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PUBLIC UTILITY COMMISSION  
OF TEXAS

APPEAL OF THE SMALL PUBLIC §  
POWER GROUP OF TEXAS §  
REGARDING ERCOT'S DEFINITION §  
OF "TRANSMISSION OPERATOR" §

PUBLIC UTILITY COMMISSION  
OF TEXAS

**APPEAL OF THE SMALL PUBLIC POWER GROUP OF TEXAS REGARDING  
ERCOT'S DEFINITION OF "TRANSMISSION OPERATOR"  
AND  
AGREED REQUEST TO IMMEDIATELY MODIFY CERTAIN TIME LIMITS**

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VERIFICATION OF STEVE MOFFITT

COMES NOW the Small Public Power Group of Texas (“SPPG”), comprised of the municipally-owned utilities of Bartlett, Bridgeport, Farmersville, Goldsmith, Hearne, Robstown, Sanger, and Seymour, and respectfully appeals to the Public Utility Commission of Texas (“the Commission” or “PUC”), pursuant to PUC Rule 22.251, from the decision by the Electric Reliability Council of Texas, Inc. (“ERCOT”) not to adopt Nodal Operating Guide Revision Request (“NOGRR”) 149, “Revision to Definition of Transmission Operator.” If adopted, the revision would except certain Distribution Service Providers (“DSPs”) from the requirement to designate a Transmission Operator (“TO”) for certain load shed purposes, due to their small size.

### I. SUMMARY

The revision would conform the ERCOT Nodal Operating Guides to the existing factual situation, in which none of the SPPG members are currently in the ERCOT Load Shed Table, and never have been (with one small exception, discussed later). The revision will not, in any way, affect the reliability of the ERCOT system (as ERCOT Staff has confirmed). It would also keep ERCOT at the same level of efficiency for emergency operations. But even if SPPG’s load was put into the ERCOT Load Shed Table, it is so miniscule that it would not materially change anyone else’s load relief share.

Moreover, several SPPG members are so small they are physically limited in their ability to comply with the relevant ERCOT requirements – even if they could find a Transmission Service Provider (“TSP”) willing to be designated as their TO.

In addition, without the revision, “critical” loads of the small utilities (like hospitals, police and fire departments, water and wastewater plants, other public safety facilities, and non-disconnect customers with medical documentation), would be discriminated against. This is because they would be vulnerable to curtailment or load shedding, while similar loads in larger cities are protected.

Further, those small utilities that are SPPG members, and ultimately their customers, would have to bear unjust and unreasonable costs for transmission services that TSPs already recover through the ERCOT postage stamp transmission pricing, and provide for free to those TSP’s wholesale customers, but which are denied to the SPPG members. This is in violation, among other things, of the obligation of the TSPs to provide on a non-discriminatory basis the

same transmission service to other market participants on the same terms and conditions that they provide to themselves and to others.

Finally, the “same-rules-should-apply-to-all” notion is not the appropriate principle here. When circumstances warrant, small entities are treated differently than larger ones – like NERC’s Compliance Registry exception for Distribution Providers at 75 MW or less of peak load, and the PUC’s “small fish swim free exemption” for generators controlling less than 5% of ERCOT’s generation capacity. In this unique context, the technical implementation problems due to DSP size warrant the SPPG revision. In other words, just as in the generation context when market power is not implicated, it makes good policy sense in the distribution context when reliability is also not implicated for “small fish” to “swim free.”

Given these unique circumstances, the Commission should recognize that ERCOT’s rules do not fit all circumstances, that there is no reliability issue at stake in this special circumstance, and that it is appropriate to modify ERCOT’s rules in this special instance.

## **II. JURISDICTION**

The Commission has jurisdiction over the subject matter of and the parties to this pleading pursuant to the Public Utility Regulatory Act (“PURA”) as codified in the Texas Utilities Code, including Sections 11.003, 11.004, 12.001, 14.001, 14.051, 15.051, 31.002, 32.001, 35.004, 36.002, 36.003, 38.001, 38.002, 38.003, 38.005, 39.003, and 39.151, and pursuant to the Commission’s regulations, including Rules 22.251, 25.191, 25.361, 25.362, and 25.503. Prior to filing this pleading with the Commission, SPPG has followed the ERCOT processes for protocol revision with regard to the relevant portion of the Nodal Operating Guides, which, per ERCOT Operating Guides Section 1.1(1), are a supplement to the ERCOT Protocols. The ERCOT Board of Directors decided not to adopt NOGRR 149 at its meeting of April 10, 2018, thus this dispute is ripe for Commission resolution under Rule 22.251(c) and timely under Rule 22.251(d).

