



## MEMORANDUM

To: ERCOT Board of Directors  
From: Bill Magness, ERCOT General Counsel  
Date: September 12, 2013  
Re: Comments concerning PURA § 39.905(b)(7)

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Johnson Controls, Inc. (JCI), has submitted comments regarding NPRR 555, Load Resource Participation in Security-Constrained Economic Dispatch. These comments express concern that NPRR 555 violates section 39.905(b)(7) of the Public Utility Regulatory Act by failing to allow participation by Load aggregators (including “curtailments service providers”). JCI made a similar claim in comments submitted to the Technical Advisory Committee (TAC). In response to JCI’s TAC comments, ERCOT submitted the attached comments explaining why NPRR 555 does not violate the statute. Specifically, ERCOT noted that PURA section 39.905(b)(7) does not require participation by aggregators, and that even if it did, NPRR 555 does not prohibit participation by aggregators. ERCOT also noted that, under the express terms of the statute, any participation requirement would only apply to the extent that participation would comply with ERCOT’s operational rules. Because no reliable manner of Load participation in ERCOT’s energy markets has yet been devised, no right to participation currently exists.

## NPRR Comments

<b>NPRR Number</b>	<b>555</b>	<b>NPRR Title</b>	<b>Load Resource Participation in Security-Constrained Economic Dispatch</b>
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<b>Date</b>	September 4, 2013
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<b>Market Segment</b>	Not applicable

### Comments

Electric Reliability Council of Texas, Inc. ("ERCOT") submits these comments to address the requirements of Texas Utilities Code section 39.905(b)(7), which reads as follows:

- (b) The commission shall provide oversight and adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including:

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- (7) ensuring that an independent organization certified under Section 39.151 allows load participation in all energy markets for residential, commercial, and industrial customer classes, either directly or through aggregators of retail customers, to the extent that load participation by each of those customer classes complies with reasonable requirements adopted by the organization relating to the reliability and adequacy of the regional electric network and in a manner that will increase market efficiency, competition, and customer benefits.

Comverge, Inc. ("Comverge") and Johnson Controls, Inc. ("JCI") have argued that Nodal Protocol Revision Request (NPRR) 555 violates this provision by failing to allow participation by Load aggregators (including "curtailment service providers"). For several reasons, ERCOT disagrees.

First, nothing in NPRR555, as currently proposed, forbids aggregators from contracting with Loads to participate in this program. While it is true that ERCOT would not settle

## NPRR Comments

directly with aggregators under this proposal, that particular approach is not required by the statute, which simply requires that the Public Utility Commission of Texas (Commission) adopt rules to ensure that ERCOT “allows load participation . . . either directly or through aggregators of retail customers . . .” Tex. Util. Code § 39.905(b)(7). To the extent this provision requires ERCOT to allow Load participation through aggregators, NPRR555 meets this requirement.

Furthermore, the statute does not appear to require Load participation through aggregators in the first place. Section 39.905(b)(7) requires “load participation in all energy markets for residential, commercial, and industrial customer classes, *either* directly *or* through aggregators of retail customers . . .” (emphasis added). *Id.* The legislative preference for the disjunctive (“or”) means that either option by itself should satisfy the statutory requirement—that is, that Load participation could permissibly be achieved by allowing direct participation without aggregator participation, or vice versa. The reading advocated by JCI and Comverge might be appropriate if the statute had provided that Load participation must be allowed “*both* directly *and* through aggregators of retail customers,” but the legislature did not choose that construction. Even if NPRR555 had somehow precluded participation by aggregators, that exclusion would be permissible under the phrasing of the statute.

Finally, JCI and Comverge fail to acknowledge other language in Texas Utilities Code section 39.905(b)(7) expressly conditioning the applicability of the participation requirement on compliance with ERCOT-approved reasonable requirements for reliability. Specifically, the obligation only applies “to the extent that load participation by each of those customer classes complies with reasonable requirements adopted by the organization relating to the reliability and adequacy of the regional electric network . . .” *Id.* This language is critical because it demonstrates the legislature’s expectation that any facilitation of further Load participation should only occur if it can be done without creating a threat to system reliability. Whether (and how) Loads can be reliably integrated into real-time energy dispatch has been the subject of much stakeholder discussion since 2011 when this statute was adopted. NPRR 555 is ERCOT’s renewed effort to provide a means for Load participation while ensuring system reliability. However, until this framework is in place, there is no reliable mechanism for real-time economic dispatch of any Loads, whether represented by aggregators or otherwise.

For these reasons, ERCOT concludes that NPRR555, as proposed, does not violate any requirement of Texas Utilities Code section 39.905(b)(7).

<b>Revised Proposed Protocol Language</b>
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None.