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| NPRR Number | [1186](https://www.ercot.com/mktrules/issues/NPRR1186) | NPRR Title | Improvements Prior to the RTC+B Project for Better ESR State of Charge Awareness, Accounting, and Monitoring  |
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| Date | July 6, 2023 |
|  |  |
| Submitter’s Information |
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| Market Segment | Independent Generator |

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| Comments |

Eolian, L.P. (Eolian) submits these comments to Nodal Protocol Revision Request (NPRR) 1186 for consideration at ERCOT’s Protocol Revision Subcommittee (PRS) on July 13, 2023. It is also Eolian’s understanding that ERCOT intends to discuss NPRR1186 and ERCOT’s justification for urgency prior to PRS consideration at the Reliability Operations Subcommittee (ROS) meeting on July 6, 2023, and the Wholesale Market Subcommittee (WMS) meeting on July 12, 2023. NPRR1186 was submitted by ERCOT on June 22, 2023, in accordance with ERCOT Protocol Section 21.4.4(2), and therefore, these Comments are timely filed for consideration by PRS.

The purpose of these comments is threefold:

1. To challenge ERCOT’s “Urgent” designation of NPRR1186;
2. To identify the necessity for transparency and sufficient Market Participant[[1]](#footnote-1) participation to ensure that:
	1. ERCOT is not unreasonably and unfairly imposing substantial operational obligations on a single subset of Resources; and
	2. ERCOT will not (i) impose substantial obligations on, or create additional requirements for Market Participants, or (ii) create policy by revising ERCOT documents (such as a Business Practice Manual (BPM)) that do not include adequate processes for Market Participant participation and require approval by the Public Utility Commission of Texas (PUCT or Commission), by asserting that such documents supplement, clarify, complement or detail language adopted in NPRR1186 (or any other ERCOT revision request (RR)—e.g., NPRR1096);
3. To identify and protect the rights of the owners, operators and Market Participants affiliated with the Resources directly impacted by NPRR1186.
4. **Urgency**

ERCOT’s explanation for classifying NPRR1186 as “Urgent” fails on all accounts.

[ERCOT Protocol Section 21.5(1)](https://www.ercot.com/files/docs/2023/06/01/21-060123_Nodal.docx) provides that an NPRR may be considered “Urgent” “***only when*** the ***submitter*** can ***reasonably show*** that an ***existing… condition is impairing or could imminently impair*** ERCOT ***System reliability*** or wholesale or retail market operations…” (emphasis added).

ERCOT identified NPRR1186 as “Urgent” because “[t]here is a sharp increase of Energy Storage Resource ***(ESR)-related projects*** ***in*** ERCOT’s interconnection ***queue***. Urgent status is necessary so that the ***system changes*** associated with this [NPRR] ***can be implemented in the narrow window*** before development work on the [RTC] & [NPRR963] project begins” (emphasis added).[[2]](#footnote-2)

**ERCOT has failed to “reasonably show” that an “*existing* condition is impairing or could imminently impair ERCOT System reliability.”**

The mere mention of an estimated increase (~6 GW) in “ESR-related products” by the end of 2024 provides no information regarding: (a) what an ESR-related project encompasses (e.g., behind-the-meter self-serve generation/load/energy storage); (b) the types of ESRs in the interconnection queue (i.e., size/duration of these ESRs; the Ancillary Services they may qualify to provide); or (c) the interconnection status of such ESR-related projects—an “IA signed and Financial Security Posted” is insufficient for a determination that a project will reach its in-service and commercial operations dates by the original dates identified in the IA. In fact, most are delayed.[[3]](#footnote-3)

Additionally, ERCOT has made no showing, much less a reasonable showing, of any ***existing condition*** that ***is impairing*** or ***could imminently impair*** ERCOT System reliability. Even if, as ERCOT claims in the Revision Description of NPRR1186 that additional state of charge (SOC) information will help ERCOT “better understand each ESR’s current energy capability and expected energy capability in future hours,” ERCOT has not shown how the lack of such information currently impairs or will immediately impair ERCOT System reliability. Furthermore, ERCOT has not identified how or why a SOC compliance metric at the top of the Operating Hour (OH) for the provision of an Ancillary Service by an ESR that is qualified to provide that Ancillary Service during the OH—i.e., an additional compliance requirement that is not based on performance, but instead on *possible n*on-performance—will be more helpful in ensuring ERCOT System reliability better than existing penalties for non-performance.

In fact, ERCOT has already implemented compliance metrics (including penalties) to address this exact issue for ESRs qualified to provide Non-Spin and ECRS. [NPRR1096](https://www.ercot.com/files/docs/2022/05/17/1096NPRR-28%20PUCT%20Report%20051222.docx), *Require Sustained Two-Hour Capability for ECRS and Four-Hour Capability for Non-Spin*, specifically accounted for ERCOT’s lack of comfort regarding these ESRs. Specifically, NPRR1096 allows ERCOT to perform unannounced SOC testing on an ESR’s ability to meet its Ancillary Service Supply Responsibility for Non-Spin and ECRS. ERCOT even filed comments in NPRR1096 to “clarify that the ***focus of the [unannounced] test is to verify the [SOC] being reserved to provide the ECRS and/or Non-Spin responsibility*** that is being carried in Real-Time.”[[4]](#footnote-4)

ERCOT Protocol Section 8.1.1.2(19) states:

… ***to verify that the [ESR’s] Ancillary Service Responsibility*** reported by telemetry ***is achievable based on the [SOC]*** the [***ESR] is maintaining in Real-Time***, ERCOT may, at its discretion, conduct an unannounced ECRS/Non-Spin capability test.

