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| NPRR Number | [1194](https://www.ercot.com/mktrules/issues/NPRR1194) | NPRR Title | Wholesale Storage Load Auxiliary Netting |
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| Date | September 12, 2023 |
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| Comments |

South Texas Electric Cooperative, Inc. (STEC) submits these comments in response to ERCOT’s comments in opposition to Nodal Protocol Revision Request (NPRR) 1194, submitted on September 7, 2023.

STEC disagrees with ERCOT’s comments and conclusory statements that STEC’s proposed NPRR would “conflict with state law” regarding the treatment of Energy Storage Resources (ESRs) that benefit from Wholesale Storage Load (WSL) treatment.

Contrary to ERCOT’s comments, state law expressly prohibits the netting of discharged energy with retail auxiliary Load from an ESR qualified for WSL treatment. ERCOT’s comments cannot be reconciled with the rules of the Public Utility Commission (Commission) or the Public Utility Regulatory Act (PURA)[[1]](#footnote-1)1 because it would allow ESRs that benefit from WSL treatment to net and determine retail charges in a manner contrary to 16 Texas Administrative Code (TAC) § 25.501(m).

This Commission rule confirms that wholesale storage is not subject to retail tariffs, rates, and charges or fees assessed in conjunction with the retail purchase of electricity. However, the separately metered auxiliary facilities *are* subject to retail rates. This principle has been confirmed several times by the Commission and Commission Staff.

In a recent memorandum filed by Commission Staff in Project No. 54224 regarding policy recommendations related to distributed energy resources (DERs), including ESRs, Commission Staff confirmed that “[t]he auxiliary load does not receive the benefits described in 16 TAC § 25.501(m).”[[2]](#footnote-2)  This treatment of an auxiliary Load has also been confirmed by the Commission in its rulemaking on energy storage issues in Project No. 39917. In that rulemaking the Commission stated that electricity purchased from the ERCOT system for auxiliary facilities and consumed by the auxiliary facilities should be treated as a retail sale.[[3]](#footnote-3)

These determinations by both the Commission and Commission Staff confirm that auxiliary facilities *are* subject to retail rates and must be served by the retail electric utility certificated to serve the area in which the auxiliary Load is located. Alternative proposals that allow for the netting of auxiliary Load with generation when an ESR is exporting to the grid are not permitted.

In support of its comments, ERCOT argues that PURA § 35.152(b)(3) states that ESRs are entitled to use “equipment or facilities to sell electricity or ancillary services at wholesale in a manner consistent with the provisions of this title and commission rules appliable to a power generation company or an exempt wholesale generator.” However, all Resources, including non-ESR Resources, are required to pay retail rates to serve auxiliary Load whenever the energy originates from the ERCOT grid.

However, as described above, ERCOT’s position is not consistent with PURA or Commission rules because it ignores the plain language in 16 TAC § 25.501(m) and recent Commission guidance on ESR and WSL issues. ERCOT fails to acknowledge that 16 TAC § 25.501(m) expressly requires that WSL be “separately metered from all other facilities including auxiliary facilities.” As stated in STEC’s NPRR submission, “[t]he wholesale storage is clearly omitted from retail-related requirements and responsibilities, which is the distinction it is granted from “all other facilities including auxiliary facilities" which are subject to retail service rules and requirements.”[[4]](#footnote-4) In addition, netting arrangements like the ones supported by ERCOT would also violate PURA § 31.002(10) because a power generation company cannot provide retail electricity or own or operate transmission and distribution facilities. Unlike the definition of “electric utility”, PURA does not include exemptions from the definition of “retail electric utility” for an entity that is a power generation company.

Instead, PURA requires that the facilities of certificated retail electric utilities be used to obtain retail electric service for the ultimate benefit of an ESR’s auxiliary Load. An ESR cannot use its battery and privately owned facilities to power its auxiliary facilities and cannot own a portion of the facilities that would ultimately serve its auxiliary Load. Such an arrangement would make the ESR a retail electric utility under PURA Chapter 37 because it would provide retail service to its auxiliary Load over non-utility, private facilities.

Under PURA § 37.001(3), “retail electric utility” includes a person, political subdivision, electric cooperative or agency that operates, maintains, or controls, in this state a facility to provide retail electric utility service. PURA § 11.003(14) defines a “person” as “an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation.” Even if an ESR were a power generation company, an ESR in a netting arrangement like the ones supported by ERCOT would still meet the definition of a “retail electric utility” because it would be furnishing, through privately-owned facilities, retail electric service for ultimate service to its auxiliary Load.

