

PROJECT NO. 57374

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

ORDER ADOPTING NEW 16 TAC §25.517

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.517, relating to Exemption Process for ERCOT Reliability Requirements. The commission adopts the rule with changes to the proposed text as published in the January 3, 2025 issue of the *Texas Register* (50 TexReg 14). The rule establishes requirements for ERCOT's evaluation of exemption or extension requests to certain ERCOT reliability requirements. This new rule is adopted under Project Number 57374. In the same project, the commission adopts amended 16 TAC §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. That amended rule modifies the process for contesting ERCOT decisions on exemption and extension requests at the commission and makes other minor and conforming changes.

The commission received comments on the proposed rule from Advanced Power Alliance and American Clean Power Association (APA and ACP); 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); Electric Reliability Council of Texas, Inc. (ERCOT); Elevate Energy Consulting (Elevate); Engie North America, Inc. (Engie); Intersect Power, LLC (IP); Invenergy Renewables LLC (Invenergy); Invenergy Renewables LLC, NextEra Energy Resources LLC, Southern Power Company, Avangrid Renewables LLC, and Clearway Renew, LLC (collectively, Joint Commenters); Jupiter Power LLC (Jupiter); the Lower Colorado River Authority (LCRA);

NextEra Energy Resources, LLC (NextEra); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company, LLC (Oncor); Southern Power Company (Southern Power); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); Texas Industrial Energy Consumers (TIEC); Texas Public Power Association (TPPA); Texas Solar + Storage Association and the Solar Energy Industries Association (Association Joint Commenters); and Vistra Corporation (Vistra).

The following entities testified at a public hearing on the proposed rulemaking held on February 20, 2025: APA and ACP; Avangrid; Invenenergy; LCRA; NextEra; Southern Power; Association Joint Commenters; and Vistra.

General Comments

Many commenters indicated that the proposed rule seemed unclear in purpose and application. For example, several commented that the proposed rule could be interpreted to apply to any ERCOT requirement, existing and future, which would promote regulatory uncertainty and a chaotic application process. Others were concerned about who determines what a reliability requirement is and the process by which a reliability requirement will be created.

Commission Response

The commission adds several purpose-related provisions to proposed subsection (a) to clarify the issues raised by commenters. A reliability requirement is defined in the adopted rule as a mandatory technical standard adopted by ERCOT to support the reliability of electric service that is included in the ERCOT protocols. Accordingly, a reliability requirement is

any ERCOT protocol related to reliability. The new purpose-related provisions clarify that this rule does not affect existing exemptions, prohibit ERCOT from adopting exemption processes unrelated to this rule, or create a presumption that any individual reliability requirement applies to an existing resource. In addition, the new provisions clarify that ERCOT staff must designate during the development of a reliability requirement whether the requirement will be subject to the new rule and allow for an exemption, and the proposed requirement will go to the ERCOT Board and then the commission for approval. The ERCOT Board can modify the requirement before adopting it, and the commission can approve, reject, or remand the requirement with suggested modifications at an open meeting. These procedural steps provide ample opportunity for stakeholder input and feedback.

Other provisions contained in modified (a) of the adopted rule include requirements that a reliability requirement that has been designated as allowing exemptions must include a deadline by which a resource entity must submit its exemption request to ERCOT, and that only existing resources are eligible for an exemption under this rule, and “existing” is described for a generation resource and a load resource.

Finally, the commission modifies the rule to apply to a reliability requirement that is already in effect for which ERCOT has accepted notices of intent to request an exemption, but for which ERCOT has not yet defined the standards by which those exemption requests will be evaluated. This modification will allow ERCOT to use this rule to evaluate exemption requests from the requirements of paragraphs (1) through (5) of Nodal Operating Guide §2.6.2.1, paragraphs (1) through (7) of §2.9.1.2, paragraphs (5) through (7) of §2.9.1, and

paragraph (9) or §2.9.1.1, all of which were effective upon the commission's approval of Nodal Operating Guide Revision Request (NOGRR) 245 at its September 26, 2024 open meeting. NOGRR 245 also revised Nodal Operating Guide §2.12.1(2) to state that an exemption process will be established through an additional NOGRR. This rule takes the place of the additional NOGRR that had been planned, and this modification maintains the prospective orientation of the rule by not altering the substantive provisions of the requirements that have already been settled.

Public Comments

The commission invited interested persons to address four questions related to various parts of the proposed rule.

1. Should the concept of feasibility include a cost component?

Association Joint Commenters, TPPA, OPUC, and LCRA answered yes. Association Joint Commenters, TPPA, and LCRA noted that resource owners whose costs to comply with a reliability requirement that would be economically infeasible may choose to retire the resource prematurely. OPUC explained that the consumer does not benefit if a resource owner incurs excessive additional costs to achieve what could be minimal improvements to grid reliability and recommended that a cost-benefit analysis be included in the rule. TIEC and NextEra agreed in principle that consideration of cost is critical but proposed that cost be considered alongside technical feasibility.

Joint Commenters, Southern Power, Avangrid, and ERCOT answered no. Generally, these

commenters stated that it is within the commission's purview to consider costs, rather than ERCOT's, and that it would be improper to introduce cost as a component of technical feasibility.

Other commenters responded indirectly. APA and ACP suggested that cost be considered in the context of a potential taking, rather than as part of considering technical feasibility. AEP Companies stated that whether to consider cost in the exemption evaluation process is highly fact dependent on the individual reliability issue and how cost is factored in, such as an absolute dollar threshold, a percentage of cost, or some other kind of cost-benefit analysis. TCPA responded that if the definition of "unacceptable reliability risk" is appropriately narrowed, then time-limited exemptions should be available, during which time the resource owner can evaluate whether it can spend the money required to come into compliance.

Commission Response

The commission agrees with commenters who responded that cost should not be considered as part of feasibility. As the entity responsible for reviewing exemption requests, ERCOT is charged with the reliability of the grid. Requiring ERCOT to evaluate the cost to an individual resource entity would dilute ERCOT's responsibility to maintain grid reliability and instead make a public interest decision. The commission agrees that it is the commission that is charged with making public interest decisions that weigh cost to an individual resource entity against the reliability benefit of compliance with a new requirement. The deliberation should occur at the commission during an appeal of an exemption decision under 16 TAC §22.251. Such deliberation is also expected during development of a reliability requirement, and the ERCOT Board and the commission will consider the impacts of a new

reliability requirement on new and existing resources, whether the requirement needs to apply to existing resources, and whether this exemption process should be used for that requirement.

For these reasons, the commission modifies the rule to remove the requirement that a resource entity submit cost information and the discretion for ERCOT to consider costs as part of its system evaluation. However, the commission also modifies subsection (d) of the proposed rule to indicate that, if a threshold reliability risk exists related to a potential exemption, ERCOT will work with the resource entity to determine whether mitigation options exist that are mutually agreeable to ERCOT and the resource entity, and both parties may consider the cost impacts of these mitigation options.

2. How should the rule distinguish between ERCOT reliability requirements that should and should not allow for an exemption?

Commenters generally agreed that the rule should not distinguish between ERCOT reliability requirements that should and should not allow for an exemption. Rather, most commenters agreed that market participants should be allowed to seek an exemption from any new reliability requirement with which compliance is technically infeasible.

OPUC, TIEC, and ERCOT did not agree with other commenters in their responses. OPUC stated that there should be two tiers of reliability requirement: first, requirements that address critical risk, to which no exemptions should be available, and second, non-critical requirements from which exemptions should be available. TIEC stated that ERCOT should only impose new

performance requirements on existing resources based on a statutory mandate or to mitigate a demonstrated reliability risk, and that if a reliability requirement is imposed to mitigate a demonstrated reliability risk, then specifics of the new requirement would still be vetted through the stakeholder process. Similarly, ERCOT stated that the rule should apply only to reliability requirements explicitly allowing ERCOT to grant an exemption, and that new reliability requirements and associated allowances for exemptions should be developed through the stakeholder process. ERCOT argued that applying proposed §25.517 to a broader set of ERCOT reliability requirements could weaken ERCOT system reliability.

Commission Response

The commission agrees with TIEC and ERCOT that new reliability requirements will be developed through the stakeholder process, but does not modify the rule to reflect this, because the process for developing new reliability requirements is beyond the scope of this rulemaking proceeding. However, as previously described, the commission does modify the rule to include additional language to clarify that whether the exemption process contained in this rule is available for a particular reliability requirement will be determined when that requirement is initially developed and adopted.

3. How should ERCOT evaluate cost in comparison to the reliability risk that an unmodified resource may pose to the grid?

Several commenters stated that ERCOT should not evaluate cost in comparison to reliability risk. ERCOT, Southern Power, and Avangrid wrote that cost considerations are irrelevant to reliability risk and are within the commission's purview rather than ERCOT's, so cost should be considered

only on appeal. ERCOT further opined that this rule should function similarly to 16 TAC §25.101(b)(3)(A)(i), under which ERCOT performs economic cost-benefit studies to inform a *commission* decision whether to grant a certificate of convenience and necessity for an economically driven transmission line project.

TCPA stated that if granting an exemption would truly endanger the grid or substantially damage another resource owner's equipment, and it is not possible technically or cost-effectively to eliminate the unacceptable risk through mitigation, curtailment, or remedial action scheme, then the exemption should not be available. AEP Companies similarly stated that a cost threshold alone should not exempt a resource from a reliability requirement or shift costs from the resource to loads that pay for transmission within the region.

Among commenters who suggested that cost be compared to risk, explanations varied. NextEra, APA and ACP, TIEC, and Joint Commenters all had similar recommendations to compare the aggregate cost of implementation of a new reliability requirement to the measured increased reliability risk before adopting the new requirement. NextEra and TIEC further suggested that ERCOT compare the cost of compliance to other available technologies to achieve the same reduction in reliability risk. TIEC also suggested that ERCOT and the commission consider the number of resources affected and the incremental reliability benefit of any new reliability requirement. TIEC noted that typically, this consideration happens during the stakeholder process.

TPPA stated that cost to an individual resource should be a paramount consideration, suggesting that ERCOT consider the likelihood of lost capacity during critical hours if a resource owner

chooses to retire or seasonally mothball a resource rather than incur the cost of complying with a new reliability requirement. TIEC and LCRA similarly suggested that during individual evaluation of exemption requests, ERCOT consider the reliability impact of resource retirement, with LCRA focusing specifically on dispatchable generation resources. On the other hand, AEP Companies suggested that ERCOT consider the value of lost reliability if an exemption is *granted*.

OPUC and LCRA had specific suggestions for how to compare cost. OPUC suggested that the rule require ERCOT to compare the cost of compliance with the change in Loss of Load Probability as valued by the Value of Lost Load (VOLL). If the cost of compliance is less than savings in expected VOLL, ERCOT should not consider costs further; however, if the cost of compliance exceeds expected VOLL, then ERCOT should consider granting an exemption or implementing phased compliance. LCRA suggested that the rule require ERCOT to compare the costs incurred by a resource owner to the implicit costs incurred by the market for every granted exemption, including the potential costs of unserved load in the case of severe reliability impacts (cascading outages, uncontrolled separation, etc.).

AEP Companies commented that if the commission chooses to include a cost component, the commission should err on the side of reliability and recognize that any such exemption for the generator may require mitigation that includes additional transmission facilities.

Finally, Association Joint Commenters commented that ERCOT should weigh individual exemption requests based on the facts and circumstances of each case and the specific impact, if any, of the individual request on the ERCOT system and the resource owner.

Commission Response

The commission agrees with commenters that stated that ERCOT should not evaluate the cost to an individual resource entity in comparison to reliability risk. As stated in the commission's response to Question 1, ERCOT's role is to maintain grid reliability, not to weigh the cost to an individual resource entity against the impact to grid reliability. It is the commission's role to make such public interest decisions. Therefore, ERCOT's role under this rule is limited to evaluating an exemption request in terms of whether granting an exemption would cause a threshold reliability risk and to working with resource entities to identify mutually acceptable options to mitigate those risks. The commission also agrees with TCPA that if an exemption would lead to catastrophic consequences, it should not be granted, and with AEP Companies, that a cost threshold alone should not justify granting an exemption or shift costs from a resource to loads that pay for transmission. The commission also agrees with TIEC's and LCRA's suggestion that ERCOT consider the impact of resource retirement on resource adequacy, but this is already covered under the proposed rule and maintained in the adopted rule.

4. Under subsection (g)(1), an exemption is no longer valid if the market participant makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations. Is this a reasonable threshold for considering a resource modified to the extent that it is no longer the same resource that was granted an exemption? If not, what is a reasonable threshold?

Most commenters disagreed with proposed (g)(1)'s threshold because, under this threshold, a

modification to a resource that is small or unrelated to the specific cause for the exemption could trigger loss of an exemption, and this outcome would be unreasonable. Of those who disagreed, most pointed to ERCOT's Planning Guide §5.2.1(1)(c) as the suggested threshold, with a subset of those commenters specifically suggesting §5.2.1(1)(c)(ii). Commenters argued that this planning guide section covers resource modifications that are so significant in changing a resource's performance characteristics that they require ERCOT to perform new studies and require a resource to make modifications to improve grid reliability.

Association Joint Commenters recommended ERCOT Planning Guide §5.2 with additional clarifying language, and TPPA recommended using Planning Guide §5.5(6), which specifically relates to continuing operations, rather than initial commissioning. NextEra and T CPA recommended adding language such as "significant modification" or "materially modified" to narrow the types of modifications that would trigger revocation of an exemption, and TIEC stated that exemptions should instead be reviewed and revoked on a case-by-case basis.

Oncor and OPUC agreed with proposed (g)(1).

Commission Response

The commission agrees with commenters who suggested that the proposed provision be modified. The commission modifies the rule to mirror the language in ERCOT Planning Guide §5.2.1(1)(c)(ii) because this language accounts for modifications significant enough that they require ERCOT to perform new studies to ensure grid reliability.

Overall suggestion to withdraw or delay rulemaking

Most commenters opined specifically on the need for this rulemaking. These commenters recommended that the proposed rule be withdrawn or delayed, with various justifications. Some commenters argued that the rule's action is an unconstitutional exercise of eminent domain or that the rule will apply retroactively, rather than prospectively. Avangrid argued that the rulemaking is arbitrary, with no reasoned justification for the rule. Several commenters argued that ERCOT or the commission should pause the rulemaking and have a third party conduct a reliability study showing a need for the rule. Other commenters argued that a rulemaking covering commission directives to ERCOT or commission oversight of ERCOT should be completed first. Several commenters also argued that the ERCOT protocol concerning exemptions for inverter-based resources (IBRs) should follow the process laid out by the North American Electric Reliability Corporation (NERC), that the rulemaking will discourage investment in the ERCOT market, or that ERCOT already has the tools it needs to ensure grid reliability without this rulemaking.

