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| NPRR Number | [1209](https://www.ercot.com/mktrules/issues/NPRR1209) | NPRR Title | Board Priority – State Of Charge Ancillary Service Failed Quantity Allocations under NPRR1149 |
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| Date | | December 14, 2023 | |
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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) 1209, Board Priority – State Of Charge Ancillary Service Failed Quantity Allocations under NPRR1149.

On November 8, 2023, ERCOT sponsored NPRR1209 for the sole purpose of supplementing NPRR 1186, Improvements Prior to the RTC+B Project for Better ESR State of Charge Awareness, Accounting, and Monitoring,[[1]](#footnote-1) with additional compliance penalties on Energy Storage Resources (ESRs) and their Qualified Scheduling Entities (QSEs) that do not meet a specific State of Charge (SOC) threshold. However, ERCOT’s proposed “stronger compliance and financial penalties” are in addition to a plethora of existing requirements and penalties applicable to all Resources (including ESRs) and their QSEs, along with ERCOT responsibilities for monitoring and notifying Resources (and their QSEs) of Ancillary Service issues. NPRR1209 is discriminatory towards ESRs and anticompetitive for the same reasons Eolian has argued in comments and filings regarding NPRR1186.[[2]](#footnote-2)

NPRR1209 specifically disadvantages ESRsover other types of dispatchable Generation Resources. NPRR1209 subjects the QSE of an ESR to financial penalties based on a single pre-performance compliance metric—an arbitrary SOC threshold—that is insufficient to determine a performance outcome. NPRR1209 is not based on the actual performance of a particular type of Resource and violates PURA by failing to treat all Market Participants in a nondiscriminatory manner.[[3]](#footnote-3)

Moreover, ERCOT’s argument that NPRR 1209 subjects ESRs to automatic failure to provide like NPRR1149, Implementation of Systematic Ancillary Service Failed Quantity Charges, is disingenuous. NPRR1149[[4]](#footnote-4) once implemented, will allow ERCOT’s systems to automatically charge QSEs (i.e., clawback Ancillary Service payments) if a Resource—any type of Resource, including an ESR— with an Ancillary Service Responsibility does not deliver the Ancillary Services in Real-Time. In other words, NPRR1149 addresses actual non-performance of an Ancillary Service obligation in Real-Time, not a preconceived notion of potential non-performance that is disconnected from actual performance in Real-Time.

ERCOT’s Business Case for NPRR1149 states:

[F]ollowing winter storm Uri, the [IMM] filed a recommendation at the [PUCT] in Project 51812, Issues Related to the State of Disaster for the February 2021 Winter Weather Event, that ERCOT should charge failed quantities ***based on Real-Time telemetry and outcomes*** during the storm. The PUCT agreed with this recommendation (*See* Second Order Addressing Ancillary Services under Project No. 51812) and applicable charges were issued to QSEs by ERCOT. . . [NPRR 1149] implements that process permanently for all periods and in a more systematic way, ensuring that Load is not charged or is reimbursed for Ancillary Services ***that are not delivered in Real-Time***.[[5]](#footnote-5)

NPRR1149 is Resource agnostic. It applies to all Resources, including ESRs. If a traditional Generation Resource does not deliver Ancillary Services in Real-Time, its QSE will automatically be charged for failure to provide. If an ESR does not deliver awarded Ancillary Services in Real-Time, its QSE will automatically be charged for failure to provide.

Under NPRR1209, however, if an ESR does not meet the SOC threshold proposed in NPRR1186, its QSE will automatically be charged for failure to provide even if (a) the ESR is not dispatched in Real-Time, or (b) the ESR is dispatched and provides in Real-Time, but for whatever reason, does not meet the SOC threshold. NPRR 1209 imposes penalties on a single Resource type for failure to maintain a certain amount of capacity at a given time, but NPRR1209 does not impose penalties on other Resource types for failure to do the same (nor any other proposed NPRR or existing rule).

PURA § 35.004(f) requires the Commission to “ensure that ancillary services necessary to facilitate the transmission of electric energy are availableat reasonable prices with termsand conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.”[[6]](#footnote-6) Additionally, PURA charges ERCOT “with nondiscriminatory coordination of market transactions, systemwide transmission planning, and network reliability”[[7]](#footnote-7) and provides that “[r]egulatory authorities . . . may not discriminate against any participant or type of participant . . . in the competitive market.”[[8]](#footnote-8) ERCOT agrees that it “is bound by PURA 39.001(c) to treat all market participants in a nondiscriminatory manner,”[[9]](#footnote-9) and PURA does not prohibit all discriminatory conduct. However, PURA does prohibit conduct that is “unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.”[[10]](#footnote-10) If ERCOT wants to impose stronger requirements and penalties on a certain type of Market Participant (i.e., ESRs), then that treatment “must be founded upon a **substantial** **and** **reasonable** ground.”[[11]](#footnote-11)

ERCOT has not provided substantial or reasonable grounds to discriminate against ESRs under NPRR1186 or NPRR1209. ERCOT has repeated its concern about a “risk that short-duration ESRs will not have the SOC necessary to fulfill their Ancillary Service Resource Responsibilities in the event they are carrying such a responsibility across multiple consecutive hours and are deployed for that service across those hours,”[[12]](#footnote-12) but has never provided a reasonable (much less, substantial) explanation for to justify discriminatory and anticompetitive treatment of ESRs.