PURA requires that any entity providing retail electric service have a certificate of convenience and necessity (CCN), which an ESR would not have. PURA § 37.051(a) requires retail electric utilities to obtain a CCN to provide retail service to customers and Load. PURA § 37.051(b) also prohibits a retail electric utility from furnishing or making available retail electric service to an area in which retail electric utility service is being lawfully furnished by another retail electric utility unless the utility first obtains a CCN that includes the area - meaning that even another utility could not provide this service unless it was being provided in their service territory. An ESR would first need to obtain a CCN from the Commission to serve its auxiliary Load over non-utility private facilities and through utility lines.

Notably, the Commission could not grant a CCN to an ESR because PURA § 37.060(h) seeks to reduce the number of retail service CCNs by requiring that “[t]he commission may not grant an additional retail electric utility certificate to serve an area if the effect of the grant would cause the area to be multiply certificated unless the commission finds that the certificate holders are not providing service to any part of the area for which a certificate is sought and are not capable of providing adequate service to the area in accordance with applicable standards.” The building of distribution infrastructure by a non-utility for ultimate retail service to a retail load in the service territory of an existing retail utility results in duplication of facilities in a singly certificated area and is not permitted by PURA.

ERCOT also argues that STEC’s NPRR would “inappropriately treat ESRs differently from Generation Resources, contrary to the mandate of [PURA].” However, ESRs are different from other Generation Resources as illustrated by the passage of 16 TAC § 25.501(m), which applies only to ESRs, and several instances of ESR-specific language and references in the ERCOT Protocols. ESRs are also different from other types of Generation Resources because ESRs must first convert imported energy to chemical energy before discharging such energy. Further, ESRs do not regenerate energy at the same level at which such energy was stored. ERCOT acknowledges this difference in its comments, stating that energy imported from the grid must first be converted to chemical energy and “re-generated” before being exported. In addition, transmission and distribution utilities in ERCOT are permitted by PURA to contract with ESRs to ensure reliable service to distribution customers. No other types of Generation Resources are afforded this privilege. The Commission has also recognized the various distinctions between ESRs and other types of Generation Resources, which has led the Commission to open two rulemaking projects to facilitate the integration of certain ESRs into the ERCOT market. In opening these rulemaking projects, the Commission recognized the unique differences and challenges that ESRs present as compared to other types of Generation Resources. As articulated in STEC’s filed NPRR, “*[n]o other type of Resource shares this clear distinction*.” (Emphasis added).

ERCOT’s arguments that NPRR1194 would “create needless disruption of an established practice in the ERCOT market” for 42 ESR sites is not accurate. NPRR1194 will not result in ESRs being taken out-of-service for extended periods of time. Nor will ESRs be saddled with exorbitant costs to meet the requirements of NPRR1194. The unwinding of current ESR metering arrangements will vary in cost and scope and the modifications needed to comply with NPRR1194 can be accomplished inexpensively. Additionally, an ESR will not need to be taken out of service until such time as the modifications are ready to be installed and only for the time period necessary.

The statement that there are 42 ESR sites in the ERCOT market that would be impacted by the NPRR is surprising given that when STEC first raised this issue in August of 2022, ERCOT communicated that there were far fewer incorrectly metered ESR sites. The NPRR will not impact sites metered in accordance with the Commission’s rules.

ERCOT also asserts that because STEC voted in favor of NPRR461, Energy Storage Settlements Consistent With PUCT Project 39917, in 2012 as a Technical Advisory Committee representative, that STEC is somehow barred from proposing an NPRR to unwind netting arrangements that run contrary to the Commission’s rules and PURA. ERCOT can point to no authority in support of its assertion and its argument directly conflicts with PUCT rules. Further 16 TAC § 25.503(f)(2)(A) encourages market participants to “seek an amendment of the Protocols as provided for in the Protocols” if it ”disagrees with any provision of the Protocols or any official interpretation of the Protocols.” This includes addressing a Protocol that cannot be reconciled with the plain language of a PUCT rule.

For these reasons, STEC respectfully requests that PRS move NPRR1194 forward. Both PURA and Commission rules expressly confirm that auxiliary Load is a retail sale, not a wholesale transaction, and therefore the energy discharged is not permitted to be netted against the auxiliary Loads.

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| Revised Cover Page Language |

None.

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| Revised Proposed Protocol Language |

None.

1. 1 Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA). [↑](#footnote-ref-1)
2. *Cost Recovery for Services to Distributed Energy Resources (DERs)*, Project No. 54224, Commission Staff Memorandum at 6 (Mar. 16, 2023). [↑](#footnote-ref-2)
3. *Rulemaking on Energy Storage Issues*, Project No. 39917, Order Adopting Amendments to § 25.192 and § 25.501 as Approved at the March 7, 2012 Open Meeting at 13 (Mar. 30, 2012). [↑](#footnote-ref-3)
4. See 1194NPRR-01 Wholesale Storage Load Auxiliary Netting 081623 at 1. [↑](#footnote-ref-4)