
NO. 03-24-____-CV

*IN THE COURT OF APPEALS
THIRD DISTRICT OF TEXAS — AUSTIN*

ASPIRE POWER VENTURES, LP,
Appellant

v.

PUBLIC UTILITY COMMISSION OF TEXAS,
Appellee.

On Direct Appeal from the Public Utility Commission of Texas’
Orders Concerning ERCOT Contingency Reserve Service (“ECRS”)

NOTICE OF DIRECT APPEAL

Aspire Power Ventures, LP (“Aspire”) hereby files this Notice of Direct Appeal and states its intent to appeal competition rules issued by the Public Utility Commission of Texas (“PUC”) in three Orders relating to ERCOT Contingency Reserve Service (“ECRS”).

1. Aspire is a market participant on the ERCOT grid and has been harmed by the orders at issue. ERCOT first rolled out ECRS in June of 2023. As reported in [Bloomberg](#),¹ its purpose is to provide insurance against another grid disaster like the

¹<https://www.bloomberg.com/graphics/2023-texas-grid-electricity-prices/?leadSource=uverify%20wall>. Other news outlets have reported similar findings.

one that ravaged Texas during Winter Storm Uri in 2021. In the wake of Uri, the ECRS was intended to provide reserve power in emergency situations by paying for “back up generation.” However, ECRS merely designates some of existing power companies’ capacity as “emergency reserves” during times of high demand, and ERCOT pays them to hold that capacity off-line. ECRS does nothing to increase actual electricity reserve capacity – in fact, it actually decreases capacity when it is most needed.

2. As has been proven multiple times since its implementation, ECRS does not work and has needlessly driven up the price of electricity for consumers and market participants. As an example, when demand spiked on June 20, 2023 due to summertime heat, ECRS took 2,000 megawatts of cheap, otherwise-available supply offline.² That created an artificial shortage, driving prices to some of the highest levels since Uri.³ Moreover, ERCOT was paying the generators to hold back that capacity. Each throttled just a small portion of their capacity, but the cumulative effect made it look like there was serious strain on the grid. Within an hour of deploying ECRS, real-time prices for electricity more than quadrupled to \$4,500 per megawatt hour.⁴

² *Id.*

³ *Id.*

⁴ *Id.*

3. The Independent Market Monitor (“IMM”) oversees ERCOT, a role prescribed by the statutes that created the ERCOT system. The IMM has publicly opined that ECRS was a cause of “artificial shortages that produced massive inefficient market costs, totaling more than \$12 Billion in 2023.”⁵ It has also found that ECRS has fostered a system that:

- Is not based on sound reliability criteria;
- Has led to excessive reserves procurements that far exceed the operating reserves held by other regional transmission organizations; and
- Diminished reliability by withholding units that are needed to manage transmission congestion.⁶

4. By August of 2023, ERCOT had paid generators more than \$608 Million to keep electricity off the grid under ECRS, thereby driving up prices for market participants. Those market participants are now attempting to recoup the costs from consumers.

5. The current ERCOT market chaos is caused by the illegal competition rules that established ECRS, which failed to comply with the notice and comment requirements of the Administrative Procedures Act. TEX. GOV’T CODE §§ 2001.023, 2001.029; *RWE Renewables Americas LLC v. Public Utility Comm. of Texas*, 669

⁵[https://www.ercot.com/files/docs/2023/12/11/13%20Independent%20Market%20Monitor%20\(IMM\)%20Report.pdf](https://www.ercot.com/files/docs/2023/12/11/13%20Independent%20Market%20Monitor%20(IMM)%20Report.pdf) at 6.

⁶*Id.* See also <https://www.tpr.org/environment/2023-11-10/texas-power-grid-watchdog-steps-down-after-clash-with-ercot-officials>

S.W.3d 566, 578-79 (Tex. App. – Austin 2023, pet. granted). As a result, Appellant seeks an order declaring the Orders void.

6. Appellant Aspire therefore appeals the following Orders that established and amended ECRS:

- *Order Approving ERCOT Revision Requests, NPRR 1096, Require Sustained Two-Hour Capability for ECRS and Four-Hour Capability for Non-Spin* (PUC Project No. 52934) (May 12, 2022);
- *Order Approving ERCOT Revision Requests, NPRR 1148, Language Cleanup Related to ERCOT Contingency Reserve Service (ECRS)* (PUC Project 54445) (Jan. 26, 2023); and
- *Order Approving ERCOT Revision Requests, NPRR 1178, Expectations for Resources Providing ERCOT Contingency Reserve Service* (PUC Project 54445) (Jun. 29, 2023).

See Exhibits A, B and C.

