

NPRR Comments

NPRR Number	347	NPRR Title	Counter-Party Invoice and Single Daily Settlement Invoice
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Date	May 3, 2011
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Market Segment	Investor-Owned Utility (IOU)

Comments

The proposed revisions shown in these comments are based on discussions held by the Credit Work Group (CWG) and the Market Credit Working Group (MCWG) that pertained to issues related to under and over collateralization in the Day-Ahead Market (DAM). Luminant Energy Company LLC (Luminant) believes that the changes shown below will ensure a more appropriate market participant collateralization while sufficiently collateralizing ERCOT. These comments revise Current Credit Exposure through the Estimated Aggregate Liability (EAL) calculation. The proposed revisions are being made on the 4/21/11 PRS Report.

The following Sections are being added to this NPRR:

- Section 16.11.5, Monitoring of a Counter-Party's Creditworthiness and Credit Exposure by ERCOT
- Section 16.11.6, Payment Breach and Late Payments by Market Participants
- Section 16.11.6.4.5, Determination of the Counter-Party Future Credit Exposure
- Section 22, Attachment D, Standard Form Market Participant Agreement

Revised Proposed Protocol Language

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2.1 DEFINITIONS

Collateral Call

A notice to a Counter-Party that additional financial security is required in order to remain in, or to regain, compliance with the policy as described in Section 16.11.5, Monitoring of a Counter-Party's Creditworthiness and Credit Exposure by ERCOT, and Section 22, Attachment A, Standard Form Market Participant Agreement.

Invoice Recipient

A ~~Market Participant~~Counter-PartyMarket Participant that receives an Invoice from ERCOT.

9.1.2 *Settlement Calendar*

- (1) ERCOT shall post and maintain on the Market Information System (MIS) Public Area a "Settlement Calendar" to denote, for each Operating Day, when:
 - (a) Each scheduled Settlement Statement for the DAM will be issued under Section 9.2.4, DAM Statement, and Section 9.2.5, DAM Resettlement Statement;
 - ~~(b) Each Settlement Invoice for the DAM will be issued under Section 9.3, Settlement Invoices for the DAM;~~
 - ~~(c) Payments for the DAM are due under Section 9.4, Payment Process for the DAM;~~
 - ~~(d) Each Late Fee Invoice for the DAM will be issued under Section 9.4.5, Late Fees and Late Fee Invoices for the DAM;~~
 - ~~(e) Payments for DAM Late Fee Invoices are due under Section 9.4.5;~~
 - ~~(b)f~~ Each scheduled Settlement Statement for the Real-Time Market (RTM) will be issued under Section 9.5.4, RTM Initial Statement, Section 9.5.5, RTM Final Statement, Section 9.5.6, RTM Resettlement Statement, and Section 9.5.8, RTM True-Up Statement;
 - ~~(c)g~~ Each Settlement Invoice ~~for the RTM~~ will be issued under Section 9.6, Settlement Invoices for the Day-Ahead Market and Real-Time Market;
 - ~~(d)h~~ Payments for the RTM Settlement Invoice are due under Section 9.7, Payment Process for the Settlement Invoices-RTM;

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- (ci) Each Late Fee Invoice ~~for the RTM~~ will be issued under Section 9.7.4, Late Fees and Late Fee Invoices for Settlement Invoices for the RTM;
 - (fj) Payments for ~~RTM~~ Late Fee Invoices are due under Section 9.7.4;
 - (gk) Each Default Uplift Invoice will be issued under Section 9.19, Partial Payments by Invoice Recipients;
 - (hl) Payments for Default Uplift Invoices are due under Section 9.19.1, Default Uplift Invoices;
 - (im) Each Congestion Revenue Rights (CRR) Auction Invoice will be issued under Section 9.8, CRR Auction Award Invoices;
 - (jn) Payments for CRR Auction Invoices are due under Section 9.9, Payment Process for CRR Auction Invoices;
 - (ke) Each CRR Auction Revenue Distribution Invoice will be issued under Section 9.10, CRR Auction Revenue Distribution Invoices;
 - (lp) Payments for CRR Auction Revenue Distribution Invoices are due under Section 9.11, Payment Process for CRR Auction Revenue Distribution;
 - (mq) Each CRR Balancing Account Invoice will be issued under Section 9.12, CRR Balancing Account Invoices;
 - (nr) Payments for CRR Balancing Account Invoices are due under Section 9.13, Payment Process for the CRR Balancing Account; and
 - (os) Settlement and billing disputes for each scheduled Settlement Statement of an Operating Day and Settlement Invoice must be submitted under Section 9.14, Settlement and Billing Dispute Process.
- (2) ERCOT shall notify Market Participants if any of the aforementioned data will not be available on the date specified in the Settlement Calendar.

9.3 Settlement Invoices for the DAM~~[RESERVED]~~

- ~~(1) ERCOT shall issue Invoices for the DAM (DAM Invoice) on the second Business Day after the Operating Day. For each DAM Invoice, the Market Participant to whom the Invoice is addressed ("Invoice Recipient") is either a payee or payor. The Invoice Recipient is responsible for accessing the Invoice on the MIS Certified Area once posted by ERCOT.~~

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- ~~(2) — ERCOT shall issue DAM Invoices that are based on DAM Resettlement Statements on the same Business Day as the day that the DAM Resettlement Statement is posted to the MIS-Certified Area.~~
- ~~(3) — Each DAM Invoice must contain:~~
 - ~~(a) — The Invoice Recipient's name;~~
 - ~~(b) — The ERCOT identifier (Settlement identification number issued by ERCOT);~~
 - ~~(c) — Net Amount Due or Payable — the aggregate summary of all charges owed by, or due to, an Invoice Recipient for that DAM;~~
 - ~~(d) — Time Periods — the time period covered for each line item;~~
 - ~~(e) — Run Date — the date in which the DAM Invoice was created and published;~~
 - ~~(f) — Invoice Reference Number — a unique number generated by the ERCOT applications for payment tracking purposes;~~
 - ~~(g) — Statement Reference — an identification code used to reference the Settlement Statement invoiced;~~
 - ~~(h) — Payment Date and Time — the date and time that DAM Invoice amounts must be paid or received;~~
 - ~~(i) — Remittance Information Details — details including the account number, bank name, and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and~~
 - ~~(j) — Overdue Terms — the terms that would be applied if payments were received late.~~

9.4 — Payment Process for the DAM

~~Payments for the DAM must be made on days that are both a Business Day and a Bank Business Day in a two-day, two-step process as detailed below. Payments for the DAM are due on the applicable payment due date, whether or not there is any Settlement and billing dispute regarding the amount of the payment.~~

9.4.1 — Invoice Recipient Payment to ERCOT for the DAM

- ~~(1) — The payment due date and time for the DAM Invoice, with funds owed by an Invoice Recipient, is 1700 on the third Bank Business Day after the DAM Invoice date, unless that third Bank Business Day is not a Business Day. If the third Bank Business Day is not a Business Day, then the payment is due by 1700 on the next Bank Business Day after the third Bank Business Day that is also a Business Day.~~

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- (2) ~~All DAM Invoices due, with funds owed by an Invoice Recipient, must be paid to ERCOT in U.S. Dollars (USD) by either of the following:~~
- (a) ~~On or before the payment due date if the payment is made by Electronic Funds Transfer (EFT) in immediately available or good funds (i.e., not subject to reversal); or~~
 - (b) ~~On or before two Bank Business Days before the payment due date if the payment is made by Automated Clearing House (ACH) funds.~~

9.4.2 ~~ERCOT Payment to Invoice Recipients for the DAM~~

- (1) ~~Subject to the availability of funds as discussed in paragraph (2) below, DAM Invoices with funds owed to an Invoice Recipient must be paid by ERCOT to the Invoice Recipient by 1700 on the next Bank Business Day after payments are due for that DAM under Section 9.4.1, Invoice Recipient Payment to ERCOT for the DAM, subject to ERCOT's right to withhold payments under Section 16, Registration and Qualification of Market Participants, unless that next Bank Business Day is not a Business Day. If that next Bank Business Day is not a Business Day, then the payment is due on the next Bank Business Day thereafter that is also a Business Day.~~
- (2) ~~ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit, to each Invoice Recipient for same day value, the amounts determined by ERCOT to be available for payment to that Invoice Recipient under paragraph (d) of Section 9.19, Partial Payments by Invoice Recipients.~~

9.4.4 ~~Enforcing the Security of a Short-Paying Invoice Recipient~~

~~ERCOT shall make reasonable efforts to enforce the security of the short-paying Invoice Recipient (pursuant to Section 16.11.6, Payment Default and Late Payments by Market Participants) to the extent necessary to cover the short pay. A short-paying Invoice Recipient shall restore the level of its security under Section 16, Registration and Qualification of Market Participants.~~

9.4.5 ~~Late Fees and Late Fee Invoices for the DAM~~

- (1) ~~A short-paying DAM Invoice Recipient shall pay late fees to ERCOT on the short-pay amount according to the late fee terms specified in the ERCOT fee schedule that is posted on the Market Information System (MIS) Public Area for the period from, and including, the relevant payment due date to the date on which the payment, including any related transaction costs incurred by ERCOT, is received by ERCOT. ERCOT will cease charging late fees to the defaulting Entity when the conditions described in item (c) of Section 9.19, Partial Payments by Invoice Recipients, are met.~~

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- (2) ~~ERCOT shall distribute any late fee revenues, less ERCOT's transaction costs, to the DAM Invoice Recipients that were underpaid, due to a short pay, on a pro rata basis of monies owed to each DAM Invoice Recipient.~~
- (3) ~~ERCOT shall post to the MIS Certified Area for each DAM Invoice Recipient, a DAM Invoice based on late fees (DAM Late Fee Invoice). The DAM Late Fee Invoice Recipient is responsible for accessing the information from the MIS Certified Area once posted by ERCOT.~~
- (4) ~~ERCOT shall issue DAM Late Fee Invoices on the tenth calendar day after the end of the month, unless the tenth day is not a Business Day. If that tenth day is not a Business Day, then ERCOT shall issue the DAM Late Fee Invoice of the next day thereafter that is a Business Day. ERCOT will post the actual dates on which it will issue DAM Late Fee Invoices under Section 9.1.2, Settlement Calendar.~~
- (5) ~~Each DAM Late Fee Invoice must contain:~~
 - (a) ~~The Invoice Recipient's name;~~
 - (b) ~~The ERCOT identifier (Settlement identification number issued by ERCOT);~~
 - (c) ~~Net Amount Due or Payable—the aggregate summary of all charges owed or due by an Invoice Recipient;~~
 - (d) ~~Time Periods—the time period covered for each line item;~~
 - (e) ~~Run Date—the date in which the Invoice was created and published;~~
 - (f) ~~Invoice Reference Number—a unique number generated by the ERCOT applications for payment tracking purposes;~~
 - (g) ~~Payment Date and Time—the date and time that Invoice amounts are to be paid or received;~~
 - (h) ~~Remittance Information Details—details including the account number, bank name and electronic transfer instructions for the ERCOT account to which any amounts owed by the Invoice Recipient must be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and~~
 - (i) ~~Overdue Terms—the terms that would apply if the Market Participant makes a late payment.~~
- (6) ~~Market Participants must make payments for DAM Late Fee Invoices on days that are both a Business Day and a Bank Business Day in a two day, two step process as detailed below. Payments for DAM Late Fee Invoices are due on the applicable payment due date, whether or not there is any Settlement and billing dispute regarding the amount of the payment.~~

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- (a) ~~The payment due date and time for the DAM Late Fee Invoice, with funds owed by an Invoice Recipient, is 1700 on the fourth Bank Business Day after the DAM Late Fee Invoice date, unless that fourth Bank Business Day is not a Business Day. If the fourth Bank Business Day is not a Business Day, then the payment is due by 1700 on the next Bank Business Day after the fourth Bank Business Day that is also a Business Day.~~
- (b) ~~All DAM Late Fee Invoices due, with funds owed by an Invoice Recipient, must be paid to ERCOT in USDs by either of the following:~~
 - (i) ~~On or before the payment due date if the payment is made by EFT in immediately available or good funds (i.e. not subject to reversal); or~~
 - (ii) ~~On or before two Bank Business Days before the payment due date if the payment is made by ACH funds.~~
- (c) ~~Subject to the availability of funds as discussed in paragraph (d) below, DAM Late Fee Invoices with funds owed to an Invoice Recipient must be paid by ERCOT to the Invoice Recipient by 1700 on the next Bank Business Day after payments are due for that DAM Late Fee Invoice under paragraph (a) above, subject to ERCOT's right to withhold payments under Section 16, Registration and Qualification of Market Participants, unless that next Bank Business Day is not a Business Day. If that next Bank Business Day is not a Business Day, then the payment is due on the next Bank Business Day thereafter that is also a Business Day.~~
- (d) ~~If at least one Invoice Recipient owing funds does not pay its DAM Late Fee Invoice in full (short pays), then ERCOT shall reduce payments to all DAM Late Fee Invoice Recipients owed monies from ERCOT. The reductions must be based on a pro rata basis of monies owed to each Invoice Recipient, to the extent necessary to clear ERCOT's accounts on the payment due date to achieve revenue neutrality for ERCOT. ERCOT shall provide to all Market Participants payment details on all short payments and subsequent reimbursements of short pays. Details must include the identity of each short paying Invoice Recipient and the dollar amount attributable to that Invoice Recipient, broken down by Invoice numbers. In addition, ERCOT shall provide the aggregate total of all amounts due to all Invoice Recipients before applying the amount not paid on the Invoice. ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit, to each Invoice Recipient for same day value, the amounts determined by ERCOT to be available for payment.~~

9.5.6 *RTM Resettlement Statement*

- (1) ERCOT shall issue a RTM Resettlement Statement using corrected Settlement data due to resolution of disputes and correction of data errors. Any resettlement occurring after an RTM True-Up Statement has been issued must meet the same Interval Data Recorder

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(IDR) Meter Data Threshold requirements defined in Section 9.5.8, RTM True-Up Statement, and is subject to the same limitations for filing a dispute. Despite the preceding sentence, the ERCOT Board may, in its discretion, direct ERCOT to run a resettlement of any Operating Day, at any time, to address unusual circumstances.

