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| NPRR Number | [1199](https://www.ercot.com/mktrules/issues/NPRR1199) | NPRR Title | Implementation of Lone Star Infrastructure Protection Act (LSIPA) Requirements |
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| **Date** | December 11, 2023 |
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| Market Segment | Investor-Owned Utility (IOU) |

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| Comments |

Oncor provides these comments to supplement the comments submitted by NRG Texas Power LLC and other joint commenters (Joint Commenters) on December 8, 2023, and to respond to certain portions of the changes submitted by ERCOT on December 8, 2023. Oncor concurs in large part with Joint Commenters’ comments and provides herein additional explanation supporting certain of Joint Commenters’ comments that are the most impactful from Oncor’s perspective.

Specifically, Oncor strongly supports the following revisions proposed in Joint Commenters’ comments:

* Revising the definition of Critical Electric Grid Equipment (CEGE) in a manner that limits it to equipment that (i) could be used to gain remote access to or control of ERCOT System Infrastructure, and (ii) if destroyed, degraded, misused, or rendered unavailable would, within 15 minutes or less of its mis-operation, non-operation, or required operation, adversely impact the reliable operation of ERCOT System Infrastructure. The intended goal of PURA § 39.360(c) – which focuses on purchases from prohibited companies or countries – is to prevent wrongdoers from remotely accessing or controlling (such as through remote manipulation or “hacking”) CEGE. For example, a utility’s purchase of a physical asset, such as a transmission pole that cannot be remotely operated, manipulated, or altered, does not pose the same type of threat as the purchase of protective relays, for example, that could be hacked into and taken control of remotely. The first instance poses a concern of physical security and in-person accessibility (which might arguably be at least partially implicated by SB 2116), while the other poses a concern of cyber security and remote accessibility (which are the focus of PURA § 39.360(c) as added by SB 2013). The inclusion of the “remote access” qualifier in the definition of CEGE is aligned with the goal of PURA § 39.360(c). For these reasons, Oncor also concurs with ERCOT’s December 8th changes to the extent they revise the requirement relating to the impact of equipment unavailability from 24 hours to 15 minutes and limit the definition of CEGE to apply only to equipment that may be remotely accessed or controlled.
* Modifying the definition of “affiliate” under the protocols for purposes of the LSIPA requirements, which places more focus on actual control for purposes of the affiliate analysis. The legislature is aware that ERCOT can and does revise its protocols from time to time; thus, by crafting SB 2013 in a way that defines “affiliate” as having “the meaning assigned by the protocols of [ERCOT],” one can presume that the legislature knew that ERCOT’s current definition of “affiliate” residing in Section 2.1 of the protocols may be revised from time to time, either with respect to the LSIPA specifically or for all purposes more generally. Oncor is agnostic as to whether Joint Commenters’ modification of the definition for LSIPA purposes should reside in this protocol or should instead be placed in Section 2.1 of the protocols. Oncor agrees, however, that the modification would be helpful in many instances. For example, a generator may be indirectly owned or controlled by an upstream parent company that makes indirect equity investments in numerous entities across the world and across multiple industries, including entities headquartered in an LSIPA Designated Country. Without the Joint Commenters’ proposed revision, some such entities would arguably be considered “affiliates” due to this indirect, common control by a shared parent company, despite the fact that (i) the common parent company merely holds an equity interest without any board representation or day-to-day management power over such entities, and (ii) the entities have no control over the generator, nor does the generator have any control over the entities. Joint Commenters’ proposed modification would clarify that these kind of entities would not be considered an “affiliate” for LSIPA purposes if the criteria set forth by Joint Commenters are met. Conversely, Oncor respectfully disagrees that ERCOT’s December 8th modification to the definition of “affiliate” makes any meaningful change.
* Adding a knowledge-based qualifier in paragraph (1) of 16.1.4 and Question No. 1 of Form R. SB 2116 introduces a clear “knowing” element regarding entering into contracts with companies meeting the prohibited citizenship/headquarters criteria; specifically, Section 117.002(a)(2) of the Texas Business and Commerce Code (added by SB 2116) begins with “if the business entity *knows* that the company is…” (emphasis added). Within SB 2013, PURA § 39.360(c) appears to incorporate this knowledge qualifier of SB 2116, given that PURA § 39.360(c) requires the reporting of purchases of CEGE “from a company described by Section 11[7].002(a)(2), Business & Commerce Code….”  Therefore, because paragraph (1) of 16.1.4 is intended to implement PURA § 39.360, it should also contain a knowledge-based qualifier, such that it only requires an Entity to report purchases of CEGE or Critical Electric Grid Services from a company known to the Entity to be an LSIPA Designated Company or an LSIPA Designated Country. Oncor also appreciates and agrees with ERCOT’s December 8th change that adds a knowledge qualifier to paragraph (1) of Section 16.1.4; Oncor, however, respectfully disagrees with ERCOT’s broadening of “knowledge” to include “constructive knowledge that could be obtained through a reasonable inquiry.” Neither SB 2116 nor SB 2013 makes reference to constructive knowledge or a reasonable inquiry; thus, ERCOT’s language goes beyond the statutory obligations. While it is reasonable to expect an Entity to ask a seller/vendor whether that seller/vendor meets any of the prohibitions under SB 2116, the language suggested by ERCOT could lead to debate as to whether making this inquiry from the seller/vendor is a “reasonable inquiry” or whether the Entity has a further duty to independently research and verify the veracity of each seller’s/vendor’s response (which would impose a tremendous, or possibly unachievable, obligation on the Entity, based on the volume of sellers/vendors with whom the Entity transacts). Rather, the knowledge qualifier proposed by Joint Commenters more closely aligns with the language used in SB 2116 and incorporated by reference in SB 2013.
* Eliminating the requirement in paragraph (1) of 16.1.4 to report procurements of CEGE or Critical Electric Grid Equipment Services that were manufactured, produced, created, or otherwise provided by an LSIPA Designated Company, and subsequently sold to the Market Participant by a non-LSIPA Designated Company. SB 2013 only requires the reporting of *purchases* *from* an LSIPA company; it does not in any way address purchases of equipment *produced or manufactured* by such a company. Therefore, this proposed Protocol requirement is beyond the scope of SB 2013. Moreover, from a practical standpoint, this proposed requirement must be eliminated because it would likely prove impossible for Oncor and other Market Participants to comply with. Oncor simply does not have visibility into the manufacturing and production processes and locations of all of the equipment it purchases, especially in light of the fact that equipment (or certain components or parts thereof) might be manufactured or produced by one company in a particular country but then sold to, and subsequently resold by, a different company in another country, without any disclosure of that manufacturing history to the buyer.
* Adding a subparagraph to 16.1.4(1) and Question No. 2 on Form R to address the required actions and reporting for past purchases of CEGE that predate the June 8, 2023 effective date of SB 2013. This distinction in the requirements for past purchases is expressly noted in the provisions of Section 7(b) of SB 2013 and is necessary, given that before SB 2013 became effective, Market Participants were not under any obligation to avoid purchases of CEGE from the prohibited companies or countries. Thus, for those past purchases predating June 8, 2023, Market Participants should only be required to take reasonable and necessary actions to mitigate access to or control of CEGE by the prohibited countries or companies and to report on those actions to ERCOT, rather than having to demonstrate that the past purchases will categorically not result in such access or control.

Oncor looks forward to discussing NPRR1199 during the December 15, 2023 Protocol Revision Subcommittee meeting.

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| **Revised Cover Page Language** |

None

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| Revised Proposed Protocol Language  |

None