## **III. PARTIES**

SPPG is an unaffiliated and unincorporated organization of small DSPs comprised of the Cities of Bartlett, Bridgeport, Farmersville, Goldsmith, Hearne, Robstown, Sanger, and Seymour. The SPPG members are directly affected by ERCOT’s decision regarding NOGRR 149. The authorized representative of SPPG is as follows:

Steve Moffitt  
Schneider Engineering, Ltd.  
1509 Emerald Parkway, Suite 103  
College Station, Texas 77845  
Phone: 830-249-3887 / Fax: 830.249.5434  
Email: [smoffitt@se-texas.com](mailto:smoffitt@se-texas.com)

The legal counsel for the authorized representative of SPPG is as follows:

Thomas K. Anson  
Clark Hill Strasburger  
720 Brazos Street, Suite 700  
Austin, TX 78701  
Phone: 512-499-3608 / Fax: 512-536-5718  
E-mail: [tom.anson@clarkhillstrasburger.com](mailto:tom.anson@clarkhillstrasburger.com)

ERCOT is an independent system operator charged under PURA § 31.002(9) with the statutory responsibilities of nondiscriminatory coordination of market transactions, system-wide transmission planning, and network reliability. ERCOT's authorized representative is as follows:

Chad V. Seely  
Vice President and General Counsel  
Electric Reliability Council of Texas, Inc.  
7620 Metro Center Drive  
Austin, Texas 78744  
Phone: (512) 225-7035 / Fax: (512) 225-7079  
Email: [Chad.Seely@ercot.com](mailto:Chad.Seely@ercot.com)

#### **IV. STATEMENT OF THE CASE**

##### **Description of Underlying Proceeding**

On November 11, 2015, SPPG's representative posted a Nodal Operating Guide Revision Request ("NOGRR") to revise the definition of "Transmission Operator" so as to establish a 25 MW annual peak threshold below which a DSP owning no transmission or generation facilities would be excepted from having procure designate a TO (which essentially implements certain load shed events). The proposed revision is as follows:

##### **1.4 Definitions**

##### **Transmission Operator (TO)**

Entity responsible for the safe and reliable operation of its own portion or designated portion of the ERCOT Transmission System.

Every Transmission Service Provider (TSP) or ~~Distribution Service Provider (DSP)~~ in the ERCOT Region shall either register as a TO, or designate a TO as its representative and with the authority to act on its behalf.

Every Distribution Service Provider (DSP) in the ERCOT Region with an annual peak Load exceeding 25 MW shall either register as a TO, or designate a TO as its representative and with the authority to act on its behalf.

Every DSP in the ERCOT Region with an annual peak Load of 25 MW and below which is required by North American Electric Reliability Corporation (NERC) to be registered as a distribution provider, or any other applicable NERC registration, shall either register as a TO, or designate a TO as its representative and with the authority to act on its behalf.

All other DSP obligations in the Nodal Operating Guides and Protocols would not be affected.

ERCOT's Operations Working Group ("OWG") recommended rejection of NOGRR 149 on January 26, 2016. SPPG timely appealed to ERCOT's Reliability and Operations Subcommittee ("ROS") on February 1, 2016. ROS rejected the appeal on March 3, 2016. SPPG timely appealed to ERCOT's Technical Advisory Committee ("TAC") on March 10, 2016. TAC tabled the appeal, starting in April 2016, in order for SPPG, among other things, to pursue potential market solutions that would, if successful, make unnecessary a TAC decision on the request. Despite hard work and some progress on potential market solutions, no permanent solutions are yet in place for any SPPG member. TAC rejected the appeal on February 22, 2018. SPPG timely appealed to ERCOT's Board of Directors on March 5, 2018. The ERCOT Board rejected the appeal on April 10, 2018. SPPG has timely filed this appeal therefrom.

#### **Entities or Classes of Entities Directly Affected by a Commission Decision**

See Section III above regarding the parties.

#### **Description of ERCOT Decision**

The conduct from which relief is sought is ERCOT's decision not to adopt NOGRR 149.

#### **Compliance with ERCOT Protocols**

See Section II above on jurisdiction, regarding utilization of the protocol revision process, and the verification attached hereto, regarding the key NOGRR 149 documents that were a part of that process. Therefore, the ERCOT Protocols have been complied with.

#### **No Suspension Sought of the ERCOT Decision**

SPPG does not seek interim suspension of the ERCOT decision not to adopt NOGRR 149. That is because the revision, if adopted, would eliminate the need for ERCOT, the SPPG members, and ERCOT transmission operators to undertake new or different arrangements. In other words, the revision would preserve the status quo; the ERCOT Board decision by itself does not change that status quo while this appeal is pending.

## **Basis for Commission Jurisdiction**

See Section II above regarding jurisdiction.