Commission Response

The commission disagrees that this rulemaking is unnecessary, arbitrary, or premature. These arguments reflect a mischaracterization of the rule as it relates to eminent domain law and retroactive application. The proposed rule outlines a process that must be followed by ERCOT, a resource entity, and the commission. The proposed rule itself does not prescribe a taking of private property without compensation or apply to a resource entity's action that occurred in the past. The rule refers only to a provision in an ERCOT protocol, guide, or other binding document and allows a resource entity to apply for an exemption from that provision. It does not regulate private property or authorize any taking of real property. In

addition, the rule is fundamentally prospective: reliability requirements that are adopted in the future will allow for resources existing at the time the requirement is adopted to apply for an exemption, with the limited exception of applicability to a reliability requirement that is already in effect for which ERCOT has accepted notices of intent to request an exemption, but has not yet developed criteria for evaluating those exemptions. Thus, even in the case of this limited exception, this rule only applies in contexts where resource entities were already expecting further regulatory action regarding the exemption process.

In addition, comments discussing specific IBR-related issues are beyond the scope of this rulemaking.

Proposed §25.517(b), (c), (c)(3), (c)(4), and (c)(6) -- Commercial availability and economic viability as part of technical feasibility

Proposed §25.517(b)(4) defines “technically feasible” as “[describing] a modification or upgrade that, based on physics and engineering, can be made to a resource.” Proposed subsection (c) allows a market participant to submit an exemption request if a technical limitation prevents a resource from complying with a requirement that ERCOT has determined is critical for reliability. Proposed subsection (c)(3) requires the market participant to submit documentation describing all technically feasible modifications, replacements, or upgrades that the market participant could implement, but has not yet implemented, to improve the resource’s performance toward meeting the applicable reliability requirement. Proposed subsection (c)(4) requires the market participant to submit the estimated total cost of all modifications identified in subsection (c)(3). Proposed subsection (c)(6) requires the market participant to submit a plan to comply with each specific

element of the applicable reliability requirement to the maximum extent possible and gives additional requirements for this plan in subparagraphs.

Many commenters had suggestions to modify several provisions of the rule to consider commercial availability, feasibility, or reasonableness and economic cost associated with equipment modifications or replacements. Commenters argued that considering only technical feasibility, without a cost component, would require the market participant to consider theoretical solutions to comply with a reliability requirement that may be either commercially unavailable or excessively expensive. Other comments focused on the difference between hardware and software modifications to existing, as-built equipment and suggested that the rule be modified to only require software modifications to as-built equipment, rather than requiring a replacement or upgrade, which could entail purchasing new equipment. For example, Joint Commenters wrote that subsection (c)(3) of the proposed rule requires an applicant to submit costs for theoretical solutions or replacement of an entire facility, which would be unreasonable.

Association Joint Commenters argued that because the rule does not specifically allow a market participant to request an exemption based on cost or commercial availability considerations, it would be unclear if that market participant could appeal to the commission because there would be no denial based on cost or commercial availability.

Finally, Joint Commenters argued that if ERCOT must evaluate costs (under subsection (d)), then an applicant should be required to submit costs (under subsection (c)); however, if ERCOT has discretion whether to evaluate costs, then an applicant should not be required to submit costs.

Commission Response

The commission disagrees that commercial reasonableness, economic feasibility, or another phrase signifying economic cost to the resource entity should be included in the concept of feasibility, as suggested by several commenters.

As described above in the commission's responses to Questions 1 and 3, ERCOT is responsible for maintaining grid reliability. Requirements related to grid reliability may involve additional investment by a resource entity. However, even if a requirement does involve additional investment, ERCOT is not statutorily tasked with measuring the economic impact of such additional investments to an individual resource entity. If there is a significant cost impact to an individual resource entity, and the entity is unsatisfied with the outcome of its exemption request, the adopted rule provides for an appeal process at the commission under 16 TAC §22.251, whereby the entity can argue its case related to the cost impact. The commission can then weigh the public interest served by ERCOT's decision against the cost impact to the individual resource entity.

For purposes of this rule, ERCOT is concerned only with whether a resource entity can identify, procure, and install a modification to its resource that would allow the resource to comply with the reliability requirement. Whether a modification can be procured is relevant to ERCOT's evaluation, but how much it costs is not. Additionally, whether a modification can be procured commercially, or "off the shelf," is not relevant to ERCOT because electricity production can involve highly customized equipment. Therefore, the commission

replaces the defined term “technically feasible” ((b)(3) of the proposed rule) with “feasible” and modifies the definition to add the term “available,” modifies (c)(3) of the proposed rule to remove the requirement to submit costs, and modifies (d) of the proposed rule to remove ERCOT’s discretion to evaluate the individual cost to the resource entity.

However, the commission also modifies (d) of the proposed rule to require ERCOT to work with an individual resource entity to determine whether the resource in question could operate with conditions mutually acceptable to ERCOT and the resource entity to mitigate any threshold reliability risks caused by the resource’s continued operation. This modification to the proposed rule allows ERCOT to request and consider additional information from the resource entity during this process, including costs of an individual condition. Modified §25.517(d) states, however, that failure to identify a mutually acceptable option does not prevent ERCOT from making a decision on the exemption request based on its assessment. This addition ensures that this requirement is not interpreted to limit ERCOT’s discretion in making its final decision on the exemption request to options the resource entity is willing to agree to. This also allows ERCOT to make a final determination if a mutually acceptable option cannot be identified in a timely fashion.

Also, the primary role of the defined term “technically feasible” is to describe the potential modifications a resource entity could implement, but has not yet implemented, to comply with the reliability requirement. It is essential not to limit the types of modifications that a resource entity could implement based on a notion of financial cost or off-the-shelf availability. The commission modifies (d) of the proposed rule as described above for this

reason.

In addition, the commission will not prescribe the types of reliability requirements and compliance solutions that may arise through the ERCOT stakeholder process by limiting the possibilities only to non-hardware modifications. ERCOT must have the flexibility to determine how best to maintain grid reliability through reliability requirements, including potential hardware modifications to existing equipment.

The commission disagrees with Association Joint Commenters that an appeal based on cost would not be available. In an appeal to the commission under 16 TAC §22.251, the appellant is given the opportunity to allege the harm to it of ERCOT's conduct, which could include the cost of compliance with the reliability requirement.

Proposed §25.517(a) -- Application

Proposed §25.517(a) states that the section applies to a resource that existed before the date a reliability requirement takes effect and that satisfies the criteria for an exemption. Proposed subsection (a) does not refer to any other commission rules or to the Public Utilities Regulatory Act (PURA).

Joint Commenters, Avangrid, TPPA, Invenergy, and APA and ACP recommended that the rule be modified to exempt a resource from a reliability requirement that would damage the equipment of the resource, as provided for in 16 TAC §25.503(f)(2)(C) and (f)(3). These commenters argued that, for an existing resource, if a new standard is adopted that cannot work with existing

equipment, or that could damage existing equipment or void original equipment manufacturer warranty, then these current rules exempt the resource from the standard. Joint Commenters and Invenergy also stated that the proposed rule conflicts with PURA §39.151(l), which states that no operational criteria, protocols, or other requirements established by ERCOT may adversely affect or impede any manufacturing or other internal process operation associated with an industrial generation facility, except to the minimum extent necessary to assure reliability of the transmission network. Furthermore, Joint Commenters argue that Sec. 5.2 of the commission-approved standard generation interconnection agreement (SGIA) “specifies...that generator’s interconnection facilities must meet ERCOT requirements ‘in effect at the time of construction.’”

Commission Response

The commission disagrees that the proposed rule conflicts with other statutes or commission rules and documents, including PURA §39.151(l), 16 TAC §25.503(f), and the SGIA, which many commenters mischaracterize as providing automatic exemptions to ERCOT reliability requirements.

The details of any particular reliability requirement will be decided through the ERCOT stakeholder process, not through this rule, and must comply with applicable statutes and commission rules. The proposed rule does not prescribe any operational criterion, protocol, or other reliability requirement, nor does it authorize the development of any of the above. Furthermore, as it relates to PURA §39.151(l), under the adopted rule, ERCOT will only deny an exemption request if it would lead to a threshold reliability risk. This aligns with the statutory standard that allows interference with the manufacturing or other internal process

operation of a generation facility if necessary to assure the reliability of the transmission network. In fact, such a process is one way of ensuring that a reliability requirement that applies to existing resources is implemented in compliance with that statutory provision.

The commission strongly disagrees with commenter arguments concerning §25.503(f). Under §25.503(f)(2)(B), a market participant *may* be excused from compliance with ERCOT instructions or Protocol requirements *only if* such non-compliance is due to a number of enumerated reasons, such as creating a risk of harm to equipment, or for other good cause. By the plain language of subsection (f)(2)(B), this is a permissive provision (*may* be excused) that sets the outer bounds (*only if*) of when a participant can be excused from compliance with a requirement. In other words, it provides ERCOT with discretion to temporarily excuse compliance with a requirement if one of the listed conditions exists. It does not, as commenters argue, require ERCOT to do so or automatically exempt a market participant from an ERCOT requirement if one of the listed conditions exists. Moreover, to the extent that a market participant interprets this as an automatic exemption, this would leave it up to the judgment of the market participant when such an exemption applies, which is an especially problematic interpretation given that the listed conditions include “or for other good cause,” which would provide the market participant with broad compliance discretion.

Similarly, §25.503(f)(3) describes what is expected of a market participant when ERCOT protocols require it to make its “best efforts.” Essentially, this provision defines “best efforts” when used in this context. It does not extend those expectations universally to all reliability requirements promulgated by ERCOT, as suggested by some commenters.

Commenters' arguments in favor of such an interpretation ignore the plain and unambiguous text of subsection (f)(3).

The commission also disagrees that this rule would conflict with Sec. 5.2 of the SGIA, as asserted by Joint Commenters. Joint Commenters' argument is supported by a partial citation of the relevant SGIA provision. Cited in full, the relevant provision reads: "Generator agrees to cause the GIF to be designed and constructed in accordance with Good Utility Practice, ERCOT Requirements and the National Electrical Safety Code in effect at the time of construction." Critically, this provision is specific to what standards are applicable during the design and construction of the resource, not – as suggested by Joint Commenters – what standards generally apply to that facility. In fact, the term "ERCOT Requirements" appears in the SGIA nearly 30 times, and the only two times it is joined with "at the time of construction" is when describing requirements related to facility construction and, therefore, apply *at the time of construction*. This addition is required in those two instances because the SGIA, which explicitly incorporates "ERCOT Requirements" by reference, includes in the definition of "ERCOT Requirements" the phrase "as amended from time to time." This indicates that signatories to the SGIA explicitly acknowledge that ERCOT requirements will change and that the SGIA incorporates, by reference, the version of ERCOT requirements that are in effect at any given time. Any other interpretation would make it impossible for ERCOT to maintain the reliability of the grid over time.

The interpretations forwarded by commenters described above are not only inconsistent with the plain language of the requirements being cited. When read together, these

interpretations also represent a problematic compliance posture that suggests ERCOT and the commission are prohibited from updating requirements that apply to existing resources and, potentially, that market participants are free to disregard requirements when they believe there exists good cause to do so. If the commission, ERCOT, and market participants were to act in conformity with these interpretations, it would pose a material risk to ERCOT's ability to maintain the reliability of the grid.

Proposed §25.517(a), (b), and (c) -- Market participant versus resource

Proposed §25.517(a) states that the section applies to “market participants,” but that an exemption granted under this section applies only to a specific kind of “resource.” Proposed subsection (b) defines “resource.”

Several commenters noted the discrepancy throughout the rule between language directed at resources and the application of the rule to market participants. TPPA recommended that the rule language be modified to apply to all market participants, and Oncor requested clarification but noted that transmission and distribution utilities are also subject to reliability requirements. However, Association Joint Commenters and LCRA recommended the opposite--that the rule language be modified to apply only to resources and resource owners.

Oncor also requested clarification as to who can request an exemption: does the proposed rule only allow market participants that own or control a resource (i.e., resource entities) to request exemptions, or can other market participants that are associated with a resource (e.g., qualified scheduling entities, load serving entities, etc.) request exemptions on a resource's behalf? Can a

resource entity request an exemption for any resource that it owns, or must the request come from the designated decision-making entity that controls the resource? Avangrid suggested that the resource entity be the entity eligible to request an exemption.

Association Joint Commenters, Avangrid, and LCRA provided redlines consistent with their comments.

Commission Response

The commission agrees with Association Joint Commenters and LCRA that the intent is for the rule to apply to resources, not all market participants, and modifies the rule to apply only to generation resources, load resources, and energy storage resources.

The commission also agrees that a resource's resource entity is the appropriate applicant to request an exemption and modifies (c) of the proposed rule accordingly.

Proposed §25.517(a), (b)(2), and (c) -- Definition of reliability requirement, and how and by whom a reliability requirement is established

Proposed §25.517(a) states the application of the rule to market participants in the ERCOT region that are required to comply with reliability requirements. Proposed subsection (b)(2) defines "reliability requirement" as "a technical standard adopted by ERCOT to support the reliability of electric service. . . ." Proposed subsection (c) refers to a "requirement that ERCOT has determined is critical for reliability."

Many commenters expressed concerns that the proposed definition of “reliability requirement” is vague and that the proposed rule is silent on how a reliability requirement will be established in the future. Commenters offered varying suggestions for responding to their concerns.

Vistra suggested that subsection (b)(2) of the rule be modified to state that the commission will approve reliability requirements adopted by ERCOT and to define a process by which the commission would do this. Vistra argued that market participants should know before they request an exemption whether a new standard is a reliability requirement and that the commission’s determination whether a standard is eligible for an exemption would result in an efficient use of commission time. Similarly, Southern Power questioned whether “reliability requirement” is easily identifiable by all parties and suggested that the commission direct ERCOT to identify all current reliability requirements and to document the process by which future reliability requirements are identified, developed, approved, modified, etc. Vistra provided redlines consistent with its suggestion.

ERCOT asserted that the rule should apply only to reliability requirements that explicitly allow ERCOT to grant an exemption based on its engineering judgment or discretion and cited to ERCOT Nodal Operating Guide §2.12 as an example. ERCOT recommended that a reliability requirement go through the ERCOT stakeholder process to become the type of requirement that the proposed rule requires, arguing that the stakeholder process encourages robust participation and is overseen by multiple bodies, including a committee or working group, the technical advisory committee, the ERCOT board of directors, and the commission. ERCOT provided redlines consistent with its comments.

Avangrid recommended that the commission use a definition like NERC's for "reliability requirement" because the proposed rule's definition is too broad and inappropriately expands ERCOT's authority. TCPA and Vistra suggested that exemptions that pose no reliability risk be excluded from the rule. TCPA also recommended modifying subsection (b)(2) of the proposed rule to exclude net metering arrangements because there are existing exemptions related to this topic that are routinely granted permanently. Avangrid, TCPA, and Vistra provided redlines consistent with these suggestions.

