|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| NPRR Number | [1165](https://www.ercot.com/mktrules/issues/NPRR1165) | NPRR Title |

|  |
| --- |
| Revisions to Requirements of Providing Audited Financial Statements and Providing Independent Amount |

 |
|  |  |
| Date | March 24, 2023 |
|  |  |
| Submitter’s Information |
| Name | Seth Cochran |
| E-mail Address | cochran@dc-energy.com |
| Company | DC Energy Texas, LLC (DC Energy) |
| Phone Number | 512-971-8767 |
| Cell Number |  |
| Market Segment | Independent Power Marketing (IPM) |

|  |
| --- |
| Comments |

DC Energy appreciates the opportunity to submit comments related to the newly proposed term “Ultimate Parent”. The ERCOT’s proposed definition could result in the financial reporting requirements applying to a “parent” Entity that does not prepare consolidated financial statements that include the Counter-Party and are not relevant for ERCOT’s purposes. Our revisions clarify that the Ultimate Parent is the highest level legal Entity that prepares consolidated financial statements within the organizational group. This way the requirement is aligned with the information ERCOT needs to assess the creditworthiness of the Counter-Party if the Counter-Party does not provide its own financials.

|  |
| --- |
| Revised Cover Page Language |

None

|  |
| --- |
| Revised Proposed Protocol Language |

16.2.1 Criteria for Qualification as a Qualified Scheduling Entity

(1) To become and remain a Qualified Scheduling Entity (QSE), an Entity must meet the following requirements:

(a) Submit a properly completed QSE application for qualification, including any applicable fee, necessary disclosures, and designation of Authorized Representatives, each of whom is responsible for administrative communications with the QSE and each of whom has enough authority to commit and bind the QSE and the Entities it represents;

(b) Sign a Standard Form Market Participant Agreement;

(c) Sign any required Agreements relating to use of the ERCOT network, software, and systems;

(d) Demonstrate to ERCOT’s reasonable satisfaction that the Entity is capable of performing the functions of a QSE;

(e) Demonstrate to ERCOT’s reasonable satisfaction that the Entity is capable of complying with the requirements of all ERCOT Protocols and Operating Guides;

(f) Satisfy ERCOT’s creditworthiness requirements as set forth in this Section, unless exempted from these requirements by Section 16.17, Exemption for Qualified Scheduling Entities Participating Only in Emergency Response Service;

(g) Be generally able to pay its debts as they come due. ERCOT may request evidence of compliance with this qualification only if ERCOT reasonably believes that a QSE is failing to comply with it;

(h) Provide all necessary bank account information and arrange for Fedwire system transfers for two-way confirmation;

(i) Be financially responsible for payment of Settlement charges for those Entities it represents under these Protocols;

(j) Comply with the backup plan requirements in the Operating Guides;

(k) Maintain a 24-hour, seven-day-per-week scheduling center with qualified personnel for the purposes of communicating with ERCOT relating to Day-Ahead and Operating Day exchange of market and operational obligations in representing Load, Resources, and market positions. Those personnel must be responsible for operational communications and must have sufficient authority to commit and bind the QSE and the Entities that it represents. This requirement applies to QSE Level 2, 3, and 4, as defined in Section 2.1, Definitions;

(l) Maintain a scheduling center for the hours of 0900 to 1700 Central Prevailing Time (CPT) on Business Days with qualified personnel for the purposes of communicating with ERCOT relating to Day-Ahead and Operating Day exchange of market and operational obligations in representing Load, Resources, and market positions. Those personnel must be responsible for operational communications and must have sufficient authority to commit and bind the QSE and the Entities that it represents. This requirement applies to QSE Level 1, as defined in Section 2.1;

(m) Demonstrate and maintain a working functional interface with all required ERCOT computer systems; and

(n) Allow ERCOT, upon reasonable notice, to conduct a site visit to verify information provided by the QSE.

(2) If a QSE chooses to use Electronic Data Interchange (EDI) transactions to receive Settlement Statements and Invoices, it must participate in and successfully complete testing as described in Section 19.8, Retail Market Testing, before starting operations with ERCOT as a QSE.

(3) A QSE or QSE applicant must be able to demonstrate to ERCOT’s reasonable satisfaction that none of its Principals were or are Principals of any Entity with an outstanding payment obligation that remains owing to ERCOT under any Agreement or these Protocols. For purposes of this Section, ERCOT will only consider disqualifying those Principals of the QSE or QSE applicant who were Principals of the other Entity at a time during which the unpaid financial obligation remained owing to ERCOT or during the 120-day period prior to the date on which the unpaid financial obligation first became due and owing to ERCOT.

