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Addendum StartPage: 0

PROJECT NO. 39191

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| **EMERGENCY RULEMAKING TO REMOVE NINETY (90) DAY NOTICE REQUIREMENT AND MODIFY EILS CONTRACT PERIODS UNDER P.U.C. SUBST. R. 25.507** | § § § § § | **PUBLIC UTILITY COMMISSION OF TEXAS** |



**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.'S PETITION FOR EMERGENCY RULEMAKING TO REMOVE NINETY (90) DAY NOTICE REQUIREMENT AND MODIFY EILS CONTRACT PERIODS PURSUANT TO P.U.C. SUBST. R. 25.507**

COMES NOW, Electric Reliability Council of Texas, Inc. (ERCOT) and files this Petition for Emergency Rulemaking to remove the ninety (90) day notice requirement and modify Emergency Interruptible Load Service (EILS) Contract Periods pursuant to P.U.C. SUBST. R. 25.507, *Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS)*. ERCOT's proposed rule would remove the 90-day notice requirement for ERCOT to publicly announce any changes to the standing EILS Contract Period schedule and further allow ERCOT to establish a new EILS Contract Period covering April 1 to May 31, 2011, in order to procure new EILS capacity for that period. Pursuant to P.U.C. PROC. R. 22.283, *Emergency Adoption*, and Administrative Procedure Act (APA) § 2001.034, *Emergency Rulemaking*, ERCOT requests that the Public Utility Commission of Texas (Commission) adopt the proposed rule on an emergency basis to avoid or minimize the imminent peril to the public health, safety, or welfare of the ERCOT Region community that could occur due to an emergency Load shedding event.

## I. Background

As stated in P.U.C. SUBST. R. 25.507, EILS is a special emergency service that is intended to be deployed by ERCOT in an emergency event prior to or in conjunction with

ERCOT instructing Transmission and/or Distribution Service Providers (TDSPs) to interrupt firm Load. ERCOT procures EILS during the course of the year over three standing Contract Periods which are as follows: (1) February through May; (2) June through September; and (3) October through January.[1] ERCOT may restructure the Contract Periods to facilitate additional Load participation in EILS; however, 90-days notice must be publicly announced prior to the next Contract Period start date.[2]

On February 1, 2011, ERCOT began a new EILS Contract Period covering February 1 – May 31, 2011. On February 2, 2011, due to extreme cold temperatures and a temporary decrease in available electricity supply, ERCOT initiated and coordinated the implementation of Energy Emergency Alert (EEA) steps as set forth in the ERCOT Protocols.[3] More specifically, ERCOT initiated EEA Level 2B and deployed EILS Loads at 5:49 AM in order to maintain system frequency at 60 Hz. The initial deployment was for 384.2 MWs of capacity during a Non-Business Hours Time Period.[4] An additional deployment occurred at 8:53 AM for 83.5 MWs of newly obligated capacity as a result of the next EILS Time Period commencing at 8:00 AM. Therefore, ERCOT deployed, in total, 467.7 MWs of EILS Loads during the EEA event. ERCOT did not release the EILS Loads from the deployment until 10:01 AM on February 3, 2011, for a total sustained response period of approximately 28 hours. The EILS deployment occurred on the second day of the EILS Contract Period.

P.U.C. SUBST. R. 25.507(c)(4)(C) states:

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1 *See* P.U.C. SUBST. R. 25.507(a)(1).

2 *Id.* at (a)(2).

3 *See* ERCOT Protocol Section 6.5.9.4.2, *EEA Levels*.

4 *See* ERCOT Protocol Section 3.14.3, *Emergency Interruptible Load Service (EILS)*. Specifically, ERCOT selects EILS Loads for one or more EILS Time Periods within an EILS Contract Period.

> An EILS resource shall be subject to a maximum of two deployments per EILS contract period, **lasting no more than a total of eight hours per contract period, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deployment shall continue until ERCOT releases the EILS resource**. EILS resources may return to service only after being released by ERCOT. (emphasis added)

Based on the deployment limitations in the P.U.C. Substantive Rule, ERCOT is no longer permitted to deploy EILS Loads for the remaining portion of the EILS Contract Period covering February 1 – May 31, 2011. ERCOT did not envision that a 28-hour deployment would occur this early in an EILS Contract Period – thereby resulting in the unavailability of any EILS capacity going forward for the remaining portion of the four-month Contact Period. ERCOT has continuing operational concerns for the remainder of the EILS Contract Period, and desires to acquire a new supply of EILS capacity as soon as possible. In order to acquire a new supply of EILS capacity, ERCOT requests that the Commission modify P.U.C. SUBST. R. 25.507 in order to give ERCOT the flexibility to create a new EILS Contract Period covering April 1 – May 31, 2011.