Avangrid, Association Joint Commenters, and TPPA recommended that the phrase "critical for reliability" in proposed subsection (c) be deleted because it is undefined, and the proposed rule contains no description of how ERCOT will arrive at the conclusion that a requirement is critical for reliability. TPPA also stated that the proposed rule seems to indicate that if ERCOT determines that a requirement is *not* critical for reliability, then a market participant would be disallowed from seeking an exemption. Avangrid and Association Joint Commenters provided redlines consistent with their comments.

Commission Response

In response to Vistra's comments on this topic, the commission agrees that market participants should know before they apply for an exemption whether a new standard is a reliability requirement and that the commission will approve new reliability requirements. In addition, the commission agrees with Southern Power's comments that ERCOT should identify all reliability requirements. The commission addresses these comments by

modifying subsection (a) of the proposed rule to describe how a reliability requirement will be developed--that ERCOT will designate during its development whether a new reliability requirement will be subject to this rule and allow for exemptions--and makes the action associated with this rule prospective only. A reliability requirement is any provision in the ERCOT protocols, operating guide, or other binding documents related to reliability, so any new reliability requirement will be developed through the stakeholder process and approved by the commission, just as all protocol, operating guide, and planning guide revisions already are; therefore, all market participants will be aware which reliability requirements will be subject to the rule and allow for exemptions.

Similarly, in response to Southern Power, this rule *is* the documented process by which an exemption to a reliability requirement that is designated as allowing for exemptions can be requested and granted. To be subject to this new rule, a reliability requirement must be a mandatory, technical standard that applies to existing resources; therefore, a reliability requirement that is missing at least one of those elements (mandatory, technical, or applicable to existing resources) is not subject to this rule, and this would include protocols related to existing net metering arrangements. The commission also modifies the definition of “reliability requirement” to align with these concepts. The new provisions in subsection (a) of the adopted rule clarify that if a revision to an ERCOT protocol does not allow for an exemption, the exemption process outlined in this rule would not apply to that revision.

The commission agrees that “critical for reliability” in subsection (c) of the proposed rule is out of place and modifies the rule to replace it with “reliability requirement.”

Proposed §25.517(a) and (c) -- Exemption eligibility date

Proposed §25.517(a) states that “any exemption granted under this section applies only to a resource that existed before the date a reliability requirement takes effect.” Subsection (c) uses the term “a resource” to describe an eligible resource, not limiting the types of resources that are eligible to apply for an exemption.

Several commenters suggested that, instead of describing an eligible resource as one that “existed” before the date a reliability requirement takes effect, the proposed rule use a more precise term or point in time, such as execution of the SGIA. However, some comments conflicted with submitted redlines. For example, NextEra’s written comments suggested that a resource with an executed SGIA should be eligible for an exemption, but its redlines suggested that only a resource that had not executed an SGIA should be eligible for an exemption (i.e., a newly built resource, rather than any resource already operating). Similarly, Avangrid’s comments and redlines suggested that it preferred that only new resources, or those that have not yet signed an SGIA, be eligible for an exemption. On the other hand, Association Joint Commenters commented that both new and existing resources should be eligible for an exemption and provided a redline strike of the sentence in subsection (a) of the proposed rule describing an eligible resource as one that is already existing.

Jupiter Power and Avangrid provided redlines to subsection (c) of the proposed rule.

Commission Response

The commission disagrees that a resource entity that has signed an SGIA should be eligible

to apply for an exemption from a reliability requirement for a resource that is not yet interconnected in ERCOT. Instead, the commission modifies (a) of the proposed rule to clarify that only a resource whose Resource Commissioning Date is before the date a reliability requirement takes effect is eligible to apply for an exemption under this rule. In the case of a load resource, only one that had completed Ancillary Service Qualification Testing before the date a reliability requirement takes effect is eligible. The reason for this choice is that a load resource does not receive a Resource Commissioning Date, but the date that it completes Ancillary Service Qualification Testing is similar to a generation resource's Resource Commissioning Date in that after this date, the load resource can provide ancillary services to the ERCOT market.

Proposed §25.517(b) and (g) -- Reference to ERCOT protocols

Proposed §25.517(b) refers to the ERCOT protocols in subsection (b)(1), the definition of “resource.” Proposed §25.517(g)(1) refers to “the ERCOT planning guide section relating to Generator Commission and Continuing Operations.”

AEP Companies discouraged the commission from referring to ERCOT protocols in a commission rule because the language or numbering in the protocols could change, thus potentially changing the rule's operation. In addition, AEP Companies noted that the reference in subsection (b)(1) refers to defined terms in the ERCOT protocols that only carry the weight of the defined term if they are capitalized.

Commission Response

The commission agrees that the rule should not directly name specific ERCOT protocols, but that it is appropriate to refer to the ERCOT protocols for terms that are defined in them, and modifies the rule accordingly.

Proposed §25.517(b)(1), (b)(2), and (b)(3) -- Definitions

Proposed §25.517(b)(1) defines “resource” as “[including] a generation resource, load resource, and an energy storage resource, as defined in the ERCOT protocols.” Proposed §25.517(b)(2) defines “reliability requirement” as “a technical standard . . . that is included in the ERCOT protocols, operating guides, or other binding documents.” Proposed §25.517(b)(3) defines “technical limitation” as “a technical restriction . . . based on the resource’s documented technical infeasibility to comply with the reliability requirement.”

Oncor suggested that subsection (b)(1) of the proposed rule be modified to remove “load resource” from the definition of “resource,” arguing that load resources are fundamentally different from generation resources and energy storage resources in the way they interact with the grid. Oncor argued further that they are not subject to the same performance requirements and are already exempt from many requirements applicable to generation and storage resources. As a result, Oncor stated that allowing load resources to obtain exemptions from ERCOT’s reliability requirements would expose the grid to unnecessary risk.

Avangrid preferred that the commission use the definition of “resource” from existing 16 TAC §25.503 and provided a corresponding redline; alternatively, Avangrid recommended aligning the

definition with the definition in the ERCOT protocols.

NextEra recommended that the commission strike “or other binding documents” from subsection (b)(2) of the proposed rule because ERCOT’s other binding documents do not undergo the same rigorous processes that protocols and operating guides undergo to be modified; therefore, other binding documents should not have the same status as these other documents.

Avangrid recommended removing the concept of technical feasibility from subsection (b)(3) of the proposed rule because this concept is too broad and abstract.

Commission Response

The commission disagrees with Oncor that load resources should not be eligible for an exemption because a future reliability requirement that allows for exemptions could pertain to load resources. In addition, the commission believes that ERCOT’s discretion whether to allow exemptions during development of a reliability requirement, subject to approval of the ERCOT Board and the commission, represents a strong check on the reliability impact of an exemption for a load resource.

The commission disagrees with Avangrid’s suggestion to adopt the definition of “resource” from §25.503 because, for the purposes of this rule, the proposed definition with slight modifications suffices. The rule is applicable to generation resources, load resources, and energy storage resources, as defined in the ERCOT protocols; how the resource provides energy is not necessary to understand as part of this rule.

The commission does not share NextEra's concern related to the formality of the process in this rule relative to ERCOT's process for adopting other binding documents. The adopted rule provides ERCOT, subject to commission approval, with the discretion to determine which reliability requirements this rule will apply to. However, the commission modifies the rule to use only "ERCOT protocols" where, in the proposed rule, "ERCOT protocols, operating guides, and other binding documents" appears because §25.5 already defines ERCOT protocols to include the entire body of procedures developed by ERCOT to maintain the reliability of the regional electric network.

The commission agrees with Avangrid's suggestion to remove "technical infeasibility" from the definition of "technical limitation" and modifies the rule accordingly.

Suggested additional definitions

Several commenters had suggestions for additional definitions to include in subsection (b).

Association Joint Commenters provided suggested definitions for "economic limitation" and "commercially feasible" and explained that some costs may make it impracticable or impossible for market participants to comply with a reliability requirement.

NextEra provided suggested definitions for "commercial availability," "legacy resource," and "significant modification" with no additional comment. NextEra's definition of "legacy resource" denotes a resource that had a signed interconnection agreement prior to commission approval of

the reliability requirement being applied to it.

LCRA provided a suggested definition for “affected entity” and explained that it would add clarification that an entity impacted by an exemption request is entitled to participate in the ERCOT process for exemption and the appeal process at the commission under 16 TAC §22.251. LCRA explained further that this addition would align terminology between 16 TAC §25.517 and §22.251.

Commission Response

For the reasons discussed under the commission’s Questions 1 and 3 above, the commission declines to modify the rule to add the definitions suggested by Association Joint Commenters and NextEra. In addition, the commission disagrees with adding a definition for “legacy resource” because the rule already includes a delineation of existing resources.

The commission disagrees with LCRA and declines to modify the rule to include a definition of “affected entity” because it is unnecessary. The concept of an affected entity is not relevant to this rule, although it is relevant to amended §22.251, where an affected entity may intervene in an appeal of ERCOT conduct. The commission has chosen to limit participants in an exemption request to ERCOT, the resource entity, and the resource entity’s interconnecting transmission service provider (TSP).

Proposed §25.517(b)(4) -- Definition of “technically feasible”

Proposed §25.517(b)(4) defines “technically feasible” as “[describing] a modification or upgrade

that, based on physics and engineering, can be made to a resource.”

Several commenters had concerns that the definition is too broad. For example, NextEra stated that any modification based on physics and engineering possibilities alone could encompass an infinite universe of possibilities, and Joint Commenters stated that anything is technically feasible if one spends unlimited time and resources to replace all existing equipment. These and other commenters who agreed with this position recommended adding language to narrow the definition to those modifications or upgrades that can be made with known, commercially available, economically viable solutions, to the as-built resource, that do not require new hardware.

On the other hand, Vistra argued that “physics and engineering” do not cover the range of options that would make a modification technically infeasible; for example, impractical waitlist times or space constraints may preclude application of a potential compliance solution. OPUC’s opinion differed: it stated that the definition lacked consideration of whether the modification or upgrade required to achieve compliance provides any material benefit to the resource or the grid accepting its output. Also, OPUC had concerns that the cost of compliance would be passed on to consumers via the Transmission Cost of Service (TCOS).

Avangrid, Joint Commenters, Jupiter Power, NextEra, TCPA, OPUC, and Vistra provided redlines consistent with their comments.

Commission Response

The commission declines to modify the definition of “technically feasible” to limit it as

suggested by commenters for the reasons described in the commission's response to comments on Question 2. However, the commission modifies the provision to remove the term "technically" because it unnecessarily limits the term "feasible" and modifies the definition to add the concept of availability.

The commission disagrees with Vistra that other reasons why a modification may be infeasible need to be enumerated in the definition. A resource entity should include the reasons why its resource cannot comply with a reliability requirement in its application, as required by proposed subsection (c)(2). The commission also modifies subsection (d) of the proposed rule to allow ERCOT and the resource entity to work together to find mutually acceptable solutions to avoid both threshold reliability risks and a denial, although ERCOT retains discretion to deny an exemption if there is a failure to identify mutually acceptable solutions. In addition, the adopted rule allows for an extension. Therefore, if there is an issue with availability of a modification, an extension could be appropriate, and if there is a space issue, the resource entity can work with ERCOT according to the new process in subsection (d) of the adopted rule.

The commission disagrees with OPUC that the definition needs consideration of material benefit because material benefit to the grid will be determined to exist through the stakeholder process that produces the reliability requirement. In addition, comments related to TCOS are beyond the scope of this rule, which applies only to resources.

Proposed §25.517(b)(5) -- Definition of “unacceptable reliability risk”

Proposed §25.517(b)(5) defines “unacceptable reliability risk” as “a risk posed to the ERCOT system, including: (A) instability, cascading outages, or uncontrolled separation; (B) loss of generation capacity equal to or greater than 500 MW in aggregate from one or more resources; (C) loss of load equal to or greater than 300 MW; (D) equipment damage; or (E) an unknown or unverified limitation.”

Several commenters believed that this definition is too broad or lenient and requested that the commission narrow the definition to what is, according to the commenters, truly an unacceptable reliability risk. For example, Oncor and Association Joint Commenters both noted that using the term “including” in (b)(5) of the proposed rule enlarges the universe of possible risks beyond the list in (A) through (E). Association Joint Commenters and TPPA commented that “instability” and “equipment damage” are undefined and ambiguous, with Association Joint Commenters adding that “an unknown or unverified limitation” is also ambiguous. Association Joint Commenters stated that under the proposed definition, even a squirrel or snake could be an unacceptable reliability risk.

Other commenters had concerns about the thresholds of 300 MW of load loss and 500 MW of generation capacity: NextEra, TCPA, Vistra, and Association Joint Commenters commented that these thresholds seem arbitrary and low, given that the ERCOT market operates regularly with outages up to 820 MW (Association Joint Commenters referred to the ERCOT Unplanned Resources Outages Report from January 18, 2025 for this figure). NextEra, TCPA, and Vistra argued that ERCOT can manage losses of generation capacity and load in a controlled manner,

and that these losses do not necessarily threaten the reliability or stability of the grid. Southern Power requested the justification for choosing the thresholds, suggesting that they are arbitrary, especially in light of Planning Guide Revision Request 122, which would establish that no more than 1,000 MW of load may be lost for any single contingency. Oncor recommended removing (C), loss of load greater than or equal to 300 MW, because the rule relates to resources, not loads. Oncor additionally argued that one resource's exemption from a reliability requirement may contribute to a loss of load event, but that contribution is more attenuated than subsection (b)(5) seems to suggest and is highly dependent on other system conditions at the time of the event. TCPA and Vistra supported (A) and (D) as appropriate to include in the definition (along with their suggested redlines) because they are the types of reliability risk that cannot be mitigated and thus warrant a denial of an exemption.

As to (b)(5)(B) specifically, if this criterion is retained, NextEra and Joint Commenters recommended that the value be tied to ERCOT's most severe single contingency (MSSC) value of 1,430 MW, not 500 MW. Joint Commenters noted that ERCOT proposed 500 MW as the threshold during the NOGRR 245 development process because it is tied to ERCOT's NERC-reportable event threshold and argued that it is unreasonable to use a NERC reporting threshold as grounds for rejecting reliability standard exemptions for existing resources. Southern Power agreed with using MSSC or ERCOT's interconnection frequency response obligation.

Avangrid, NextEra, and Joint Commenters included "material" in their redlines of this paragraph ("a material risk posed to the ERCOT system . . ."). Association Joint Commenters, Avangrid, TCPA, and Vistra included additional redline suggestions to clarify the definition: "a risk posed to

the ERCOT system that, if realized (or materialized), would result in. . .”

Oncor, Association Joint Commenters, Joint Commenters, Avangrid, NextEra, TCPA, and Vistra provided redlines consistent with their comments.

Commission Response

The commission modifies the proposed rule by replacing the defined term “unacceptable reliability risk” with “threshold reliability risk,” and makes conforming edits throughout the section. Whether a risk is “unacceptable” reflects a policy decision by the commission, rather than an operational decision. Further, ERCOT should not be required to say that there is an unacceptable reliability risk *definitionally*, even if there are mitigating measures from a policy perspective that should be considered by the commission. This modification also clarifies the line between ERCOT’s reliability determinations and the commission policy decisions.