(4) If any of a QSE’s or QSE applicant’s Principals were or are Principals of a terminated Market Participant with an obligation for Default Uplift Ratio Share allocated under Section 9.19.1, Default Uplift Invoices, the terminated Market Participant must be current on all payment obligations for Default Uplift Invoices in order for the QSE to remain, or QSE applicant to become, a registered QSE. For purposes of this Section, ERCOT will only consider as disqualifying those Principals of the QSE or QSE applicant who were Principals of the other Entity at a time during which the other Entity was not current on its payment obligation for Default Uplift Invoices or 120 days prior to the date the other Entity first failed to pay a Default Uplift Invoice.

(5) A QSE shall promptly notify ERCOT of any change that a reasonable examiner may deem material to the QSE’s ability to continue to meet the requirements set forth in this Section, and any material change in the information provided by the QSE to ERCOT that may adversely affect the reliability or safety of the ERCOT System or the financial security of ERCOT. This includes any changes in the Principals of the QSE. If the QSE fails to so notify ERCOT of such change within two Business Days after becoming aware of the change, then ERCOT may, after providing notice to each Entity represented by the QSE, refuse to allow the QSE to perform as a QSE and take any other action ERCOT deems appropriate, in its sole discretion, to prevent ERCOT or Market Participants from bearing potential or actual risks, financial or otherwise, arising from those changes, and in accordance with these Protocols.

(6) Subject to the following provisions of this paragraph, a QSE may partition itself into any number of subordinate QSEs (“Subordinate QSEs”). If a single Entity requests to partition itself into more than four Subordinate QSEs, ERCOT may implement the request subject to ERCOT’s reasonable determination that the additional requested Subordinate QSEs will not be likely to overburden ERCOT’s staffing or systems. ERCOT shall adopt an implementation plan allowing phased-in registration for these additional Subordinate QSEs in order to mitigate system or staffing impacts. However, ERCOT may not unreasonably delay that registration.

(7) Each Subordinate QSE must be treated as an individual QSE for all purposes including communications and control functions except for liability, financial security, and financial liability requirements under this Section. That liability, financial security, and financial liability is cumulative for all Subordinate QSEs for the single Entity signing the QSE Agreement.

(8) Continued qualification as a QSE is contingent upon compliance with all applicable requirements in these Protocols. ERCOT may suspend a QSE’s rights as a Market Participant when ERCOT reasonably determines that it is an appropriate remedy for the Entity’s failure to satisfy any applicable requirement.

(9) Each QSE, or its designated QSE agent, representing one or more Resources shall be connected to the ERCOT Wide Area Network (WAN) and maintain 24-hour, seven-day-per-week operations and Hotline communications with ERCOT. Each QSE representing one or more Resources shall answer each QSE Hotline call.

16.11 Financial Security for Counter-Parties

(1) The term “Financial Security” in this Section means the collateral amount posted with ERCOT in any of the forms listed in Section 16.11.3, Alternative Means of Satisfying ERCOT Creditworthiness Requirements.

(2) The term “Secured Collateral” in this Section means the collateral posted by a Counter-Party with ERCOT in the form of an unconditional, irrevocable letter of credit, a surety bond naming ERCOT as the beneficiary, or cash.

|  |
| --- |
| [NPRR1112: Delete paragraph (2) above upon system implementation and October 1, 2023, and renumber accordingly.] |

(3) The term “Remainder Collateral” in this Section means the Secured Collateral minus Total Potential Exposure Secured (TPES) minus Net Positive Exposure of approved Congestion Revenue Right (CRR) Bilateral Trades minus Available Credit Limit (ACL) locked for CRR Auction, calculated in accordance with paragraph (3) of Section 16.11.4.6.1, Credit Requirements for CRR Auction Participation.

|  |
| --- |
| [NPRR1112: Replace paragraph (3) above with the following upon system implementation and October 1, 2023:] (2) The term “Remainder Collateral” in this Section means the Financial Security minus Total Potential Exposure Secured (TPES) minus Net Positive Exposure of approved Congestion Revenue Right (CRR) Bilateral Trades minus Available Credit Limit (ACL) locked for CRR Auction, calculated in accordance with paragraph (3) of Section 16.11.4.6.1, Credit Requirements for CRR Auction Participation. |

(4) The term “Ultimate Parent” in this Section is defined as the most distant fully consolidating parent that prepares consolidated financial statements within the hierarchical ownership structure.

