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Mr. Chad Seely

Assistant General Counsel

ERCOT

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Austin, Texas 78744

Re: Request for Comments on Draft Amendments to PUC Subst R. 25.207

Dear Mr. Seely:

I appreciate the opportunity to comment on ERCOT’s recommendations to the Public Utility Commission of Texas in regard to PUC Subst. R. 25.207, the Emergency Interruptible Load Service (EILS) rule. I am submitting these comments on my own behalf given the relatively rapid turnaround requested by the ERCOT staff.

In general, I support the direction of the ERCOT staff’s proposal which seeks to open the program to more resources and to provide the ERCOT staff with more operational flexibility to manage the program. I also applaud the willingness of ERCOT management and staff to support the program which has clearly provided demonstrated reliability benefits to the ERCOT market even in the face of the unwarranted intransigent opposition from certain stakeholders dating back to program inception.

Nevertheless, I remain concerned that the ERCOT staff’s proposals fail to address fundamental design flaws in the EILS program and in some cases will exacerbate some problems. As such, the EILS program, which was originally envisioned as a mechanism to provide reliability benefits by attracting up to 1000 MW of new demand response resources to participate in the ERCOT market, will continue to fail to meet its intended goals.

I have detailed below some of the major concerns with the existing rule and with the ERCOT staff’s proposed changes.

**Program Scope**

As originally conceived, the EILS program was intended to improve reliability as well as promote the development of demand response resources in the ERCOT market by providing “meaningful demand response opportunities for all customer classes.” [[1]](#footnote-1)

The EILS program was intended to attract 1000 MW of new demand response resources, but unfortunately, about 450-466 MW are participating in business hours and 388 MW are participating in non-businesses hour time periods as of the last bidding cycle.[[2]](#footnote-2)

ERCOT’s staff’s proposal to now expand participation by including distributed generation in the rule changes the Commission’s original intent for the rule, which is to focus on encouraging demand side participation, an area in which ERCOT continues to lag behind other ISOs, as ERCOT management and staff have routinely acknowledged on many occasions.[[3]](#footnote-3)

Rather than change the intent of the program, the ERCOT staff should instead focus its suggested changes on how to encourage more customers to participate in the ERCOT market in order to achieve the original goal for the EILS program.

In this respect, the proposal fails to address the fundamental issue constraining growth of the program. The rule’s limitation to resources that can reduce demand in 10 minutes, a very short time frame, has precluded participation by a large number of otherwise interested and willing customers.

While including distributed generation may provide some opportunities for a new class of resource to participate, it is not clear this change will improve the program. First, it is not clear what resource ERCOT is targeting for participation since the term “dispatchable distributed generation” is not defined by the proposed rule. The staff should clarify whether it is referring to the definition of a “distributed resource” in PUC Subst R. 25.5 (32) (defining a distributed resource as “A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center”).

If that is the definition, it is not clear that this change would result in many new resources enrolling in the program since it is clear that few such resources exist in the ERCOT market. For example, reports filed at the PUCT show that there is a total of 394 MW of distributed generation in the service territories of the four ERCOT utilities in 2008. [[4]](#footnote-4) It is unclear how many of these resources would actually be available to participate in the program since it is unclear whether these resources could curtail in 10 minutes or whether the uptake would be significant by the upcoming summer. In sum, it is unlikely that this change will fix the under-subscription problem in the EILS program.

In contrast, it is certain that there are many customers that cannot currently participate in the EILS program due to the 10 minute curtailment period, but could participate if the program were expanded to include 30 minute, one hour and two hour curtailment periods. Such curtailment periods are the norm in almost all other ISO-conducted reliability demand response programs. [[5]](#footnote-5)

Indeed, it is likely that adding new curtailment periods would represent the fastest method for building additional reliability resources in ERCOT since EILS providers have most likely already identified customers that could participate under these expanded curtailment time periods.

Accordingly, ERCOT should also seek to expand load participation opening up new curtailment periods in addition to including distributed resources in the program.