The commission disagrees with commenters who recommended modifying the amount of capacity loss in (b)(5)(B) and the amount of load loss in (C) of the proposed rule. 500 MW of capacity loss and 300 MW of load loss are NERC thresholds for reportable events, and the values reflect a supportable and conservative operating mindset. Loss of generation capacity equal to 500 MW or more in aggregate is related to a NERC Category 1 reportable event (“an outage, contrary to design, of three or more Bulk Electric System Facilities caused by . . . the outage of an entire generation station of three or more generators (aggregate generation of 500 MW to 1,999 MW)”). See NERC, Electric Reliability Organization Event

Analysis Process Version 5.0 at 2, effective January 1, 2024,
https://www.nerc.com/pa/rrm/ea/ERO_EAP_Documents%20DL/ERO_EAP_v5.0.pdf.

Loss of load equal to or greater than 300 MW is related to a NERC Category 2 reportable event (“simultaneous loss of 300 MW or more of firm load due to a Bulk Electric System event, contrary to design, for more than 15 minutes”). In addition, 500 MW of generation capacity loss is enough to cause a frequency disturbance, which could lead to a more serious outage and should be avoided. However, the commission modifies the rule to reflect that the 500 MW of capacity loss must come from resources other than the resource requesting the exemption. The commission also notes that the NERC thresholds are established for reporting actual events where complete fact patterns are known, whereas the requirements of this section are tailored to the forward-looking orientation of ERCOT’s analysis.

MSSC is an inappropriate measure because a reliability requirement is intended to prevent failures that could lead to the MSSC, and using the MSSC as the threshold reliability risk is overly risky.

The commission disagrees with Oncor that load loss is potentially so attenuated from a resource operating with an exemption that the loss cannot be fairly attributed to that resource. In the case of an assessment using models submitted by resource entities, potential load loss could be attributed to those resources; in the case of a real-time system event, an after-event analysis could determine the cause of experienced load loss. Additionally, the commission disagrees with removing (b)(5)(C) of the proposed rule, relating to loss of load, because load loss is an unacceptable scenario that could result from a resource’s

noncompliance with a reliability requirement and should be avoided or mitigated.

The adopted rule retains “equipment damage” because this is an industry-standard term that represents an important system risk; however, the commission modifies the provision to remove “unknown or unverified limitation” because it is too broad and open to interpretation for a commission rule definition. The commission also agrees with redlines modifying (b)(5) to avoid the term “including,” because the list of risks is exclusive, and modifies the rule accordingly to begin with “one or more of the following.”

The commission disagrees with modifications suggested by Association Joint Commenters, Avangrid, NextEra, TCPA, and Vistra and declines to modify the rule.

The commission also notes that the definition of threshold reliability risk sets the standard of reliability that ERCOT will use to evaluate exemption requests and will serve as an avoidance target for resource entities and ERCOT to achieve when collaborating on potential mitigation measures. However, if a resource entity believes that the application of one of these standards in a particular instance would be too strict and would result in too high of a cost of compliance, that entity can appeal to the commission under 16 TAC §22.251.

Proposed §25.517(c) -- Extensions

Proposed §25.517(c) allows a market participant to request an exemption from a reliability requirement. The proposed rule does not mention extensions.

Several commenters recommended in written and oral comments that the commission allow extension requests in this rule alongside exemption requests. For example, Jupiter Power argued that a resource may be able to comply with a reliability requirement if it is permitted reasonable time for compliance. In those situations, Jupiter Power argued, a resource may only need an extension of the applicable requirement and not a permanent exemption. For regulatory expediency, therefore, Jupiter Power recommended that resources should be granted a defined amount of additional time to comply with the reliability requirement without having to seek a formal exemption.

Jupiter Power, Association Joint Commenters, and NextEra provided redlines consistent with their comments.

Commission Response

The commission agrees with commenters that an extension is an acceptable potential outcome of an exemption request and modifies the rule throughout accordingly. However, the process laid out in this rule will remain the same. A resource entity will apply to ERCOT and be assessed in the same way, regardless of whether the application is for an exemption, an extension, or both.

Proposed §25.517(c) -- Timing of rule implementation

Proposed §25.517(c) allows a market participant to request an exemption from a reliability requirement.

TPPA recommended that the rule be modified to require ERCOT to promulgate the application form within 30 days of the rule's adoption to ensure that this rule can take full effect upon commission approval.

LCRA recommended that the rule be modified to add a 90-day limit for resource owners to submit an application for an exemption from a new reliability requirement. LCRA argued that this would allow ERCOT to collect and assess holistically the aggregate impacts of granting an exemption to all resource owners seeking to avoid a new reliability requirement, and that having a well-defined, time-bound exemption framework will also give other affected entities clarity and predictability regarding when, how, and to whom new reliability requirements will be applied. LCRA provided redlines consistent with its comments.

Commission Response

The commission disagrees with TPPA's recommendation to require ERCOT to promulgate an application form within 30 days of the rule's adoption because each reliability requirement may require a different format for data submission by a resource entity. The commission also clarifies that the use of the term "form" in the proposed rule did not necessarily mean an application form. The commission modifies the rule to replace "form" with "manner" to clarify intent. ERCOT may elect not to use a traditional form in favor of a less structured approach. This edit should also alleviate TPPA's concerns regarding the quick promulgation of a submission method, as ERCOT can quickly provide direction on how to submit information consistent with this rule.

The commission agrees with LCRA's recommendation because, with a time limitation by which all applications must be received, ERCOT will then have a complete picture of all resource entities that are requesting an exemption. However, the commission disagrees with requiring a static number of days for each reliability requirement because each requirement may warrant its own applicable deadlines based on the complexity of a requirement's underlying technical aspects. Therefore, the commission modifies (a) and (c) of the proposed rule to require a deadline for applications in each reliability requirement.

Proposed §25.517(c) -- Application requirements

Proposed §25.517(c)(1) through (9) describe the documentation that must be submitted to ERCOT as part of an exemption request.

Proposed §25.517(c)(3) and (4) -- Modifications and costs

Proposed §25.517(c)(3) requires the requester to submit documentation describing all technically feasible modifications, replacements, or upgrades the requester could implement, but has not yet implemented, to improve the resource's performance toward meeting the reliability requirement. Proposed §25.517(c)(4) requires the requester to submit costs for each of the items in paragraph (3) of subsection (c).

Vistra commented overall on subsection (c) of the proposed rule that the documentation should focus more on verifying the infeasibility of a required modification or upgrade and determining what mitigation options are available. Instead, Vistra asserted, the documentation required in

proposed subsection (c) appears to assume that there is a technically feasible modification available, but the market participant is choosing not to implement it.

Several commenters focused on the breadth of the required documentation, stating their opinion that the proposed required documentation is overly burdensome. These commenters argued that the technically feasible modifications should be limited to known, available, non-hardware, commercially reasonable modifications. Southern Power explained that original equipment manufacturers (OEMs) and generation owners shouldn't have to study all possible solutions, only known, commercially available, and cost-effective solutions. Association Joint Commenters asserted not only that proposed requirements are too onerous, but also that they track NOGRR 245 too closely and do not apply to potential future reliability-related standards.

Vistra, Joint Commenters, Southern Power, Avangrid, and Association Joint Commenters provided redlines consistent with their comments.

Commission Response

The commission disagrees that the application requirements are burdensome and declines to modify the rule on this basis. An exemption from a reliability requirement is not something that should be evaluated or granted lightly, and ERCOT should have all the information available to make an informed decision whether to grant an exemption. In addition, for reasons stated above, the commission modifies the rule to add “available” to the definition of “technically feasible” but declines to modify the rule further to limit potential modifications, as suggested by Southern Power.

The commission agrees with Vistra that ERCOT should verify the inability of a resource to comply with a reliability requirement and work with the resource entity to determine mitigation options. The rule already allows for this, but the commission modifies subsection (d) of the proposed rule to explicitly require a process to determine mutually acceptable mitigation solutions.

The commission agrees that this rule is not specific to NOGRR 245 and modifies the rule throughout to broaden its scope to potential future reliability requirements, although the rule is applicable to approved NOGRR 245 as described under “General Comments” above.

Suggested additional application requirements

OPUC recommended that the commission modify the rule to require applicants to submit a detailed description of the anticipated benefits and savings to the market derived from the exemption, arguing that this may help ERCOT in its review.

Commission Response

The commission disagrees with requiring a resource entity to submit anticipated benefits and savings and declines to modify the rule. Benefits and savings of an exemption cannot be developed by the entity seeking the exemption because those must be determined through ERCOT’s assessment of the system as a whole. A uniform process must be applied to all resources requesting an exemption, especially in measuring the benefit of compliance with a reliability requirement. Further, the commission intends ERCOT’s evaluation to focus on

whether an exemption would result in threshold reliability risks.

Other suggested edits

Proposed §25.517(c)(1) requires a description of the applicable reliability requirement that the market participant's resource cannot meet. Proposed §25.517(c)(2) requires a succinct description, with supporting technical documentation, of the market participant's efforts to comply with the applicable reliability requirement.

Avangrid recommended modifying the proposed rule to remove the term "technical" to describe "documentation," asking how technical documentation is different from any other type of documentation. Avangrid also provided the following redline without commentary to subsection (c)(1) of the proposed rule: "a description of the applicable reliability requirement from which the resource entity seeks an exemption."

Commission Response

The commission agrees with the suggested edits and modifies the rule accordingly.

Proposed §25.517(c)(5) and (9) -- Required submissions

Proposed §25.517(c)(5) requires an applicant to submit models of its resource to ERCOT, and proposed §25.517(c)(9) requires an applicant to submit the resource's interconnection date, including a copy of the resource's interconnection agreement and any amendments.

Southern Power commented that these requirements should already be on file with ERCOT or the

commission and that an applicant should not be required to submit such information again. Southern Power specifically suggested that (c)(5) of the proposed rule either be deleted or modified to specify that models may be provided to ERCOT via the relevant model rules and submission processes and explained that this modification would avoid ambiguity if a market participant must submit a model package to ERCOT multiple times. Avangrid and NextEra provided redlines without commentary on these two paragraphs.

Commission Response

The commission agrees with Southern Power that if models and a signed interconnection agreement are already on file with ERCOT, the resource entity should not be required to submit the same information again. The commission modifies the provisions to require submission of models and the interconnection agreement only if not already provided to ERCOT.

Proposed §25.517(c)(7) and (c)(8) -- Submission of other exemption requests and enforcement actions

Proposed §25.517(c)(7) requires an applicant to submit information on whether any other exemption request has been submitted for the same resources, including the outcome of each request. Proposed §25.517(c)(8) requires an applicant to submit a list of the resource's history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement for which an exemption is being requested.

Several commenters recommended that these two paragraphs be deleted. Specifically, TPPA

stated that the commission's enforcement actions are public, ERCOT already has information about the exemption requests it has received, and it is unclear what these proposed requirements contribute to the process. For (c)(8) of the proposed rule, commenters suggested either that the commission delete it or modify it to only include violations that have been adjudicated through ERCOT or the commission. For example, ERCOT explained that it does not anticipate relying on a resource's violation history when evaluating the reliability impact of an exemption request, and that the commission could request this information as part of an appeal process under 16 TAC §22.251.

Joint Commenters, TPPA, Avangrid, NextEra, Southern Power, Vistra, and ERCOT provided redlines consistent with their comments.

Commission Response

The commission disagrees with deleting (c)(7) of the proposed rule. Because the proposed rule creates a new process, there may not be a centralized history of existing exemptions for each resource, and submission of this information would be helpful to ERCOT in determining whether a resource should be granted an exemption.

However, the commission agrees with deleting (c)(8) of the proposed rule. A resource's violation history would be relevant to the commission in a proceeding under §22.251, but not to ERCOT in an evaluation of an exemption request for threshold reliability risks.

Proposed §25.517(c), (d)(1), and (d)(2) -- Transparency and confidentiality

See above for the rule summary of proposed §25.517(c). Proposed §25.517(d)(1) describes the assessment process ERCOT will use to evaluate exemption requests, and proposed §25.517(d)(2) describes the potential outcomes of ERCOT's assessment.

There were several comments related to the transparency of these provisions of the proposed rule. First, TPPA recommended that ERCOT be required to issue a market notice describing all exemption applications and which requirement the requests are for, with confidential information remaining protected. TPPA similarly recommended that ERCOT's determination on an exemption request (related to subsection (d) of the proposed rule) be filed publicly, with redactions for confidential information, including a full set of findings of fact and conclusions of law. TPPA's recommendation would also include a market notice for this provision. TPPA explained that, for subsection (c) of the proposed rule, the market notice would provide critical information to the commission and the public as to which reliability requirements may be onerous and provide an opportunity for similarly situated market participants to coordinate exemption requests. For subsection (d) of the proposed rule, TPPA explained that its recommendations would assist in developing the record for a potential appeal to the commission and inform the public, given that ERCOT is an arm of the state that makes decisions as to the rights and obligations of the entities that must comply with its reliability requirements.

Other comments, specifically related to (d)(1) of the proposed rule, focused on the transparency from ERCOT's perspective as the assessor of an exemption request. Southern Power stated that, for (A) through (H) of subsection (d)(1), there needs to be a transparency and information sharing requirement for all assumptions, data, and models used for each step of the assessment process. Vistra stated in oral comments that there seems to be a lot of concern about the rule not containing any meaningful guidance on when ERCOT will grant an exemption. Similarly, NextEra stated that resource owners should know in advance what standards ERCOT will rely on to assess system reliability risk. NextEra suggested that the ERCOT Regional Transmission Plan is a good example because the assumptions and models used for that plan are known and would provide a level of regulatory certainty to the process. NextEra provided redlines consistent with its comments.

On the other hand, some commenters focused specifically on protection of confidential information. Vistra stated that information submitted as part of an exemption application should be treated as confidential by ERCOT because commercially sensitive information, as critical grid reliability information, should be protected. TCPA recommended adding language directing ERCOT to update its protocols to provide a process for determining what information should be protected, confidential information, and what information should be made available to all stakeholders. Vistra provided redlines consistent with its comments.

Commission Response

The commission disagrees with TPPA's suggested modifications to the proposed rule. ERCOT's primary function as the grid operator is not adjudicatory, and the commission

declines to assign that function to ERCOT in this rule. The commission also declines to modify the rule to require a market notice of exemption requests and a market notice of outcomes because ERCOT and stakeholders can determine the appropriate level of transparency and how to best achieve that transparency during development and execution of a reliability requirement. Additionally, in terms of developing the record for potential appeals, the provisions of §22.251 already require the commission to be provided with an adequate record.