### **V. STATEMENT OF THE ISSUE PRESENTED**

Whether ERCOT should be required to adopt NOGRR 149, or otherwise except small systems like the SPPG members from the requirement to designate a Transmission Operator (TO), or in the alternative whether the Commission should fashion some other appropriate relief, since those SPPG systems are so small it is unfair (to them and their residential and commercial customers) and inefficient (both for them and for the broader ERCOT market) to require those small systems to expend scarce resources on something that has (1) no reliability benefit for the ERCOT system and (2) no material effect on anyone else's load relief share.

### **VI. STATEMENT OF FACTS**

The SPPG members range in peak size from less than 1 MW to 21 MW, with most in the 9 to 12 MW range. They serve residential and commercial customers, and own no generation or transmission facilities.

The SPPG entities have a limited number of distribution feeders, six of which have critical load on all of them, and a limited number of electric utility employees:<sup>1</sup>

- City of Bartlett: 1 feeder, with critical load on it, and 8 electric employees
- City of Bridgeport: 3 feeders, with critical load on all 3, and 4 electric employees
- City of Farmersville: 2 feeders, with critical load on both, and 5 electric employees
- City of Goldsmith: 1 feeder, with critical load on it, and 3 electric employees
- City of Hearne: 3 feeders, with critical load on all 3, and 4 electric employees
- City of Robstown: 9 feeders, with critical load on 6 of them, and 26 electric employees
- City of Sanger: 4 feeders, with critical load of all 4, and 7 electric employees
- City of Seymour: 8 feeders, with critical load on 2 of them, and 4 electric employees

Critical load, such as law enforcement organizations and facilities affecting public health, have a priority in service restoration, and TSPs when curtailing firm load are to keep in mind the need to protect the safety and health of the community and the essential human needs of the citizens.<sup>2</sup> These are typically hospitals, police and fire departments, water and wastewater plants, and non-disconnect customers with medical documentation.<sup>3</sup> The smaller the DSP, and the fewer number of distribution feeders it has, the more difficult it becomes for the small DSP to have sufficient

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<sup>1</sup> See 149NOGRR-37 SPPG Appeal 030618, available at <http://www.ercot.com/mktrules/issues/NOGRR149#keydocs>; Tex. Pub. Power Ass'n 2017 Directory.

<sup>2</sup> See ERCOT Nodal Operating Guide, "Emergency Operation," §§ 4.5.2(3)(d) & 4.5.3.3(3)(b) (Feb. 1, 2018), available at <http://www.ercot.com/mktrules/guides/noperating/current>.

<sup>3</sup> PUC Subst. R. 25.497, "Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers."

distribution feeders capable of allowing firm load shed to occur without significant load over-  
curtailment (including as much as an entire city), much less as to just non-critical load.

The designated TO essentially implements two kinds of ERCOT load shed events. The first is an Energy Emergency Alert (“EEA”), the second is Under-Frequency Load Shedding (“UFLS”). These are typically implemented on a distribution feeder-by-feeder basis.

SPPG requested NOGRR 149 in order to cut the Gordian knot in which SPPG’s members:

- (1) cannot get the TSPs with whom they are directly connected to agree to become their designated TOs – because they are not under the wing of large TSPs who already provide free designated TO service to their wholesale customers;
- (2) cannot get other TSPs to be their designated TOs, absent new interconnection points with those other TSPs, since TSPs want to be the only ones operating their own equipment;
- (3) cannot comply, physically, if they have only one distribution feeder, with shed load in a manner consistent with ERCOT’s load shedding levels except by curtailment of the entire city;
- (4) cannot comply, physically, even if they have two or more distribution feeders, with shed load in a manner consistent with ERCOT’s load shedding levels without curtailing “critical load” (like police and fire departments or hospitals), due to their limited number of distribution feeders; and
- (5) cannot comply economically with ERCOT’s load shedding requirements, because of the tremendous cost to “self-designate” as a TO after creating from scratch the hard and soft infrastructure the TSPs use for designated TO purposes (e.g., under-frequency relays, back office systems, ERCOT communications, and ERCOT training and certification), even though the directly-connected TSPs already have those elements and processes in place (and presumably recover the costs as part of the ERCOT “postage stamp” transmission pricing).

Requiring ERCOT to adopt NOGRR 149 will not, in any way, adversely affect the reliability of the ERCOT system – as ERCOT Staff has twice expressly confirmed.<sup>4</sup>

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<sup>4</sup> 149NOGRR-02 ERCOT Comments 120915, and 149NOGRR-41 ERCOT Comments 040318, both available at <http://www.ercot.com/mktrules/issues/NOGRR149#keydocs>.