***16.11.5 Monitoring of a Counter-Party’s Creditworthiness and Credit Exposure by ERCOT***

(1) ERCOT shall monitor the creditworthiness and credit exposure of each Counter-Party. To enable ERCOT to monitor creditworthiness, each Counter-Party shall provide to ERCOT:

(a) Its own or its Ultimate Parent’s quarterly (semi-annually, if the Ultimate Parent is foreign and rated by a rating agency acceptable to ERCOT) unaudited financial statements not later than 60 days (90 days if the Ultimate Parent is foreign and rated by a rating agency acceptable to ERCOT) after the close of each of the issuer’s fiscal quarters; if an issuer’s financial statements are publicly available electronically and the issuer provides to ERCOT sufficient information to access those financial statements, then the issuer is considered to have met this requirement.

(b) Its own or its Ultimate Parent’s annual audited financial statements not later than 120 days after the close of each of the issuer’s fiscal year; if an issuer’s financial statements are publicly available electronically and the issuer provides to ERCOT sufficient information to access those financial statements, then the issuer is considered to have met this requirement. ERCOT may extend the period for providing interim unaudited or annual audited statements on a case-by-case basis. Annual audited financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP) or Financial Reporting Standards (IFRS).

(c) For paragraphs (a) and (b) above, financial statements shall include the Counter-Party’s or its Ultimate Parent’s:

(i) Statement of Financial Position (balance sheet) as of the applicable quarterly or annual ending date;

(ii) Statement of Income (or Profit and Loss); and

(iii) Statement of Cash Flows.

(d) Notice of a material change. A Counter-Party that has been granted an Unsecured Credit Limit pursuant to Section 16.11.2, Requirements for Setting a Counter-Party’s Unsecured Credit Limit, shall inform ERCOT within one Business Day if it has experienced a material change in its operations, financial condition or prospects that might adversely affect the Counter-Party and require a revision to its Unsecured Credit Limit. ERCOT may require the Counter-Party to meet one of the credit requirements of Section 16.11.3, Alternative Means of Satisfying ERCOT Creditworthiness Requirements.

 (2) A Counter-Party is responsible at all times for maintaining:

(a) Secured Collateral in an amount equal to or greater than that Counter-Party’s

(i) TPES; plus

(ii) Net Positive Exposure of approved CRR Bilateral Trades; plus

(iii) ACL locked for CRR Auction, if any; and

(b) Remainder Collateral plus Financial Security defined as guarantees in paragraph (a) of Section 16.11.3 in an amount equal to or greater than that Counter-Party’s

(i) TPEA; minus

(ii) Unsecured Credit Limit.

(3) ERCOT shall promptly notify each Counter-Party of the need to increase its Financial Security, including whether Secured Collateral must be provided, and allow the Counter-Party time, as defined in paragraph (6)(a) below, to provide additional Financial Security to maintain compliance with this Section.

(4) When either the Counter-Party’s TPEA or TPES as defined in Section 16.11.4, Determination and Monitoring of Counter-Party Credit Exposure, reaches 90% of its requirement, ERCOT shall use reasonable efforts to electronically issue a warning to the Counter-Party’s Authorized Representative and credit contact advising the Counter-Party that it should consider increasing its Financial Security. However, failure to issue that warning does not prevent ERCOT from exercising any of its other rights under this Section.

(5) ERCOT may suspend a Counter-Party when:

(a) That Counter-Party’s TPES as defined in Section 16.11.4, equals or exceeds 100% of its Secured Collateral; or

(b) That Counter-Party’s TPEA as defined in Section 16.11.4 equals or exceeds 100% of the sum of its Unsecured Credit Limit and its Remainder Collateral.

The Counter-Party is responsible at all times for managing its activity within both its TPEA and its TPES or increasing its Financial Security to avoid reaching its limits. Any failure by ERCOT to send a Notice as set forth in this Section does not relieve the Counter-Party from the obligation to maintain appropriate Financial Security in amounts equal to or greater than that Counter-Party’s TPES and TPEA as defined in Section 16.11.4.

(6) To the extent that a Counter-Party fails to maintain Secured Collateral in amounts equal to or greater than its TPES or Remainder Collateral in amounts equal to or greater than its TPEA, each as defined in Section 16.11.4:

(a) ERCOT shall promptly notify the Counter-Party of the amount by which its Financial Security must be increased, including whether Secured Collateral must be provided and allow it:

(i) Until 1500 on the second Bank Business Day from the date on which ERCOT delivered the Notice to increase its Financial Security if ERCOT delivered its Notice before 1500; or

(ii) Until 1700 on the second Bank Business Day from the date on which ERCOT delivered Notification to increase its Financial Security if ERCOT delivered its Notice after 1500 but prior to 1700.

ERCOT shall notify the QSE’s Authorized Representative(s) and Credit Contact if it has not received the required security by 1530 on the Bank Business Day on which the security was due; however, failure to notify the Counter-Party’s representatives or contact that the required security was not received does not prevent ERCOT from exercising any of its other rights under this Section.