## II.
## Standard for Emergency Rulemaking

The Commission has the authority to adopt an emergency rule allowing ERCOT to acquire additional EILS capacity for a new EILS Contract Period covering April 1 – May 31, 2011 based upon the following authorities:

- Section 14.002 of the Public Utilities Regulatory Act (PURA), which provides the Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction;

- Section 39.151 of PURA, which provides the Commission with the authority to oversee ERCOT's operations; and

- Section 2001.034 of the Administrative Procedure Act (APA), which provides that a state agency may adopt an emergency rule without prior notice or hearing, or with an

abbreviated notice and a hearing that it finds practicable, if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice; and

## III.
## Availability of EILS Capacity Assists ERCOT to Prevent or Minimize the Imminent Peril to the Public Health, Safety and Welfare of the ERCOT Region Community Resulting from Emergency Load Shedding Events

As previously stated, EILS is designed to reduce the need for ERCOT to instruct TDSPs to shed firm Load, or to reduce the amount of firm Load that is required to be shed during an EEA event. EILS is procured for all hours and could be needed at any time. On February 2, 2011, ERCOT directed TDSPs or their agents to shed 4,000 MWs of firm Load in order to maintain system frequency at 59.8 Hz or greater. When implementing Load shedding, TDSPs are required to keep in mind the need to protect the safety and health of the community and the essential human needs of the citizens.[5] Although ERCOT will not know the performance of EILS Loads for the February 2, 2011 EEA event until mid to late March 2011, ERCOT believes that the deployment of approximately 467 MWs of EILS Loads most likely mitigated the need to direct TDSPs to shed additional firm Load throughout the day on February 2nd. Anytime firm Load shedding is implemented to maintain the reliability of the ERCOT System, the public health, safety and welfare of the ERCOT Region community is at stake.

To avoid that imminent peril, ERCOT desires to have all operational tools available before reaching that final step in the EEA process – *i.e.* shedding firm Load. The "shoulder months" of April and May can pose a unique set of operational challenges for ERCOT if extreme weather occurs. Historically, a sizable amount of generation capacity is Off-line during the

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[5] *See* ERCOT Protocol Section 6.5.9.4.2(4)(b).

"shoulder months" of the year as a result of Planned Outages.[6] For example, in April 2006, the ERCOT Region experienced 100-plus degree temperatures which were five degrees above the Day Ahead weather forecast and 20 degrees above normal for that time of year. Since a large amount of generation capacity was Off-line for Planned Outages, ERCOT directed TDSPs to shed 1,000 MWs of firm Load. Having EILS capacity available could reduce the amount of MWs required for firm Load shedding or potentially alleviate the need altogether. The potential for extreme weather exists in the spring, especially during the months of April and May, and ERCOT must be prepared to respond to any extreme weather situation. Although EILS is not considered an operating reserve such as Responsive Reserves or Nonspin Reserves, ERCOT does view EILS as a valuable operational tool and it must be able to have all operational tools readily available within its arsenal for deployment.

## III.
## Proposed Text of Rule

In Attachment A, ERCOT proposes modifications (both additions and deletions) to P.U.C. SUBST. R. 25.507. The modifications are limited to subsections (a)(1) and (a)(2) of the rule. The proposed changes would remove the requirement that ERCOT provide 90-days notice prior to a restructuring of an EILS Contract Period, and allow ERCOT the flexibility to create a new EILS Contract Period (April 1 – May 31, 2011) and procure additional EILS capacity for this time period.

## IV.
## Conclusion

In coordination with the filing of this petition, ERCOT has published an EILS Request for Proposal (RFP) to obtain cost and qualification information for entities to provide EILS for

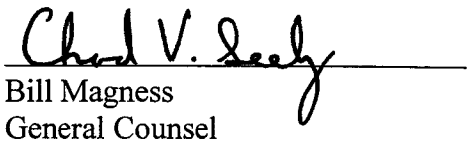
[6] *See* ERCOT Protocol Section 2: *Definitions and Acronyms*. "Planned Outage. An Outage that is planned and scheduled in advance with ERCOT, other than a Maintenance Outage or Opportunity Outage."

the Contract Period covering April 1 – May 31, 2011. The EILS RFP is conditional and subject to the Commission's approval of the emergency rule with an effective date prior to the new EILS Contract Period. ERCOT believes that the Commission would need to make a determination on this request for an emergency rule no later than at its March 24th Open Meeting in order to allow ERCOT to move forward with procurement of EILS capacity by April 1, 2011. Even if the emergency rule is adopted, ERCOT may not procure EILS capacity if the MWs offered is not priced reasonably and therefore deemed sufficient to provide ERCOT with a useful operational tool.[7] ERCOT respectfully requests that the Commission adopt this rule on emergency basis as soon as possible.