Moreover, even if the SPPG members' aggregate load was put into the ERCOT Load Shed Table as the result of finding designated TOs, it is so miniscule that it would not materially change anyone else's load relief share: less than three one-hundredths of one percent of the total ERCOT system.<sup>5</sup>

In theory, under the 25 MW threshold in NOGRR 149, up to 600 MW of load could be excluded from the designated TO requirement. This is, of course, just a theoretical hypothetical, since it assumes that DSPs who already have a designated TO in place (for free, at that), and thus do not need the exclusion, would nevertheless unwind their multiple physical and legal arrangements just to invoke the proposed exclusion. But even the "worst case" 600 MW hypothetical still has a de minimis amount of load involved for anyone else's load shed relief share: less than three tenths of one percent of the total ERCOT system.<sup>6</sup>

Requiring ERCOT to adopt the request would also conform the Nodal Operating Guides to the existing factual situation, in which none of the SPPG members are currently in the ERCOT Load Shed Table, and never have been (with the exception of Goldsmith, which is already in the Load Shed Plan of Oncor Electric Delivery Company LLC ("Oncor"), but Oncor nevertheless is unwilling to be Goldsmith's designated TO).

Codifying the existing situation would also be a positive as to the efficiency of ERCOT emergency operations. This is because there would be no additional entities for ERCOT to manage during an emergency, and less training, drills, administration, etc. Indeed, the North American Electric Reliability Corporation ("NERC") exclusion threshold for Distribution Providers compliance registration was raised in 2014 from 25 MWs to 75 MWs of peak load, which simplified NERC's administrative efficiency without any adverse reliability effect.<sup>7</sup>

Requiring each SPPG member to have a designated TO, when their directly-connect TSP refuses to be one, will require the SPPG member either to: (1) incur significant costs to self-

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<sup>5</sup> See ERCOT Report on the 2017 "4CP" Coincident Peak Load in the ERCOT Region (Nov. 30, 2017), PUC Docket No. 47777, *Commission Staff's Application to Set 2018 Wholesale Transmission Service Charges for [ERCOT]*, which is publically available at [http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TXT\\_CNT\\_R\\_NO=47777&TXT\\_ITEM\\_NO=16](http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNT_R_NO=47777&TXT_ITEM_NO=16). A 25% curtailment of the SPPG members' 2017 peak load would be 18.85 MWs, to support the ERCOT system that had a 2017 peak demand of 67,273 MWs, or 0.00028025 thereof.

<sup>6</sup> See *id.* A 25% curtailment of 600 MW of peak load would be 150 MWs, to support the ERCOT system that had a 2017 peak demand of 67,273 MWs, or 0.002297 thereof.

<sup>7</sup> *North American Electric Reliability Corp.*, Order on Electric Reliability Organization Risk Based Registration Initiative and Requiring Compliance Filing, FERC Docket No. RR15-4-000, 150 FERC ¶ 61,213 (Mar. 19, 2015).



designate as its own TO (since as pure DSPs they own no transmission facilities), or (2) get another TSP to agree to become the designated TO by creating a new point of interconnection with the SPPG system, including new substations. Those costs are all in the hundreds of thousands of dollars, and in the aggregate in the millions of dollars. To the extent that the costs of any new point of interconnection (such as the high-side of substations), or the infrastructure and annual costs of a TO self-designation, are includable in the ERCOT transmission service “postage stamp” rate, they would be borne by the broader ERCOT market.

This is not a case in which a new form of business, like distributed energy resources, seeks a revision of the ERCOT rules to accommodate a new type of industry activity or business model. The utility systems involved here are, and have been for decades, providing basic electric service to residential and commercial customers. They were created and operating long before ERCOT was even in existence, much less a grid operator,<sup>8</sup> while the designated TO requirement and associated load shedding reliability scheme were adopted much later, and were designed to preserve reliability based on how larger systems operate.

## VII. ARGUMENT

**No Adverse Reliability Impact.** The revision will not, in any way, adversely affect the reliability of the ERCOT system – as ERCOT Staff has expressly confirmed (see the ERCOT comments referenced further below).<sup>9</sup>

**No Material Load Shed Burden.** The revision will not materially change anyone else’s load shed obligation. If the SPPG loads’ most extreme automatic load shed amount was included in the ERCOT Load Shed Table, it would be *less than 3/10<sup>ths</sup> of 1%*. Even in the unrealistic hypothetical of up to 53 DSPs with 600 MW of peak load unwinding their multiple physical and legal arrangements under which they get designated TO service for free and invoking the revision, it would be *less than 3/10<sup>ths</sup> of 1%* of the total ERCOT system.

**ERCOT Market Efficiency.** It is inefficient to force small systems to meet a one-size-fits-all reliability rule – at tremendous expense and time expenditures due to the necessary hard and soft infrastructure – when doing so makes no reliability difference. If those small systems

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<sup>8</sup> Year each utility was established: Bartlett, 1920, Bridgeport 1926, Farmersville 1849, Goldsmith 1956, Hearne 1912, Robstown 1939, Sanger 1929, and Seymour 1906. See Tex. Pub. Power Ass’n 2017 Directory. ERCOT was formed in 1970, and became an Independent System Operator in 1996. See [https://en.wikipedia.org/wiki/Electric\\_Reliability\\_Council\\_of\\_Texas](https://en.wikipedia.org/wiki/Electric_Reliability_Council_of_Texas).