(b) At the same time ERCOT notifies the Counter-Party that is the QSE, ERCOT may notify each LSE and Resource represented by the Counter-Party that the LSE or Resource may be required to designate a new QSE if its current QSE fails to increase its Financial Security.

(c) ERCOT is not required to make any payment to that Counter-Party unless and until the Counter-Party increases its Financial Security, including any Secured Collateral required. The payments that ERCOT will not make to a Counter-Party include Invoice receipts, CRR revenues, CRR credits, reimbursements for short payments, and any other reimbursements or credits under any other agreement between the Market Participant and ERCOT. ERCOT may retain all such amounts until the Counter-Party has fully discharged all payment obligations owed to ERCOT under the Counter-Party Agreement, other agreements, and these Protocols.

(d) ERCOT may reject any bids or offers in a CRR Auction from the Counter-Party until it has increased its Financial Security, including any Secured Collateral required. ERCOT may reject any bids or offers from the Counter-Party in the DAM until it has increased its Financial Security.

(7) If a Counter-Party increases its Financial Security as required by ERCOT by the deadline in paragraph (6)(a) above, then ERCOT may notify each LSE and Resource represented by the Counter-Party.

(8) If a Counter-Party increases its Financial Security as required by ERCOT by the deadline in paragraph (6)(a) above, then ERCOT shall release any payments held.

|  |
| --- |
| ***[NPRR1112: Replace Section 16.11.5 above with the following upon system implementation and October 1, 2023:]*** ***16.11.5 Monitoring of a Counter-Party’s Creditworthiness and Credit Exposure by ERCOT***(1) ERCOT shall monitor the creditworthiness and credit exposure of each Counter-Party. To enable ERCOT to monitor creditworthiness, each Counter-Party shall provide to ERCOT: (a) Its own or its Ultimate Parent’s quarterly (semi-annually, if the Ultimate Parent is foreign and rated by a rating agency acceptable to ERCOT) unaudited financial statements not later than 60 days (90 days if the Ultimate Parent is foreign and rated by a rating agency acceptable to ERCOT) after the close of each of the issuer’s fiscal quarters; if an issuer’s financial statements are publicly available electronically and the issuer provides to ERCOT sufficient information to access those financial statements, then the issuer is considered to have met this requirement. (b) Its own or its Ultimate Parent’s annual audited financial statements not later than 120 days after the close of each of the issuer’s fiscal year; if an issuer’s financial statements are publicly available electronically and the issuer provides to ERCOT sufficient information to access those financial statements, then the issuer is considered to have met this requirement. ERCOT may extend the period for providing interim unaudited or annual audited statements on a case-by-case basis. Annual audited financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP) or Financial Reporting Standards (IFRS).(c) For paragraphs (a) and (b) above, financial statements shall include the Counter-Party’s or its Ultimate Parent’s: (i) Statement of Financial Position (balance sheet) as of the applicable quarterly or annual ending date; (ii) Statement of Income (or Profit and Loss); and (iii) Statement of Cash Flows.(d) Notice of a material change. A Counter-Party shall inform ERCOT within one Business Day if it has experienced a material change in its operations, financial condition or prospects that might adversely affect the Counter-Party.(2) A Counter-Party is responsible at all times for maintaining:(a) Financial Security in an amount equal to or greater than that Counter-Party’s(i) TPES; plus(ii) Net Positive Exposure of approved CRR Bilateral Trades; plus(iii) ACL locked for CRR Auction, if any; and(b) Remainder Collateral in an amount equal to or greater than that Counter-Party’s TPEA.(3) ERCOT shall promptly notify each Counter-Party of the need to increase its Financial Security and allow the Counter-Party time, as defined in paragraph (6)(a) below, to provide additional Financial Security to maintain compliance with this Section. (4) When either the Counter-Party’s TPEA or TPES as defined in Section 16.11.4, Determination and Monitoring of Counter-Party Credit Exposure, reaches 90% of its requirement, ERCOT shall use reasonable efforts to electronically issue a warning to the Counter-Party’s Authorized Representative and credit contact advising the Counter-Party that it should consider increasing its Financial Security. However, failure to issue that warning does not prevent ERCOT from exercising any of its other rights under this Section.(5) ERCOT may suspend a Counter-Party when:(a) That Counter-Party’s TPES as defined in Section 16.11.4, equals or exceeds 100% of its Financial Security; or(b) That Counter-Party’s TPEA as defined in Section 16.11.4 equals or exceeds 100% of its Remainder Collateral. The Counter-Party is responsible at all times for managing its activity within both its TPEA and its TPES or increasing its Financial Security to avoid reaching its limits. Any failure by ERCOT to send a Notice as set forth in this Section does not relieve the Counter-Party from the obligation to maintain appropriate Financial Security in amounts equal to or greater than that Counter-Party’s TPES and TPEA as defined in Section 16.11.4. (6) To the extent that a Counter-Party fails to maintain Financial Security in amounts equal to or greater than its TPES or Remainder Collateral in amounts equal to or greater than its TPEA, each as defined in Section 16.11.4:(a) ERCOT shall promptly notify the Counter-Party of the amount by which its Financial Security must be increased and allow it: (i) Until 1500 on the second Bank Business Day from the date on which ERCOT delivered the Notice to increase its Financial Security if ERCOT delivered its Notice before 1500; or (ii) Until 1700 on the second Bank Business Day from the date on which ERCOT delivered Notification to increase its Financial Security if ERCOT delivered its Notice after 1500 but prior to 1700. ERCOT shall notify the QSE’s Authorized Representative(s) and Credit Contact if it has not received the required security by 1530 on the Bank Business Day on which the security was due; however, failure to notify the Counter-Party’s representatives or contact that the required security was not received does not prevent ERCOT from exercising any of its other rights under this Section.(b) At the same time ERCOT notifies the Counter-Party that is the QSE, ERCOT may notify each LSE and Resource represented by the Counter-Party that the LSE or Resource may be required to designate a new QSE if its current QSE fails to increase its Financial Security. (c) ERCOT is not required to make any payment to that Counter-Party unless and until the Counter-Party increases its Financial Security. The payments that ERCOT will not make to a Counter-Party include Invoice receipts, CRR revenues, CRR credits, reimbursements for short payments, and any other reimbursements or credits under any other agreement between the Market Participant and ERCOT. ERCOT may retain all such amounts until the Counter-Party has fully discharged all payment obligations owed to ERCOT under the Counter-Party Agreement, other agreements, and these Protocols. (d) ERCOT may reject any bids or offers in a CRR Auction from the Counter-Party until it has increased its Financial Security. ERCOT may reject any bids or offers from the Counter-Party in the DAM until it has increased its Financial Security.(7) If a Counter-Party increases its Financial Security as required by ERCOT by the deadline in paragraph (6)(a) above, then ERCOT may notify each LSE and Resource represented by the Counter-Party.(8) If a Counter-Party increases its Financial Security as required by ERCOT by the deadline in paragraph (6)(a) above, then ERCOT shall release any payments held. |

