

## NPRR369 – Printable Version

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NPRR Number	369	NPRR Title	Black Start Service Requirement Revisions
<b>Revision Description</b>		This Nodal Protocol Revision Request (NPRR) allows ERCOT to conduct quarterly testing of Black Start Resources and further proposes language changes that would allow a Resource Entity representing a contracted Black Start Resource to request that an alternate Generation Resource substitute in place of the Black Start Resource if the alternate Generation Resource meets testing and verification under established qualification criteria to ensure Black Start Service (BSS).	

<b>Proposed Protocol Language Revision</b>
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### 3.14.2 *Black Start*

- (1) Each Generation Resource providing Black Start Service must meet the requirements specified in North American Electric Reliability Corporation (NERC) policy and the Operating Guides.
- (2) Each Generation Resource providing Black Start Service must meet technical requirements specified in Section 8.1.1, QSE Ancillary Service Performance Standards, and Section 8.1.1.1, Ancillary Service Qualification and Testing.
- (3) Bids for Black Start Service are due on or before June 1st of each two year period. Bids must be evaluated based on evaluation criteria attached as an appendix to the request for bids and contracted by December 31<sup>st</sup> for the following two year period. ERCOT shall ensure Black Start Services are arranged, provided, and deployed as necessary to reenergize the ERCOT System following a total or partial system blackout.
- (4) ERCOT shall schedule random testing or simulation, or both, to verify Black Start Service is operable according to the ERCOT System restoration plan. Testing and verification must be done under established qualification criteria.
- (5) QSEs representing Generation Resources contracting for Black Start Services shall participate in training and restoration drills coordinated by ERCOT.
- (6) ERCOT shall periodically conduct system restoration seminars for all TSPs, Distribution Service Providers (DSPs), QSEs, Resource Entities and other Market Participants.
- (7) ERCOT shall periodically determine and review the location and number of Black Start Resources required, as well as any special transmission or voice communication needs required. ERCOT and providers of this service shall meet the requirements as specified in the ERCOT Operating Guides and in NERC policy.

## NPRR369 – Printable Version

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- (8) A Resource Entity representing a Black Start Resource may request that an alternate Generation Resource which is connected to the same black start primary and secondary cranking path as the original Black Start Resource be substituted in place of the original Black Start Resource during the two year term of an executed Standard Form Black Start Agreement (Section 22, Attachment D, Standard Form Black Start Agreement) if the alternate Generation Resource meets testing and verification under established qualification criteria to ensure BSS.
- (a) ERCOT, in its sole discretion, may reject a Resource Entity’s request for an alternate Generation Resource and will provide the Resource Entity an explanation of such rejection.
- (b) If ERCOT accepts the alternative Generation Resource as the substituted Black Start Resource, such acceptance shall not affect the original terms, conditions and obligations of the Resource Entity under the Standard Form Black Start Agreement. The Resource Entity shall submit to ERCOT an Amendment to Standard Form Black Start Agreement (Section 22, Attachment I, Amendment to Standard Form Black Start Agreement) after qualification criteria has been met.
- (9) For the purpose of the Black Start Hourly Standby Fee as described in Section 6.6.8.1, Black Start Hourly Standby Fee, the Black Start Service Availability Reduction Factor shall be determined by using the availability for the original Black Start Resource and any substituted Black Start Resource(s), as appropriate for the rolling 4380 hour period of the evaluation.

### 4.3 QSE Activities and Responsibilities in the Day-Ahead

- (1) During the Day-Ahead, a QSE:
- (a) Must submit its Current Operating Plan (COP) and update its COP as required in Section 3.9, Current Operating Plan (COP);
- (b) May submit Three-Part Supply Offers, Day-Ahead Market (DAM) Energy-Only Offers, DAM Energy Bids, Energy Trades, Self-Schedules, Capacity Trades, Direct Current (DC) Tie Schedules, Ancillary Service Offers, Ancillary Service Trades, Self-Arranged Ancillary Service Quantities, Point-to-Point (PTP) Obligation Bids, and Congestion Revenue Right (CRR) Offers as specified in this Section; and

***[NPRR131: Replace paragraph (1)(b) above with the following upon system implementation:]***

- (b) May submit Three-Part Supply Offers, Day-Ahead Market (DAM) Energy-Only Offers, DAM Energy Bids, Energy Trades, Self-Schedules, Capacity Trades,

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

Direct Current (DC) Tie Schedules, Ancillary Service Offers, Ancillary Service Trades, Self-Arranged Ancillary Service Quantities, Ancillary Service Trades with ERCOT, Point-to-Point (PTP) Obligation Bids, and Congestion Revenue Right (CRR) Offers as specified in this Section; and

- (2) By 0600 in the Day-Ahead, each QSE representing Reliability Must-Run (RMR) Units, or Black Start Resources shall submit its Availability Plan information to ERCOT indicating availability of RMR Units, and Black Start Resources for the Operating Day, and any other information that ERCOT may need to evaluate use of the units as set forth in the applicable Agreements and this Section.