<sup>9</sup> 149NOGRR-02 ERCOT Comments 120915, and 149NOGRR-41 ERCOT Comments 040318,, both available at <http://www.ercot.com/mktrules/issues/NOGRR149#keydocs>.

cannot get a TSP to serve as their designated TO on reasonable terms and conditions, despite hard work and some progress in pursuing potential market solutions, then making those systems bear the costs of duplicating from scratch the back office systems, ERCOT communications, and ERCOT training and certification regimen that the TSPs already have in place imposes tremendous time burdens and costs on small utilities that do not have a large number of employees to shoulder the time and training burden and do not have a large base of ratepayers over which they can spread those costs.

**ERCOT Administrative Efficiency.** ERCOT operations are more efficient with ERCOT managing fewer entities for emergencies, training, drills, and administration.

**Avoiding Imposition of Unlawful and Unnecessary Costs.** If the small cities have to create their own hard and soft infrastructure used only for designated TO purposes, that unnecessarily duplicates much of the TSPs' hard and soft infrastructure used for designated TO purposes, which are presumably included in their transmission costs of service, and thus already paid by load, including by SPPG's members, in ERCOT transmission rates.

**Avoiding Transmission Service Discrimination.** A TSP must provide wholesale transmission service to other utilities comparable to the TSP's use of its own system.<sup>10</sup> ERCOT, in turn, is to provide for non-discriminatory access to the transmission system, consistent with the Commission's electric regulations, the Commission's orders, and ERCOT rules.<sup>11</sup> ERCOT's 17 TSPs provide designated TO service to themselves; many provide it to DSPs at no additional charge. A TSP's refusal to provide designated TO service is inconsistent with the statutory requirement of non-discriminatory access to transmission services. ERCOT's decision not to adopt NOGRR 149 is inconsistent with its obligation to provide for non-discriminatory access to the transmission system.

**All Critical Loads Deserve Protection.** The small systems do not have enough distribution feeders serving only non-critical load to provide sufficient non-critical load to meet the required load shedding levels. Forcing small systems into ERCOT's load shed scheme will discriminate against critical loads in the small cities (police, fire, water and wastewater, etc.), while similar loads elsewhere in larger cities are protected.

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<sup>10</sup> Tex. Utils. Code § 35.004(a); PUC Subst. R. § 25.191(d)(2).

<sup>11</sup> PUC Subst. R. § 25.361(b)(5).

**Small Systems Should be Treated Fairly, Because One Size Does Not Fit All.** It is unfair to force small systems with small work forces and small revenue streams to meet, at enormous cost and tremendous time burdens, a one-size-fits-all reliability rule. When circumstances warrant, small entities are treated differently than larger ones. For example:

- NERC excludes from its Compliance Registry a Distribution Provider that is 75 MW of peak load or less.<sup>12</sup>
- A power generation company controlling less than 5% of the installed generation capacity in ERCOT is generally deemed not to have ERCOT-wide market power.<sup>13</sup> This has been dubbed the “small fish swim free exemption.” Using the most recent estimate of installed generation capacity in ERCOT for purposes of that rule, the 5% “small fish” level is approximately 4,088 MW.<sup>14</sup>
- In rate design, size is often a key differentiator, such as small commercial customers versus large commercial customers versus industrial customers.
- Generation facilities that are generally 10 MW or less are exempt from several sets of regulatory requirements in certain circumstances.<sup>15</sup>
- Self-generators less than 1 MW in size are not required to register with the Commission.<sup>16</sup>
- Owners of distributed renewable generation, which is renewable generation two MWs or less on the retail customer’s side of the meter, have certain regulatory rights on their sales to and interconnection with certain utilities.<sup>17</sup>
- An owner of distributed generation (“DG”) with capacity of 1 MW or less is not required to register as a Resource Entity (“RE”) with ERCOT.<sup>18</sup>

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<sup>12</sup> NERC Rules of Procedure, Appendix 5B – Statement of Compliance Registry Criteria (Revision 5.2), Sec. III.a.1 (eff. Oct. 15, 2015), available at <http://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

<sup>13</sup> PUC Subst. R. 25.504(c).

<sup>14</sup> Project No. 39870 - Estimate of Installed Generation Capacity in ERCOT (Jan. 25, 2018), available at [http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TXT\\_CNT\\_R\\_NO=39870&TXT\\_ITEM\\_NO=9](http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNT_R_NO=39870&TXT_ITEM_NO=9).