|  |
| --- |
| [NPRR1023: Insert Section 16.11.8 below upon system implementation and renumber accordingly:] ***16.11.8 Conversion of Letters of Credit and Surety Bonds to Cash Collateral***(1) To facilitate Settlement of Market Participant Invoices arising in consequence of a Payment Breach or other Default by a Market Participant, including but not limited to those described in Section 16.11.6.1.4, Repossession of CRRs by ERCOT, Section 16.11.6.1.5, Declaration of Forfeit of CRRs, and Section 16.11.6.1.6, Liquidation of Repossessed or Forfeited CRRs, ERCOT may at its sole discretion initiate conversion of letters of credit or surety bonds held as Financial Security to cash collateral. |

***16.16.1 Counter-Party Criteria***

(1) In order to participate in the ERCOT Real-Time, Day-Ahead and Congestion Revenue Right (CRR) markets, in addition to satisfying any other eligibility requirements set forth in the ERCOT Protocols, each Counter-Party must satisfy, and at all times remain in compliance with, the following requirements:

(a) **Expertise in Markets**. All employees or agents transacting in ERCOT markets pursuant to the ERCOT Protocols have had appropriate training and/or experience and are qualified and authorized to transact on behalf of the Counter-Party.

(b) **Market Operational Capabilities**. Counter-Party has appropriate market operating procedures and technical abilities to promptly and effectively respond to all ERCOT market communications.

(c) **Allowable Contract Participants**. Each Counter-Party must be one of the following:

(i) An “Appropriate Person” as defined in sections 4(c)(3)(A) through (J) of the Commodity Exchange Act (7 U.S.C. § 6(c)(3)(A)-(J));

(ii) An “Eligible Contract Participant,” as defined in section 1a(18)(A) of the Commodity Exchange Act (7 U.S.C. § 1a(18)(A)) and in Commodity Futures Trading Commission (CFTC) regulation 1.3(m) (17 C.F.R. § 1.3(m)); or

(iii) A “person who actively participates in the generation, transmission, or distribution of electric energy,” as that term is defined in the CFTC’s final exemption order (78 Fed. Reg. 19,879).