7. Under Texas Utilities Code sections 39.001(e) and (f), this appeal is taken directly to the Court of Appeals for the Third District of Texas. TEX. UTIL. CODE §§ 39.001(e), (f). This is an expedited appeal. *See id.* § 39.001(f) (“The court of appeals shall hear and determine each appeal as expeditiously as possible with lawful precedence over other matters.”).

8. Because the Orders have not been published in the Texas Register, this notice is timely under Texas Utilities Code section 39.001(f). *Id.*; TEX. GOV’T CODE § 2001.035(c).

Respectfully submitted,

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**Counsel for Appellant
Aspire Power Ventures, LP**

CERTIFICATE OF SERVICE

I hereby certify that, on February 13, 2020, a true and correct copy of the above and foregoing has been served via electronic service, via electronic mail and via certified mail, return receipt requested on the following:

PUBLIC UTILITY COMMISSION OF TEXAS
c/o Connie Corona (Connie.Corona@puc.texas.gov)
Interim Executive Director, Public Utility Commission of Texas
William B. Travis Building
1701 N. Congress Ave.
Seventh Floor
Austin, Texas 78711-3326

/s/ Chrysta Castañeda

Chrysta L. Castañeda

EXHIBIT A



Control Number: 52934



Item Number: 11

PROJECT NO. 52934

**REVIEW OF RULES ADOPTED BY
THE INDEPENDENT ORGANIZATION**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

2022 JUL 12 PM 2:00

ORDER APPROVING ERCOT REVISION REQUESTS

This Order addresses revisions to 14 Electric Reliability Council of Texas (ERCOT) rules. The Commission approves the revisions and accompanying market impact statements.

At its meeting on April 13, 2022, the ERCOT Technical Advisory Committee (TAC) recommended Commission approval of Nodal Operating Guide Revision Request (NOGRR) 239, WAN Data Protection Responsibilities. Pursuant to the relevant rules, NOGRR239 does not need a recommendation of Commission approval from the ERCOT Board of Directors (Board).

At its meeting on April 28, 2022, the Board recommended Commission approval of the following proposed revisions to the ERCOT rules (Revision Requests) Nodal Protocol Revision Requests (NPRRs), Nodal Operating Guide Revision Request (NOGRRs), Other Binding Document Revision Requests (OBDRRs), Planning Guide Revision Requests (PGRRs), Retail Market Guide Revision Request (RMGRR), Resource Registration Glossary Revision Request (RRGRRs), System Change Requests (SCRs), Settlement Metering Operating Guide Revision Request (SMOGRRs), and Verifiable Cost Manual Revision Request (VCMRRs):

- NOGRR239, WAN Data Protection Responsibilities;
- NPRR1092, Reduce RUC Offer Floor and Remove RUC Opt-Out Provision;
- NPRR1096, Require Sustained Two-Hour Capability for ECRS and Four-Hour Capability for Non-Spin;
- NPRR1108, ERCOT Shall Approve or Deny All Resource Outage Requests;
- NPRR1116, Remove Obsolete Reference to Market Information System (MIS);
- NPRR1117, Related to SMOGRR025, Modifications to Line Loss Compensation Requirement for EPS Metering;
- NPRR1122, Clarifications for PURA Subchapter M Securitization Default Charges;

- NPRR1123, Clarifications for PURA Subchapter N Securitization Uplift Charges;
- NPRR1124, Recovering Actual Fuel Costs through RUC Guarantee;
- NPRR1125, Use of Financial Security for Securitization Default Charge and Securitization Uplift Charge Invoices and Escrow Deposit Requests;
- PGRR096, Achieve Consistent Representation of Distributed Generation in Steady-State Models;
- PGRR098, Consideration of Load Shed in Transmission Planning Criteria;
- SCR818, Changes to Incorporate GIC Modeling Data into Existing Modeling Applications; and
- SMOGRR025, Modifications to Line Loss Compensation Requirement for EPS Metering.

On May 2, 2022, for each proposed revision, ERCOT filed a copy of its Board Report, which includes an ERCOT Market Impact Statement, and ERCOT Impact Analysis. These supporting ERCOT documents constitute the market impact analysis. Commission Staff filed a memorandum on May 6, 2022 related to these revisions in which it recommends that the Commission approve each of the revisions to the rules.