### 6.6.8.1 Black Start Hourly Standby Fee ~~Capacity~~ Payment

- (1) ERCOT shall pay an ~~hourly~~ Hourly sStandby ~~f~~Fee to the QSEs representing a Black Start Resources. This standby fee is determined through a competitive bi-annual bidding process, with an adjustment for reliability based on a six-month rolling availability equal to 85% in accordance with Section 22, Attachment D, Standard Form Black Start Agreement.
- (2) The Black Start Hourly Standby Fee is subject to reduction and claw-back provisions as described in Section 8.1.1.2.1.5, System Black Start Capability Qualification and Testing.
- (23) ERCOT shall pay a Black Start Hourly sStandby Fee payment to each QSE for each Black Start Resource. The payment for each hour is calculated as follows:

$$\text{BSSAMT}_{q,r} = (-1) * \text{BSSPR}_{q,r} * \text{BSSARF}_{q,r}$$

Where:

Black Start Service Availability Reduction Factor

If  $(\text{BSSHREAF}_{q,r} \geq 0.85)$

$$\text{BSSARF}_{q,r} = 1$$

Otherwise

$$\text{BSSARF}_{q,r} = \text{Max}(0, 1 - (0.85 - \text{BSSHREAF}_{q,r}) * 2)$$

Black Start Service Hourly Rolling Equivalent Availability Factor

If  $(\text{BSSEH}_{q,r} < 4380)$

$$\text{BSSHREAF}_{q,r} = 1$$

Otherwise

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

$$BSSHREAF_{q,r} = \left( \sum_{hr=h-4379}^h BSSAFLAG_{q,r,hr} \right) / 4380$$

Availability for a Combined Cycle Train will be determined pursuant to contractual terms but no more than once per hour.

The above variables are defined as follows:

Variable	Unit	Definition
$BSSAMT_{q,r}$	\$	<i>Black Start Service Amount per QSE per Resource by hour</i> —The standby payment to QSE $q$ for the Black Start Service (BSS) provided by Resource $r$ , for the hour. Where for a Combined Cycle Train, the Resource $r$ is the Combined Cycle Train.
$BSSPR_{q,r}$	\$ per hour	<i>Black Start Service Price per QSE per Resource</i> —The standby price of BSS Resource $r$ represented by QSE $q$ , as specified in the Black Start Agreement. Where for a Combined Cycle Train, the Resource $r$ is the Combined Cycle Train.
$BSSARF_{q,r}$	none	<i>Black Start Service Availability Reduction Factor per QSE per Resource by hour</i> —The availability reduction factor of Resource $r$ represented by QSE $q$ under the Black Start Agreement, for the hour. Where for a Combined Cycle Train, the Resource $r$ is the Combined Cycle Train.
$BSSHREAF_{q,r}$	none	<i>Black Start Service Hourly Rolling Equivalent Availability Factor per QSE per Resource by hour</i> —The equivalent availability factor of the BSS Resource $r$ represented by QSE $q$ over 4,380 hours, for the hour. Where for a Combined Cycle Train, the Resource $r$ is the Combined Cycle Train.
$BSSEH_{q,r}$	none	<i>Black Start Service Elapsed number of Hours per QSE per Resource by hour</i> —The number of the elapsed hours of BSS Resource $r$ represented by QSE $q$ since the beginning of the BSS Agreement, for the hour. Where for a Combined Cycle Train, the Resource $r$ is the Combined Cycle Train.
$BSSAFLAG_{q,r,hr}$	none	<i>Black Start Service Availability Flag per QSE per Resource by hour</i> —The flag of the availability of BSS Resource $r$ represented by QSE $q$ , 1 for available and 0 for unavailable, for the hour. Where for a Combined Cycle Train, the Resource $r$ is a Combined Cycle Generation Resource within the Combined Cycle Train.
$Q$	none	A QSE.
$R$	none	A BSS Resource.
$Hr$	none	The index of a given hour and the previous 4379 hours.
4380	none	The number of hours in a six-month period.

