3) providing guidance to ERCOT for further action, including guidance on the

development and implementation of protocol revisions.

(q) **Notice of proceedings affecting ERCOT.**

- (1) Within seven days of ERCOT receiving a pleading instituting a lawsuit against it concerning ERCOT's conduct as described in subsection (b) of this section, ERCOT must notify the commission of the lawsuit by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the pleading instituting the lawsuit.
- (2) Within seven days of receiving notice of a proceeding at the Federal Energy Regulatory Commission in which relief is sought against ERCOT, ERCOT must notify the commission by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the notice received by ERCOT.

(r) **Complaint related to a request for exemption from or extension for an ERCOT reliability requirement.** In a complaint by a resource entity involving a decision by ERCOT on the resource entity's exemption or extension request under §25.517 of this title, the following additional provisions apply:

- (1) the complainant is not required to comply with the Applicable ERCOT Procedures prior to submitting a complaint to the commission;
- (2) a proceeding under this subsection is exempt from ADR or other informal dispute resolution procedures otherwise available in this section;
- (3) the complaint must include the resource's history of violations of reliability-related

ERCOT protocols, operating guides, or other binding documents;

- (4) commission staff's comments under subsection (h) of this section may include consideration of the following, in addition to the specific claims by the complainant:
 - (A) ERCOT's most relevant outlook for resource adequacy;
 - (B) date of interconnection of the resource in question;
 - (C) the potential impact to system reliability of new resources that have been approved for energization by ERCOT;
 - (D) the resource's history of violations described in paragraph (3) of this subsection;
 - (E) the complainant's cost to comply with the reliability requirement, or the cost to other affected entities as a result of a resource entity's being granted or denied an exemption; and
 - (F) any condition related to the exemption.
- (5) Notwithstanding any other provision in this section or §25.517 of this title, the commission may grant or deny an extension or exemption, with or without conditions, if doing so is in the public interest. In making its determination, the commission may consider any relevant information, including evidence of reliability risks to the grid and operational or economic impacts to the resource entity. The commission may impose conditions on an extension or exemption as appropriate to protect the public interest.

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 §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of _____ 2025.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

KATHLEEN JACKSON, COMMISSIONER

COURTNEY HJALTMAN, COMMISSIONER