 ERCOT may request necessary information to verify compliance with this requirement.

(d) **Independent Amount**. Counter-Party shall provide an Independent Amount as follows:

|  |
| --- |
|  |

(i) For a Counter-Party seeking authorization to participate or participating in all ERCOT markets, $500,000 Independent Amount.

(ii) For a Counter-Party seeking authorization to participate or participating in all ERCOT markets except for the CRR market, $200,000 Independent Amount.

(iii) For purposes of assessment of the Independent Amount, ERCOT will deem a Counter-Party that is or is applying to be a CRR Account Holder as having a desire to participate in all ERCOT markets.

(iv) Financial Security posted pursuant to this section is fully available to ERCOT in the event of the Counter-Party’s Payment Breach.

(v) ERCOT shall add the Independent Amount to that Counter-Party’s Total Potential Exposure Secured (TPES) pursuant to Section 16.11 and designate it as the Independent Amount. ERCOT will require Financial Security for the Independent Amount in the same way as it does for other TPES elements.

(vi) Any non-payment of the Independent Amount is considered a Payment Breach pursuant to Section 16.11.6, Payment Breach and Late Payments by Market Participants. ERCOT may use any of the remedies provided in Section 16.11.6 to collect the Independent Amount for each Counter-Party.

(e) **Risk Management Capabilities**. Each Counter-Party shall maintain appropriate, comprehensive risk management capabilities with respect to the ERCOT markets in which the Counter-Party transacts or wishes to transact. ERCOT may review documentation supporting a Counter-Party’s risk management framework as part of its processes for verifying the implementation of a Counter-Party’s risk management framework as described in Section 16.16.3, Verification of Risk Management Framework.

***16.16.2 Annual Certification***

(1) Each Counter-Party must submit to ERCOT annually a notarized certificate, signed by an officer or executive with authority to bind the Counter-Party, in the form of Section 22, Attachment J, Annual Certification Form to Meet ERCOT Additional Minimum Participation Requirements, certifying that the Counter-Party is in compliance with each of the Counter-Party criteria and agrees to procedures for verification of its risk management framework as described in Section 16.16.3, Verification of Risk Management Framework.

(2) The certificate must be received by ERCOT no later than 120 days after the close of the fiscal year of the Counter-Party or its parent. ERCOT may extend the period for providing the certificate on a case-by-case basis.

(3) For new entry Counter-Parties, the certificate must be received by ERCOT prior to participation in any ERCOT markets.

(4) A Counter-Party shall notify ERCOT within one day if it has experienced a material adverse change that would make its most recent annual certificate inaccurate.

***16.16.3 Verification of Risk Management Framework***

(1) ERCOT will periodically perform or cause to be performed procedures to assess the risk management framework of Counter-Parties, including its implementation.

(2) ERCOT may retain a third party either to assess the sufficiency of the Counter-Party’s risk management framework or to provide guidance and advice as to what constitutes appropriate content with respect to generally accepted risk management practices in their respective markets, commensurate and proportional in sophistication, scope and frequency to the volume of transactions and the nature and extent of risk taken by the Counter-Party.

(3) ERCOT shall identify the nature and scope of generally accepted risk management practices in their respective markets by which Counter-Party risk management frameworks will be assessed. Key elements will include:

(a) The risk management framework is documented in a risk policy addressing market and credit risks that has been approved by a Counter-Party’s risk management function which includes appropriate corporate persons or bodies that are independent of the Counter-Party’s trading functions, such as a risk management committee, a designated risk officer, participant Counter-Party’s board or board committee, or, if applicable, a board or committee of the Counter-Party’s parent company.

(b) A Counter-Party maintains an organizational structure with clearly defined roles and responsibilities that clearly segregate trading and risk control functions.

(c) There is clarity of authority specifying the transactions into which traders are allowed to enter.

(d) A Counter-Party ensures that traders have adequate training and/or experience relative to their delegations of authority in systems and the markets in which they transact.

(e) As appropriate, a Counter-Party has risk limits in place to control risk exposures.

(f) A Counter-Party has reporting in place to ensure risks are adequately communicated throughout the organization.

(g) A Counter-Party has processes in place for independent confirmation of executed transactions.

(h) A Counter-Party performs a periodic valuation or mark-to-market of risk positions, as appropriate.

(4) The ERCOT Board may approve minimum standards under an Other Binding Document.

