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| NPRR Number | XXX | NPRR Title | Late Payment Enforcement Provisions |
| Date Posted | | June xx, 2020 | |
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| Requested Resolution | | Normal | |
| Nodal Protocol Sections Requiring Revision | | 16.11.6, Payment Breach and Late Payments by Market Participants  16.11.6.2.1, First Late Payment in Any Rolling 12-Month Period (delete)  16.11.6.2.2, Second Late Payment in Any Rolling 12-Month Period  16.11.6.2.3, Third Late Payment in Any Rolling 12-Month Period  16.11.6.2.4, Fourth Late Payment in Any Rolling 12-Month Period  16.11.6.2.5, Level I Enforcement  16.11.6.2.6, Level II Enforcement  16.11.6.2.7, Level III Enforcement | |
| Related Documents Requiring Revision/Related Revision Requests | | None | |
| Revision Description | | This Nodal Protocol Revision Request (NPRR) clarifies certain processes associated with Late Payments and Payment Breaches and aligns Protocol language in Section 16 with language in the Standard Form Market Participant Agreement.  First, this NPRR removes the option for ERCOT to terminate a Counter-Party’s Standard Form Agreement (SFA) under Level III Enforcement when a Market Participant has made three Late Payments. This is done to eliminate a potential conflict with the SFA, under which termination may only occur after more than three payment breaches in a 12-month period. Instead, Level III Enforcement actions are revised to ramp up from Level I and Level II actions.  Next, this NPRR clarifies the means by which ERCOT will determine the time of receipt of payments for purposes of assessing if a payment is a Late Payment by specifying that ERCOT will use the timestamp for when funds are credited to ERCOT’s bank account for purposes of determining if if a payment is a Late Payment.  Finally, clarification is provided that payments are due by the times specified in Protocols, not at the close of the Bank Business Day. This clarification is made because requests for Financial Security may be due at a different time than Settlement Invoices. | |
| Reason for Revision | | Addresses current operational issues.  Meets Strategic goals (tied to the [ERCOT Strategic Plan](http://www.ercot.com/content/wcm/lists/144926/ERCOT_Strategic_Plan_2019-2023.pdf) or directed by the ERCOT Board).  Market efficiencies or enhancements  Administrative  Regulatory requirements  Other: (explain)  *(please select all that apply)* | |
| Business Case | | This NPRR eliminates a potential conflict with the SFA, while strengthening provisions to encourage Market Participants to make payments when due, thereby reducing instances of market short-pays or defaults. Proposed revisions with respect to when payments are due, and how Late Payments are determined, are intended to provide additional clarity on payment processes for Market Participants. | |

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| Market Segment | Not Applicable |

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| Proposed Protocol Language Revision |

16.11.6 Payment Breach and Late Payments by Market Participants

(1) It is the sole responsibility of each Market Participant to ensure that the full amounts due to ERCOT, or its designee, if applicable, by that Market Participant, are paid to ERCOT by the applicable time and date specified in these Protocols. If no time is specified in these Protocols for a particular type of payment, then payment must be made by the close of the Bank Business Day on which payment is due.

(2) If a Market Participant receives separate Invoices for Subordinate QSE or various CRR Account Holder activity, netting by the Market Participant of the amounts due to ERCOT with amounts due to the Market Participant among those Invoices for payment purposes is not permitted. The amounts due to ERCOT on the separate Invoices for each Market Participant must be paid by the the applicable time and date specified in Protocols. If a Market Participant does not pay the full amount due to ERCOT for all such Invoices by the required time, ERCOT shall deduct any and all amounts due and unpaid from any amounts due to the same Market Participant before allocating short payments to other Market Participants.

(3) The failure of a Market Participant to pay when due any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any Agreement with ERCOT, is a Late Payment and constitutes an event of “Payment Breach.” For purposes of designating a Late Payment, ERCOT shall consider multiple Invoices unpaid when due on a single Business Day by a single Market Participant as constituting one Late Payment. Any Payment Breach by a Market Participant under any agreement with ERCOT is a Default under all other agreements between ERCOT and the Market Participant unless cured within one Bank Business Day after ERCOT delivers to the Market Participant written notice of the Payment Breach.

(4) Upon a Payment Breach, ERCOT shall immediately attempt to contact the Market Participant’s Authorized Representative and/or Credit Contact named in the Counter-Party Credit Application telephonically to inform the Market Participant of the Payment Breach, and demand payment of the past due amount. ERCOT shall also provide the Market Participant with written notice of the Payment Breach via email. Upon a Payment Breach, ERCOT may impose remedies for Payment Breach, as set forth in Section 16.11.6.1, ERCOT’s Remedies, in addition to any other rights or remedies ERCOT has under any agreement, these Protocols or at common law.

(5) If a Market Participant makes a payment (or a partial payment, if allowed by these Protocols) or satisfies a collateral call to ERCOT after the required due date and time, or if a short-paid Invoice is settled by a draw on available security greater than the amount of Market Participant’s cash collateral held in excess of that required to cover its Total Potential Exposure (TPE) (“Excess Collateral”), then that payment will be deemed a “Late Payment.”

(6) For purposes of assessing if a payment is a Late Payment, the time of receipt of a payment will be determined as follows:

(a) For cash payments, the timestamp for when funds are credited to ERCOT’s bank account; or

(b) For non-cash Financial Security:

(i) The timestamp of the email or facsimile, if the required documentation is delivered to ERCOT by email or facsimile; or

(ii) The timestamp of the delivery receipt, if the required documentation is mailed or physically delivered to ERCOT.

