



Date: March 15, 2011
To: Board of Directors
From: Bill Magness, Vice President and General Counsel
Subject: Ratification of Emergency Interruptible Load Service (EILS) Petition

Issue for the ERCOT Board of Directors

ERCOT Board of Directors Meeting Date: March 22, 2011

Agenda Item No.: 6d

Issue:

Ratification of the *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* as filed on February 25, 2011 at the Public Utility Commission of Texas (Commission)(*Petition for Emergency Rulemaking*).

Background/History:

P.U.C. Subst. R. 25.507, *Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Services (EILS)*, provides that 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. Under the rule, ERCOT procures EILS during the following three standing Contract Periods: (1) February through May; (2) June through September; and (3) October through January. The rule, however, allows ERCOT to restructure the Contract Periods to facilitate additional Load participation in EILS if ERCOT publicly announces the changes to the Contract Period schedule at least 90-days prior to restructuring the Contract Period. The rule further states that an EILS resource is 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 deployments will continue until ERCOT releases the EILS resource.

On February 1, 2011, ERCOT began the EILS Contract Period covering February 1 – May 31, 2011. On February 2, 2011, due to extreme cold temperatures and a temporary decrease in available electric supply, ERCOT initiated and coordinated the implementation of Energy Emergency Alert (EEA) steps pursuant to the ERCOT Protocols. Specifically, on February 2, 2011, ERCOT initiated EEA Level 2B and deployed EILS Loads at 5:49 AM in order to maintain system frequency at 60 Hz. In total, ERCOT deployed 467.7MWs of EILS Loads during the EEA event. ERCOT did not release the EILS Loads from deployment until 10:01 AM on February 3, 2011, which resulted in a total sustained response period of approximately 28 hours. Consequently, due to the deployment limitations in the rule, ERCOT cannot deploy EILS Loads for the remainder of the February 1-May 31, 2011 Contract Period.

The “shoulder months” of April and May could pose unique operational challenges for ERCOT if extreme weather occurs since a significant amount of generation capacity is typically Off-line as a result of Planned Outages. Due to the need to utilize all available EILS for the February 1 – May 31 period in early February, if ERCOT is not able to procure additional EILS resources



outside the normal contract period, ERCOT could face future EEA situations without the ability to deploy EILS. ERCOT discussed this unique challenge with PUCT Staff, and determined that the most efficient vehicle for addressing the problem would be to file a petition for emergency rulemaking, requesting that ERCOT be given the flexibility to create a new EILS Contract Period covering April 1-May 31, 2011 without requiring 90-days notice of the new Contract Period to permit the timely acquisition of new EILS capacity. The time sensitivity of the situation required ERCOT to make its filing between scheduled meetings of the Board of Directors.

In the *Petition for Emergency Rulemaking*, ERCOT requested that the Commission adopt the proposed rule amendments, and noted that the Commission would have to make a determination on the request no later than the March 24, 2011 Open Meeting to allow ERCOT to timely procure new EILS capacity by April 1, 2011. Even if the Commission adopted the emergency rule in its *Petition*, ERCOT stated that it would not procure EILS capacity if the MWs offered were not reasonably priced. In conjunction with the filing of its *Petition*, ERCOT published an EILS Request for Proposal (RFP) to obtain cost and qualification information from entities to provide EILS for the April 1- May 31, 2011 Contract Period contingent upon the Commission's approval of the proposed emergency rule with an effective date prior to the start of the new April 1- May 31, 2011 Contract Period. The Commission opened Project No. 39191 to process the EILS rulemaking. See Exhibit A.

Section 4.10 of the ERCOT Bylaws requires the ERCOT Board to approve the initiation of any non-routine filing at a regulatory agency requesting regulatory action. ERCOT Legal did not obtain ERCOT Board approval prior to filing the *Petition for Emergency Rulemaking* at the Commission pursuant to the ERCOT Bylaws due to the need to quickly initiate the rulemaking process to ensure the timely procurement of additional EILS capacity for April and May.

In order to obtain ERCOT Board approval prior to filing the *Petition for Emergency Rulemaking*, the ERCOT Board would have needed to call an urgent ERCOT Board meeting pursuant to ERCOT Bylaw Section 4.6(b) or (c) because: (1) ERCOT determined that the submission of its *Petition* was necessary after the February 14, 2011 Board meeting; and (2) acquiring ERCOT Board approval at the next regularly scheduled March 2011 ERCOT Board meeting would not have provided ERCOT with sufficient time to procure additional EILS capacity for the April 1 – May 31, 2011 Contract Period. If the Board had approved the filing of the *Petition for Emergency Rulemaking* at an urgent Board meeting, the Board's action would have required ratification at its next regularly scheduled meeting (the March 22, 2011 Board meeting), pursuant to Bylaw Section 4.6(c).

Key Factors Influencing Issue:

Section 4.10 of the ERCOT Bylaws required ERCOT to obtain ERCOT Board approval prior to filing its *Petition for Emergency Rulemaking* at the Commission. ERCOT Staff believes the emergency filing was necessary to enable ERCOT to procure EILS on a timely basis, and that the emergency rulemaking presented the best procedural option for achieving that goal.

Alternatives:

1. Ratify ERCOT's *Petition for Emergency Rulemaking* as filed at the Commission;



2. Direct ERCOT to withdraw its *Petition for Emergency Rulemaking*; or
3. Direct ERCOT to withdraw its *Petition for Emergency Rulemaking* and file an amended petition based on the ERCOT Board's direction.

Conclusion/Recommendation:

Based on the facts stated above, ERCOT staff respectfully requests that the ERCOT Board ratify ERCOT's filing of the *Petition for Emergency Rulemaking*.



ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.
BOARD OF DIRECTORS RESOLUTION

WHEREAS, after due consideration of the alternatives, the Board of Directors (Board) of Electric Reliability Council of Texas, Inc. (ERCOT) deems it desirable and in ERCOT's best interest to ratify the filing of *Electric Reliability Council of Texas, Inc.'s Petition for Emergency Rulemaking to Remove the Ninety (90) Day Notice Requirement and Modify EILS Contract Periods pursuant to P.U.C. SUBST. R. 25.507 (Petition for Emergency Rulemaking)* as filed on February 25, 2011 at the Public Utility Commission of Texas (Commission).

THEREFORE, be it RESOLVED, that the ERCOT Board hereby ratifies ERCOT's filing of the *Petition for Emergency Rulemaking* as filed on February 25, 2011 at the Commission, which is attached hereto as Exhibit A.

CORPORATE SECRETARY'S CERTIFICATE

I, Bill Magness, Corporate Secretary of ERCOT, do hereby certify that, at its March 22, 2011 meeting, the ERCOT Board passed a motion approving the above Resolution by _____.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of March, 2011.

Bill Magness
Corporate Secretary