



NOTICE DATE: June 29, 2021

NOTICE TYPE: M-A062921-01 Legal

SHORT DESCRIPTION: Protocol Interpretation Regarding Necessity of Non-Opt-In Entity Consent to Qualified Scheduling Entity Representation of Energy Storage Resource in Non-Opt-In Entity Service Territory

INTENDED AUDIENCE: All ERCOT Market Participants

LONG DESCRIPTION: ERCOT has received an inquiry from a Resource Entity that owns a proposed Energy Storage Resource (ESR) interconnecting in a Non-Opt-In Entity's (NOIE) service territory at distribution voltage. The Resource Entity has informed ERCOT that it wishes to designate a Qualified Scheduling Entity (QSE) other than the NOIE's QSE to represent the ESR for purposes of communication and settlement with ERCOT. The Resource Entity has asked whether the ERCOT Protocols require the NOIE's consent to that QSE designation. As further explained in this Market Notice, ERCOT concludes that the Protocols should not be read to require such consent. In the interest of transparency, and to ensure simultaneous notice to all Market Participants, ERCOT has determined that it is appropriate to address this inquiry by issuing this formal interpretation of the ERCOT Protocols on its own initiative, as permitted by Public Utility Commission of Texas (PUC) Rule 25.503(i)(5).

Paragraph (1) of ERCOT Protocols Section 16.2.3, Remaining Steps for Qualified Scheduling Entity Registration, states as follows:

(1) After a QSE application is deemed approved under Section 16.2.2.3, ERCOT Approval or Rejection of Qualified Scheduling Entity Application, the applicant shall coordinate or perform the following:

* * *

(c) If applicable, a QSE offering services in a Non-Opt-In Entity (NOIE) service territory must obtain written authorization from the NOIE, and submit such authorization to ERCOT[.]

On its face, this provision appears to require that, at least under some circumstances, a QSE representing a Resource that is located in a NOIE service territory must obtain the consent of the NOIE before providing such representation.

The language in Section 16.2.3(1)(c) was introduced in 2013 with Nodal Protocol Revision Request (NPRR) 534, Clarification of QSE Responsibilities to Provide Service in NOIE Territory. The Revision Description for NPRR534 states that it



was intended to “provide[] clarity that third party Qualified Scheduling Entities (QSEs) offering services within a Non-Opt-In Entity (NOIE) service territory require NOIE authorization.” But the NPRR’s Reason for Revision section suggests the NPRR was intended to require NOIE authorization for QSE representation of only Load Resources and Emergency Response Service (ERS) Resources in the NOIE’s service territory:

This NPRR clarifies that a NOIE is the default provider and at its sole discretion may authorize third party QSEs to provide Load Resource and ERS services within their service territory.

This limited scope is also implied by the Protocol language introduced by the NPRR. In Section 16.5.2, Registration Process for a Resource Entity, the new language in paragraph 3—requiring a Resource Entity applicant to either designate the NOIE’s QSE or else obtain NOIE authorization—is limited to Resource Entities representing Load Resources. See NPRR534 at § 16.5.2(3). Although Section 16.5.2 generally applies to all Resource Entities, NPRR534 modified it to require NOIE consent for only those QSEs representing Load Resources.

The only other revisions in NPRR534, apart from the language in question in Section 16.2.3(1)(c), require a QSE to obtain a NOIE’s written consent for representation of an ERS Resource in the NOIE’s service territory. See NPRR534, Section 22, Attachment G (Standard Form ERS Agreement). Accordingly, while it is not perfectly clear, the context of NPRR534 suggests that the purpose of the NPRR was to require NOIE authorization for QSE representation of only Load Resources and ERS Resources.

However, irrespective of the purpose of NPRR534, ERCOT concludes that construing Section 16.2.3(1)(c) to require QSEs representing Energy Storage Resources to obtain NOIE consent would be contrary to wholesale market design principles in the Public Utility Regulatory Act¹ (PURA) and PUC rules.

By statute, each NOIE must “provide nondiscriminatory access to wholesale transmission service for . . . power generation companies.” PURA § 35.004(b). This open-access obligation includes the provision of “wholesale transmission service at distribution voltage.” PURA § 39.203(b). See also *Brazos Elec. Power Co-op., Inc. v. Pub. Util. Comm’n*, 101 S.W.3d 499, 511 (Tex. App.—Austin 2002, pet. denied) (affirming validity of PUC rule requiring NOIEs to provide open access to wholesale transmission customers at distribution voltage). Although PURA reserves to NOIEs the exclusive authority to “set all terms of access, conditions, and rates applicable to services provided by the [NOIE], . . . including nondiscriminatory and comparable rates for distribution,” this authorization explicitly excludes “wholesale transmission rates, terms of access, and conditions

¹ Tex. Util. Code §§ 11.001-66.016.



for wholesale transmission service set by the commission under this subtitle,” including transmission service conditions established by the PUC pursuant to section 35.004(b). PURA §§ 40.055(a)(1); 41.055(1). See also PURA §§ 40.004(1); 41.004(1) (In NOIE areas, PUC has authority “to regulate wholesale transmission rates and service, including terms of access, to the extent provided in Subchapter A, Chapter 35.”).