…ERCOT will issue a Verbal Dispatch Instruction (VDI) to the QSE to operate the designated ESR an output level that delivers the total [SOC] the ESR was obligated to provide based on sum of the ECRS Ancillary Service Responsibility and Non-Spin Ancillary Service Responsibility as shown in the ESR’s telemetry at the time the test is initiated.

Should the designated ***ESR fail to demonstrate the [SOC] level needed to meet*** the sum of ***ECRS******Ancillary Service Responsibility*** and ***Non-Spin Ancillary Service Responsibility*** shown in its telemetry within the time frame set forth herein, the ***Real-Time averaged MW telemetered during the test*** shall be the ***basis for the ECRS and Non-Spin capacity that the Resource may provide*** (emphasis added).

ERCOT sponsored NPRR1096 in September 2021. NPRR1096 was approved in May 2022. It took Market Participants **eight (8) months** to identify and reconcile ERCOT’s comfort level regarding ESR SOC and participation in Ancillary Services. Now, and while apparently disregarding those efforts and the overlap in NPRR1096, ERCOT seeks to create rules for approval within **a single (1) month**—i.e., rules that will impose additional SOC requirements on those same ESRs, as well as new SOC requirements on all ESRs, and may impose significant operational obligations on ESRs. Eolian fully supports ERCOT’s efforts to create a reliable operating system, but NPRR1186 does not do that. NPRR186 is a tool that *might* help ERCOT in understanding ESRs better, but it is not a tool that is guaranteed to support grid reliability. Rather, and as discussed in further detail below, NPRR1186 has the very real potential of diminishing reliability by obstructing ESR flexibility and curbing ESR participation in tight grid conditions.

On numerous occasions, ERCOT has claimed that it wants (not needs) additional SOC transparency because ESR technology is new and ERCOT is not yet “comfortable” with it.[[5]](#footnote-5) ERCOT has also noted that NPRR1186 will help ERCOT operators “get comfortable” with ERCOT’s daily operating plan.[[6]](#footnote-6) While ERCOT’s general lack of understanding regarding the operations of any new technology in theory could impact the reliability of the ERCOT System, ERCOT has not shown that the lack of NPRR1186, currently impairs or will impair (even in the distant future) ERCOT System reliability. Instead, NPRR1186 has the potential to diminish reliability. Nowhere in [NPRR1186](https://www.ercot.com/files/docs/2023/06/22/1186NPRR-01%20Improvements%20Prior%20to%20the%20RTCB%20Project%20for%20Better%20ESR%20State%20of%20Charge%20Awareness%20062223.docx) does ERCOT even mention the word “reliability”—not in the Requested Resolution section that addresses urgency; not in the Revision Description section that describes the Protocol changes; and not in the Business Case, which according to ERCOT’s own [Revision Request and Comment Submission Guidelines](https://www.ercot.com/files/docs/2017/12/12/Revision_Request_and_Comment_Submission_Guidelines.doc), advises the submitter of an NPRR to “***provide as much detailed information as possible***… ***Include reasons, explanations***, and any cost benefit calculation pertaining to the revision request ***that might assist in justifying the reason for the revision request***” (emphasis added).

ERCOT has not proposed “Urgent” status for another NPRR for which ERCOT seeks Resource-specific information to help ERCOT operators with situational awareness. [NPRR1170](https://www.ercot.com/mktrules/issues/NPRR1170#keydocs), *Capturing Natural Gas Delivery Information for Natural Gas Generation Resources*, was sponsored by ERCOT and posted on March 29, 2023. NPRR1170 and NPRR1186 are similar in that ERCOT seeks Resource-specific information from Qualified Scheduling Entities (QSEs) to help ERCOT operators with situational awareness regarding a Resource’s ability to satisfy energy/Ancillary Service obligations. ERCOT sponsored NPRR1170 because “it became apparent that not all Resource Entities or their affiliates had purchased enough natural gas to satisfy the level of generation their QSE indicated was available in their [COP],”[[7]](#footnote-7) yet ERCOT did not designate NPRR1170 as “Urgent” even though ERCOT posed it as conducive for ensuring reliability in the winter months.

When HB 1500 becomes effective on September 1, 2023, the Commission will be required to use a contested case or the rulemaking process to direct ERCOT to implement rule changes like NPRR1186 that “impose significant operational obligations on an entity.”[[8]](#footnote-8) As several PUC Commissioners acknowledged at the PUC’s June 29, 2023, Open Meeting, ERCOT and the Commission need to work on incorporating rules and processes that provide for sufficient stakeholder and public comment.[[9]](#footnote-9) Codification of the roles and responsibilities of ERCOT and the Commission regarding the approval of revisions to ERCOT rules, though essential, will not solve the current problem regarding ERCOT’s rush to approve ERCOT rule changes, as discussed below.

ERCOT claims that the only opportunity for it to implement NPRR1186 is between now and 2024, due to ERCOT’s timing for implementing real-time co-optimization (RTC) and implementing the DRRS, but that rationale does not satisfy the requirements for urgency under the Protocols. Further, the “window of opportunity” most certainly does not justify the almost complete exclusion of stakeholder participation in NPRR/rulemaking process. That is, by filing NPRR1186 as “Urgent” on the day of the June 2023 ESR Workshop without any prior discussion or preview of NPRR1186 with Market Participants, ERCOT has forced Market Participants (in order to preserve their rights to participate in future actions related to NPRR1186) to review, analyze and file comments to an NPRR that may require significant operational modifications, and will physically degrade a subset of Resources and materially impact revenues, no later than Thursday, July 7, 2023, a date which was further impacted by two weekends and the July 4th holiday.[[10]](#footnote-10) ERCOT’s opaque management of its SOC concerns, coupled with recent actions taken by ERCOT to apparently circumvent stakeholder input on ERCOT market and governance issues, suggests that ERCOT may intend to disregard the voice of, and impose additional participation restrictions on, a single type of Resource—ESRs—that provide Ancillary Services, regardless of whether the ESR meets the same qualification requirements as all other Resource types for the Ancillary Service(s) it provides.