The commission agrees that a resource entity should understand the inputs into ERCOT's evaluation and modifies subsection (d) of the proposed rule to require ERCOT to provide a written explanation of its decision to a resource entity that includes details of the assessment, with appropriate confidentiality for protected information. However, the commission declines to specify exact standards, as recommended by NextEra, because ERCOT should have the flexibility to assess system reliability in a way that is appropriate to each reliability requirement, which is best defined during that requirement's development.

The commission agrees with Vistra that information submitted as part of an exemption request should be treated as protected information by ERCOT and modifies the rule accordingly.

Proposed §25.517(d) and (d)(1) -- Authority to grant an exemption

Proposed §25.517(d)(1) states that ERCOT must assess the ERCOT system to determine whether an exemption would adversely affect ERCOT system reliability. Subsection (d) of the proposed

rule in its entirety describes the assessment process and possible outcomes of the process.

TCPA suggested that ERCOT's decision on an exemption should be advisory only and that the commission should make the final decision on whether to grant an exemption. TCPA offered this suggestion as an alternative to having the commission consider implementation costs on appeal. TCPA explained that ERCOT may not be in a position to evaluate costs itself or may not feel that evaluating costs is the appropriate role for ERCOT, so it could make sense for the rule to provide for the commission making the final decision on all exemption requests.

TPPA requested clarification on who, precisely, at ERCOT will be conducting the risk assessment and who will make the final decision--is it the ERCOT Board of Directors, or only ERCOT staff?

Commission Response

The commission disagrees with TCPA's suggestion for ERCOT's decision on an exemption request to be advisory only because this would unnecessarily delay implementation of reliability requirements. The commission clarifies for TPPA that ERCOT staff will evaluate exemption requests and make a final decision, just as ERCOT staff implements all other nodal protocols.

Proposed §25.517(d)(2), (d)(2)(A), and (d)(2)(C) -- ERCOT's discretion to grant an exemption

Proposed §25.517(d)(2) allows ERCOT to grant an exemption, grant an exemption with conditions, or deny an exemption. Proposed §25.517(d)(2)(A) states that ERCOT may grant an

exemption if its assessment identifies no unacceptable reliability risks. Proposed §25.517(d)(2)(C) states that ERCOT must deny the exemption request if its assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions.

Several commenters stated that (d)(2)(A) of the proposed rule inappropriately gives ERCOT too much authority. These commenters stated that ERCOT should be required to grant an exemption if certain conditions are met; however, the stated conditions varied among commenters. For example, Vistra argued that subsection (d)(2) should require ERCOT to grant an exemption if its assessment identifies no unacceptable reliability risk. Association Joint Commenters argued that ERCOT should be required to grant an exemption if a *market participant* can establish that granting the exemption would result in no unacceptable reliability risk. NextEra commented that ERCOT should be required to grant an exemption to market participants that meet the reliability requirements in place on the date that resource signed its interconnection agreement and that show no degradation in performance for the applicable reliability requirement. NextEra argued that ERCOT should not be in the position of adopting standards that effectively order an existing resource that may have been serving the grid for decades to deenergize. NextEra argued further that ERCOT should continue with its current authority to establish operational restrictions as conditions warrant for existing resources that have demonstrated performance issues that pose operational stability risk to the grid. APA and ACP stated in oral comments that the exemption process should include a presumption in favor of an exemption for IBR owners rather than placing the burden on generators to prove infeasibility because this aligns with NERC's approach.

NextEra also commented that ERCOT should be required to deny an exemption request only if the resource fails to provide the information required to support the exemption and fails to make technically feasible and commercially available modifications to improve performance under the new reliability standard.

Vistra, NextEra, TCPA, Association Joint Commenters, and Joint Commenters provided redlines consistent with their comments.

Commission Response

The commission modifies (d)(2)(A) of the proposed rule to require ERCOT to grant an exemption if an assessment shows that the exemption would pose no threshold reliability risks. The commission agrees that because one purpose of the rule is to avoid threshold reliability risks, if an exemption would not pose any such risk, there is no other consideration remaining as to whether an exemption should be granted in that case. However, the commission disagrees with Association Joint Commenters that an exemption should be granted if the resource entity can demonstrate that granting an exemption will not cause a threshold reliability risk; it is ERCOT, not individual resource entities, that is capable of evaluating system reliability and determining if threshold reliability risks exist. In addition, the commission disagrees with NextEra's suggested language because some future reliability requirements will apply to existing resources, and the criterion chosen by the commission to determine whether a resource will receive an exemption is whether that resource creates a threshold reliability risk, not how the resource has performed in the past. The comments by APA and ACP are beyond the scope of this rulemaking because they refer to IBRs, and this

rule is technology agnostic.

The commission agrees with NextEra that ERCOT should deny an exemption request if a resource entity fails to make required modifications and to supply the information required but disagrees that these are the only conditions under which ERCOT should be able to deny an exemption request. Therefore, the commission declines to modify the rule.

Proposed §25.517(d), (d)(1), (d)(2), (f), and (g) -- Participation of other interested parties

Proposed §25.517(d), (f), and (g) identify communication that will occur between the requester and ERCOT and does not include communication with any other party related to a particular exemption request. Proposed subsection (f) states that if a market participant is not satisfied with ERCOT's determination of that market participant's request under subsection (d), the market participant may file a complaint to the commission. Proposed subsection (g) describes how ERCOT may revoke an exemption.

AEP Companies and LCRA suggested redlines to the rule to require communication between ERCOT and other market participants that could be affected by an exemption request and specifically identified the requesting resource entity's TSP as an affected entity. AEP Companies specifically recommended that ERCOT's assessment (all of subsection (d) of the proposed rule) consider input from the resource's interconnecting TSP and that any affected entity may file a complaint with the commission under subsection (f) of the proposed rule. AEP Companies explained that allowing input from other affected market participants would allow ERCOT to assess a fuller picture of the impact of a potential exemption.

LCRA suggested redlines to (d)(1), (d)(2), (g)(1), and (g)(2) requiring ERCOT to include the resource's interconnecting TSP and all affected entities in any communications related to an exemption request by a resource. LCRA explained that an exemption request granted to one market participant will pass on some level of risk to another market participant, so any entities affected by an exemption request should have standing and means to weigh in to the decision-making process.

Commission Response

The commission agrees with LCRA and AEP Companies that a TSP should be aware of an exemption request by a resource that interconnects with its transmission facilities and modifies the rule accordingly. The commission also modifies the rule to allow ERCOT to consider input from the resource's interconnecting TSP, as appropriate. However, the commission declines to modify the rule to allow an affected entity to file a complaint with the commission under subsection (f) of the adopted rule because §22.251 already allows an affected entity to file a complaint with the commission regarding any ERCOT conduct.

Proposed §25.517(d), (d)(1)(H), (d)(2), and (g)(1) -- Time limitation on exemptions

Proposed §25.517(d) describes the process and criteria by which ERCOT will evaluate and decide on an exemption request. Proposed §25.517(d)(1)(H) states that ERCOT will consider any other information it deems necessary to assess the reliability impact of an exemption. Proposed §25.517(g)(1) states that any exemption is limited to the period identified by ERCOT in granting the exemption or the period in the commission's order ruling on an exemption under §22.251.

Proposed subsection (g)(1) also states that an exemption is no longer valid if the resource owner or operator makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations.

Several commenters opined on whether a time limit should be included with the grant of an exemption. OPUC and TCPA recommended modifying the proposed rule to impose a specific time limit. OPUC specifically suggested a two-to-five-year exemption period, with the option for a renewal application to be filed at least six months before expiration. OPUC explained that as technology evolves, a technical limitation that was once not commercially viable or cost effective might become viable and thus render the exemption unnecessary. TCPA explained that a not-to-exceed timeframe for an exemption would provide clarity and transparency, and two years would be a reasonable timeframe to allow for supply chain or labor delays related to the required modification. TCPA also included a good cause exception in its redlines to provide flexibility for the commission to evaluate any additional issues that occur on a case-by-case basis. TCPA stated that its suggested modifications would strike a balance between requiring all resources to meet the same requirements with the very real cost considerations of required modifications.

OPUC provided redlines to (d)(1)(H) of the proposed rule, and TCPA provided redlines to (g)(1) of the proposed rule, consistent with their comments.

On the other hand, TPPA, Vistra, and Association Joint Commenters recommended modifying the rule to emphasize that ERCOT should identify the date at which an exemption will automatically expire. TPPA also recommended allowing ERCOT to grant an exemption that does not expire.

TPPA explained that there may be circumstances where there is an exemption that is only needed for a limited period, such as to allow installation of new equipment or upgrades, and in this kind of circumstance, ERCOT should be empowered to grant an exemption for the specific duration requested. Vistra explained that an exemption should expire at the end of the defined term, but that a market participant should be allowed to request an additional exemption for the resource if needed. Vistra provided redlines consistent with its comments. Association Joint Commenters provided redlines with no explanation to subsection (g)(1) showing its opinion that an exemption should be valid for the time specified in the granting of the exemption.

Commission Response

The proposed rule already states in subsection (g)(1) that ERCOT has discretion to grant an exemption for the time that it deems appropriate, so there is no need to modify the rule per TPPA, Vistra, and Association Joint Commenters' suggestions. However, for clarity, the commission modifies the rule to add this concept to subsection (d) of the proposed rule. In addition, the commission disagrees with OPUC and TCPA that each reliability requirement that allows an exemption should limit those exemptions to a certain duration by default. Longer exemption periods provide more regulatory certainty for resource entities. The adopted rule provides ERCOT with the flexibility to determine an appropriate duration for each requirement and each exemption based on the reliability risks an exemption poses.

Proposed §25.517(d)(1) -- Elements of ERCOT's evaluation of an exemption request

Proposed §25.517(d)(1) describes the process and criteria by which ERCOT will assess an exemption request. Specifically, proposed §25.517(d)(1) requires ERCOT to assess the ERCOT

system to determine whether an exemption granted to one resource *or several resources* would adversely affect ERCOT system reliability.

Association Joint Commenters insisted that ERCOT should be required to demonstrate a particular reliability concern arising from a specific exemption request. A particularized assessment would include an assessment of the ERCOT system considering the size, location, and availability of the resources, the cost of compliance, the commercial availability of any technical solutions, and other alternatives that could mitigate or eliminate any potential reliability risk, such as the use of grid forming inverters, synchronous condensers, or transmission solutions.

Association Joint Commenters also stated that ERCOT should not base its decision on the potential impact of dozens or hundreds of exemptions to other potential applicants that may never seek an exemption. TPPA similarly recommended that the rule provision be modified so that ERCOT will not be basing its decision to grant or deny an exemption on theoretical, unfilled exemption requests. TPPA explained that this flexibility could allow ERCOT to deny actual requests based on the idea that numerous additional requests could theoretically be filed. TPPA further stated that the rule should require ERCOT to evaluate reliability risks based solely on real requests that have actually been filed and that ERCOT evaluations should be conducted on a first come, first served basis.

TCPA commented that resources that are considered together in an assessment by ERCOT should be similarly situated. TCPA stated that its recommended changes would provide clarity to policymakers, regulators, and market participants and provide an apples-to-apples comparison during the assessment process. TCPA stated further that, by considering similarly situated

resources when determining impacts to reliability, ERCOT would ensure that all such resources would either receive or not receive the exemption based on the aggregate impact of their requests. In other words, TCPA commented, if the aggregate impact of the exemption requests would present an unacceptable reliability risk, and that risk cannot be managed satisfactorily through curtailment or other mitigation schemes, then none of the similarly situated resources requesting that exemption should get the exemption. If, on the other hand, the risk would not be unacceptable, then, TCPA stated, the resources should all receive the exemption. Vistra supported TCPA's comments on this issue.

Association Joint Commenters, TCPA, and Vistra provided redlines consistent with their comments.

Commission Response

The commission agrees with Association Joint Commenters that each resource should be evaluated separately based on the information in its individual application. However, ERCOT must also evaluate resources in the aggregate to determine system risk. Both of these evaluations are necessary for ERCOT to determine whether an exemption will result in a threshold reliability risk. Therefore, the commission declines to modify the rule per Association Joint Commenter's suggestions.

The commission also agrees that ERCOT's analysis should be based on resources whose owners have requested an exemption from a particular reliability requirement. To achieve this result, the commission modifies (c) of the proposed rule, so that each reliability

requirement will include a time by which requests for exemptions from that requirement must be submitted. The commission disagrees with TCPA's comment that the resources to be considered together by ERCOT should be similarly situated. ERCOT's analysis will be based on the resources that will have filed an exemption request, not on the similarities among resources. ERCOT must perform an individual and aggregate assessment of the resources whose resource entities have requested an exemption and determine if there is a threshold reliability risk, which is an objective standard, regardless of the "similarity" of resources requesting an exemption. Moreover, subsection (d) of the adopted rule also requires ERCOT to make a reasonable effort to work with each resource entity that requested an exemption to identify mitigation options that are mutually acceptable to ERCOT and the resource entity. Accordingly, the outcome for each resource will depend upon its ability to identify, with ERCOT, a mitigation option that avoids threshold reliability risks.

Resource adequacy

Association Joint Commenters, TPPA, and NextEra recommended modifying the proposed rule to require ERCOT to assess the system if a resource would choose to retire due to not receiving an exemption. Association Joint Commenters and NextEra provided redlines consistent with their comments.

Commission Response

The commission agrees that if denial of an exemption request would result in a measurable and significant impact to resource adequacy, ERCOT should consider that impact to the

system when determining mitigation options for the resource in question. However, the commission declines to make the changes suggested because proposed §25.517(d)(1)(F) already includes ERCOT consideration of the most relevant outlook for resource adequacy, which could include the monthly outlook for resource adequacy, the capacity, demand, and reserves report, or another resource adequacy assessment. In addition, proposed §22.251(r)(6) requires commission staff to consider the most relevant outlook for resource adequacy in a proceeding to appeal ERCOT conduct under proposed new §25.517. This language provides ERCOT and the commission discretion to evaluate as a data point the short-term and long-term impacts of the units exiting the market as a result of not being able to comply.

Proposed §25.517(d)(1) -- ERCOT's cost evaluation

TPPA stated that ERCOT should be required to consider costs, not that ERCOT “may” consider costs as part of its assessment. LCRA stated in oral comments that a cost component makes sense to include and that the methodology should be transparent to all parties that are affected by the exemption request. Vistra stated in oral comments that “it’s a bit odd that ERCOT is not empowered to grant a cost-based exemption, but the requester still has to apply to ERCOT and then complain about the conduct of ERCOT when the request is not granted.”

Southern Power, on the other hand, commented the opposite: that ERCOT should not have the authority to consider costs. Southern Power explained that financial analysis of potential capital investments for generation and load resources is outside of ERCOT’s purview and expertise and squarely within the commission’s, on appeal from a denied exemption request.

Commission Response

As discussed above, the commission modifies the rule to remove consideration of cost from the exemption request process at ERCOT. For the same reasons, the commission modifies this provision to remove consideration of cost.