ERCOT and the Commission have acknowledged that NPRR1209 is dependent upon Commission approval of NPRR1186.[[13]](#footnote-13) ERCOT has also agreed to provide the Commission and stakeholders with details and explanations for why ESR growth supports the “explicit and enforceable [SOC] requirements,” as well as an explanation of the relationship between NPRRs 1186 and 1209.[[14]](#footnote-14) It remains to be seen whether ERCOT will meet the statutory burden that would allow the Commission to justify discriminatory and anticompetitive treatment of ESRs. Until then, NPRR 1209 should remain tabled at the ERCOT Protocol Revision Subcommittee (PRS).

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| Revised Cover Page Language |

None

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| Revised Proposed Protocol Language |

None

1. NPRR1209, *Board Priority – State Of Charge Ancillary Service Failed Quantity Allocations under NPRR1149* (Nov. 8, 2023) available at https://www.ercot.com/files/docs/2023/11/08/1209NPRR-01%20Board%20Priority%20-%20State%20of%20Charge%20Ancillary%20Service%20Failed%20Quantity%20Allocations%20under%20NPRR1149%20110823.docx. [↑](#footnote-ref-1)
2. NPRR1186, ***Improvements Prior to the RTC+B Project for Better ESR State of Charge Awareness, Accounting, and Monitoring***:

   Eolian Comments (Jul. 6, 2023) at https://www.ercot.com/files/docs/2023/07/06/1186NPRR-03%20Eolian%20Comments%20070623.docx;

   Joint Commenters Comments (Aug. 09, 2023) at https://www.ercot.com/files/docs/2023/08/09/1186NPRR-11%20Joint%20Commenters%20Comments%20080923%20v2%20CORRECTED.docx;

   Joint Commenters Comments (Aug. 21, 2023) at https://www.ercot.com/files/docs/2023/08/21/1186NPRR-17%20Joint%20Commenters%20Comments%20082123.docx;

   Eolian TAC Recommendation Opposition (Aug. 24, 2023) at https://www.ercot.com/files/docs/2023/08/24/1186NPRR-20%20Eolian%20TAC%20Recommendation%20Opposition%20082423.pdf;

   Eolian Comments (Sep. 25, 2023) at https://www.ercot.com/files/docs/2023/09/25/1186NPRR-29%20Eolian%20Comments%20092523.docx; and

   PUC Proj. No. 54445:

   Eolian Comments (Nov. 28, 2023) at https://interchange.puc.texas.gov/Documents/54445\_40\_1348960.PDF; and

   Joint Comments (Dec. 11, 2023) at https://interchange.puc.texas.gov/Documents/54445\_45\_1352196.PDF. [↑](#footnote-ref-2)
3. *See* PURA § 31.009(c). [↑](#footnote-ref-3)
4. NPRR 1149, *Implementation of Systematic Ancillary Service Failed Quantity Charges* (approved on Mar. 24, 2023, with an expected effective date of May/June 2024) available at https://www.ercot.com/files/docs/2023/03/24/1149NPRR-18%20PUCT%20Report%20032323.docx. [↑](#footnote-ref-4)
5. *Id.* (emphasis added). [↑](#footnote-ref-5)
6. PURA § 35.004(f); *see also TXU Generation Co., L.P. v. Pub. Util. Comm’n of Tex.*, 165 S.W.3d 821, 830 (Tex. App.—Austin 2005, pet. denied); *see also* Tex. Att’y Gen. Op. No. KP-0363 at 4 (2021) (“[T]he Utilities Code empowers the Commission to ‘ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.’”); *see also* Docket No. 33416, Conclusion of Law No. 4 (Apr. 13, 2007) (“The Commission must ensure that the provision of ancillary services by ERCOT is not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.”). [↑](#footnote-ref-6)
7. PURA § 31.002(9). [↑](#footnote-ref-7)
8. PURA § 39.001(c). [↑](#footnote-ref-8)
9. Docket No. 37817, ERCOT’s Response to Appellants’ Complaints at 38. [↑](#footnote-ref-9)
10. Docket No. 33416, Order at 7 (quoting PURA § 35.004(e), which the Texas Legislature subsequently relettered as PURA § 35.004(f) in 2021); *see also* Docket No. 33416, Commission Staff’s Brief on the Merits at 6–7 (Jan. 29, 2007). [↑](#footnote-ref-10)
11. *Amtel Communications, Inc. v. Pub. Util. Comm’n of Tex.*, 687 S.W.2d 95, 101–02 (Tex. App.—Austin 1985, no writ) (citing *United Gas Corp. v. Shepherd Laundries Co.*, 144 Tex. 164, 189 S.W.2d 485 (1945)); *see also Westlake Ethylene Pipeline Corp. v. R.R. Comm'n of Tex.*, 506 S.W.3d 676, 683 (Tex. App.—Austin 2016, pet. denied) (citing *Amtel Commc’ns, Inc.*, 687 S.W.2d at 101–02) (emphasis added). [↑](#footnote-ref-11)
12. NPRR 1186, ERCOT Comments(Sept. 19, 2023) at https://www.ercot.com/files/docs/2023/09/19/1186NPRR-27%20ERCOT%20Comments%20091923.docx. [↑](#footnote-ref-12)
13. *See* PUCT Open Meeting, Agenda Item 33, Project No. 54445 – CY 2023 Review of Rules Adopted by the Independent Organization (Nov. 30, 2023). [↑](#footnote-ref-13)
14. *See* PUC Proj. No. 54445, ERCOT Letter Regarding NPRR 1186 (Dec. 11, 2023) available at https://interchange.puc.texas.gov/Documents/54445\_44\_1351904.PDF. [↑](#footnote-ref-14)