ERCOT has failed to reasonably show that an existing condition is impairing or could imminently impair ERCOT System reliability and, as a result, NPRR1186 does not meet the requisite criteria for consideration on an urgent timeline. Accordingly, PRS should reject ERCOT’s requested resolution that NPRR1186 be considered “Urgent.”

1. **Transparency & New Significant Obligations**

As mentioned above, the Texas Legislature has made it very clear that in directing ERCOT to take an action that will “impose significant operational obligations on an entity,” the PUC must afford affected entities (including Market Participants) a reasonable opportunity to be heard, as provided for in the [Texas Administrative Procedure Act (APA)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2001.htm#2001.0225).[[11]](#footnote-11) The APA sets forth the *minimum standards* by which the Commission must act and the procedures associated therewith, including rulemaking and contested case standards and procedures. Further, [ERCOT’s vision](https://www.ercot.com/about/profile/vision) is to “***lead with*** independent insight on the future of electricity reliability, markets and ***technology*** in Texas in order to facilitate grid and market ***change for the benefit of all stakeholders***.” Ensuring that stakeholders have a reasonable opportunity to be heard cannot and should not be thwarted by a NPRR that is purely designed to educate ERCOT staff on new technologies and designated as “Urgent” to meet a window of opportunity for implementation by ERCOT staff due to other projects in the queue. ERCOT’s recent actions regarding the maintenance SOC have been anything but transparent, opportunistic, or uniform.

In December 2022, ERCOT revised the BPM, [ERCOT and QSE Operations Practices During the Operating Hour](https://www.ercot.com/files/docs/2021/10/13/BP_ERCOT_And_QSE_Operations_Practices_During_The_Operating_Hour_Version_5.16.docx), to add new SOC requirements for ESRs. On several occasions, ERCOT staff indicated that it believed the BPM supplemented and clarified the ERCOT Protocols, and therefore is enforceable.[[12]](#footnote-12) In addition, since January 2023, ERCOT has been telling Market Participants that it would hold a workshop for “discussions around operations, discussions around [ERCOT’s] expectations, discussions around [the BPM], if there is any pushback or anything that maybe we are missing or understanding… that workshop is… where we want to try to tackle those things.”[[13]](#footnote-13) In February, Eolian met with ERCOT to discuss its SOC concerns, informed ERCOT that Eolian wished to remain involved in any activities related to SOC requirements, and requested a workshop to address SOC issues sooner rather than later. However, and although numerous ESRs have requested involvement in the development of SOC and other modeling rules that will directly impact their operations, ERCOT has been unwilling to publicly engage in this effort with Market Participants. In contrast, on May 31, 2023, ERCOT issued a [Market Notice](https://www.ercot.com/services/comm/mkt_notices/M-F053123-01) stating that it would host a workshop on June 22, 2023, to “discuss potential changes that will improve monitoring and/or modeling of [ESRs] in ERCOT systems and/or processes.” Coincidently, ERCOT posted NPRR1186 on the day of the workshop without, to Eolian’s knowledge, input from or coordination with any ESRs and requested Urgent status that would limit such input and coordination. Six months after ERCOT posted the revised BPM, it filed NPRR1186 with the same concepts. This hardly suggests an “urgent” scenario that will imminently impair the ERCOT Grid.

The lack of transparency and insufficient dialogue with stakeholders appears to have caused ERCOT to overlook the reliability risks associated with NPRR1186. NPRR1186, as written, has the potential to have a negative impact on reliability—by obstructing ESR flexibility and curbing ESR participation in tight grid conditions. For example, an ESR may not be able to immediately respond to an emergency event at the end of an OH because it (and every other ESR with obligations in the next OH) may have to charge to meet ERCOT’s arbitrary SOC requirements at the top of an hour, when instead, the ESR could have used its full dispatchable capabilities to provide ERCOT with energy quickly *and* satisfied its Ancillary Service obligations within the OH. This is because ESRs are operationally flexible—that is the very nature of ESRs when optimized and operated properly. Although many small utility-scale ESRs on the ERCOT System are optimized and qualified to provide a handful of Ancillary Services due to duration requirements—e.g., Responsive Reserve Service (RRS) or Regulation Service (Reg-Up and Reg-Down)—larger ESRs, such as Eolian’s Resources, are longer in duration and eligible to provide additional Ancillary Services, such as Non-Spin Reserve Service (Non-Spin) and ERCOT Contingency Reserve Service (ECRS). Eolian’s ESRs have multi-use capabilities, which fundamentally require optimization on a more complex level to ensure economic viability. Eolian recognizes that the primary focus of ERCOT and the Commission are on reliability, not the economics of operating complex ESRs. However, it is critical for regulators to understand that the implementation of arbitrary requirements, such as those set forth in NPRR1186, without reasoned analysis and guidance from the entities most experienced in operating these new technologies, is careless, may unnecessarily degrade the Resources, and may inadvertently create subsequent adverse impacts to the reliability of the ERCOT System.

NPRR1186 may also impose substantial operational requirements on ESRs based on an uninformed standard determined by ERCOT. However, given the limited time for which other Market Participants have been given to evaluate NPRR1186, Eolian and other ESRs have not had a sufficient opportunity to evaluate the operational additions that may be required for compliance with NPRR1186 or any ramp limitations/requirements that ERCOT proposed at the June 2023 ESR Workshop.