Pursuant to this authority, the PUC has established certain “conditions for wholesale transmission service” in PUC Substantive Rule 25.198. 16 Tex. Admin. Code (TAC) § 25.198. That rule explicitly requires, as one of several “conditions precedent for receiving service,” that a transmission service customer “compl[y] with the applicable provisions of the ERCOT protocols.” 16 TAC § 25.198(b)(1). See also 16 TAC § 25.361(b)(5), (10) (directing ERCOT to “provide for non-discriminatory access to the transmission system” and to establish registration procedures). In turn, ERCOT Protocols require a Resource Entity to designate a QSE as a condition for obtaining wholesale transmission service. ERCOT Protocols § 16.5.1.1(1). Because the designation of a QSE is a condition for wholesale transmission service established under PUC rules, it falls outside the defined scope of NOIE jurisdiction under sections 40.055(a)(1) and 41.055(1) of PURA. Allowing NOIEs to regulate the provision of QSE services would also impinge on the authority reserved to the PUC under those provisions as well as sections 40.004(1) and 41.004(1) of PURA.

While each NOIE has exclusive jurisdiction over the rates and terms of retail distribution service in its service territory, PURA §§ 40.055(a)(1), 41.055(1), this authority cannot reasonably be construed to extend to the provision of QSE services for an ESR. By definition, an ESR is registered with ERCOT to participate in the wholesale electricity market, and its metered injections and withdrawals are settled by ERCOT as part of ERCOT’s administration of the wholesale market pursuant to PURA section 39.151(a)(4) (requiring ERCOT to “ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.”). See ERCOT Protocols § 6.6.3.1 (describing Real-Time settlements for ESR injections and withdrawals). The sole function of the QSE is to facilitate the ESR’s participation in the wholesale market by communicating and settling with ERCOT on behalf of the Resource Entity for the ESR. See ERCOT Protocols § 2.1 (A QSE is “[a] Market Participant that is qualified by ERCOT . . . for communication with ERCOT for Resource Entities and [Load Serving Entities (LSEs)] and for settling payments and charges with ERCOT.”). Because a QSE’s functions are relevant only to the ERCOT-administered wholesale market, the regulation of a Resource Entity’s QSE selection cannot reasonably be understood to fall within the authority reserved to NOIEs under PURA.

Allowing a Resource Entity with an ESR in a NOIE service territory to select which QSE will represent the ESR in no way impairs that NOIE’s provision of distribution



service to its retail customers. The NOIE can still fully exercise its exclusive authority to serve as the LSE for the ESR's *retail* consumption (including auxiliary load) and to bill the ESR customer for that consumption at the NOIE's retail rates. PURA §§ 40.055(a)(1), 41.055(1). The ESR's retail and wholesale consumption are accounted for separately in ERCOT settlements using different prices. See ERCOT Protocols § 6.6.3.1 (providing for nodal settlement of generation and Wholesale Storage Load); § 6.6.3.2 (providing for zonal settlement of Adjusted Metered Load). For purposes of wholesale settlement, the ESR's retail load is charged to the NOIE LSE's designated QSE, while the ESR's charging load is settled to the Resource Entity's QSE along with the ESR's metered injections. See ERCOT Protocols §§ 6.6.3.1, 6.6.3.2. Therefore, the QSE representing the ESR's Resource Entity for purposes of wholesale charging and injection need not be the same QSE that represents the LSE for the ESR site's retail load. And from an operational perspective, allowing Resource Entities in NOIE areas the flexibility to choose which QSE will represent the ESR does not affect the NOIE TDSP's ability to ensure distribution system reliability. The NOIE TDSP still has the authority to manage the reliability of its network, just as any other TDSP that is subject to an open-access obligation would.

It is also unclear what legitimate policy purpose could be served by requiring a Resource Entity to obtain the NOIE's consent to its choice of QSE. Because a NOIE must allow a third-party Resource Entity to interconnect an ESR to the NOIE's transmission or distribution system on nondiscriminatory terms, as required by PURA section 35.004(b), it reasonably follows that the Resource Entity—which has ultimate ownership or control of the ESR—should have the exclusive right to select which QSE will represent the Resource for purposes of communication and settlement. By contrast, requiring NOIE approval of a Resource Entity's preferred QSE would effectively allow NOIEs to exclude non-NOIE providers from NOIE areas, thereby limiting competition, contrary to PURA's open-access principles and the Texas Legislature's purpose of promoting "full and fair competition among all providers of electricity." PURA § 39.001(b)(1).

Because PURA and the PUC's rules do not appear to provide any valid basis for requiring NOIE consent to a Resource Entity's choice of QSE for an ESR located in the NOIE's service territory, ERCOT does not interpret Section 16.2.3(1)(c) or any other Protocol provision to require such approval. ERCOT therefore concludes that a Resource Entity need not obtain the consent of a NOIE before designating a QSE for an ESR interconnecting in the NOIE's service territory.

In developing this interpretation, ERCOT has consulted with the PUC staff as required by PUC Rule 25.503(i)(3). ERCOT's issuance of this interpretation does not bind the PUC or its staff in any way.

CONTACT: If you have any questions, please contact your ERCOT Account Manager. You may also call the general ERCOT Client Services phone number



at (512) 248-3900 or contact ERCOT Client Services via email at ClientServices@ercot.com.