[7] *See* ERCOT Protocol Section 3.14.3, *Emergency Interruptible Load Service (EILS)*. Paragraph (9) states the following:

> ERCOT shall not procure more than $50,000,000 of EILS in any 12 month period beginning on February 1st and ending on January 31st ("EILS Cap"). ERCOT may determine cost limits for each EILS Contract Period in order to ensure that the EILS Cap is not exceeded. **In order to minimize the cost of EILS, ERCOT may reject any offer it determines to be unreasonable or outside the parameters of an acceptable offer.** ERCOT shall establish a written process for determining the cost limits for each EILS Contract Period and for the reasonableness of offers. (emphasis added).

Respectfully submitted,



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## ATTACHMENT A

### §25.507. Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).

(a) **EILS procurement.** ERCOT shall procure EILS, a special emergency service that is intended to be deployed by ERCOT in an Emergency Electric Curtailment Plan (EECP) event prior to or in conjunction with ERCOT instructing transmission and distribution service providers to interrupt firm load.

(1) EILS may be procured for one or more of three contract periods and any additional contract periods as designated by ERCOT:

(A) February through May;

(B) June through September; and

(C) October through January.

(2) Notwithstanding the foregoing, ERCOT may restructure the contract periods to facilitate additional load participation in EILS. ~~ERCOT must publicly announce any changes to the contract period schedule described above at least 90 days prior to the next contract period start date.~~

(3) ERCOT may determine cost limits for each EILS contract period in order to ensure that the EILS cost cap is not exceeded. To minimize the cost of EILS, ERCOT may reject any bid that ERCOT determines to be unreasonable or outside of the parameters of an acceptable bid.

(4) ERCOT may contract for any number of MW in an EILS contract period not to exceed 1,000 MW.

(b) **Definitions.**

(1) EILS — A special emergency service procured and used by ERCOT in accordance with this section.

(2) EILS contract period — As defined in subsection (a) of this section.

(3) EILS cost cap — The maximum amount ERCOT may spend on the EILS program in a year, February-January. The cost cap is set at $50 million.

(4) EILS resource — Load that is contracted to provide EILS.

(5) EILS time period — Sets of hours designated by ERCOT within an EILS contract period.

(6) ERCOT — The professional staff of the Electric Reliability Council of Texas, Inc.

(c) **Participation in EILS.** In addition to requirements established by ERCOT, the following requirements shall apply for the provision of EILS:

(1) EILS bids may be submitted to ERCOT by a qualified scheduling entity (QSE) on behalf of an EILS resource.

(A) Bids may be submitted for one or more time periods within a contract period.

(B) The minimum amount of EILS that may be offered in a bid to ERCOT is one MW. QSEs representing EILS resources may aggregate multiple

resources to reach the one MW bid requirement. Such aggregated bids will be considered a single EILS resource.

(2) To qualify to participate in the EILS program, an EILS resource shall meet the technical requirements set out in this paragraph.

(A) Each EILS resource, including each EILS resource participating in an aggregated bid, shall have an ESI ID or unique service identifier, as defined by ERCOT.

(B) Each EILS resource shall have a dedicated installed Interval Data Recorder (IDR) meter or equivalent. If the IDR meter or equivalent is not used for settlement with ERCOT, then the meter and the method and format used to collect and transfer the meter data are subject to ERCOT approval. This subsection also applies to meters behind a Non-Opt-In Entity (NOIE) meter point, to meters behind a private network's settlement meter point, and to separately metered loads behind a single ESI ID. This requirement shall not apply to customers participating in aggregations of EILS resources if a statistically valid alternative to universal IDR metering for measurement and verification consistent with industry best practices can be developed and approved by ERCOT.

(C) An EILS resource shall be capable of reducing its load by its contracted capacity within ten minutes of an ERCOT verbal dispatch instruction (VDI) to its QSE and shall be capable of maintaining its performance at contracted levels for the entire period of the EILS deployment.