- (3) The total of the payments to each QSE for all BSS Resources represented by this QSE for a given hour is calculated as follows:

$$BSSAMTQSETOT_q = \sum_r BSSAMT_{q,r}$$

The above variables are defined as follows:

Variable	Unit	Definition
$BSSAMTQSETOT_q$	\$	<i>Black Start Service Amount QSE Total per QSE</i> —The total of the payments to QSE $q$ for BSS provided by all the BSS Resources represented by this QSE for the hour $h$ .

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

Variable	Unit	Definition
BSSAMT <sub>q,r</sub>	\$	<i>Black Start Service Amount per QSE per Resource</i> —The standby payment to QSE $q$ for BSS provided by Resource $r$ , for the hour. Where for a Combined Cycle Train, the Resource $r$ is the Combined Cycle Train.
$Q$	none	A QSE.
$R$	none	A BSS Resource.

### 8.1.1.2.1.5 System Black Start Capability Qualification and Testing

- (1) A Resource is qualified to be a Black Start Resource if it has met the following requirements:
  - (a) Verified control communication path performance;
  - (b) Verified primary and alternate voice circuits for receipt of instructions;
  - (c) Passed the “Basic Starting Test” as defined below;
  - (d) Passed the ”Line-Energizing Test” as defined below;
  - (e) Passed the “Load-Carrying Test” as defined below;
  - (f) Passed the “Next Start Resource Test” as defined below;
  - (g) If not starting itself, has an ERCOT-approved firm standby power contract with deliverability under ERCOT blackout circumstances from a non-ERCOT Control Area that can be finalized upon selection as a Black Start Resource;
  - (h) If not starting itself, has an ERCOT approved agreement with the necessary TSPs for access to another power pool, for coordination of switching during a Black Start event, for coordination of maintenance through the ERCOT Outage Scheduler for all non-redundant transmission startup feeds; and
  - (i) If dependent upon non-ERCOT transmission resources, agreements providing this Transmission Service have been provided in the proposal.
- (2) On successful demonstration of system Black Start Service capability, ERCOT shall certify that the Black Start Resource is capable of providing system Black Start Service capacity and shall provide a copy of the certificate to the Black Start Resource. Qualification shall be valid for the time frames set forth below. Except under extenuating

## NPRR369 – Printable Version

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circumstances, as reasonably determined by ERCOT, all qualification testing for the next year of Black Start Service must be completed by December 1 of each year.

~~ERCOT shall revoke the qualification of a Black Start Resource and reduce the Black Start Resources' Hourly Standby Fee (if under an existing Black Start Agreement) to zero during the time of disqualification if the Black Start Resource fails to perform successfully during a test described herein, until the Black Start Resource is successfully retested.~~

(3) ERCOT may limit the number of qualification retests allowed. Qualification ~~Retesting~~ is required only for the aspect of system Black Start Service capability for which the Black Start Resource failed. If a Black Start Resource under an existing Black Start Agreement does not successfully re-qualify within two months of failing a test described herein, ERCOT shall decertify the Black Start Resource for the remainder of the calendar year as described in Section 7, Black Start Decertification, of Section 22, Attachment D, Standard Form Black Start Agreement. The following tests are required for Black Start Service qualification:

- (a) The “Basic Starting Test” includes the following:
  - (i) The basic ability of the Black Start Resource to start itself, or start from a normally open interconnection to another provider not inside the ERCOT interconnection, without support from the ERCOT System;
  - (ii) Annual testing, either as a stand-alone test or part of the Line Energizing and Load Carrying Tests, and the test is performed during a one-week period agreed to in advance by the Black Start Resource and ERCOT and must not cause outage to ERCOT Customer Load or the availability of other Resources to the ERCOT market;
  - (iii) Confirmation of the dates of the test with the Black Start Resource by ERCOT;
  - (iv) Initiation of the test at a time during a previously agreed test week window not previously disclosed to the Black Start Resource;
  - (v) Isolation of the Black Start Resource, including all auxiliary Loads, from the ERCOT System, except for the transmission that connects the Resource to a provider not inside the ERCOT interconnection if the startup power is supplied by a firm standby contract. Black Start Resources starting with the assistance of a provider not inside the ERCOT interconnection through a firm standby agreement will connect to provider not inside the ERCOT interconnection, start-up, carry internal Load, disconnect from the provider not inside the ERCOT interconnection if not supplied through a black-start capable DC Tie, and continue equivalently to what is required of other Black Start Resources;

