

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter O. UNBUNDLING AND MARKET POWER.

DIVISION 2. INDEPENDENT ORGANIZATIONS.

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

- (a) **Purpose.** This section provides standards for the operation of an independent organization within the ERCOT region.
- (b) **Application.** This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under the Public Utility Regulatory Act (PURA) §39.151.
- (c) **Adoption of rules by ERCOT and commission review.** ERCOT shall adopt and comply with procedures concerning the adoption and revision of protocols and procedures that constitute statements of general policy and that have an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system.
 - (1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of new protocols or revisions to protocols, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.
 - (2) The commission shall process requests for review of ERCOT protocols, procedures, and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).
- (d) **Access to meetings.** ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the board of directors shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.
- (e) **Access to information.** This subsection governs access to information held by ERCOT and access to information held by the commission that it receives from ERCOT.
 - (1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operation, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT will notify the requester of the expected delay and the anticipated date that the documents may be available. ERCOT's procedures regarding access to records shall be consistent with this section.
 - (A) Information submitted to or collected by ERCOT pursuant to requirements of the protocols or operating guides shall be protected from public disclosure only if it is designated as Protected Information pursuant to the Protocols, except as otherwise provided in this subsection.
 - (B) On its own motion or the petition of an affected party, including commission staff, the commission may, after providing reasonable notice to affected parties and an opportunity to be heard, amend the definition of "Protected Information" or the designation of "Items Not Considered Protected Information" under the ERCOT Protocols. In considering such an amendment, the commission may review the specific information under consideration or a general description of such information.

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- (C) The procedures adopted by ERCOT under this subsection shall include provisions for promptly responding to a request from the commission or commission staff for information that ERCOT collects, creates or maintains in order to provide the commission access to information that the commission or commission staff determines is necessary to assess market power and the development and operation of competitive wholesale and retail markets; to evaluate possible violations of laws, rules, protocols, or codes of conduct; or to carry out the commission's responsibilities for oversight of ERCOT.
- (2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act (TPIA).
 - (A) If the commission receives from a member of the Texas Legislature a request for information that the commission has or has access to that is designated as "Protected Information" under the ERCOT Protocols, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated §552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify ERCOT, and, if applicable, the entity that provided the information to ERCOT, of the existence of the request, the identity of the requestor, and the substance of the request.
 - (B) If the commission receives a request for information that the commission has or has access to that has been designated as Protected Information under the Protocols the commission shall make a good faith effort to provide notice of the request to the affected market participant and ERCOT within three business days of receipt of the request. If the third-party provider of the information objects to the release of the information, the commission shall offer to facilitate an informal resolution between the requestor and the third party. If informal resolution of an information request is not possible, the commission will process the request in accordance with the TPIA.
 - (C) In the absence of a request for information, if the commission staff seeks to release information that the commission has or has access to that has been designated as Protected Information under the Protocols, the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under the TPIA.
 - (D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion.

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- (E) Except as otherwise provided in subparagraph (A) of this paragraph, if either the commission or the attorney general determines that the disclosure of information designated as Protected Information under the ERCOT Protocols is appropriate, the commission shall provide notice to the entity that provided the information and to ERCOT at least three business days prior to the disclosure of the Protected Information (or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of Protected Information earlier than within three business days, prior to such disclosure).
- (f) **Conflicts of interest.** ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.
- (g) **Qualifications for membership on governing board.** ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.
 - (1) The qualification criteria shall include:
 - (A) Definitions of the market sectors;
 - (B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;
 - (C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and
 - (D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.
 - (2) The procedures for removal of a member from service on the governing board shall include:
 - (A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and
 - (B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection.
 - (3) The procedures adopted under paragraph (2) of this subsection shall:
 - (A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection; and
 - (B) Specify how decisions concerning the qualification of an individual will be made.
 - (4) A decision concerning an individual or organization's qualification is subject to review by the commission.

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(h) **Required reports.**

- (1) **Annual report.** Beginning with the 2002 calendar year, ERCOT shall file an annual report with the commission, not later than 120 days after the end of the year. The annual report shall include:
 - (A) An independent audit of ERCOT's financial statements for the report year;
 - (B) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year and a schedule showing the variance between actual and budgeted revenues and costs;
 - (C) An independent audit of ERCOT's market operation for the report year;
 - (D) The annual board-approved budget; and
 - (E) Any other information the commission may deem necessary.
- (2) **Quarterly reports.** ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:
 - (A) All internal audit reports that were produced during the reporting quarter;
 - (B) A report on performance measures, as prescribed by the commission;
 - (C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:
 - (i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;
 - (ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;
 - (iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and
 - (D) Any other information the commission may deem necessary.
- (3) **Emergency reports.** If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the accounting procedures applicable to ERCOT or the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the Executive Director of the commission, or the Executive Director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of the following business day after becoming aware of such event or situation, unless the Executive Director specifies, in writing, that the report may be delayed. The Executive Director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report. If ERCOT contends that any of the information contained in an emergency report is "Protected Information" under the ERCOT Protocols, or is otherwise subject to protection from disclosure under the TPIA, the report will be subject to the requirements of subsection (e) of this section.

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- (i) **Compliance with rules or orders.** ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, the commission's substantive rules, or a commission order. If ERCOT fails to comply with PURA, the commission's substantive rules, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.
- (1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.
 - (2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.
 - (3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.
 - (4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.
 - (5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.
 - (6) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the instance of non-compliance or related instances of non-compliance.
 - (7) In assessing penalties, the commission shall consider the following factors:
 - (A) Any prior history of non-compliance;
 - (B) Any efforts to comply with and to enforce the commission's rules;
 - (C) The nature and degree of economic benefit or harm to any market participant or electric customer;
 - (D) The damages or potential damages resulting from the instance of non-compliance or related instances of non-compliance;
 - (E) The likelihood that the penalty will deter future non-compliance; and
 - (F) Such other factors deemed appropriate and material to the particular circumstances of the instance of non-compliance or related instances of non-compliance.
 - (8) The commission may initiate a compliance proceeding or other enforcement proceeding upon its own initiative or after a complaint has been filed with the commission that alleges that the ERCOT has failed to comply with PURA, the commission's substantive rules, or a commission order.
 - (9) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.
- (j) **Priority of commission rules.** This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.
- (k) **Long-term operations plan.** Annually, by October 31st, ERCOT shall file a long-term operations plan. At a minimum, the long-term operations plan shall provide the following information:
- (1) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, centralized control and power scheduling, centralized commercial functions, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers;

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- (2) An overview of the major systems, including both hardware and software, operated by ERCOT, including descriptions of the functionality provided, estimates of remaining useful life, estimates of ongoing maintenance and upgrade costs, and evaluations of the performance of each system;
- (3) A description of major capital projects completed in the current budget year and those expected to be completed in the next budget year, including an explanation of why each project is needed to assist ERCOT in meeting its responsibilities;
- (4) A schedule summarizing ERCOT's sources and uses of funds for a six-year period beginning with the last historic calendar year and projections for the next five calendar years;
- (5) Long-term goals for all ERCOT activities;
- (6) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations, as set forth in PURA and the commission rules, during the current budget year; and
- (7) Any other information or activity required by the commission.