<sup>15</sup> PUC Subst. R. 25.101(a)(2) (experimental generation units less than 10 MW are not subject to the requirement for a certificate of convenience and necessity); PUC Subst. R. 25.173 (small producers of renewable energy, even though not new renewable resources, are eligible to produce renewable energy credits); PUC Subst. R. 25.211 (generation 10 MW or less connected at distribution voltage have special, less burdensome interconnection requirements); PUC Subst. R. 25.345 (certain on-site power production facilities of 10 MW or less are exempt from restructuring’s stranded cost recovery charges).

<sup>16</sup> PUC Subst. R. 25.109(a)(2).

<sup>17</sup> PUC Subst. R. 25.217.

<sup>18</sup> ERCOT Nodal Protocols Section 16.5(5) (Mar. 1, 2018).

- Small transmission and distribution business units (“TDBU”) of a municipally owned utility or electric cooperative, i.e., those with less than 500,000 kWh in average annual sales over the last three years, are subject to fewer of the affiliate relationship requirements regarding competitive affiliates.<sup>19</sup> If the small TDBU had a load factor of 50%, then the small TDBU’s average peak load would be 29 MW.<sup>20</sup>
- Under the Public Utility Regulatory Act of 1978 (“PURPA”), as amended, “small power production facilities” are 80 MW or less of biomass, waste, or renewable resources, and they and other “qualifying facilities” have certain favorable regulatory rights regarding their sales to utilities.<sup>21</sup>
- Also under PURPA, as amended in 2005, utilities can be relieved of their PURPA obligations to qualifying facilities in certain circumstances, but qualifying facilities that are 20 MW or less have more protection from the potential granting of such utility relief due to special rebuttable presumptions.<sup>22</sup>
- Under the Federal Power Act, generator that are 20 MW or less have less burdensome interconnection requirements.<sup>23</sup>

If critical load in one city is curtailed while similar critical load in a different city is not curtailed, even though there is more than enough non-critical load in the other cities served by the 17 ERCOT TSPs, *it turns reliability on its head for those critical loads who are so unnecessarily curtailed under what is supposed to be a reliability requirement.*

### **VIII. EXISTENCE OF QUESTIONS OF LAW OR FACT**

Procedural Rule 22.251(d)(1)(F) requires “a statement of all questions of fact, if any, that the complainant contends require an evidentiary hearing.” Until ERCOT responds to this pleading, SPPG has no knowledge of which of portions in the Statement of Facts above are undisputed and which are in contention. Therefore, at this point in the proceedings, it is possible there may be questions of fact which will require an evidentiary hearing. In the event there is an

<sup>19</sup> PUC Subst. R. 25.275(b)(3) & (c)(14).

<sup>20</sup> That is, 500,000 x (0.5 / 8,760).

<sup>21</sup> 16 U.S.C. § 796(17)(A) & § 824a-3; 18 C.F.R. § 292.309; PUC Subst. R. 25.242.

<sup>22</sup> 16 U.S.C. § 824a-3(m); 18 C.F.R. § 292.303.

<sup>23</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh’g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order on clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006); *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (2013), *order clarifying compliance procedures*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

evidentiary hearing, SPPG requests that it be conducted before the Commissioners as the finders of fact.

### **IX. NOTICE**

Pursuant to PUC Procedural Rule 22.251(d), SPPG will serve a copy of this pleading on ERCOT's General Counsel, the PUC's Legal Division, and the Office of Public Utility Counsel, as shown in the certificate of service.

All notices or other communications to SPPG concerning this complaint and appeal should be addressed to counsel for the authorized representative of SPPG for this proceeding, as set forth above.

### **X. REQUEST TO ALLOW E-MAIL SERVICE OF DOCUMENTS**

SPPG requests modification in this docket of the traditional service requirements to allow for electronic mail service of all pleadings and other documents filed with the Commission. If the request is granted, all parties will still be required to file all pleadings and other documents with the Commission to be uploaded to the Commission's Interchange. This will save costs for the Commission and all parties.

### **XI. AGREED REQUEST TO IMMEDIATELY MODIFY CERTAIN TIME LIMITS**

Pursuant to Procedural Rules 22.202(c) and 22.251(k), SPPG requests that the Commission presiding officer assigned to this case modify certain time limits, as explained below.

When TAC first considered the appeal, SPPG was asked, among other things, to investigate whether there are potential "market solutions," so as to try to avoid having to rule on the request, and TAC abated the appeal to it. Despite hard work, and some progress for certain SPPG members, no permanent market solutions are yet in place, since they involve infrastructure changes or additions, such as a new substation, and depend on matters not within the sole control of the SPPG members, such as actions that need to be taken by other utilities. While some SPPG members may continue pursuing potential market solutions, which if successful could narrow the number of SPPG systems involved in this proceeding, that will take still take significant time, and not all SPPG members have realistic potential market solutions to pursue.