- (2) ERCOT shall issue a RTM Resettlement Statement for a given Operating Day due to data error in data other than prices when the total of all errors in data other than prices results in an impact greater than 2% of the total payments due to ERCOT for the RTM for the Operating Day, excluding bilateral transactions. ERCOT shall issue RTM Resettlement Statements as soon as possible to correct the errors. ERCOT shall review this percentage on an annual basis. Upon the review, ERCOT may make a recommendation to revise this percentage under Section 21, Process for Nodal Protocol Revision.
- (3) For any Settlement and billing disputes resolved prior to issuance of the RTM Final Statement, ERCOT shall effect the dispute's resolution on the RTM Final Statement for that Operating Day. If a dispute is submitted by 15 Business Days after the issuance of the RTM Initial Statement for an Operating Day and is not resolved on the RTM Final Statement, ERCOT will effect the dispute's resolution on an RTM Resettlement Statement for that Operating Day. ERCOT shall issue such an RTM Resettlement Statement within a reasonable time after resolving the Settlement and billing dispute.
- (4) ERCOT must effect the resolution of any dispute submitted more than 15 Business Days after the issuance of the RTM Initial Statement on the next available Resettlement or RTM True-Up statement for that Operating Day. For Settlement and billing disputes resolved under Section 9.14, Settlement and Billing Dispute Process, and submitted at least 20 Business Days before the scheduled date for issuance of the RTM True-Up Statement, ERCOT will include adjustments relating to the dispute on the RTM True-Up Statement. Resolved disputes must be included on the next available [RTM Settlement Invoice](#) after ERCOT has issued the RTM True-Up Statement.
- (5) ERCOT may not issue an RTM Resettlement Statement less than 20 days before a scheduled RTM Final Statement or RTM True-Up Statement for the relevant Operating Day. An RTM Resettlement Statement will reflect differences to financial records generated on the previous Settlement Statement for the given Operating Day.

9.6 Settlement Invoices for the [Day-Ahead Market and Real-Time Market](#)

- (1) ERCOT shall prepare Settlement Invoices ~~for the RTM (RTM Invoices)~~ on a net basis ~~for a Counter Party each Invoice cycle~~ based on [Day-Ahead Market \(DAM\) Statements](#), [DAM Resettlement Statements](#), [Real-Time Market \(RTM\) Initial Statements](#), [RTM Final Statements](#), [RTM True-Up Statements](#) and [RTM Resettlement Statements](#) ~~for Entities registered by the same Counter Party~~. ~~ERCOT must issue Invoices on a weekly basis on each Thursday, unless that Thursday is not a Business Day. If a Thursday is not a Business Day, ERCOT shall issue the RTM Invoices on the next Business Day after that~~

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~~Thursday.~~ ERCOT shall issue the Settlement Invoices on the same Business Day as the day that the DAM and RTM Statements are posted to the Market Information System (MIS) Certified Area. ERCOT will post the actual dates that it will issue the RTMSettlement Invoices under Section 9.1.2, Settlement Calendar. ~~For each cycle, the~~ Market ParticipantCounter Party Market Participant to whom the RTMSettlement Invoice is addressed ("Invoice Recipient") is either a net payee or net payor.

- (2) Each Invoice Recipient shall pay any net debit and be entitled to receive any net credit shown on the RTMSettlement Invoice on the payment due date, whether or not there is any Settlement and Billing dispute regarding the amount of the debit or credit.
- (3) ERCOT shall post RTMSettlement Invoices on the MIS Certified Area. The Invoice Recipient is responsible for accessing the RTMSettlement Invoice on the MIS Certified Area once posted by ERCOT.
- (4) RTMSettlement Invoice items must be grouped by DAM, DAM Resettlement, RTM Initial, RTM Final, RTM Resettlement, and RTM True-Up categories and must be sorted by Operating Day within each category. RTMSettlement Invoices must contain the following information:
 - (a) The Invoice Recipient's name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due/Payable – the aggregate summary of all charges owed by, or due by to, the Invoice Recipient ~~summarized by Operating Day~~;
 - (d) Time Periods – the time period covered for each line item;
 - (e) Run Date – the date on which the Invoice was created and published;
 - (f) Invoice Reference Number – a unique number generated by ERCOT for payment tracking purposes;
 - (g) Statement Reference – an identification code used to reference each Settlement Statement invoiced;
 - (h) Payment Date and Time – the date and time that Invoice amounts are to be paid or received;
 - (i) Remittance Information Details – details including the account number, bank name and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and
 - (j) Overdue Terms – the terms that would be applied if payments were received late.

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9.7 Payment Process for the RTMSettlement Invoices

Payments for the RTMSettlement Invoices are due on a Business Day and Bank Business Day basis in a two-day, two-step process as detailed below.

9.7.1 Invoice Recipient Payment to ERCOT for the RTMSettlement Invoices

- (1) The payment due date and time for the RTMSettlement Invoice, with funds owed by an Invoice Recipient, is 1700 on the ~~fourth~~ third Bank Business Day after the RTMSettlement Invoice date, unless the ~~fourth~~ third Bank Business Day is not a Business Day. If the ~~fourth~~ third Bank Business Day is not a Business Day, the payment is due by 1700 on the next Bank Business Day after the ~~fourth~~ third Bank Business Day that is also a Business Day.
- (2) All RTMSettlement Invoices due, with funds owed by an Invoice Recipient, must be paid to ERCOT in U.S. Dollars by either of the following:
 - (a) On or before the payment due date if the payment is made by Electronic Funds Transfer (EFT) in immediately available or good funds (i.e., not subject to reversal); or
 - (b) On or before two Bank Business Days before the payment due date if the payment is made by Automated Clearing House (ACH) funds.

9.7.2 ERCOT Payment to Invoice Recipients for the Real-Time MarketSettlement Invoices

- (1) Subject to the availability of funds as discussed in paragraph (2) below, ERCOT must pay RTMSettlement Invoices with funds owed to an Invoice Recipient by 1700 on the next Bank Business Day after payments are due for that RTMSettlement Invoice under Section 9.7.1, Invoice Recipient Payment to ERCOT for the RTMSettlement Invoices subject to ERCOT's right to withhold payments for any reason set forth in these Protocols or as a matter of law, unless that next Bank Business Day is not a Business Day. If that next Bank Business Day is not a Business Day, the payment is due on the next Bank Business Day thereafter that is also a Business Day.
- (2) ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit to each Invoice Recipient for same day value the amounts determined by ERCOT to be available for payment to that Invoice Recipient under paragraph (d) of Section 9.19, Partial Payments to Invoice Recipients.

9.7.4 Late Fees and Late Fee Invoices for the RTMSettlement Invoices

- (1) A short-paying RTMSettlement Invoice Recipient or Default Uplift Invoice Recipient shall pay late fees to ERCOT on the short-pay amount according to the late fee terms specified in the ERCOT fee schedule posted on the Market Information System (MIS) Public Area for the period from and including the relevant payment due date to the date

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on which the payment, including any related transaction costs incurred by ERCOT, is received by ERCOT. ERCOT will cease charging late fees to the defaulting Entity when the conditions described in item (e) of Section 9.19, Partial Payments by Invoice Recipients, are met.

- (2) ERCOT shall distribute on a pro rata basis of monies owed to each Invoice Recipient any late fee revenues, less ERCOT's transaction costs, to the underpaid [RTMSettlement](#) Invoice Recipients or Default Uplift Invoice Recipient.
- (3) ERCOT shall post to the MIS Certified Area for each [RTMSettlement](#) Invoice Recipient or Default Uplift Invoice Recipient, an Invoice based on late fees ([RTM](#) Late Fee Invoice). The [RTM](#) Late Fee Invoice Recipient is responsible for accessing the information from the MIS Certified Area once posted by ERCOT.
- (4) ERCOT shall issue [RTM](#) Late Fee Invoices on the tenth day after the end of the month, unless the tenth day is not a Business Day. If that tenth day is not a Business Day, ERCOT shall issue the [RTM](#) Late Fee Invoice by 2400 of the next Business Day thereafter. The actual dates that [RTM](#) Late Fee Invoices will be issued will be posted by ERCOT under Section 9.1.2, Settlement Calendar.
- (5) Each [RTM](#) Late Fee Invoice must contain:
 - (a) The Invoice Recipient's name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due or Payable – the aggregate summary of all charges owed to or due from an Invoice Recipient;
 - (d) Time Periods – the time period covered for each line item;
 - (e) Run Date – the date on which ERCOT created and published the Invoice;
 - (f) Invoice Reference Number – a unique number generated by the ERCOT applications for payment tracking purposes;
 - (g) Payment Date and Time – the date and time that Invoice amounts are to be paid or received;
 - (h) Remittance Information Details – details, including the account number, bank name and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and
 - (i) Overdue Terms – the terms that would be applied if payments were received late.
- (6) Payments for [RTM](#) Late Fee Invoices must be made on days that are both a Business Day and a Bank Business Day in a two-day, two-step process as detailed below. Payments for

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~~RTM~~Late Fee Invoices are due on the applicable payment due date, whether or not there is any Settlement and billing dispute regarding the amount of the payment.

- (a) The payment due date and time for the ~~RTM~~Late Fee Invoice, with funds owed by an Invoice Recipient, is 1700 on the fourth Business Day after the ~~RTM~~Late Fee Invoice date unless that day is not a Bank Business Day. If the fourth Business Day is not a Bank Business Day, then the payment is due by 1700 on the next Business Day after the fourth Business Day that is also a Bank Business Day.
- (b) All ~~RTM~~Late Fee Invoices due, with funds owed by an Invoice Recipient, must be paid to ERCOT in USDs by either of the following:
 - (i) On or before the payment due date if the payment is made by EFT in immediately available or good funds (i.e., not subject to reversal); or
 - (ii) On or before two Bank Business Days before the payment due date if the payment is made by ACH funds.
- (c) Subject to the availability of funds as discussed in paragraph (d) below, ~~RTM~~Late Fee Invoices with funds owed to an Invoice Recipient must be paid by ERCOT to the Invoice Recipient by 1700 on the next Bank Business Day after payments are due for that ~~RTM~~Late Fee Invoice under paragraph (a) above, subject to ERCOT's right to withhold payments under Section 16, Registration and Qualification of Market Participants, or pursuant to common law unless that next Bank Business Day is not a Business Day. If that next Bank Business Day is not a Business Day, then the payment is due on the next Bank Business Day thereafter that is also a Business Day.
- (d) If at least one Invoice Recipient owing funds does not pay its ~~RTM~~Late Fee Invoice in full (short-pays), ERCOT shall reduce payments to all ~~RTM~~Late Fee Invoice Recipients owed monies from ERCOT. The reductions must be based on a pro rata basis of monies owed to each Invoice Recipient, to the extent necessary to clear ERCOT's accounts on the payment due date to achieve revenue neutrality for ERCOT. ERCOT shall provide to all Market Participants payment details on all short pay and subsequent reimbursements of short pays. Details must include the identity of each short-paying Invoice Recipient and the dollar amount attributable to that Invoice Recipient, broken down by Invoice numbers. In addition, ERCOT shall provide the aggregate total of all amounts due to all Invoice Recipients before applying the amount not paid on the Invoice. ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit to each Invoice Recipient for same day value the amounts determined by ERCOT to be available for payment.

9.8 CRR Auction Award Invoices

Comment [s1]: Please note this Section also being revised by NPRR320.

- (1) ERCOT shall prepare invoices for each Congestion Revenue Right (CRR) Auction (CRR Auction Invoice) on a net basis. Invoices must be issued on the first Business Day

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following the completion of a CRR Auction on the date specified in the Settlement Calendar. For each CRR Auction Invoice, the ~~CRR Account Holder~~ Counter Party CRR Account Holder to whom the Invoice is addressed (“Invoice Recipient”) is either a net payee or net payor. The Invoice Recipient is responsible for accessing the CRR Auction Invoice on the Market Information System (MIS) Certified Area once posted by ERCOT.