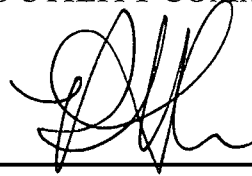
The Commission finds that these revisions are necessary for the proper functioning of the ERCOT market as demonstrated by the supporting material. The Commission issues the following orders:

1. The Commission approves NOGRR239 and accompanying market impact statement.
2. The Commission approves NPRR1092 and accompanying market impact statement.
3. The Commission approves NPRR1096 and accompanying market impact statement.
4. The Commission approves NPRR1108 and accompanying market impact statement.
5. The Commission approves NPRR1116 and accompanying market impact statement.
6. The Commission approves NPRR1117 and accompanying market impact statement.
7. The Commission approves NPRR1122 and accompanying market impact statement.
8. The Commission approves NPRR1123 and accompanying market impact statement.
9. The Commission approves NPRR1124 and accompanying market impact statement.

- 10. The Commission approves NPRR1125 and accompanying market impact statement.
- 11. The Commission approves PGRR096 and accompanying market impact statement.
- 12. The Commission approves PGRR098 and accompanying market impact statement.
- 13. The Commission approves SCR818 and accompanying market impact statement.
- 14. The Commission approves SMOGRR025 and accompanying market impact statement.

Signed at Austin, Texas the 12th day of May 2022

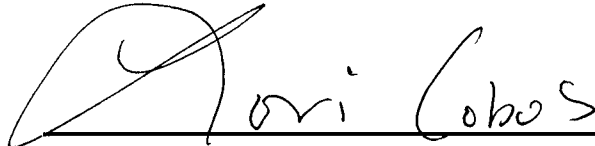
PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER

EXHIBIT B



Control Number: 54445



Item Number: 4

PROJECT NO. 54445

RECEIVED

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CY 2023 REVIEW OF RULES
ADOPTED BY THE INDEPENDENT
ORGANIZATION

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER APPROVING ERCOT REVISION REQUESTS

This Order addresses revisions to 11 Electric Reliability Council of Texas (ERCOT) rules. The Commission approves the revisions and accompanying market impact statements.

At its meeting on December 20, 2022, the ERCOT Board of Directors (Board) recommended Commission approval of the following ten proposed revisions to the ERCOT rules: six Nodal Protocol Revision Requests (NPRRs), one Nodal Operating Guide Revision Request (NOGRR), one Other Binding Document Revision Request (OBDRR), one System Change Request (SCR) and one Resource Registration Glossary Revision Request (RRGRR).

NPRR1128, *Allow FFR Procurement up to FFR Limit Without Proration;*

NPRR1132, *Communicate Operating Limitations during Cold and Hot Weather Condition;*

NPRR1138, *Communication of Capability and Status of Online IRRs at 0 MW Output;*

NPRR1148, *Language Cleanup Related to ERCOT Contingency Reserve Service (ECRS);*

NPRR1152, *Remove Requirements to Submit Emergency Operations Plans, Weatherization Plans, and Declarations of Summer/Winter Weather Preparedness;*

NPRR1154, *Include Alternate Resource in the Availability Plan for the Firm Fuel Supply Service;*

NOGRR226, *Addition of Supplemental UFLS Stages;*

OBDRR043, *Related to NPRR1148, Language Cleanup Related to ERCOT Contingency Reserve Service (ECRS);*

SCR821, *Voltage Set Point Target Information for Distribution Generation Resource (DGR) or Distribution Energy Storage Resource (DESR).*

4

RRGRR032, *Related to NPRR1132, Communicate Operating Limitations during Cold and Hot Weather Conditions, and*

At its December 5, 2022 meeting Technical Advisory Committee (TAC) approved one NOGRR.

NOGRR243 *Implementation of Seasonal Load Shed Tables.*

This NOGRR does not require Board approval.¹

On January 6, 2023, for each proposed revision, ERCOT filed a copy of its Board Report, which includes an ERCOT Market Impact Statement, and ERCOT Impact Analysis. These supporting ERCOT documents constitute the market impact analysis. Commission Staff filed a memorandum on January 19, 2023, related to these revisions in which it recommends that the Commission approve the revisions to the rules.

The Commission finds that these revisions are necessary for the proper functioning of the ERCOT market as demonstrated by the supporting material. The Commission issues the following orders:

1. The Commission approves NPRR1128 and accompanying market impact statement.
2. The Commission approves NPRR1132 and accompanying market impact statement.
3. The Commission approves NPRR1138 and accompanying market impact statement.
4. The Commission approves NPRR1148 and accompanying market impact statement.
5. The Commission approves NPRR1152 and accompanying market impact statement.
6. The Commission approves NPRR1154 and accompanying market impact statement.
7. The Commission approves NOGRR226 and accompanying market impact statement.
8. The Commission approves NOGRR243 and accompanying market impact statement.
9. The Commission approves OBDRR043 and accompanying market impact statement.
10. The Commission approves RRGRR032 and accompanying market impact statement.

¹ Per ERCOT Nodal Operating Guides 1.3.3.10 *ERCOT Board Vote*. NOGRRs that do not require an ERCOT project for implementation are not subject to Board approval.