The new requirements proposed by NPRR1186 are not necessary. ERCOT currently has tools it can use to help ensure that ESRs comply with Ancillary Service obligations. These tools apply fairly to all Market Participants and have resulted in a successful, self-regulating market for decades. ESRs were developed with these tools (SASM, DAM, etc.) in mind, and ESR operators expect to pay penalties based on those tools if they fail to meet their Ancillary Service obligations. ERCOT’s proposed SOC requirement in NPRR1186 is the only Ancillary Service compliance metric not related to a Resource’s actual performance in meeting obligations for which it is qualified to provide.

Additionally, as noted above, [NPRR1096](https://www.ercot.com/files/docs/2022/05/17/1096NPRR-28%20PUCT%20Report%20051222.docx) set a 2-hour duration requirement for all Resource types to participate in ECRS, and 4-hour duration requirement to participate in Non-Spin. All the analysis provided by ERCOT to justify these duration requirements was based on the expected duration of ECRS and Non-Spin utilization based on the needs of the ERCOT System. At NO time during the eight-month discussions on NPRR1096 was the concept of rolling/continuous proof of duration a contemplated requirement for participation (as that would be tantamount to proving infinite duration). Following the implementation of NPRR1096, ESRs have undertaken significant steps to qualify to provide ECRS and NSRS.

If ERCOT’s current hourly-clearing design and penalty structure for non-performance applicable to ALL RESOURCES is insufficient to ensure that ERCOT can meet operational reliability goals, then the *entirety* of ERCOT’s structure and Protocols should be evaluated to ensure that all Resources are held to such enhanced standards. If ESRs are bidding into the Day-Ahead Market for Ancillary Services and are as accountable as any other Resource type for performing during a given one-hour interval in which they have cleared, then there is no emergency. In fact, any changes that target one Resource type when the entire Ancillary Service construct is actively being changed through the implementation of DRRS would be dangerous when so many other items, including DRRS, RTC and the Performance Credit Mechanism (PCM) have been identified by ERCOT and the PUC as the most time-sensitive priorities. Therefore, without knowing exactly what roles the various Ancillary Services will play in a newly designed schema that may replace Non-Spin with a DRRS concept, it is inappropriate for ERCOT rush to implement NPRR1186, which will immediately impact ESR participation in multiple Ancillary Service products. The Commission must first redefine the various sizing and requirements of the Ancillary Service products.

It should also be recognized that the SOC requirements set forth in NPRR1186 appear to be incongruous with its proposed changes discussed in the June 2023 ESR Workshop, by which “ERCOT ‘turns on’ EMS improved calculation in determining AS Regulation Up/Down deployment requirement for ESR-GR and ESR-CLR as a single model ESR.”[[14]](#footnote-14) This approach recognizes that both “sides” on an ESR can be used to meet a single AS responsibility, but ERCOT’s proposed SOC requirements in NPRR1186 appear to ignore this reality, thereby limiting the actual operations of the ESR.

Finally, alternative solutions and educational opportunities are always available to ERCOT. It is just a matter of openly discussing options and opportunities with ESR experts—ERCOT Market Participants.

1. **Market Participant Rights**

Recent actions by ERCOT suggest that it is implementing policy and requirements upon Market Participants beyond those which have been approved by the Commission.

ERCOT Revisions to the Business Practice Manual: ERCOT and QSE Operations Practices During the Operating Hour (December 2022)

Last December, ERCOT revised the BPM, [ERCOT and QSE Operations Practices During the Operating Hour](https://www.ercot.com/files/docs/2021/10/13/BP_ERCOT_And_QSE_Operations_Practices_During_The_Operating_Hour_Version_5.16.docx) (BPM-SOC) to “supplement” and “clarify” the Protocols by adding SOC requirements, similar to those not-yet-approved in NPRR1186 and beyond the SOC compliance metrics approved in [NPRR1096](https://www.ercot.com/files/docs/2022/05/17/1096NPRR-28%20PUCT%20Report%20051222.docx)—*See* e.g., current Protocol Section 8.1.1.2(19) regarding ERCOT unannounced testing of ESRs qualified to provide Non-Spin “***to verify ESR’s [SOC] capability to meet*** the [Non-Spin] ***Ancillary Service Resource Responsibility***” (emphasis added). Importantly however, Market Participants cannot easily access historical versions of, or redlines to ERCOT BPMs on ERCOT’s website because ERCOT approves and maintains BPMs internally. On occasion, one may run across a redline version of a BPM if it was shared at an ERCOT stakeholder meeting—e.g., [ERCOT PDCWG Meeting (01.15.2023)](https://www.ercot.com/calendar/01182023-PDCWG-Meeting-_-Webex) (redlines to BPM-SOC are contained in a Zip file under “Key Documents”). Instead, the only evidence that a BPM was revised is by looking at the “Document Revisions” table within the BPM. The following table represents ERCOT’s December 2022 BPM-SOC edits (emphasis added):[[15]](#footnote-15)

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Version** | **Description** | **Author(s)** |
| 12/xx/2022 | 5.16 | Update to Section 3.6.1 to align telemetry expectations for resources providing Fast Frequency Response. ***Update to Section 3.12 to include additional Provisions for Energy Storage Resources (ESRs) with additional focus on SOC expectations and AS transitions***.  | L. HinojosaN. MagoJ. DuBroA. Gari |

Section 1 of the current BPM-SOC states that the purpose of the document is “to describe the use of telemetry data values in the ERCOT Systems and the expected management of various Resource operations/evolutions during the [OH] by the QSE…” It further states, “QSEs and Resource Owners are solely responsible for the physical operation of their Resources and the accuracy of the associated telemetry data set required by the Protocolsand the ICCP Handbook. It is both necessary and desirable from a reliability and operations viewpoint that ERCOT and the QSE keep one another informed as to the continuing availability and capability of the Generation Resources in the ERCOT Control Area.”