System assessment responsibility

Avangrid provided redlines stating its opinion that the rule should require a third party to conduct the system assessment, and that the assessment should be conducted before any evaluation of individual requests. Avangrid explained that a prior system assessment is crucial for identifying critical grid vulnerabilities, determining acceptable risk thresholds, and understanding how a resource's technical limitations may impact overall system reliability. Avangrid also argued that a system-level analysis would help prioritize mitigation efforts based on a resource's contributions to the system, redundancy within the system, and the potential for cascading effects. Avangrid emphasized its preference that any such study be conducted by a third party to assure that it is evidence based, objective, and non-discriminatory.

Commission Response

The commission disagrees that the proposed rule should be modified to require a system-level analysis before ERCOT accepts exemption requests from a particular reliability requirement. The need for an individual reliability requirement will be established before and during its development, and the development process should include any necessary system-level analyses. The adopted rule neither requires ERCOT to conduct, nor prohibits

ERCOT from conducting, additional assessments or considering assessments conducted by third parties when appropriate.

“Adversely affect ERCOT system reliability”

Proposed §25.517(d)(1) states that ERCOT must assess the ERCOT system to determine whether an exemption granted to one resource or several resources would adversely affect ERCOT system reliability, including whether an unacceptable reliability risk is present in ERCOT’s assessment.

Several commenters argued that the phrase “adversely affect ERCOT system reliability” is vague and undefined. For example, Association Joint Commenters noted that it appears that there are two standards present in the first sentence of subsection (d)(1) of the proposed rule: first, whether an exemption would adversely affect ERCOT system reliability, and second, whether an exemption would create an unacceptable reliability risk. Association Joint Commenters recommended choosing one defined standard to eliminate ambiguity and avoid confusion and specifically recommended using “unacceptable reliability risk.” NextEra argued that the layering of subjective determinations results in a rule that would, by nature, be arbitrary and capricious, and commission (or judicial) review of the assessment of these exemptions would be rendered meaningless.

Association Joint Commenters, Avangrid, NextEra, TCPA, and Vistra provided redlines consistent with their comments.

Commission Response

The commission agrees with commenters and modifies the rule to remove “adversely affect ERCOT system reliability” and replace it with a phrase using the defined term “threshold reliability risk.”

Proposed §25.517(d)(1)(D) and (E) -- Engineering judgment

Proposed §25.517(d)(1)(D) and (E) rely on “[ERCOT’s] engineering judgment” to determine contingencies and expected impact of technical limitations that are missing from models submitted by a requester.

Avangrid and NextEra provided redlines to replace “[ERCOT’s] engineering judgment” with “good utility practice,” and NextEra went further to suggest “good utility practice consistent with 16 TAC §25.5(57).” NextEra explained that the proposed rule language gives ERCOT too much subjective discretion and could lead to opaque outcomes.

Commission Response

The commission disagrees with comments that would replace “ERCOT’s engineering judgment” with “good utility practice consistent with 16 TAC §25.5(57).” Subsection (d) of the proposed rule outlines the process that ERCOT will use to assess an exemption request, including the types of assumptions that will go into the assessment. In (d)(1)(D) of the proposed rule, “ERCOT’s engineering judgment” describes contingencies ERCOT may choose to evaluate, and in (d)(1)(E) of the proposed rule, “ERCOT’s engineering judgment” describes how ERCOT will analyze the expected impact of any technical limitations

described in the request that are not included in the models provided by the resource entity. Because ERCOT's role is to evaluate the *system* impact of one or more exemptions, ERCOT's focus must remain on the system despite reviewing individual requests. For this reason, ERCOT must use its engineering judgment to choose contingencies and expected impacts of certain aspects of models provided by a resource entity, not evaluate an exemption request based on how the resource entity would choose to operate its own resource.

However, the commission also agrees that the assumptions used in an assessment of an exemption request should be clear to a resource entity requesting an exemption. For this reason, the commission modifies subsection (d) of the proposed rule to require ERCOT to provide each resource entity requesting an exemption with a written explanation of the outcome of its assessment, including which models ERCOT used in the assessment, a list of assumptions that were used in the assessment, and which factors were varied to run any sensitivities.

Proposed §25.517(d)(1)(G) -- Impact of new resources

Proposed §25.517(d)(1)(G) requires ERCOT to evaluate the potential impact of new resources in the interconnection queue on system reliability.

Joint Commenters and Avangrid recommended that the resources that are evaluated under this subparagraph should be ones that have been approved for energization by ERCOT. Joint Commenters argued that no speculative generation should be considered as part of the reliability assessment, and Avangrid argued that ERCOT's assessment should be evidence based, not based

on speculative generation or load.

Commission Response

The commission agrees that ERCOT should evaluate new resources that are reasonably certain to come online. For this reason, the commission modifies this provision to state “the potential impact on system reliability of new resources that have been approved for energization by ERCOT.” The commission also notes, however, that limiting the number of potential future resources that are considered as part of ERCOT’s analysis supports the inclusion of exemption expiration and revocation provisions elsewhere in the rule. If speculative interconnections do materialize, ERCOT must be permitted to take the reliability impacts of these resources into account when they do.

Proposed §25.517(d)(1)(H) -- Catchall subparagraph

Proposed §25.517(d)(1)(H) allows ERCOT to use any other information it deems necessary to assess the reliability impact of an exemption based on ERCOT’s engineering judgment.

Southern Power, Avangrid, and NextEra provided redlines striking this provision from the proposed rule. Southern Power argued that “any other information” is very vague and open ended, and it had concerns that this clause could be misinterpreted or misused.

Commission Response

The commission disagrees that the provision should be struck because it gives ERCOT the flexibility to customize its evaluation criteria based on the needs of each individual reliability

requirement. It is unclear what incentive ERCOT would have to use this discretion for any purpose other than enhancing the accuracy of its reliability analysis, but the risk of this scenario is outweighed by the potential benefits of more fine-tuned analysis. If a resource entity is dissatisfied with ERCOT's conduct in this – or any – aspect of the exemption process, it may file a complaint with the commission about ERCOT conduct under amended §22.251. Therefore, the commission declines to modify the rule.

Proposed §25.517(d)(1) and (d)(2)(C) -- Other solutions to mitigate risk

Proposed §25.517(d)(1) describes the process and criteria by which ERCOT will assess an exemption request by an individual market participant. Proposed §25.517(d)(2)(C) states that ERCOT must deny an exemption request if ERCOT's assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions on the resource that is the subject of the request.

Several commenters recommended modifying the rule to consider solutions to mitigate a resource's inability to comply with a reliability requirement that are outside the control of the requester. Specifically, Joint Commenters, Avangrid, and OPUC suggested that the assessment process in (d)(1) of the proposed rule should consider and review the costs and benefits of these potential alternative solutions. Joint Commenters suggested static var compensators (SVCs) and transmission solutions. OPUC argued that it could be appropriate to consider alternative solutions if they achieve compliance across multiple generation resource sites, especially if such solutions prove to be more cost effective than a by-resource-site approach. Avangrid provided redlines consistent with its comments.

Association Joint Commenters offered redlines to (d)(2)(C) of the proposed rule that would allow the use of alternative solutions (such as the use of grid forming inverters, synchronous condensers, or transmission solutions) to mitigate an unacceptable reliability risk, which would in turn mean that ERCOT would not deny an exemption request.

Commission Response

The commission disagrees that this rule should explicitly address alternative solutions to mitigate a threshold reliability risk that involve entities other than the requesting resource entity, such as regional solutions or requiring action by the TSP. The appropriate context for determining which entity should be responsible for addressing a reliability issue is the development of new reliability requirements. The commission disagrees with OPUC that ERCOT should be required to evaluate regional solutions in the context of an exemption request. The process established in this rule relates to the compliance obligations of individual entities with respect to reliability requirements, and it would be inappropriate to require consideration of solutions that would shift costs from competitive entities to ratepayers in such a process. Moreover, this is consistent with the division of responsibilities that resource entities agree to when interconnecting (*see* Sec. 1.6 of the SGIA, which states that with regards to ERCOT requirements, any “requirement...imposed upon generation entities or generation facilities becomes the responsibility of the Generator, and any requirements imposed on transmission providers or transmission facilities become the responsibility of the TSP”). While not every interconnecting resource is subject to the SGIA, it reflects the appropriate regulatory principle in this case. If a reliability requirement

imposes an obligation on a resource entity, the obligation to comply with that requirement or mitigate the reliability risks associated with noncompliance rests with the resource entity.

Proposed §25.517(d)(2) -- Assessment outcomes

Proposed §25.517(d)(2) describes the potential outcomes of an assessment by ERCOT: ERCOT may grant an exemption, grant an exemption with conditions, or deny an exemption.

TPPA and Vistra commented that the rule does not address how a market participant will be treated while ERCOT is reviewing that market participant's exemption request: is it required to comply with the reliability requirement from which it is requesting an exemption, or not? TPPA recommended that the rule explicitly provide that, while the exemption request is being processed, no enforcement actions will be taken against that market participant for failure to comply with the reliability requirement in question. TPPA also recommended that the rule allow for a cure period for the complainant to become compliant if its exemption request is denied. Vistra recommended that the rule be modified to provide a specific temporary exemption for a resource with a pending request. Vistra provided redlines consistent with its comments.

TPPA also recommended that the rule be modified to include a date certain by which ERCOT will complete its exemption request assessments to ensure that exemption requests are processed timely.

Commission Response

The commission declines to modify the rule to address whether a resource entity is required

to comply with a reliability requirement while ERCOT is processing an exemption request because it is unnecessary. All market participants are required to comply with all applicable requirements that are in effect unless otherwise stated. In this instance, codifying a universal exemption in this rule may interfere with ERCOT's ability to ensure the reliability of the grid and create an incentive for market entities to request exemptions merely to delay compliance obligations. The commission is not in a position to judge the consequences of delayed compliance with future reliability requirements or whether other interim measures may be appropriate. These details can, when appropriate, be addressed in the provisions of individual reliability requirements. Additionally, ERCOT already has tools to grant temporary exemptions, as appropriate, during the pendency of an exemption request. For example, ERCOT may consider a pending exemption request good cause for excusing compliance with a requirement under §25.503(f)(2).

For the same reasons, the commission declines to explicitly provide that a resource entity will not be the subject of enforcement actions during the pendency of an exemption request. In some scenarios, for example, the resource entity may be subject to temporary mitigation measures during the pendency of an exemption request, and enforcement actions may be appropriate if the entity does not abide by the restrictions. However, the commission agrees that, in most instances, enforcement actions during the pendency of an exemption request are inappropriate and, accordingly, will use its enforcement discretion accordingly. Additionally, the commission may consider an exemption request under the penalty factors under PURA §15.023, which include "efforts to correct the violation" and "any other matter that justice may require."

The commission also adds (d)(5) to the proposed rule to allow ERCOT to give a resource that is denied an exemption a reasonable amount of time to come into compliance with the reliability requirement in question.

The commission disagrees with TPPA that the rule should require a date certain by which ERCOT will complete its assessments of exemption requests and declines to modify the rule. ERCOT must have flexibility to thoroughly evaluate exemptions to individual reliability requirements.

Detailed written explanation

TCPA and Vistra recommended that (d)(2) of the proposed rule be modified to require ERCOT to provide a detailed written explanation for the denial of an exemption request. TCPA argued that this change would provide transparency and important information for the market participant and the commission, especially if the market participant chooses to appeal to the commission.

Vistra's explanation centered on ERCOT's ability to deny an exemption based solely on economic considerations. Vistra argued that if no economic viability consideration is included in the rule, then even when no unacceptable reliability risk is identified, every exemption request to ERCOT based on economic viability would be rejected and then appealed to the commission. If, however, the rule provides for a mandatory grant of an exemption when ERCOT is able to verify the factual bases for the request and confirm that there is no unacceptable reliability risk, the commission's review of economically based requests would be appropriately limited to requests where there are costs and risks that need to be balanced. Vistra argued that if the rule is not modified to require

ERCOT to grant an exemption if there are no unacceptable reliability risks, an alternative process should be included in the rule for an exemption request based on economic viability, so that the initial review of the request will include meaningful consideration of the cost component.

TCPA and Vistra provided redlines consistent with their comments.

Commission Response

The commission agrees that ERCOT should provide a written explanation of its decision to a resource entity—because a resource entity should understand how its request is evaluated—and modifies the rule accordingly.

The commission modifies the rule to require ERCOT to work with each resource entity to identify mitigation options in a case where an assessment shows a threshold reliability risk, and ERCOT may request and consider costs of such mitigation options. Finally, the commission modifies the rule to require ERCOT to grant an exemption if its assessment identifies no threshold reliability risks.

Proposed §25.517(d)(2)(B) and (C) -- Exemption with conditions and denial of an exemption

Proposed §25.517(d)(2)(B) allows ERCOT to grant an exemption with conditions, one of which is curtailment of the resource's output under certain circumstances, if implementation of those conditions would eliminate all unacceptable reliability risks. Proposed §25.517(d)(2)(C) requires ERCOT to deny an exemption if its assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions, such as those listed in (d)(2)(B).

Association Joint Commenters commented that (d)(2)(B) of the proposed rule, especially related to curtailment, is too vague, in that the circumstances under which ERCOT will impose conditions are not identified in the rule. Association Joint Commenters argued that curtailment should not be viewed as a “condition” that ERCOT can impose any time it wishes, but more as an extreme action of a regulatory authority that should be very limited and under the most serious circumstances. Association Joint Commenters also argued that this provision violates PURA §39.001, which prevents the open-ended use of curtailment on competitive generation, and that PURA requires regulatory authorities to use competitive rather than regulatory methods to the greatest extent possible to cause the least impact to competition. Association Joint Commenters provided redlines consistent with its comments.

NextEra and TCPA had minor recommendations for wording in these two subparagraphs. NextEra provided a redline to proposed (d)(2)(B) showing the following change: “. . . if implementation of those conditions ~~would eliminate all~~ is necessary to avoid unacceptable reliability risks.” TCPA suggested a redline to proposed (d)(2)(C) adding the following: “. . . an unacceptable reliability risk that cannot be eliminated or satisfactorily managed by imposing conditions. . . .” TCPA explained its redline by stating that if a risk can be managed, e.g., through curtailment, then it should not be deemed unacceptable and should not require denial of the exemption request.

LCRA provided a redline to proposed (d)(2)(C) that would remove the reference to subparagraph (B) because subparagraph (B) includes a very few examples of conditions that should not be considered a list.

Commission Response

The commission disagrees with Association Joint Commenters regarding curtailment and declines to modify the rule. The conditions listed as examples in (d)(2)(B) of the proposed rule are only examples of the types of mitigation options that ERCOT and a resource entity may discuss and agree to as part of an exemption request evaluation. The circumstances under which ERCOT may curtail a resource's output would be specific to both the individual reliability requirement from which a resource entity seeks an exemption and the resource's characteristics and capabilities. These circumstances cannot be listed in a commission rule of general applicability and will be detailed during the evaluation process or during development of an individual reliability requirement.