- (2) Each Invoice Recipient shall pay any net debit and be entitled to receive any net credit shown on the CRR Auction Invoice on the payment due date. Payments for CRR Auction Invoices are due on the applicable payment due date, whether or not there is any Settlement and Billing dispute regarding the amount of the payment.
- (3) ERCOT shall post on the MIS Certified Area for each Invoice Recipient a CRR Auction Invoice based on CRR Auction charges and payments as set forth in:
 - (a) Section 7.5.6.1, Payment of an Awarded CRR Auction Offer;
 - (b) Section 7.5.6.2, Charge of an Awarded CRR Auction Bid; and
 - (c) Section 7.5.6.3, Charge of PCRRs Pertaining to a CRR Auction.
- (4) CRR Auction Invoices must contain the following information:
 - (a) The Invoice Recipient’s name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due/Payable – the aggregate summary of all charges owed to or due from the Invoice Recipient summarized by CRR Auction;
 - (d) Time Period – the CRR Auction for which the Invoice is generated;
 - (e) Run Date – the date on which ERCOT created and published the Invoice;
 - (f) Invoice Reference Number – a unique number generated by ERCOT for payment tracking purposes;
 - (g) Product Description – a description of each product awarded in, sold in, or allocated before the CRR Auction;
 - (h) Payment Date – the date and time that Invoice amounts are to be paid or received; and
 - (i) Remittance Information Details – details including the account number, bank name and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient’s account from which ERCOT may draw payments due.

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9.10 CRR Auction Revenue Distribution Invoices

- (1) ERCOT shall prepare Settlement Invoices for [Congestion Revenue Right \(CRR\)](#) Auction Revenue Distribution (CARD Invoices) on a monthly basis on the first Business Day following the [Real-Time Market \(RTM\)](#) Initial Settlement posting of the last day of the month on the date specified in the Settlement Calendar.
- (2) ERCOT shall true up the distribution of monthly CRR Auction Revenues by posting additional Settlement Invoices on the first Business Day following the RTM Final Settlement posting of the last day of the month on the date specified in the Settlement Calendar. A true up [CRR Auction Revenue Distribution \(CARD\)](#) Invoice will reflect differences to financial records generated on the previous CARD Invoice for a given month.
- (3) For each cycle, the ~~Market Participant~~[Counter Party Market Participant](#) to whom the CARD Invoice is addressed (“Invoice Recipient”) is either a payee or payor. The Invoice Recipient is responsible for accessing the CARD Invoice on the [Market Information System \(MIS\)](#) Certified Area once posted by ERCOT.
- (4) Each Invoice Recipient shall pay any debit and be entitled to receive any credit shown on the CARD Invoice on the payment due date. Payments for CARD Invoices are due on the applicable payment due date whether or not there is any Settlement and Billing dispute regarding the amount of the payment.
- (5) ERCOT shall post on the MIS Certified Area for each Invoice Recipient a CARD Invoice based the calculations located:
 - (a) Section 7.5.6.4, CRR Auction Revenues; and
 - (b) Section 7.5.7, Method for Distributing CRR Auction Revenues.
- (6) CARD Invoices must contain the following information:
 - (a) The Invoice Recipient’s name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Due/Payable – the aggregate summary of all charges owed to or due from the Invoice Recipient summarized by CRR Auction Revenue month;
 - (d) Time Period – the CRR Auction Revenue month for which the Invoice is generated, including Initial or Final distribution;
 - (e) Run Date – the date on which ERCOT created and published the Invoice;
 - (f) Invoice Reference Number – a unique number generated by ERCOT for payment tracking purposes;

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- (g) Payment Date – the date and time that Invoice amounts are to be paid or received; and
- (h) Remittance Information Details – details including the account number, bank name and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient’s account from which ERCOT may draw payments due.

9.12 CRR Balancing Account Invoices

- (1) ERCOT shall prepare Settlement Invoices for the [Congestion Revenue Right \(CRR\)](#) Balancing Account on a monthly basis on the first Business Day following the [Real-Time Market \(RTM\)](#) Initial Settlement posting of the last day of the month on the date specified in the Settlement Calendar.
- (2) For each Invoice cycle, the ~~Market Participant~~~~Counter Party~~[Market Participant](#) to whom the CRR Balancing Account Invoice is addressed (“Invoice Recipient”) is a payee. The Invoice Recipient is responsible for accessing the CRR Balancing Account Invoice on the [Market Information System \(MIS\)](#) Certified Area once posted by ERCOT.
- (3) Each Invoice Recipient shall be entitled to receive any credit shown on the CRR Balancing Account Invoice on the payment due date.
- (4) ERCOT shall post on the MIS Certified Area for each Invoice Recipient a CRR Balancing Account Invoice based the calculations located:
 - (a) Section 7.9.3.4, Monthly Refunds to Short-Paid CRR Owners; and
 - (b) Section 7.9.3.5, CRR Balancing Account Closure.
- (5) CRR Balancing Account Invoices must contain the following information:
 - (a) The Invoice Recipient’s name;
 - (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
 - (c) Net Amount Payable – the aggregate summary of all amounts owed to the Invoice Recipient summarized by month;
 - (d) Time Period – the time period covered for each line item;
 - (e) Run Date – the date on which the ERCOT created and published Invoice;
 - (f) Invoice Reference Number – a unique number generated by ERCOT for payment tracking purposes; and
 - (g) Payment Date – the date and time that Invoice amounts are to be received.

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9.13 Payment Process for the CRR Balancing Account

Payments for the [Congestion Revenue Right \(CRR\)](#) Balancing Account are due on a Business Day and Bank Business Day basis in a one-day, one-step process, as detailed below.

- (1) By 1700 on the first day that is both a Business Day and a Bank Business Day following the due date of the [RTM Settlement](#) Invoice that includes the [Real-Time Market \(RTM\)](#) Initial Settlement statement for the last day of the month and subject to ERCOT's right to withhold payments under Section 16, [Registration and Qualification of Market Participants](#), and pursuant to common law ERCOT shall pay [on a net credit shown on the CRR Balancing Account Invoice based on amounts due](#):
 - (a) To each short-paid CRR Owner a monthly refund from the positive balance in the CRR Balancing Account, with the amount paid to each CRR Owner as calculated in Section 7.9.3.4, [Monthly Refunds to Short-Paid CRR Owners](#); and
 - (b) To each QSE, any remaining positive balance in the CRR Balancing Account, with the amount paid to each QSE as calculated in Section 7.9.3.5, [CRR Balancing Account Closure](#).
- (2) ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit, to each ~~CRR Owner or QSE Invoice Recipient~~ [CRR Owner or QSE](#), for same day value, the amounts determined by ERCOT to be available for payment.

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9.14.2 Notice of Dispute

- (1) A Settlement Statement Recipient may dispute items or calculations in the most recently issued Settlement Statement for an Operating Day, except as limited for RTM True-Up Statements in paragraph (3) below. The dispute will apply to the Operating Day in question, not to the associated Settlement Statement. The Market Participant must enter the Settlement and billing dispute electronically through the ERCOT dispute tool provided on the Market Information System (MIS) Certified Area. In processing disputes under this Section, ERCOT will analyze the latest Settlement Statement issued.
- (2) An Invoice Recipient may dispute elements of an Invoice that are not the result of a Settlement Statement that are contained on the Invoice. The Invoice Recipient must file the ~~RTM~~ Invoice dispute within ten Business Days of the date on which ERCOT posted the Invoice.
- (3) The Statement Recipient is deemed to have validated each RTM True-Up Statement or Resettlement Statement arising from the True-Up Statement unless it has raised a Settlement and billing dispute or reported an exception within ten Business Days of the date on which ERCOT issued the Settlement Statement. With respect to an RTM True-Up Statement or any subsequent Resettlement Statement after ERCOT issued the True-

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Up Statement, ERCOT will consider only Settlement and billing disputes associated with incremental changes between the RTM True-Up Statement or Resettlement Statement, and the most recent previous Settlement Statement for that Operating Day. The Statement Recipient may recover only the amounts associated with the incremental monetary change between the prior Statement and the Statement from which the dispute arose. ERCOT shall reject late-filed Settlement and billing disputes. Once the deadline for filing a dispute has passed, an RTM True-Up Statement binds the Statement Recipient to which it relates unless ERCOT issues a subsequent Resettlement Statement pursuant to this Section. Once the deadline for filing a dispute has passed, an RTM Statement binds the Statement Recipient to which it relates unless ERCOT issues a subsequent Resettlement Statement.

- (4) The Statement Recipient is deemed to have validated each DAM Settlement or Resettlement Statement unless it has raised a Settlement and billing dispute or reported an exception within ten Business Days of the date on which ERCOT issued the Settlement or Resettlement Statement. With respect to a DAM Resettlement Statement, ERCOT will consider only Settlement and billing disputes associated with incremental changes between the DAM Resettlement Statement and the most recent previous Settlement Statement for that Operating Day. The Statement Recipient may recover only the amounts associated with the incremental monetary change between the prior Statement and the Statement from which the dispute arose. ERCOT shall reject late-filed Settlement and billing disputes. Once the deadline for filing a dispute has passed, a DAM Statement binds the Statement Recipient to which it relates unless ERCOT issues a subsequent Resettlement Statement.
- (5) ERCOT shall reject Settlement and billing disputes for a given Operating Day during the 20 Business Days before the scheduled date for issuance of the RTM True-Up Statement for that Operating Day.
- (6) However, to the extent a disputing party claims that the Settlement or billing dispute relates to information made available under Section 1.3.3, Expiration of Confidentiality, the disputing party must register the Settlement and billing dispute with ERCOT by electronic means within 60 days after the date the information became available. All communication to and from ERCOT concerning disputes must be made through either the MIS Certified Area or other electronic communication.

9.19 Partial Payments by Invoice Recipients

Comment [s2]: Please note this Section also being revised by NPRR338.

If at least one Invoice Recipient owing funds does not pay its Day Ahead Market (DAM) or Real Time Market (RTM) Settlement Invoice in full (i.e., a short-pay), ERCOT shall follow the procedure set forth below:

- (a) ERCOT shall make every reasonable attempt to collect payment from each short-paying Invoice Recipient prior to four hours preceding the close of the Bank Business Day

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Central Prevailing Time (CPT) on the day that payments by ERCOT are due to be paid to applicable Invoice Recipient(s).

- (b) ERCOT shall draw on any available security pledged to ERCOT by each short-paying Invoice Recipient that did not pay the amount due under paragraph (a) above. ERCOT may, in its sole discretion, hold up to five percent of security (posted collateral) of each short-paying Invoice Recipient and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held after the last True-Up Statements will be applied to unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1, Default Uplift Invoices.
- (c) ERCOT shall offset or recoup any amounts owed, or to be owed, by ERCOT to a short-paying Invoice Recipient against amounts not paid by that Invoice Recipient, and ERCOT shall apply the amount offset or recouped to cover short pays by that Invoice Recipient. ERCOT may, in its sole discretion, hold credit Invoices and use those funds to pay subsequent Settlement Invoices as they become due. Any funds still held after the last True-Up Statement will be offset or recouped against unpaid Invoices in conjunction with the default uplift process outlined in Section 9.19.1.
- (d) If, after taking the actions set forth in paragraphs (a), (b) and (c) above, ERCOT still does not have sufficient funds to pay all amounts that it owes to [DAM-Settlement](#) Invoice Recipients in full, ERCOT shall deduct any applicable [DAM](#)-administrative fees as specified in Section 9.16, Administrative Fees, payments for Reliability Must-Run (RMR) Services, ~~and amounts calculated for [CRR shortfall charges as specified in paragraph \(3\) of Section 7.9.3.3, Shortfall Charges to CRR Owners, and](#) the Congestion Revenue Right (CRR) Balancing Account from the amount received or collected and then reduce payments to all [DAM-Settlement](#) Invoice Recipients owed monies from ERCOT. ~~If, after taking the actions set forth in paragraph (a), (b) and (c) above, ERCOT still does not have sufficient funds to pay in full all amounts owed to RTM Invoice Recipients, ERCOT shall deduct any applicable RTM administrative fees as specified in Section 9.16 and payments for RMR Services from the amount received or collected and reduce payments to all RTM Invoice Recipients owed monies from ERCOT except for monies owed for RMR Services.~~ The reductions must be based on a pro rata basis of monies owed to each ~~[DAM or RTM Settlement](#)~~ Invoice Recipient, to the extent necessary to clear ERCOT's accounts on the payment due date to achieve revenue neutrality for ERCOT. ERCOT shall provide to all Market Participants payment details on all short pays and subsequent reimbursements of short pays. Details must include the identity of each short-paying Invoice Recipient and the dollar amount attributable to that Invoice Recipient, broken down by Invoice numbers. In addition, ERCOT shall provide the aggregate total of all amounts due to all Invoice Recipients before applying the amount not paid on the [DAM or RTM Settlement](#) Invoice.~~
- (e) If sufficient funds continue to be unavailable for ERCOT to pay all amounts in full (excluding late fees) to short-paid Entities for that ~~[DAM or RTM Settlement](#)~~ Invoice, and the short-paying Entity is not complying with a payment plan designed to enable ERCOT to pay all amounts in full (excluding late fees) to short-paid Entities, the following shall occur:

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- (i) ERCOT will cease charging late fees to the short-paying Entity; provided however, that ERCOT may cease charging late fees earlier than 180 days following a short-payment of a ~~DAM or RTM~~ Settlement Invoice if ERCOT, in its sole discretion, determines that the recovery of late fees from the short-paying Entity is unlikely; and
 - (ii) ERCOT shall uplift short-paid amounts through the Default Uplift process described below in Section 9.19.1 and Section 9.19.2, Payment Process for Default Uplift Invoices.
- (f) When ERCOT enters into a payment plan with a short-pay Invoice Recipient, ERCOT shall post to the Market Information System (MIS) Secure Area:
- (i) The short-pay plan;
 - (ii) The schedule of quantifiable expected payments, updated if and when modifications are made to the payment schedule; and
 - (iii) Invoice dates to which the payments will be applied.
- (g) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient before the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds to the earliest short-paid Invoice for that short-paying Invoice Recipient. ERCOT shall use its best efforts to distribute collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000 on a pro rata basis of monies owed. Subsequently collected funds that have not previously been distributed will be applied against unpaid Invoices in conjunction with the uplift process outlined in Section 9.19.1.
- (h) To the extent ERCOT is able to collect past due funds owed by a short-paying Invoice Recipient, after the default uplift process defined in Section 9.19.1, ERCOT shall allocate the collected funds using the same allocation method as in the default uplift process. ERCOT shall use its best efforts to distribute subsequently collected funds quarterly by the 15th Business Day following the end of a calendar quarter for a short paying Entity when the cumulative amount of undistributed funds held exceed \$50,000.