The current Protocols (i) advise QSEs regarding telemetry updates for an ESR in Real-Time to reflect SOC limitations;[[16]](#footnote-16) (ii) address SOC with respect to unannounced testing for ESRs providing Non-Spin and ECRS;[[17]](#footnote-17) and (iii) require QSEs to provide Real-Time ESR telemetry data to ERCOT, including min/max operating SOC as well as real-time SOC.[[18]](#footnote-18) The Protocols do not require an ESR to maintain SOC at the top of an OH for its full Ancillary Service responsibility throughout the OH. However, the BPM-SOC, as revised by ERCOT in December 2022, states that “the ESR ***must reserve sufficient SOC for the AS Responsibility it is carrying in Real Time***.”[[19]](#footnote-19) The BPM-SOC additionally provides formulas for calculating “SOC Expectation for AS.”[[20]](#footnote-20) As noted above, with respect to recent SOC discussions, ERCOT staff has frequency indicated that because BPMs supplement and clarify the ERCOT Protocols, they are enforceable—e.g., “The Protocols and the Operating Guides are there to set the real standards, the real compliance, the real nitty gritty of what [ERCOT’s] expectations are, but then… there are off-hand examples that are not going get put in the Protocols to specifically ***handle scenarios that need more definition***. And that is how we use the [BPMs], to ***put some of that extra clarity in*** there.”[[21]](#footnote-21)

ERCOT’s December 2022 revisions to the BPM-SOC appear to establish additional operational requirements on a subset of Market Participants without having to work with those Market Participants in the ERCOT revision request (RR) process or receive Commission approval.

ERCOT ESR Workshop (June 2023)

At the June 2023 ESR Workshop, ERCOT informed Market Participants that it would be implementing a 15-minute ramp curve on ESRs at minute 45 for the next OH, and to do so, ERCOT would require an ESR hold its Ancillary Obligation at minute 45 to ramp to the maximum SOC obligation of the ESR in the next OH. “And through this set up, we want to ensure always at the top of the hour, that we have all of the SOC for the AS we procured for that hour. And after that, of course, as the hour progresses, also, we want to ensure people are actively monitoring that SOC and taking action, so that if [ERCOT] were to have events, [the ESR has] sufficient SOC, sufficient juice, to make sure that [the] event is supported.”[[22]](#footnote-22) While one ERCOT staff member noted that the 15-minute ramp/slope requirement was ERCOT’s starting point—“it is kind of a guess; maybe there’s a cushion in there, but we need to take that back,” another staff member noted, “I thought we did that so that the [ERCOT] operator is not scrambling in the [OH].”[[23]](#footnote-23) Regardless of how ERCOT derives the period for which it wants to require an ESR to ramp up to its SOC before an OH, such a requirement is based on ERCOT’s comfort level of an ESR’s ability to meet its Ancillary Service obligation in the next OH, not the ESR’s actual ability or performance.

Effectively, ERCOT has decided to restrict the participation of ESRs from participating in a QUARTER (or some other undefined amount) of ERCOT’s 1-hour Ancillary Service market, for which ESRs, like other Resources, are already qualified to provide. Unlike ERCOT’s lack of transparency in determining the SOC requirements, ERCOT has been crystal clear that it intends to “police” ESRs based on ERCOT’s belief that ESRs cannot meet their Ancillary Service obligations within an OH. This is in addition to policing actual ESR performance, as it does for all Resource types—e.g., ERCOT staff at the June 2023 ESR Workshop, in reference to the 15-minute ramp/curve to SOC at the top of the hour: “…we are more comfortable that we started policing [ESRs] and planning for the next [OH] ahead of time… I know this is where we were comfortable in saying, ‘we don't want to just not have any policing for the next hour.’”[[24]](#footnote-24) In other words, ERCOT’s comfort level (due to its lack of understanding ESR technologies and abilities) will determine the how an ESR should operate to provide Ancillary Services before the ESR’s Ancillary Service obligation arises. In even simpler terms, because ERCOT does not yet have technological expertise to understand ESR operational flexibility, it will impose additional qualification requirements on a singular Resource type which will (a) physically and financially impair the ESR if it complies with ERCOT’s inequitable compliance metrics, which are not based on performance, and (b) penalize the ESR through compliance and enforcement actions or threats of disqualification if the ESR performs to optimal capacity but does not meet those compliance metrics.

The Commission is required to “ensure that ancillary services… are available… with terms that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.”[[25]](#footnote-25) In fact, in 2021, Texas Legislature through [Senate Bill (SB) 3](https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00003F.pdf#navpanes=0), further emphasized that the modification of Ancillary Service products to be done “in a manner consistent with cost-causation principles and *on a nondiscriminatory basis*” (emphasis added).[[26]](#footnote-26) Again, NPRR1186 is imposing additional Ancillary Service requirements and qualifications—i.e., Ancillary Service terms—on, not all Resources that provide Ancillary Services, but a single subset of Resources. Thus, the question must be asked: Is ERCOT proposing a regulatory taking through the proposed imposition of these restrictions on ESRs?