## NPRR369 – Printable Version

***(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)***

- (vi) The ability of the Black Start Resource to start without assistance from the ERCOT System, except for the transmission that connects the Resource to a provider not inside the ERCOT interconnection if the startup power is supplied by a firm standby contract;
- (vii) The ability of the Black Start Resource to remain stable (in both frequency and voltage) while supplying only its own auxiliary Loads or Loads in the immediate area for at least 30 minutes; and
- (viii) The Black Start Resource must have verified that its Volts/Hz relay, over-excitation limiter, and under-excitation limiter are set properly and that no protection devices will trip the Black Start Resource within the required reactive range. The Resource Entity for the Black Start Resource shall provide ERCOT with data to verify these settings.
- (ix) Qualification under the Basic Starting Test is valid for one year.
- (b) The “Line-Energizing Test” must be conducted at a time agreed on by the Black Start Resource, TSP or Distribution Service Provider (DSP), and ERCOT and includes the following:
  - (i) Energizing transmission with the Black Start Resource when conditions permit as determined by the TSP or DSP but at least once every three years;
  - (ii) De-energizing sufficient transmission in such manner that when energized by the Black Start Resource it demonstrates the Black Start Resource’s ability to energize enough transmission to deliver to the Loads the Resource’s output that ERCOT’s restoration plan requires the Black Start Resource to supply. ERCOT shall be responsible for transmission connections and operations that are compatible with the capabilities of the Black Start Resource;
  - (iii) Conducting a Basic Starting Test;
  - (iv) Energizing transmission with the Black Start Resource of the previously de-energized transmission, while monitoring frequency and voltages at both ends of the line. Alternatively, if ERCOT agrees, the transmission line may be connected to the Black Start Resource before starting, allowing the Resource to energize the line as it comes up to speed;
  - (v) Stable operation of the Black Start Resource (in both frequency and voltage) while supplying only its auxiliary Loads or external Loads for at least 30 minutes;

## NPRR369 – Printable Version

***(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)***

- (vi) This test may be performed together with the Basic Starting Test in one 30 minute interval; and
  - (vii) Qualification under the Line-Energizing Test is valid for three years.
- (c) The “Load-Carrying Test” -shall be tested as conditions permit, but at least once every five years and includes the following:
- (i) Stable operation of the Black Start Resource (in both frequency and voltage) while supplying restoration power to Load specified by ERCOT’s restoration plan for the Black Start Resource.
  - (ii) Conducting a Basic Starting Test;
  - (iii) Conducting a Line-Energizing Test when required; and
  - (iv) The TSP or DSP operator for the Black Start Resource shall direct picking up sufficient Load to demonstrate the Black Start Resource’s capability to supply the required power identified in ERCOT’s restoration plan, while maintaining voltage and frequency for at least 30 minutes.
  - (v) This test may be performed together with the Basic Starting Test and Line Energizing Test when required in one 30 minute interval.
  - (vi) Qualification under the Load-Carrying Test is valid for five years.
- (d) “Next Start Resource Test”:
- (i) The ability of a Black Start Resource to start up the next start unit’s largest required motor while continuing to remain stable and control voltage and frequency shall be tested. This test shall be repeated when a new next start unit is selected;
  - (ii) To pass the test, (a) the potential Black Start Resource must start the next start unit (as determined by ERCOT), or start the next start unit’s largest required motor and satisfied the next start unit’s minimum startup Load requirements; or (b) the Resource Entity shall demonstrate to the satisfaction of ERCOT through simulation studies conducted by the Resource Entity or a qualified third party, that the potential Black Start Resource is capable of starting the next start unit’s largest required motor while meeting the next start unit’s minimum startup Load requirements. Potential Black Start Service bidders may request next start unit information from ERCOT prior to the selection process to satisfy this requirement. ERCOT shall request this information from the designated next start unit as follows: ERCOT may require any Generation Resource to provide largest motor startup information and unit startup energy