(5) Upon notice of being selected for verification, a Counter-Party will make available or submit to ERCOT, or a third party acting on ERCOT’s behalf, such documentation as is necessary to provide evidence of the sufficiency and implementation of its risk management framework. Such information may include, but not be limited to, documents of the following nature: risk policies, organizational charts, Delegations of Authority, training records, risk limit structure, reporting frameworks, and relevant procedures, all in a level of detail acceptable to ERCOT. Along with such documentation, a Counter-Party will provide a written explanation to ERCOT or its agent of how its risk management framework conforms to the risk management standards noted above. Requested information and documents must be made available for review by ERCOT, or a third party acting on ERCOT’s behalf, 30 days after Notice of the request. ERCOT will provide Counter-Party Notice of inadequate documentation and will give Counter-Party ten Business Days to correct the inadequacy. At ERCOT’s sole discretion, these deadlines may be extended on a case-by-case basis.

(6) If necessary, Counter-Parties will support the verification process by, among other things, making appropriate personnel available for interviews, permitting on-site observation of credit and risk management processes and procedures, and providing written responses to written inquiries on a timely basis. A Counter-Party may request that ERCOT or a third party performing verification on ERCOT’s behalf perform the review on-site at the Counter-Party’s location. Any resulting additional expenses will in this case be the sole responsibility of the Counter-Party making the request.

(7) ERCOT will perform procedures to verify the risk management framework at least annually for any Counter-Party if that Counter-Party or its parent:

(a) Is ineligible for unsecured credit under Section 16.11.2, Requirements for Setting a Counter-Party’s Unsecured Credit Limit; and

|  |
| --- |
| ***[NPRR1112: Replace paragraph (a) above with the following upon system implementation and October 1, 2023:]*** (a) Has had one or more late payments or represents a Qualified Scheduling Entity (QSE) or CRR Account Holder that has short-paid Settlement Invoices in the year preceding the date of the annual certificate; and |

(b) Has had exposure in CRR Obligations in the ERCOT CRR market during the year preceding the date of the annual certificate.

(i) Notwithstanding the above, ERCOT will perform risk management framework verification procedures on other Counter-Parties at its sole discretion.

(8) Upon completion of its review, ERCOT will notify the Counter-Party whether or not any material deficiencies were noted. If material deficiencies exist, ERCOT may, in its sole discretion, establish in consultation with the Counter-Party, a remediation plan for any deficiencies. The remediation period allowed for specific deficiencies should be consistent with the severity of those deficiencies and may have incremental deadlines. The total remediation period will not exceed 90 days, unless extended, at ERCOT’s sole discretion, on a case-by-case basis.

(9) Risk management deficiencies remaining beyond the ERCOT-defined remediation periods constitute a material breach under the Counter-Party’s Standard Form Market Participant Agreement as provided for in Section 22, Attachment A, Standard Form Market Participant Agreement. Upon a material breach, ERCOT may, in addition to any other rights or remedies ERCOT has under any agreement, these Protocols or at common law, suspend any or all future activities in the ERCOT market, pending remediation of deficiencies. An action by ERCOT to suspend activities in the ERCOT market is subject to the provisions of Section 20, Alternative Dispute Resolution Process.

(10) Participation in ERCOT markets is contingent on verification by ERCOT, or by a third party acting on ERCOT’s behalf, that the proposed measures have been implemented.

(11) If a Counter-Party provides evidence that its risk management framework has been deemed sufficient for transacting in another Regional Transmission Operator/Independent System Operator market in the United States, ERCOT may elect to forego verification processes.

(12) In conjunction with providing its annual certificate, if a Counter-Party certifies that there has been no material change in its risk management capabilities since the framework was last verified, ERCOT may elect to forego verification. ERCOT may not forego verification more than once in any 24-month period.

16.17 Exemption for Qualified Scheduling Entities Participating Only in Emergency Response Service

(1) A Qualified Scheduling Entity (QSE) that is not also registered as a Congestion Revenue Rights (CRR) Account Holder, that does not participate in the Day-Ahead Market (DAM) or Real-Time Market (RTM), that represents only Emergency Response Service (ERS) Resources, and whose Total Potential Exposure (TPE) (as calculated in Section 16.11.4.1, Determination of Total Potential Exposure for a Counter-Party) is zero may request designation as an ERS-only QSE.

(2) A QSE must submit a written request for designation as an ERS-only QSE at least five Business Days before the desired effective date of the designation.

(3) Upon determining that the QSE has addressed all financial risk to ERCOT’s satisfaction, ERCOT shall designate the QSE as an ERS-only QSE, and shall notify the QSE of that designation in writing.

(4) Except as provided in paragraph (5) below, an ERS-only QSE is exempt from the following requirements:

(a) The requirement to maintain sufficient collateral under Sections 16.11.1, ERCOT Creditworthiness Requirements for Counter-Parties, and 16.11.5, Monitoring of a Counter-Party’s Creditworthiness and Credit Exposure by ERCOT;

(b) The requirement to submit financial statements and any notice of material changes under paragraph (1) of Section 16.11.5; and

(c) All requirements under Section 16.16, Additional Counter-Party Qualification Requirements.