9.19.1 Default Uplift Invoices

- (1) ERCOT shall collect the total short-pay amount for all ~~DAM and RTM~~ Settlement Invoices for a month, less the total payments expected from a payment plan, from Qualified Scheduling Entities (QSEs) and CRR Account Holders (CRRAHs). ~~Qualified Scheduling Entities (QSEs) and CRR Account Holders~~ the Counter Party. ~~The amount charged to each Counter Party's QSE(s) and/or CRR Account Holder(s) is determined~~

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~~according to paragraphs (2) and (3) below.~~ ERCOT must pay the funds it collects from payments on Default Uplift Invoices to the Entities previously short-paid. ERCOT shall notify those Entities of the details of the payment.

- (2) Each Counter-Party's share of the uplift is calculated using True-Up Settlement data for each Operating Day in the month prior to the month in which the ~~DAM or RTM~~ default occurred, and is calculated as follows:

$$\frac{\text{Max}_{cp} (\sum_{cp} (\text{URTMG}_{mp} + \text{URTDCIMP}_{mp}), \sum_{cp} \text{URTAML}_{mp}, \sum_{cp} \text{URTQQUES}_{mp}, \sum_{cp} \text{URTQQEP}_{mp}, \sum_{cp} \text{UDAES}_{mp}, \sum_{cp} \text{UDAEP}_{mp}, \sum_{cp} \text{URTOBL}_{mp}, \sum_{cp} (\sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBS}_{mp}))), \sum_{cp} (\sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp})))}{\sum_{cp} [\text{Max}_{cp} (\sum_{cp} (\text{URTMG}_{mp} + \text{URTDCIMP}_{mp}), \sum_{cp} \text{URTAML}_{mp}, \sum_{cp} \text{URTQQUES}_{mp}, \sum_{cp} \text{URTQQEP}_{mp}, \sum_{cp} \text{UDAES}_{mp}, \sum_{cp} \text{UDAEP}_{mp}, \sum_{cp} \text{URTOBL}_{mp}, \sum_{cp} (\sum_{mp} (\text{UDAOPT}_{mp} + \text{UDAOBL}_{mp} + \text{UOPTS}_{mp} + \text{UOBS}_{mp}))), \sum_{cp} (\sum_{mp} (\text{UOPTP}_{mp} + \text{UOBLP}_{mp}))}]}$$

Where:

$\text{URTMG}_{mp} = \sum_{p, r, i} (\text{RTMG}_{mp, p, r, i})$, excluding RTMG for RMR Resources and RTMG in Reliability Unit Commitment (RUC)-Committed Intervals for RUC-committed Resources

$$\text{URTDCIMP}_{mp} = \sum_{p, r, i} (\text{RTDCIMP}_{mp, p, i}) / 4$$

$$\text{URTAML}_{mp} = \sum_{p, i} (\text{RTAML}_{mp, p, i})$$

$$\text{URTQQUES}_{mp} = \sum_{p, i} (\text{RTQQUES}_{mp, p, i})$$

$$\text{URTQQEP}_{mp} = \sum_{p, i} (\text{RTQQEP}_{mp, p, i})$$

$$\text{UDAES}_{mp} = \sum_{p, h} (\text{DAES}_{mp, p, h})$$

$$\text{UDAEP}_{mp} = \sum_{p, h} (\text{DAEP}_{mp, p, h})$$

$$\text{URTOBL}_{mp} = \sum_{(j, k), h} (\text{RTOBL}_{mp, (j, k), h})$$

$$\text{UDAOPT}_{mp} = \sum_{(j, k), h} (\text{DAOPT}_{mp, (j, k), h})$$

$$\text{UDAOBL}_{mp} = \sum_{(j, k), h} (\text{DAOBL}_{mp, (j, k), h})$$

$$\text{UOPTS}_{mp} = \sum_{(j, k), h} (\text{OPTS}_{mp, (j, k), h})$$

$$\text{UOBS}_{mp} = \sum_{(j, k), h} (\text{OBS}_{mp, (j, k), h})$$

$$\text{UOPTP}_{mp} = \sum_{(j, k), h} (\text{OPTP}_{mp, j, h})$$

$$\text{UOBLP}_{mp} = \sum_{(j, k), h} (\text{OBLP}_{mp, (j, k), h})$$

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The above variables are defined as follows:

Variable	Unit	Definition
RTMG _{mp, p, r, i}	MWh	<i>Real-Time Metered Generation per Market Participant per Settlement Point per Resource</i> —The Real-Time energy produced by the Generation Resource <i>r</i> represented by Market Participant <i>mp</i> , at Resource Node <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTMG _{mp}	MWh	<i>Uplift Real-Time Metered Generation per Market Participant</i> —The monthly sum of Real-Time energy produced by Generation Resources represented by Market Participant <i>mp</i> , excluding generation for RMR Resources and generation in RUC-Committed Intervals, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTDCIMP _{mp, p, i}	MW	<i>Real-Time DC Import per QSE per Settlement Point</i> —The aggregated Direct Current Tie (DC Tie) Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System through DC Tie <i>p</i> , for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTDCIMP _{mp}	MW	<i>Uplift Real-Time DC Import per Market Participant</i> —The monthly sum of the aggregated DC Tie Schedule submitted by Market Participant <i>mp</i> , as an importer into the ERCOT System where the Market Participant is a QSE assigned to a registered Counter-Party.
RTAML _{mp, p, i}	MWh	<i>Real-Time Adjusted Metered Load per Market Participant per Settlement Point</i> —The sum of the Adjusted Metered Load (AML) at the Electrical Buses that are included in Settlement Point <i>p</i> represented by Market Participant <i>mp</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTAML _{mp}	MWh	<i>Uplift Real-Time Adjusted Metered Load per Market Participant</i> —The monthly sum of the AML represented by Market Participant <i>mp</i> , where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQES _{mp, p, i}	MW	<i>QSE-to-QSE Energy Sale per Market Participant per Settlement Point</i> —The amount of MW sold by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQES _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Sale per Market Participant</i> —The monthly sum of MW sold by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTQQEP _{mp, p, i}	MW	<i>QSE-to-QSE Energy Purchase per Market Participant per Settlement Point</i> —The amount of MW bought by Market Participant <i>mp</i> through Energy Trades at Settlement Point <i>p</i> for the 15-minute Settlement Interval <i>i</i> , where the Market Participant is a QSE.
URTQQEP _{mp}	MWh	<i>Uplift QSE-to-QSE Energy Purchase per Market Participant</i> —The monthly sum of MW bought by Market Participant <i>mp</i> through Energy Trades, where the Market Participant is a QSE assigned to the registered Counter-Party.
DAES _{mp, p, h}	MW	<i>Day-Ahead Energy Sale per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offers at Settlement Point <i>p</i> , excluding the offers submitted for RMR Units at the same Settlement Point, for the hour <i>h</i> , where the Market Participant is a QSE.
UDAES _{mp}	MWh	<i>Uplift Day-Ahead Energy Sale per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared Three-Part Supply Offers in the DAM and cleared DAM Energy-Only Offer Curves, where the Market Participant is a QSE assigned to the registered Counter-Party.

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Variable	Unit	Definition
DAEP _{mp, p, h}	MW	<i>Day-Ahead Energy Purchase per Market Participant per Settlement Point per hour</i> —The total amount of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids at Settlement Point <i>p</i> for the hour <i>h</i> , where the Market Participant is a QSE.
UDAEP _{mp}	MWh	<i>Uplift Day-Ahead Energy Purchase per Market Participant</i> —The monthly total of energy represented by Market Participant <i>mp</i> 's cleared DAM Energy Bids, where the Market Participant is a QSE assigned to the registered Counter-Party.
RTOBL _{mp, (j, k), h}	MW	<i>Real-Time Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's Point-to-Point (PTP) Obligations with the source <i>j</i> and the sink <i>k</i> settled in Real-Time for the hour <i>h</i> , and where the Market Participant is a QSE.
URTOBL _{mp}	MWh	<i>Uplift Real-Time Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations settled in Real-Time, counting the quantity only once per source and sink pair, and where the Market Participant is a QSE assigned to the registered Counter-Party.
DAOPT _{mp, (j, k), h}	MW	<i>Day-Ahead Option per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's PTP Options with the source <i>j</i> and the sink <i>k</i> owned in the DAM for the hour <i>h</i> , and where the Market Participant is a CRR Account Holder.
UDAOPT _{mp}	MWh	<i>Uplift Day-Ahead Option per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Options owned in the DAM, counting the ownership quantity only once per source and sink pair, and where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
DAOBL _{mp, (j, k), h}	MW	<i>Day-Ahead Obligation per Market Participant per source and sink pair per hour</i> —The number of Market Participant <i>mp</i> 's PTP Obligations with the source <i>j</i> and the sink <i>k</i> owned in the DAM for the hour <i>h</i> , and where the Market Participant is a CRR Account Holder.
UDAOBL _{mp}	MWh	<i>Uplift Day-Ahead Obligation per Market Participant</i> —The monthly total of Market Participant <i>mp</i> 's PTP Obligations owned in the DAM, counting the ownership quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OPTS _{mp, (j, k), a, h}	MW	<i>PTP Option Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Option offers with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOPTS _{mp}	MWh	<i>Uplift PTP Option Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option offers awarded in CRR Auctions, counting the awarded quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLs _{mp, (j, k), a, h}	MW	<i>PTP Obligation Sale per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation offers with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.

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Variable	Unit	Definition
UOBSL _{mp}	MWh	<i>Uplift PTP Obligation Sale per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation offers awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OPTP _{mp, (j, k), a, h}	MW	<i>PTP Option Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Option bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOPTP _{mp}	MWh	<i>PTP Option Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Option bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
OBLP _{mp, (j, k), a, h}	MW	<i>PTP Obligation Purchase per Market Participant per source and sink pair per CRR Auction per hour</i> —The MW quantity that represents the total of Market Participant <i>mp</i> 's PTP Obligation bids with the source <i>j</i> and the sink <i>k</i> awarded in CRR Auction <i>a</i> , for the hour <i>h</i> , where the Market Participant is a CRR Account Holder.
UOBLP _{mp}	MWh	<i>PTP Obligation Purchase per Market Participant</i> —The MW quantity that represents the monthly total of Market Participant <i>mp</i> 's PTP Obligation bids awarded in CRR Auctions, counting the quantity only once per source and sink pair, where the Market Participant is a CRR Account Holder assigned to the registered Counter-Party.
cp	none	A registered Counter-Party.
mp	none	A Market Participant that is a non-defaulting QSE or CRR Account Holder.
j	none	A source Settlement Point.
k	none	A sink Settlement Point.
a	none	A CRR Auction.
p	none	A Settlement Point.
i	none	A 15-minute Settlement Interval.
h	none	The hour that includes the Settlement Interval <i>i</i> .

~~(3) The uplifted short-paid amount will be allocated to the Market Participants (QSEs or CRR Account Holders) assigned to a registered Counter Party based on the pro-rata share of MWhs that the QSE or CRR Account Holder contributed to its Counter Party's maximum MWh activity ratio share.~~

(3) The uplifted short-paid amount will be allocated to the Market Participants (QSEs or CRR Account Holders) assigned to a registered Counter-Party based on the pro-rata share of MWhs that the QSE or CRR Account Holder contributed to its Counter-Party's maximum MWh activity ratio share.

~~(434)~~ Any uplifted short-paid amount greater than \$2,500,000 must be scheduled so that no amount greater than \$2,500,000 is charged on each set of Default Uplift Invoices until

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ERCOT uplifts the total short-paid amount. ERCOT must issue Default Uplift Invoices at least 30 days apart from each other.

(545) ERCOT shall issue Default Uplift Invoices no earlier than 180 days following a short-pay of a ~~DAM/RTM~~Settlement Invoice on the date specified in the Settlement Calendar. The Invoice Recipient is responsible for accessing the Invoice on the MIS Certified Area once posted by ERCOT.

