



## Department of Energy

Washington, DC 20585

### Order No. 202-23-1

Pursuant to the authority vested in the Secretary of Energy by section 202(c) of the Federal Power Act (FPA), 16 U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), and for the reasons set forth below, I hereby determine that an emergency exists in Texas due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and that issuance of this Order will meet the emergency and serve the public interest.

#### *Emergency Situation*

On September 7, 2023, the Electric Reliability Council of Texas, Inc. (ERCOT), the Independent System Operator (ISO) whose service territory includes 90 percent of the electric customers in the state of Texas, filed a *Request for Emergency Order Under Section 202(c) of the Federal Power Act* (Application) with the United States Department of Energy (Department) “to preserve the reliability of the bulk electric power system.” ERCOT describes the emergency situation as follows:

The ERCOT region is currently experiencing a sustained heat wave that is resulting in abnormally high electric demand. Temperatures on September 7, 2023, are expected to reach 107 degrees in the Dallas-Fort Worth area, 105 degrees in the Houston area, 103 degrees in the San Antonio area, and 105 degrees in the Austin area, while temperatures on September 8, 2023, are expected to reach 108, 106, 107, and 105 degrees in these same areas, respectively. These high temperatures are driving record demands for this time of year. On September 6, 2023, ERCOT established a September load record of 82,705 MW, which exceeds last year’s September peak load of 72,370 MW by 10,335 MW—an increase of 14.3% year over year.

Application at 1. ERCOT declared an Energy Emergency Alert (EEA) Level 2 at 7:25 PM Central Daylight Time (CDT) on September 6 due to low reserve margins and a drop in frequency. ERCOT has observed high loading on a certain transmission element in similar circumstances over the past few weeks and is concerned that a post-contingency overload could occur again during the later afternoon and evening hours today and tomorrow. Such an overload would require ERCOT to reduce output of resources impacting the loading on that element, exacerbating ERCOT’s scarcity concern. The extreme heat and high electric demand are expected to continue through September 8, 2023.

*Description of Mitigation Measures*

ERCOT has taken several actions to help ensure the supply of generation will continue to be sufficient to meet system demand and reserve requirements. On September 7, 2023, ERCOT issued a conservation appeal seeking energy conservation for the hours of 17:00 through 21:00 CDT, and ERCOT expects to issue a similar appeal on September 8, 2023. At ERCOT's request, the Texas Commission on Environmental Quality announced that it will provide enforcement discretion to generators in the ERCOT region that may need to exceed state emissions limits during periods in which their incremental output is necessary. If generating reserves do eventually diminish to a level that requires ERCOT to declare an Energy Emergency Alert (EEA), ERCOT has stated that it will take additional measures to provide additional reserves, including:

- Utilizing all available DC Tie import capacity;
- Deploying capacity enrolled in ERCOT's Emergency Response Service;
- Instructing transmission and distribution service providers to implement distribution voltage reduction measures and to deploy customers enrolled in load management programs;
- Instructing Load Resources providing Responsive Reserve Service (RRS) to curtail their demand, and instruct Generation Resources providing RRS to make their capacity available for ERCOT's dispatch; and
- Instructing Energy Storage Resources to suspend charging.

Application at 2. Despite these measures, ERCOT has filed the Application because ERCOT's actions may not prove sufficient to avoid the need to curtail firm load to ensure system reliability.

*Request for Order*

ERCOT requests that the Secretary issue an order immediately, effective September 7, 2023, through 21:00 CDT on September 8, 2023, authorizing "the provision of additional energy from the units identified in Exhibit A, as well as any other generating units subject to emissions or other permit limitations" in the ERCOT region. Application at 3. The generating units (Specified Resources) that this Order pertains to are listed on the Order 202-23-1 Resources List, as described below.

*ORDER*

Given the emergency nature of the expected load stress, the responsibility of ERCOT to ensure maximum reliability on its system, and the ability of ERCOT to identify and dispatch generation necessary to meet the additional load, I have determined that, under the conditions specified below, additional dispatch of the Specified Resources is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c). This determination is based on, among other things

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- The emergency nature of the expected load stress caused by the current extreme heat event threatens to cause loss of power to homes and local businesses in the areas that may be affected by curtailments, presenting a risk to public health and safety.
- The expected shortage of electric energy, shortage of facilities for the generation of electric energy, and other causes in the State of Texas and within the ERCOT region demonstrate the need for the Specified Resources to contribute to the reliability of ERCOT.
- ERCOT's responsibility to ensure maximum reliability on its system, and, with the authority granted in this Order, its ability to identify and dispatch generation, including the Specified Resources, necessary to meet the additional load resulting from the extreme heat event.