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

requirements as needed to validate Black Start proposals or plans submitted by other Generation Resources. Such data, if requested by ERCOT, shall be provided by the QSE representing the Generation Resource or the Generation Resource Entity to ERCOT within 30 days. Such information shall be considered Protected Information by the requesting Resource Entity when provided to the Resource Entity;

- (iii) If a physical test is performed, the test shall commence with a Basic Starting Test, followed by a Line Energizing Test when required and a Load-Carrying Test as a stand-alone test or part of the Next Start Resource Test;
- (iv) If a physical test is performed, the Black Start Resource must remain stable (in both voltage and frequency) and controlling voltage for 30 minutes;
- (v) If a physical test is performed, this test may be performed together with the Basic Starting Test, Line Energizing Test when required, and Load Carrying Test in one 30 minute interval; and
- (vi) Qualification under the Next Start Resource Test is valid for five years until a new next start unit is selected.

(4) Each qualified Black Start Resource shall perform a Black Start Resource Availability Test quarterly unless the Black Start Resource has successfully started and operated at LSL or higher for at least four consecutive Settlement Intervals during the quarter. The Black Start Resource’s cost to perform a Black Start Availability Test may be a component of the overall bid for Black Start Service (BSS) but ERCOT will not separately compensate QSEs representing Black Start Resources for such testing. ERCOT, at its sole discretion, may grant an exemption of the Black Start Resource Availability Test for QSEs whose Black Start Resources have responded as instructed by ERCOT during an EEA event.

(5) The Black Start Resource Availability Test shall be scheduled by ERCOT. Upon receipt of notification for a Black Start Resource Availability Test, the QSE representing the Black Start Resource shall send confirmation to ERCOT of its intent to comply with the test or submit a request to reschedule along with justification for the request.

(6) ERCOT shall provide the QSE representing the Black Start Resource two-hour notice in order to allow the QSE time to update its Current Operating Plan (COP). The QSE representing the Black Start Resource shall show the Resource as “On Test” in its COP and through its Real-Time telemetry for the duration of the test. As part of the Black Start Resource Availability Test, the QSE representing the Black Start Resource shall start the Black Start Resource and operate it at or above its LSL for at least four

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

consecutive Settlement Intervals. After completion of the Black Start Resource Availability Test the QSE will update its COP to reflect their current status.

- (7) Upon completion of the Black Start Resource Availability Test, the QSE representing the Black Start Resource shall complete and file a Black Start Resource Availability Test report with ERCOT. If the Black Start Resource wants to use a successful start and normal operation to satisfy the quarterly reporting requirement, it must provide the necessary information for the start and normal operation on a Black Start Resource Availability Test report. The report form shall be provided by ERCOT.
- (8) A Black Start Resource Availability Test is deemed to be successful if the Black Start Resource comes On-Line within the time specified in the Black Start Resource's RFP response submitted to ERCOT and operates at a minimum level as agreed to by ERCOT and the QSE representing the Black Start Resource for at least four consecutive Settlement Intervals.
- (9) If the Black Start Resource fails to successfully start during the Black Start Resource Availability Test, the QSE representing the Black Start Resource shall immediately update its Availability Plan for that Black Start Resource showing zero availability. The QSE representing the Black Start Resource shall not receive the Hourly Standby Fee for Black Start Service effective from the date of the failed Black Start Resource Availability Test. The QSE representing the Black Start Resource may schedule a second Black Start Resource Availability Test, subject to ERCOT approval, to be completed within ten Business Days of the date of the failed Black Start Resource Availability Test unless a later date is agreed to by ERCOT. The cost of the second Black Start Resource test will be borne solely by the QSE representing the Black Start Resource.
- (10) If the Black Start Resource successfully passes the second Black Start Resource Availability Test, the QSE representing the Black Start Resource shall resume receipt of the Hourly Standby Fee beginning on the date of the successful Black Start Resource Availability Test.
- (11) If the Black Start Resource fails a second Black Start Resource Availability Test within the quarter, it shall immediately be disqualified from providing BSS and shall receive no further compensation under the Black Start Service Agreement. In addition, ERCOT shall claw-back all Hourly Standby Fee payments made to the QSE representing the Black Start Resource since its last successful Black Start Resource Availability Test or its last successful start and operation under normal system conditions, whichever is later. The clawed-back Hourly Standby Fee payments shall be uplifted by ERCOT to Loads on a Load Ratio Share basis. ERCOT, may, at its sole discretion, consider allowing the Black Start Resource to perform an additional Black Start Resource Availability Test. ERCOT may also, at its sole discretion, seek to procure additional Black Start Resources to replace the disqualified Black Start Resource.