(D) EILS resources, once deployed, shall be able to return to their contracted operating level for providing EILS within ten hours following the recall instruction.

(E) EILS resources shall be subject to qualification, testing, and performance requirements as developed and administered by ERCOT.

(F) An EILS resource shall be registered as part of its QSE agreement with ERCOT.

(G) The QSE shall execute a standard form EILS agreement as developed by ERCOT.

(H) The EILS resource shall be served by a QSE qualified to provide ancillary services and capable of communicating with ERCOT and the EILS resource.

(I) An EILS resource shall not provide other ancillary services, including balancing energy services with the same capacity, while under an EILS Agreement.

(3) ERCOT shall establish an individual load baseline for each proposed EILS resource. If the EILS resource is an aggregation of ESI IDs, ERCOT shall take into account the load characteristics of each ESI ID represented by the EILS resource.

(A) ERCOT shall review IDR data or equivalent from the most recent available 12-month period to determine an EILS Resource's consumption. If 12 months of IDR data are not available, ERCOT may use reliable meter data for a shorter period or from a different source, at its reasonable discretion. If ERCOT does not possess sufficient data, the EILS Resource

or its QSE must provide data to ERCOT according to ERCOT's specifications.

(B) ERCOT may establish an alternate baseline methodology to accommodate loads for which a sufficiently accurate default baseline cannot be established.

(C) Baselines shall be used to verify or establish an EILS Resource's maximum contract amount and to verify the EILS resource's performance as compared to its contracted capacity during an EILS deployment event.

(4) EILS shall be deployed by ERCOT by VDIs in a single phone call to all QSEs providing EILS.

(A) When ERCOT issues a VDI, 100% of the available contracted EILS resources shall be deployed.

(B) ERCOT may deploy EILS at any time during a settlement interval.

(C) An EILS resource shall be subject to a maximum of two deployments per EILS contract period, lasting no more than a total of eight hours per contract period, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deployment shall continue until ERCOT releases the EILS resource. EILS resources may return to service only after being released by ERCOT.

(D) ERCOT may conduct a load-shedding test of each EILS resource once a year unless the EILS resource has met its performance obligations during an EILS deployment during the preceding 12 months. ERCOT tests are not "deployments" under subparagraph (C) of this paragraph.

(d) **EILS Payment and Charges.**

(1) ERCOT shall pay a capacity payment to each QSE representing an EILS resource on an as-bid basis subject to modifications determined by ERCOT based on the EILS resource's availability during an EILS contract period, and the EILS resource's performance in a deployment event.

(2) ERCOT shall charge each QSE a capacity charge for EILS based upon its load ratio share during the relevant EILS time period and EILS contract period.

(3) There shall be no energy payments for providing EILS above and beyond typical load imbalance payments pursuant to the ERCOT protocols.

(4) ERCOT shall settle an EILS contract period through payments and charges on a settlement statement of a single operating day within 70 days following the completion of the EILS contract period.

(5) ERCOT shall make the following available to market participants through market notices and by posting on a publicly accessible section of the ERCOT web site:

(A) Methodology used to develop baseline formulas;

(B) Formulas used for wholesale market settlement; and

(C) Equations used to determine an EILS resource's compliance with its obligations in an EILS deployment.

(e) **Compliance.** QSEs representing EILS resources are subject to penalties for failure to meet their obligations under this section. ERCOT shall withhold all or part of an EILS resource's capacity payment for a contract period and suspend participation in EILS for

six months if the EILS resource fails to make its committed load available during its committed hours, or fails to meet its load reduction obligations in an EILS deployment event. In order to be reinstated after the suspension the load must demonstrate its capability of performing the service by satisfactorily performing a test conducted by ERCOT.

(f) **Reporting.** Within 10 days of the EILS awards for a contract period, ERCOT shall report publicly the number of MW procured per time period, the number of resources providing the service, and the projected total cost of the service for that contract period. ERCOT shall review the effectiveness and benefits of the EILS and report its findings to the commission annually within 70 days of the completion of the EILS program year. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EECP events, and the number and duration of deployments.

(g) **Implementation.** ERCOT shall develop additional procedures, guides, and/or protocols that are consistent with this section and that ERCOT finds necessary to implement EILS, including but not limited to developing a standard form EILS Agreement and specific performance guidelines and grace periods for EILS Resources.

(h) **Self Provision**. ERCOT shall maintain procedures for self provision of EILS by any QSE.