However, it appears that there is an opportunity for SPPG and relevant ERCOT market participants to discuss whether there are other possible solutions, not involving an outright exemption (such as in NOGRR 149), which may or may not entail different ERCOT rule

revisions. Counsel for ERCOT has agreed to facilitate those discussions. If successful, those discussions could make NOGRR 149 unnecessary, and SPPG could then withdraw this appeal.

Therefore, to allow pursuit of those discussions and any related ERCOT actions, SPPG intends to request that the Commission abate the appeal, so as to allow the pursuit of other possible solutions as described above. SPPG will be making that abatement request promptly after the period for the filing of motions to intervene, so that all parties to the case may have an opportunity to respond to the request to abate.

As a result, SPPG requests that the time limits for the ERCOT response under Procedural Rule 22.251(f), the Commission Staff comments under Procedural Rule 22.251(g), and the SPPG reply under Procedural Rule 22.251(h), be immediately suspended pending the outcome of the abatement request, and reset under a new procedural schedule after the abatement request is resolved. Good cause for granting this request is the time, effort, and expense saved by ERCOT, Commission Staff, and SPPG if the deadlines for the filing of the respective response, comments, and reply are suspended until after the abatement request and any resulting abatement period.

Counsel for the Commission Staff and for ERCOT have been consulted, and they authorize SPPG to state that they agree to the immediate granting of the requested suspension of the time limits in Procedural Rule 22.251(f)-(h).


## **XII. CONCLUSION AND RELIEF REQUESTED**

Adoption by ERCOT of NOGRR 149 is necessary to prevent undue discrimination against critical loads of small municipally owned utilities and to prevent unjust and unreasonable transmission service rates. And its adoption will have no material effect on ERCOT system reliability, given how small the load in question is (especially if the amount of available non-critical load is considered).

Accordingly, SPPG respectfully requests that the Commission: (1) immediately suspend the time limits under Procedural Rule 22.251(f)-(g) as requested above; (2) modify the traditional requirements for service of documents as requested above; (3) conduct any evidentiary hearing before the Commissioners; (4) grant this appeal; (5) enter an order (a) finding and concluding that corrective action is required by ERCOT, and (b) requiring that ERCOT adopt NOGRR 149 at the next ERCOT Board of Director's meeting, or that ERCOT adopt such other relief determined by the Commission for small systems like the SPPG members; and (6) grant SPPG all other or additional relief to which it may be entitled under the circumstances.

Respectfully submitted,

**SMALL PUBLIC POWER GROUP OF TEXAS**

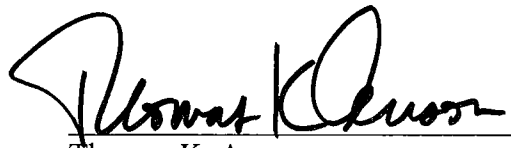
By:   
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**LEGAL COUNSEL TO THE  
REPRESENTATIVE OF THE SMALL  
PUBLIC POWER GROUP OF TEXAS,  
SCHNEIDER ENGINEERING, LTD.**

**CERTIFICATE OF SERVICE**

I certify I served the foregoing on those listed below this May 14, 2018, by U.S. mail delivery and by e-mail, as follows:

Chad V. Seely General Counsel Electric Reliability Council of Texas, Inc. 7620 Metro Center Drive Austin, Texas 78744  Email: <a href="mailto:Chad.Seely@ercot.com">Chad.Seely@ercot.com</a>	Margaret Pemberton Division Director, Legal Division Public Utility Commission of Texas P.O. Box 13326 Austin, Texas 78711-3326  Email: <a href="mailto:margaret.pemberton@puc.state.tx.us">margaret.pemberton@puc.state.tx.us</a>	Tonya Baer Public Counsel Office of Public Utility Counsel P.O. Box 12397 Austin, Texas 78711-2397  Email: <a href="mailto:tonya.baer@opuc.texas.gov">tonya.baer@opuc.texas.gov</a>
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Thomas K. Anson

## VERIFICATION OF STEVE MOFFITT

BEFORE ME, the undersigned notary public, this day appeared Steve Moffitt, to me known, who being duly sworn according to law, deposes and says:

My name is appeared Steve Moffitt. I am a principal of Schneider Engineering, Ltd., which is the representative of the Small Public Power Group of Texas ("SPPG"). I am over 18 years of age and am competent to testify to the matters stated herein. I have read the pleading to which this verification is attached. I have personal knowledge of the factual statements contained in the pleading and in this affidavit, and those statements are true and correct.