Future Changes to an ERCOT Business Practice Manual

Notably, ERCOT’s proposed 15-minute ramp curve is absent from NPRR1186. It is likely absent because it is even more controversial than the arbitrary and inequitable SOC requirements posed in NPRR1186. Consistent with ERCOT staff statements that an ERCOT BPM is designed to supplement and clarify the ERCOT Protocols, we expect that ERCOT will, as it attempted to do in the BPM-SOC, impose additional operational requirements related to SOC (i.e., a SOC ramp/curve, as ERCOT described at the June 2023 ESR Workshop) by again modifying a BPM. And unlike when ERCOT attempted this in December 2022—when there were no Protocols that supported the BPM language—if NPRR1186 is approved and implemented, ERCOT will try to justify implementation of something like a 15-minute SOC ramp/curve requirement by pointing to the language (or “framework” as that term was used in the July 6, 2023 ROS meeting), approved in NPRR1186.

Changes to an ERCOT BPM do not require discussion or approval by ERCOT stakeholders, the ERCOT Board or the PUC. Therefore, even if such requirements will have a “significant operational impact on an entity,” ERCOT may try to argue that the statutory requirements in HB 1500 do not apply under the current process because the Commission is not required to approve ERCOT BPMs. Moreover, without a directive from the Commission for ERCOT to implement new requirements couched as “clarifications” or “additional detail” to supplement the ERCOT Protocols in a BPM, it will not matter if the changes will have a significant impact on a Market Participant’s operations. Thus, the question becomes: Are ERCOT materials that (i) include requirements or restrictions on Market Participants, and (ii) are intended to support/clarify/supplement the ERCOT Protocols or OBDs, ERCOT rules that must be approved by the Commission before becoming effective?

Commission Approval of ERCOT Rules

While [HB1500](https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB01500F.pdf#navpanes=0) becomes effective on September 1, 2023, and it appears that ERCOT’s trend is to diminish stakeholder participation in the development of rules and processes directly affecting Market Participants and their assets, that might not matter. If the Commission approves NPRR1186 (or any other ERCOT rule requiring Commission approval) under the current process, and thereby implicitly or explicitly directs ERCOT to implement NPRR1186, it may overstep its authority under the law.

For clarity, the above reference to “the current process” means, at a high level, as follows:

An NPRR, OBDRR or other ERCOT RR (collectively “RR”) requiring PUC approval is submitted to ERCOT. The RR is processed under [ERCOT Protocol Section 21](https://www.ercot.com/files/docs/2023/06/01/21-060123_Nodal.docx), *Revision Request Process*. Any RR designated as “Urgent,” requires PRS to consider the RR’s urgency, and only PRS may designate a RR as “Urgent” following a motion and vote.[[27]](#footnote-27) PRS maintains the “ultimate responsibility for the processing of all Revision Requests.”[[28]](#footnote-28) In considering action on a RR, PRS may take one of the following actions: “(a) Recommend approval of the [RR] as submitted or as modified; (b) Reject the [RR]; (c) Table the [RR]; or Refer the [RR] to another TAC subcommittee, working group, or task force as provided in Section 21.3, [PRS].”[[29]](#footnote-29) Further, ERCOT Protocol Section 21.3(2) provides:

Where additional expertise is needed, the ***PRS may refer a [RR] to***… existing [TAC] ***subcommittees***… ***for review and comment*** on the [RR]. ***Suggested modifications***… to the [RR] ***should be submitted*** by the [subcommittee’s] chair or the chair’s designee ***on behalf of the subcommittee***… ***as comments on the [RR]*** ***for consideration by PRS***. However, the PRS shall retain ultimate responsibility for the processing of all Revision Requests (emphasis added).

The ERCOT Protocols do not prevent an existing TAC subcommittee from considering an RR that has not been referred by PRS. However, the Protocols also do not authorize any TAC subcommittee other than PRS to take any action on the RR other than suggesting modifications in the form of comments to PRS, and that is only after PRS has referred the RR to the specific subcommittee.[[30]](#footnote-30) Interestingly, since Winter Storm Uri, there has been a significant uptick of consideration of ERCOT-sponsored RRs by TAC subcommittees before PRS has had an opportunity to consider the RR and refer it to a TAC subcommittee for review. Most likely this is to fast-track an RR through the ERCOT process by discussing the RR with certain stakeholders beforehand to garner support for the RR. Unfortunately, processing rules in this manner—i.e., typically rules that that have a significant impact on a relatively small segment of Market Participants, but an insignificant impact on or lack of interest by a larger group of Market Participants or voting segments—does not provide the small set of significantly impacted parties with adequate opportunity to evaluate and understand the depth of potential impacts of the RR.

In fact, Eolian learned just yesterday, July 5, 2023, that not only did ERCOT plan to speak to NPRR1186 at the [July 6, 2023 ROS meeting](https://www.ercot.com/calendar/07062023-ROS-Meeting-_-Webex), but that ERCOT requested that ROS vote to approve NPRR1186 on July 6, 2023 because ERCOT needs to move quickly to implement NPRR1186 before working on RTC and DRRS. Again, PRS—the only ERCOT subcommittee with the authority to take action on an ERCOT RR—has yet to consider NPRR1186. Moreover, in so doing, ERCOT requested ROS to approve an NPRR that substantially shifts ESR and QSE operations and creates an enforcement mechanism on a subset of Resources that are already qualified to provide the same Ancillary Services only two weeks after ERCOT filed the NPRR—i.e., ***ESRs have had less than 10 Business Days to evaluate and understand the impacts of NPRR1186*.**

Irrespective of any action taken by ROS on July 6, 2023, TAC (unless it calls a special meeting to consider NPRR1186, which is typically reserved for the most urgent of issues) will consider NPRR1186 at its regularly scheduled meeting following PRS consideration and determination. PRS is scheduled to meet on Thursday, July 13, 2023. TAC is scheduled to meet on July 25, 2023. If TAC recommends approval of NPRR1186 at that meeting, the ERCOT Board will consider NPRR1186 at its August 31, 2023 meeting. The PUCT could approve NPRR1186 on that same day (**one day before HB1500 becomes effective**), as it did with the most recent amendments to the ERCOT Bylaws on December 20, 2022.