In line with the anticipated circumstances precipitated by the extreme heat event, this Order is limited to the period beginning with the issuance of this Order on September 7, 2023, through 21:00 CDT on September 8, 2023. Because the additional generation may result in a conflict with environmental standards and requirements, I am authorizing only the necessary additional generation on the conditions contained in this Order, with reporting requirements as described below.

FPA section 202(c)(2) requires the Secretary of Energy to ensure that any 202(c) order that may result in a conflict with a requirement of any environmental law be limited to the "hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable," be consistent with any applicable environmental law and minimize any adverse environmental impacts. ERCOT anticipates that this Order may result in exceedance of emissions of sulfur dioxide, nitrogen oxide, mercury, and carbon monoxide emissions, as well as wastewater release limits. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes.

Based on my determination of an emergency set forth above, I hereby order:

- A. From the time this Order is issued on September 7, 2023, to 21:00 CDT on September 8, 2023, in the event that ERCOT determines that generation from the Specified Resources is necessary to meet the electricity demand that ERCOT anticipates in Texas during this event, I direct ERCOT to dispatch such unit or units and to order their operation only as needed to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements. Specified Resources are those generating units set forth on the Order 202-23-1 Resource List, subject to updates directed here and as described in paragraph D, which the Department shall post on [www.energy.gov](http://www.energy.gov). ERCOT is directed to update Exhibit A to its Application with the anticipated category of environmental impact(s) (i.e., sulfur dioxide, nitrogen oxide, mercury, carbon monoxide emissions, wastewater release, other air pollutants) by 21:00 CDT on September 8, 2023.

- B. To minimize adverse environmental impacts, this Order limits operation of dispatched units to the times and within the parameters determined by ERCOT for reliability purposes. Consistent with good utility practice, ERCOT shall exhaust all reasonably and practically available resources, including available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions, to the extent that such resources provide support to maintain grid reliability, prior to dispatching the Specified Resources. ERCOT shall provide a daily notification to the Department reporting each generating unit that has been designated to use the allowance and operated in reliance on the allowances contained in this Order.

In furtherance of the foregoing and, in each case, subject to the exhaustion of all available imports, demand response, and identified behind-the-meter generation resources selected to minimize an increase in emissions available to support grid reliability:

- (i) For any Generation Resource or Settlement Only Generator whose operator notifies ERCOT that the unit is unable, or expected to be unable, to produce at its maximum output due to an emissions or other limit in any federal environmental permit, the unit will be allowed to exceed any such limit only between the hours of 17:00 and 21:00 CDT on Thursday, September 7, 2023, and 17:00 and 21:00 CDT on Friday, September 8, 2023, and only if ERCOT has declared an EEA Level 2 or Level 3 that remains in effect during all or any part of either such period. This incremental amount of restricted capacity would be offered at a price no lower than \$1,500/MWh. Once ERCOT declares that it is no longer in an EEA Level 2 or 3, or at 21:00, whichever occurs first, the unit would be required to return to operation within its permitted limits as expeditiously as possible. And at all other times, the unit would be required to operate within its permitted limits.
- (ii) For any Generation Resource whose operator notifies ERCOT that the unit will be offline at any point between the hours of 17:00 and 21:00 CDT Thursday, September 7, 2023, and 17:00 and 21:00 CDT Friday, September 8, 2023, or would need to go offline during either such period, due to an emissions or other limit in any federal environmental permit, if ERCOT has declared or expects to declare an EEA Level 2 or Level 3 that is expected to be in effect during all or any part of that period, then ERCOT may issue a Reliability Unit Commitment (RUC) instruction in advance of that period or during that period directing the unit operator to bring the unit online, or to keep the unit online, and to operate at the minimum level at which the Resource can be sustainably operated. If ERCOT issues the instruction in advance of either such period, then ERCOT shall endeavor to commit the unit at a time that allows the unit to reach its low sustained limit no earlier than the beginning of that period or the start of any EEA Level 2, whichever is expected to occur last. An operator subject to RUC instruction described herein would be allowed to make all of the unit's capacity available to ERCOT for dispatch during any period between the hours of 17:00 and 21:00 CDT on Thursday, September 7, 2023, and 17:00 and 21:00 CDT

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Friday, September 8, 2023, for which ERCOT has declared an EEA Level 2 or Level 3. This capacity would be offered at a price no lower than \$1,500/MWh. Once ERCOT issues a declaration indicating that it is no longer in an EEA Level 2 or 3, or at 21:00 CDT, whichever occurs first, the unit would be required to return to operation within its permitted limits as expeditiously as possible unless the unit is subject to a subsequent RUC instruction that complies with the terms specified herein.