## NPRR369 – Printable Version

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- (12) A QSE representing the Black Start Resource shall update its Availability Plan for a Black Start Resource to show zero if the Black Start Resource fails to perform when ERCOT has issued a Dispatch Instruction to come On-Line any time other than for a Blackout. The Black Start Resource shall continue to be shown as unavailable until it successfully starts under normal operations or completes a successful Black Start Resource Availability Test.
- (133) ~~ERCOT shall decertify a Black Start Resource for the remainder of the contract term i~~ If the Black Start Resource fails to perform successfully during an actual ERCOT System ~~b~~Blackout-event and the Black Start Resource has been declared available, as defined in Section 22, Attachment D, ERCOT shall:
- (a) Decertify the Black Start Resource for the remainder of the Black Start Agreement contract term, and
  - (b) Claw-back 100% of the Hourly Standby Fee paid to the QSE Representing the Black Start Resource for all the Operating Days since its last successful Black Start Resource Availability Test or its last successful start and operation under normal system conditions, whichever is later.

## **NPRR369 – Printable Version**

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### **ERCOT Nodal Protocols**

#### **Section 22**

#### **Attachment D: Standard Form Black Start Agreement**

[if1]

**May 1, 2011**

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# NPRR369 – Printable Version

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Standard Form Black Start Agreement  
Between  
(Name of Participant)  
and  
Electric Reliability Council of Texas, Inc.

This Black Start Agreement (“Agreement”), effective as of \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”), is entered into by and between [insert Participant’s name], a [insert business entity type and state] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

## Recitals

### WHEREAS:

- A. Participant is a Resource Entity as defined in the ERCOT Protocols, and Participant intends to provide Black Start Service (BSS);
- B. ERCOT is the Independent Organization certified under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.151 (Vernon 1998 & Supp. 2007) (PURA) 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. Resource-Specific Terms.

- A. Start Date: \_\_\_\_\_.
- B. Black Start Resource.
  - (1) Description of Black Start Resource [including location, number of generators, metering scheme, etc.]:  
  
\_\_\_\_\_  
\_\_\_\_\_, as described in more detail on Exhibit 1.
  - (2) Nameplate Capacity in MW: \_\_\_\_\_
  - (3) Delivery Point: \_\_\_\_\_

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

(4) Revenue Meter Location (use Resource IDs): \_\_\_\_\_

C. Price:

Hourly Standby Price: \$\_\_\_\_\_ per hour

D. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three 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 Federal Express delivery. 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.  
7620 Metro Center Drive  
Austin, Texas 78744-1654  
Tel No. (512) 225-7000

If to Participant:

[insert information]

### 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.

## NPRR369 – Printable Version

**(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)**

- (1) This Agreement is effective beginning on the Effective Date.
  - (2) The full term (“Full Term”) of this Agreement begins on the Start Date and continues for a period of two years.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement immediately upon the failure of ERCOT to continue to be certified by the Public Utility Commission of Texas (PUCT) as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151.
- 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 of Participant’s 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) The 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 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,

## NPRR369 – Printable Version

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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;
- (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;

## NPRR369 – Printable Version

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- (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;
- (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, [ERCOT Operating Guides](#), and the [North American Electric \(NERC\) Reliability Standards](#) as they pertain to operation of a Black Start Resource by a Resource Entity.
- 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, 16 U.S.C. § 824(e)(2005), 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 (FERC).

### 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 FERC. 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.

## NPRR369 – Printable Version

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### Section 7. Black Start Decertification.

If a Black Start Resource does not remain certified, or if it is in default as described in Section 10.A(2)(e) during the term of this Agreement, then the Hourly Standby Fee is reduced to zero for the remainder of the Full Term, and Participant will be required to~~shall~~ refund to ERCOT ~~any~~uncertain amounts paid by ERCOT under this Agreement during the Full Term as described in the ERCOT Protocols.

### Section 8. Operation.

A. Black Start Resource Maintenance. Before the start of the contract year, Participant shall furnish ERCOT with its proposed schedule for Planned Outages for inspection, repair, maintenance, and overhaul of the Black Start Resource for the contract year. Participant will promptly advise ERCOT of any later changes to the schedule. The specific times for Planned Outages of the Black Start Resource must be approved by ERCOT. Such approval may be withheld if necessary to assure reliability of the ERCOT System. ERCOT shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the ERCOT System is not materially affected by those changes. In all cases, ERCOT must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.