**Eliminating Technical Detail**

It is clear that the current EILS rule incorporates many unnecessary technical details that have limited ERCOT’s operational flexibility for improvements to the EILS program.

Nevertheless, eliminating all of the technical detail contained in the rule could result in the unintended consequences. There is a risk that the program could become subject to more frequent rule changes under the protocol revision procedures existing in the ERCOT stakeholder process, particularly given the fact that demand response providers lack representation, have no ability to vote and are vastly outnumbered by companies representing generation resources in the ERCOT stakeholder process.

While the existing rule has overly constrained improvements in the program, there is a concern that the proposed changes would cause more uncertainty regarding the fundamental design elements of the program and thereby discourage, rather than encourage customer participation given the current state of affairs in the ERCOT stakeholder process.

**Compliance**

The EILS rule’s current approach to compliance is overly harsh and the proposed rule changes only worsen the problem.

Under the existing EILS rule, a resource is responsible for its failure to meet its availability or performance requirements. In contrast, the proposed changes appear to make the QSE subject to administrative penalties for non-compliance by “the ERS resource it represents.” Since many aggregators enroll customers but do not control whether the represented loads actually perform, a change that could subject the QSE to administrative penalties for non-compliance by its customer unreasonably places performance responsibility on the QSE. This change could have the unintended consequence of limiting enrollment to loads that the QSE can directly control.

In addition, the penalty structure under EILS, which includes the possibility of suspension both under the existing rule and the proposed rule change, imposes disproportionate penalties since suspension is not imposed on generation resources. In addition, the penalty structure in ERCOT is much harsher than any other ISO where nonperformance penalties are usually structured around reductions in payment, in future participation levels or financial penalties.

**Event Duration**

Two issues related to event duration resulting from the February 2-3 rolling blackout should be addressed in the rule.

First, Section (c) (7) of the proposed rule makes clear that a resource must continue providing service until “released by ERCOT”. The rule, however, does not provide for additional compensation for any dispatch beyond the eight hour contract amount should ERCOT continue to need load reduction. Nor does the rule mitigate any performance failures that could occur if the load cannot perform at the same level through an extended outage. In order to address this issue, ERCOT should consider adding a provision that a failure to perform outside the eight hour requirement cannot be sole cause for a suspension.

Second, the rule appropriately clarifies the ambiguity of performance obligations of a resource that is (or is not) committed over several time periods. The proposed change that clarifies that the obligation is “consistent with its obligations in each ERS time period” clarifies the ambiguity over the level of participation that stretches across time periods.

**Conclusion**

In summary, I appreciate ERCOT management and staff’s efforts to developing a robust demand response program that can address the reliability needs of the ERCOT market and look forward to working together to continue to improve this program.

Sincerely,



Brett A. Perlman

1. See Docket 34707, Order Adopting Amendment To §25.507 As Approved At The November 1, 2007 Open Meeting at 36. [↑](#footnote-ref-1)
2. See EILS Update to DSWG, available at the http://www.ercot.com/calendar/2011/09/20110930-DSWG [↑](#footnote-ref-2)
3. See, e.g. Trip Doggett’s recent presentation to the Austin Metropolitan Breakfast Club, Nov. 9, 2011 which is available on the ERCOT website. [↑](#footnote-ref-3)
4. See Table KM-2 in Docket 36485, Annual Filing by Electric Utilities of Interconnected Distributed Generation Facilities to Comply with Substantive Rule §25.211(n) [↑](#footnote-ref-4)
5. See ISO/RTO Council, [North American Wholesale Electricity Demand Response Program Comparison](http://www.isorto.org/site/apps/nlnet/content2.aspx?c=jhKQIZPBImE&b=2708737&ct=8400541) 2010 available at <http://www.isorto.org/site/c.jhKQIZPBImE/b.2604461/k.6151/Documents_and_Issues.htm> [↑](#footnote-ref-5)