

**PROJECT NO. 54585**

**EMERGENCY PRICING PROGRAM      §      PUBLIC UTILITY COMMISSION**  
**§**  
**§      OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §25.509**  
**AS APPROVED AT THE SEPTEMBER 14, 2023 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region. The proposed amendments will implement Senate Bill 3, Section 18, passed in the 87th Texas Legislative Session (R.S.), by establishing an emergency pricing program for the wholesale electric market as required by Public Utility Regulatory Act (PURA) §39.162.

***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***

Werner Roth, Senior Market Economist, Market Analysis Division, 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 the sections.

### ***Public Benefits***

Mr. Roth 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 protecting electric consumers from excessive energy prices during prolonged scarcity events while ensuring generators are able to recover costs incurred during those events. 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

October 13, 2023. 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 October 13, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. 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 rules on adoption. All comments should refer to Project Number 54585.

**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. Comments should be limited to ten pages, excluding the executive summary, and any attached redlines.**

### *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; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.162,

which directs the commission to establish an emergency pricing program for the wholesale electric market.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, and 39.162.

**§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) **Generation entity** -- an entity that owns or controls a generation resource.
  - (2) **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.
  - (3) **Load entity** -- an entity that owns or controls a load resource.
  - (4) **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.
  - (5) **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:  $\sum((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$  for each settlement interval when  $RTEP - POC > 0$ .
- (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 and \$2,000 per MW per hour.
- (B) The high system-wide offer cap (HCAP) will be \$5,000 per MWh and \$5,000 per MW per hour.
- (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 average 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. 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) 72 hours after the activation of the EPP; or

(B) 24 hours after ERCOT exits emergency operations.

(4) **Market Notice.** ERCOT will issue a market notice both when the EPP is activated and when the EPP is terminated.

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

(6) **Report.** Within 60 calendar days from the date the EPP is terminated, ERCOT must file a report with the commission that contains the following information:



- (A) A summary of the event that triggered the EPP;
- (B) An analysis of the EPP's performance while the program was active;
- (C) The number of generators that filed for cost recovery under paragraph (5) of this subsection and the total dollar amount of costs recovered with this mechanism; and
- (D) Any recommendations to modify or improve the EPP.

(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)(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 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 14TH DAY OF SEPTEMBER 2023 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA GONZALES**