The commission disagrees with the language "is necessary to avoid" a threshold reliability risk but modifies the provision for clarity to use the phrase "would no longer result in" a threshold reliability risk. However, the commission disagrees that TCPA's suggested modification to (d)(2)(C) of the proposed rule is necessary because if a threshold reliability risk is eliminated or avoided, then it is no longer unacceptable. That is the purpose of allowing an exemption with conditions.

The commission agrees with LCRA's suggestion and modifies the rule accordingly.

Proposed §25.517(e) -- ERCOT inspections

Proposed §25.517(e) allows ERCOT to inspect resources to verify the need for an exemption or

perform field verification of modeling parameters with 48 hours' prior notice.

Several commenters recommended modifying this provision to allow for three business days instead of 48 hours because 48 hours is not enough time to prepare for a site visit. TPPA specifically suggested using the provisions from 16 TAC §25.55(d), the commission's weather preparedness rule, which requires inspectors to give a market participant 72 hours' notice and names of inspectors; comply with safety and security regulations; and treat all documents, photographs, and video recordings collected or generated by inspectors as confidential. Avangrid suggested modifying the rule to provide for additional time if requested by the resource owner and agreed to by ERCOT, with the explanation that security concerns may require additional time to prepare for. Avangrid provided redlines consistent with its comments.

NextEra provided the following redline: "ERCOT may inspect resources owned and operated by a market participant to verify the need for an exemption...". NextEra argued that the proposed rule applies to load resources, which could comprise aggregated distributed energy resources (ADER) that are not owned or operated by a market participant. For this reason, NextEra stated, the proposed rule should clarify that ERCOT is not authorized to enter the premises of private end-use customers who may have an ADER on their property. NextEra argued that requiring inspection access in contracts with end users could compromise the viability of the ADER initiative.

Commission Response

The commission agrees with commenters that suggested 72 hours' notice as the appropriate amount of time and modifies the rule accordingly. In addition, the commission agrees with

TPPA that the inspection components in 16 TAC §25.55(d) are a good model for this rule's inspection requirements and modifies the rule accordingly.

The commission agrees with NextEra that a resource should be owned and operated by a resource entity to be open to an ERCOT inspection and modifies the rule accordingly. However, the commission notes that ERCOT is not required to conclude that an threshold reliability risk does not exist or that a mitigation measure is effective simply because it is not able to inspect for verification purposes.

Proposed §25.517(f) -- Appeal to commission

Proposed §25.517(f) allows a market participant that is not satisfied with the outcome of its exemption request to file a complaint with the commission under 16 TAC §22.251.

TPPA and Avangrid stated that the proposed rule in its entirety is a form of enforcement that the commission is delegating to ERCOT but had separate recommendations for responding to this concern. TPPA argued that PURA §39.151(d) states that enforcement actions delegated to ERCOT may not take effect before receiving approval from the commission, so the commission may be required to review ERCOT's decision regardless of whether a market participant appeals. On the other hand, Avangrid recommended deletion of this provision and stated that ERCOT does not have legal or statutory authority to deny an exemption under the proposed rule. Avangrid argued that PURA provides the commission with remedies for a resource's significant violations of ERCOT's reliability standards (*see* PURA §39.356(b), §39.357, and §15.023) and does not allow the commission to delegate these remedies to ERCOT. In addition, Avangrid argued, only

the commission has the authority to determine whether non-compliance with a reliability requirement rises to the required level of materiality for exercising the commission's statutorily prescribed remedies (*see* Project 44650, Rulemaking Proceeding to Amend P.U.C. Subst. R. §25.503, relating to Oversight of Wholesale Market Participants, Order Adopting Amendment of 25.503 as Adopted at the August 14, 2015 Open Meeting, Aug. 21, 2015).

AEP Companies commented that this subsection appears to limit the ability to file a complaint with the commission to the market participant that made the exemption request. AEP Companies argued that other affected market participants should have the ability to contest ERCOT's determination as well and would bring this subsection of the rule into better alignment with proposed 16 TAC §22.251(c)(3). AEP provided redlines consistent with its comments.

Commission Response

The commission disagrees with TPPA and Avangrid that the rule delegates enforcement authority to ERCOT. This rule lays out a process for a resource entity to request an exemption from a reliability requirement and for that resource entity or an affected entity to use the existing appeal process in §22.251 if it is unsatisfied with the outcome of an exemption request. As several commenters, including TPPA and Avangrid, note, there are already many different forms of exemptions that ERCOT evaluates unilaterally, and this rule is no different.

The commission declines to modify the rule to state that an affected entity has the right to appeal the outcome of another entity's exemption request as recommended by AEP

Companies because it is unnecessary. Any affected entity can already appeal any ERCOT conduct under §22.251, and this rule does not change that.

Proposed §25.517(g)(1) -- Modification resulting in invalidation

Proposed §25.517(g)(1) states that an exemption is no longer valid if the resource owner or operator makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations; after such a modification, the resource must meet the latest reliability requirements in the ERCOT protocols, operating guides, and other binding documents.

In addition to comments responding to this section as part of commission question 4, several commenters submitted redlines that would modify this provision. Most commenters specified that the provision is too broad or would result in loss of an exemption after a modification that may be small or unrelated to the equipment that is the subject of the exemption. For example, Joint Commenters recommended that an exemption should remain valid unless a modification results in the replacement of the specific equipment with the underlying limitation that prevented the resource from meeting the applicable reliability requirement, unless the replacement is in kind. Joint Commenters argued that this proposal is consistent with the proposed federal standards for ride-through requirements for IBRs. NextEra argued that the modification that would cause loss of an exemption should be significant enough to necessitate the submission of a modified interconnection agreement at ERCOT, and even then, a resource owners should be allowed to request a modified or new exemption.

Avangrid and Vistra argued that the provision would discourage investment, improvement, and modernization of resources due to concerns that any modifications may lead to loss of the exemption, and that resource owners might choose to delay modifications until the resource can come into compliance with the exempted standard. Vistra additionally argued that the fundamental purpose of the proposed rule is to limit unacceptable degradation to reliability and achieve resource adequacy, and that this purpose would be best served by granting exemptions for specific terms. Alternatively, Vistra suggested implementing language that would allow a resource to retain an exemption if it makes an uprate or modification unrelated to the exemption.

ERCOT commented that it preferred to refer to the planning guide section related to generation interconnection or modification, not commissioning and continuing operations.

Joint Commenters, NextEra, Vistra, and Avangrid provided redlines consistent with their comments.

Commission Response

As stated above in the commission's response to comments on Question 4, the commission modifies this provision to align with the language in ERCOT Planning Guide §5.2.1(1)(c)(ii). That is, an exemption is no longer valid if a modification is made to the resource that involves changing the inverter, turbine, generator, battery modules, or power converter associated with a facility with an aggregate real power rating of ten MW or greater, unless the replacement is in kind. However, the commission agrees with Joint Commenters that replacement of the specific equipment with the technical limitation that prevented the

resource from complying with the applicable reliability requirement should also invalidate an exemption, unless the replacement is in kind, and modifies the provision accordingly.

Proposed §25.517(g)(1) and (2) -- Revocation authority

See above for the description of proposed §25.517(g)(1). Proposed §25.517(g)(2) allows ERCOT to revoke an exemption it granted, or suspend an exemption granted by the commission, if a reliability study by ERCOT demonstrates that system conditions have materially changed since the exemption was granted; if ERCOT suspends an exemption granted by the commission, the commission will either ratify or set aside ERCOT's action as soon as practicable.

Several commenters expressed concerns with (g)(1) and (g)(2) of the proposed rule. For example, Avangrid argued that (g)(2) impermissibly grants ERCOT the unilateral authority to revoke or suspend an exemption based on a reliability study and should be deleted. NextEra and Joint Commenters also suggested that subsection (g)(2) be deleted. NextEra and Association Joint Commenters commented that the terms "reliability study" and "material change" are undefined, leaving market participants without guidance as to when exemptions might be revoked, leading to a negative impact on investment decisions. Joint Commenters also argued that this paragraph poses an unreasonable level of regulatory uncertainty on existing assets, which would lead to investors becoming unlikely to invest in such assets. Southern Power also commented that "materially changed" is very open ended when associated with "system conditions" and that specific parameters should be added to the proposed rule so that material changes are directly associated with and impactful to the resource in question. Joint Commenters also argued that ERCOT already has authority to temporarily curtail resources in an emergency, rendering this

paragraph unnecessary. On the other hand, Oncor commented that ERCOT's authority to revoke or suspend an exemption should be mandatory, not permissive, if the change in system conditions is truly material.

ERCOT suggested some modifications to subsection (g)(2) of the proposed rule: first, allowing ERCOT to modify an exemption, rather than revoking one, in response to a system change. Second, ERCOT recommended removing the term "material" because it is undefined; ERCOT's proposed modification would give ERCOT the engineering discretion to determine whether system condition changes would warrant revoking or modifying a previously granted exemption. ERCOT's third proposed modification was to add a reference to an actual system disturbance, so that ERCOT could revoke or modify an exemption based on actual conditions, rather than only a study based on modeling. This final recommendation was also suggested by Oncor. Oncor explained that a real-time system event makes revocation or suspension of an exemption even more urgent than under circumstances of a reliability study, and the proposed rule should reflect this urgency to avoid exposing the grid to unnecessary reliability risks.

Association Joint Commenters commented that the commission is the only body capable of revoking or suspending an exemption, and only after notice and an opportunity for a hearing and with a compelling state interest. If ERCOT seeks to revoke an exemption, Association Joint Commenters wrote, there should also be transparency to the affected entity as to why ERCOT is requesting to revoke the exemption, including a reasoned justification for ERCOT's action, and a reasonable period should be granted for the entity to implement necessary modifications.

TPPA recommended that additional requirements be added to (g)(2) of the proposed rule: ERCOT should be required to (1) provide notice to any resources with exemptions affected by ERCOT's new determination, (2) make a public filing of its determinations, and (3) establish a cure period in conjunction with the entity, for the entity to become compliant with the rule for which the exemption was revoked.

Avangrid, NextEra, Joint Commenters, ERCOT, Oncor, and Association Joint Commenters provided redlines consistent with their comments.

Commission Response

The commission agrees with ERCOT's suggested changes to the proposed rule and modifies the rule to allow ERCOT to modify an exemption, remove the term "material," and revoke an exemption based on an anticipated or actual system disturbance.

However, in response to concerns about due process and transparency related to revocations, the commission makes several modifications to proposed subsection (g). First, the commission modifies (g)(1) of the proposed rule to allow for an extension request of an expiring exemption, which ERCOT may grant, provided that it does not result in a threshold reliability risk.

Second, the commission adds subparagraphs to (g)(2) of the proposed rule to lay out the process that must occur after ERCOT decides to revoke or modify an ERCOT-granted exemption. ERCOT must first inform the resource entity, the resource entity's

interconnecting TSP, and the commission, in writing, and this notice must include a justification for the action. Then, ERCOT must make reasonable efforts to work with the resource entity to identify mutually acceptable mitigation solutions. After these reasonable efforts, ERCOT must issue a final decision whether to revoke, modify, or continue the exemption. If ERCOT revokes or modifies the exemption, it must inform the resource entity, the resource entity's interconnecting TSP, and the commission, in writing, and give the resource entity a reasonable period in which to come into compliance with the reliability requirement or implement necessary mitigatory actions. The resource entity may then file a complaint with the commission under §22.251 if it is unsatisfied with the outcome of this process.

Third, the commission modifies the rule to require ERCOT to petition the commission if it wishes to revoke or modify an exemption or extension that was granted by the commission. However, the commission further modifies the rule to allow ERCOT to suspend an exemption or extension or impose mitigation requirements on a temporary basis. These revisions strike a proper balance by providing ERCOT with authority to take immediate action in the short term to protect reliability, while respecting the commission's proper role of determining whether the exemptions or extensions it previously granted remain in the public interest.

Proposed §25.517(g)(2) and (g)(3) -- Review or revocation of an exemption

Proposed §25.517(g)(2) allows ERCOT to revoke an exemption it granted or suspend an exemption the commission granted. If ERCOT suspends an exemption the commission granted,

the commission will either ratify or set aside ERCOT's actions as soon as practicable. Proposed §25.517(g)(3) states that the commission may initiate a review of an exemption on its own motion or in response to a filing by ERCOT.

Association Joint Commenters and NextEra provided redlines without commentary to modify these two paragraphs. Association Joint Commenters provided a redline replacing (g)(2) of the proposed rule in its entirety with the following: Any affected entity, ERCOT, or commission staff may request that the commission revoke or suspend a previously granted exemption. This redline shows that Association Joint Commenters prefers that the commission have sole authority to revoke or suspend an exemption and prefers that other affected entities also have the right to request that the commission revoke or suspend an exemption. Association Joint Commenters' redline to (g)(3) of the proposed rule would allow only the commission, on its own motion, to initiate a review of any previously granted exemption.

NextEra provided a redline modifying (g)(3) of the proposed rule so that the resource owner may file a request for the commission to review its exemption.

Commission Response

The commission disagrees with deleting proposed (g)(2) or (g)(3) and declines to modify the rule. The commission also declines to modify the rule according to Association Joint Commenters' redline to proposed (g)(2). ERCOT should be able to revoke or modify an exemption it granted because it is the entity most informed and capable of making such a decision. Also, an affected entity should not be able to request a revocation of an exemption

because an affected entity is not directly involved with the grant of an exemption.

Proposed §25.517(g)(3) -- Reservation of ERCOT's right to prudently operate the grid

Proposed §25.517(g)(3) states that nothing in this section reduces or otherwise adversely affects ERCOT's authority to prudently operate the grid, regardless of whether a resource has been granted an exemption.

Avangrid recommended deleting this sentence because, it argued, ERCOT already has authority to manage reliability risks through established mechanisms. Avangrid stated that this provision is unnecessary and could destabilize the market by undermining investor confidence in the long-term viability of existing resources.

Commission Response

The commission disagrees with Avangrid that the provision is unnecessary and declines to modify the rule. ERCOT has statutory authority to manage the stability of the grid in several ways, and this provision clarifies that ERCOT's responsibility to reliably operate the grid is not abrogated by the rule.

Proposed §25.517(h) -- Limit on number of exemptions

Proposed §25.517(h) limits the number of exemptions for each resource to two exemptions from the same reliability requirement.

Several commenters recommended deleting this provision. For example, Avangrid stated that the

limit in (h) is arbitrary, capricious, potentially illegal, and without any reasoned justification. Other commenters stated similar beliefs. Vistra commented that the focus of the exemption process should be on striving to keep generation operating in ERCOT while maintaining reliability, which would not be achieved by setting an arbitrary number of exemptions.