(5) If ERCOT posts an RTM True-Up Statement or RTM Resettlement Statement providing for a resettlement of any ERS Time Period, and as a result of that resettlement alone, ERCOT determines that an ERS-only QSE has a positive TPE as calculated in Section 16.11.4.1, ERCOT will require that QSE to comply with Section 16.11.5, excluding paragraph (1), until its TPE again equals zero. If the QSE fails to pay when due any payment or Financial Security obligation owed to ERCOT, ERCOT may terminate the QSE’s ERS-only status.

(6) ERCOT shall ensure that its systems prevent participation by ERS-only QSEs in the DAM and RTM.

(7) A QSE must request termination of its ERS-only status in writing. Termination of ERS-only status will be effective only upon ERCOT’s written confirmation that the QSE has satisfied all creditworthiness requirements applicable to QSEs.

(8) Nothing in this Section affects an ERS-only QSE’s obligation under paragraph (5) of Section 16.2.1, Criteria for Qualification as a Qualified Scheduling Entity, to provide ERCOT notice of any material change that could adversely affect the reliability or safety of the ERCOT System. Additionally, ERCOT may at any time require any ERS-only QSE to demonstrate that its risk management policies and practices are sufficient to ensure that it will be capable of meeting its ERS performance requirements during any ERS Standard Contract Term for which it has submitted an offer or for which it is committed to provide ERS.

**ERCOT Nodal Protocols**

**Section 22**

**Attachment J:**  **Annual Certification Form to Meet ERCOT Additional Minimum Participation Requirements**

**October 1, 2013**

**Annual Certification Form**

**to Meet ERCOT Additional**

**Minimum Participation Requirements**

|  |
| --- |
| **Counter-Party Name:** Counter-Party Name**(“Counter-Party”)** |

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a duly authorized officer or executive of Counter-Party, understanding that Electric Reliability Council of Texas, Inc. (“ERCOT”) is relying on this Certification as evidence that Counter-Party meets the minimum participation requirements set forth in the ERCOT Protocols, hereby represent that I have full authority to bind the Counter-Party and further certify and represent the following:

1. **Expertise in Markets.** All employees or agents transacting in ERCOT markets pursuant to the ERCOT Protocols have had appropriate training and/or experience and are qualified and authorized to transact on behalf of the Counter-Party.

2. **Market Operational Capabilities.** Counter-Party has appropriate market operating procedures and technical abilities to promptly and effectively respond to all ERCOT market communications.

3. **Risk Management Capabilities.** Counter-Party maintains appropriate, comprehensive risk management capabilities with respect to the ERCOT markets in which the Counter-Party transacts or wishes to transact.

4. **Verification of Risk Management Framework.** Counter-Party has read and agrees to the requirements for verification of its risk management framework as detailed in the ERCOT Protocols.

Risk management framework verification processes undertaken by ERCOT or a third party acting on ERCOT’s behalf are by necessity limited in scope and nature and cannot address their appropriateness or sufficiency with respect to the full range of risks that may face a Counter-Party or that all such capabilities and controls are in fact operating as purported. In performing an assessment of risk management framework, ERCOT or its agent rely on the assertions and documentary evidence produced by the Counter-Party, and accept no liability for the consequences of insufficient implementation or effectiveness in mitigating risks of the Counter-Party or the impact of risks upon the financial strength of the Counter-Party with respect to ERCOT or other Independent System Operator/Regional Transmission Operator -administered markets.

[ ]  By checking this box, I further certify and represent that there has been no material change in internal risk management capabilities since last verified by ERCOT.

[ ]  By checking this box, I further certify and represent that Counter-Party is:

(a) An “Appropriate Person” as defined in sections 4(c)(3)(A) through (J) of the Commodity Exchange Act (7 U.S.C. § 6(c)(3)(A)-(J));

(b) An “Eligible Contract Participant” as defined in section 1a(18)(A) of the Commodity Exchange Act (7 U.S.C. § 1a(18)(A)) and in Commodity Futures Trading Commission (CFTC) regulation 1.3(m) (17 C.F.R. § 1.3(m)); or

(c) In the business of:

(i) Generating, transmitting or distributing electric energy; or

(ii) Providing electric energy services that are necessary to support the reliable operation of the transmission system.

This area is provided for the Counter-Party to provide any additional information or clarification necessary with respect to this Certification.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subscribed and sworn before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a notary public in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_in and for the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Notary Public Signature)

My commission expires: \_\_\_\_/\_\_\_\_/\_\_