(656) Each Default Uplift Invoice must contain:

- (a) The Invoice Recipient's name;
- (b) The ERCOT identifier (Settlement identification number issued by ERCOT);
- (c) Net Amount Due or Payable – the aggregate summary of all charges owed by a Default Uplift Invoice Recipient;
- (d) Run Date – the date on which ERCOT created and published the Default Uplift Invoice;
- (e) Invoice Reference Number – a unique number generated by the ERCOT applications for payment tracking purposes;
- (f) Default Uplift Invoice Reference – an identification code used to reference the amount uplifted;
- (g) Payment Date and Time – the date and time that Default Uplift Invoice amounts must be paid;
- (h) Remittance Information Details – details including the account number, bank name, and electronic transfer instructions of the ERCOT account to which any amounts owed by the Invoice Recipient are to be paid or of the Invoice Recipient's account from which ERCOT may draw payments due; and
- (i) Overdue Terms – the terms that would apply if the ~~Market Participant Counter-Party~~ Market Participant makes a late payment.

(7) Each Invoice Recipient shall pay any net debit shown on the Default Uplift Invoice on the payment due date whether or not there is any Settlement and billing dispute regarding the amount of the debit.

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9.19.2.2 ERCOT Payment to Invoice Recipients for Default Uplift

- (1) Subject to the availability of funds as discussed in paragraph (2) below, uplifted funds received from Default Uplift Invoices must be paid by ERCOT to short-paid Invoice

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Recipients by 1700 on the next Bank Business Day after payments are due for that Default Uplift Invoice under Section 9.19.2.1, Invoice Recipient Payment to ERCOT for Default Uplift, subject to ERCOT's right to withhold payments under Section 16, Registration and Qualification of Market Participants, or pursuant to common law unless that next Bank Business Day is not a Business Day. If that next Bank Business Day is not a Business Day, the payment is due on the next Bank Business Day thereafter that is also a Business Day.

- (2) ERCOT shall give irrevocable instructions to the ERCOT financial institution to remit to each short-paid Invoice Recipient for same day value the amounts determined by ERCOT to be available for payment to that short-paid Invoice Recipient under paragraph (d) of Section 9.19, Partial Payments by Invoice Recipients.
- (3) Any short and late payments of Default Uplift Invoices must be handled under Section 9.7.4, Late Fees and Late Fee Invoices for the [RTM Settlement Invoices](#) and Default Uplift Invoices, and Section 9.19, respectively.

16.11.4 Determination and Monitoring of Counter-Party Credit Exposure

16.11.4.1 Determination of Total Potential Exposure for a Counter-Party

Comment [s3]: Please note this Section also being revised by NPRR300.

- (1) A Counter-Party's "Total Potential Exposure" (TPE) is: (i) for a Counter-Party that has granted ERCOT a first priority security interest in receivables generated under or in connection with the Counter-Party Agreement or is an EC or an Entity created under Texas Water Code (TWC) § 222.001, Creation, the algebraic sum of its current and future credit exposures, and (ii) for every other Counter-Party, the sum of its current credit exposure, if positive, and Future Credit Exposures (FCEs), if positive.
- (a) Current credit exposure is calculated as the Initial Estimated Liability (IEL) or the greater of its Estimated Aggregate Liability (EAL), Aggregate Incremental Liability (AIL) or the sum of its EAL and AIL. Current credit exposure includes the following:
 - (i) Obligations as a result of the Adjustment Period operations and Real-Time operations, including emergency operations;
 - (ii) Known obligations in the DAM; and
 - (iii) CRR-related known obligations.
- (b) FCE is calculated as the FCE that reflects the future mark-to-market value of CRRs registered in the name of the Counter-Party.
- (2) For a Counter-Party that has granted ERCOT a first priority security interest in receivables generated under or in connection with the Counter-Party Agreement or is an EC or an Entity created under TWC § 222.001:

TPE = $\text{Max}[0, [\text{Max}[(\text{IEL for the first 60 days}), \text{EAL}, \text{AIL}, (\text{EAL} + \text{AIL})]] + \text{FCE}]$

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For all other Counter-Parties:

$$TPE = \text{Max} [0, (\text{IEL for the first 60 days}), \text{EAL}, \text{AIL}, (\text{EAL} + \text{AIL})] + \text{Max} [0, \text{FCE}]$$

However, if a Counter Party has a Credit Rating below BB or Ba3 or an Equity to Asset Ratio of less than 10%, the following calculation will be used in place of the calculation in paragraph (2) above

(a) If a Counter Party has granted ERCOT a first priority security interest in receivables generated under or in connection with the Counter Party Agreement or is an EC or an Entity created under TWC § 222.001:

$$TPE = \text{Max} [\text{MCE}, [\text{Max} [(\text{IEL for the first 60 days}), \text{EAL}, \text{AIL}, (\text{EAL} + \text{AIL})] + \text{FCE}]]$$

(b) Otherwise:

$$TPE = \text{Max} [\text{MCE}, [\text{Max} [0, (\text{IEL for the first 60 days}), \text{EAL}, \text{AIL}, (\text{EAL} + \text{AIL})] + \text{Max} [0, \text{FCE}]]]$$

(4) For a Counter Party, ERCOT shall calculate the Minimum Current Exposure (MCE) using the following formula:

$$MCE = \text{OUT} + \text{PUL} + \text{RTLO} + \text{MRTFL} * \text{md} + \text{FCE}$$

The above variables are defined as follows:

<u>Variable</u>	<u>Unit</u>	<u>Description</u>
<u>OUT</u>	<u>\$</u>	<u>Outstanding Unpaid Transactions</u> —Outstanding, unpaid transactions of the Counter Party, which include (1) outstanding Invoices to the Counter Party, including Invoices for DAM activity and CRR Auction activity, (2) estimated unbilled items to the Counter Party, to the extent not adequately accommodated in the ADTE calculation (including resettlements and other known liabilities), and (3) estimated CRR Auction revenue available for distribution for the next two months, to the extent not invoiced to the Counter Party. Invoices will not be considered outstanding for purposes of this calculation the Business Day after that Invoice payment is received.
<u>PUL</u>	<u>\$</u>	<u>Potential Uplift</u> —Potential uplift to the Counter Party, to the extent and in the proportion that the Counter Party represents Entities to which an uplift of a short payment will be made pursuant to Section 9.19, Partial Payments by Invoice Recipients. It is calculated as the sum of: (a) Amounts expected to be uplifted within one year of the date of the calculation; and (b) 25%, or such other percentage based on available statistics regarding payment default under bankruptcy reorganization plans, of any short payment

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		<u>amounts being repaid to ERCOT under a bankruptcy reorganization plan that are due more than one year from the date of the calculation.</u>
<u>RTLO</u>	<u>\$</u>	<p><u><i>Real-Time Liability Outstanding</i>—The estimated or settled amounts due from or to ERCOT due to activities in the Real Time and Adjustment Period. Real-Time Liability (RTL) is the amounts for Load increased by amounts for awarded DAM energy offers, and Energy Trade sales and is decreased by amounts for awarded DAM Energy Bids, Energy Trade purchases, and estimated or settled amounts for generation. In addition RTL will be adjusted for CRRs settled in Real Time and for other amounts due to or from ERCOT by the Counter Party. RTL is determined over all Settlement Points and all Settlement Intervals over all relevant days, as follows:</u></p> <p><u>(a) For each Operating Day that is completed and settled but for which no Invoice has been issued, ERCOT shall calculate RTL using Settlement Statement data; and</u></p> <p><u>(b) For each Operating Day that is completed but not settled or for which no Invoice has been issued, ERCOT shall calculate RTL as the higher of ERCOT's estimate of the Counter-Party's RTL for the day or the Counter-Party's estimate of RTL for the day;</u></p>
<u>MRTEL</u>	<u>\$</u>	<p><u><i>Minimum Real-Time Forward Liability</i>—The Counter-Party's Minimum Real-Time Forward Liability shall be calculated as the Maximum of Daily Highest Real-Time Imbalance Volume in most recent 30 days, Highest Real-Time Load Volume in most recent 30 days, 20% of Highest Real-Time Generation Volume in most recent 30 days; multiplied by 120% of the associated derived Average Price per Mwh. If Counter-Party has no Real-Time Imbalance Volume, Real-Time Load Volume or Real-Time Generation Volume in the most recent 30 days, then it is 0. ERCOT may review and set limits for the derived average prices.</u></p>
<u>md</u>	<u>none</u>	<u>Minimum Days for which Real-Time Exposure should be covered. This value is currently 2 days.</u>
<u>FCE</u>	<u>\$</u>	<u><i>Future Credit Exposure</i>—Counter-Party FCE for all CRRs held by the Counter-Party as owner of record at ERCOT, for all Operating Days that have not yet occurred and for CRRs that have not settled.</u>

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(534) If ERCOT, in its sole discretion, determines that the TPE for a Counter-Party calculated under paragraph (1) above does not adequately match the financial risk created by that Counter-Party's activities under these Protocols, then ERCOT may set a different TPE for that Counter-Party. ERCOT shall, to the extent practical, give to the Counter-Party the information used to determine that different TPE. ERCOT shall provide written or electronic notice to the Counter-Party of the basis for ERCOT's assessment of the Counter-Party's financial risk and the resulting creditworthiness requirements.

(644) ERCOT shall monitor and calculate each Counter-Party's TPE daily.

16.11.4.3 Determination of Counter-Party Estimated Aggregate Liability

After a Counter-Party receives its first Invoice, ERCOT shall monitor and calculate the Counter-Party's EAL based on the formula below.

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$$EAL = \text{Max} [-(IEL \text{ during the first 60-day period} + DALE), MCE, -(Max \{(ADTE-RTLE \text{ during the previous 60-day period}\} + DALE), (RTLF + DALE)] + \text{Max} [RTLCNS, \text{Max} \{URTA \text{ during the previous 60 day period}\}] + OUT + PUL + DALE$$

The above variables are defined as follows:

Variable	Unit	Description
EAL	\$	Estimated Aggregate Liability—EAL for the Counter-Party.
IEL	\$	Initial Estimated Liability—IEL (as defined in Section 16.11.4.2, Determination of Counter-Party Initial Estimated Liability) for the Counter-Party.
ADTE-RTLE	\$	Average Daily Transaction Extrapolated Real Time Liability Extrapolated—4035 days-M1 multiplied by the sum of the net amount due from or to ERCOT by the Counter-Party in Real-Time Market (RTM) Initial Settlement-Statements generated in the 14 most recent calendar days included in the Counter-Party's two most recent Real-Time Settlement Invoices divided by the number of Real-Time Initial Settlement Statements generated for the Counter-Party in the 14 most recent calendar days, included in those two Settlement Invoices. Forward extrapolation for the Counter-Party's CRR Account Holder activity is excluded from this calculation.
URTA	\$	Unbilled Real Time Amount —M2 multiplied by the sum of the net amount due from or to ERCOT by the Counter-Party in RTM Initial Statements generated in the 14 most recent calendar days divided by the number of Real-Time Initial Settlement Statements generated for the Counter-Party in the 14 most recent calendar days. Forward extrapolation for the Counter-Party's CRR Account Holder activity is excluded from this calculation.
MCE	\$	<p>Minimum Collateral Exposure – For each Counter-Party, ERCOT shall determine a Minimum Collateral Exposure (MCE) as follows:</p> $MCE = \text{Max} \left\{ \frac{\sum_{d=-11,-25} \sum_{i=1,96} \sum_k [L_{oidk} * T2 + RTQONETES_{oidk} * T1 - G_{oidk} * (1-NUCADJ_o) * T2] * RTSP_{idk} * PM_o * SAF / n}{\sum_{d=-11,-25} \sum_{i=1,96} \sum_k [G_{oidk} * NUCADJ_o * T1 * RTSP_{idk} * PM_o * SAF / n]} \right\}$ $RTQONETES_{oidk} = \sum_c \text{Max} [0, [RTQOES_{oidkc} * RTSP_{idk} * PM_o * SAF] - [RTQOEP_{oidkc} * RTSP_{idk} * PM_o * SAF]]$ <p>Where:</p> $G_{oidk} = \text{Total Metered Generation at all Resource Nodes for Counter-Party } o \text{ for interval } i \text{ for calendar day } d \text{ at Settlement Point } k$ $L_{oidk} = \text{Total Adjusted Metered Load (AML) at all Load Zones for Counter-Party } o \text{ for interval } i \text{ for calendar day } d \text{ at Settlement Point } k$ $PM_o = \text{Price Multiplier—200\% fFor a Counter-Party that has}$