On the other hand, AEP Companies supported retaining a limit on the number of exemptions and in fact reducing the limit to a single exemption. AEP Companies suggested that more than one exemption from the same reliability requirement should not be available because the need for more than one exemption would arise only in the case that an exemption was revoked under proposed (g)(2) due to a reliability study completed by ERCOT showing material changes in conditions since the exemption was granted. Further, AEP Companies supported limiting the overall number of exemptions that any one resource can have, to limit reliability risk to the system. AEP Companies also suggested that the rule could be helped by defining the allowable duration of an exemption.

Commission Response

The commission agrees that the process in the proposed rule does not benefit by imposing a limit on the number of exemptions that a resource may be granted and modifies the rule to remove this provision.

Proposed §25.517 -- “Technical”

Vistra commented that the proposed rule should be modified throughout to remove the term “technical” because it unnecessarily limits what ERCOT could consider and might limit the

information to be provided during the process. Additionally, “technical” is a vague term that could lead to confusion and misunderstanding between ERCOT and market participants.

Commission Response

The commission disagrees with removing “technical” throughout the entire rule because it sometimes refers to equipment or operations associated with a resource, as opposed to a resource entity’s commercial market behavior, and so, as it is used, is not a vague term. However, the commission agrees that some instances of “technical” in the proposed rule are unnecessary and modifies the rule to remove these instances accordingly.

The new 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; and §39.151, which grants the commission authority to establish the terms and conditions for the exercise of ERCOT’s authority, grants the commission authority to adopt and enforce rules concerning reliability of the regional electrical network, and allows the commission to delegate to an independent organization responsibilities for establishing or enforcing such rules, which are subject to commission oversight and review.

Cross reference to statutes: Public Utility Regulatory Act §§14.001 and 14.002 and §39.151.

§25.517. Exemption Process for ERCOT Reliability Requirements

- (a) **Purpose and applicability.** This section outlines a process at the Electric Reliability Council of Texas (ERCOT) for a resource entity to request an exemption from an ERCOT reliability requirement that applies to existing resources. This section does not modify or otherwise preempt existing exemptions or exemption processes contained in commission rules or ERCOT protocols, as that term is defined in §25.5 of this title (relating to Definitions). This section also does not prohibit ERCOT from adopting specific exemption processes for an individual reliability requirement that is not designated as a requirement for which an exemption under this section is available or create a presumption that any individual reliability requirement applies to an existing resource.
- (1) ERCOT must designate during the development of a reliability requirement whether the exemption process outlined in this section is available for that reliability requirement. This designation must appear in the text of the approved reliability requirement.
- (A) A reliability requirement designated under this paragraph must include a reasonable deadline by which a resource entity must submit its exemption request to ERCOT. ERCOT may extend this deadline.
- (B) An exemption to a reliability requirement designated under this paragraph is available only for a resource that had a resource commissioning date, as defined in the ERCOT protocols, before the date a reliability requirement takes effect. An existing load resource is one that completed Ancillary Service Qualification Testing, as defined in the ERCOT protocols, before the date a reliability requirement takes effect.

- (2) This section also applies to a reliability requirement that is already in effect on the effective date of this section and for which ERCOT has accepted notices of intent to request an exemption, but for which ERCOT has not yet defined the standards by which those exemption requests will be evaluated.
 - (3) A threshold reliability risk described in subsection (b) of this section applies only to the assessment of an exemption request under this section and does not apply to reliability criteria in other ERCOT protocols.
- (b) **Definitions.** The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:
 - (1) **Feasible** -- describes an available modification or upgrade that can be made to a resource.
 - (2) **Reliability requirement** -- a mandatory technical standard adopted by ERCOT to support the reliability of electric service that is included in the ERCOT protocols.
 - (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.
 - (5) **Technical limitation** -- a technical restriction preventing a resource from complying with a reliability requirement, based on the resource's documented inability to comply with the reliability requirement.
 - (6) **Threshold reliability risk** -- one or more of the following:
 - (A) instability, cascading outages, or uncontrolled separation;
 - (B) loss of generation capacity equal to or greater than 500 megawatts in

aggregate from one or more resources other than the resource for which the exemption is requested;

- (C) loss of load equal to or greater than 300 megawatts; or
- (D) equipment damage.

(c) **Exemption Request.** If a technical limitation prevents a resource from complying with a reliability requirement, a resource entity may submit to ERCOT an exemption request in accordance with this section by the deadline established by ERCOT under subsection (a) of this section. ERCOT must treat information submitted as part of an exemption request as protected information. The exemption request must be submitted in a manner prescribed by ERCOT that, at a minimum, requires the following:

- (1) a description of the applicable reliability requirement from which the resource entity seeks an exemption, including cross-references to ERCOT protocols where the applicable reliability requirement is contained;
- (2) a succinct description, with supporting documentation, of the resource entity's efforts to comply with the applicable reliability requirement, and an explanation of the resource entity's inability to comply;
- (3) documentation describing all feasible modifications, replacements, or upgrades the resource entity could implement, but has not yet implemented, to improve the performance of the resource toward meeting the applicable reliability requirement;
- (4) models that accurately represent expected resource performance and reflect the actual, as-built resource equipment and settings, with all technical limitations, before and after maximizing the resource's operational capability, if applicable, and

- if not already submitted to ERCOT. Each model must include a description of any technical limitation the resource entity cannot accurately represent in that model;
- (5) a plan to comply with each specific element of the applicable reliability requirement to the maximum extent possible. A plan under this paragraph must include:
 - (A) a proposed completion deadline for each proposed modification, replacement, or upgrade;
 - (B) proposed dates for the resource entity to provide updates to ERCOT on its progress;
 - (C) any supporting documentation relevant to plan implementation; and
 - (D) potential mitigation options, if applicable;
 - (6) whether any other exemption request has been submitted for the resource, in accordance with this section or otherwise, including the outcome of each request;
 - (8) the resource's interconnection date, including a copy of the resource's interconnection agreement and any amendments, if not already submitted to ERCOT; and
 - (9) whether the resource entity is seeking an exemption, an extension, or both.
- (d) **ERCOT assessment of exemption requests.**
- (1) **Assessment process.** ERCOT must assess the ERCOT system to determine whether an exemption granted to one resource or several resources would result in a threshold reliability risk to the ERCOT system . ERCOT must identify the resource's interconnecting TSP and send the TSP all studies and substantive communications related to the exemption request and ERCOT's assessment and

may consider input from the interconnecting TSP, as appropriate. The assessment must consider at least the following:

- (A) steady state and dynamic stability of the ERCOT system;
- (B) resource and system performance under a reasonable set of operating conditions (e.g., peak summer, peak winter, high wind low load, and nighttime conditions);
- (C) reasonable and expected topology, equipment status, and dispatch used in the assessment;
- (D) any contingencies ERCOT deems critical based on engineering judgment, including contingencies from any applicable North American Electric Reliability Corporation reliability standard, such as any allowed steady state system adjustments for contingencies, or from the ERCOT planning guide;
- (E) any technical limitations described in the request that are not included in the models provided by the resource entity under subsection (c)(4) of this section, the effect of which will be assessed by analyzing the expected impact based on ERCOT's engineering judgment;
- (F) ERCOT's most relevant outlook for resource adequacy;
- (G) the potential impact to system reliability of new resources that have been approved for energization by ERCOT;
- (H) any mitigation options included in the exemption request under subsection (c)(5)(D) of this section; and
- (I) any other information ERCOT deems necessary to assess the reliability impact of an exemption based on ERCOT's engineering judgment.

- (2) **Process to determine mitigation options.** Before making a final decision to grant an exemption or extension with conditions or deny an exemption or extension, ERCOT must make a reasonable effort to work with the resource entity that made the request to identify any technical or operational options that are mutually acceptable to ERCOT and the resource entity to mitigate any threshold reliability risk caused by the resource's continued operation. ERCOT may request and consider additional information from the resource entity during this process, including costs of an individual option. Failure to identify a mutually acceptable option does not prevent ERCOT from making a final decision on the requested exemption or extension based on its assessment.
- (3) **Assessment outcomes.** ERCOT may grant an exemption, grant an exemption with conditions, grant an extension, or deny an exemption. ERCOT must provide the resource entity with a written explanation for its decision that includes information on its assessment, including which models ERCOT used in the assessment, a list of assumptions that were used in the assessment, and which factors were varied to run any sensitivities.
- (A) ERCOT must grant an exemption if its assessment identifies that no threshold reliability risks would result from granting the exemption or, if applicable, granting several exemptions requested by multiple resource entities.
- (B) ERCOT may grant an exemption with conditions (e.g., curtailment of the resource's output under certain circumstances, a congestion management plan, or other remedial action) if doing so would no longer result in a

threshold reliability risk.

- (C) ERCOT may grant an extension or an extension with conditions if it determines that a feasible solution acceptable to both it and the resource entity will become available within a reasonable time.
 - (D) ERCOT must deny the exemption request if its assessment identifies that a threshold reliability risk would result from granting the exemption or, if applicable, granting several exemptions requested by multiple resources entities, that cannot be eliminated by imposing conditions.
- (4) An exemption under this section may be limited to a period identified by ERCOT in granting the exemption.
 - (5) If ERCOT denies an exemption request, ERCOT may specify in its written explanation a reasonable amount of time for the resource to come into compliance with the reliability requirement from which the resource entity was seeking an exemption.
- (e) **ERCOT inspections.** ERCOT may inspect a resource owned and operated by a resource entity to verify the need for an exemption or perform field verification of modeling parameters, using employees or ERCOT-designated contractors.
- (1) ERCOT must provide the resource entity at least 72 hours' written notice of a field visit unless otherwise agreed by that resource entity and ERCOT. The written notice must identify each ERCOT employee, commission staff member, or designated contractor participating in the inspection. Within 24 hours of receiving notice of inspection, a resource entity must provide ERCOT, commission staff, and

designated contractors all resource entity requirements for facility access. Upon provision of the required written notice, a resource entity must grant access to its facility to ERCOT and to commission staff, including an employee of a contractor designated by ERCOT to conduct, oversee, or observe the inspection.

- (2) During the inspection, a resource entity must provide ERCOT, commission staff, or designated contractors access to any part of the facility upon request. ERCOT, commission staff, and designated contractors must comply with all applicable safety and security regulations, including those maintained by the resource entity, during the inspection. A resource entity must provide access to inspection, maintenance, and other records associated with the applicable reliability requirement and must make the resource entity's staff available to answer questions. A resource entity may escort ERCOT, commission staff, and designated contractors at all times during an inspection. During the inspection, ERCOT, commission staff, or designated contractors may take photographs or video recordings of any part of the facility, except control rooms, and may conduct interviews of facility personnel designated by the resource entity. Documents, photographs, and video recordings collected or generated by ERCOT, commission staff, or designated contractors during or related to the inspection will be treated as confidential information under applicable state or federal laws and regulations. ERCOT may require additional documentation from the resource or conduct its own verifications, as ERCOT deems necessary.

- (f) **Complaint to commission.** If a resource entity is not satisfied with ERCOT's determination of that resource entity's request under subsection (d) of this section, the resource entity may file a complaint under §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).
- (g) **Validity and revocation.** An exemption may become invalid, or ERCOT may revoke or modify an exemption, under the circumstances listed in this subsection. ERCOT must notify the resource entity's interconnecting TSP of any changes to the status of an exemption.
- (1) **Expiration.** An exemption is valid for the period identified by ERCOT in granting the exemption or the period in the commission's order ruling on an exemption under §22.251 of this title. If an exemption expires, the resource entity may request an extension of the exemption, and ERCOT may grant an extension, provided that granting the extension does not result in a threshold reliability risk. ERCOT may develop procedures to implement this provision, including establishing extension request deadlines for a group of exemptions to a reliability requirement that will expire at the same time. ERCOT may request any information reasonable and necessary to evaluate a request under this paragraph.
- (2) **Resource modification.** An exemption is no longer valid if a modification described in this paragraph is made to the resource. After such a modification, the resource must meet the latest reliability requirements in the ERCOT protocols.
- (A) A modification that involves changing the inverter, turbine, generator, battery modules, or power converter associated with a facility with an

aggregate real power rating of ten MW or greater, unless the replacement is in kind.

(B) A modification that involves changing the specific equipment with the technical limitation, unless the replacement is in kind.

(3) **Revocation.** An exemption or extension may be revoked or modified if an anticipated or actual system disturbance or a reliability study indicates that the resource's continued operation with the exemption or extension results in a threshold reliability risk.

(A) If the exemption or extension was granted by ERCOT under this section, then the following provisions apply:

(i) If ERCOT determines that it is necessary to revoke or modify an exemption or extension, it must inform the resource entity, the resource entity's interconnecting TSP, and the commission of its determination, in writing, and this notice must include a justification for the action.

(ii) Before revoking or modifying an exemption or extension, ERCOT must make reasonable efforts as described under subsection (d)(2) of this section to find mutually acceptable mitigation solutions to avoid a threshold reliability risk. However, if necessary to ensure the reliability of the grid, ERCOT may temporarily suspend an exemption or extension, or impose temporary mitigation measures, pending its final decision under this subparagraph.

(iii) After making reasonable efforts as described under subsection (d)(2)

of this section, ERCOT must issue a final decision whether to revoke, modify, or continue the exemption or extension. If ERCOT revokes or modifies the exemption or extension, ERCOT must share the information required under subsection (d)(3) of this section with the resource entity, the resource entity's interconnecting TSP, and the commission, in writing, and give the resource entity a reasonable period in which to come into compliance with the reliability requirement or implement necessary mitigatory actions.

- (iv) If a resource entity is unsatisfied with ERCOT's final decision under this subparagraph, it may contest the decision by filing a complaint with the commission consistent with the procedure in subsection (f) of this section. For purposes of this clause, the resource entity's complaint will be treated like a complaint relating to a decision made by ERCOT under subsection (d) of this section.

- (B) If the exemption or extension was granted by the commission in response to a complaint filed under §22.251 of this title, the following provisions apply:

- (i) If an anticipated or actual system disturbance or a reliability study indicates that continued operation of a resource with an exemption or extension results in a threshold reliability risk, ERCOT may file a petition with the commission to revoke or modify the extension or exemption. ERCOT must provide notice of this petition to all of the parties in the proceeding in which the exemption or extension was

granted by the commission.

- (ii) ERCOT may request interim relief during the pendency of the petition for good cause to ensure the reliability of the grid. ERCOT may temporarily suspend an exemption or extension, or impose temporary mitigation measures, for fifteen days or until the presiding officer rules on its request for interim relief, whichever is shorter.
 - (iii) The commission may grant ERCOT's petition if doing so is in the public interest. In making its determination, the commission may consider any relevant information, including evidence of reliability risks or operational or economic impacts to the resource entity.
- (4) The commission may initiate a review of an exemption or extension on its own motion or in response to a filing by ERCOT.
- (h) Nothing in this section reduces or otherwise adversely affects ERCOT's authority to prudently operate the grid, regardless of whether a resource has been granted an exemption.

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 §25.517, relating to Exemption Process for ERCOT Reliability Requirements, 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