B. Planning Data.

Participant shall timely report to ERCOT those items and conditions necessary for ERCOT's internal planning and compliance with ERCOT's guidelines in effect from time to time. The information supplied must include, without limitation, the following:

- (1) Availability Plan for the next day ~~shall be~~ (transmitted to the ERCOT Shift Supervisor dispatcher by 06:00 a.m. of the preceding day) ~~pertaining to the Black Start Resource's ability to black start. The information submitted in the Availability Plan will be consistent with the information submitted in the Resource plan;~~ and
- (2) Revised Availability Plan reflecting changes in the availabilityPlan as soon as reasonably practical, but in no event later than 60 minutes after the event that caused the change.

C. Testing.

Participant shall perform quarterly Black Start Resource Availability Tests as described in these Protocols.

D. Delivery.

- (1) ERCOT will make every effort to~~shall~~ notify the Participant, through its Qualified Scheduling Entity (QSE) or Transmission Service Provider (TSP), when the

## NPRR369 – Printable Version

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Black Start Resource must black start. It is, however, the responsibility of the Participant to initiate the start-up process of Black Start Resources in preparation for system restoration.

- (2) If the ERCOT Transmission Grid at the Black Start Resource becomes de-energized and if Participant cannot communicate with either ERCOT or the Transmission Service Provider (TSP) and/or Distribution Service Provider (DSP) serving the Black Start Resource, then Participant shall follow the procedures specified for the Black Start Resource under ERCOT’s Black Start plan in the Operating Guides, but Participant shall not commence delivering electric energy into the ERCOT System without specific instructions to do so from either ERCOT or the TSP and/or DSP serving the Black Start Resource.

### Section 9. Payment.

- A. 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:
  - (1) 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.
  - (2) 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.
- B. Hourly Standby Fee Payments. ERCOT shall pay Participant the Hourly Standby Fee as described below, except as specified otherwise in Section 7 above.
  - (1) Availability
    - (a) “Available” means, with respect to a given hour, that Participant has declared, in its Availability Plan, that the Black Start Resource is able to start without a connection to the ERCOT Transmission Grid.
    - (b) The Black Start Resource is not Available if:
      - (i) the Black Start Resource utilizes a power pool outside of ERCOT to start and the transmission path(s) between the Resource and the other power pool is not available due to an outage; or
      - (ii) the Black Start Resource utilizes a power pool outside of ERCOT to start but fails to maintain a firm standby supply contract for that power pool; or

## NPRR369 – Printable Version

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- (iii) the Black Start Resource has failed a ~~Black Start Resource Availability Test~~, as described in the ERCOT Protocols or Operating Guides and has not passed a subsequent ~~Black Start Resource Availability Test~~; or
- (iv) the Black Start Resource has failed to start when required under this Agreement, and ~~it has not~~ passed a subsequent ~~Black Start Resource Availability Test~~; or
- (v) the Black Start Resource failed to perform when issued a Dispatch Instruction to come On-Line any time other than for BSS and has not passed a subsequent Black Start Resource Availability Test.

(c) At its option, ERCOT may use the Black Start Resource’s Current Operating Plan (COP) as the source of ~~black-start~~Black Start Resource availability information instead of the Availability Plan.

(2) “Black Start Service Hourly Rolling Equivalent Availability Factor (BSSHREAF)” means, with respect to a given hour, the quotient (expressed as a percentage) of (a) the number of hours, including the given hour and the immediately preceding 4,379 hours, in which the Black Start Resource was Available, divided by (b) 4,380; provided that, to the extent that 4,379 hours have not elapsed since the Start Date (the difference between 4,379 and the hours that have elapsed being referred to herein as the “Assumed Hours”), the Black Start Resource shall be deemed, for purposes of this calculation, to be Available for the Assumed Hour unless the Black Start Resource has failed to perform in response to a blackout event or when a Dispatch Instruction to come On-Line has been issued. Participant’s failure to perform shall be subject to possible claw-back of its Hourly Standby Fee and reduced payment during the Assumed Hours period. A Force Majeure Event is treated the same as any other cause for unavailability for the purposes of calculating BSSHREAF.