Again, regardless of whether the Commission approves NPRR1186 on August 31, 2023, or after September 1, 2023, under the current process, if the Commission approves NPRR1186 and ERCOT implements the requirements before or after ERCOT staff begins to work on implementing RTC or DRRS, the Commission may exceed its authority under state law. This is because on [May 11, 2023](https://interchange.puc.texas.gov/Documents/54445_13_1290332.PDF), when the Commission approved NPRR1157, *Incorporation of PUCT Approval into Revision Request Process*, and the seven related RRs—i.e., COPMGRR049, LPGRR072, NOGRR248, PGRR104, RMGRR173, RRGRR034, and SMOGRR026—*Related to NPRR1157, Incorporation of PUCT Approval into Revision Request Process,* in PUC Project No. 54445, it further stripped Market Participants’ rights—i.e., the right to challenge an ERCOT decision on an ERCOT RR.[[31]](#footnote-31)

It is a long-established principle that the procedure set forth in the ERCOT rules for revisions to those rules should provide for stakeholder participation by ERCOT, the Commission ***and*** ERCOT Market Participants (the entities most directly impacted by ERCOT rules), and ensure that Market Participants are afforded due process protections—i.e., the right to challenge an ERCOT decision to the Commission. Although historically, ERCOT has not been subject to the [Texas Administrative Procedure Act (APA)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2001.htm), ERCOT and the Commission have agreed that ERCOT rules “should strive to ***create a review and approval process*** that operates as efficiently as possible ***within the legal construct of the [APA]***.”[[32]](#footnote-32) The APA sets forth procedural rules for contested cases and rulemakings. PUC Subst. R. 25.362(c)(5), related to ERCOT governance, provides that the Commission must process requests for review of “a new or amended ERCOT rule or an ERCOT decision” in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).” PUC Proc. R. 22.251, is the procedure by which a Market Participant can appeal a decision made by ERCOT—i.e., a contested case.

Prior to [Texas Senate Bill (SB) 2](https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00002F.pdf#navpanes=0), which became effective on June 8, 2021, ERCOT developed and implemented RRs independent of, but frequently in consultation with the Commission. In SB2, however, the Legislature amended PURA § 39.151(g-6) to require Commission approval prior to ERCOT rule revisions take effect. However, following the effectiveness of SB2 and until May 11, 2023, a Market Participant could challenge ERCOT’s approval of the RR with the Commission (following exhaustion of the ERCOT Alternative Dispute Resolution (ADR) process or via waiver from the Commission). NPRR1157 and the related RRs modified ERCOT’s actions regarding RRs, such that ERCOT no longer “approves” RRs; it only “recommends approval” to the PUC—i.e., the Commission is now the sole decider of revisions to the ERCOT rules. There is no longer any ERCOT action or decision for a Market Participant to challenge—i.e., no contested case process. Further, although Commission is the only decision maker of the ERCOT rules, the means by which the Commission is currently approving ERCOT rules does not provide Market Participants with an opportunity to be heard—i.e., no rulemaking process. Given that the Commission is now (subsequent to its May 11, 2023 approval of the NPRR1157, et al.) the only decider of changes to the ERCOT rules, would the Commission’s approval of NPRR1186 constitute a rulemaking under the PUC’s rules and the APA?

HB 1500 will afford Market Participants with more opportunity to be heard insofar as the new ERCOT rules impose significant operational obligations on a Market Participant, but it will not solve the current problem. On June 29, 2023, at the PUC Open Meeting, the Commissioners acknowledged the need for ERCOT and the Commission to develop rules and processes that provide for sufficient stakeholder and public comment. And while future codification of those roles and responsibilities are essential, for the reasons herein, we must question whether the current, albeit perhaps interim, process is lawful. Until the Commission implements a rulemaking to sufficiently account for the interests of those most impacted by ERCOT’s rules, ERCOT will continue to advance pernicious rules at the expense of the very players trying to help reinstate credibility in the ERCOT market and reinforce reliability on the ERCOT Grid.

**IV. Conclusion**

As these comments make clear, there are many unanswered questions and potential unintended consequences if NPRR1186 is approved by the Commission under an urgent timeline. Moreover, ERCOT has failed to reasonably show that an existing condition is impairing or could imminently impair ERCOT System reliability and, as a result, NPRR1186 does not meet the requisite criteria for consideration on an urgent timeline. Accordingly, PRS should reject ERCOT’s requested resolution that NPRR1186 be considered “Urgent.” Careless consideration of NPRR1186 could diminish reliability, rather than improve it. It is imperative that ERCOT and the Commission ensure that stakeholder rights are respected and considered with any proposed changes to ERCOT rules that have significant financial or operational impacts on Market Participants and their Resources.