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Variable	Unit	Description
		<p>either made a late payment in the previous 12 months or has been the recipient of Level I - III Enforcement, else for all other Counter-Parties the Price Multiplier (PM) shall equal 100%</p> <p>SAF = <u>Seasonal Adjustment Factor</u>—Used to more precisely forecast the liability for Operating Days that are not yet completed. ERCOT shall initially set this factor equal to 120%. Changes to the PM factor will be reviewed by the Technical Advisory Committee (TAC) and approved by the ERCOT Board. ERCOT will provide notice to Market Participants of any change at least 14 days prior to the effective date along with the analysis supporting the change.</p> <p>1.1.1.1.1.1 <u>NUCADJ_o</u> = <u>Net Unit Contingent Adjustment</u>—A minimum value of 20% unless ERCOT can deduce using commercially reasonable measures and the Counter-Party's actual forced outage history that an increase in the outage factor more accurately reflects the Counter-Party's net unit contingency risk.</p> <p><u>RTQQNETES_{oidk}</u> = <u>Net OSE-to-OSE Energy Sales</u> for Counter-Party <i>o</i> for interval <i>i</i> for calendar day <i>d</i></p> <p><u>RTQQES_{oidkc}</u> = <u>OSE Energy Trades</u> for which the Counter-Party <i>o</i> is the seller for interval <i>i</i> for day <i>d</i> at Settlement Point <i>k</i> with Counter-Party <i>c</i></p> <p><u>RTQQEP_{oidkc}</u> = <u>OSE Energy Trades</u> for which the Counter-Party <i>o</i> is the buyer for interval <i>i</i> for calendar day <i>d</i> at Settlement Point <i>k</i> with Counter-Party <i>c</i></p> <p><u>RTSPP_{idk}</u> = <u>Real-Time Settlement Point Price</u> for interval <i>i</i> for calendar day <i>d</i> at Settlement Point <i>k</i></p> <p>T1 = 2 days</p> <p>T2 = 5 days</p> <p>c = Bilateral Counter-Party</p> <p>d = Calendar day</p> <p>i = Settlement Interval</p> <p>n = 14 days</p> <p>o = Counter-Party</p> <p>k = A Settlement Point</p>
RTL	\$	<u>Real-Time Liability</u> —The estimated or settled amounts due from or to ERCOT due to activities in the Real-Time and Adjustment Period. Real-Time Liability (RTL) is the amounts for Load increased by amounts for awarded DAM energy offers, and Energy Trade sales and is decreased by amounts for awarded DAM Energy Bids, Energy Trade purchases, and estimated or settled amounts for generation. In addition RTL will be adjusted for CRRs settled in Real-Time and for other amounts due to or from ERCOT by the Counter-Party.
RTLCNS	\$	<u>Real Time Liability Completed and Not Settled</u> — For each Operating Day that is completed but not settled or for which no Invoice has been issued, ERCOT shall calculate RTL as the higher of ERCOT's estimate of the Counter-Party's RTL for the day or the Counter-Party's estimate of RTL for the day

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Variable	Unit	Description
RTLF	\$	<u>Real Time Liability Forward</u> — For five Operating Days that are not yet completed, ERCOT shall calculate RTL as the higher of 150% of ERCOT's estimate of the Counter-Party's RTL for the most recent seven days or the Counter-Party's forecast of RTL for the next seven days.
OUT	\$	<u>Outstanding Unpaid Transactions</u> —Outstanding, unpaid transactions of the Counter-Party, which include (a) outstanding Invoices to the Counter-Party, including Invoices for DAM activity and CRR Auction activity; and (b) estimated unbilled items to the Counter-Party, to the extent not adequately accommodated in the ADTE calculation (including resettlements and other known liabilities); and (c) estimated CRR Auction revenue available for distribution for the next operating days in the previous two months, to the extent not invoiced to the Counter-Party. Invoices will not be considered outstanding for purposes of this calculation the Business Day after that Invoice payment is received.
PUL	\$	<u>Potential Uplift</u> —Potential uplift to the Counter-Party, to the extent and in the proportion that the Counter-Party represents Entities to which an uplift of a short payment will be made pursuant to Section 9.19, Partial Payments by Invoice Recipients. It is calculated as the sum of: (a) Amounts expected to be uplifted within one year of the date of the calculation; and (b) 25%, or such other percentage based on available statistics regarding payment default under bankruptcy reorganization plans, of any short payment amounts being repaid to ERCOT under a bankruptcy reorganization plan that are due more than one year from the date of the calculation.
DALE	\$	<u>Average Daily Day Ahead Liability Extrapolated</u> — 16 M1 days multiplied by the sum of the net amount due to or from ERCOT by the Counter-Party in the DAM Settlement Statements generated in the seven most recent calendar days that includes Ancillary Services and Point-to-Point (PTP) Obligations bought in the DAM included in the seven most recent DAM Settlement Invoices divided by the number of DAM Settlement Statements generated for the Counter-Party in the seven most recent calendar days included in those seven DAM Settlement Invoices. Forward extrapolation for the Counter-Party's CRR Account Holder's DAM settled payments and charges that are not an offset to PTP Obligations bought in the DAM are activity is excluded from this calculation. <u>CRR payment and charges as described in Section 7.9.1.1, Payments and Charges for PTP Obligations Settled in DAM, and Section 7.9.1.2, Payments for PTP Options Settled in DAM, that qualify as an offset to PTP obligations bought in the DAM, shall be a Settlement payment (charge) for PTP Options and Obligations settled in DAM less than or equal to the Settlement charge (payment) of the total of all PTP Obligations bought in the DAM at the specified source and sink pair for an Operating Hour within an Operating Day as described in Section 4.6.3, Settlement for PTP Obligations Bought in DAM, less all PTP Options and Obligations settled in DAM that were previously tested for qualification at the specified source and sink pair for an Operating Hour within an Operating Day.</u>

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16.11.4.4 ~~[RESERVED]~~ Determination of Counter Party Aggregate Incremental Liability

ERCOT shall monitor and calculate an AIL for each Counter Party using the formula below:

$$AIL = \frac{\sum_d (RTL_d)}{0.9} - \text{Max} [0, (\text{MAX (ADTE during previous 60-day period)} / 40 \cdot 35 \cdot N \cdot 0.9)]$$

The above variables are defined as follows:

Variable	Unit	Description
AIL	\$	Aggregate Incremental Liability—The amount by which the calculated incremental liability of the Counter-Party for all relevant days, N, exceeds the ADTE.
RTL	\$	<p>Real-Time Liability—The estimated or settled amounts due from or to ERCOT due to activities in the Real-Time and Adjustment Period. Real-Time Liability (RTL) is the amounts for Load increased by amounts for awarded DAM energy offers, and Energy Trade sales and is decreased by amounts for awarded DAM Energy Bids, Energy Trade purchases, and estimated or settled amounts for generation. In addition RTL will be adjusted for CRRs settled in Real-Time and for other amounts due to or from ERCOT by the Counter-Party. RTL is determined over all Settlement Points and all Settlement Intervals over all relevant days, as follows:</p> <p>(a) For each Operating Day that is completed and settled but for which no Invoice has been issued, ERCOT shall calculate RTL using Settlement Statement data;</p> <p>(b) For each Operating Day that is completed but not settled or for which no Invoice has been issued, ERCOT shall calculate RTL as the higher of ERCOT's estimate of the Counter-Party's RTL for the day or the Counter-Party's estimate of RTL for the day; and</p> <p>(c) For seven Operating Days that are not yet completed, ERCOT shall calculate RTL as the higher of 150% of ERCOT's estimate of the Counter-Party's RTL for the most recent seven days or the Counter-Party's forecast of RTL for</p>

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Variable	Unit	Description
		the next seven days.
ADTE	\$	Average Daily Transaction Extrapolated—4035 days multiplied by the sum of the net amount due from or to ERCOT by the Counter-Party in Real-Time Initial Settlement Statements generated in the 14 most recent calendar days included in the Counter-Party's two most recent Real-Time Settlement Invoices divided by the number of Real-Time Initial Settlement Statements generated for the Counter-Party in the 14 most recent calendar days, included in those two Settlement Invoices. Forward extrapolation for the Counter-Party's CRR Account Holder activity is excluded from this calculation.
d	none	One Operating Day in the period of relevant days.
N	none	All relevant days, i.e., the number of Operating Days that have not been invoiced plus seven future days.

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16.11.4.5 Determination of the Counter-Party Future Credit Exposure

- (1) ERCOT shall monitor and calculate the Counter-Party's FCE for all CRRs held by the Counter-Party as owner of record at ERCOT, for all Operating Days where the corresponding Day Ahead Market has not yet occurred and for CRRs where the corresponding DAM has that have not settled, using the formula below.

$$FCE_o = FCEOBL_o + FCEOPT_o + FCRFRGR_o$$

The above variables are defined as follows:

Variable	Unit	Description
FCE _o	\$	<i>Future Credit Exposure</i> —Counter-Party FCE for all CRRs held by the Counter-Party as owner <i>o</i> of record at ERCOT, for all Operating Days that have not yet occurred and for CRRs that have not settled.
FCEOBL _o	\$	<i>Future Credit Exposure for PTP Obligations</i> —Counter-Party FCE for all PTP Obligations held by the Counter-Party as owner <i>o</i> of record at ERCOT, for all Operating Days that have not yet occurred and for CRRs that have not settled.
FCEOPT _o	\$	<i>Future Credit Exposure for PTP Options</i> —Counter-Party FCE for all PTP Options held by the Counter-Party as owner <i>o</i> of record at ERCOT, for all Operating Days

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		that have not yet occurred and for CRRs that have not settled.
FCEFGRO	\$	<i>Future Credit Exposure for FGRs</i> —Counter-Party FCE for all Flowgate Rights (FGRs) held by the Counter-Party as owner <i>o</i> of record at ERCOT, for all Operating Days that have not yet occurred and for CRRs that have not settled.
o	none	A Counter-Party CRR Owner

- (2) The Counter-Party's FCE for all PTP Obligations (FCEOBL) held by the Counter-Party as owner of record at ERCOT for all Operating Days where the corresponding DAM has ~~that have~~ not yet occurred and for CRRs that have not settled is calculated as follows:

$$\text{FCEOBL}_o = \text{Max} (\text{ACPEOBL}_o - \text{FMMOBL}_o)$$

Where:

$$\text{ACPEOBL}_o = \sum_{(h)} \sum_{(j,k)} (\text{ACPE}_{h,(j,k)} * \text{OBLMW}_{o,h,(j,k)})$$

$$\text{FMMOBL}_o = \sum_{(h)} \sum_{(j,k)} [(W_1 * \text{ACP}_{h,(j,k)} + W_2 * \text{TOBLV}_{h,(j,k)} + W_3 * \text{FDOBLV}_{h,(j,k)} + W_4 * \text{PMOBLV}_{h,(j,k)}) * \text{OBLMW}_{o,h,(j,k)}]$$

If FCEOBL_o is negative (a net asset to the Counter-Party), then the FCEOBL_o will be recalculated using PTP Obligations registered in the name of the Counter-Party only for”

- (a) The remaining hours of the current month; and
- (b) All hours in the following month.

The parameters to determine ACPE (X and Y) shall be posted on the MIS Public Area. The Technical Advisory Committee (TAC) shall review these values at least annually and may recommend to the ERCOT Board changes to these values. If changes to these values are approved by the ERCOT Board, such revised values shall be posted on the MIS Public Area within three Business Days of ERCOT Board approval.

The above variables are defined as follows:

Variable	Unit	Description
FCEOBL _o	\$	<i>Future Credit Exposure for PTP Obligations</i> —Counter-Party FCE for all PTP Obligations held by the Counter-Party as owner <i>o</i> of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.
ACPEOBL _o	\$	<i>Auction Clearing Price Exposure for all PTP Obligations</i> held by the Counter-party as owner <i>o</i> of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.

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Variable	Unit	Description
$ACPE_{h, (j, k)}$	\$/MW per hour	<p><i>Auction Clearing Price Exposure for PTP Obligations with the source j and the sink k for hour h</i>—Exposure level calculated as follows:</p> <ul style="list-style-type: none"> if the PTP Obligation Auction Clearing Price is greater than \$Y per MW, then $Y * X$ divided by the PTP Obligation Auction Clearing Price; if the PTP Obligation Auction Clearing Price is between \$0 and \$Y per MW, then \$X per MW; and if the PTP Obligation Auction Clearing Price is negative, then \$X per MW, plus the absolute value of the PTP Obligation Auction Price per MW.
$FMMOBL_o$	\$	<i>Forward Mark-to-Market for PTP Obligations</i> —Estimate of the forward mark-to-market value of PTP Obligations held by the Counter-Party as owner o of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.
$ACP_{h, (j, k)}$	\$/MW per hour	<i>Auction Clearing Price</i> —The auction clearing price of the PTP Obligation with the source j and the sink k for hour h .
$W_1 - W_4$	none	<i>Weighting</i> —The weighting associated with the pricing components that sum to 1. The values of these factors must be determined by the Credit Work Group (Credit WG) and posted on the MIS Public Area. The weighting factors may be customizable for the month to which a CRR applies.
$TOBLV_{h, (j, k)}$	\$/MW per hour	<i>Today's PTP Obligation Value</i> —The difference in current day's most recent DAM Settlement Point Price between the sink k and the source j of the CRR for the hour h owned. If the DAM is executed but specific DAM Settlement Point Prices are not available, ERCOT may use the appropriate Auction Clearing Prices instead. If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
$FDOBLV_{h, (j, k)}$	\$/MW per hour	<i>Five-day PTP Obligation Value</i> —Average of the most recent rolling five-day difference in DAM Settlement Point Price between the sink k and the source j of the CRR for the hour h owned. If the DAM is executed but specific DAM Settlement Point Prices are not available, ERCOT may use the appropriate Auction Clearing Prices instead. If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
$PMOBLV_{h, (j, k)}$	\$/MW per hour	<i>Previous Month's PTP Obligation Value</i> —Average of the previous month's daily difference in DAM Settlement Point Price between the sink k and the source j of the CRR for the hour h owned. If the DAM is executed but specific DAM Settlement Point Prices are not available, ERCOT may use the appropriate Auction Clearing Prices instead. If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
$OBLMW_{o, h, (j, k)}$	MW	<i>PTP Obligation</i> with the source j and the sink k for hour h owned by the Counter-Party as owner o for all Operating Days that have not yet occurred and for CRRs that have not settled.
j	none	A source Settlement Point
k	none	A sink Settlement Point
h	none	An Operating Hour of (i) the remaining hours in the current month and (ii) all hours in the following month.
o	none	A Counter-Party CRR Owner

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- (3) The Counter-Party's FCE for all PTP Options (FCEOPT) held by the Counter-Party as owner of record at ERCOT for all Operating Days where the corresponding DAM has ~~that have~~ not yet occurred and for CRRs that have not settled is calculated as follows.

$$\text{FCEOPT}_o = - \text{FMMOPT}_o$$

Where:

$$\text{FMMOPT}_o = \sum_{(h)} \sum_{(j,k)} [(W_1 * \text{ACP}_{h,(j,k)} + W_2 * \text{TOPTV}_{h,(j,k)} + W_3 * \text{FDOPTV}_{h,(j,k)} + W_4 * \text{PMOPTV}_{h,(j,k)}) * \text{OPTMW}_{o,h,(j,k)}]$$

FCEOPT_o is calculated using PTP Options registered in the name of the Counter-Party only for (a) the remaining hours of the current month, and (b) all hours in the following month.