(3) “Hourly Standby Fee” means, with respect to a given hour, the result determined from the following table:

Black Start Service Hourly Rolling Availability Factor (BSSHREAF)	Hourly Standby Fee
If BSSHREAF is more than or equal to 85%	Hourly Standby Price (\$)
If BSSHREAF is less than 85% but more than 35%	Hourly Standby Price * [100%-(85%-BSSHREAF) * 2] (\$)
If BSSHREAF is equal to or less than 35%	Zero

Section 10. Default.

## NPRR369 – Printable Version

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### A. Event of Default.

- (1) Failure to make payment or transfer funds as provided in the ERCOT Protocols shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three times within a rolling 12-month period, the fourth such breach shall constitute a Default by the breaching Party.
- (2) For any material breach other than a failure to make payment or transfer funds, 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 failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the ERCOT Protocols, unless cured within 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 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 times within a rolling 12-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 proceeding, that is dismissed within 90 days thereafter.
  - (c) The Black Start Resource's operation is abandoned without an intent to return it to operation during the Full Term; or
  - (d) At any time, the Black Start Service Hourly Rolling Equivalent Availability Factor (BSSHREAF) is equal to or less than 50%.
  - (e) An Available Black Start Resource fails to perform successfully as required during a Partial Blackout or Blackout.
- (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 14 Business Days after

## NPRR369 – Printable Version

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delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three 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 times within a rolling 12-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 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 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 12, 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 12, 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

## NPRR369 – Printable Version

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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(s) 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(s) 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 (followed by written notice) as soon as reasonably practicable, but not later than 14 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 10.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 11. 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

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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 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 Section 13.A, Choice of Law and Venue, of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).

### Section 12. 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 13. 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

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defense of 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, notices of Default, and an opportunity for the Financing Person to cure Defaults.
- (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 10.B and the Financing Persons in subsection 13.B(1)(c), (1) 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, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (3) this

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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.

- 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 (1) 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 (2) 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 14 days, either Party shall have the right to terminate this Agreement on three 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

## NPRR369 – Printable Version

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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 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 9.A.

## NPRR369 – Printable Version

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- 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.
  - (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 (CPT).
- 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.

## NPRR369 – Printable Version

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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

**NPRR369 – Printable Version**

***(\*\*Disclaimer – this version is being provided to aid in review of proposed language but is not a substitute for the official TAC Report)***

By: \_\_\_\_\_,  
as General Partner for [Participant]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Market Participant Name:  
\_\_\_\_\_

Market Participant DUNS: \_\_\_\_\_

## **NPRR369 – Printable Version**

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### **ERCOT Nodal Protocols**

#### **Section 22**

#### **Attachment I: Amendment to Standard Form Black Start Agreement**

**XXXXXX, 2011**

# NPRR Comments

Amendment to  
Standard Form Black Start Agreement  
Between  
(Name of Participant)  
and  
Electric Reliability Council of Texas, Inc.

This AMENDMENT to the Standard Form Black Start Agreement (“Amendment”), 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, Participant and ERCOT entered into a Standard Form Black Start Agreement (Agreement) dated \_\_\_\_\_; and

WHEREAS, Participant and ERCOT wish to amend that Agreement to substitute the current Black Start Resource with an alternative Generation Resource that will now serve as the designated Black Start Resource under the Agreement.

NOW, THEREFORE, Participant and ERCOT agree that paragraphs A and B of Section 1, Resource-Specific Terms, of that Agreement shall be deleted in its entirety and replaced with the following:

### Section 1. Resource-Specific Terms.

A. Start Date: \_\_\_\_\_.

B. Black Start Resource.

(1) Description of Black Start Resource [including location, number of generators, metering scheme, etc.]:

\_\_\_\_\_, as described in more detail on Exhibit 1.

(2) Nameplate Capacity in MW: \_\_\_\_\_

(3) Delivery Point: \_\_\_\_\_

(4) Revenue Meter Location (use Resource IDs): \_\_\_\_\_

# NPRR Comments

This Amendment modifies the existing Agreement only to include the Resource-specific terms designated above by Participant.

This Amendment in no way alters the terms and conditions of the existing Agreement other than as specifically set forth herein.

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 Amendment to the Standard Form Black Start 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

By: \_\_\_\_\_,

as General Partner for [Participant]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Market Participant Name:

\_\_\_\_\_

# NPRR Comments

Market Participant DUNS: \_\_\_\_\_