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| --- |
| Revised Cover Page Language |

None

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| Revised Proposed Protocol Language |

None

1. For the purpose of these comments, to the terms “Market Participant” and “stakeholder” are used interchangeably and refer to “Market Participants,” as that term is defined in ERCOT Protocol Section 2.1, ERCOT “Members,” as that term is defined in the ERCOT Bylaws, as well as any owner or operator of a Resource, as the term “Resource” is defined in ERCOT Protocol Section 2.1. [↑](#footnote-ref-1)
2. *See* ERCOT’s [Requested Resolution](https://www.ercot.com/files/docs/2023/06/22/1186NPRR-01%20Improvements%20Prior%20to%20the%20RTCB%20Project%20for%20Better%20ESR%20State%20of%20Charge%20Awareness%20062223.docx) in NPRR1186. [↑](#footnote-ref-2)
3. *See e.g.,* Various amendments to ERCOT Interconnection Agreements (IAs) in [PUC Project No. 35077](https://interchange.puc.texas.gov/search/filings/?UtilityType=A&ControlNumber=35077&ItemMatch=Equal&DocumentType=ALL&SortOrder=Ascending). [↑](#footnote-ref-3)
4. *See* ERCOT Comments to NPRR1096 (Nov. 3, 2021) at

<https://www.ercot.com/files/docs/2021/11/03/1096NPRR-05_ERCOT_Comments_110321.docx>. [↑](#footnote-ref-4)
5. *See e.g.,* ERCOT staff comments at the [July 26, 2022](https://www.ercot.com/calendar/07262022-WMWG-Meeting-by-Webex), ERCOT Wholesale Market Working Group (WMWG) meeting, [Nov. 16, 2022](https://www.ercot.com/calendar/11162022-PDCWG-Meeting-by-Webex), and [Jan. 18, 2023](https://www.ercot.com/calendar/01182023-PDCWG-Meeting-_-Webex), ERCOT Performance, Disturbance, Compliance Working Group (PDCWG) meetings, along with numerous similar references during stakeholder discussions on [NPRR1096](https://www.ercot.com/mktrules/issues/NPRR1096#keydocs), Require Sustained 2-Hour Capability for ECRS and 4-Hour Capability for Non-Spin. [↑](#footnote-ref-5)
6. *See e.g.,* ERCOT staff comments at the[Jun. 22, 2023](https://www.ercot.com/calendar/06222023-Changes-to-improve-monitoring), ERCOT ESR Workshop. [↑](#footnote-ref-6)
7. *See* ERCOT’s Business Case in [NPRR1170](https://www.ercot.com/files/docs/2023/03/29/1170NPRR-01%20Capturing%20Natural%20Gas%20Delivery%20Information%20for%20Natural%20Gas%20Generation%20Resources%20032923..docx). [↑](#footnote-ref-7)
8. *See* new Texas Public Utility Regulatory Act (PURA) § 39.1514(a-1) in [HB 1500](https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB01500F.pdf#navpanes=0). [↑](#footnote-ref-8)
9. *See* PUC Open Meeting, Item No. 43 (Jun. 29, 2023) at [Admin Monitor - Texas - Public Utility Commission of Texas (texasadmin.com)](https://texasadmin.com/tx/puct/open_meeting/20230629/). [↑](#footnote-ref-9)
10. ERCOT Protocol Section 21.4.4(2), PRS Review and Action, provides, “To receive consideration, comments must be delivered electronically to ERCOT in the designated format provided on the ERCOT website within 14 days from the posting date of the Revision Request.” Fourteen days from June 22, 2023, is July 7, 2023, the time between which includes two weekends and a holiday. [↑](#footnote-ref-10)
11. *See* PURA 39.1514(a-1) in [Texas House Bill (HB) 1500](https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB01500F.pdf#navpanes=0) (eff. Sept. 1, 2023). [↑](#footnote-ref-11)
12. *See e.g.,* ERCOT staff comments at [Jan. 18, 2023](https://www.ercot.com/calendar/01182023-PDCWG-Meeting-_-Webex) PDCWG meeting. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *See* ERCOT Presentation at the ESR Workshop (Jun. 22, 2023) at Slides 7, 11, and 32. [↑](#footnote-ref-14)
15. See page 5 of ERCOT BPM, [ERCOT and QSE Operations Practices During the Operating Hour](https://www.ercot.com/files/docs/2021/10/13/BP_ERCOT_And_QSE_Operations_Practices_During_The_Operating_Hour_Version_5.16.docx). [↑](#footnote-ref-15)
16. ERCOT Protocol Section 3.8.5(3). [↑](#footnote-ref-16)
17. ERCOT Protocol Section 8.1.1.2(19). [↑](#footnote-ref-17)
18. ERCOT Protocol Section 6.5.5.2 (12)(a)-(c). [↑](#footnote-ref-18)
19. *See* Section 3.12 of ERCOT BPM, [ERCOT and QSE Operations Practices During the Operating Hour](https://www.ercot.com/files/docs/2021/10/13/BP_ERCOT_And_QSE_Operations_Practices_During_The_Operating_Hour_Version_5.16.docx). [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *See e.g.,* ERCOT staff comments at [Jan. 18, 2023](https://www.ercot.com/calendar/01182023-PDCWG-Meeting-_-Webex) PDCWG meeting. [↑](#footnote-ref-21)
22. *See* ERCOT staff comments at the[Jun. 22, 2023](https://www.ercot.com/calendar/06222023-Changes-to-improve-monitoring), ERCOT ESR Workshop. [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. *See* PURA 35.004(f). [↑](#footnote-ref-25)
26. *See* PURA 35.004(h). [↑](#footnote-ref-26)
27. *See* ERCOT Protocol Sections 21.5(2), (5) and (6). [↑](#footnote-ref-27)
28. ERCOT Protocol Section 21.3(2). [↑](#footnote-ref-28)
29. ERCOT Protocol Section 21.4.4(3). [↑](#footnote-ref-29)
30. *See* ERCOT Protocol Section 21.3. [↑](#footnote-ref-30)
31. *See* CY 2023 Review of Rules Adopted by the Independent Organization, Project No. 54445, Order (May 11, 2023). [↑](#footnote-ref-31)
32. *See e.g.,* Rulemaking Relating to the Accountability and Performance of [ERCOT], PUC Proj. No. 38338, ERCOT Initial Comments (Oct. 4, 2010) at

<https://interchange.puc.texas.gov/Documents/38338_11_674934.PDF>. [↑](#footnote-ref-32)