The following is a list of the relevant documents giving rise to said pleading and, in lieu of attaching copies thereof as the sworn copies of record documents, the ERCOT website where they are all publically available is <http://www.ercot.com/mktrules/issues/NOGRR149#keydocs>. These documents are incorporated herein by reference as if attached to this affidavit:

149NOGRR-01 Revision to Definition of Transmission Operator 111115  
(11/11/2015, doc, 88.5 KB)

149NOGRR-02 ERCOT Comments 120915  
(12/09/2015, docx, 22 KB)

149NOGRR-03 SPPG Comments 121415  
(12/14/2015, doc, 43 KB)

149NOGRR-04 OWG Report 121515  
(12/17/2015, doc, 84 KB)

149NOGRR-05 OWG Report 012616  
(02/16/2016, doc, 84.5 KB)

149NOGRR-06 Schneider Engineering LTD Appeal 020116  
(02/16/2016, doc, 47.5 KB)

149NOGRR-07 ROS Report 030316  
(03/08/2016, doc, 89 KB)

149NOGRR-08a SPPG Appeal 031016  
(03/11/2016, doc, 79 KB)

149NOGRR-08b SPPG Appeal Attachment 1 031016  
(03/11/2016, doc, 3 MB)

149NOGRR-09 SPPG Comments 032216  
(03/22/2016, doc, 70.5 KB)



149NOGRR-10 TAC Report 033116  
(Apr 14, 2016 – doc – 91.5 KB)

149NOGRR-11 SPPG Position Statement 042516  
(Apr 25, 2016 – doc – 67 KB)

149NOGRR-12 ROS Position Statement 042616  
(Apr 26, 2016 – doc – 51 KB)

149NOGRR-13 TAC Report 042816  
(Apr 29, 2016 – doc – 97 KB)

149NOGRR-14 SPPG Comments 051716  
(May 17, 2016 – doc – 71 KB)

149NOGRR-15 TAC Report 052616  
(May 31, 2016 – doc – 98 KB)

149NOGRR-16 SPPG Comments 071916  
(Jul 19, 2016 – doc – 72 KB)

149NOGRR-17 TAC Report 072816  
(Aug 01, 2016 – doc – 99 KB)

149NOGRR-18 SPPG Comments 091916  
(Sep 19, 2016 – doc – 72 KB)

149NOGRR-19 TAC Report 092916  
(Sep 30, 2016 – doc – 102 KB)

149NOGRR-20 SPPG Comments 111816  
(Nov 18, 2016 – doc – 74 KB)

149NOGRR-21 TAC Report 120116  
(Dec 05, 2016 – doc – 103 KB)

149NOGRR-22 SPPG Comments 011917  
(Jan 20, 2017 – doc – 70.5 KB)

149NOGRR-23 TAC Report 012617  
(Jan 27, 2017 – doc – 105.5 KB)

149NOGRR-24 SPPG Comments 022017  
(Feb 20, 2017 – doc – 49 KB)

149NOGRR-25 SPPG Comments 032117  
(Mar 21, 2017 – doc – 49.5 KB)

149NOGRR-26 SPPG Comments 042417  
(Apr 24, 2017 – doc – 61.5 KB)

149NOGRR-27 SPPG Comments 062617  
(Jun 26, 2017 – doc – 51.5 KB)

149NOGRR-28 SPPG Comments 072417  
(Jul 24, 2017 – doc – 51.5 KB)

149NOGRR-29 SPPG Comments 082117  
(Aug 21, 2017 – doc – 53 KB)

149NOGRR-30 TAC Report 082417  
(Aug 25, 2017 – doc – 113.5 KB)

149NOGRR-31 SPPG Comments 092517  
(Sep 25, 2017 – doc – 53.5 KB)

149NOGRR-32 SPPG Comments 102317  
(Oct 23, 2017 – doc – 53 KB)

149NOGRR-33 SPPG Comments 112717  
(Nov 27, 2017 – doc – 52.5 KB)

149NOGRR-34 SPPG Comments 121817  
(Dec 18, 2017 – doc – 53 KB)

149NOGRR-35 SPPG Comments 012218  
(Jan 22, 2018 – doc – 53 KB)

149NOGRR-36 TAC Report 022218  
(Feb 27, 2018 – doc – 121 KB)

149NOGRR-37 SPPG Appeal 030618  
(Mar 06, 2018 – doc – 75 KB)

149NOGRR-38 TAC Advocate Presentation of TAC Action 033018  
(Mar 30, 2018 – pptx – 81.4 KB)

149NOGRR-39 SPPG Position Statement 033018  
(Mar 30, 2018 – doc – 116 KB)

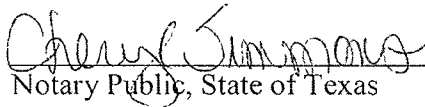
149NOGRR-40 SPPG Board Presentation 033018  
(Mar 30, 2018 – pptx – 88.3 KB)

149NOGRR-41 ERCOT Comments 040318  
(Apr 03, 2018 – doc – 47 KB)

149NOGRR-42 Board Report 041018  
(Apr 11, 2018 – doc – 123 KB)

  
\_\_\_\_\_  
Steve Moffitt

Subscribed and sworn to before me on this 9 day of May, 2018.

  
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Notary Public, State of Texas