11. The Commission approves SCR821 and accompanying market impact statement.

Signed at Austin, Texas the 26th day of January 2023

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



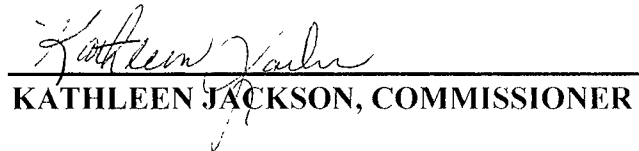
WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER

EXHIBIT C



Control Number: 54445



Item Number: 20

CY 2023 REVIEW OF RULES §
ADOPTED BY THE INDEPENDENT §
ORGANIZATION §

2023 JUN 29 PM 12: 59
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER APPROVING ERCOT REVISION REQUESTS

This Order addresses revisions to Electric Reliability Council of Texas (ERCOT) rules. The Commission approves the revisions and accompanying market impact statements.

At its meeting on June 20, 2023, the ERCOT Board of Directors (Board) recommended Commission approval of the following five proposed revisions to the ERCOT rules: four Nodal Protocol Revision Requests (NPRRs), and one Nodal Operating Guide Revision Request (NOGRR):

NPRR1167, Improvements to Firm Fuel Supply Service Based on Lessons Learned;

NPRR1169, Expansion of Generation Resources Qualified to Provide Firm Fuel Supply Service in Phase 2 of the Service;

NPRR1177, Enhance Exceptional Fuel Cost Process;

NPRR1178, Expectations for Resources Providing ERCOT Contingency Reserve Service;
and

NOGRR253, Related to NPRR1178, Expectations for Resources Providing ERCOT Contingency Reserve Service.

On June 20, 2023, for each proposed revision, ERCOT filed a copy of its Board report, which includes an ERCOT Market Impact Statement, and ERCOT Impact Analysis. These supporting ERCOT documents constitute the market impact analysis. Commission Staff filed a memorandum on June 22, 2023, related to these revisions in which it recommends that the Commission approve the revisions to the rules.

The proposed revision to SMOGRR026, *Related to NPRR1157, Incorporation of PUCT Approval into Revision Request Process*, was addressed and approved by the Commission in its order filed in this project on May 11, 2023. However, in the ordering paragraphs, PGRR104, *Related to NPRR1157, Incorporation of PUCT Approval into Revision Request Process*, was

inadvertently listed twice and SMOGRR026 was inadvertently omitted. Therefore, the Commission confirms its approval of the revision to SMOGRR026 and the accompanying market impact statement in this Order. On April 25, 2023, ERCOT filed the Board Report for this revision which included an ERCOT Market Impact Statement and ERCOT Impact Analysis. Those supporting ERCOT documents constituted the market impact analysis. Commission Staff filed a memorandum recommending its approval on May 4, 2023.

The Commission finds that the revisions to the ERCOT rules are necessary for the proper functioning of the ERCOT market as demonstrated by the supporting material. The Commission issues the following orders:

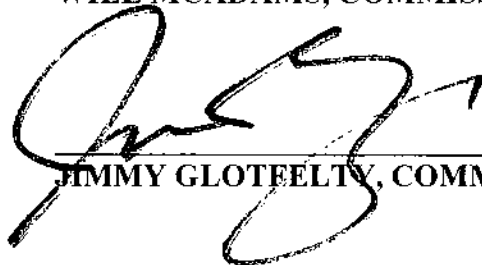
1. The Commission approves NPRR1167 and accompanying market impact statement.
2. The Commission approves NPRR1169 and accompanying market impact statement.
3. The Commission approves NPRR1177 and accompanying market impact statement.
4. The Commission approves NPRR1178 and accompanying market impact statement.
5. The Commission approves NOGRR253 and accompanying market impact statement.
6. The Commission approves SMOGRR026 and accompanying market impact statement.

Signed at Austin, Texas the 29th day of June 2023.

PUBLIC UTILITY COMMISSION OF TEXAS


KATHLEEN JACKSON, INTERIM CHAIR


WILL MCADAMS, COMMISSIONER


JIMMY GLOTEELTY, COMMISSIONER

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Associated Case Party: ASPIRE POWER VENTURES, LP

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MONICA LATIN		mlatin@ccsb.com	2/13/2024 11:57:40 AM	SENT
Nicole Michael		nicole@castaneda-firm.com	2/13/2024 11:57:40 AM	SENT
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Associated Case Party: PUBLIC UTILITY COMMISSION OF TEXAS

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Connie Corona		connie.corona@puc.texas.gov	2/13/2024 11:57:40 AM	SENT