

PROJECT NO. 57374

**EXEMPTION PROCESS FOR ERCOT
TECHNICAL STANDARDS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

CHAPTER 22

PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §22.251

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. The amended rule will modify the appeal process at the commission for ERCOT decisions on exemptions and make other minor and conforming changes. In the same project, the commission proposes new 16 TAC §25.517, relating to Exemption Process for ERCOT Reliability Requirements. The proposed rule will allow ERCOT to promulgate reliability-related technical standards and list general criteria by which ERCOT must decide whether to grant an exemption from those standards.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Rachel Seshan, Attorney, Division of Compliance and Enforcement, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering this section.

Public Benefits

Ms. Seshan has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be improved grid reliability in the ERCOT power region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by **February 3, 2025**. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by **February 3, 2025**. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to **Project Number 57374**. In addition to this proposed rule, the commission is simultaneously proposing new 16 TAC §25.517. Interested persons may provide comments to both proposals in a single filing, and the commission will consider the two proposals together.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendment is proposed under PURA §14.001, which grants 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 this title that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; and 14.002.

§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 appeal a decision made by ERCOT 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) **Conduct** -- a decision, act, or omission.
 - (2) **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 the protocol revision process.
- (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 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) An affected entity may file a complaint with the commission appealing a decision by ERCOT on an exemption request under §25.517 of this title (relating to Exemption Process for ERCOT Reliability Requirements) in accordance with subsection (r) of this section.

(d) **ERCOT Protocols compliance prerequisite.** An affected entity must use 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 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, e-mail addresses, and, if available,

the facsimile transmission numbers of the parties' counsel or other representatives;

(B) a procedural and historical statement of the case that does not exceed two pages 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 conduct, alleged conduct, or ERCOT decision 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 conduct or implementation of the decision complained of; 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 conduct or the implementation of the decision 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 conduct or implementation of the decision 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 conduct or implementation of a decision must be reviewed in accordance with subsection (i) 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.
- (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.** A response to a complaint is due within 28 days after receipt of the complaint by the commission.
 - (1) The response must be confined to the issues or points raised in the complaint and must otherwise conform to the requirements for the complaint established under in 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 respondent 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 conduct or implementation of the decision that is the subject of the complaint, the response must state whether the respondent 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 within 45 days after the date on which the complaint was filed. A motion to intervene must be filed with a response to the complaint.

(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 or decision.

- (1) If the complainant seeks to suspend the conduct or implementation of the decision 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 supporting the 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 conduct complained 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, responses, and replies.
- (2) If factual determinations must be made to resolve a complaint brought under this section, and the parties do not agree to the making of all such determinations in accordance with a procedure described in subsection (o) of this section, the matter may be referred to SOAH for all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commission or a commissioner serves as the finder of facts.

(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 conduct or implementation of the decision complained of;
 - (2) ordering that appropriate protocol revisions be developed;
 - (3) providing guidance to ERCOT for further action, including guidance on the development and implementation of protocol revisions; or
 - (4) ordering ERCOT to promptly develop protocols revisions for commission approval.
- (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 regarding exemptions to ERCOT reliability requirements.** In a complaint involving the outcome of an exemption decision by ERCOT under §25.517 of this title, the following provisions apply:

- (1) the complainant is not required to comply with the Applicable ERCOT Procedures prior to submitting a complaint to the commission;
- (2) the parties to a proceeding under this subsection are the complainant, the complainant's transmission service provider, ERCOT, OPUC, and commission staff;
- (3) ERCOT is exempt from the notice requirements of subsection (f) of this section;
- (4) a proceeding under this subsection is exempt from ADR or other informal dispute resolution procedures otherwise available in this section;
- (5) the complaint must 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;
- (6) 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 recent outlook for resource adequacy;
 - (B) date of interconnection of the resource in question;
 - (C) the potential impact of new resources in the interconnection queue on system reliability;
 - (D) the resource's history of violations described in paragraph (4) of this subsection;

- (E) the complainant's cost to comply with the reliability requirement; and
 - (F) a modification or condition to the exemption.
- (7) In addition to any other relief the commission may grant under subsection (p) of this section, the commission may grant an exemption to a complainant with modifications as the commission deems appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF DECEMBER 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**