- C. All operation of the Specified Resource must comply with applicable environmental requirements, including but not limited to monitoring, reporting, and recordkeeping requirements, to the maximum extent feasible while operating consistent with the emergency conditions. This Order does not provide relief from any obligation to pay fees or purchase offsets or allowances for emissions that occur during the emergency condition or to use other geographic or temporal flexibilities available to generators.
- D. In the event that ERCOT identifies additional generation units that it deems necessary to operate in excess of federal environmental permitting limits in order to maintain the reliability of the power grid in the ERCOT region when the demand on the ERCOT system exceeds expected energy and reserve requirements, including any such entity to which ERCOT intends to issue a Reliability Unit Commitment (RUC), ERCOT shall provide prompt written notice to the Department of Energy at [AskCR@hq.doe.gov](mailto:AskCR@hq.doe.gov) with the name and location of those units that ERCOT has identified, as well as notice by the same means as an updated Exhibit A to its Application such additional generation units, the fuel type of such unit, and the anticipated category of environmental impact, at 09:00 CDT or 21:00 CDT, whichever follows closest in time to the unit identification by ERCOT to the greatest extent feasible. Such additional generation unit shall be deemed a Specified Resource for the purpose of this Order for the hours prior to the required written notice to the Department, and ERCOT may dispatch such additional generation units, provided that if the Department of Energy notifies ERCOT that it does not approve of such generation unit being designated as a Specified Resource, such generation unit shall not constitute a Specified Resource upon notification from the Department. The Department shall post an updated Order 202-23-1 Resource List as soon as practicable following notification from ERCOT under this paragraph.
- E. ERCOT shall provide such additional information regarding the environmental impacts of this Order and its compliance with the conditions of this Order, in each case as requested by the Department of Energy from time to time. By October 6, 2023, ERCOT shall report all dates between September 7, 2023 and September 8, 2023, inclusive, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. ERCOT shall submit a final report by November 6, 2023, with any revisions to the information reported on October 6, 2023. The environmental information submitted in the final report shall also include the following information:
- (i) Emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NO<sub>x</sub>, PM<sub>10</sub>, VOC, and SO<sub>2</sub>;
  - (ii) Emissions data must include emissions (lbs/hr) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits;

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- (iii) The number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions, e.g. “Generator #1; September 8, 2023; 4 hours; 04:00-08:00 CDT”;
- (iv) Amount, type and formulation of any fuel used by each Specified Resource;
- (v) All reporting provided under the Specified Resource’s operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource that operates pursuant to this Order;
- (vi) Additional information requested by DOE as it performs any environmental review relating to the issuance of this Order; and
- (vii) Information provided by the Specified Resource describing how the requirements in paragraph C above were met by the Specified Resource while operating under the provisions of this Order.

In addition, ERCOT shall provide information to the Department quantifying the net revenue associated with generation in excess of environmental limits accruing to non-RUC units in connection with orders issued by the Department pursuant to Section 202(c) of the Federal Power Act.

- F. ERCOT shall take reasonable measures to inform affected communities where all Specified Resources operate that ERCOT has been issued this Order, in a manner that ensures that as many members of the community as possible are aware of the Order, and explains clearly what the Order allows ERCOT to do. At a minimum, ERCOT shall post a description of this Order on its website (with a link to this Order) and identify the name, municipality or other political subdivision, and zip code of Specified Resources covered by this Order, as the Specified Resources may be updated pursuant to paragraph D above. In addition, in the event that a Specified Resource operates pursuant to this Order, a general description of the action authorized by this Order will be included in any press release issued by ERCOT with respect to the extreme heat event and will include a reference to the website posting required by the preceding sentence for further information. ERCOT shall describe the actions taken to comply with this paragraph in the reports delivered to the Department pursuant to paragraph E above.
- G. This Order shall not preclude the need for the Specified Resource to comply with applicable state, local, or Federal law or regulations following the expiration of this Order.
- H. ERCOT shall be responsible for the reasonable third-party costs of performing analysis of the environmental and environmental justice impacts of this Order, including any analysis conducted pursuant to the National Environmental Policy Act.
- I. This Order shall be effective upon its issuance, and shall expire at 21:00 CDT on

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Friday, September 8, 2023, with the exception of the reporting requirements in paragraph E. Renewal of this Order, should it be needed, must be requested before this Order expires.

Issued in Washington, D.C. at 6:35 PM Eastern Daylight Time on this 7<sup>th</sup> day of September 2023.

A handwritten signature in black ink, appearing to be "John A. DOE", written over a faint, illegible background.

Secretary of Energy