The above variables are defined as follows:

Variable	Unit	Description
FCEOPT _o	\$	<i>Future Credit Exposure for PTP Options</i> —Counter-Party FCE for all PTP Options held by the Counter-Party as owner <i>o</i> of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.
FMMOPT _o	\$	<i>Forward Mark-to-Market for PTP Options</i> —Estimate of the forward mark-to-market value of PTP Options held by the Counter-Party as owner <i>o</i> of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.
ACP _{h,(j,k)}	\$/MW per hour	<i>Auction Clearing Price</i> —The auction clearing price of the PTP Option with the source <i>j</i> and the sink <i>k</i> for the hour <i>h</i> .
W ₁ – W ₄	none	<i>Weighting</i> —The weighting associated with the pricing components that sum to 1. The values of these factors must be determined by the Credit WG and posted on the MIS Public Area. The weighting factors may be customizable for the month to which a CRR applies.
TOPTV _{h,(j,k)}	\$/MW per hour	<i>Today's PTP Option Value</i> —The greater of zero or the difference in current day's most recent DAM Settlement Point Price between the sink <i>k</i> and the source <i>j</i> of the CRR for the hour <i>h</i> owned. If the DAM is executed but specific DAM Settlement Point Prices are not available, ERCOT may use the appropriate Auction Clearing Prices instead. If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
FDOPTV _{h,(j,k)}	\$/MW per hour	<i>Five-day PTP Option Value</i> —Average of the most recent rolling five-day amount given by the greater of zero or the difference in DAM Settlement Point Price between the sink <i>k</i> and the source <i>j</i> of the CRR for the hour <i>h</i> owned. If the DAM is executed but specific DAM Settlement Point Prices are not available, ERCOT may use the appropriate Auction Clearing Prices instead. If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.

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Variable	Unit	Description
$PMOPTV_{h, (j, k)}$	\$/MW per hour	<i>Previous Month's PTP Option Value</i> —Average of the previous month's daily amount given by the greater of zero or the difference in DAM Settlement Point Price between the sink k and the source j of the CRR for the hour h owned. If the DAM is executed but specific DAM Settlement Point Prices are not available, ERCOT may use the appropriate Auction Clearing Prices instead. If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
$OPTMW_{o, h, (j, k)}$	MW	<i>PTP Option</i> with the source j and the sink k owned by the Counter-Party as owner o for hour h of (i) the remaining hours in the current month, and (ii) all hours in the following month.
j	none	A source settlement point.
k	none	A sink settlement point.
h	none	An operating hour of (i) the remaining hours in the current month, and (ii) all hours in the following month.
o	none	A Counter-Party CRR Owner

- (4) The Counter-Party's FCE for all FGRs (FCEFGR) held by the Counter-Party as owner of record at ERCOT for all Operating Days [where the corresponding DAM has](#) ~~that have~~ not yet occurred and for CRRs where the corresponding Day Ahead Market has not settled is calculated as follows:

$$FCEFGR_o = - FMMFGR_o$$

Where:

$$FMMFGR_o = \sum_{(h)} \sum_{(f)} [(W_1 * ACP_{h, f} + W_2 * TFGRV_{h, f} + W_3 * FDFGRV_{h, f} + W_4 * PMFGRV_{h, f}) * FGRMW_{o, h, f}]$$

FCEFGR_o is calculated using FGRs registered in the name of the Counter-Party only for:

- (a) The remaining hours of the current month; and
- (b) All hours in the following month.

The above variables are defined as follows:

Variable	Unit	Description
$FCEFGR_o$	\$	<i>Future Credit Exposure for FGRs</i> —Counter-Party FCE for all FGRs held by the Counter-Party as owner o of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.
$FMMFGR_o$	\$	<i>Forward Mark-to-Market for FGRs</i> —Estimate of the forward mark-to-market value of FGRs held by the Counter-Party as owner o of record at ERCOT for all Operating Days that have not yet occurred and for CRRs that have not settled.
$ACP_{h, f}$	\$/MW per hour	<i>Auction Clearing Price</i> —The auction clearing price of the FGR on the flowgate f for hour h .
$W_1 - W_4$	none	<i>Weighting</i> —The weighting associated with the pricing components that sum to 1.

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Variable	Unit	Description
		The values of these factors must be determined by the Credit WG and posted on the MIS Public Area. The weighting factors may be customizable for the month to which a CRR applies.
TFGRV _{h, f}	\$/MW per hour	<i>Today's FGR Value</i> —The current day's most recent DAM price of the FGR on the flowgate <i>f</i> for the hour <i>h</i> . If the DAM is not executed for an operating day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
FDFGRV _{h, f}	\$/MW per hour	<i>Five-day FGR Value</i> —Average of the most recent rolling five-day price of the FGR on the flowgate <i>f</i> for the hour <i>h</i> . If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
PMFGRV _{h, f}	\$/MW per hour	<i>Previous Month's FGR Value</i> —Average of the previous month's daily price of the FGR on the flowgate <i>f</i> for the hour <i>h</i> . If the DAM is not executed for an Operating Day, ERCOT shall use the RTM Settlement Point Prices for that Operating Day.
FGRMW _{o, h, f}	MW	<i>FGR</i> on the flowgate <i>f</i> owned by the Counter-Party as owner <i>o</i> for hour <i>h</i> of (a) the remaining hours in the current month, and (b) all hours in the following month.
f	none	A Flowgate Right
h	none	An Operating Hour of (a) the remaining hours in the current month, and (b) all hours in the following month.
o	none	A Counter-Party CRR Owner

16.11.4.7 Credit Monitoring and Management Reports

- (1) ERCOT shall post twice each Business Day on the MIS Certified Area each active Counter-Party's credit monitoring and management related reports as listed below. The first posting shall be made by 1200 and the second posting shall be made as close as reasonably possible to the close of the Business Day but no later than 2350. The reports listed in (f), (g), and (h) below, are not required to be included in both first and second posting if the Counter-Party has no active CRR ownership. The reports listed in (c), (d), (e), (f), (g), (h) and (i) below, are not required to be included in the second post if there are no changes to the underlying data. ERCOT shall post one set of these reports on the MIS Certified Area on each non-Business Day for which an ACL is sent.

- (a) Available Credit Limit (ACL) Summary Report;
- (b) Total Potential Exposure (TPE) Summary Report;
- (c) Minimum Current Exposure (MCE) Summary Report;
- (d) Estimate Aggregate Liability (EAL) Summary Report;
- (e) Estimated Aggregate Liability (EAL) Detail Report;
- (f) Aggregate Incremental Liability (AIL) Detail Report;

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- (~~fgf~~) Future Credit Exposure for CRR PTP Obligations (FCEOBL) Summary Report;
- (~~ghg~~) Future Credit Exposure for CRR PTP Options (FCEOPT) Summary Report; and
- (~~hih~~) Future Credit Exposure for CRR PTP Flowgate Rights (FCEFGR) Summary Report.

- (2) ERCOT shall post once each Business Day on the MIS Certified Area each active Counter-Party's credit monitoring and management related reports or extracts as listed below; however, these reports may not be posted if system limitations are [prohibitive or if the Counter-Party has no active CRR ownership](#).
 - (a) Future Credit Exposure for CRR PTP Obligations (FCEOBL) Detail Report;
 - (b) Future Credit Exposure for CRR PTP Options (FCEOPT) Detail Report; and
 - (c) Future Credit Exposure for CRR PTP Flowgate Rights (FCEFGR) Detail Report.
- (3) The reports listed referenced above will be posted to the MIS Certified Area in Portable Document File (PDF) format and Microsoft Excel (XLS) format. There shall be a provision to "open", "save" and "print" each report.

[NPRR241: Replace paragraph (3) above with the following upon system implementation:]

- (3) The reports referenced above will be posted to the MIS Certified Area in Portable Document File (PDF) format and Extensible Markup Language (XML) format.

16.11.5 Monitoring of a Counter-Party's Creditworthiness and Credit Exposure by ERCOT

- (1) ERCOT shall monitor the creditworthiness and credit exposure of each Counter-Party or its guarantor, if any. To enable ERCOT to monitor creditworthiness, each Counter-Party shall provide to ERCOT:
 - (a) Its own or its guarantor's quarterly (semi-annually, if the guarantor is foreign and rated by a rating agency acceptable to ERCOT) unaudited financial statements not later than 60 days (90 days if the guarantor is foreign and rated by a rating agency acceptable to ERCOT) after the close of each of the issuer's fiscal quarters; if an issuer's financial statements are publicly available electronically and the issuer

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provides to ERCOT sufficient information to access those financial statements, then the issuer is considered to have met this requirement.

- (b) Its own or its guarantor's annual audited financial statements not later than 120 days after the close of each of the issuer's fiscal year; if an issuer's financial statements are publicly available electronically and the issuer provides to ERCOT sufficient information to access those financial statements, then the issuer is considered to have met this requirement. ERCOT may extend the period for providing interim unaudited or annual audited statements on a case-by-case basis.
 - (c) Notice of a material change. A Counter-Party that has been granted an Unsecured Credit Limit pursuant to Section 16.11.2, Requirements for Setting a Counter-Party's Unsecured Credit Limit, shall inform ERCOT within one Business Day if it has experienced a material change in its operations, financial condition or prospects that might adversely affect the Counter-Party and require a revision to its Unsecured Credit Limit. ERCOT may require the Counter-Party to meet one of the credit requirements of Section 16.11.3, Alternative Means of Satisfying ERCOT Creditworthiness Requirements.
- (2) A Counter-Party that meets all or part of its creditworthiness requirements using a method provided in Section 16.11.3, is responsible, at all times, for maintaining Financial Security in an amount equal to or greater than that Counter-Party's TPE minus its Unsecured Credit Limit. ERCOT shall promptly notify each Counter-Party of the need to increase its Financial Security, and allow the Counter-Party time as defined in paragraph (3)(a) below to provide additional Financial Security to maintain compliance with this subsection.
- (a) When the Counter-Party's TPE as defined in Section 16.11.4, Determination and Monitoring of Counter-Party Credit Exposure, reaches 90% of its Financial Security, ERCOT shall use reasonable efforts to electronically issue a warning to the Counter-Party's Authorized Representative and Credit Contact advising the Counter-Party that it should consider increasing its Financial Security. However, failure to issue that warning does not prevent ERCOT from exercising any of its other rights under this Section.
 - (b) ERCOT may suspend a Counter-Party when that Counter-Party's TPE as defined in Section 16.11.4, equals or exceeds 100% of the sum of its Unsecured Credit Limit and its Financial Security. The Counter-Party is responsible, at all times, for managing its activity within its TPE or increasing its Financial Security to avoid reaching its limit. Any failure by ERCOT to send a notice as set forth in this Section does not relieve the Counter-Party from the obligation to maintain Financial Security in an amount equal to or greater than that Counter-Party's TPE as defined in Section 16.11.4.
- (3) To the extent that a Counter-Party fails to maintain Financial Security in an amount equal to or greater than its TPE as defined in Section 16.11.4:

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- (a) ERCOT shall promptly notify the Counter-Party of the amount by which its Financial Security must be increased by issuing a Collateral Call and allow it a period to cure this deficiency:
 - (i) Until 1500 on the second Bank Business Day from the date on which ERCOT delivered the Collateral Call notice to increase its Financial Security if ERCOT delivered its notice before 1500; or
 - (ii) Until 1700 on the second Bank Business Day from the date on which ERCOT delivered the Collateral Call notification to increase its Financial Security if ERCOT delivered its Notice after 1500 but prior to 1700. ERCOT shall notify the QSE's Authorized Representative(s) and Credit Contact if it has not received the required security by 1530 on the Bank Business Day on which the security was due; however, failure to notify the Counter-Party's representatives or contact that the required security was not received does not prevent ERCOT from exercising any of its other rights under this Section.
 - (iii) ERCOT, at its sole discretion, may extend the cure period as defined in items (i) and (ii) above until 1500 on the fourth Bank Business Day from the date on which ERCOT delivered the Collateral Call.
- (b) At the same time it notifies the Counter-Party that is the QSE, ERCOT may notify each LSE and Resource represented by the Counter-Party that the LSE or Resource may be required to designate a new QSE if its current QSE fails to increase its Financial Security.
- (c) ERCOT is not required to make any payment to that Counter-Party unless and until the Counter-Party increases its Financial Security. The payments that ERCOT will not make to a Counter-Party include Invoice receipts, CRR revenues, CRR credits, reimbursements for short payments, and any other reimbursements or credits under any other agreement between the Market Participant and ERCOT. ERCOT may retain all such amounts until the Counter-Party has fully discharged all payment obligations owed to ERCOT under the Counter-Party Agreement, other agreements, and these Protocols.
- (d) ERCOT may reject any bids or offers in a CRR Auction from the Counter-Party until it has increased its Financial Security. ERCOT may reject any bids or offers from the Counter-Party in the DAM until it has increased its Financial Security.
- (4) If a Counter-Party increases its Financial Security by the deadline in paragraph (3)(a) above, then ERCOT may notify each LSE and Resource represented by the Counter-Party.
- (5) If a Counter-Party increases its Financial Security by the deadline in paragraph (3)(a) above, then ERCOT shall release any payments held.

