



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

November 14, 2019

Chad V. Seely
Electric Reliability Council of Texas

RE: QSE Resale Certificates

Dear Mr. Seely,

You asked if Qualified Scheduling Entities (QSEs) are required to file a resale certificate with the Electric Reliability Council of Texas (ERCOT)? If they are so required, can the Comptroller allow the QSEs to "opt-out" of that requirement?

ERCOT manages the flow of more than 90 percent of the electricity in Texas. To do that, ERCOT works with several different entities that fulfil necessary functions. QSEs are one such entity. QSEs buy and sell electricity themselves on the wholesale market or on behalf of entities the QSE represents. ERCOT is part of each sale and purchase of electricity under its purview. ERCOT purchases electricity and then sells that electricity to QSEs who, in turn, sell the electricity to another entity.

Typically, in order to purchase tangible personal property (TPP) tax-free for resale, the purchaser must provide a resale certificate to the seller. Rule 3.285(c). Electricity is TPP. An entity which purchases electricity for resale (i.e. QSEs) should issue resale certificates to the seller (i.e. ERCOT).

However, there is precedent for purchases for resale to be made tax-free without a certificate, when the purchase must result in the re-selling of the TPP. In Rule 3.285(c)(5), brokers or dealers who purchase bulk commodities may do so tax-free without issuing a resale certificate. Additionally, per Rule 3.289(c), licensed manufacturers, wholesalers, or distributors of alcohol are not required to present a resale certificate in order to make a tax-free purchase.

Under current law and policy, the QSEs should provide a valid resale certificate to ERCOT. However, the comptroller may waive this requirement by rule. Since QSEs have no use for the electricity themselves and must sell it to another entity, the comptroller will, in cooperation with ERCOT, draft a rule amendment which exempts QSEs from the resale certificate requirement. Prior to such a rule taking effect, the comptroller will issue a memo to audit staff informing them of the policy change.

If you need any assistance, please contact me by e-mail at teresa.bostick@cpa.texas.gov or by phone at 512-305-9952.

Sincerely,

A handwritten signature in black ink, reading "Teresa G. Bostick", is positioned below the word "Sincerely,".

Teresa G. Bostick
Director, Tax Policy Division