(c) For Financial Security documents physically delivered to ERCOT, the delivery timestamp.

(7) ERCOT may, in its sole discretion, and upon a Market Participant’s showing that the failure to pay when due was not within the control of the Market Participant, deem that a failure to pay when due was neither a Payment Breach nor a Late Payment.

(8) ERCOT shall track the number of Late Payments received from each Market Participant in each rolling 12-month period for purposes of imposing the Late Payment remedies set forth in Section 16.11.6.2, ERCOT’s Remedies for Late Payments by a Market Participant.

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| ***[NPRR702: Replace paragraph (5) above with the following upon system implementation:]***  (5) If a Market Participant makes a payment or a partial payment as allowed by these Protocols or a collateral call to ERCOT after the due date and time, or if a short-paid Invoice is settled by a draw on available security greater than the amount of Market Participant’s Excess Cash Collateral, then that payment is a “Late Payment.”  (6) For purposes of assessing if a payment is a Late Payment, the time of receipt of a payment will be determined as follows:  (a) For cash payments, the timestamp for when funds are credited to ERCOT’s bank account;  (b) For other forms of Financial Security, the timestamp on the accompanying email or fax, or;  (c) For Financial Security documents physically delivered to ERCOT, the delivery timestamp.  (7) ERCOT may, in its sole discretion, and upon a Market Participant’s showing that the failure to pay when due was not within the control of the Market Participant, waive the Payment Breach as a Late Payment. ERCOT shall track the number of Late Payments received from each Market Participant in each rolling 12-month period for purposes of imposing the Late Payment remedies set forth in Section 16.11.6.2. |

16.11.6.2.1 First Late Payment in Any Rolling 12-Month Period

(1) For the first Late Payment in any rolling 12-month period, ERCOT shall take Level I Enforcement action as described in Section 16.11.6.2.5, Level I Enforcement.

(2) ERCOT shall send written notice to the Market Participant’s Authorized Representative and/or Credit Contact via email, advising the Market Participant of the action required under Level I Enforcement.

16.11.6.2.2 Second Late Payment in Any Rolling 12-Month Period

(1) For the second Late Payment in any rolling 12-month period, ERCOT shall review the circumstances and reason for the Late Payment, and shall take Level II Enforcement action, as described in Section 16.11.6.2.6, Level II Enforcement.

(2) ERCOT shall send written notice to the Market Participant’s Authorized Representative and/or Credit Contact via email, advising the Market Participant of the action required under Level II Enforcement.

16.11.6.2.3 Third Late Payment in Any Rolling 12-Month Period

(1) For the third Late Payment in any rolling 12-month period, ERCOT shall review the circumstances and reason for the Late Payment, and shall take Level III Enforcement action, as described in Section 16.11.6.2.7, Level III Enforcement.

(2) ERCOT shall send written notice to the Market Participant’s Authorized Representative and/or Credit Contact via email, advising the Market Participant of the action required under Level III Enforcement, and informing the Market Participant that a fourth Late Payment in any 12-month rolling period shall result in ERCOT taking action under Section 16.11.6.1.6, Revocation of a Market Participant’s Rights and Termination of Agreements.

16.11.6.2. Fourth Late Payment in Any Rolling 12-Month Period

(1) For the fourth Late Payment resulting from a Payment Breach in any rolling 12-month period, ERCOT shall take action under Section 16.11.6.1.6, Revocation of a Market Participant’s Rights and Termination of Agreements.

16.11.6.2.5 Level I Enforcement

(1) Under Level I Enforcement, ERCOT shall notify the Market Participant to comply with one of the following requirements:

(a) If the Market Participant has not provided Financial Security, the Market Participant shall now provide Financial Security, within two Bank Business Days, in an amount at or above 110% of the amount of the Market Participant’s TPE less the Unsecured Credit Limit; or any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region, whichever applies.

(b) If the Market Participant has already provided Financial Security, the Market Participant shall increase its Financial Security, within two Bank Business Days, to an amount at or above 110% of its TPE less the Unsecured Credit Limit or any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region, whichever applies.

(2) Increased Financial Security requirements under this Section remain in effect for a minimum of 60 days and remain in effect thereafter until ERCOT, at its sole discretion, determines to reduce such Financial Security requirements to the normally applicable levels.

16.11.6.2.6 Level II Enforcement

(1) Under Level II Enforcement, ERCOT shall notify the Market Participant that the Market Participant shall provide Financial Security, within two Bank Business days, in the form of a cash deposit or letter of credit, as chosen by ERCOT at its sole discretion, at 110% of the Market Participant’s TPE less the Unsecured Credit Limit or for any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region.

(2) Increased Financial Security requirements under this Section remain in effect for a minimum of 60 days and remain in effect thereafter until ERCOT, at its sole discretion, determines to reduce such Financial Security requirements to the normally applicable levels.

16.11.6.2.7 Level III Enforcement

(1) Under Level III Enforcement, ERCOT shall notify the Market Participant that the Market Participant shall provide Financial Security, within two Bank Business days, in the form of a cash deposit, at 120% of the Market Participant’s TPE less the Unsecured Credit Limit or for any other liability to ERCOT that the Market Participant has or is expected to have for activity in the ERCOT Region.

(2) Increased Financial Security requirements under this Section remain in effect for a minimum of 90 days and remain in effect thereafter until ERCOT, at its sole discretion, determines to reduce such Financial Security requirements to the normally applicable levels.