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- (6) [The Counter-Party's failure to satisfy a Collateral Call within the cure period defined in paragraph \(3\)\(a\) above, will be considered an event of default and an uncured Payment Breach.](#)

16.11.6 Payment Breach and Late Payments by Market Participants

- (1) It is the sole responsibility of each Market Participant to ensure that the full amounts due to ERCOT, or its designee, if applicable, by that Market Participant, is paid to ERCOT by close of the Bank Business Day on which it is due.
- (2) If a Market Participant receives separate Invoices for Subordinate QSE or various CRR Account Holder activity, netting by the Market Participant of the amounts due to ERCOT with amounts due to the Market Participant among those Invoices for payment purposes is not permitted. The amounts due to ERCOT on the separate Invoices for each Market Participant must be paid by the close of the Bank Business Day on which it is due. If a Market Participant does not pay the full amount due to ERCOT for all such Invoices by the required time, ERCOT shall deduct any and all amounts due and unpaid from any amounts due to the same Market Participant before allocating short payments to other Market Participants.
- (3) The failure of a Market Participant to pay when due any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT, is an event of "Payment Breach." Any Payment Breach by a Market Participant under any agreement with ERCOT is a default under all other agreements between ERCOT and the Market Participant. Upon a Payment Breach, ERCOT shall immediately attempt to contact an Authorized Representative and Credit Contact of the Market Participant telephonically and shall send appropriate written notices, as described below, and demand payment of the past due amount.
- (4) Upon a Payment Breach, ERCOT may impose the below-listed remedies for Payment Breach ("Default Breach"), as set forth in Section 16.11.6.1, ERCOT's Remedies, in addition to any other rights or remedies ERCOT has under any agreement, these Protocols or at common law. If a Market Participant makes a payment or a partial payment as allowed by these Protocols or a collateral call to ERCOT after the due date and time, that payment is a "Late Payment," regardless of the reason it was late. If ERCOT receives, within two Bank Business Days after the due date, a Late Payment that fully pays the Market Participant's payment obligation ([other than a](#) ~~or~~ Financial Security obligation), ERCOT may waive the Payment Breach, except for ERCOT's remedies in Section 16.11.6.2, ERCOT's Remedies for Late Payments by a Market Participant. Even if ERCOT chooses to not immediately impose Default Remedies against a Market Participant because it has fully paid its obligation within two Bank Business Days, ERCOT shall track the number of Late Payments received from each Market Participant

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in each rolling 12-month period for purposes of imposing the Late Payment remedies set forth in Section 16.11.6.2.

ERCOT Nodal Protocols

Section 22

Attachment A: Standard Form Market Participant Agreement

February 1, 2011

Standard Form Market Participant Agreement
Between
Participant
and
Electric Reliability Council of Texas, Inc.

This Market Participant Agreement ("Agreement"), effective as of the _____ day of _____, _____ ("Effective Date"), is entered into by and between [Participant], a [State of Registration and Entity Type] ("Participant") and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT").

Recitals

WHEREAS:

A. As defined in the ERCOT Protocols, Participant is a (check all that apply):

- ☐ Load Serving Entity (LSE)
- ☐ Qualified Scheduling Entity (QSE)
- ☐ Transmission Service Provider (TSP)

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- ☐ Distribution Service Provider (DSP)
- ☐ Congestion Revenue Right (CRR) Account Holder
- ☐ Resource Entity
- ☐ Renewable Energy Credit (REC) Account Holder

- B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:

Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

If to Participant:

[Participant Name]
[Contact Person/Dept.]
[Street Address]
[City, State Zip]

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[Telephone]
[Facsimile]

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.
- B. “ERCOT Protocols” shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

- A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement:
 - (1) immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;
 - (2) if the “REC Account Holder” box is checked in Section A. of the *Recitals* section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the entity approved by the PUCT (“Program Administrator”) for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or
 - (3) for any other reason at any time upon thirty days written notice to ERCOT.

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- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;
- (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;
- (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;
- (4) Market Participant's execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

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- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

- (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;
- (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;
- (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties and covenants under this Agreement;
- (4) ERCOT’s past, present and future agreements or ERCOT’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT’s obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;
- (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

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- (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on ERCOT’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

- A. Participant shall comply with, and be bound by, all ERCOT Protocols.
- B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

- A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.
- B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5.B. from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. Payment.

For the transfer of any funds under this Agreement directly between ERCOT and Participant and pursuant to the Settlement procedures for Ancillary Services described in the ERCOT Protocols, the following shall apply:

- A. Participant appoints ERCOT to act as its agent with respect to such funds transferred and authorizes ERCOT to exercise such powers and perform such duties as described in this Agreement or the ERCOT Protocols, together with such powers or duties as are reasonably incidental thereto.
- B. ERCOT shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the ERCOT Protocols.

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Section 8. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds, provide collateral or designate/maintain an association with a QSE (if required by the ERCOT Protocols) as provided in the ERCOT Protocols shall constitute a material breach and shall constitute an event of default ("Default"). All events of default other than those related to failure to provide collateral may be unless cured within two (2) Business Days after the non-breaching Party delivers to the breaching Party written notice of the breach. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a twelve-month period, the fourth such breach shall constitute a Default by the breaching Party.
- (2) For any material breach other than a material breach described in Section 8(A)(1) the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:
 - (a) Except as excused under subsection (4) or (5) below, a material breach, other than a material breach described in Section 8(A)(1), of this Agreement by Participant, including any material failure by Participant to comply with the ERCOT Protocols, unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by ERCOT of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within twelve-month period, the fourth such breach shall constitute a Default.
 - (b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter.
- (3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a failure to make payment or transfer funds, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a

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material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a twelve-month period, the fourth such breach shall constitute a Default.

- (4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.
- (2) Participant's Remedies for Default.
 - (a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to ERCOT,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols, and
 - (iii) Specific performance.
 - (b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.
 - (c) If as a final result of any dispute resolution, ERCOT, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to ERCOT, as the settlement agent, such Market Participant(s) may request ERCOT to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from ERCOT. In the event of such request,

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ERCOT, in its sole discretion, may agree to assign to such Market Participant ERCOT's rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) survives termination of this Agreement.

- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8.A(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL

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DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

- B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
- C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).
- D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM's authority arising under or relating to PURA §39.1515 and PUC SUBST. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.
- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).
- B. Assignment.

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- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):
 - (a) Where any such assignment or transfer is to an Affiliate of the Party; or
 - (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
 - (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.
- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.

C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 8.B. and the Financing Persons in Section 11.B., (i) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (ii) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (iii) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

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- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (i) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (ii) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.
- G. Entire Agreement. Any Exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of

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Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

- J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.
- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 7A.
- N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word "shall" denotes a duty.
 - (5) The word "must" denotes a condition precedent or subsequent.

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- (6) The word “may” denotes a privilege or discretionary power.
 - (7) The phrase “may not” denotes a prohibition.
 - (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
 - (9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
 - (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
 - (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
 - (12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.
 - (13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.
 - (14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.
 - (15) References to time are to Central Prevailing Time.
- O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

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SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

Participant:

[USE OPTION 1 IF PARTICIPANT IS A CORPORATION]

By: _____

Name: _____

Title: _____

Date: _____

USE OPTION 2 IF PARTICIPANT IS A LIMITED PARTNERSHIP

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By: _____,
as General Partner for [Participant]

Name: _____

Title: _____

Date: _____

Market Participant Name:

Market Participant DUNS: _____

[NPRR260: Replace the Standard Form Market Participant Agreement, above, with the following upon system implementation:]

Standard Form Market Participant Agreement
Between
Participant
and
Electric Reliability Council of Texas, Inc.

This Market Participant Agreement (“Agreement”), effective as of the _____ day of _____, _____ (“Effective Date”), is entered into by and between [Participant], a [State of Registration and Entity Type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

~~1.1.1.1.2~~1.1.1.1.1 **Recitals**

WHEREAS:

A. As defined in the ERCOT Protocols, Participant is a (check all that apply):

- ☐ Load Serving Entity (LSE)
- ☐ Qualified Scheduling Entity (QSE)
- ☐ Transmission Service Provider (TSP)

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- ☐ Distribution Service Provider (DSP)
- ☐ Congestion Revenue Right (CRR) Account Holder
- ☐ Resource Entity
- ☐ Renewable Energy Credit (REC) Account Holder
- ☐ Independent Market Information System Registered Entity (IMRE)

- B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the "Parties") hereby agree as follows:

Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

If to Participant:

[Participant Name]

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[Contact Person/Dept.]

[Street Address]

[City, State Zip]

[Telephone]

[Facsimile]

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.
- B. "ERCOT Protocols" shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

- A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement:
 - (1) immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;
 - (2) if the "REC Account Holder" box is checked in Section A. of the *Recitals* section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the entity approved by the PUCT ("Program Administrator") for carrying out the administrative responsibilities

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related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or

- (3) for any other reason at any time upon thirty days written notice to ERCOT.

C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;
- (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;
- (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;
- (4) Market Participant's execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all

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actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Participant's performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

- (3) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;
- (4) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;
- (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT's obligations, representations, warranties and covenants under this Agreement;
- (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;
- (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially

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affect performance under this Agreement;

- (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

- A. Participant shall comply with, and be bound by, all ERCOT Protocols.
- B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

- A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.
- B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5.B. from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. Payment.

For the transfer of any funds under this Agreement directly between ERCOT and Participant and pursuant to the Settlement procedures for Ancillary Services described in the ERCOT Protocols, the following shall apply:

- A. Participant appoints ERCOT to act as its agent with respect to such funds transferred and authorizes ERCOT to exercise such powers and perform such duties as described in this Agreement or the ERCOT Protocols, together with such powers or duties as are reasonably incidental thereto.

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- B. ERCOT shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the ERCOT Protocols.

Section 8. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds, provide collateral or designate/maintain an association with a QSE (if required by the ERCOT Protocols) as provided in the ERCOT Protocols shall constitute a material breach and shall constitute an event of default ("Default"). All events of default other than those related to failure to provide collateral may be ~~unless~~ cured within two (2) Business Days after the non-breaching Party delivers to the breaching Party written notice of the breach. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a twelve-month period, the fourth such breach shall constitute a Default by the breaching Party.
- (2) For any material breach other than a material breach described in Section 8(A)(1) the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:
 - (a) Except as excused under subsection (4) or (5) below, a material breach, other than a material breach described in Section 8(A)(1), of this Agreement by Participant, including any material failure by Participant to comply with the ERCOT Protocols, unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by ERCOT of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within twelve-month period, the fourth such breach shall constitute a Default.
 - (b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter.
- (3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a failure to make payment or transfer funds, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT.

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ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a twelve-month period, the fourth such breach shall constitute a Default.

- (4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.
- (2) Participant's Remedies for Default.
 - (a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to ERCOT,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols, and
 - (iii) Specific performance.
 - (b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.
 - (c) If as a final result of any dispute resolution, ERCOT, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the

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result that refunds are owed by Participant to ERCOT, as the settlement agent, such Market Participant(s) may request ERCOT to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from ERCOT. In the event of such request, ERCOT, in its sole discretion, may agree to assign to such Market Participant ERCOT's rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) survives termination of this Agreement.

- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8.A(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT

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UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

- B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
- C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).
- D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM's authority arising under or relating to PURA §39.1515 and PUC SUBST. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.
- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of

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forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):
 - (a) Where any such assignment or transfer is to an Affiliate of the Party; or
 - (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
 - (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.
- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.

- C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 8.B. and the Financing Persons in Section 11.B., (i) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (ii) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (iii) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the

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services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (i) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (ii) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.
- G. Entire Agreement. Any Exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement,

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charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

- J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.
- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 7A.
- N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
 - (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.

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- (4) The word “shall” denotes a duty.
- (5) The word “must” denotes a condition precedent or subsequent.
- (6) The word “may” denotes a privilege or discretionary power.
- (7) The phrase “may not” denotes a prohibition.
- (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
- (9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
- (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
- (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
- (12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.
- (13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.
- (14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.
- (15) References to time are to Central Prevailing Time.

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

By: _____

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Name: _____

Title: _____

Date: _____

Participant:

[USE OPTION 1 IF PARTICIPANT IS A CORPORATION]

By: _____

Name: _____

Title: _____

Date: _____

USE OPTION 2 IF PARTICIPANT IS A LIMITED PARTNERSHIP

By: _____,
as General Partner for [Participant]

Name: _____

Title: _____

Date: _____

Market Participant Name:

Market Participant DUNS: _____